

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 702

RIN 3133-AE80

### Capital Planning and Supervisory Stress Testing

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

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (“Board”) proposes to amend its regulations regarding capital planning and stress testing for federally insured credit unions with \$10 billion or more in assets (covered credit unions). The proposal would reduce regulatory burden by removing some of the capital planning and stress testing requirements currently applicable to certain covered credit unions. The proposal would also make the NCUA’s capital planning and stress testing requirements more efficient for covered credit unions and the NCUA by, among other things, authorizing credit unions to conduct their own stress tests in accordance with the NCUA’s requirements and allowing those credit unions to incorporate the stress test results into their capital plan submissions.

**DATES:** Comments must be received on or before December 29, 2017.

**ADDRESSES:** You may submit comments by any of the following methods, but please send comments by one method only:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/>. Follow the instructions for submitting comments.
- *NCUA Web site:* <https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx>. Follow the instructions for submitting comments.
- *Email:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Proposed Rule—Capital Planning and Supervisory Stress Testing” in the email subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for email.

• *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.

#### FOR FURTHER INFORMATION CONTACT:

*Technical information:* Dale Klein, Senior Financial Analyst—CPST, Office of National Examinations and Supervision, at the above address or telephone (703) 518–6629; or *legal information:* John H. Brolin, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In April 2014, the Board issued a final rule requiring capital planning and stress testing for FICUs with assets of \$10 billion or more (covered credit unions).<sup>1</sup> The NCUA recognizes that covered credit unions present a systemic risk to the National Credit Union Share Insurance Fund (NCUSIF) thereby necessitating that they be subject to more stringent prudential standards than apply to other federally insured credit unions. This approach is consistent with that taken by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the other banking agencies). Capital planning requires covered credit unions to assess their financial condition and risks over the planning horizon under both expected and more adverse conditions. Annual supervisory stress testing has allowed the NCUA to obtain an independent test of these credit unions under stress scenarios. By setting a regulatory minimum stress test capital ratio, the April 2014 final rule requires a covered credit union to take corrective action before it becomes undercapitalized to an extent that it may cause a risk of loss to the NCUSIF.

In July 2015, the Board amended the NCUA’s capital planning and stress testing regulation to align its annual planning and testing schedule with the timelines being adopted by the other

banking agencies. Among the reasons for this schedule change was that the NCUA’s stress test scenarios are based on the supervisory stress test scenarios developed by the other banking agencies for their regulated institutions. The other banking agencies changed their schedule for publishing scenarios, which precipitated the modification of the NCUA’s supervisory stress testing schedule.

Based on the other banking agencies’ experiences implementing the annual Dodd-Frank Act stress tests (DFAST), the NCUA tiered its own capital planning expectations for covered credit unions during the first three years of its program. By “tiered,” we mean that the NCUA aligned its capital planning and analysis expectations based on the size, complexity, and financial condition of each covered credit union. As the Board expected, credit union capital planning practices have evolved over the three-year period since 2014. Covered credit unions, consistent with their size, complexity, financial condition, have operated under the NCUA’s tiered supervisory expectations. The Board believes that taking a graduated supervisory approach to capital planning has been beneficial for credit unions, and is consistent with the NCUA’s overall supervisory objectives.

When the NCUA’s current capital planning and stress testing rule was adopted in April 2014, the Board believed it was important for the agency to initially conduct all stress tests to ensure the NCUA had an independent assessment of risk for covered credit unions.<sup>2</sup> Current § 702.506(c) provides, however, that after the NCUA has completed three consecutive supervisory stress tests of a covered credit union, the covered credit union may, with the NCUA’s approval, conduct the tests described in subpart E of part 702. The preamble to the April 2014 final rule also states that the April 2014 final rule was not the end of the process on stress testing, but just the beginning.<sup>3</sup> Accordingly, after three productive and informative years of practical experience implementing the current capital planning and stress testing regulations, the Board now believes it is appropriate for the NCUA to revisit those regulations.

<sup>1</sup> 12 CFR part 702, subpart E; 79 FR 24311 (Apr. 30, 2014).

<sup>2</sup> 79 FR 24311, 24312 (Apr. 30, 2014).

<sup>3</sup> *Id.*

## II. Summary of the Proposed Rule

The Board is proposing to amend the NCUA's capital planning and stress testing regulations. The proposed changes reflect the NCUA's experiences in implementing the current rule's requirements, while also taking into consideration the systemic risk that covered credit unions pose to the NCUSIF. As explained in more detail below, these proposed changes are intended to reduce regulatory burdens by removing some of the more onerous capital planning and stress testing requirements currently applicable to covered credit unions.

