

1 **7535-01-U**

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3 **NATIONAL CREDIT UNION ADMINISTRATION**

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5 **12 CFR Part 702**

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7 **NCUA-2022-0005**

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9 **RIN 3133-AF19**

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11 **Prompt Corrective Action: Earnings Retention Waivers and Net Worth Restoration Plans**

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13 **AGENCY:** National Credit Union Administration (NCUA).

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15 **ACTION:** Interim final rule.

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17 **SUMMARY:** The NCUA Board (Board) is extending two temporary changes to its prompt  
18 corrective action (PCA) regulations to help ensure that federally insured credit unions (FICUs)  
19 remain operational and liquid during the COVID-19 crisis. The first amends these regulations to  
20 temporarily extend the Board's ability to issue an order applicable to all FICUs to waive the  
21 earnings retention requirement for any FICU that is classified as adequately capitalized. The  
22 second extends a provision that modifies the specific documentation required for net worth  
23 restoration plans (NWRPs) for FICUs that become undercapitalized. These temporary

24 modifications will remain in place until March 31, 2023. This rule is substantially similar to an  
25 interim final rule that the Board published on April 19, 2021.

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27 **DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL*  
28 *REGISTER*]. Comments must be received on or before [INSERT DATE 60 DAYS FROM  
29 DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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31 **ADDRESSES:** You may submit written comments, identified by RIN 3133-AF19, by any of the  
32 following methods. **Please send comments by one method only.**

- 33 • Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for  
34 submitting comments for Docket # NCUA-2022-0055.
- 35 • Fax: (703) 518-6319. Include “[Your Name]—Comments on “Prompt Corrective Action:  
36 Earnings Retention Waivers and Net Worth Restoration Plans” in the transmittal.
- 37 • Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit  
38 Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- 39 • Hand Delivery/Courier: Same as mail address.

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41 **Public Inspection:** You may view all public comments on the Federal eRulemaking Portal at  
42 <https://www.regulations.gov> as submitted, except for those we cannot post for technical reasons.  
43 The NCUA will not edit or remove any identifying or contact information from the public  
44 comments submitted. Due to social distancing measures in effect, the usual opportunity to  
45 inspect paper copies of comments in the NCUA’s law library is currently unavailable. After

46 social distancing measures are relaxed, visitors may make an appointment to review paper copies  
47 by calling (703) 518-6540 or e-mailing [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

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49 **FOR FURTHER INFORMATION CONTACT:** *Policy and Analysis:* Kathryn Metzker, Risk  
50 Officer, or Victoria Nahrwold, Associate Director, Office of Examination and Insurance, at (703)  
51 518-6360; *Legal:* Marvin Shaw, Senior Staff Attorney and Thomas Zells, Senior Staff Attorney,  
52 Office of General Counsel, at (703) 518-6540; or by mail at: National Credit Union  
53 Administration, 1775 Duke Street, Alexandria, Virginia 22314.

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## 55 **SUPPLEMENTARY INFORMATION**

### 56 **I. Legal Authority**

57 The Board is issuing this interim final rule pursuant to its authority under the Federal  
58 Credit Union Act.<sup>1</sup> The Act grants the Board a broad mandate to issue regulations that govern  
59 both federal credit unions and, more generally, all FICUs. For example, Section 120 of the Act is  
60 a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations  
61 for the administration of the Act.<sup>2</sup> Section 209 of the Act is a plenary grant of regulatory  
62 authority to issue rules and regulations necessary or appropriate for the Board to carry out its role  
63 as share insurer for all FICUs.<sup>3</sup> Other provisions of the Act confer specific rulemaking authority

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<sup>1</sup> 12 U.S.C. 1751 *et seq.*

<sup>2</sup> 12 U.S.C. 1766(a).

<sup>3</sup> 12 U.S.C. 1789.

64 to address prescribed issues or circumstances.<sup>4</sup> Such specific rulemaking authority is set forth in  
65 Section 216(b) about PCA.<sup>5</sup>

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## 67 **II. Prompt Corrective Action Background**

### 68 A. Statutory Provisions

69 In 1998, Congress enacted the Credit Union Membership Access Act (“CUMAA”).<sup>6</sup>  
70 CUMAA amended the Federal Credit Union Act (“the Act”) to require the NCUA to adopt, by  
71 regulation, a system of PCA consisting of minimum capital standards and corresponding  
72 remedies to improve the net worth of federally-insured “natural person” credit unions.<sup>7</sup> The  
73 purpose of PCA is to “resolve the problems of insured credit unions at the least possible long-  
74 term loss to the [National Credit Union Share Insurance Fund (‘NCUSIF’)].”<sup>8</sup> The PCA section  
75 of the Act does not apply to corporate credit unions.<sup>9</sup>

76 The statute designated three principal components of PCA: (1) A framework combining  
77 mandatory actions prescribed by statute with discretionary actions developed by the NCUA; (2)  
78 an alternative system of PCA to be developed by the NCUA for FICUs which CUMAA defines  
79 as “new;” and (3) a risk-based net worth requirement to apply to FICUs which the NCUA  
80 defines as “complex.” Besides those FICUs that meet the statutory definition of a “new” FICU,  
81 CUMAA mandated a framework of mandatory and discretionary supervisory actions indexed to  
82 five statutory net worth categories. These categories are: “well capitalized,” “adequately

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<sup>4</sup> An example of a provision of the Act that provides the Board with specific rulemaking authority is Section 207 (12 U.S.C. 1787), which is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.

