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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

RIN 3133-AF15

#### Temporary Regulatory Relief in Response to COVID-19—Extension

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

**ACTION:** Final rule and temporary final rule; extension.

**SUMMARY:** The NCUA Board (Board) is extending the effective date of its temporary final rule, which modified certain regulatory requirements to help ensure that federally insured credit unions (FICUs) remain operational and can properly conduct appropriate liquidity management to address economic conditions caused by the COVID-19 pandemic. Specifically, the temporary final rule issued by the Board in April 2020 temporarily raised the maximum aggregate amount of loan participations that a FICU may purchase from a single originating lender to the greater of \$5,000,000 or 200 percent of the FICU's net worth. The rule also temporarily suspended limitations on the eligible obligations that a Federal credit union (FCU) may purchase and hold. In addition, given physical distancing practices necessitated by COVID-19, the rule also tolled the required timeframes for the occupancy or disposition of properties not being used for FCU business or that have been abandoned. Unless extended, each of these temporary modifications will expire on December 31, 2020. Due to the continued impact of COVID-19, the Board has decided it is necessary to extend the effective period of these temporary modifications until December 31, 2021.

**DATES:** This rule is effective December 22, 2020. The expiration date of the temporary final rule published on April 21, 2020 (85 FR 22010), is extended through the close of December 31, 2021.

#### FOR FURTHER INFORMATION CONTACT:

*Policy and Analysis:* Victoria Nahrwold, Office of Examination and Insurance, at (703) 548-2633; *Legal:* Thomas Zells and Ariel Pereira, Staff Attorneys, Office of General Counsel, at (703) 518-6540; or by mail at: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Legal Authority
- III. Section-by-Section Analysis
- IV. Regulatory Procedures

#### I. Background

##### A. COVID-19 Pandemic

The COVID-19 pandemic has created uncertainty for FICUs and their members. The Board continues to work with Federal and state regulatory agencies, in addition to FICUs, to assist FICUs in managing their operations and to facilitate continued assistance to credit union members and communities impacted by the novel coronavirus. In April 2020, as part of these ongoing efforts, the Board temporarily modified certain regulatory requirements to help ensure that FICUs remain operational and liquid during the COVID-19 pandemic.<sup>1</sup> The Board concluded that the amendments would provide FICUs necessary additional flexibility in a manner consistent with the NCUA's responsibility to maintain the safety and soundness of the credit union system. The temporary amendments were to remain in place through the end of calendar year 2020 unless the Board took action to extend their effectiveness.

The economic environment is a key determinant of credit union performance. After several years of solid growth, the economy entered a recession at the start of 2020.<sup>2</sup> Given the potential depth of the recession, forecasters do not expect the economy to return to its pre-recession, late 2019 peak before the end of 2021. A sustained, high level of unemployment could reduce loan demand, particularly for non-mortgage consumer loans, and affect credit quality. System-wide delinquency rates, which remained low through the second quarter, could begin to rise as the forbearance programs put in place during the spring come to an

end.<sup>3</sup> The economic impact of the COVID-19 pandemic may result in additional stress on credit union balance sheets, potentially requiring robust liquidity management over the course of 2021. While recovery in economic activity and labor markets is widely expected to continue, there is a high risk of a worse-than-expected outcome. This will depend on the path of COVID-19 infections. As COVID-19 cases rise, another wave of temporary business closures and other measures that hinder economic activity may become necessary. As a result, the recovery could falter, leading to more job losses and higher unemployment. Weaker-than-expected economic conditions or another downturn would keep interest rates low or cause them to decline, particularly at the long end of the yield curve, and pose more significant challenges for the credit union system. The NCUA, like credit unions, needs to plan and prepare for a range of economic outcomes that could affect credit union performance. This includes ensuring a regulatory environment that provides FICUs with the flexibility necessary to cope with and address the range of potential COVID-19 impacts.