The proposed changes to the NCUA's capital planning requirements would more closely align the agency's regulatory requirements with its current supervisory expectations for covered credit unions. Under the proposal, covered credit unions would be subject to new tiered regulatory requirements that would further ensure their capital plans are tailored to reflect their size, complexity, and financial condition. For a tier I credit union, which is a covered credit union that has completed fewer than three capital planning cycles and has less than \$20 billion in total assets, review of its capital plan would be incorporated into the NCUA's supervisory oversight of that covered credit union. For a tier II credit union, which is a covered credit union that has completed three or more capital planning cycles and has less than \$20 billion in total assets, or is otherwise designated as a tier II credit union by the NCUA, review of its capital plan also would be incorporated into its supervisory oversight from the NCUA. For a tier III credit union, which is a covered credit union that has \$20 billion or more in total assets, or is otherwise designated as a tier III credit union by the NCUA, review of its capital plan would continue to be subject to the current requirement that the NCUA formally approve or reject it.

Stress testing requirements under the proposal also would be tiered. Tier I credit unions would not be subject to any stress testing requirements. Once a tier I credit union satisfies the criteria for becoming a tier II credit union, which generally would be three years after it reaches total assets of \$10 billion or more, that covered credit union would be required to conduct stress testing. Unlike their larger counterparts in tier III, however, tier II credit unions would not be subject to a 5% minimum stress test capital threshold. Further, under the proposal, the NCUA would no longer conduct the annual supervisory stress tests on applicable covered credit

unions. Rather, the covered credit unions themselves would conduct the stress tests. Since stress testing standards were first adopted in 2014, the NCUA has conducted annual supervisory stress tests on all covered credit unions.

While the Board recognizes that all covered credit unions are of systemic importance to the NCUSIF, the Board it is appropriate to differentiate the capital planning requirements applicable to such institutions based on their individual characteristics. Specifically, size, complexity, and financial condition are significant determinants regarding each covered credit union's risk to the NCUSIF, as well as to each covered credit union's ability to support sound capital planning and supervisory stress testing expectations. The application of the NCUA's capital planning and stress testing requirements defined by size, complexity, and financial condition would provide certain covered credit unions with a more reasonable period of time over which they can develop the policies and processes necessary to develop sound capital plans and analyses. However, the Board seeks comments on whether these characteristics are the appropriate factors, or whether other considerations should also be taken into account in assessing risk for purposes of differentiating capital planning and stress testing requirements.

As noted above, all covered credit unions pose a degree of systemic risk to the NCUSIF and the credit union industry. This proposal, however, seeks to balance the higher risk that the larger, more complex covered credit unions may pose to the NCUSIF, with the time and resources these institutions need to prepare themselves to meet the NCUA's capital planning and supervisory stress testing expectations. The Board also seeks to tailor the NCUA's capital planning and stress testing requirements in such a manner as to reduce the regulatory burden imposed on those smaller covered credit unions which pose less risk to the NCUSIF.

### *Proposed Tiers of Covered Credit Unions*

The proposal identifies three tiers of covered credit unions and would impose varying levels of regulatory requirements based on those tiers. In brief, the tier comprised of the smallest covered credit unions would have the least regulatory requirements, with a concomitant increase in requirements for each tier as the size and complexity of those covered credit unions increases. The three tiers are as follows:

- A *tier I credit union* would be a covered credit union that has completed fewer than three capital planning cycles and has less than \$20 billion in total assets;
- A *tier II credit union* would be a covered credit union that has completed three or more capital planning cycles and has less than \$20 billion in total assets, or is otherwise designated as a tier II credit union by the NCUA; and
- A *tier III credit union* would be a covered credit union that has \$20 billion or more in total assets, or is otherwise designated as a tier III credit union by the NCUA.

Under the proposal, the level of the NCUA's capital planning requirements for tier I and tier II credit unions would generally decrease from the current regulatory requirements, but would generally remain the same for tier III credit unions. This proposed approach would reduce regulatory burdens on tier I and tier II credit unions while allowing them to focus on establishing sound capital planning and capital adequacy assessment processes. The tier III credit unions, on the other hand, which may pose the greatest systemic risk to the NCUSIF and which are most capable of complying with the current requirements, would remain subject to most of the current requirements. The Board seeks specific comments on whether this approach is appropriate and whether it sufficiently balances regulatory relief for covered credit unions with the NCUA's objective of managing risk to the NCUSIF.

Under the proposal, the NCUA's capital planning and stress testing rule would distinguish between a tier II and a tier III credit union at the threshold level of \$20 billion in total assets. Setting the threshold level at \$20 billion would mean that a covered credit union would generally not be subject to the regulation's most rigorous requirements until it had doubled in size from the time it was first classified as a covered credit union. Setting the threshold at this level should help ensure that covered credit unions have adequate time to plan and prepare for compliance. The Board specifically requests comment, however, on whether the threshold level should be set higher, at \$25 billion in total assets, to provide covered credit unions with even more time to plan and prepare for compliance. In addition, the Board requests comment on whether setting the threshold at this higher level would be reasonable and why.