<sup>5</sup> 12 U.S.C. 1790d(b).

<sup>6</sup> Pub. L. 105-219, 112 Stat. 913 (1998).

<sup>7</sup> 12 U.S.C. 1790d *et seq.*

<sup>8</sup> 12 U.S.C. 1790d(a)(1).

<sup>9</sup> 12 U.S.C. 1790d(m). Part 704, which this rulemaking does not affect, applies capital and PCA requirements to corporate credit unions.

83 capitalized,” “undercapitalized,” “significantly undercapitalized,” and “critically  
84 undercapitalized.” The mandatory actions and conditions triggering conservatorship and  
85 liquidation are expressly prescribed by statute.<sup>10</sup> To supplement the mandatory actions, the  
86 statute directed the NCUA to develop discretionary actions which are “comparable” to the  
87 “discretionary safeguards” available under Section 38 of the Federal Deposit Insurance Act,  
88 which is the statute that applies PCA to other federally-insured depository institutions.<sup>11</sup>

89 The Act addresses the earnings retention requirement applicable to FICUs that are not well  
90 capitalized.<sup>12</sup> Such FICUs are required to annually set aside as net worth an amount equal to not  
91 less than 0.4 percent of their total assets.<sup>13</sup> The Board has the authority to decrease the earnings  
92 retention requirement.<sup>14</sup> To do this, the Board may issue an order if it determines that the  
93 decrease is necessary to avoid a significant redemption of shares and further the purpose of that  
94 PCA provision of the Act. The Act also requires the Board to periodically review any order  
95 issued under that section.<sup>15</sup>

96 Separately, the Act sets forth requirements related to NWRPs, which FICUs must submit to  
97 the NCUA when it becomes undercapitalized.<sup>16</sup> The regulatory provisions addressing the  
98 procedures and documentation requirements for NWRPs are codified at 12 CFR 702.111 and are  
99 detailed below.

## 100 B. Regulatory Provisions

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<sup>10</sup> 12 U.S.C. 1790d(e), (f), (g), and (i); 12 U.S.C. 1786(h)(1)(F); 12 U.S.C. 1786(a)(3)(A)(1).

<sup>11</sup> 12 U.S.C. 1790d(b)(1)(A); S. Rep. No. 193, 105th Cong., 2d Sess. 12 (1998) (S.Rep.); H.R. Rep. No. 472, 105<sup>th</sup> Cong; *see also* 12 U.S.C. 1831o (Section 38 of the Federal Deposit Insurance Act setting forth the PCA requirements for banks).

<sup>12</sup> 12 U.S.C. 1790d(e).

<sup>13</sup> 12 U.S.C. 1790d(e)(1).

<sup>14</sup> 12 U.S.C. 1790d(e)(2).

<sup>15</sup> 12 U.S.C. 1790d(e)(2)(B).

<sup>16</sup> 12 U.S.C. 1790d(f).

101 In February 2000, the Board adopted part 702 and subpart L of part 747 establishing a  
102 comprehensive system of PCA that combines mandatory supervisory actions prescribed by the  
103 statute with discretionary supervisory actions developed by the NCUA (2000 final rule).<sup>17</sup> Each  
104 of these supervisory actions is indexed to the five statutory net worth categories noted above.  
105 The 2000 final rule also permits the NCUA to impose “other action to better carry out the  
106 purpose of PCA” than any discretionary supervisory action available in that category.<sup>18</sup> In the  
107 proposal that provided the basis for the 2000 final rule, the Board noted that “Part 702 also  
108 amplifies the terms of the statutory exception to the 0.4 percent minimum set aside. Specifically,  
109 the Board stated that it interprets the phrase *by order* to indicate that exceptions to the 0.4 percent  
110 statutory minimum are to be granted on a case-by-case basis.”<sup>19</sup> But the Board revisited this  
111 interpretation in the May 2020 interim final rule on this subject, finding that the Act does not  
112 require FICUs to send a specific application or the NCUA to issue individual orders for each  
113 FICU.<sup>20</sup> The Board also notes that the current, specific requirements on earnings retention  
114 waivers are based on a regulatory provision rather than a specific statutory directive.<sup>21</sup> Thus,  
115 issuing a broadly applicable order is consistent with the overall statutory structure of PCA, which  
116 combines both mandatory and discretionary provisions. During the COVID-19 pandemic, many  
117 FICUs have broadly faced similar economic circumstances that affect net worth and earnings.  
118 Given these experiences, and the potential for similar volatility and uncertainty in the future, the  
119 Board has determined it is appropriate to implement the changes in this rule to extend the

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<sup>17</sup> 65 FR 8560 (Feb. 18, 2000).