Due to the continuing impact of the COVID-19 pandemic on FICUs and their members, the Board has determined that it is necessary to extend the effectiveness of these temporary provisions. The economic impact of the COVID-19 pandemic remains uncertain and is forecasted to extend through 2021. As such, the temporary amendments will remain in place through the end of calendar year 2021 unless the Board finds conditions warrant additional action to further extend their effectiveness.

##### B. The Temporary Amendments

In general, two of the temporary amendments expanded the authority of FICUs to purchase loans and participations in loans, thereby enhancing FICUs' ability to meet liquidity needs. Specifically, the Board temporarily raised the maximum aggregate amount of loan participations that a FICU may purchase from a single originating lender to the greater of \$5,000,000 or 200 percent of the credit

<sup>1</sup> 85 FR 22010 (Apr. 21, 2020).

<sup>2</sup> See <https://www.nber.org/news/business-cycle-dating-committee-announcement-june-8-2020>.

<sup>3</sup> See Title IV of the *Coronavirus Aid, Relief, and Economic Security Act*, Public Law 116-136, 134 Stat 281 (March 27, 2020).

union's net worth. The Board also temporarily suspended certain limitations on the types of eligible obligations that a FICU may purchase and hold. The third regulatory amendment tolled the required timeframes for the occupancy or disposition of properties not being used for FCU business or that have been abandoned to address the impact of the physical distancing practices necessitated by the COVID-19 pandemic.

Section III of this preamble discusses the temporary regulatory amendments in greater detail and the rationale for the extension of their temporary effect.

## II. Legal Authority

The Board is issuing this temporary final rule pursuant to its authority under the Act.<sup>4</sup> The Act grants the Board a broad mandate to issue regulations governing both Federal credit unions and, more generally, all FICUs. For example, section 120 of the Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the Act.<sup>5</sup> Section 209 of the Act is a plenary grant of regulatory authority to issue rules and regulations necessary or appropriate for the Board to carry out its role as share insurer for all FICUs.<sup>6</sup> Other provisions of the Act confer specific rulemaking authority to address prescribed issues or circumstances.<sup>7</sup> Accordingly, the Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

## III. Section-by-Section Analysis

### A. Aggregate Limit on Loan Participation Purchases (Section 701.22(b)(5)(ii))

Section 107(5)(E) of the FCU Act authorizes an FCU to engage in participation lending with other credit unions, credit union organizations, or financial organizations in accordance with written policies of the FCU's board of directors.<sup>8</sup> The NCUA has implemented this statutory provision in § 701.22 of its regulations, which applies to all FICUs. The statute contains no limitation on the amount of participations that an FCU may

purchase from any single originating lender.

The regulation limits the aggregate amount of loan participations that a FICU may purchase from any one originating lender to the greater of \$5,000,000 or 100 percent of the FICU's net worth.<sup>9</sup> As explained in the preamble to the final rule that established the limitation, the purpose of the provision is to mitigate the exposure of FICUs to concentration risk.<sup>10</sup> The preamble explained that, in prescribing concentration limits on loan participations, the Board's goal was "to strike an appropriate balance between mitigating risk and fostering the [credit union] industry's growth and stability."<sup>11</sup>

Under the temporary final rule issued in April 2020, the aggregate limit below which a waiver from the appropriate NCUA Regional Director is not required was temporarily raised to the greater of \$5,000,000 or 200 percent of a FICU's net worth. The increase was intended to help safeguard the stability of FICUs during the COVID-19 pandemic, without undue additional risk to the safety and soundness of the credit union system. The temporary increase was set to expire at the close of December 31, 2020.

Due to the ongoing COVID-19 pandemic and its continued impact on FICUs, the Board believes it necessary to extend the effective period of this temporary amendment until the close of December 31, 2021. As noted in the April 2020 temporary final rule, the Board continues to believe that a cap is an important protection against FICU insolvency. However, the Board also continues to believe that, as currently formulated in § 701.22(b)(5)(ii), the limitation may be overly prescriptive during this time. Additional regulatory flexibility continues to be especially warranted to deal with the economic impact of the COVID-19 pandemic, which may result in additional stress on credit union balance sheets, potentially requiring robust liquidity management.