Proposed Revisions to the NCUA’s Capital Planning Requirements

This proposal would retain the current requirement that all covered credit unions submit capital plans to the NCUA no later than May 31st of each year. Tier 1 and tier II credit unions, however, would no longer be required to have their capital plans formally approved by the NCUA. Capital plan reviews for tier I and tier II credit unions would be conducted as part of the NCUA’s supervision of the credit union, with any deficiencies addressed as part of the supervisory process. This approach would provide the NCUA greater latitude when reviewing capital plan submissions. This proposed change is also intended to provide the NCUA with additional flexibility to use the supervisory process to address plan deficiencies, especially for credit unions newly covered by the NCUA’s capital planning requirements. The Board believes that any increased risk to the NCUSIF that may occur as a result of providing regulatory relief can be addressed through the supervisory process.

This proposal would retain the current requirement for the NCUA to formally approve or reject a tier III credit union’s capital plan. Because the failure of a tier III credit union poses the most significant risk to the NCUSIF, the Board believes it is prudent to retain the current, more formal requirements for tier III credit unions.

The NCUA’s formal rejection of a capital plan would be subject to the Supervisory Review Committee process.

The Board specifically requests comment on this aspect of the proposal.

Proposed Revisions to the NCUA’s Supervisory Stress Testing Requirements

*Credit Union-Conducted Stress Tests.* Under the current rule, the NCUA is required to conduct supervisory stress tests for all covered credit unions. When the Board approved the current regulation in 2014, it believed the agency should initially conduct all stress tests to ensure the NCUA had an independent assessment of risk for covered credit unions. The preamble to the final rule acknowledged, however, that it might be appropriate in the future for certain covered credit unions to conduct their own supervisory stress tests, and the Board adopted a provision in the final rule to allow for that. In particular, current § 702.506(c) provides that after the NCUA has completed three consecutive supervisory stress tests of a covered credit union, the covered credit union may, with the NCUA’s approval, conduct the tests described in subpart E of part 702 on its own. Having now completed three annual stress testing cycles, the Board believes that changing the NCUA’s regulations to have covered credit unions conduct their own supervisory stress tests, without needing to obtain approval from the NCUA, is appropriate. Accordingly, under the proposal, the requirement that the NCUA conduct supervisory stress tests would be eliminated.

The Board believes that credit unions are better informed of risk when they

perform their own capital analyses. Having covered credit unions conduct their own supervisory stress tests also eliminates any unintentional, negative consequences that could result from the NCUA conducting those tests, namely concerns that a covered credit union might abdicate its responsibility to perform rigorous capital analyses to the NCUA. As a safeguard, however, the proposal would retain the provision in the current rule that reserves the NCUA’s right to conduct the stress tests on any covered credit union at any time, and to request qualitative and quantitative information from the covered credit unions that pertains to supervisory stress testing.

*Incremental Approach.* Running a supervisory stress test requires internal controls that enable the credit union to effectively challenge all material aspects of its capital planning and analysis. For a covered credit union to develop the ability to obtain, cleanse, and manage internal and external data, and perform adequate capital analyses, it must possess a level of experience and operational scale that is unlikely to be in place or quickly developed by a credit union when it first reaches the \$10 billion threshold. Accordingly, the Board is proposing to adopt an incremental regulatory approach to supervisory stress testing that would gradually increase regulatory requirements on a covered credit union over time without making the requirements too burdensome too soon.

TABLE 1—INCREMENTAL APPROACH

Tier	Description	Stress test	Capital plan review
I .....	First three years .....	Not required .....	Incorporated as part of the NCUA’s supervisory oversight.
II .....	3 years or more, but less than \$20 billion in total assets.	Credit unions run stress tests using the NCUA stress-test scenarios and NCUA guidance, but are not subject to the 5% minimum stress-test ratio.	Incorporated as part of the NCUA’s supervisory oversight.
III .....	\$20 billion or more in total assets	Credit unions run stress tests using the NCUA stress-test scenarios and NCUA guidance, and are subject to the 5% minimum stress-test ratio.	The NCUA accepts or rejects credit union capital plans—qualitative and quantitative assessment.

*Tier I.* Under the proposal, a tier I credit union would not be subject to any supervisory stress testing requirements, nor would it be required to incorporate the NCUA’s stress test scenarios within its capital plan. This proposed approach would allow a tier I credit union time after it reaches the \$10 billion threshold level to obtain the policies and processes necessary to develop sound capital plans and analyses prior to incorporating supervisory stress testing. Once the tier I credit union satisfies the

tier II criteria, which generally would be three years after reaching the \$10 billion threshold, it would then be required to comply with all tier II requirements described below.