<sup>18</sup> 12 CFR 702.107(b)(9), which applies to undercapitalized FICUs.

<sup>19</sup> 64 FR 27090 (May 18, 1999).

<sup>20</sup> 85 FR 31952, 31954 (May 28, 2020).

<sup>21</sup> The Board notes that 12 U.S.C. 1790d(e)(1) requires earnings retention. However, additional provisions in 12 CFR part 702, including those related to timing and the content of the application, supplement this statutory provision.

120 provisions that authorize a broadly applicable order to decrease the earnings-retention  
121 requirements for multiple FICUs and to allow a streamlined NWRP in certain circumstances.

### 122 **III. Recent Interim Final Rules**

#### 123 A. May 2020 Interim Final Rule

124 On May 21, 2020, the Board approved an interim final rule that temporarily amended two  
125 provisions in the PCA regulations in part 702.<sup>22</sup> The first amendment addressed the earnings  
126 retention requirement in §702.201 for FICUs classified as adequately capitalized.<sup>23</sup> The second  
127 amendment addressed the NWRPs for FICUs in §702.206(c) that have become  
128 undercapitalized.<sup>24</sup>

129 The May 2020 interim final rule was issued in response to the COVID-19 pandemic and  
130 sought to ensure that FICUs continue to operate efficiently, to ensure that FICUs maintain  
131 sufficient liquidity, and to account for the potential temporary increase in shares that FICUs may  
132 experience during the COVID-19 pandemic. Specifically, the Board believed the temporary  
133 amendments in the interim final rule would allow FICUs to better utilize resources by reducing  
134 the administrative burden associated with a temporary increase in shares. The Board concluded  
135 that the amendments would provide FICUs with necessary additional flexibility in a manner  
136 consistent with the NCUA's responsibility to maintain the safety and soundness of the credit  
137 union system. The Board made the temporary amendments effective upon publication and

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<sup>22</sup> 85 FR 31952 (May 28, 2020).

<sup>23</sup> As detailed subsequently in this preamble, the NCUA's 2015 final rule on risk-based capital went into effect on January 1, 2022, and amended certain provisions in part 702. As a result, the earnings retention requirement in §702.201 was moved to §702.106. Accordingly, this interim final rule implements the amendment made by the 2020 and 2021 PCA interim final rules to §702.201 in §702.106.

<sup>24</sup> As detailed subsequently in this preamble, the NCUA's 2015 final rule on risk-based capital went into effect on January 1, 2022, and amended certain provisions in part 702. As a result, the requirements for NWRPs in §702.206(c) were moved to §702.111(c). Accordingly, this interim final rule implements the amendment made by the 2020 and 2021 PCA interim final rules to §702.206(c) in current §702.111(c).

138 specified that they would remain in place through the end of calendar year 2020. The Board  
139 sought comment on the interim final rule.

140 On June 5, 2020, pursuant to the changes made by the May 2020 interim final rule, the  
141 Board issued a temporary order decreasing the earnings retention requirement.<sup>25</sup> Specifically, the  
142 Board determined that, due to economic circumstances caused by the COVID-19 pandemic,  
143 decreasing the earnings retention requirements set forth in the NCUA’s regulations was  
144 necessary to avoid a significant redemption of shares. This action would further the purposes of  
145 the PCA regulations. Accordingly, the Board ordered that any consumer FICU whose net worth  
146 classification, as defined in part 702 of the NCUA’s regulations, was adequately capitalized  
147 between March 31, 2020, and December 31, 2020, could decrease its earnings retention  
148 requirement to zero as set forth in part 702. The order was effective through and including  
149 December 31, 2020.<sup>26</sup>

150 As noted, the Board solicited comment on the May 2020 interim final rule. The Board  
151 received comments from a credit union trade association, two state credit union leagues, and an  
152 organization of state credit union supervisors. All commenters supported the interim final rule,  
153 and no commenter opposed it. All commenters stated that the changes were appropriate, noting  
154 that they provided regulatory relief and flexibility to credit unions to manage their liquidity and  
155 address financial hardships caused by COVID-19.

156 The interim final rule’s two provisions expired on December 31, 2020. All commenters  
157 requested that the temporary amendments be extended or made permanent. One commenter

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<sup>25</sup> <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/temporary-order-decreasing-earnings-retention-requirement>.

<sup>26</sup> 12 CFR 702.301. The term consumer FICU is being used instead of the term natural person FICU. This terminology is being used for clarity, however, the term natural person FICU will continue to be used for the accompanying regulatory text changes for consistency with other sections of the NCUA’s regulations.



158 stated that if the economic dislocation caused by the pandemic lingers, the regulatory relief may  
159 be necessary beyond the end of 2020. Among the recommendations to extend the effective date  
160 were: (1) making the rule permanent; (2) extending the applicability until the COVID-19  
161 pandemic was declared over by the Center for Disease Control or other Federal agency; or (3)  
162 making the end date December 31, 2021.

