§ 1778.11 Maximum grants.

(a) Grants up to $1,000,000 may be made to alleviate a significant decline in quantity or quality of water available to a rural area that occurred within two years of filing an application with the Agency, or to attempt to avoid a significant decline that is expected to occur during the twelve month period following the filing of an application.

* * * * *

PART 1784—RURAL ALASKAN VILLAGE GRANTS

■ 20. The authority citation for part 1784 continues to read as follows:

Authority: 7 U.S.C. 1926d.

Subpart A—General Provisions.

■ 21. Revise § 1784.1 to read as follows:

§ 1784.1 Purpose.

This part sets forth the policies and procedures that will apply when the Rural Utilities Service (RUS) makes grants under the Rural Alaska Village Grant (RAVG) program (7 U.S.C. 1926d) to native villages in Alaska. The grants will be provided directly to a native village or jointly with either The State of Alaska, Department of Environmental Conservation (DEC) or The Alaska Native Tribal Health Consortium (ANTHC) for the benefit of native villages in Alaska.

■ 22. Amend § 1784.2 by removing the definition of ''Rural or Native Villages in Alaska'' and adding, in alphabetical order, the definition of ''Native Villages in Alaska'' to read as follows:

§ 1784.2 Definitions.

* * * * *

Native Villages in Alaska means a Native village in Alaska which meets the definition of a village as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

* * * * *

Subpart B—Grant Requirements

■ 23. Amend § 1784.8 by revising paragraphs (a)(1) through (3), (b), and (d) to read as follows:

§ 1784.8 Eligibility.

(a) * * *

(1) Native village in Alaska; or

(2) DEC on behalf of one or more recipient communities in Alaska; or

(3) ANTHC on behalf of one or more recipient communities in Alaska.

(b) Grants made to DEC or ANTHC may be obligated through a master letter of conditions for more than one recipient community; however, DEC or ANTHC together with each individual recipient community beneficiary shall execute a grant agreement on a project by project basis. Expenditures for projects will be based on specific scope and be requested on a project by project basis.

* * * * *

(d) The median household income of the recipient community cannot exceed 110 percent of the statewide nonmetropolitan household income (SNMHI), according to US Census American Community Survey. Alaska census communities considered to be high cost isolated areas or ''off the road systems'' (*i.e.,* communities that cannot be accessed by roads) may utilize up to 150 percent of SNMHI.

■ 24. Amend § 1784.10 by revising paragraph (a) introductory text to read as follows:

§ 1784.10 Eligible grant purposes.

* * * * *

(a) To pay reasonable costs associated with providing potable water or waste disposal services to residents of recipient communities. Reasonable costs include construction, planning, pre-development costs (including engineering, design, and rights-of-way establishment), and technical assistance as further defined in paragraphs (a)(1) through (3) of this section:

* * * * *

Subpart C—Application Processing

■ 25. Amend § 1784.16 by revising paragraph (a) to read as follows:

§ 1784.16 General.

(a) DEC and ANTHC utilize the National Indian Health Service, Sanitation Deficiency System (SDS) database as a comprehensive source of rural sanitation needs in Alaska. The database provides an inventory of the sanitation deficiencies including water, sewer, and solid waste facilities for existing homes. The sanitation deficiencies data are updated annually by DEC and ANTHC in consultation with the respective recipient communities. The SDS system is utilized in the RAVG program to help prioritize applications under the Village Safe Water Program.

* * * * *

■ 26. Amend § 1784.17 by revising paragraph (a) to read as follows:

§ 1784.17 Application for Planning grants.

(a) Entities identified in § 1784.8 may submit a completed Standard Form 424 to apply for funding to establish a Planning report for a recipient community.

* * * * *

■ 27. Amend § 1784.20 by revising paragraph (a) to read as follows:

§ 1784.20 Applications Accepted from DEC or ANTHC.

(a) In cases where applications are accepted from DEC or ANTHC, one master application may be submitted covering recipient communities to be funded, however, each individual project will be broken out and (for construction grants) each will require its own PER, or PER-like document and Environmental Report.

* * * * *

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020–08034 Filed 4–24–20; 8:45 am]

BILLING CODE 3410–15–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 723

RIN 3133–AF16

Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule.