*Tier II.* This proposal would require a tier II credit union to incorporate the NCUA’s annual stress test scenarios into its capital plan submissions. The Board does not believe this particular requirement imposes additional regulatory burden on a tier II credit union because, as the NCUA has

observed over the last three years of implementing the stress testing regulations, covered credit unions already incorporate the NCUA’s supervisory stress testing scenarios into their capital plans even though they are not required to do so under the current rule.

*Tier III.* The proposal would require a tier III credit union to incorporate the NCUA’s stress test scenarios into its capital plan. Because a tier III credit union poses the greatest level of

systemic risk to the NCUSIF, it must also submit a plan to build capital or mitigate the risk if the credit union shows that its stress test capital ratio would fall below the 5% minimum stress test capital threshold. This is consistent with the supervisory stress testing requirements in current § 702.506(c).

The proposal would apply the tier III threshold of \$20 billion as of the March 31 measurement date of each year, and the threshold would be effective at the beginning of the next capital planning cycle. The capital planning cycle would begin on June 1 of that year and run through the capital plan submission date of May 31 of the following year.

*Web site Instructions.* If the Board adopts a final rule on this matter, the NCUA will publish on its Web site instructions for tier II and tier III credit unions on how to administer their own supervisory stress tests. The Board believes that a covered credit union's ability to maintain independence and flexibility is essential to the overall success of the NCUA's supervisory stress testing program. Accordingly, under the proposal, tier II and tier III credit unions would be required to conduct their own stress tests in accordance with the instructions provided by the NCUA. The standards for conducting the tests would differ for tier II and tier III credit unions and would be commensurate with their level of systemic risk to the NCUSIF.

*Conforming and Clarifying Amendments.* Finally, the proposal would also make a number of minor conforming and clarifying amendments to the current rule. These conforming and clarifying amendments would include removing, changing, and adding certain definitions, and making other small amendments to various provisions in subpart E to part 702.

The proposed changes outlined above are discussed in more detail in the Section-by-Section Analysis below.

### III. Legal Authority

The NCUA is issuing this proposal pursuant to its authority under the Federal Credit Union Act (FCUA).<sup>4</sup> Section 120(a) of the FCUA authorizes the Board to "prescribe rules and regulations for the administration of" the FCUA.<sup>5</sup> Section 204 of the FCUA authorizes the Board, through its examiners, "to examine any [federally] insured credit union . . . to determine the condition of any such credit union for insurance purposes."<sup>6</sup> Section

206(e) of the FCUA authorizes the Board to take certain actions against a federally insured credit union, if, in the opinion of the Board, the credit union "is engaging or has engaged, or the Board has reasonable cause to believe that the credit union or any institution affiliated party is about to engage, in any unsafe or unsound practice in conducting the business of such credit union."<sup>7</sup>

### IV. Section-by-Section Analysis

This proposed rule would retain most of the current language in subpart E of part 702. In particular, current §§ 702.501, and 702.503 would remain unchanged under this proposal. The proposed changes to §§ 702.502, 702.504, 702.505, and 702.506 are described and explained in more detail below.

#### Section 702.502 Definitions

The proposal would retain most of the definitions from current § 702.502, without change, with the following exceptions.

##### *Adverse Scenario*

The proposal would remove the definition of "adverse scenario" from § 702.502 and replace this term throughout subpart E with terms more commonly used within the financial services industry. This change is intended to reduce confusion for covered credit unions. No substantive changes to the requirements of subpart E are intended by this change.

##### *Capital Planning Cycle*

The proposal would add a definition for the new term "capital planning cycle" to § 702.502. The proposal would provide that "capital planning cycle" means a complete round of capital planning over a one year period. The definition would provide further that the capital planning cycle begins on June 1st of a given year and ends on May 31st of the following year when the capital plan submission is due. This change is intended to reduce confusion for covered credit unions regarding when they would be subject to certain stress testing and other requirements, which are discussed in more detail below.

##### *Covered Credit Union*

The proposal would make conforming amendments to the current definition of "covered credit union" in § 702.502. In particular, the proposed definition would remove the words "capital planning and stress testing" from the second sentence in the definition and

add in their place the word "applicable." The proposed definition would provide that "covered credit union" means a federally insured credit union whose assets are \$10 billion or more. The definition would provide further that a credit union that crosses that asset threshold as of March 31st of a given calendar year is subject to the applicable requirements of subpart E in the capital planning cycle that begins on June 1st of that calendar year. As explained in more detail below, this change would help clarify that a covered credit union is only subject to the applicable requirements of subpart E.

##### *Scenarios*

The proposal would make conforming amendments to the current definition of "scenarios" in § 702.502. In particular, the proposal would remove the words "adverse, and severely adverse" from the current definition and add in their place the words "scenarios, and stress." The revised definition would provide that "scenarios" are those sets of conditions that affect the U.S. economy or the financial condition of a covered credit union that serve as the basis for stress testing, including, but not limited to, NCUA-established baseline scenarios, and stress scenarios.