#### 163 B. April 2021 Interim Final Rule

164 Based on information available in December 2020, the Board did not extend these  
165 provisions but continued to consider this issue. In light of new facts and circumstances, the  
166 Board subsequently determined in April 2021 that it was appropriate to reinstate these  
167 amendments to the PCA regulations in part 702 on a temporary basis.<sup>27</sup> Specifically, based on  
168 the enactment of the American Rescue Plan Act of 2021<sup>28</sup> to provide direct financial relief to  
169 individual taxpayers, the Board expected that credit unions would receive a significant increase  
170 in deposits due to stimulus checks. Accordingly, the Board determined that it was appropriate to  
171 reinstitute the changes to the PCA provisions that had been adopted in May 2020. The Board  
172 also sought comments in the April 2021 interim final rule.

173 The NCUA received seven substantive comments in response to the interim final rule, all  
174 of which offered support. Commenters stated that the interim final rule provides assistance to  
175 FICUs that have experienced pandemic-related hardships; reduces regulatory burden; does not  
176 unduly increase risk to the NCUSIF; allows otherwise healthy FICUs to focus on serving  
177 members without discouraging deposits; provides FICUs and the NCUA flexibility during a time  
178 of unprecedented deposit growth; and helps ensure the relief is available throughout the

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<sup>27</sup> 86 FR 20258 (Apr. 19, 2021).

<sup>28</sup> Pub. L. 117-2 (Mar. 11, 2021).

179 pandemic and resulting economic turbulence. Commenters also addressed the duration of the  
180 extension, requesting that the termination date either be extended beyond March 31, 2022, or be  
181 made permanent.

### 182 C. This Interim Final Rule

183 As noted above, the two temporary PCA-related provisions are set to expire on March 31,  
184 2022. Based on the agency's experience and lessons learned during the last two years as well as  
185 the ongoing economic fallout related to the COVID-19 pandemic, the Board has determined that  
186 it is appropriate to issue another interim final rule to extend these provisions until March 31,  
187 2023. Share growth remains unusually high compared to pre-pandemic levels. Specifically, share  
188 growth from September 30, 2020, to September 30, 2021, exceeded 14 percent.<sup>29</sup> The COVID-  
189 19 pandemic and Congressional responses to it were the initial impetus for the two previous  
190 interim final rules that temporarily amended the two PCA provisions. While the environment that  
191 precipitated these temporary amendments has evolved, substantial uncertainties about the  
192 continued impact of the pandemic and the evolving economic environment remain.  
193 Macroeconomic uncertainty has been particularly significant over the last few months. Inflation,  
194 geopolitical tensions, and a new COVID-19 variant have introduced new economic challenges.  
195 Ultimately, the combined effects of these factors on share growth and net worth ratios could be  
196 quite significant, leading to potentially greater volatility in those measures in the year ahead.

197 Also, the flexibilities provided by these temporary amendments have proven to benefit  
198 both the NCUA and FICUs. The Board believes the agency can use these flexibilities judiciously  
199 to address challenges posed by the current environment and potential issues that may arise while

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<sup>29</sup> Average annual share growth in the 10 years preceding the pandemic was only 5.8 percent.

200 the rule remains in effect without imposing any additional safety and soundness risk.  
201 Accordingly, the Board believes it is appropriate to extend these provisions until March 31,  
202 2023. The Board requests comments on all aspects of this interim final rule.

203 The Board notes that this interim final rule incorporates new amendatory language given  
204 that the agency’s 2015 final rule on risk-based capital amended certain provisions in part 702.<sup>30</sup>  
205 Specifically, that final rule amended part 702 by removing §§ 702.201 and 702.206 and moving  
206 them, mostly unchanged, to new §§ 702.106 and 702.111. As a result, the current regulatory text  
207 does not reflect the April 2021 interim final rule. Because the Board is extending this authority, it  
208 is revising the affected provisions to include these authorities to run from the effective date of  
209 this interim final rule until March 31, 2023, to ensure there is no interruption in the flexibility.

#### 210 **IV. Section-by-Section Analysis**

##### 211 *A. Section 702.106 — Earnings retention requirement for “adequately capitalized” FICUs*

212 A FICU that is classified as “adequately capitalized” or lower must increase the dollar  
213 amount of its net worth quarterly by an amount equivalent to at least 1/10<sup>th</sup> of a percent of its  
214 total assets and must retain at least that amount (for a total of 0.4 percent annually) every quarter  
215 until it is “well capitalized.”<sup>31</sup> The purpose of this provision is to restore a FICU that is less than  
216 well capitalized to a well-capitalized position in an incremental manner. The Board notes that  
217 newly chartered FICUs are excluded from this relief given that the relief is intended for FCUs  
218 experiencing growth as a result of the COVID-19 pandemic.

219 As discussed previously, current §702.106 provides that the Board may waive this  
220 requirement on a case-by-case basis upon application by an affected FICU. The Act provides

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<sup>30</sup> 80 FR 66626 (Oct. 29, 2015)

<sup>31</sup> This relief is provided for FICUs that are required to retain earnings under §§ 702.106, 702.107, 702.108, and 702.109.