When the Board issued the temporary increase in April, it emphasized its belief that this amendment would help safeguard the stability of FICUs during the COVID-19 pandemic, without undue additional risk to the safety and soundness of the credit union system. The Board maintains this belief and expects that the impact of the COVID-19 pandemic will warrant an increased cap until the close of December 31, 2021. The Board also continues to

believe that the temporary increase is needed to strike the balance the Board sought in originally promulgating the rule in 2013; the Board encourages FICUs to engage in appropriate due diligence in this context. As such, the Board feels it necessary to extend this relief until the close of December 31, 2021 to continue to allow FICUs the flexibility to conduct robust liquidity management to cope with the atypical economic conditions caused by the COVID-19 pandemic. The Board believes that a one-year extension appropriately balances the unpredictable length of the economic impact of the COVID-19 pandemic with safety and soundness considerations.

In the April 2020 temporary final rule, the Board noted that, subsequent to the temporary rule's expiration at the close of December 31, 2020, a FICU must return into compliance with the current limitation (that is, the greater of \$5,000,000 or 100 percent of its net worth) by either ceasing to purchase loan participations from the originating lender or requesting a waiver as provided in the regulation. With this extension of the expiration, a FICU now must return into compliance with the current limitation or obtain a waiver at the close of December 31, 2021.

### B. Purchase, Sale, and Pledge of Eligible Obligations (Section 701.23(b))

Section 107(13) of the FCU Act authorizes an FCU, "in accordance with rules and regulations prescribed by the Board," to purchase, sell, or pledge all or part of an eligible obligation to one of its own members.<sup>12</sup> The NCUA has implemented this authority in its regulations at § 701.23(b)(1)(i) and (b)(2)(i), which provide that an FCU may purchase an eligible obligation from any source, provided the FCU is empowered to grant the loan or the loan is refinanced within 60 days following its purchase so that it is a loan the FCU is empowered to grant.

The purpose of the refinancing requirement is to help ensure that loans purchased by an FCU comply with the statutory and regulatory requirements applicable to loans made by the FCU. Although the Board's longstanding policy has been that all eligible obligations of an FCU, whether made or purchased, comply with the requirements and goals of the FCU Act, the explicit statutory language of the FCU Act does not necessarily compel this. As explained in the April 2020 temporary final rule, the Board believes that, given the impact of the COVID-19 pandemic, the balance weighs in favor

<sup>4</sup> 12 U.S.C. 1751 *et seq.*

<sup>5</sup> 12 U.S.C. 1766(a).

<sup>6</sup> 12 U.S.C. 1789.

<sup>7</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>8</sup> 12 U.S.C. 1757(5)(e).

<sup>9</sup> 12 CFR 701.22(b)(5)(ii).

<sup>10</sup> 78 FR 37946 (June 25, 2013).

<sup>11</sup> *Id.* at 37951.

<sup>12</sup> 12 U.S.C. 1757(13).

of adopting a closer reading of the text of the statute and suspending the refinancing requirement for a temporary period to promote the extension of credit and flow of liquidity in the credit union system generally.

As noted, the FCU Act and § 701.23 generally do not authorize an FCU to purchase a loan unless the person liable on the loan is a member of that credit union. The Board's publicly articulated interpretation since the 1979 rulemaking that implemented section 107(13) is that Congress did not intend section 107(13) to be an express prohibition on purchases of obligations made to non-members provided they are authorized by other sections of the FCU Act.<sup>13</sup>

The Board's regulations in § 701.23 generally require that purchased eligible obligations be obligations of a purchasing FCU's members. However, § 701.23(b)(2) provides certain limited exceptions to the general requirements for well-capitalized FCUs that have composite CAMEL ratings of "1" or "2."<sup>14</sup> The regulations authorize these FCUs to purchase the eligible obligations of any FICU or of any liquidating credit union without regard to whether they are obligations of the purchasing FCU's members. As the Board has previously noted, these types of purchases could be construed as being made under section 107(14) of the FCU Act (which does not impose a membership requirement), as opposed to under section 107(13).<sup>15</sup> Section 107(14) authorizes FCUs to "purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members." This statutory interpretation is consistent with the general principle that the more specific provision or authority applies in favor of the more general provision.