SUMMARY: The NCUA Board (Board) is issuing this interim final rule to make a conforming amendment to its capital adequacy regulation following the enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act authorizes the Small Business Administration to create a loan guarantee program, the Paycheck Protection Program (PPP), to help certain businesses affected by the COVID–19 pandemic. The CARES Act requires that PPP loans receive a zero percent risk weighting under the NCUA's risk-based capital requirements. To reflect the statutory requirement, the interim final rule amends the NCUA's capital adequacy regulation to provide that covered PPP loans receive a zero percent risk weight. The interim final rule also provides that if the covered loan is pledged as collateral for a non-recourse loan that is provided as part of the Board of Governors of the Federal Reserve System's (FRB) PPP Lending Facility, the covered loan can be excluded from a credit union's calculation of total assets for the

purposes of calculating its net worth ratio. The interim final rule also makes a conforming amendment to the definition of commercial loan in the NCUA's member business loans and commercial lending rule. The Board has found good cause to issue the interim final rule without advance notice-and-comment procedures and with an effective date upon publication.

DATES: This rule is effective on April 27, 2020. Comments, as discussed below, must be received on or before May 27, 2020.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF16, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Include ''[Your Name]—Comments on Interim Final Rule: Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans'' in the transmittal.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect through at least April 30, 2020, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Amanda Parkhill, Supervisory CUE (Policy); or Rachel Ackmann, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Amanda Parkhill can also be reached at (703) 518–6385, and Rachel Ackmann can be reached at (703) 548–2601.

SUPPLEMENTARY INFORMATION:

I. Background and Legal Authority

a. The NCUA's Risk-Based Capital Requirements

The Credit Union Membership Access Act (CUMAA) requires the NCUA to formulate a risk-based net worth (RBNW) requirement to apply to complex credit unions.[1] Part 702 of the NCUA's regulations implement the risk-based net worth requirement.[2] Under current § 702.103 of the NCUA's regulations, a credit union is defined as ''complex'' if ''[i]ts quarter-end total assets exceed fifty million dollars ($50,000,000); and . . . [i]ts [RBNW] requirement . . . exceeds six percent (6%).'' [3] Current § 702.104 of the NCUA's regulations defines eight risk portfolios of complex credit union assets, liabilities, or contingent liabilities.[4] The eight risk portfolios are long-term real estate loans, member business loans (MBL) outstanding, investments, low-risk assets, average-risk assets, loans sold with recourse, unused MBL commitments, and allowance. Current § 702.106 sets forth the specific risk-weightings that are applied to the assets, liabilities, or contingent liabilities of each risk portfolio.[5] A credit union's RBNW requirement is the sum of the eight risk portfolios times the applicable risk-weighting.[6] The RBNW requirement for credit unions meeting the definition of ''complex'' was first applied on the basis of data in the Call Report reflecting activity in the first quarter of 2001.[7]

b. The NCUA's MBL and Commercial Lending Rule

Among other things, CUMAA limited the aggregate amount of MBLs that a credit union may make to the lesser of 1.75 times the net worth of the credit union or 1.75 times the minimum net worth required under the Federal Credit Union Act (FCU Act) for a credit union to be well capitalized.[8] The statutory MBL limit is incorporated in part 723 of NCUA's regulations.[9] Part 723 also defines MBLs and commercial loans, establishes minimum safety and soundness standards, and implements various other requirements regarding MBLs and commercial loans. The Board has not significantly amended part 723 since 2016.[10]

c. The Coronavirus Aid, Relief, and Economic Security (CARES Act)

On March 27, 2020, President Trump signed the CARES Act into law.[11] The law is designed to provide aid to the U.S. economy in the midst of the COVID–19 pandemic. The CARES Act authorizes the Small Business Administration (SBA) to create a loan guarantee program, the Paycheck Protection Program (PPP), to help certain affected businesses meet payroll needs and utilities (including employee salaries, sick leave, other paid leave, and health insurance expenses) as a result of the COVID–19 pandemic. Provided credit union lenders comply with the applicable lender obligations set forth in the SBA's interim final rule, the SBA will fully guarantee loans issued under the PPP. Most federally insured credit unions are eligible to make PPP loans to members.[12] Under the CARES Act, PPP loans must receive a zero percent risk weighting under the

[1] 12 U.S.C. 1790d(d). Only complex credit unions are subject to the NCUA's risk-based net worth requirement. *See* 12 U.S.C. 1790d(d)(1) and 12 CFR 702.103. The FCU Act grants the Board a broad mandate to issue regulations governing both FCUs and, more generally, all FICUs. For example, section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the Act. 12 U.S.C. 1766(a).