221 broader authority for the Board to issue an order to waive this requirement and does not require  
222 an application or individual orders.<sup>32</sup> In response to recent economic conditions, there were  
223 previous infusions of stimulus funds and an increased propensity for consumers to save due to  
224 the variety of pandemic-related circumstances. Thus, the Board has determined that it is  
225 appropriate to extend its decision to amend §702.106 temporarily to provide express regulatory  
226 authority for the Board to issue a single order waiving the earnings retention requirement for all  
227 FICUs that are classified as adequately capitalized during this time. As with the previous orders  
228 issued under the May 2020 and April 2021 interim final rules, the Board would provide in the  
229 order that the applicable Regional Director has authority to subsequently require an application if  
230 a particular FICU poses undue risk to the NCUSIF or exhibits material safety and soundness  
231 concerns. Extending this regulatory provision will allow the Board to respond to circumstances  
232 broadly affecting many FICUs with a single issuance rather than numerous individual waiver  
233 approvals. This provision will expire on March 31, 2023.

234 In a separate action that will be published on the NCUA website after this interim final rule  
235 becomes effective, the Board intends to issue the order described above, which will be applicable  
236 to adequately capitalized FICUs and will grant relief from the earnings retention requirement  
237 without requiring those FICUs to submit applications and receive individual waiver approvals,  
238 subject to the qualification noted above.

239 The Board is exercising this authority under 12 U.S.C. 1790d(e)(2) to enhance flexibility in  
240 the application of the earnings retention requirement. The Board believes that this relief remains  
241 necessary to avoid a reduction of shares and thus retain system liquidity and capital adequacy,

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<sup>32</sup> See 1 U.S.C. 1 (providing that unless context indicates otherwise, words importing the singular also apply to several persons or parties).

242 thereby furthering the purpose of PCA. Economic uncertainty caused by the COVID-19  
243 pandemic and its effect on the economy have resulted in significant asset growth within the  
244 credit union industry. This growth may impact the PCA classification of many credit unions,  
245 resulting in an increased number of credit unions being subject to the earnings retention  
246 requirement. Based on the September 30, 2021, Call Report, 223 credit unions are classified as  
247 less than well capitalized and are thus subject to the earnings retention requirement. Of those, 42  
248 percent report negative earnings as of September 30, 2021. With continued uncertainty caused by  
249 the COVID-19 pandemic, the credit union system continues to experience the effects of  
250 pandemic-related share growth and additional credit unions may be subjected to the earnings  
251 retention requirement. A comparison of Call Report data from March 31, 2020, to September 30,  
252 2021, reveals 101 credit unions experienced a decline in their PCA classification from “well  
253 capitalized” to “adequately capitalized” from March 31, 2020, despite having reported a positive  
254 return on average assets in September 2021. This illustrates the continued impact of the flight to  
255 safety experienced by the industry.

256         Specifically, during the time period that the two interim final rules have been effective,  
257 the Board issued orders providing that any consumer FICU that had a net worth classification, as  
258 defined in part 702 of the NCUA’s regulations, of adequately capitalized could decrease its  
259 earnings-retention requirement to zero as set forth in part 702. These orders enabled FICUs to  
260 better utilize resources by eliminating the need to request a waiver of the earnings-retention  
261 requirement from their Regional Director. While the interim final rules and earnings-retention  
262 orders have been in effect, the number of FICUs that benefitted from this relief has varied from  
263 an estimated 77 FICUs as of June 2020 to as many as 179 as of June 30, 2021, based on Call  
264 Report data. The FICUs benefitting from the earnings-retention requirement reduction have

265 assets representing less than one percent of industry assets as of September 30, 2021.  
266 Accordingly, the Board believes that this amendment and the implementing orders have not  
267 posed an undue risk to the NCUSIF.

268 The Board further notes that FICU operations continue to be significantly disrupted due to  
269 social distancing practices, remote work, supply chain disruption, and related complications.  
270 Also, the unprecedented amount of fiscal stimulus and decreased spending opportunities have led  
271 to a significant increase in the personal saving rate over the last two years. This, in turn, has  
272 resulted in extraordinary share growth, leaving net worth ratios artificially depressed.

273 Given current macroeconomic conditions, downward pressure on net worth ratios will likely  
274 persist in the coming year. Although consumer spending has rebounded somewhat, the amount  
275 of excess savings—the accumulation of savings over and above pre-pandemic levels—remains  
276 significant and is not likely to abate any time soon. Consumer spending on services—the most  
277 significant share of expenditures—continues to lag, as the pandemic is resulting in consumers  
278 spending less on travel and other activities that are highly social and could potentially expose  
279 them to COVID-19. Also, strong gains in employment are supporting incomes and certain loan  
280 forbearance programs—which decrease debt service payments—still remain in effect.

281 By avoiding the need for numerous waiver applications and responses, the simplified  
282 procedure that this interim final rule extends will reduce the administrative burden on FICUs and  
283 the NCUA. The Board notes qualifications in the planned order regarding FICUs that pose undue  
284 risk or material safety and soundness concerns will help ensure that the purposes of PCA are  
285 maintained during this time.

