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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AF92

PUBLIC UNIT AND NONMEMBER SHARES

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) seeks comment on a proposed rule to amend the NCUA's public unit and nonmember share rule to remove the requirement for a written plan to document the intended use of any borrowings, public unit, or nonmember shares if, collectively, those funds exceed 70 percent of the federally insured credit union's (FICU's) paid-in and unimpaired capital and surplus. FICUs would remain subject to the limits and other regulatory requirements governing public unit and nonmember shares. Removing this regulation will provide greater flexibility while holding FICUs accountable for managing the associated risks through a principles-based supervisory approach.

DATES: Comments must be received by [**INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

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–2026–0133. 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 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

The Federal Credit Union Act (FCU Act) authorizes federal credit unions (FCUs) to receive payment on shares from nonmembers "subject to such terms, rates, and conditions as may be established by the [FCU] board of directors, within limitations prescribed by the Board[.]"[1] Section 107(6) of the FCU Act provides that an FCU may receive payment on shares from its members (including public units that are members)

[1] 12 U.S.C. 1757(6). Federally insured, state-chartered credit unions (FISCUs) are subject to state law.

and from other credit unions.[2] Section 107(6) also permits an FCU to receive payments on shares from nonmembers under certain circumstances, including payment on shares from nonmember public units and their political subdivisions.[3] Moreover, a low-income designated credit union may receive payment on shares from any source regardless of membership.[4]

B. Legal Authority

The Board is issuing this proposed rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.[5] The FCU Act grants the NCUA a broad mandate to issue regulations governing 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.[6] Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[7] 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.[8] In addition, section 107(6) of the FCU Act specifically recognizes that the Board may prescribe limitations governing shares accepted by FCUs.[9] 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 (Share Insurance Fund) remain safe and sound.

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[2] 12 U.S.C. 1757(6).
[3] *Id.* The term "public unit" is defined at 12 CFR 745.1(c).
[4] 12 U.S.C. 1757(6). For this purpose, § 701.34 of the NCUA's regulations defines a "low-income member." 12 CFR 701.34(a)(2).
[5] 12 U.S.C. 1752-1775.
[6] 12 U.S.C. 1766(a).
[7] 12 U.S.C. 1787(b)(1).
[8] 12 U.S.C. 1789(a)(11).
[9] 12 U.S.C. 1757(6).

Section 701.32 of the NCUA's regulations authorizes FCUs to receive payments on shares from public units and certain nonmembers, including other credit unions, so that the FCU could use the funds to benefit its membership, for example by providing loanable funds.[10] Section 701.32 limits the total amount of public unit and nonmember shares that an FCU may receive to (i) 50 percent of the credit union's net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares, or (ii) $3 million, whichever is greater.[11] These limitations apply to all FICUs through § 741.204. In 1989, the Board established aggregate limits on such shares out of concern for the safety and soundness of the credit union and to mitigate potential losses to the Share Insurance Fund. [12] The 1989 rule was prompted by several cases involving the misuse of such funds, which had resulted in losses to the Share Insurance Fund.[13] The 1989 rule also established a process for FCUs to request a waiver from the NCUA Regional Director.[14] The waiver process required the FCU to submit, among other things, a written plan concerning its use of public unit and nonmember shares.[15] At the time, the Board expected these credit unions to have a reasonable plan in place "to ensure such funds are used in a safe and sound manner and are utilized in the best interests of the membership."[16]

Most recently, a 2019 final rule significantly altered the primary aggregate limit (changing it from 20 percent of total shares to 50 percent of net worth less such shares), eliminated the waiver process, and added a due diligence requirement for a written plan.[17] In the preamble to the 2019 final rule, the Board recognized that these shares are functionally equivalent to borrowings and provide FCUs with diversified and reasonably

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[10] 54 FR 31182 (July 27, 1989).
[11] 12 CFR 700.2 defines "paid-in and unimpaired capital and surplus or unimpaired capital and surplus."
[12] 54 FR 31182 (July 27, 1989).
[13] 54 FR 31182 (July 27, 1989).
[14] 54 FR 31182 (July 27, 1989).
[15] 54 FR 31182 (July 27, 1989).
[16] 54 FR 31183 (July 27, 1989).
[17] 84 FR 58305, 58309 (Oct. 31, 2019).