[2] 12 CFR pt. 702. On January 1, 2022, the NCUA's capital requirements will be substantially amended when the NCUA's risk-based capital rules become effective. *See,* 84 FR 68781 (Dec. 17, 2019). This interim final rule only amends the NCUA's current risk-based net worth rules and does not amend the NCUA's risk-based capital rules (''2015 Final Rule''), which will be addressed when they become effective. Generally, the NCUA uses the term ''risk-based net worth requirement'' to reference the statutory requirement for the Board to design a capital standard that accounts for variations in the risk profile of complex credit unions and the current risk-based framework in part 702. In contrast, the NCUA generally uses the term ''risk-based capital'' to refer to the specific standards established in the 2015 Final Rule. The term ''risk-based capital requirement,'' however, is used in the CARES Act and refers to both the risk-based net worth and the risk-based capital requirements. The Board notes that the term ''risk-based capital'' is also used by the other banking agencies and the international banking community when referring to the types of risk-based requirements that are addressed in the 2015 Final Rule.

[3] 12 CFR 702.103. For the definition of total assets, *see* 12 CFR 702.2(k).

[4] 12 CFR 702.104.

[5] 12 CFR 702.106.

[6] *Id.*

[7] 65 FR 44950 (July 20, 2000).

[8] 12 U.S.C. 1757a; Public Law 105–219, 112 Stat. 913 (1998).

[9] 12 CFR part 723.

[10] 81 FR 13530 (Mar. 14, 2016).

[11] Public Law 116–136 (Mar. 27, 2020).

[12] Credit unions that are currently permitted to make loans under the SBA's 7(a) program are automatically approved to make PPP loans. Federally insured credit unions that are not current SBA 7(a) lenders, can receive approval by submitting an application to the SBA, unless they are currently designated as being in troubled condition or are subject to a formal enforcement action that addresses unsafe and unsound lending practices. Non-depository financing providers, such as credit union service organizations, may qualify as a PPP lender subject to the requirements listed in the interim final rule.

NCUA's risk-based capital requirements.[13]

II. The Interim Final Rule

a. Risk Weighting of PPP Loans

To reflect the statutory requirement that PPP loans receive a zero percent risk weight, the interim final rule amends the NCUA's risk-based net worth rules. Specifically, the interim final rule explicitly provides that PPP loans are low-risk assets. Low-risk assets are currently defined as cash on hand (*e.g.,* coin and currency, including vault, ATM and teller cash), the National Credit Union Share Insurance Fund (NCUSIF) deposit, and debt instruments unconditionally guaranteed by the NCUA.[14] Under § 702.106(d), low-risk assets receive a zero percent risk weight.[15] Under the interim final rule, low-risk assets are defined as cash on hand (*e.g.,* coin and currency, including vault, ATM and teller cash), the NCUSIF deposit, debt instruments unconditionally guaranteed by the NCUA; and loans issued under the SBA's Paycheck Protection Program (15 U.S.C. 636(a)(36)). Therefore, the interim final rule provides that PPP loans receive a zero percent risk weight under the NCUA's risk-based capital rules as required by the CARES Act.

b. Definition of Total Assets for the Purposes of Calculating the Net Worth Ratio

To provide liquidity to small business lenders and the broader credit markets, to help stabilize the financial system, and to provide economic relief to small businesses nationwide, the FRB authorized each of the Federal Reserve Banks to participate in the Paycheck Protection Program Lending Facility (PPPL Facility), pursuant to section 13(3) of the Federal Reserve Act.[16] Under the PPPL Facility, each of the Federal Reserve Banks will extend non-recourse loans to eligible financial institutions to fund PPP loans. Under the PPPL Facility, only PPP loans that are guaranteed by the SBA with respect to both principal and interest and that are originated by an eligible institution may be pledged as collateral to the Federal Reserve Banks. Participation in the PPPL Facility will affect a credit union's balance sheet because, as a function of participating in the PPPL Facility, the credit union must originate and hold PPP covered loans (that is, assets that are eligible collateral pledged to the Federal Reserve Banks) on its balance sheet.

