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**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 711**

**RIN 3133-AF89**

**Thresholds Increase for the Major Assets Prohibition of the Depository Institution Management Interlocks Act Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) is seeking comment on a proposed rule that would increase two thresholds in its regulation implementing management official interlocks for purposes of the Depository Institution Management Interlocks Act (DIMIA). DIMIA provides that the NCUA may adjust, by regulation, the major assets prohibition thresholds to allow for inflation or market changes. This proposal would increase both major assets prohibition thresholds to $10 billion to account for changes in the United States banking market since 1996. Additionally, the proposal would remove a presumption related to depository institutions controlled or managed by persons who are members of a minority group or women.

**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–2026–0992. 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:** John H. Brolin, 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*

Under the authorities established in DIMIA, the Board is issuing a proposed rule to increase the major assets prohibition thresholds for management interlocks.[1] This increase the thresholds is proposed to reflect the changes in the United States banking

[1] 12 U.S.C. 3201 *et seq*.

market since Congress established the current thresholds in 1996. Under current part 711, an exemption is required for a management official[2] of a depository organization[3] (or any affiliate of such organization) with assets exceeding $2.5 billion to serve as a management official of an unaffiliated depository organization (or any affiliate of such organization) with assets exceeding $1.5 billion. The proposal would increase both thresholds to $10 billion. Section 711.4(c) of the NCUA's regulations exempts a management official of a credit union from the prohibition when the individual serves as a management official of another credit union. Thus, the Interlocks Act prohibitions contained in part 711 apply to only a management official of a credit union when that individual also serves as a management official of another type of depository organization (usually a bank or a thrift).[4]

By increasing the major assets prohibition thresholds, the proposal would reduce the number of depository organizations subject to the major assets prohibition. This reduces regulatory burden by raising the threshold at which depository organizations must ask the NCUA for exemptions from the major assets prohibition. The NCUA anticipates that raising the asset thresholds would assist credit unions with less than $10 billion in total assets in finding qualified directors by eliminating the need to file requests for exemptions. Additionally, the removal of the rebuttable presumption that an interlock will not result in a monopoly or substantially lessen competition if the depository institution seeking to add a management official is controlled or managed by persons who are members of a minority group or women will help ensure Equal Protection issues don't arise under § 711.6.

DIMIA—implemented in the NCUA's regulations at 12 CFR part 711—fosters competition by prohibiting a management official from serving at multiple, unaffiliated

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[2] *See* 12 CFR 711.2(k).
[3] *See* 12 CFR 711.2(h); § 711.2(f); *and* § 711.2(e).
[4] § 711.1(c).

depository organizations simultaneously when such multiple roles may have an anticompetitive effect.[5] DIMIA achieves this purpose through three statutory prohibitions, which are implemented in § 711.3 of the NCUA's regulations. In their current form, the three prohibitions are as follows.

The community prohibition[6] precludes a management official of a depository organization from serving concurrently as a management official of an unaffiliated depository organization if the depository organizations in question (or any depository institution affiliate thereof) have offices in the same community.[7] The second prohibition, the relevant metropolitan statistical area (RMSA) prohibition,[8] precludes a management official of a depository organization from serving concurrently as a management official of an unaffiliated depository organization if the depository organizations in question (or any depository institution affiliate thereof) have offices in the same RMSA[9] and each depository organization has total assets of $50 million or more. The third prohibition, the major assets prohibition,[10] precludes a management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) from serving concurrently as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. While the first two prohibitions capture the risk of anticompetitive effects from management interlocks between depository organizations that operate within overlapping geographical areas, the major assets prohibition addresses management interlocks between depository

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[5] § 711.1(b).
[6] § 711.3(a).
[7] The NCUA's regulation defines "community" to mean a city, town, or village, and contiguous and adjacent cities, towns, or villages. § 711.2(c).
[8] § 711.3(b).
[9] The NCUA's regulation defines "RMSA" to mean an [metropolitan statistical area (MSA)], a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget. § 711.2(n).
[10] § 711.3(c).

organizations that are large enough that a management interlock may present anticompetitive concerns even though the involved organizations may not have offices in the same community or RMSA.