In the April 2020 temporary final rule, the Board explained that—while it continues to believe that this exception should generally be limited to FCUs with CAMEL 1 or 2 composite ratings—it also recognizes the urgent need to support the extension of credit and facilitate downstream loan purchases as a tool to manage liquidity. The Board, therefore, temporarily amended its

regulations to authorize FCUs with CAMEL composite ratings of 1, 2, or 3 to purchase eligible obligations of FICUs and liquidating credit unions irrespective of whether the obligation belongs to the purchasing FCU's members. This change did not alter the requirement for a purchasing FCU to be well-capitalized under § 701.22(b)(2).<sup>16</sup>

This temporary amendment was set to expire at the close of December 31, 2020. Due to the ongoing and unforeseeable impact of the COVID-19 pandemic, the Board believes it appropriate to extend these temporary provisions until the close of December 31, 2021. The Board recognizes that the need to support the extension of credit and facilitate the downstream loan purchases as a tool to manage liquidity remains, and likely will remain for the foreseeable future. The Board believes that a one-year extension appropriately balances the unpredictable length of the economic impact of the COVID-19 pandemic with safety and soundness considerations.

As noted in the April 2020 temporary final rule, the Board reiterates that this change allows FCUs to continue to hold obligations purchased pursuant to this temporary final rule subsequent to the rule's expiration. The standard requirements applicable to the purchase of obligations under § 701.23 will resume after the expiration of the temporary provisions at the close of December 31, 2021, unless extended, and will apply to all future purchases, including to purchases of obligations previously acquired under the provisions of this temporary final rule. The Board also reiterates that the restrictions temporarily relieved in § 701.23 do not apply to state-chartered, federally insured credit unions. Any such restrictions applicable to state-chartered credit unions would be based on state laws or regulations. This temporary final rule does not modify the current authority of FCUs under § 701.23 to purchase the obligations of a liquidating credit union without regard to whether the obligations belong to the purchasing FCU's members.

#### *C. FCU Occupancy and Disposal of Acquired Premises (Section 701.36(c))*

Section 107(4) of the FCU Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations.<sup>17</sup> The Board has implemented and interpreted this provision of the FCU Act in its

regulation at 12 CFR 701.36. In general, an FCU may only invest in property that it intends to use to transact credit union business or in property that supports its internal operations or serves its members. Among other provisions, § 701.36: (1) Limits FCU investments in fixed assets; and (2) establishes occupancy, planning, and disposal requirements for acquired and abandoned premises.

The regulation provides that if an FCU acquires premises, including unimproved land or unimproved real property, it must partially occupy them "no later than six years after the date of acquisition," subject to the NCUA granting a waiver.<sup>18</sup> Further, an FCU must make diligent efforts to dispose of abandoned premises and any other real property it does not intend to use in transacting business. Additionally, the FCU must advertise for sale premises that have been abandoned for four years.<sup>19</sup> The specific terms of these requirements do not stem directly from the FCU Act, but instead reflect the Board's judgment in implementing the general statutory provision.

In the April temporary final rule, the Board—noting the impact of the physical distancing measures adopted by many states and localities related to COVID-19<sup>20</sup> on FCU's ability to comply with the occupancy and disposition requirements in § 701.36—adopted provisions to temporarily toll the regulatory mandated timeframes in the rule. The Board emphasized that these health-related restrictions on the mobility of individuals made the changes in occupancy and dispositions required by § 701.36 extremely difficult. The Board explained that this temporary change appropriately reflected these unique circumstances while maintaining consistency with the statutory provision as interpreted and implemented by the Board.

The temporary final rule provided that any days that fall within the period commencing on April 21, 2020 and concluding at the close of December 31, 2020 shall not be counted for purposes of determining an FCU's compliance with the regulatory time periods. This temporary deferral has provided FCUs additional flexibility to comply with the prescribed time periods, while still complying with the statutory and regulatory goals of ensuring that

<sup>13</sup> 44 FR 27068, 27069 (May 9, 1979).