##### *Severely Adverse Scenario*

The proposal would delete the definition of "severely adverse scenario" from § 702.502 and replace this term throughout subpart E with terms more commonly used within the financial services industry. This change is intended to reduce confusion for covered credit unions. No substantive changes to the requirements of subpart E are intended by this change.

##### *Stress Scenario*

The proposal would add the definition "stress scenario" to § 702.502. The definition would provide that "stress scenario" means a scenario that is more adverse than that associated with the baseline scenario.

##### *Tier I Credit Union*

The proposal would add the definition of "tier I credit union" to § 702.502. The definition would provide that "tier I credit union" means a covered credit union that has completed fewer than three capital planning cycles and has less than \$20 billion in total assets. Generally, a covered credit union would be categorized as a tier I credit union for the first three years after its total assets reached \$10 billion or more. After three years, a tier I credit union

<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. 1784(a).

<sup>7</sup> 12 U.S.C. 1786(e).

would become a tier II credit union with the corresponding requirements.

The definition of a tier I credit union would provide regulatory relief for qualifying covered credit unions. The Board believes it is appropriate to adjust the expectations for credit unions that newly meet the criteria for covered credit unions. As noted earlier, the NCUA has conducted the review and assessment of covered credit union capital planning activities in a phased manner since inception of the final rule in 2014. The proposed creation of the tier I distinction would allow the NCUA to better align regulatory expectations based on the size, complexity, and financial condition of each covered credit union.

#### *Tier II Credit Union*

The proposal would add the definition of “tier II credit union” to § 702.502. The definition would provide that “tier II credit union” means a covered credit union that has completed three or more capital planning cycles and has less than \$20 billion in total assets, or is otherwise designated as a tier II credit union by NCUA. The tier II credit union definition would recognize the iterative nature of the NCUA’s capital planning and stress testing processes, and acknowledge that covered credit unions get better at developing and implementing their capital plans over time and through repetition. The Board believes these proposed changes would provide regulatory relief for tier II credit unions.

#### *Tier III Credit Union*

The proposal would add the definition of “tier III credit union” to § 702.502. The definition would provide that “tier III credit union” means a covered credit union that has \$20 billion or more in total assets, or is otherwise designated as a tier III credit union by NCUA. The proposal identifies credit unions with total assets of \$20 billion or more as posing the highest degree of risk to the NCUSIF. While the Board considers qualitative and quantitative capital plan supervision and credit union-run stress test review to be appropriate for covered credit unions with less than \$20 billion in total assets, it does not for larger covered credit unions. For covered credit unions with total assets of \$20 billion or more, the Board believes it is prudent, given the size of the NCUSIF and the potential loss associated with the failure of a credit union that large, to establish formal triggers requiring the NCUA and credit union actions to further mitigate NCUSIF risk exposure.

Unless otherwise delegated to the NCUA’s staff, the Board would retain the authority to designate a covered credit union as a tier II credit union or tier III credit union, respectively. The Board invites comment on what criteria would be appropriate to apply when considering such a designation.

#### *Section 702.504 Capital Planning*

##### *(a) Annual Capital Planning*

###### *(a)(1)*

The proposal would retain most of current § 702.504 without change, with the following exceptions. Proposed § 702.504(a)(1) would no longer include the last sentence in current § 702.504(a)(1), which provides that the NCUA will assess whether the capital planning and analysis process is sufficiently robust in determining whether to accept a credit union’s capital plan. Given the other changes in this proposal, this sentence would no longer be necessary. Proposed § 702.504(a)(1) would provide that a covered credit union must develop and maintain a capital plan. It also would provide that a covered credit union must submit this plan and its capital policy to the NCUA by May 31 each year, or such later date as directed by the NCUA. It also would provide that the plan must be based on the covered credit union’s financial data as of December 31 of the preceding calendar year, or such other date as directed by the NCUA.

##### *(b) Mandatory Elements*

###### *(b)(4)*

The proposal would delete current § 702.504(b)(4) from the regulation. Current § 702.504(b)(4) provides that if a credit union conducts its own stress test under § 702.506(c), its capital plan must include a discussion of how the credit union will maintain a stress test capital ratio of 5 percent or more under baseline, adverse, and severely adverse conditions in each quarter of the 9-quarter horizon. This sentence would no longer be necessary in this section because it would be fully addressed in proposed § 702.506(f).

#### *Section 702.505 NCUA Action on Capital Plans*

##### *(a) Timing*

The proposal would amend current § 702.505(a) by dividing paragraph (a) into two subparts. Proposed § 702.505(a)(1) would provide that the NCUA will address any deficiencies in the capital plans submitted by tier I and tier II credit unions through the supervisory process. The intent of this

change is to provide regulatory relief to tier I and tier II credit unions by removing the regulatory review and regulatory “accept or reject” assessment of their capital plans. It also provides the NCUA with additional flexibility in addressing plan deficiencies.

