NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 725, and 741

RIN 3133–AD87

Net Worth and Equity Ratio

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: On January 4, 2011, President Obama signed Senate Bill 4036 into law, which, among other things, amended the statutory definitions of ''net worth'' and ''equity ratio'' in the Federal Credit Union Act. Through this final rule, NCUA is making conforming amendments to the definition of ''net worth'' as it appears in NCUA's Prompt Corrective Action regulation and the definition of ''equity ratio'' as it appears in NCUA's Requirements for Insurance regulation. NCUA is also making technical changes in other regulations to ensure clarity and consistency in the use of the term ''net worth,'' as it is applied to federally-insured credit unions.

DATES: This rule will become effective on October 31, 2011.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540 or Karen Kelbly, Chief Accountant, Office of Examination and Insurance, at the above address or telephone at 703–518–6630.

SUPPLEMENTARY INFORMATION:

A. Background

On January 4, 2011, President Obama signed An Act to Clarify the National Credit Union Administration Authority to Make Stabilization Fund Expenditures without Borrowing from the Treasury (the Stabilization Fund Expenditures Act) into law. S. 4036, 111th Cong., Public Law 111–382 (2011). The Stabilization Fund Expenditures Act amended the Federal Credit Union Act (the Act) by clarifying NCUA's authority to make stabilization fund expenditures without borrowing from the Treasury, amending the definitions of ''equity ratio'' and ''net worth,'' and requiring the Comptroller General of the United States to conduct a study on NCUA's handling of the recent corporate credit union crisis. The Stabilization Fund Expenditures Act is divided into four sections, and the amendments in this rule implement the changes made to the Act by sections two and three of the Stabilization Fund Expenditures Act.

B. Proposed Rule

On March 17, 2011, the NCUA Board (the Board) issued a proposed rule to make conforming changes to the definitions of ''net worth'' and ''equity ratio,'' as those terms are used in NCUA's regulations. 76 FR 16345, March 23, 2011. The Board also proposed technical changes to the term ''net worth'' to ensure consistency and accurate accounting treatment in combination transactions. In response, the Board received 15 comments: Two from credit union trade associations; one from a bank trade association; one from a state bank league; four from state credit union leagues; four from federal credit unions; and three from federally insured state chartered credit unions. All of the commenters supported the conforming changes to the definitions of ''net worth'' and ''equity ratio,'' but a majority of the commenters disagreed with the Board's proposed technical correction to the definition of net worth in § 702.2(f)(3) of NCUA's regulation. The proposed technical change, which addresses the acquisition of one credit union by another, requires the subtraction of any bargain purchase gain from the acquired credit union's retained earnings when determining the amount of regulatory capital add-on to be included in the acquirer credit union's post acquisition net worth.

In addition, commenters also addressed other points in the proposed rule, including the differing definitions of ''net worth'' in the Prompt Corrective Action (PCA) and Member Business Loan (MBL) regulations, the inclusion of section 208 assistance in a credit union's net worth, and the public disclosure of credit unions that receive section 208 assistance. Below, the Board discusses each of the topics addressed by the commenters.

C. Summary of Comments

1. Technical Change To ''Net Worth''

Eleven commenters objected to NCUA's technical change to the definition of ''net worth'' in a combination transaction as set forth in proposed § 702.2(f)(3). The proposed change requires the subtraction of any bargain purchase gain from an acquired credit union's retained earnings before the latter amount is included in the net worth of the acquiring credit union. This proposed correction also limits the difference between the added retained earnings and bargain purchase gain to an amount that is zero or more, which would prevent a retained earnings deficit from flowing forward to the acquiring institution. Finally, this proposed revision adds a requirement that the retained earnings of the acquired credit union at the point of acquisition be measured under Generally Accepted Accounting Procedures (GAAP) as referenced in the Act. 12 U.S.C. 1790d(o)(2)(A).