<sup>14</sup> Section 701.23 also contains exceptions to the membership requirement for certain purchases of student loans and real estate loans that an FCU purchases to complete a pool for sale. The Board established this exception in the 1979 final rule discussed above. 44 FR 27068 (May 9, 1979).

<sup>15</sup> Section 107(14) is codified in 12 U.S.C. 1757(14). For the Board's prior statements on this matter, please refer to 66 FR 58656, 58660 (Nov. 23, 2001); 51 FR 15055, 15059 (Mar. 15, 2001), and 76 FR 81421, 81426 (Dec. 28, 2011).

<sup>16</sup> Generally, credit unions with a CAMEL composite rating lower than 3 are considered to be in "troubled condition" under the NCUA's regulations. 12 CFR 700.2.

<sup>17</sup> 12 U.S.C. 1757(4).

<sup>18</sup> 12 CFR 701.36(c)(1).

<sup>19</sup> 12 CFR 701.36(c)(2).

<sup>20</sup> See <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>. ("[A] vast majority of Americans — nine in 10 United States residents — are now or will soon be under instructions to stay at home.")

properties acquired or held by FCUs are used for credit union business.

Due to the ongoing nature of the COVID-19 pandemic and its continued impact on FICUs, the Board has decided it is necessary to extend the effectiveness of this temporary amendment until the close of December 31, 2021. Physical distancing practices continue to be a key component of preventing the spread of COVID-19 and many states, localities, and businesses have adopted related requirements or policies<sup>21</sup> that continue to make the changes in occupancy and dispositions required by § 701.36 extremely difficult.

The Board continues to believe this temporary change appropriately reflects the unique circumstances necessitated by the COVID-19 pandemic while maintaining consistency with the statutory provision as interpreted and implemented by the Board. The Board feels that a one-year extension appropriately balances the unpredictable length of the impact of the COVID-19 pandemic with safety and soundness considerations.

*Example One: An FCU closed on the purchase of an office building 30 days before April 21, 2020 (that is, the temporary final rule is published on the 31st day following acquisition). Under the temporary regulatory amendment, January 1, 2022 would be deemed the 31st day following acquisition for purposes of calculating the six-year deadline for partial occupancy.*

*Example Two: An FCU has an abandoned parcel of land that, under § 701.36(c)(2), it is required to advertise for sale no later than November 9, 2020 (i.e., that fourth year anniversary of the date the parcel was abandoned). Under this temporary final rule, the FCU would have an additional amount of time to meet this requirement equal to the number of days between the publication date and January 1, 2022.*

#### IV. Regulatory Procedures

##### A. Administrative Procedure Act

The Board is issuing the extension of the temporary final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).<sup>22</sup>

<sup>21</sup> See <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>. (“As coronavirus cases continue to surge and hospitals in some areas stretch to capacity, many states are once again imposing limits on businesses and everyday life. Some governors are closing sectors they had reopened after spring lockdowns. Others, wary of an ailing economy, are letting businesses remain largely open but setting stricter capacity limits or mandating the wearing of masks in public.”)

<sup>22</sup> 5 U.S.C. 551 *et seq.*

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.”<sup>23</sup>

The Board believes that the public interest is best served by implementing the extension of the previously issued temporary final rule immediately upon publication in the **Federal Register**. The Board notes that the COVID-19 crisis is unprecedented. It is a rapidly changing situation 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 temporary nature of both the relief contemplated by the temporary final rule and this extension of such relief, the Board believes it is has good cause to determine that ordinary notice and public procedure are impracticable and that moving expeditiously to extend the temporary final rule is in the best of interests of the public and the FICUs that serve that public. The extension of these temporary regulatory changes are proactive steps that are designed help FICUs cope with the economic impact of the COVID-19 pandemic, which may result in additional stress on credit union balance sheets, potentially requiring robust liquidity management over the course of 2021. The changes are undertaken with expedience to ensure the maximum intended effects remain in place.

