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Corporate Governance Update

July 2019

NCUA Proposes Delaying Effective Date of Risk-based Capital Rule Until 2022

Last month, the NCUA proposed delaying the effective date of the agency's risk-based capital rule set forth in 12 CFR Part 702. 84 FR 30048. The board approved the final risk-based capital rule in October 2015 (2015 Final Risk-Based Capital Rule). 80 FR 66626. The final rule was scheduled to go into effect on January 1, 2019. In November 2018, the NCUA both delayed the effective date to January 1, 2020, and raised the asset threshold for a complex credit union from $100 million to $500 million. 83 FR 55467. On June 26, 2019, the NCUA issued the proposed rule to delay the effective date of the final rule by two more years (to January 1, 2022).

According to the NCUA, the proposed delay will provide the NCUA board time to holistically consider additional improvements to credit union capital standards, such as subordinated debt authority, capital treatment for an asset securitization, and a community bank leverage ratio equivalent for credit unions. The proposed delay will also give the agency time to integrate changes into the rule before it goes into effect. In its June 20, 2019 press release announcing the proposal, the NCUA stated that based on call report data from the end of 2018, if the 2015 Final Risk-Based Capital Rule were to go into effect in 2019, 545 complex credit unions would be subject to the final rule and more than 99 percent of all complex credit unions would be considered well capitalized.

The 2015 Final Risk-Based Capital Rule is summarized in Part One, Section IV.J. of BCG Standard Procedures Manual #17, *Managing Financial Institutions*. Comments on the NCUA's proposed rule are due by July 26, 2019.

Agencies Streamline FFIEC 051 Call Report Even More

As part of a continuing effort to provide regulatory relief to community banks, the FDIC, FRB and OCC ("Agencies") issued a final rule to implement Regulatory Relief Act Section 205. 84 FR 29039. Section 205 expanded an institution's eligibility to file the FFIEC 051 Call Report (or report of condition) from insured depository institutions with less than $1 billion in total consolidated assets to those with less than $5 billion in total consolidated assets. Section 205 also reduced reporting requirements for the first and third reports of condition of a calendar year. The FFIEC 051 Call Report was issued in 2016 and requires 40 percent less data than the FFIEC 041 Call Report.

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According to the Agencies, the final rule provides significant regulatory reporting relief. The Agencies estimate that overall, a depository institution's burden hours will decline 12.73 hours per quarter, from 63.69 hours for those filing the FFIEC 041 Call Report to 50.96 hours for those filing the FFIEC 051 Call Report. In addition to increasing the number of institutions eligible to file the FFIEC 051 Call Report every quarter, the agencies reduced the reporting required on the FFIEC 051 Call Report in the first and third calendar quarters by decreasing the reporting frequency of approximately 37 percent of the report's existing data items from quarterly to semiannually. The principal areas of reduced reporting include data items related to categories of risk-weighting of various types of assets and other exposures under the Agencies' regulatory capital rules, fiduciary and related services assets and income, and troubled debt restructurings by loan category.

An institution can determine whether it meets the final rule's asset-size criterion based on the total consolidated assets reported in its report of condition for the second calendar quarter of the previous calendar year (Schedule RC, Balance Sheet, Item 12). The Agencies said this approach is consistent with the current FFIEC 051 Call Report instructions for determining eligibility based on asset size. The Agencies continue to believe that establishing the asset threshold in this manner allows an institution sufficient time to address any accounting or reporting systems changes, or other preparation process changes, that may be needed if the institution wants to take advantage of, or becomes no longer eligible for, filing the FFIEC 051 Call Report in the following calendar year.

The final rule takes effect on July 22, 2019, but the FFIEC 051 Call Report revisions take effect as of the September 30, 2019 report date. An institution can determine its asset-size eligibility for 2019 based on the total assets reported on the institution's call report as of June 30, 2018. An institution eligible to file the FFIEC 051 Call Report also has the option to file the FFIEC 041 Call Report. For an institution with less than $5 billion in total assets that qualifies to use the FFIEC 051 Call Report for the first time as a result of the increased asset-size reporting threshold, and that desires to use that report form but is unable to do so for the September 30, 2019, Call Report date, the institution may begin reporting on the FFIEC 051 Call Report as of the December 31, 2019 report date. Beginning in 2020, an institution should file whichever version of the Call Report for which it is both eligible and chooses to file in the first quarter of that year, for the remainder of that year if it meets the asset-size threshold for eligibility as of June 30, 2019, and continues to meet the non-asset-size criteria.

FOR FURTHER INFORMATION

For additional information or guidance regarding these or the other corporate governance topics, please contact Mark E. Aldrich at **MAldrich@ABLawyers.com** or Joel N. Cook at **JCook@ABLawyers.com** or 949-474-1944.