All of the commenters objecting to this change cited at least one of three reasons. First, six commenters believed this change would have a chilling effect or act as a disincentive to credit unions interested in merging. The Board, however, notes that most mergers will be unaffected by this change. For the majority of credit union mergers, the resulting component is in the form of goodwill rather than bargain purchase gain. In those situations, this change will have no effect on the transaction. For those few mergers that this change will impact, the Board believes the impact will be minimal and will not create any disincentive to mergers as it duplicates the regulatory capital result achieved under the old pooling method. In responding to these comments, NCUA staff looked at recent mergers to evaluate the impact this change would have had on those transactions. Of the mergers reviewed, which resulted in a bargain purchase gain, none would have resulted in a significant decrease in net worth because of the technical correction. To illustrate this point, the Board notes that, of the mergers reviewed, the sharpest decline in net worth was from a net worth of 12.93% under the current rule to a net worth of 12.46% with the technical correction.

Second, six commenters also stated that this change is contrary to GAAP and would put acquiring credit unions in a worse financial position than they otherwise would have been had the transaction been accounted for under GAAP. The Board agrees with commenters that GAAP should govern the financial reporting of merger transactions and notes that this technical correction does not change the requirement for credit unions to report merger transactions in accordance with GAAP. This technical correction ensures that an acquiring credit union's regulatory capital does not achieve a double benefit through a bargain purchase gain, which is not contrary to GAAP accounting.

Finally, eight commenters stated that this change is contrary to the purpose and intent of the 2006 Financial Services Relief Act (2006 Relief Act). The 2006 Relief Act amended the FCU Act by defining ''net worth'' as including ''the retained earnings balance of the credit union, as

determined under generally accepted accounting procedures, together with any amounts that were previously retained earnings of any credit union with which the credit union has combined.'' Public Law 709–351, section 504 (2006), 12 U.S.C. 1790d(o)(2)(A). The expanded definition permitted the acquiring credit union to ''follow the new Financial Accounting Standards Board (FASB) rule while still allowing the capital of both credit unions to flow forward as regulatory capital and thus preserve the incentive for desirable credit union mergers.'' Staff of Senate Comm. on Banking, Housing and Urban Affairs, 109th Cong., *Section-By-Section Analysis of Financial Services Regulatory Relief Act of 2006* (Comm. Print 2006) at 3. By duplicating the regulatory capital measure previously obtained under the pooling method of accounting, the 2006 Relief Act eliminated the regulatory capital disincentive caused by changes to the FASB rules. The technical change proposed by the Board retains the forward flow of the capital of both the acquired and acquiring credit unions, but removes the double counting of the acquired credit union's capital caused by the accounting treatment of bargain purchase gain. The Board's proposed technical correction, therefore, is consistent with Congress' objective in the 2006 Relief Act. The following hypothetical example illustrates how the technical correction is in line with Congress' intent:

TABLE 1—HYPOTHETICAL EXAMPLE

Target's balance sheet	Book value	Fair value
Assets	$475,000	$500,000
Liabilities	348,000	350,000
Equity:		
Retained Earnings	127,000	.....
Acquired Equity	.....	125,000
Bargain Purchase Gain	.....	25,000
Liabilities & Equity	475,000	500,000
Acquirer's Retained Earnings	250,000	.....

TABLE 2—COMPARISON OF ACQUIRER'S REGULATORY CAPITAL OUTCOMES

	Under old pooling	Under current rule w/BPG	With technical amendment
Acquirer's Retained Earnings Under GAAP	$250,000	$275,000	$275,000
Target's Regulatory Capital Add-on:			
PreMerger Retained Earnings	127,000	127,000	127,000
Less: Bargain Purchase Gain	.....	.....	(25,000)
Net Worth (Regulatory Capital)	377,000	402,000	377,000

Based on the discussion above and for the reasons articulated in the proposed rule (*see* 76 FR 16345, March 23, 2011), the Board is retaining the technical change in this final rule that requires the subtraction of any bargain purchase gain from the acquired credit union's retained earnings before the latter amount is included in the acquirer's net worth. A technical change to a reference in Part 725 is also made due to a realignment of definitions in Part 700.

