



## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701 and 746

#### RIN 3133-AF95

### PURCHASE, SALE, AND PLEDGE OF ELIGIBLE OBLIGATIONS

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

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) solicits public comment on a proposal to streamline its regulations governing the purchase, sale, and pledge of eligible obligations. The Board proposes to remove the prescriptive lists of items that must be addressed in the written policies adopted by a federal credit union (FCU). Although FCUs would still be required to maintain written policies, removing the mandated items will enable a more efficient and principles-based approach. The Board also proposes to remove detailed requirements regarding conflicts of interest and compensation. These regulatory provisions are unnecessary since FCUs are already governed by broader conflict of interest provisions in their bylaws and by the fiduciary duties of their officials.

**DATES:** Comments must be received by **[INSERT DATE 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–2026-0432. Follow the “Submit a comment” instructions. If you are reading this document on [federalregister.gov](https://www.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](mailto:OGCMail@ncua.gov)

**FOR FURTHER INFORMATION CONTACT:** Ariel Pereira and John Brolin, Senior Attorneys, Office of General Counsel, at (703) 518-6540, or at 1775 Duke Street, Alexandria, VA 22314.

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

#### *A. Background*

In a final rule published on May 9, 1977, the NCUA established the regulations currently codified in 12 CFR 701.23.<sup>1</sup> Section 701.23 implements section 107(13) of the Federal Credit Union Act (FCU Act), which authorizes CUs to purchase, sell, and pledge eligible obligations to provide greater flexibility in meeting member demand and

---

<sup>1</sup> 44 FR 27071 (May 9, 1979). The regulation was originally codified in § 701.21-8 but was subsequently redesignated as § 701.23 as part of the Board's comprehensive 1984 revision of its lending regulations (49 FR 30683, Aug. 1, 1984).

improving liquidity.<sup>2</sup> A 1981 final rule further enhanced this flexibility by excluding adjustable-rate mortgage loans from certain asset limitations and clarifying an FCU's right to enforce "due on sale" clauses, thereby promoting safe and sound participation in the secondary mortgage market.<sup>3</sup> The regulations have been periodically amended since then. Section 701.23 was most recently amended through a 2023 final rule that provided additional flexibility for federally insured credit unions (FICUs) to use advanced technologies and opportunities offered by the financial technology sector.<sup>4</sup>

### *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. The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe regulations for the administration of the FCU Act.<sup>5</sup> Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or appropriate to carry out its role as share insurer for all FICUs.<sup>6</sup> The FCU Act also includes an express grant of authority for the Board to subject federally chartered central, or corporate, credit unions to such rules, regulations, and orders as the Board deems appropriate.<sup>7</sup>

## **II. Proposed Rule**

Section 701.23 governs the purchase of whole or partial loans from various sources, including the eligible obligations of an FCU's own members, student loans, and real estate-secured loans. It establishes requirements for written policies, board approval,

---

<sup>2</sup> 12 U.S.C. 1757(13).

<sup>3</sup> 46 FR 38678 (July 29, 1981).

<sup>4</sup> 88 FR 67570 (Sept. 29, 2023).

<sup>5</sup> 12 U.S.C. 1766(a).

<sup>6</sup> 12 U.S.C. 1789.

<sup>7</sup> 12 U.S.C. 1766(a).

and limitations on the aggregate amount of purchased obligations. While section 107(13) of the FCU Act requires the Board to prescribe “rules and regulations” for the purchase, sale, and pledge of eligible obligations, the Board has determined that several provisions of § 701.23 are not statutorily required and impose an unnecessary regulatory burden. The Board is therefore proposing to amend § 701.23 by revising paragraphs (b)(6), (c), and (d), and removing paragraph (g).

Paragraph (b)(6) provides that the purchases of eligible obligations and notes of liquidating credit unions must comply with the purchasing FCU’s internal written purchase policies. The paragraph goes on to mandate a detailed list of requirements for an FCU’s internal written purchase policies. These requirements, which cover due diligence, risk management, underwriting, portfolio concentration limits, and legal review, create a rigid, one-size-fits-all framework that is unduly burdensome, particularly for smaller FCUs. The Board believes that an FCU’s board is in the best position to develop policies that are appropriately scaled for its activities.

The Board proposes to revise § 701.23(b)(6) by removing the prescriptive list of items that must be addressed in the FCU’s written policies. Although FCUs would still be required to maintain written policies, removing the mandated items would foster a more efficient, principles-based approach, allowing boards to exercise their business judgment while remaining accountable for safe and sound operations. The FCU Act requires the Board to issue rules, but does not require the Board to mandate a detailed framework for internal credit union policies.

Paragraph (c) of § 701.23 establishes similarly prescriptive elements that must be addressed in an FCU’s written policies on the sale of eligible obligations. Paragraph (d) does the same for the required written policy to address the pledging of eligible obligations. The Board proposes to also amend these paragraphs for the same reasons as those discussed regarding § 701.23(b). Mandating board approval and specific written

agreement terms for these transactions codifies what are already standard and prudent business practices. Removing these provisions reduces administrative burden and without lifting the requirement that FCUs manage their own operations responsibly, tailoring their processes to their specific needs and risk profiles, and subject to examiner oversight.

The Board also proposes to remove paragraph (g) of § 701.23, which establishes a detailed code of conduct regarding conflicts of interest and compensation. The regulation's broad prohibition on compensation, followed by a narrow list of exceptions, is inflexible and may hinder legitimate incentive structures. FCUs are already governed by broader conflict of interest provisions in their bylaws and by the fiduciary duties of their officials. The FCU Act does not require the Board to establish such a detailed compensation framework. Removing this paragraph allows credit union boards to establish their own reasonable policies, provided all transactions are conducted at arm's length and in the best interest of the credit union.