286 *B. Section 702.111 — NWRPs; Contents of NWRP*

287 As for NWRPs, the Act provides a broad directive that a FICU that is less than  
288 adequately capitalized must submit an applicable NWRP to the NCUA. The NCUA, by  
289 regulation, has provided additional details to supplement this statutory provision. Section  
290 702.111(a) of the NCUA's regulations specifies the schedule for filing the plan, and §702.111(c)  
291 of the NCUA's regulations outlines the contents of a NWRP.

292 The Board has decided that it is appropriate to continue waiving the NWRP content  
293 requirements for FICUs that become classified as undercapitalized predominantly as a result of  
294 share growth for Call Reports filed for the periods effective March 31, 2022, June 30, 2022,  
295 September 30, 2022, and December 31, 2022. In these cases, the FICU may submit a  
296 significantly simpler NWRP to the applicable Regional Director noting that the FICU's PCA  
297 classification fell to undercapitalized because of share growth. Specifically, a FICU would be  
298 required to attest that its reduction in capital was caused by share growth and that such share  
299 growth is a temporary condition due to the COVID-19 pandemic. Federally insured, state-  
300 chartered credit unions must comply with applicable state requirements when submitting  
301 NWRPs for state supervisory authority approval.

302 When reviewing NWRPs submitted under this authority, the Regional Director will  
303 determine if the decrease in the net worth ratio was predominantly a result of share growth. To  
304 assess the reason for the decrease, the Regional Director will analyze the numerator and  
305 denominator of the net worth ratio. If there is no change, or if there is an increase in the  
306 numerator and an increase in the denominator, this would indicate that the decrease in the net  
307 worth ratio was due to share growth. If there is an increase in the denominator and a decrease in  
308 the numerator, the Regional Director will analyze whether the decrease in the numerator would  
309 have caused the FICU to fall to a lower net worth classification if there were no change in the

310 denominator. If so, the FICU's net worth decline would not be predominantly due to share  
311 growth, and thus the FICU would not be eligible to submit a streamlined NWRP.

312 The Board has determined it is appropriate to extend this regulatory flexibility for NWRPs  
313 given the continued economic disruption and the corresponding uncertainty caused by the  
314 COVID-19 pandemic.

315 Since the Board published the interim final rule on May 28, 2020, permitting FICUs that  
316 become classified as undercapitalized as a result of share growth to submit a streamlined NWRP,  
317 fourteen credit unions have submitted such streamlined NWRPs. Of the fourteen streamlined  
318 NWRPs submitted, nine NWRPs were approved, and five streamlined NWRPs were denied. The  
319 denials of the streamlined NWRPs were based on those FICUs' decline in PCA classification  
320 being the result of other economic factors, and not predominantly the result of share growth.  
321 Further, the Board notes that the FICUs submitting streamlined NWRPs were generally smaller,  
322 or non-complex credit unions, thus presenting limited risk to the NCUSIF.

323 Based on September 30, 2021, Call Report data, 59 FICUs would require a NWRP to be  
324 in place or be submitted for approval based on their PCA classification. This is an increase of  
325 over 22 percent from the 48 credit unions required to have a NWRP to be in place or be  
326 submitted for approval based on December 31, 2020, Call Report data, illustrating an upward  
327 trend.

328 The streamlined NWRP will provide sufficient information, based on current economic  
329 conditions, to determine if the credit union is prepared to manage the volatility associated with  
330 the COVID-19 pandemic and the impact on the FICU's financial and operational position.

331 As it concluded in the April 2021 interim final rule, the Board continues to believe it can  
332 fulfill its statutory duty to evaluate the NWRPs even if the plans are more concise and



333 streamlined than plans submitted before the COVID-19 pandemic. Such a streamlined approach  
 334 is acceptable because the more extensive information required under the current requirements  
 335 may not be practicable or useful under the current situation. The Board believes it can determine  
 336 if a plan is acceptable even if it lacks some of the detailed submissions that the permanent  
 337 regulatory provision requires.

338 A FICU’s eligibility to submit a streamlined NWRP to the NCUA will be determined  
 339 based on the effective date of the credit union’s PCA classification, as defined in part 702 of the  
 340 NCUA’s regulations.<sup>33</sup> The streamlined NWRP will apply on a case-by-case basis to FICUs that  
 341 become classified as undercapitalized (those that have a net worth ratio of 4 percent to  
 342 5.99 percent) predominantly as a result of share growth. To further clarify, a FICU that has a  
 343 declined PCA classification will be permitted to submit a streamlined NWRP as reflected in the  
 344 following table.

Call Report Effective Date	PCA Classification Date	Streamlined NWRP Permissible
March 31, 2022	April 30, 2022	Yes
June 30, 2022	July 30, 2022	Yes
September 30, 2022	October 31, 2022	Yes
December 31, 2022	January 30, 2023	Yes
March 31, 2023	April 30, 2023	No

345

346 **V. Regulatory Procedures**

347 *A. Administrative Procedure Act*

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<sup>33</sup> 12 CFR Part 702.