As a result, credit unions that participate in the PPPL Facility could potentially be subject to increased regulatory capital requirements (due to the increase in total assets from originating and holding PPP loans). To facilitate use of the PPPL Facility, the interim final rule allows credit unions to neutralize the regulatory capital effects of PPP loans pledged to the Facility.[17] Additionally, the Board believes that the regulatory capital requirements for certain PPP loans, those PPP loans pledged to a Federal Reserve Bank as part of the PPPL Facility, do not reflect the substantial protections from risk provided to credit unions by the PPPL Facility. Because of the non-recourse nature of the FRB's extension of credit to the credit union, the credit union is not exposed to credit or market risk from the pledged PPP covered loans. Therefore, the Board believes that it is appropriate to exclude pledged PPP loans from regulatory capital. Specifically, the interim final rule excludes PPP loans pledged as collateral to the PPPL Facility from the definition of total assets in § 702.2 for purposes of calculating a credit union's net worth ratio.[18]

c. Definition of Commercial Loan

The interim final rule also clarifies that PPP loans would not constitute commercial loans under part 723 of the NCUA's regulations. Generally commercial loans are defined as any loan, line of credit, or letter of credit (including any unfunded commitments), and any interest a credit union obtains in such loans made by another lender, to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, agricultural, or professional purposes, but not for personal expenditure purposes.[19] The current definition also provides various exclusions. The interim final rule amends the commercial loan definition to add PPP loans issued under the CARES Act as an exclusion from the definition of commercial loan in § 723.2. While other federally guaranteed loans may still be considered commercial loans under the regulation, the unique nature of PPP loans mitigates the need for enhanced commercial underwriting of these loans. The SBA's interim final rule specifically limits each lender's underwriting obligation under the PPP to the items noted in the rule.[20] Additionally, lenders will be held harmless for any borrower's failure to comply with PPP criteria and, in addition to the 100 percent guarantee, PPP loans may qualify for loan forgiveness.

III. Clarification Regarding Eligible Recipients of PPP Loans

In general, the SBA has restrictions on who can receive SBA business loans.[21] The SBA, however, recognizes that, unlike other SBA loan programs, PPP Loans are uniform for all borrowers, and the standard underwriting process does not apply because no creditworthiness assessment is required for PPP Loans. The SBA also recognizes that many directors and equity holders of lenders making PPP Loans are owners of unrelated businesses. Therefore, the SBA has determined that certain of its prohibitions regarding eligible borrowers for SBA loans are not applicable.[22] In general, it appears that a credit union director may obtain a PPP Loan from the credit union on whose board the director serves, provided that the related business follows the same process as any similarly situated member or account holder of the credit union and the director is not an officer or key employee of the credit union.[23] This change to the SBA's regulations, however, does not affect the FCU Act, the NCUA's rules on insider lending, or any relevant provision of a credit union's bylaws.

Under the FCU Act, a loan, or aggregate of loans, to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds $20,000 (plus

[13] *Supra* note 11, at § 1102(a)(2).

[14] 12 CFR 702.104(d).

[15] 12 CFR 702.106(d).

[16] 12 U.S.C. 343(3).

[17] The Office of the Comptroller of the Currency, the FRB, and the Federal Deposit Insurance Corporation (together, the other banking agencies) adopted a similar interim final rule to allow banking organizations to neutralize the regulatory capital effects of participating in the PPPL Facility. *See,* 85 FR 20387 (Apr. 13, 2020).

[18] The Board has broad authority to define the term ''total assets.'' While 12 U.S.C. 1790d defines ''net worth''—the numerator for determining the net worth ratio—it does not define the term ''total assets,'' which comprises the denominator of the equation. However, the Board has elected to define the term in part 702. In addition to the Board's broad authority to define the term ''total assets,'' the Board finds that given the unique and unprecedented nature of the COVID–19 pandemic, encouraging use of the PPP Facility by excluding pledged PPP loans from total assets would further the purpose of section 1790d. Pledged covered PPP loans present less risk and would potentially facilitate resolving the problems of credit unions at the least possible long-term cost to the NCUSIF compared to non-pledged covered PPP loans.