As a result of the removal of the existing paragraph (g), current § 701.23(h) would be redesignated as §701.23(g). The proposed rule would make a conforming change to the appeals procedures regulation in 12 CFR part 746 to reflect this redesignation. Specifically, the current reference to "701.23(h)" in § 746.201(c) would be revised to read "701.23(g)." No substantive effect is intended by this technical conforming amendment.

The Board invites public comments on the proposed amendments. The Board specifically requests comment on whether removing these prescriptive policy requirements, procedural mandates, and the expanded authority process could create safety and soundness concerns or lead to imprudent risk-taking by FCUs.

### **III. Regulatory Procedures**

#### *A. Providing Accountability Through Transparency Act of 2023*

The Providing Accountability Through Transparency Act of 2023<sup>8</sup> (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<sup>9</sup> (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.

The Board solicits public comments on a proposal to streamline its regulations governing the purchase, sale, and pledge of eligible obligations. The Board proposes to remove the prescriptive lists of items that must be addressed in an FCU’s written policies. Although FCUs would still be required to maintain written policies, removing the mandated items will enable a more efficient and principles-based approach. The Board also proposes to remove detailed requirements regarding conflicts of interest and compensation. FCUs are already governed by broader conflict of interest provisions in their bylaws and by the fiduciary duties of their officials.

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

---

<sup>8</sup> 5 U.S.C. 553(b)(4)

<sup>9</sup> 44 U.S.C. 3501 note

### *B. Executive Orders 12866, 13563, and 14192*

Pursuant to Executive Order 12866 (“Regulatory Planning and Review”), 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.<sup>10</sup> 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.<sup>11</sup> This proposed rule was drafted and reviewed in accordance with Executive Order 12866 and 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. Further, this proposed rule will reduce the burden of prescriptive lists of items that must be addressed in FCU written policies and is consistent with Executive Order 13563.

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.<sup>12</sup> 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<sup>13</sup> 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

---

<sup>10</sup> 58 FR 51735 (Oct. 4, 1993).

<sup>11</sup> 76 FR 3821 (Jan. 21, 2011).

<sup>12</sup> 90 FR 9065 (Feb. 6, 2025).

<sup>13</sup> 5 U.S.C. 601 *et seq.*

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.<sup>14</sup> For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.<sup>15</sup> The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

The Board proposes to remove the prescriptive lists of items that must be addressed in an FCU's written policies regarding the sale, purchase, and pledge of eligible obligations. While the current requirement to maintain written policies might impose some economic costs on FCUs, they are unlikely significant. Although FCUs would still be required to maintain these written policies, they would no longer be subject to any additional costs they may have incurred in addressing the items currently specified in the regulations. Given that the economic costs of maintaining the current written policies is insignificant, the economic impact of removing the prescribed lists is equally unlikely to have a significant economic impact.

The Board also proposes to remove detailed requirements regarding conflicts of interest and compensation. The permissibility of incentive structures currently prohibited under the current regulations may have some economic impact. However, the Board does not anticipate that such impacts would be significant because FCUs will remain governed by broader conflict of interest provisions in their bylaws and by the fiduciary duties of their officials.

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

---

<sup>14</sup> 5 U.S.C. 605(b).

<sup>15</sup> 80 FR 57512 (Sept. 24, 2015).

*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 (OMB) 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 information collection requirements contained in part 701.23 are approved by OMB under OMB Control Number 3133-0127 with a current expiration date of February 28, 2027.

The proposed rule would revise the following information collection requirement(s): Detailed code of conduct regarding conflicts of interest and compensation – 701.23(g)

Upon the publication of the final rule in the Federal Register, as applicable, the NCUA will submit a request to OMB to revise OMB Control Number 3133-0127. The proposed rescission of these regulations, along with the information collection requirement(s) contained therein and the revision of OMB Control Number 3133-0127, would reduce public information collection burden by an estimated 686 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.<sup>16</sup> 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 applies solely to FCUs and therefore would not have a substantial 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.

### *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.<sup>17</sup> The regulatory requirements that are the subject of this proposed rule are exclusively concerned with FCU policies regarding the sale, purchase, and pledge of eligible obligations. The potential positive effect on family well-being, including financial well-being is, at most, indirect.

## **List of Subjects**

### **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.

### **12 CFR Part 746**

Administrative practice and procedure, Claims, Credit unions, Investigations.

By the National Credit Union Administration Board, this 20<sup>th</sup> day of February, 2026.

---

<sup>16</sup> “Federalism,” E.O. 13,132 (Aug. 10, 1999).

<sup>17</sup> Public Law 105–277, 112 Stat. 2681 (1998).

Melane Conyers-Ausbrooks,  
Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board proposes to amend 12 CFR parts 701 and 746, 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.

2. Amend § 701.23 by:

a. Revising paragraphs (b)(6), (c), and (d)(1);

b. Removing paragraph (g); and

c. Redesignating paragraph (h) as paragraph (g), to read as follows:

**§ 701.23 Purchase, sale, and pledge of eligible obligations.**

\* \* \* \* \*

(b) \* \* \*

(6) *Written purchase policies.* Purchases of eligible obligations and notes of liquidating credit unions must comply with the purchasing Federal credit union's internal written purchase policies.

(c) *Sale.* A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the limitations of the board of directors' written sale policies.

(d) *Pledge.* (1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the limitations of the board of directors' written pledge policies.

\* \* \* \* \*

#### **PART 746 – APPEALS PROCEDURES**

3. The authority citation for part 746 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1787, and 1789.

#### **§ 746.201 [Amended]**

4. In § 746.201, revise the reference to “701.23(h)(3)” to read “701.23(g)(3).”

[FR Doc. 2026-03755 Filed: 2/24/2026 8:45 am; Publication Date: 2/25/2026]