348           The Board is issuing the interim final rule without prior notice and the opportunity for  
349 public comment and the delayed effective date ordinarily prescribed by the Administrative  
350 Procedure Act (APA).<sup>34</sup> Pursuant to the APA, general notice and the opportunity for public  
351 comment are not required about a rulemaking when an “agency for good cause finds (and  
352 incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice  
353 and public procedure thereon are impracticable, unnecessary, or contrary to the public  
354 interest.”<sup>35</sup>

355           The Board believes the public interest is best served by implementing the interim final  
356 rule immediately upon publication in the *Federal Register*. The Board notes that the economic  
357 disruption caused by the COVID-19 pandemic is unprecedented. Even after nearly two years, the  
358 situation continues to evolve, thereby making it difficult to anticipate how pandemic-induced  
359 disruptions will manifest themselves within the financial system and how individual FICUs may  
360 be impacted. The continued relief measures, including the most recent infrastructure legislation,  
361 combined with the flight to safety and reduced spending, places a strain on FICU net worth. To  
362 disrupt or end the regulatory relief in place would conflict with preserving the safety and  
363 soundness of the industry. Because the unprecedented expansionary monetary and fiscal policies,  
364 combined with precautionary savings, is placing a strain on FICU net worth, the Board believes  
365 it has good cause to determine that ordinary notice and public procedure are impracticable and  
366 that moving expeditiously in the form of an interim final rule is in the public’s best interests and  
367 the FICUs that serve that public. The temporary regulatory changes are necessary steps designed  
368 to alleviate potential liquidity and resource strains including stress on capital adequacy and are

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<sup>34</sup> 5 U.S.C. 553

<sup>35</sup> 5 U.S.C. 553(b)(3).

369 undertaken with expedience to ensure the maximum intended effects are in place at the earliest  
370 opportunity.

371 The Board values public input in its rulemakings and, to that end, believes that  
372 regulations are enhanced when the public has the opportunity to comment. Accordingly, the  
373 Board is soliciting comments on this interim final rule. The amendments made by the interim  
374 final rule will automatically expire on March 31, 2023, and are limited in number and scope. For  
375 these reasons, the Board finds there is good cause consistent with the public interest to issue the  
376 rule without advance notice and comment.

377 The APA also requires a 30-day delayed effective date, except for (1) substantive rules  
378 which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and  
379 statements of policy; or (3) as otherwise provided by the agency for good cause.<sup>36</sup> Because the  
380 rule relieves currently codified limitations and restrictions, the interim final rule is exempt from  
381 the APA's delayed effective date requirement. As an alternative to making the rule effective  
382 without the 30-day delayed effective date, the Board finds there is good cause to do so for the  
383 same reasons set forth above regarding advance notice and opportunity for comment.

384 *B. Congressional Review Act.*

385 For purposes of the Congressional Review Act (CRA),<sup>37</sup> the Office of Management and  
386 Budget (OMB) decides whether a final rule constitutes a “major” rule. If the OMB deems a rule  
387 to be “major,” the CRA generally provides that the rule may not take effect until at least 60 days  
388 following its publication.

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<sup>36</sup> 5 U.S.C. 553(d).

<sup>37</sup> 5 U.S.C. 801-808.

389 The CRA defines a “major rule” as any rule that the Administrator of the OMB’s Office  
390 of Information and Regulatory Affairs finds has resulted in, or is likely to result in, (A) an annual  
391 effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for  
392 consumers, individual industries, Federal, State, or local government agencies or geographic  
393 regions; or (C) significant adverse effects on competition, employment, investment, productivity,  
394 innovation, or on the ability of United States-based enterprises to compete with foreign-based  
395 enterprises in domestic and export markets.<sup>38</sup>

396 For the same reasons noted above, the Board is adopting the interim final rule without the  
397 delayed effective date generally prescribed under the CRA. The delayed effective date required  
398 by the CRA does not apply to any rule for which an agency for good cause finds (and  
399 incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice  
400 and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.<sup>39</sup>  
401 In light of current market uncertainty, the Board believes that delaying the effective date of the  
402 rule would be contrary to the public interest for the same reasons discussed above.

403 As required by the CRA, the Board will submit the final rule and other appropriate  
404 reports to Congress and the Government Accountability Office for review.

405 *C. Paperwork Reduction Act*

406 The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires OMB to approve  
407 all collections of information by a Federal agency from the public before they can be  
408 implemented. Respondents are not required to respond to any collection of information unless it  
409 displays a valid OMB control number. The information collection requirements prescribed by the

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<sup>38</sup> 5 U.S.C. 804(2).

<sup>39</sup> 5 U.S.C. 808.

