



NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AF80

SURETYSHIP AND GUARANTY; SEGREGATED DEPOSIT AND COLLATERAL

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) seeks comment on a proposed rule to remove the segregated deposit and collateral requirements when a federally insured credit union (FICU) acts as a surety and guarantor. Removing this regulation will provide FICUs with greater flexibility to design products that meet member needs. FICUs would remain subject to the other requirements regarding surety and guaranty agreements.

DATES: Comments must be received by [INSERT 60 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: Comments may be submitted in one of the following ways. **(Please send comments by one method only):**

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. The docket number for this proposed rule is NCUA–2025–1434. Follow the “Submit a comment” instructions. If you are reading this document on federalregister.gov, you may use the green “SUBMIT A PUBLIC COMMENT” button beneath this rulemaking’s title to submit a comment to the [regulations.gov](https://www.regulations.gov) docket. A plain language summary of the proposed rule is also available on the docket website.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier*: Same as mailing address.

Mailed and hand-delivered comments must be received by the close of the comment period.

Public inspection: Please follow the search instructions on <https://www.regulations.gov> to view the public comments. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received and will not be deleted, modified, or redacted. Comments may be submitted anonymously. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Keisha Brooks, Attorney-Advisor, Office of General Counsel, at (703) 518-6540 or at 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Federal Credit Unions (FCUs) may only engage in activities that are expressly authorized either by statute or within the FCU's incidental powers. The Federal Credit Union Act (FCU Act) explicitly grants FCUs the power to, among other activities, make loans to members and to provide letters of credit on behalf of members.¹ The accompanying incidental powers provision states that each FCU may "exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated."² The FCU Act defines the business for which each

¹ 12 U.S.C. 1757(5), 1757a.

² 12 U.S.C. 1757(17).

FCU is incorporated: “promoting thrift among its members and creating a source of credit for provident or productive purposes.”³ Section 701.20, established in 2004, recognizes the ability of FCUs to enter into suretyship and guaranty agreements for their members as an incidental power, providing additional flexibility to meet member needs.⁴ For example, the regulation allows FCUs to become one party in a three-way lending relationship, where the FCU agrees to take responsibility for repayment if the member is unable to meet the lending obligation.

Section 701.20 defines these arrangements and, to promote safety and soundness, requires that the FCU’s obligation be for a fixed amount and duration, that the FCU’s performance of the agreement creates an authorized loan that complies with the applicable lending regulations, and that it obtains a segregated deposit from the member sufficient to cover the potential liability.

As provided in § 741.221 of the NCUA regulations, these requirements also apply to federally insured state credit unions (FISCUs) that are authorized under state law to enter into suretyship and guaranty agreements.⁵ The rule was amended in 2019 as part of a regulatory reform initiative to reduce burden and improve clarity by updating internal cross-references.⁶

B. Legal Authority

The Board has the legal authority to issue this proposed rule pursuant to its plenary rulemaking authority under the FCU Act and its specific rulemaking authority under the various acts the Board administers.⁷ Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.⁸ The FCU Act grants the NCUA a broad mandate to issue regulations governing

³ 12 U.S.C. 1752(1).

⁴ 69 FR 8547, Feb. 25, 2004.

⁵ 12 CFR 741.221.

⁶ 84 FR 10975 (Mar. 25, 2019).

⁷ 12 U.S.C. 1766, 1789.

⁸ 12 U.S.C. 1752-1775.

both FCUs and all FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.⁹ Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.¹⁰ Section 209 of the FCU Act is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.¹¹ Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the National Credit Union Share Insurance Fund remain safe and sound.

II. Proposed Rule

As part of its deregulatory initiative, the Board proposes to remove paragraphs (c)(3) and (d) of § 701.20, which impose segregated deposit and collateral requirements when FICUs act as a surety and guarantor. Under these provisions, depending on the nature of the collateral, an FCU must have a perfected security interest in collateral equal to 100 or 110 percent of the obligation. The 100 percent collateral category includes cash; obligations of the United States or its agencies; obligations fully guaranteed by the United States or its agencies as to principal and interest; and notes, drafts, bills of exchange, and bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank.¹² The 110 percent collateral category includes real estate and marketable securities.¹³ Section 741.221 of the NCUA regulations applies these requirements to FISCUs that are authorized under state law to act as a surety or guarantor.

⁹ 12 U.S.C. 1766(a).

¹⁰ 12 U.S.C. 1787(b)(1).

¹¹ 12 U.S.C. 1789(a)(11).

¹² 12 CFR 701.20(d)(2).

¹³ 12 CFR 701.20(d)(3).

The Board is now of the view that removing these segregated deposit and collateral requirements will provide FICUs the flexibility to design products that meet member needs. These proposed changes are intended to simplify the regulatory framework and reduce unnecessary compliance burdens.

It is not always necessary to have a segregated deposit that fully covers the liability. For example, current regulations require a FICU acting as a surety or guarantor to create an authorized loan that complies with the applicable NCUA lending regulations.¹⁴ The NCUA's commercial lending regulations adopted in 2016 include collateral requirements that reflect a broad principles-based regulatory approach for FICUs engaged in member business lending activities.¹⁵ These principles are predicated on the Board's expectation that credit unions will maintain prudent risk management practices and sufficient capital to mitigate the risks associated with their commercial lending activities.¹⁶ Maintaining this additional requirement for a segregated deposit associated with suretyship or guaranty agreements adds complexity to these transactions. FICUs are best positioned to determine the amount and types of collateral they are willing to accept to cover the risk.

The Board invites comment on all aspects of this proposed rule.