The $1.5 billion and $2.5 billion thresholds in the major assets prohibition were enacted through amendments to DIMIA in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[11] During hearings on EGRPRA, it was noted that the increase of the asset thresholds to $1.5 billion and $2.5 billion was made because the previous asset threshold numbers did not "realistically reflect the size of large institutions in today's market."[12] DIMIA, as amended, also provides that the agencies may adjust the thresholds as necessary "to allow for inflation or market changes."[13] The major assets prohibition thresholds set forth in EGRPRA do not reflect the growth and consolidation among U.S. depository organizations that has occurred since 1996 and do not reflect the size of today's large institutions.

Based on regulatory reporting, total assets at depository organizations have grown by more than 341 percent in the 29 years between the fourth quarter of 1996 and the fourth quarter of 2024. Moreover, in an October 2019 final rule, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (FDIC), collectively referred to as the Other Banking Agencies, reduced regulatory burden by adjusting the major assets thresholds to $10 billion in their respective DIMIA regulations.[14]

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[11] *See* Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law 104-208, Title II, 110 Stat. 3009-9, § 2210(a).
[12] *The Economic Growth and Regulatory Paperwork Reduction Act—S. 650: Hearings Before the Subcomm. on Fin. Insts. & Regulatory Relief of the S. Comm. on Banking, Hous., & Urban Affairs*, 104 Cong. 90 (1995) (statement of Eugene A. Ludwig, Comptroller of the Currency). Initially, the thresholds were set at $500,000,000 and $1,000,000,000. *See* Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law 95-630, Title II, Depository Institutions Management Interlocks Act, 92 Stat. 3641, 3672 (Nov. 10, 1978).
[13] 12 U.S.C. 3203.
[14] 84 FR 54465 (Oct. 10, 2019)

In addition, DIMIA allows agencies to prescribe regulations that permit otherwise prohibited interlocks under certain circumstances.[15] Pursuant to § 711.6, the NCUA may exempt a prohibited interlock in response to an application by a depository organization if the NCUA finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns. In reviewing applications for an exemption under § 711.6, the NCUA applies a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official, among other things, is controlled or managed by persons who are members of a minority or group of women. The proposed rule would eliminate this presumption.

The NCUA welcomes comments on all changes that would be made under this proposal.

*Legal Authority*

The Board has the legal authority to issue this final rule pursuant to its plenary rulemaking authority under the Federal Credit Union Act and its specific rulemaking authority under the various provisions the Board administers.[16]

**II. Proposed Rule**

*A. § 711.3(c) Major Assets*

The proposal would amend current § 711.3(c) of the NCUA's regulations to increase the major assets prohibition thresholds from $1.5 billion and $2.5 billion to $10 billion each. Under the proposal, the major assets prohibition would still prohibit management interlocks between unaffiliated depository organizations each with total assets exceeding $10 billion (or any affiliates of such organizations).

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[15] 12 U.S.C. 3207.
[16] 12 U.S.C. 1766, 1789.

The proposed increase to the major assets prohibition thresholds, and the application of the major assets prohibition to larger depository organizations rather than depository organizations with $10 billion or less in total assets, is consistent with the purpose of the major assets prohibition of DIMIA.[17] Adjusting the major assets prohibition to reflect a $10 billion asset threshold prohibits interlocks between larger depository organizations, which could present a risk of anticompetitive conduct at the level of the U.S. banking market, while exempting smaller depository organizations, which generally operate in regional markets and do not present the same competitive risks.[18]

In addition, the proposed rule is consistent with the current thresholds that Congress, the NCUA, and the Other Banking Agencies have used to distinguish between small institutions and larger institutions. For example, sections 201 and 203 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 provide burden relief for institutions with less than $10 billion in total consolidated assets.[19] Further, the Dodd-Frank Wall Street Reform and Consumer Protection Act uses a $10 billion threshold to distinguish between large banks subject to supervision by the Consumer Financial Protection Bureau and small banks subject to prudential regulator supervision.[20] A $10 billion threshold is also consistent with the asset threshold for "covered credit unions," which are subject to capital planning and stress testing requirements.[21]

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[17] Legislative history indicates that Congress intended for the major assets prohibition to apply to "larger" organizations. *See* H.R. Rep. No. 95-1383, at 5 (1978); S. Rep. No. 95-323, at 13 (1977).