[19] 12 CFR 723.2.

[20] *See, https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule.*

[21] *See e.g.,* 13 CFR 120.110 and 120.140.

[22] 85 FR 21747 (Apr. 20, 2020).

[23] Officers and key employees of the credit union may obtain a PPP Loan from a different lender, but not from the credit union with which they are associated.

any applicable pledged shares) must be approved by the board of directors.[24] Similarly, loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser must be approved by the board of directors when such loans, standing alone or when added to any outstanding loan or loans of the guarantor or endorser, exceeds $20,000.[25] The NCUA's regulations implement these restrictions under part 701, which explains how balances are calculated for purposes of these provisions and sets forth loan approval requirements.[26] The SBA's interim final rules and the CARES Act do not provide any authority to set these statutory restrictions aside, and the FCU Act contains no authority for the Board to provide an exception.[27] Therefore, as discussed above, current NCUA provisions governing loans to insiders are applicable to PPP Loans.

IV. Regulatory Procedures

A. Administrative Procedure Act

The Board is issuing this interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [28] The Board believes that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. The Board notes that the COVID–19 crisis is unprecedented. It is rapidly changing and difficult to anticipate how the disruptions caused by the crisis will manifest themselves within the financial system and how individual credit unions may be impacted. Because of the widespread impact of a pandemic and the speed with which business and economic disruptions have transmitted throughout the United States, the Board believes it has good cause to determine that ordinary notice and public procedure are impracticable and that moving expeditiously in the form of an interim final rule is in the best interests of the public and the credit unions that serve that public.

The Board also believes that notice-and-comment procedures are unnecessary for this interim final rule as it principally implements a statutory requirement and the Board has no discretion in providing the zero risk weight for PPP loans. Furthermore, the Board believes notice-and-comment procedures are impractical because credit unions have already begun to offer PPP loans to members affected by COVID–19.[29] Credit unions need clarity and certainty on the applicable treatment of PPP loans both in regards to the risk weighting and whether the loans qualify as commercial loans under the NCUA's MBL and commercial lending rule. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the interim final rule without advance notice and the opportunity to comment.[30]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[31] For the reasons stated above, the Board finds good cause to issue the rule with an immediate effective date. This rule would also be excepted from the delayed effective date requirement because it relieves a restriction that would otherwise apply.

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the Board is interested in the views of the public and requests comment.

B. Congressional Review Act

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule. If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[32]

For the same reasons set forth above, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[33] As discussed above, the Board has concluded there is good cause to issue the interim final rule without notice-and-comment procedures.

As required by the Congressional Review Act, the Board will submit the interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

To capture activity related to the PPP, beginning with the June reporting cycle by credit unions, the NCUA will add four accounts to the quarterly Call Report (NCUA 5300) to identify the

[24] 12 U.S.C. 1757(5)(A)(iv).

[25] 12 U.S.C. 1757(5)(A)(v).

[26] 12 CFR 701.21(d).

[27] Cf. 12 U.S.C. 375b(9)(D)(ii) (authority for FRB to grant an exception to a similar restriction for member banks for extensions of credit that pose ''minimal risk'').

[28] 5 U.S.C. 553(b)(3)(B).

[29] Financial institutions could begin offering PPP loans April 3, 2020. *See, https://www.sba.com/funding-a-business/government-small-business-loans/ppp/.*

[30] . 5 U.S.C. 553(b)(B); 553(d)(3). For the same reasons, the Board is not providing the usual 60-day comment period before finalizing this rule. See NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2 and IRPS 15–1. 80 FR 57512 (Sept. 24, 2015), available at *https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf.*

[31] 5 U.S.C. 553(d).

[32] 5 U.S.C. 804(2).

