



## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

### RIN 3133-AF86

### Statutory Liens

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

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) is publishing this proposed rule to remove a provision of NCUA regulations regarding federal credit unions' (FCUs) statutory lien authority. The Board believes it is redundant to continue to include a definition of the term "except as otherwise provided by law or except as otherwise provided by federal law" when it is axiomatic that a law that supersedes this regulation would be controlling. The provision does not provide any assistance to FCUs in determining whether such statutory or case law exists, therefore it has no material value.

**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-2026-0435.
- *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](mailto: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 701.39 of the NCUA's regulations implements the statutory lien authority granted to FCUs under the Federal Credit Union Act (FCU Act).<sup>1</sup> The regulation, which converted a prior policy statement into a regulation in 1999, states that an FCU has the power to impress and enforce a lien against a member's shares and dividends to satisfy any outstanding financial obligation owed to the credit union.<sup>2</sup>

This proposed rule would amend the regulation by removing the definition of the term "[e]xcept as otherwise provided by law or except as otherwise provided by federal law."<sup>3</sup>

Section 701.39(a)(1) signals the possible existence of superseding federal and/or state law requirements and alerts credit unions of their responsibility to "ascertain whether such statutory or case law exists and is applicable."<sup>4</sup>

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<sup>1</sup> 12 U.S.C. 1757(11).

<sup>2</sup> 64 FR 56956 (Oct. 22, 1999).

<sup>3</sup> 12 CFR 701.39(a)(1).

<sup>4</sup> *Id.*

The history of § 701.39 shows that, as originally proposed in 1998, the regulation contained an express provision that would have preempted state laws governing the right of a creditor to impress and enforce a lien, as well as the common law right of set-off. Commenters countered that the proposed language was overbroad, sweeping within its ambit state laws that may benefit credit unions and on which they should be free to rely.<sup>5</sup> Commenters suggested that the final rule specify which state laws it preempts and which ones it does not preempt. The agency did not take up that suggestion but, as a compromise and to eliminate ambiguity, the final rule deleted the blanket preemption provision. In its place, the agency adopted the qualifying language, “*except as otherwise provided by law or except as otherwise provided by federal law.*”

### *B. Legal Authority*

Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for federally insured credit unions. The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and federally insured credit unions. Section 120 of the FCU Act is a general grant of regulatory authority, and it authorizes the Board to prescribe rules and regulations for the administration of the FCU Act. Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure the credit union industry and the Share Insurance Fund remain safe and sound.

## **II. Proposed Rule**

In reconsidering the regulation, the Board believes that this definition is not helpful. The fact that an FCU must determine which laws apply to its operations and must be aware that some legal requirements supersede others, is a universal consideration and not one that is specific to this regulation. Thus, the Board proposes to repeal paragraph 701.39(a)(1).

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<sup>5</sup> 64 FR 56956 (Oct. 22, 1999).

The Board invites feedback on its proposal to repeal paragraph 701.39(a)(1), including whether commenters believe that the provision is helpful and should be retained.

### **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 Board is publishing this proposed rule to remove a paragraph from section 701.39 regarding FCUs' statutory lien authority. The Board believes it is redundant to continue to include a definition of the term "*except as otherwise provided by law or except as otherwise provided by federal law,*" when it is accepted that, when a law that supersedes a regulation would be controlling. The provision does not provide any assistance to FCUs in determining whether such statutory or caselaw exists, therefore it has no material value.

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. 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. The proposed rule eliminates a nonsubstantive reference in § 701.39 regarding statutory lien authority. 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.<sup>6</sup> 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.<sup>7</sup> For purposes of this analysis, the NCUA considers small credit unions to

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<sup>6</sup> 5 U.S.C. 601 *et seq.*

<sup>7</sup> 5 U.S.C. 605(b).

be those having under \$100 million in assets.<sup>8</sup> The Board fully considered the potential economic impacts of the regulatory amendment on small credit unions.

The proposed rule eliminates a nonsubstantive reference in § 701.39 regarding statutory liens. 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 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 NCUA has determined that the change in the proposed rule does 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 regulatory 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 intended to eliminate an unnecessary reference without making any substantive change. The regulation applies only to FCUs. 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.

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<sup>8</sup> 80 FR 57512 (Sept. 24, 2015).

*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 amends the regulation regarding an FCU's authority to impose a statutory lien on a member but makes no substantive change; thus, this proposed rule is not expected to have any effect on family well-being.

**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.

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

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Melane Conyers-Ausbrooks,  
Secretary of the Board.

For the reasons stated in the preamble, the 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.

**§ 701.39 [Amended]**

2. Amend § 701.39 by removing paragraph (a)(1) and redesignating paragraphs (a)(2) through (5) as paragraphs (a)(1) through (4).

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