The Board values public input in its rulemakings and believes that providing the opportunity for comment enhances its regulations. Accordingly, the Board often solicits comments on its rules even when not required under the APA, such as for the rules it issues on an interim-final basis. The Board, however, notes that the provisions extended in this rule are temporary in nature, and designed specifically to help credit unions affected by the COVID-19 pandemic. The extension of the amendments made by the initial temporary final rule will automatically expire at the close of December 31, 2021, and are limited in number and scope. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.

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.<sup>24</sup> Because the rules relieve currently codified limitations and restrictions, the extension of the temporary final rule is exempt from the APA’s delayed effective date requirement. As an alternative basis to make the rule effective without the 30-day delayed effective date, the Board finds there is good cause to do so for the same reasons set forth above regarding advance notice and opportunity for comment.

##### B. Congressional Review Act

For purposes of the Congressional Review Act,<sup>25</sup> the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule. If the OMB deems a rule to be a “major rule,” 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.<sup>26</sup>

For the same reasons set forth above, the Board is adopting the extension of the temporary 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.<sup>27</sup> In light of current market uncertainty, the Board believes that delaying the effective date of the extension of the

<sup>24</sup> 5 U.S.C. 553(d).

<sup>25</sup> 5 U.S.C. 801–808.

<sup>26</sup> 5 U.S.C. 804(2).

<sup>27</sup> 5 U.S.C. 808.

<sup>23</sup> 5 U.S.C. 553(b)(3).

temporary final rule would be contrary to the public interest for the same reasons discussed above.

As required by the Congressional Review Act, the Board will submit the 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) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number.

In accordance with the PRA, the information collection requirements included in this temporary final rule extension have been submitted to OMB for approval under control numbers 3133-0141, 3133-0127 and 3133-0040.

#### D. Executive Order 13132, on Federalism

Executive Order 13132<sup>28</sup> 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. The extension of the temporary final rule will 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 Board 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 the extension of the temporary final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>29</sup>

#### 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 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**. 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.

As discussed previously, consistent with the APA, 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.

#### List of Subjects in 12 CFR Part 701

Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Mortgages, Reporting and recordkeeping requirements.

By the NCUA Board, this 17th day of December 2020.

**Melane Conyers-Ausbrooks,**  
*Secretary of the Board.*

For the reasons discussed in the preamble, the Board amends 12 CFR part 701 as follows:

#### PART 701—ORGANIZATION AND OPERATION OF CREDIT UNIONS

■ 1. 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, 1785, 1786, 1787, 1788, 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.

#### § 701.22 [Amended]

■ 2. In § 701.22(e), remove the date “December 31, 2020” and add in its place the date “December 31, 2021”.

#### § 701.23 [Amended]

■ 3. In § 701.23(i) introductory text, remove the date “December 31, 2020” and add in its place the date “December 31, 2021”.

#### § 701.36 [Amended]

■ 4. In § 701.36(c)(3), remove the date “December 31, 2020” and add in its place the date “December 31, 2021”.

[FR Doc. 2020–28279 Filed 12–21–20; 8:45 am]

BILLING CODE 7535–01–P

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1003

#### Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretation.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 1.3 percent increase in the average of the CPI-W for the 12-month period ending in November 2020, the exemption threshold is adjusted to \$48 million from \$47 million. Therefore, banks, savings associations, and credit unions with assets of \$48 million or less as of December 31, 2020, are exempt from collecting data in 2021.

**DATES:** This rule is effective on January 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Willie Williams, Paralegal Specialist; Rachel Ross, Attorney-Advisor; Office of Regulations, at (202) 435–7700. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau is amending Regulation C, which implements the HMDA asset thresholds, to establish the asset-sized exemption threshold for depository financial institution for 2021. The asset threshold will be \$48 million for 2021.

#### I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA)<sup>1</sup> requires most mortgage lenders located in metropolitan areas to collect data about their housing related lending activity. Annually, lenders must

<sup>28</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>29</sup> Public Law 105–277, 112 Stat. 2681 (1998).

<sup>1</sup> 12 U.S.C. 2801–2810.