III. Regulatory Procedures

A. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) (Act) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain

¹⁴ See 12 CFR §§ 701.20(c)(2), 741.203, 741.221.

¹⁵ See Final Rule, Member Business Loans; Commercial Lending, 81 FR 13530, 13533 (Mar. 14, 2016); 12 CFR part 723. For FISCUs, a state regulator may adopt state-specific rules if the state rule covers at least all provisions in part 723 and is no less restrictive as determined by the NCUA. FISCUs in states with an NCUA-approved state rule may comply with the state rule and need not comply with part 723. See 12 CFR §§ 723.10, 741.203.

¹⁶ See Final Rule, Member Business Loans; Commercial Lending, 81 FR 13530, 13533 (Mar. 14, 2016).

language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as regulations.gov). The Act, under its terms, applies to notices of proposed rulemaking and does not expressly include other types of documents that the Board publishes voluntarily for public comment, such as notices and interim-final rules that request comment despite invoking “good cause” to forgo such notice and public procedure. The Board, however, has elected to address the Act’s requirement in these types of documents in the interests of administrative consistency and transparency. In summary, the Board seeks comment on a proposed rule to remove the segregated deposit and collateral requirements when a FICU acts as a surety and guarantor. Removing this regulation will give FICUs the flexibility to design products that meet member needs. FICUs would remain subject to the other requirements regarding surety and guaranty agreements.

The proposal and the required summary can be found at <https://www.regulations.gov>.

B. Executive Orders 12866, 13563, and 14192

Pursuant to Executive Order 12866 (“Regulatory Planning and Review”), as amended by Executive Order 14215, a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order.¹⁷ Executive Order 13563 (“Improving Regulation and Regulatory Review”) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866.¹⁸ This proposed rule was drafted and reviewed in accordance with Executive Order 12866 and Executive Order 13563. This proposed rule will reduce a burden by removing the segregated deposit and collateral

¹⁷ 58 FR 51735 (Oct. 4, 1993).

¹⁸ 76 FR 3821 (Jan. 21, 2011).

requirements for FICU suretyship and guaranty arrangements and is consistent with Executive Order 13563. OMB has determined that this proposed rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

Executive Order 14192 (“Unleashing Prosperity Through Deregulation”) requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.¹⁹ This proposed rule is expected to be a deregulatory action for purposes of Executive Order 14192.

C. The Regulatory Flexibility Act

The Regulatory Flexibility Act²⁰ generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the agency makes such a certification, it shall publish the certification at the time of publication of either the proposed rule or the final rule, along with a statement providing the factual basis for such certification.²¹ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.²² The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

To the extent that the proposed rule would have any economic impacts, they will be deregulatory in nature. The current rule authorizes FCUs to enter into suretyship and guaranty agreements. The proposed rule would remove the segregated deposit and collateral requirements for FCUs to enter into such agreements. To the extent FISCUs are authorized to enter into surety and guaranty agreements under state law, FISCUs would

¹⁹ 90 FR 9065 (Feb. 6, 2025).

²⁰ 5 U.S.C. 601 *et seq.*

²¹ 5 U.S.C. 605(b).

²² 80 FR 57512 (Sept. 24, 2015).

similarly benefit from the removal. It is unlikely that small credit unions will participate in either of these activities. While these requirements might impose some economic costs or create an economic benefit for FICUs, they are unlikely to be significant.

Accordingly, the NCUA certifies the proposed rule would not have a significant economic impact on a substantial number of small credit unions.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to, a collection of information, unless it displays a currently valid Office of Management and Budget control number. The PRA applies to rulemakings in which an agency creates a new or amends existing information collection requirements. For purposes of the PRA, an information-collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA has determined that the changes addressed in this notice do not create a new information collection or revise an existing information collection as defined by the PRA.

E. Executive Order 13132 on Federalism

Executive Order 13132 encourages certain agencies to consider the impact of their actions on state and local interests. The NCUA, an agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule would apply to all FICUs, including FISCUs.

The NCUA expects that any effect on states or on the distribution of power and responsibilities among the various levels of government will be minor. These proposed changes are not intended to affect the division of responsibilities between the NCUA and state regulatory authorities with oversight of FISCUs. The proposed rule would remove the segregated deposit and collateral requirements imposed by § 701.20 when FCUs or

FISCUs act as a surety and guarantor. FISCUs would remain subject to the other requirements, including compliance with applicable NCUA and state lending regulations.

The proposed rulemaking may, therefore, have some direct effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, to the extent the rule has any such effects, it will be to relieve FISCUs of a regulatory burden.

F. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999. The proposed rule relates to the collateral requirements for FICUs to enter into surety and guaranty agreements, and any effect on family well-being is expected to be indirect. The proposed regulatory changes are exclusively concerned with removing the unnecessary segregated deposit and collateral requirements specific to such agreements. Any potential positive effect on family well-being, including financial well-being is, at most, indirect.

List of Subjects in 12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

By the National Credit Union Administration Board, this 19th day of December, 2025.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board proposes to amend 12 CFR part 701, as follows:

**Part 701 – ORGANIZATION AND OPERATION OF FEDERAL 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.

§ 701.20 [Amended]

2. Amend § 701.20 by:

- a. Removing paragraphs (c)(3) and (d) and
- b. Revising paragraph (c) to read as follows:

§ 701.20 Suretyship and guaranty.

* * * * *

(c) * * *

- (1) The federal credit union limits its obligations under the agreement to a fixed dollar amount and a specified duration and
- (2) The federal credit union's performance under the agreement creates an authorized loan that complies with the applicable lending regulations, including the limitations on loans to one member or associated members or officials for purposes of §§ 701.21(c)(5), (d); 723.4(c).