410 May 2020 interim final rule under PCA remains in effect and are cleared under OMB control  
411 number 3133-0154.

412 *D. Executive Order 13132*

413 Executive Order 13132<sup>40</sup> encourages independent regulatory agencies to consider the  
414 impact of their actions on state and local interests. The NCUA, an independent regulatory  
415 agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order to adhere  
416 to fundamental federalism principles. The interim final rule will not have substantial direct  
417 effects on the states, on the relationship between the National Government and the states, or on  
418 the distribution of power and responsibilities among the various levels of government. The Board  
419 has thus determined that this rule does not constitute a policy that has federalism implications for  
420 purposes of the Executive order. But the Board notes that it has consulted with state regulators,  
421 as described in the PCA section of the Act, and will continue to do so during the comment period  
422 and implementation of this interim final rule.<sup>41</sup>

423 *E. Assessment of Federal Regulations and Policies on Families*

424 The NCUA has determined that this interim final rule will not affect family well-being  
425 within the meaning of Section 654 of the Treasury and General Government Appropriations Act,  
426 1999.<sup>42</sup>

427 *F. Regulatory Flexibility Act*

428 The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a  
429 proposed rule or a final rule pursuant to the APA<sup>43</sup> or another law, the agency must prepare a

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<sup>40</sup> Executive Order 13132 on Federalism was signed by former President Clinton on August 4, 1999, and subsequently published in the *Federal Register* on August 10, 1999 (64 FR 43255).

<sup>41</sup> 12 U.S.C. 1790d(I).

<sup>42</sup> Public Law 105-277, 112 Stat. 2681 (1998).

<sup>43</sup> 5 U.S.C. 553(b).

430 regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis  
431 in the *Federal Register*.<sup>44</sup> Specifically, the RFA normally requires agencies to describe the  
432 impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes  
433 of the RFA, the Board considers FICUs with assets less than \$100 million to be small entities.<sup>45</sup>

434 As discussed previously, consistent with the APA,<sup>46</sup> the Board has determined for good  
435 cause that general notice and opportunity for public comment is unnecessary, and thus, the Board  
436 is not issuing a notice of proposed rulemaking. Rules that are exempt from notice and comment  
437 procedures are also exempt from the RFA requirements, including conducting a regulatory  
438 flexibility analysis, when among other things the agency for good cause finds that notice and  
439 public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly,  
440 the Board has concluded that the RFA's requirements relating to initial and final regulatory  
441 flexibility analysis do not apply.

442 Nevertheless, the Board seeks comment on whether, and to what extent, the interim final  
443 rule would affect a significant number of small entities.

444

445 **List of Subjects in 12 CFR Part 702**

446 Credit unions, Reporting and recordkeeping requirements.

447

448 By the NCUA Board, this 17th day of February 2022

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Melane Conyers-Ausbrooks

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<sup>44</sup> 5 U.S.C. 603, 604.

<sup>45</sup> NCUA IRPS 15-1. 80 FR 57512 (Sept. 24, 2015).

<sup>46</sup> 5 U.S.C. 553(b)(3)(B).

Secretary of the Board

454  
455

456 For the reasons set forth in the preamble, the Board is amending 12 CFR part 702 as  
457 follows:

458 PART 702—CAPITAL ADEQUACY

459 1. The authority citation for part 702 continues to read as follows:

460 **Authority:** 12 U.S.C. 1766(a), 1790d.

461 2. Amend § 702.106 by redesignating paragraphs (b)(1) and (2) as paragraphs (b)(1)(i)  
462 and (ii), respectively, and adding a new paragraph (b)(2) to read as follows:

463 **§ 702.106 Prompt corrective action for “adequately capitalized” credit unions.**

464 \* \* \* \* \*

465 (b) \* \* \*

466 (2) Notwithstanding paragraph (a) of this section, from [INSERT DATE OF  
467 PUBLICATION IN THE *FEDERAL REGISTER*] until March 31, 2023, for a credit union that is  
468 adequately capitalized:

469 (i) The NCUA Board may issue an administrative order specifying temporary revisions to  
470 the earnings retention requirement, to the extent the NCUA Board determines that such lesser  
471 amount—

472 (A) Is necessary to avoid a significant redemption of shares; and

473 (B) Would further the purpose of this part.

474 (ii) Despite the issuance of an administrative order under paragraph (b)(2) of the section, the  
475 Regional Director may require a credit union to submit an earnings retention waiver under  
476 paragraph (b)(1) if the credit union poses an undue risk the National Credit Union Share  
477 Insurance Fund or exhibits material safety and soundness concerns.

478 \* \* \* \* \*

479 3. Amend § 702.111 by adding paragraph (c)(4) to read as follows:

480 **§ 702.111 Net worth restoration plans.**

481 \* \* \* \* \*

482 (c) \* \* \*

483 (4) Notwithstanding paragraphs (c)(1), (2), and (3) of this section, the Board may permit  
484 a credit union that is undercapitalized to submit to the Regional Director a streamlined NWRP  
485 attesting that its reduction in capital was caused by share growth and that such share growth is a  
486 temporary condition due to the COVID-19 pandemic. A streamlined NWRP plan may be  
487 accepted from [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] until  
488 March 31, 2023.

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