2. Consistent Definition of ''Net Worth''

Four commenters objected to the use of a different definition of ''net worth'' in the MBL and PCA regulations. These commenters stated that the differing definitions were unfair and would likely cause confusion among credit unions. As noted in the proposed rule, the differing definitions are based on the definitions of ''net worth'' used in the sections of the Act addressing MBLs and PCA. *See* 76 FR 16345, March 23, 2011 and 12 U.S.C. 1757a(c)(2) and 1790d(o)(2). The differing definitions of net worth for MBLs and PCA in NCUA's regulations reflect the corresponding differing definitions in the Act. As such, the Board cannot use the same definition of ''net worth'' in the MBL and PCA regulations without a statutory change.

3. Clarification of Section 208 Assistance

The Board received four comments seeking clarification on when 208 assistance can be counted as net worth. Section 208 of the Act allows the Board, in its discretion, to make loans to, or purchase the assets of, or establish accounts in insured credit unions the Board has determined are in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union. 12 U.S.C. 1788(a)(1). Two commenters stated that it was Congress' intent to limit when section 208 assistance may be counted as net worth to only those situations when the Board provides the assistance to facilitate a merger between a healthy and a failed credit union. These commenters cited a portion of the Stabilization Fund Expenditures Act, which states that section 208 assistance may be counted as net worth when it is provided by the Board ''to facilitate a least cost resolution.'' 111 Public Law 382, 124 Stat. 4134 (2011). These commenters believe that the phrase ''facilitate a least cost resolution'' limits when section 208 assistance may be considered net worth to only those situations where it is provided to facilitate a merger. In contrast, two other commenters stated that section 208 assistance counted as net worth should not be restricted to only those situations involving a merger. These other commenters also cited the statutory amendments and argued that the Stabilization Fund Expenditures Act does not contain explicit limitations on when section 208 assistance can be included in a credit unions net worth, but rather provides the Board with a high level of discretion on when to use section 208 assistance as net worth. *Id.*

After considering the comments and revisiting the language of the statutory amendments, the Board concurs with the commenters who stated that section 208 assistance as net worth should not be limited to only those instances when a merger is involved. As those commenters pointed out, there is nothing in the statutory change that states that section 208 assistance can only be counted as net worth when a

merger is involved. In fact, when read as a whole, the Act, as amended by the Stabilization Fund Expenditures Act, addresses net worth in the context of a merger and in the context of section 208 assistance in different sections. Specifically, section 216(o)(2)(A) of the Act defines net worth of a credit union in a combination transaction and section 216(o)(2)(B) of the Act separately defines net worth with respect to section 208 assistance. 12 U.S.C. 1790d(o)(2)(A) and (B). The Board believes that this statutory construction as well as the absence of limiting language in the Stabilization Fund Expenditures Act supports the conclusion that defining section 208 assistance as net worth is not limited to situations only involving a merger. The Board, therefore, is clarifying that section 208 assistance can be counted in a credit union's net worth subject only to those limitations contained in the rule text and is not limited only to merger transactions.

4. Section 208 Assistance on the 5300

Finally, three commenters requested that NCUA include a separate line item on the 5300 Call Report for reporting section 208 assistance received by a credit union. These commenters cited transparency and accountability as reasons for the inclusion of section 208 assistance on the 5300 Call Report. NCUA has previously declined to make information about credit unions receiving section 208 assistance public because there is a strong possibility that members may perceive receipt of section 208 assistance to indicate a weak and unstable credit union. Further, this information would also be exempt from public disclosure pursuant to Exemption 8 of the FOIA.[1] While the Board is dedicated to transparency in its operations, this dedication must also be balanced with the safety and soundness of the credit union industry. As such, the Board continues to agree with this rationale for not publicly releasing information on credit unions that receive section 208 assistance and will not include a separate line item on the 5300 Call Report for the disclosure of section 208 assistance.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This final rule modifies the definition of ''net worth'' and ''equity ratio,'' and will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, is currently reviewing this rule, and NCUA anticipates it will determine that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

NCUA has determined that the final amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Parts 700, 701, 702, 725, and 741

Bank deposit insurance, Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 22, 2011.