Proposed § 702.505(a)(2) would continue to require that the NCUA accept or reject tier III credit unions’ capital plans. The Board is not proposing to remove this requirement for Tier III credit unions at this time for the reasons discussed above. Accordingly, proposed § 702.505(a)(2) would provide that the NCUA will notify tier III credit unions of the acceptance or rejection of their capital plans by August 31 of the year in which their plan is submitted.

The proposal also would make additional conforming changes throughout § 702.505 to clarify that only tier III credit unions would be required to operate under a capital plan formally accepted by the NCUA. No substantive changes, other than those discussed above, are intended.

#### *Section 702.506 Annual Supervisory Stress Testing*

Much of the substance of current § 702.506 would remain unchanged under the proposal. Each of the proposed substantive amendments are discussed in detail below. The proposal also would make a number of non-substantive conforming amendments to address certain changes in terminology.

##### *(a) General Requirements*

The proposal would amend current § 702.506(a) by adding a new clarifying sentence to the beginning of proposed paragraph (a). The new sentence would provide that only tier II and tier III credit unions are required to conduct supervisory stress tests. The Board believes that exempting tier I credit unions from supervisory stress testing provides prudent regulatory relief and enables tier I credit union time to develop their own capital adequacy assessments. The Board considers the supervisory stress testing exemption for tier I credit unions, which generally would be three years, after which the tier I credit union becomes a tier II credit union, to be sufficient time to develop internal capabilities to perform credit union-run supervisory stress tests.

##### *NCUA-Run Tests*

The proposal would delete current § 702.506(b), which, because of the other changes being proposed to part 702, would be overridden. The NCUA already reserves, in proposed

§ 702.506(b)(3), the right to conduct stress tests on covered credit unions if it deems such action necessary.

(b) Credit Union-Run Supervisory Stress Tests

The proposal would make significant revisions to current § 702.506(c) to require tier II and tier III credit unions to conduct their own stress tests instead of first having to get approval from the NCUA. Proposal § 702.506(b) would be split into three new subparagraphs, each of which is described in more detail below.

(b)(1) General

Proposed § 702.506(b)(1) would provide that all supervisory stress tests must be conducted according to the NCUA's instructions. The Board is proposing to add this requirement to ensure that supervisory stress tests performed by tier II and tier III credit unions are conducted in a manner that promotes consistency and comparability. Credit union-run stress tests must adhere to these principles in order for the NCUA to assess inherent risk in the portfolios of covered credit unions and establish supervisory benchmarks. The NCUA will publish credit union-run supervisory stress test instructions each year on its Web site. The instructions will contain general directives, and where appropriate, differentiate between tier II and tier III requirements.

(b)(2) Tier III Credit Unions

Proposed § 702.506(b)(2) would provide that when conducting its stress test, a tier III credit union must apply the minimum stress test capital ratio to all time periods in the planning horizon. The Board believes this requirement of the current remains pertinent, but only for tier III credit unions.

(b)(3) NCUA Tests

Proposed § 702.506(b)(3) would retain the last two sentences in current § 702.506(c), without change. Proposed § 702.506(b)(3) would provide that the NCUA reserves the right to conduct the tests described in this section on any covered credit union at any time. Proposed paragraph (b)(3) would provide further that where both the NCUA and a covered credit union have conducted the tests, the results of the NCUA's tests will determine whether the covered credit union has met the requirements of part 702. No substantive changes are being proposed with regard to these two sentences.

(f) Supervisory Actions

The proposal would retain much of the language in current § 702.506(g), but would insert some additional language. The section would also be broken into three subsections, each of which is discussed in more detail below.

(f)(1)

Proposed § 702.506(f)(1) would provide that if a *credit union-run* stress test shows a tier III credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the planning horizon, the credit union must incorporate into its capital plan a stress test capital enhancement plan showing how it will meet that target.

(f)(2)

This section of the proposal would retain the language from the first sentence in current § 702.506(g) and limit the application of paragraph (f)(2) to tier III credit unions. Proposed paragraph (f)(2) would provide that if an *NCUA-run* stress test shows that a tier III credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the planning horizon, the credit union must provide the NCUA, by November 30 of the calendar year in which the NCUA conducted the tests, a stress test capital enhancement plan showing how it will meet that target. As explained above, the NCUSIF risk exposure to a tier I and tier II credit union is sufficiently mitigated through qualitative and quantitative supervision of the credit union's capital planning and capital adequacy analysis. Accordingly, the proposed rule offers regulatory relief as tier 1 and tier II credit unions would no longer be subject to the minimum stress test capital ratio.

