



NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AF85

Nondiscrimination Requirements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is publishing this proposed rule to remove a redundant and outdated regulation regarding nondiscrimination in lending. While the regulation was intended to summarize the Fair Housing Act (FHA) prohibitions on discrimination related to real estate related loans, appraisals, and advertising, the Board's last substantive amendment to the regulation was finalized in 2001. Thus, the regulation may not reflect all case law or regulatory developments under the FHA, a statute that primarily falls under the jurisdiction of the Department of Housing and Urban Development (HUD) and continues to apply to federal credit unions (FCUs) regardless of the NCUA's regulations. Thus, the Board believes the current regulation may cause confusion and unnecessary burden because it has not kept up with changes in FHA interpretation and implementation. For these reasons, the Board is proposing to remove this regulation in its entirety.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION].

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

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for Docket Number NCUA-2026- 0034.
- *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 mail address.

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

Public Inspection: All public comments are available on the Federal eRulemaking Portal at <https://www.regulations.gov> as submitted, except when impossible for technical reasons. Public comments will not be edited to remove any identifying or contact information. 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: Gira Bose, Senior Staff Attorney, Office of General Counsel, at (703) 518-6540 or at 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 701.31 was first promulgated in 1972, and its purpose was to summarize in one place the lending discrimination requirements applicable to FCUs. The regulation includes nondiscrimination requirements for loans and appraisals; advertising, notices, and logos related to nondiscrimination; and guidelines for compliance with the FHA.¹

While § 701.31 has been updated periodically in an effort to keep up with changes to the FHA, it has not kept pace with regulatory and case law changes regarding lending discrimination or fair housing. Changes made to the regulation in the 1980s reiterated the agency's original intent for § 701.31 to "summarize in one place the prohibitions on discrimination in real estate lending activities."² The preamble to the 1989 final rule stated, the "NCUA is not required by either the Fair Housing Act or the Equal Credit Opportunity Act to promulgate regulations. However, the Board believes it helpful to Federal credit unions to have the nondiscrimination regulation in [one] place."³ In the intervening years, however, the agency has not kept pace with this intent.

B. Legal Authority

The Federal Credit Union Act (FCUA or the Act) authorizes the Board to adopt such regulations as it deems appropriate to administer the Act.⁴ The FCUA does not require the agency to promulgate regulations to assist credit unions in their compliance with the FHA or ECOA. Neither the FHA nor ECOA require any such NCUA rulemaking. Thus, the Board has determined that § 701.31 may exist beyond the scope of statutory requirements and should be rescinded.

¹ Title VIII of the Civil Rights Act of 1968; 42 U.S.C. 3601-3619.

² 54 FR 46222 (Nov. 2, 1989).

³ *Id.*

⁴ 12 U.S.C. 1766.

II. Proposed Rule

It is not current agency practice to (1) issue regulations that attempt to synthesize and interpret statutes primarily administered and enforced by other agencies, or (2) embed guidance within the text of a regulation which, considering the agency's position that guidance is nonbinding, may cause unnecessary confusion.

Section 701.31 is duplicative of other, more comprehensive, federal laws—principally the FHA and the Equal Credit Opportunity Act (ECOA)—and their implementing regulations, such as the Consumer Financial Protection Bureau's (CFPB) Regulation B. FCUs are obligated to comply with these laws. Maintaining a separate NCUA regulation designed to align with these sources creates unnecessary redundancy and a risk of inconsistency if the NCUA's regulation is not perfectly aligned. This creates unnecessary burden as FCUs attempt to determine what is current law.

As already noted, it is not the agency's current practice to embed guidelines into the text of regulations. To add to the confusion, some of the content in § 701.31 is presented as guidelines but may be required under nondiscrimination laws. These guidelines have not been updated since they were initially adopted and may not be as helpful today or focus the reader on the most current lending discrimination issues. For these reasons, the Board believes § 701.31 should be removed in its entirety. This proposed action would eliminate a redundant regulation without weakening anti-discrimination protections.

As an alternative to the proposed rule, which fully rescinds § 701.31, the agency considered retaining §§ 701.31(c) *Nondiscrimination in appraisals* and 701.31(d) *Nondiscrimination in advertising*. Subsection 701.31(c) precludes an FCU from relying on an appraisal that it knows or should know is based upon prohibited characteristics or criteria that generally have a discriminatory effect. The Board considered retaining § 701.31(c) but determined that it would be unnecessarily duplicative of the FHA

prohibitions on discrimination in appraisals and ECOA, which prohibits discrimination in every aspect of a credit transaction. The regulation has also become somewhat disjointed since the transfer of ECOA rulemaking authority to the CFPB. Under ECOA's implementing regulation, Regulation B, creditors must provide applicants with free copies of all appraisals and other written valuations developed for credit applications secured by a first lien on a dwelling. This requirement regarding appraisals on first liens was previously expressed in the NCUA's regulations along with the reference to appraisals on subordinate liens. The Board considered keeping the remaining requirement in § 701.3(c) for FCUs to make available an appraisal used in connection with a *subordinate* lien on a dwelling. While the Board believes it is still good practice for FCUs to offer this service, the Board does not believe it is necessary to maintain the regulation solely for this purpose. The Board invites commenters to provide feedback on its determination.