[18] While depository organizations with $10 billion or less in total assets will not be covered by the major assets prohibition against management interlocks, those depository organizations are still subject to the community and RMSA prohibitions.

[19] Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, Public Law 115-174, § 201, 203, 132 Stat. 1296, 1306, 1309 (2018) (enacting a "Community Bank Leverage Ratio" capital simplification framework that is generally available to depository institutions and depository institution holding companies with $10 billion or less in total consolidated assets and exempting generally from the prohibitions of section 13 of the Bank Holding Company Act of 1956, also known as the "Volcker Rule," certain entities with $10 billion or less in total consolidated assets).

[20] Public Law 111-203, § 1025 & 1026, 124 Stat. 1376, 1990-95 (2010).

[21] *See* 12 CFR part 702, subpart C—Capital Planning and Stress Testing.

The $10 billion asset size threshold is also consistent with the threshold the Board of Governors of the Federal Reserve System uses to distinguish between community banking organizations and larger banking organizations for supervisory and regulatory purposes.[22] The FDIC uses the same threshold to distinguish between "small" and "large" institutions for purposes of its deposit insurance assessment regulations.[23] Finally, $10 billion is the asset threshold the OCC uses to distinguish community banks from midsize and large banks for supervisory purposes.[24] Finally, setting the NCUA's two thresholds at the same level will simplify the NCUA's DIMIA regulations and enable depository organizations to more easily determine whether they are subject to the major assets prohibition.

The proposal would increase the number of depository organizations that would no longer be subject to the major assets prohibition and therefore would reduce the number of institutions that need to seek an exemption from the NCUA.

As of December 31, 2024, 309 credit unions had total assets of more than $1.5 billion and were subject to the major assets prohibition. In addition, 190 credit unions with total assets of more than the $2.5 billion threshold were subject to restrictions on management interlocks with unaffiliated depository organizations with total assets exceeding the $1.5 billion threshold. Raising the $1.5 billion asset threshold to $10 billion would exempt 289 credit unions from the major assets prohibition as of December 31, 2024. As of December 31, 2024, only 20 credit unions reported total assets greater than $10 billion and would remain subject to the major assets prohibition.

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[22] Bd. of Governors of the Fed. Reserve Sys., Commercial Bank Examination Manual (rev. Jan. 2018), https://www.federalreserve.gov/publications/files/cbem.pdf.

[23] *See* 12 CFR 327.8(e) and (f). For the purposes of the FDIC's assessment regulations, a "small institution" generally is an insured depository institution with less than $10 billion in total assets. Generally, a "large institution" is an insured depository institution with $10 billion or more in total assets or that is treated as a large institution for assessment purposes under section 327.16(f).

[24] Comptroller's Handbook, "OCC Community Bank Supervision" (June 2018), https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/community-bank-supervision/pub-ch-community-bank-supervision.pdf.

*B. § 711.6(b) Presumptions*

The proposal would amend current § 711.6(b)(2) of the NCUA's regulations to remove the presumption for institutions controlled or managed by persons who are members of a minority group or women and seeking to add a management official. In 1979, the NCUA, Board of Governors of the Federal Reserve, OCC, FDIC, and the Federal Home Loan Banks jointly adopted regulations setting forth exceptions to the prohibitions contained in DIMIA.[25] The exceptions were for organizations located in low-income areas, minority and women's organizations, newly chartered organizations, organizations facing conditions endangering safety or soundness, and organizations sponsoring credit unions. The exceptions were subsequently revised in 1996[26] and again in 1999[27] due to amendments to the DIMIA. Current § 711.6(b), which was adopted in 1999,[28] creates a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official "is controlled or managed by persons who are members of a minority group or women; . . ." The NCUA believes this presumption is overly broad and raises Equal Protection issues under the U.S. Constitution.[29] Accordingly, the Board proposes removing § 711.6(b)(2) and renumbering paragraphs (b)(3) and (b)(4).