priced funding sources to better serve members.[18] The Board also made conforming amendments to § 741.204, which applies to all FICUs, to reflect the changes to § 701.32.[19]

II. Proposed Rule

Following a review of the NCUA's regulations, the Board has determined that § 701.32(b)(2) is unnecessarily prescriptive and burdensome. Specifically, the NCUA has determined that removing the due diligence requirement for a written plan in § 701.32(b)(2) is appropriate for the reasons discussed in this preamble. Under § 701.32(b)(2), an FCU board of directors must adopt a specific written plan concerning the intended use of these funds that is consistent with prudent risk management principles before receiving public unit or nonmember shares that, taken together with any borrowings, exceed 70 percent of paid-in and unimpaired capital and surplus. Section 741.204 of the NCUA regulations applies the written plan requirement to FISCUs.

Unlike the prior waiver process, FICUs are not required to submit these plans for NCUA approval before accepting external funds that, in total, would exceed 70 percent of paid-in and unimpaired capital and surplus. Instead, FICUs that exceed the 70 percent limit must maintain the written plan and make it available to NCUA examiners. As stated in the preamble to the 2019 final rule adopting the due diligence requirement, the Board originally designed this approach to provide a FICU with flexibility to adopt a diverse funding structure without the regulatory burden of developing a plan regarding the intended use of those funds unless the credit union borrows a significant amount of funds or accepts a significant number of public unit and nonmember shares.[20] The Board now believes this prescriptive provision is unnecessary. Credit unions will continue to be

[18] 84 FR at 58309 (Oct. 31, 2019). For FCUs, the 50 percent borrowing limit is explicitly established by statute in 12 U.S.C. 1757(9).
[19] 12 CFR 741.204.
[20] 84 FR 58305, 58306 (Oct. 31, 2019).

expected to manage any liquidity and interest rate risk associated with this form of funding, which will be evaluated as part of a credit union's supervisory examination.

As part of a deregulatory initiative to reduce regulatory burden by eliminating rules that are no longer necessary for the safe and sound operation of credit unions, the Board proposes to remove paragraph (b)(2) of § 701.32. This provision created an administrative requirement for FICU boards to adopt a written plan for using public unit and nonmember shares when these funds, taken together with any borrowings, exceed 70 percent of paid-in and unimpaired capital and surplus. This imposes an unnecessary administrative burden on FICUs. While the FCU Act specifically recognizes that the Board may prescribe limitations governing public unit and nonmember shares accepted by FCUs, the authorizing statute does not require the Board to mandate a written plan for using these funds. Thus, this provision is an unnecessary regulatory creation.

The Board believes that FICUs should have greater flexibility to manage their funding sources and that liquidity and concentration risks are more effectively managed through the supervisory process and the credit union's own internal risk management policies rather than a one-size-fits-all due diligence requirement. Further, a credit union's ability to safely manage its share composition depends on a variety of factors, including its asset structure, liquidity management practices, and overall risk profile. Accordingly, the Board believes that FICUs can manage their reliance on these funds as part of their comprehensive asset-liability and liquidity risk management programs.

Mandating a specific written plan for using public unit and nonmember shares codifies what are already standard due diligence and prudent business practices. Such a prescriptive, one-size-fits-all approach is unduly burdensome, particularly for smaller and low-income designated credit unions. The level of appropriate due diligence should be tailored to a credit union's unique size, complexity, and risk tolerance. Removing this

paragraph would empower FICU boards to exercise their business judgment and fiduciary responsibilities that are appropriate for their specific institution.

Removing this provision would also reduce administrative burden and enable FICUs to manage their own operations responsibly, tailoring their processes to their specific needs and risk profiles, subject to NCUA examiner oversight. Removing this prescriptive requirement would also align the regulation with a principles-based philosophy, trusting FICU boards to fulfill their fiduciary duties to safeguard the credit union's interests without being constrained by inflexible procedural mandates. Therefore, the Board proposes to remove paragraph (b)(2) from § 701.32 to support a more principles-based regulatory approach that reduces this administrative burden on FICU boards of directors.