Subsection 701.31(d) governs the notice that FCUs must provide if they engage in real estate lending. With respect to written and visual advertisements, the regulation includes a template of the notice to be placed in the lobby of the FCU and in the public area of each office where such loans are made. This notice is intended to (1) notify the public that the FCU is an equal housing lender under the FHA and does not discriminate in any credit transaction in compliance with ECOA, and (2) provide the NCUA's contact information in the event someone believes they have been discriminated against and wishes to file a complaint. This notice is also often referred to as the Fair Housing poster and is required by HUD regulation.⁵ The NCUA's notice requirement or poster also references the broader ECOA prohibition on discriminating in any credit transaction.

The Board is proposing the removal of § 701.31(d) because the requirement to display a fair housing poster is rooted in HUD's regulation interpreting the FHA. While

⁵ 24 CFR 110.25.

HUD's regulation includes an express waiver permitting lenders to substitute a poster prescribed by a federal financial regulatory agency, a category that includes the NCUA, the Board believes that compliance with the HUD regulation is sufficient to meet the FHA requirement and does not need to be duplicated in the NCUA's regulations. Neither ECOA nor Regulation B require lenders to display a poster or notice akin to the HUD regulation. If the agency were to maintain this provision, it would likely need updating because the NCUA now offers credit union members the opportunity to submit complaints online, an option that is not included in the current § 701.31(d) notice.

The Board invites commenters to provide feedback on whether retaining the current regulation's reference to the fair housing and ECOA poster is a preferable approach and, if so, why.

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)) 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 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*).

In summary, the NCUA is publishing this proposal to remove § 701.31 regarding nondiscrimination in lending. While the rule follows the FHA's prohibition on discrimination related to real estate loans, appraisals, and advertising, the Board last substantively amended the regulation in 2001. Thus, it may not reflect all case law or regulatory developments under the FHA, a statute that primarily falls under the jurisdiction of HUD. Furthermore, the Board believes that the current regulation may cause confusion because it has not kept up with FHA interpretation and implementation.

The proposed rule and the required summary are available 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. OMB has determined that this proposed rule is not a “significant regulatory action” as defined in section 3(f)(1) of Executive Order 12866.

Executive Order 13563 (“Improving Regulations and Regulatory Review”) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This proposed rule will reduce the unnecessary burden of FCUs having to determine which elements of the regulation are consistent with HUD’s current interpretation of the FHA. This proposed rule is consistent with Executive Order 13563.

Executive Order 14192, entitled “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. Section 3(c) of Executive Order 14192 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. This proposed rule is expected to be a deregulatory action for purposes of Executive Order 14192.

C. The Regulatory Flexibility Act

The Regulatory Flexibility Act 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.⁶ 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.⁷ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.⁸ The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

The proposed rule would repeal § 701.31, which may be outdated, and, thus, would simplify FCU compliance with the FHA. An FCUs' obligations under the FHA and HUD's regulations would stay the same. Accordingly, the NCUA certifies the proposed rule would not have a significant economic impact on a substantial number of small credit unions.

D. The 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

⁶ 5 U.S.C. 601 *et seq.*

⁷ 5 U.S.C. 605(b).

⁸ 80 FR 57512 (Sept. 24, 2015).

determined that the changes in the proposed rule do not create a new information collection or revise an existing information collection as defined by the PRA.

E. Analysis on 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), complies with the executive order to adhere to fundamental federalism principles. This proposed rule is limited in application to FCUs. It is intended to reduce the burden on FCUs by removing a potential source of confusion. Thus, it is not intended to affect the division of responsibilities between the NCUA and state regulatory authorities with oversight of federally insured, state-chartered credit unions.

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 FCUs' lending programs, and any effect on family well-being is expected to be 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 9th day of January, 2026.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons stated above, the NCUA Board proposes to remove 12 CFR § 701.31 as follows:

**PART 701 – ORGANIZATION AND OPERATION OF FEDERAL CREDIT
UNIONS**

1. Revise the authority citation for part 701 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 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Remove and reserve § 701.31.

§ 701.31 [Removed and reserved]

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