(f)(3)

This section of the proposal would retain the language in the last sentence in current § 702.506(g) and move it to proposed § 702.506(f)(3). The proposal also would limit the application of this section to only tier III credit unions. Proposed § 702.506(f)(3) would provide that a tier III credit union operating without an NCUA-approved stress test capital enhancement plan required under this section may be subject to supervisory action. A tier III credit union operating without an accepted capital plan or an approved stress test capital enhancement plan will be considered poorly managed and/or operating with insufficient capital to

support the credit union's risk profile. The Board believes it is prudent to subject a tier III credit union to heightened regulatory scrutiny under such circumstances.

## IV. Regulatory Procedures

### 1. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis of any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under \$100 million in assets).<sup>8</sup> The proposed rule and its requirements will apply to only the largest credit unions, those with \$10 billion or more in total assets. Accordingly, the Board certifies that it will not have a significant economic impact on a substantial number of small entities.

### 2. 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 information collections.

The NCUA is seeking comments on proposed revisions to the information collection requirements contained in Subpart E of part 702, which has been submitted to the Office of Management and Budget (OMB) for review and approval OMB control number 3133-0199. The information collection requirements are found in § 702.504, that requires FICUs with assets of at least \$10 billion (covered credit unions) to develop, maintain, and submit capital plans annually to NCUA. Proposed change amend § 702.506 to require tier 2 and 3 credit unions to conduct stress tests in a manner prescribed by NCUA. This reporting requirement will have an effect on five credit unions by increasing the information collection burden by an estimated 100 hours for each.

*Estimated number of respondents:* 7.  
*Estimated number of responses per respondent:* 1.

*Estimated total annual responses:* 7.  
*Estimated burden per response:* 393 hours.

*Total annual burden:* 2,750 hours.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

<sup>8</sup> 5 U.S.C. 603(a); 12 U.S.C. 1787(c)(1).

whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments on the proposed information collection requirements may be sent to the 1. Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov) and 2. NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314, Suite 5067, or email at [PRAComments@ncua.gov](mailto:PRAComments@ncua.gov).

### 3. 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. The proposed 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 Board has, therefore, determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

### 4. Assessment of Federal Regulations and Policies on Families

The Board has determined that this proposed 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).

### List of Subjects in 12 CFR Part 702

Credit unions, Reporting and record keeping requirements.

By the National Credit Union Administration Board, on October 19, 2017.  
**Gerard Poliquin,**  
*Secretary of the Board.*

For the reasons discussed above, the National Credit Union Administration proposes to amend 12 CFR part 702 as follows:

## PART 702—CAPITAL ADEQUACY

- 1. Revise the authority citation for part 702 to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1784(a), 1786(e), 1790d.

### Subpart E—Capital Planning and Stress Testing

- 2. Amend § 702.502 as follows:
  - a. Remove the definition of “adverse scenario”;
  - b. Add the definition of “capital planning cycle”;
  - c. Remove from the definition of “covered credit union” the words “capital planning and stress testing” and add in their place the word “applicable”;
  - d. Remove from the definition of “scenarios” the words “adverse and severely adverse” and add in their place the words “scenarios and stress”;
  - e. Remove the definition of “severely adverse scenario”;
  - f. Add the definition of “stress scenario”;
  - g. Add the definitions of “tier I credit union”, “tier II credit union”, and “tier III credit union”.

The additions and revisions read as follows:

#### § 702.502 Definitions.

\* \* \* \* \*

*Capital planning cycle* means a complete round of capital planning over a one year period. The capital planning cycle begins on June 1 of a calendar year and ends on May 31, the capital plan submission date, of the following calendar year.

\* \* \* \* \*

*Stress scenario* means a scenario that is more adverse than that associated with the baseline scenario.

\* \* \* \* \*

*Tier I credit union* means a covered credit union that has completed fewer than three capital planning cycles and has less than \$20 billion in total assets.

*Tier II credit union* means a covered credit union that has completed three or more capital planning cycles and has less than \$20 billion in total assets, or is otherwise designated as a tier II credit union by NCUA.

*Tier III credit union* means a covered credit union that has \$20 billion or more

in total assets, or is otherwise designated as a tier III credit union by NCUA.

#### § 702.504 [Amended]

- 3. Amend § 702.504 as follows:
  - a. Remove the last sentence in paragraph (a)(1);
  - b. Remove paragraph (b)(4); and
  - c. Redesignate paragraphs (b)(5) and (6) as paragraphs (b)(4) and (5), respectively.
- 4. Amend § 702.505 as follows:
  - a. Revise paragraph (a);
  - b. In paragraph (d) introductory text, add the words “tier III” before the words “credit union’s capital plan,”; and
  - c. In paragraph (e), remove the word “covered” and add in its place the words “tier III”.

The revision reads as follows:

#### § 702.505 NCUA action on capital gains.

(a) *Timing*—(1) *Tier I & tier II credit unions.* NCUA will address any deficiencies in the capital plans submitted by tier I and tier II credit unions through the supervisory process.

(2) *Tier III credit unions.* NCUA will notify tier III credit unions of the acceptance or rejection of their capital plans by August 31 of the year in which their plan is submitted.