Mary Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR parts 700, 701, 702, 725, and 742 as set forth below:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6) and 1766.

■ 2. In § 700.2:

■ a. Remove the alphabetical paragraph designations,and add in alphabetical order a definition for ''net worth''; and

■ b. In the definition of ''insolvency,'' transfer paragraph designation (1) to follow the term.

The addition reads as follows:

§ 700.2 Definitions.

* * * * *

Net worth. Unless otherwise noted, the term ''net worth,'' as applied to credit unions, has the same meaning as set forth in § 702.2(f) of this chapter.

* * * * *

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 4. Revise § 701.21(h)(4)(iv) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(h) * * *

(4) * * *

(iv) The term ''net worth'' means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in § 702.2(f) of this chapter.

* * * * *

[1] Exemption 8 of the FOIA exempts from disclosure information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. 5 U.S.C. 552(b)(8).

PART 702—PROMPT CORRECTIVE ACTION

■ 5. The authority citation for part 702 continues to read as follows:

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

■ 6. In 702.2, revise paragraph (f)(3) and add paragraph (f)(4) to read as follows:

§ 702.2 Definitions.

* * * * *

(f) * * *

(3) For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under generally accepted accounting principles. A mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

(4) The term ''net worth'' also includes loans to and accounts in an insured credit union established pursuant to section 208 of the Act [12 U.S.C. 1788], provided such loans and accounts:

(i) Have a remaining maturity of more than 5 years;

(ii) Are subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund;

(iii) Are not pledged as security on a loan to, or other obligation of, any party;

(iv) Are not insured by the National Credit Union Share Insurance Fund;

(v) Have non-cumulative dividends;

(vi) Are transferable; and

(vii) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

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PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

■ 7. The authority citation for part 725 continues to read as follows:

Authority: Secs. 301–307 Federal Credit Union Act, 92 Stat. 3719–3722 (12 U.S.C. 1795–1795f).

§ 725.18 [Amended]

■ 8. In § 725.18, amend paragraph (c) by removing the words ''by § 700.2(e)(1)'' and adding in its place the words ''in paragraph (1) to the definition of ''insolvency in § 700.2''.

PART 741—REQUIREMENTS FOR INSURANCE

■ 9. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 10. In § 741.4, in paragraph (b), revise the introductory text to the definition of ''equity ratio'' to read as follows:

§ 741.4 Insurance premium and one percent deposit.

* * * * *

(b) * * *

Equity ratio, which shall be calculated using the financial statements of the NCUSIF alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of:

* * * * *

[FR Doc. 2011–24907 Filed 9–28–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0218; Directorate Identifier 2009–CE–006–AD; Amendment 39–16820; AD 2009–13–06 R1]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for certain Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–23–250 (Navy UO–1), PA–E23–250, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31P–350, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes that are equipped with a baggage door in the fuselage nose section (a nose baggage door). That AD currently establishes life limits and replacement requirements for safety-critical nose baggage door components and repetitive inspections and lubrication of the nose baggage door latching mechanism and lock assembly. This new AD removes the requirement for the nose baggage door compartment interior light inspection and retains the other requirements from AD 2009–13–06, Amendment 39–15944. This AD was prompted by further investigation and a request for an alternative method of compliance (AMOC). We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective November 3, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 24, 2009 (74 FR 29118, June 19, 2009).

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gregory K. Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5551; fax: (404) 474–5606; e-mail: *gregory.noles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2009–13–06, amendment 39–15944 (74 FR 29118, June 19, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on May 20, 2011 (76 FR 29176). That NPRM proposed to continue to require establishment of life limits for safety-critical nose baggage door components. That NPRM also proposed to continue to require replacement of those safety-critical nose baggage door components