[33] 5 U.S.C. 808.

number and amount of PPP loans, the amount of PPP loans pledged as collateral to secure Federal Reserve System's PPP Lending Facility, and the amount of FRB PPP Lending Facility loans. The changes to the Call Report will assist NCUA in off-site monitoring and supervision of credit unions while minimizing the burden during on-site examinations.

These changes will not alter the current estimate of four hours per response necessary to review the instructions and complete the form. The amount of data elements added are minimal and will not impact the total burden. The Office of Management Budget (OMB) has approved this change under a ''non-substantive change'' request to the information collection requirements approved under OMB control number 3133–0004.

D. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

This interim final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

E. Assessment of Federal Regulations and Policies on Families

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

F. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the APA [34] or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**.[35] Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than $100 million to be small entities.[36]

As discussed previously, consistent with the APA,[37] the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Rules that are exempt from notice and comment procedures are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

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

List of Subjects

12 CFR Part 702

Capital, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 723

Credit, Credit unions, Member business loans, Commercial lending, Reporting and recordkeeping requirements.

By the NCUA Board on April 22, 2020.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends parts 702 and 723 of chapter VII of title 12 of the Code of Federal Regulations as follows:

PART 702—CAPITAL ADEQUACY

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

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

■ 2. In § 702.2, add paragraph (k)(3) to read as follows:

§ 702.2 Definitions.

* * * * *

(k) * * *

(3) Notwithstanding paragraph (k)(1) of this section, a credit union may exclude loans pledged as collateral for a non-recourse loan that is provided as part of the Paycheck Protection Program Lending Facility, announced by the Federal Reserve Board on April 7, 2020, from the calculation of total assets for the purpose of calculating its net worth ratio. For the purpose of this provision, a credit union's liability under the Facility must be reduced by the principal amount of the loans pledged as collateral for funds advanced under the Facility.

* * * * *

■ 3. In § 702.104, revise paragraph (d) to read as follows:

§ 702.104 Risk portfolios defined.

* * * * *

(d) *Low-risk assets.* Cash on hand (*e.g.,* coin and currency, including vault, ATM and teller cash), the NCUSIF deposit, debt instruments unconditionally guaranteed by the National Credit Union Administration; and covered loans issued under the Small Business Administration's Paycheck Protection Program, 15 U.S.C. 636(a)(36).

* * * * *

PART 723—MEMBER BUSINESS LOANS; COMMERCIAL LENDING

■ 4. The authority for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757a, 1766, 1785, 1789.

■ 5. In § 723.2, revise the definition of ''commercial loan'' to read as follows:

§ 723.2 Definitions.

* * * * *

Commercial loan means any loan, line of credit, or letter of credit (including any unfunded commitments), and any interest a credit union obtains in such loans made by another lender, to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, agricultural, or professional purposes, but not for personal expenditure purposes. Excluded from this definition are loans made by a corporate credit union; loans made by a federally insured credit union to another federally insured credit union; loans made by a federally insured credit union to a credit union service organization; loans secured by a 1- to 4-family residential property (whether or not it is the borrower's primary residence); loans fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions; loans secured by a vehicle manufactured for household use; and loans that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balances plus unfunded

[34] 5 U.S.C. 553(b).

[35] 5 U.S.C. 603, 604.

[36] NCUA Interpretive Ruling and Policy Statement 15–1. 80 FR 57512 (Sept. 24, 2015).

[37] 5 U.S.C. 553(b)(3)(B).

commitments less any portion secured by shares in the credit union to a borrower or an associated borrower, are equal to less than $50,000. The definition of commercial loan also excludes covered loans issued under the Small Business Administration's Paycheck Protection Program, 15 U.S.C. 636(a)(36).

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

Treatment of Pandemic Relief Payments Under Regulation E and Application of the Compulsory Use Prohibition

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this interpretive rule to provide guidance to government agencies distributing aid to consumers in response to the COVID–19 pandemic. The Bureau concludes in this interpretive rule that certain pandemic-relief payments are not ''government benefits'' for purposes of Regulation E and the Electronic Fund Transfer Act (EFTA) and are therefore not subject to the compulsory use prohibition in EFTA, if certain conditions are met. Specifically, government benefits do not include payments from Federal, State, or local governments if those payments: Are made to provide assistance to consumers in response to the COVID–19 pandemic or its economic impacts; are not part of an already-established government benefit program; are made on a one-time or otherwise limited basis; and are distributed without a general requirement that consumers apply to the agency to receive funds.