\* \* \* \* \*

- 5. Section 702.506 is revised to read as follows:

#### § 702.506 Annual supervisory stress testing.

(a) *General requirements.* Only tier II and tier III credit unions are required to conduct supervisory stress tests. The supervisory stress tests consist of a baseline scenario, and stress scenarios, which NCUA will provide by February 28 of each year. The tests will be based on the credit union’s financial data as of December 31 of the preceding calendar year, or such other date as directed by NCUA. The tests will take into account all relevant exposures and activities of the credit union to evaluate its ability to absorb losses in specified scenarios over a planning horizon. The minimum stress test capital ratio is 5 percent.

(b) *Credit union-run supervisory stress tests*—(1) *General.* All supervisory stress tests must be conducted according to NCUA’s instructions.

(2) *Tier III Credit Unions.* When conducting its stress test, a tier III credit union must apply the minimum stress test capital ratio to all time periods in the planning horizon.

(3) *NCUA tests.* NCUA reserves the right to conduct the tests described in this section on any covered credit union at any time. Where both NCUA and a



covered credit union have conducted the tests, the results of NCUA's tests will determine whether the covered credit union has met the requirements of this subpart.

(c) *Potential impact on capital.* In conducting stress tests under this subpart, NCUA or the credit union will estimate the following for each scenario during each quarter of the planning horizon:

(1) Losses, pre-provision net revenues, loan and lease loss provisions, and net income; and

(2) The potential impact on the stress test capital ratio, incorporating the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the horizon. NCUA or the credit union will conduct the stress tests without assuming any risk mitigation actions on the part of the credit union, except those existing and identified as part of the credit union's balance sheet, or off-balance sheet positions, such as derivative positions, on the date of the stress test.

(d) *Information collection.* Upon request, the credit union must provide NCUA with any relevant qualitative or quantitative information requested by NCUA pertinent to the stress tests under this subpart.

(e) *Stress test results.* A credit union required to conduct stress tests under this section must incorporate the results of its tests in its capital plan.

(f) *Supervisory actions.* (1) If a credit union-run stress test shows a tier III credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the planning horizon, the credit union must incorporate, into its capital plan, a stress test capital enhancement plan that shows how it will meet that target. (2) If an NCUA-run stress test shows that a tier III credit union does not have the ability to maintain a stress test capital ratio of 5 percent or more under expected and stressed conditions in each quarter of the planning horizon, the credit union must provide NCUA, by November 30 of the calendar year in which NCUA conducted the tests, a stress test capital enhancement plan showing how it will meet that target.

(3) A tier III credit union operating without an NCUA approved stress test capital enhancement plan required under this section may be subject to supervisory actions.

(g) *Consultation on proposed action.* Before taking any action under this section against a federally insured, state-chartered credit union, NCUA will

consult and work cooperatively with the appropriate State official.

[FR Doc. 2017-23212 Filed 10-27-17; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 170828813-7813-01]

RIN 0648-BH15

#### Snapper-Grouper Fishery of the South Atlantic Region; Temporary Measures To Reduce Overfishing of Golden Tilefish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed temporary rule; request for comments.

**SUMMARY:** This proposed temporary rule would implement interim measures to reduce overfishing of golden tilefish in Federal waters of the South Atlantic. Beginning in 2018, this temporary rule would reduce the total annual catch limit (ACL), the commercial and recreational sector ACLs, and the quotas for the hook-and-line and longline components of the commercial sector. This proposed temporary rule would be effective for 180 days, although NMFS may extend the temporary rule's effectiveness for a maximum of an additional 186 days. The intended effect of this proposed temporary rule is to reduce overfishing of golden tilefish while the South Atlantic Fishery Management Council develops long-term management measures.

**DATES:** Written comments must be received by November 14, 2017.

**ADDRESSES:** You may submit comments on the proposed temporary rule, identified by "NOAA-NMFS-2017-0111," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0111](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0111) click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Karla Gore, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of an environmental assessment (EA) supporting these interim measures may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/s\\_atl/sg/2017/golden\\_tilefish\\_interim/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2017/golden_tilefish_interim/index.html). The EA includes a Regulatory Flexibility Act (RFA) analysis.

#### FOR FURTHER INFORMATION CONTACT:

Karla Gore, NMFS Southeast Regional Office, telephone: 727-551-5753, or email: [karla.gore@noaa.gov](mailto:karla.gore@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery in the South Atlantic region is managed under the Fishery Management Plan for Snapper-Grouper Fishery of the South Atlantic Region (FMP) and includes golden tilefish, along with other snapper-grouper species. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Golden tilefish are harvested by both commercial and recreational fishermen throughout the South Atlantic, although total landings are dominated by the commercial sector using bottom longline gear. Golden tilefish are also harvested commercially using hook-and-line gear, while the recreational