The Board is providing a 60-day comment period for this proposed rule to account for the volume of proposed rules the Board is issuing. The longer comment

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[25] 44 FR 42152, 42155 (Jul. 19, 1979).
[26] 61 FR 50698 (Sep. 27, 1996).
[27] 64 FR 51673 (Sep. 24, 1999).
[28] *Id.*
[29] Amend. XIV, § 1. The Equal Protection Clause of the Fourteenth Amendment provides, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Generally, the same equal protection obligations apply to the Federal Government through the Fifth Amendment. When federal agency action targets benefits to groups based, in whole or in part, on race or sex, it can trigger equal protection scrutiny. While the federal government can consider race or sex in narrow circumstances, the Constitution's equal protection guarantees require that the government have sufficient justification for doing so. *See, e.g., Students for Fair Admin., Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023) (holding that Because Harvard's and University of North Carolina's admissions programs lacked sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points, those admissions programs cannot be reconciled with the guarantees of the Equal Protection Clause.).

period will avoid placing undue burden on commenters who are trying to review all of the rulemakings.

## II. Regulatory Procedure

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

The Providing Accountability Through Transparency Act of 2023[30]) (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[31] (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 is seeking comment on a proposed rule that would increase two thresholds in its regulation implementing management official interlocks for purposes of the DIMIA. DIMIA provides that the NCUA may adjust, by regulation, the major assets prohibition thresholds to allow for inflation or market changes. This proposal would increase both major assets prohibition thresholds to $10 billion to account for changes in the United States banking market since 1996. Additionally, the proposal would remove a presumption related to depository institutions controlled or managed by persons who are members of a minority group or women.

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

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[30] 5 U.S.C. 553(b)(4).
[31] 44 U.S.C. 3501 note.

*B. Executive Orders 12866, 13563, 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.[32] 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.[33] 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.

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.[34] 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[35] 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

[32] 58 FR 51735 (Oct. 4, 1993).
[33] 76 FR 3821 (Jan. 21, 2011).
[34] 90 FR 9065 (Feb. 6, 2025).
[35] 5 U.S.C. 601 *et seq*.

certification.[36] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[37] The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

The proposal would increase both major assets prohibition thresholds under part 711 to $10 billion to account for changes in the United States banking market since 1996. Additionally, the proposal would remove a presumption related to depository institutions controlled or managed by persons who are members of a minority group or women. Neither of these changes would impose new requirements on small credit unions.

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 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 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.[38] The proposed rule would not have substantial direct effects on the states, on the relationship between the national government and the

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[36] 5 U.S.C. 605(b).
[37] 80 FR 57512 (Sept. 24, 2015).
[38] "Federalism," E.O. 13,132 (Aug. 10, 1999).

states, or on the distribution of power and responsibilities among the various levels of government. The rule would not create or alter existing rights or requirements that apply to federally insured, state-chartered credit unions or affect the ability of state regulatory agencies to examine, supervise, or regulate such credit unions. The NCUA has therefore determined that this rule would not constitute a policy that has federalism implications for purposes of the executive order.

*F. Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act.[39] The proposed rule would provide regulatory relief for some credit unions that might otherwise have applied for an exemption. Any effect on family well-being will be indirect and likely insubstantial.

**List of Subjects in 12 CFR Part 711**

Antitrust, Credit unions, Holding companies.

By the National Credit Union Administration Board, this 1st day of May, 2026.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed above, the Board proposes to amend 12 CFR part 711 as follows:

**Part 711—Management Officials Interlocks**

1. The authority section continues to read as follows:

**Authority:** 12 U.S.C. 1757 and 3201–3208.

2. Section 711.3 is amended by revising the first sentence of paragraph (c) to read as follows:

**§ 711.3 Prohibitions**

[39] Pub. L. 105–277, sec. 654, 112 Stat. 2681, 2681-528 (1998).

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(c) *Major assets.* A management official of a depository organization with total assets exceeding $10 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $10 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. * * *

**§ 711.6 [Amended]**

3. Amend § 711.6 by:

a. Removing paragraph (b)(2); and

b. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(2) and (3).

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