DATES: This interpretive rule is effective on April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background

Section 913 of the Electronic Fund Transfer Act (EFTA) provides, among other things, that no person may require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.[1] This provision, often referred to as the compulsory use prohibition, is implemented in § 1005.10(e)(2) of Regulation E.

In the mid-1990s, the Board of Governors of the Federal Reserve System (Board) extended consumer protections under Regulation E to accounts established by government agencies for distributing benefits to consumers electronically (government benefit accounts).[2] Government benefits covered under the rule include Federally-administered government benefit programs and non-needs tested State and local government benefit programs (they do not include accounts for distributing needs-tested benefits in programs established under State or local law or administered by a State or local agency).[3] Provisions specific to government benefit accounts were codified in § 1005.15 of Regulation E.

On October 5, 2016, the Bureau issued a final rule titled ''Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)'' (2016 Final Rule).[4] The Bureau subsequently amended the 2016 Final Rule twice, in 2017 and 2018.[5] The 2016 Final Rule, as subsequently amended, is referred to herein as the Prepaid Accounts Rule. The Prepaid Accounts Rule, among other things, extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts. The definition of ''prepaid account'' in the Prepaid Accounts Rule includes government benefit accounts (as defined in § 1005.15(a)(2)), which were already covered by Regulation E as described above. The Prepaid Accounts Rule generally maintained the existing provisions specific to government benefit accounts, while adding certain new requirements such as pre-acquisition disclosures. The Prepaid Accounts Rule did not change the compulsory use prohibition in § 1005.10(e) of Regulation E, but did add commentary to clarify the compulsory use prohibition's application to government benefits (comment 10(e)(2)–2), which is in line with pre-existing commentary regarding payroll (comment 10(e)(2)–1).

Federal, State, and local governments are considering a variety of approaches to providing consumers relief from the economic impacts of the COVID–19 pandemic. These approaches may include government distribution of funds directly to consumers, in some cases outside of existing government benefit programs. In some cases, the relevant governmental agencies may not have access to consumers' account information, such as account and routing numbers, and therefore may have difficulty disbursing funds via direct deposit in a timely manner; in other cases, consumers may not have a pre-existing account that is capable of receiving funds via direct deposit.

B. Use of Electronic Fund Transfers in Government Benefit Disbursement

The Bureau notes that Regulation E provides significant flexibility to government agencies that wish to disburse government benefits via electronic fund transfers. As stated above, EFTA and Regulation E prohibit requiring consumers to establish accounts for receipt of electronic fund transfers with a particular financial institution as a condition of receipt of a government benefit.[6] The compulsory use prohibition does not require the agency to also offer payment through *any* other method the consumer may prefer; it simply requires that government agencies provide the consumer *a* choice. Specifically, comment 10(e)(2)–2 to Regulation E states that a government agency may require direct deposit of benefits by electronic means if recipients are allowed to choose the institution that will receive the direct deposit.[7]

In the preamble to the 2016 Final Rule, the Bureau recognized that in some cases, circumstances may require that financial institutions or other persons disburse funds to consumers within a certain period. Consumers may be presented with options of how to receive payment but fail to exercise a choice. In such cases, the Bureau noted

[1] 15 U.S.C. 1693k(2).

[2] 59 FR 10678 (Mar. 7, 1994) and 62 FR 43467 (Aug. 14, 1997).

[3] *See* § 1005.15(a)(2).

[4] 81 FR 83934 (Nov. 22, 2016).

[5] *See* 82 FR 18975 (Apr. 25, 2017) and 83 FR 6364 (Feb. 13, 2018). These amendments, among other things, extended the effective date of the Prepaid Accounts Rule to April 1, 2019.

[6] *See* EFTA section 913(a)(2) (15 U.S.C. 1693k(2)) and § 1005.10(e)(2).

[7] Government agencies are permitted to provide paper checks as an option for payment, but are not *required* to do so by EFTA or Regulation E. Similarly, government agencies may, but are not required to, offer direct deposit into an account of the consumer's choosing as an alternative method of payment.