The Board invites public comment on the proposed elimination of § 701.32(b)(2). The Board invites comments on all aspects of the proposed rule. The Board specifically requests comment on whether removing § 701.32(b)(2)'s mandate for a written plan could create safety and soundness concerns or lead to imprudent risk-taking by FCUs or FISCUs.

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 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 amend the NCUA's public unit and nonmember share rule to remove the requirement for a written plan to document the intended use of any borrowings, public unit, or nonmember shares if, collectively, those funds exceed 70 percent of the federally insured credit union's (FICU's) paid-in and unimpaired capital and surplus. FICUs would remain subject to the limits and other regulatory requirements governing public unit and nonmember shares. Removing this regulation will provide greater flexibility while holding FICUs accountable for managing the associated risks through a principles-based supervisory approach.

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.[21] 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.[22] This proposed rule was drafted and reviewed in accordance with Executive Order 12866 and Executive Order 13563. Consistent with Executive Order 13563, this proposed rule will reduce the burden of

[21] 58 FR 51735 (Oct. 4, 1993).
[22] 76 FR 3821 (Jan. 21, 2011).

requiring FICUs to develop and maintain a written plan for using elevated levels of public unit and nonmember shares and borrowings. 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 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.[23] This proposed rule is expected to be a deregulatory action for purposes of Executive Order 14192.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act[24] 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.[25] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[26] 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 proposed rule would remove the requirement that FICU boards adopt a written plan regarding the use of borrowings and public unit and nonmember shares when, collectively, those amounts reach specified levels. While

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[23] 90 FR 9065 (Feb. 6, 2025),
[24] 5 U.S.C. 601 *et seq*.
[25] 5 U.S.C. 605(b).
[26] 80 FR 57512 (Sept. 24, 2015).

removing these documentation requirements might relieve some economic costs on affected FICUs, they are unlikely to be significant. The proposed rule does not repeal or alter the aggregate limits on public unit and nonmember shares. Nor does it relax NCUA expectations that FICUs develop and execute safe-and-sound strategies for securing and deploying all types of funding. The agency is simply giving FICU boards the option of developing their own policies for managing public unit and nonmember shares within existing aggregate limits. Any FICU satisfied with the written plan requirement is free to retain it as part of its volatile-funding policies.

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 not withstanding 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 proposed rule would eliminate the information collection requirements for OMB Control Number 3133-0114 with a current expiration date of March 31, 2026. Upon publication of the final rule in the *Federal Register,* as applicable, the NCUA will submit a request to OMB to discontinue OMB Control Number 3133-0114. The proposed rescission of these regulations, along with the information collection requirements contained therein and the discontinuance of OMB Control Number 3133-0114 would reduce public information collection burden by 100 annual burden hours.

If you want to comment on the proposed rescission of the information-collection requirements that would result from this proposed rule, please send your comments and suggestions on this proposed action as previously described in the **DATES** and **ADDRESSES** sections.

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), complies with the executive order to adhere to fundamental federalism principles. This proposed rule would apply to all FICUs, but 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. State law governs the authority for state-chartered credit unions to accept nonmember shares. The proposed change would remove an administratively imposed due diligence requirement for FISCUs and is not intended to affect the division of responsibilities between the NCUA and state regulatory authorities with oversight of FISCUs. The rulemaking would therefore not have 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. The NCUA welcomes comments on ways to eliminate, or at least minimize, any potential impact in this area.

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.[27] The proposed rule relates to FICUs that accept elevated levels of external funds, and any effect on family well-being is expected to be indirect. The proposed regulatory changes are exclusively concerned with the adoption of a

[27] Public Law 105–277, 112 Stat. 2681 (1998).

written plan by FICU boards regarding the intended use of such funds. The 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 23rd day of January, 2026.

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.

§ 701.32 [Amended]

2. Amend § 701.32 by removing paragraph (b)(2).

[FR Doc. 2026-01696 Filed: 1/27/2026 8:45 am; Publication Date: 1/28/2026]