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12 CFR Part 723

RIN 3133-AG12

Member Business Loans; Commercial Lending

AGENCY: National Credit Union Administration (NCUA)

ACTION: Interim final rule; request for comments.

SUMMARY: The NCUA Board (Board) is amending its regulations governing member business loans and commercial lending. This interim final rule eliminates an outdated, transitional provision that is no longer necessary. This action is necessary to reduce regulatory complexity and improve the clarity of the NCUA's regulations. The intended effect is to enhance clarity and simplify compliance for federally insured credit unions (FICUs).

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [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 rule is NCUA–2026–1884. 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 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.

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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: *Office of Examination and Insurance*: Naghi Khaled, Associate Director, the Office of Examination and Insurance, at (703) 518-6360 or at 1775 Duke Street, Alexandria, VA 22314. *Office of General Counsel*: Ariel Woodard-Stephens, Staff Attorney, Office of General Counsel, at (703) 518-6540 or at the above address.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Board is publishing this interim final rule (IFR) amending its regulations at 12 CFR part 723, which governs member business loans and commercial lending for FICUs. This part establishes the safety and soundness standards FICUs must adopt for their commercial lending programs and implements the statutory limits on the aggregate amount of member business loans a credit union may hold, as established by the Federal Credit Union Act (FCU Act). The Board's statutory authority for this part is derived from

several provisions of the FCU Act, including 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, and 1789.

On March 14, 2016, the Board published a final rule that substantially revised part 723.[1] The primary purpose of the 2016 rulemaking, which was part of the NCUA's Regulatory Modernization Initiative, was to modernize the agency's regulation of member business lending by shifting from a prescriptive, rules-based framework to a broad, principles-based regulatory approach. The prior rule included prescriptive requirements and limitations related to collateral, security, equity, and loan amounts. The Board determined that this approach caused credit unions to manage their lending practices based on rigid regulatory restrictions rather than on sound, individualized risk management practices. Furthermore, the prior rule's associated waiver process had become burdensome for both credit unions and the NCUA, requiring significant time and resources and sometimes preventing credit unions from acting on borrower applications in a timely manner.

The 2016 final rule was designed to provide FICUs with greater flexibility and individual autonomy to safely and soundly offer commercial loans to their members. It eliminated many of the prescriptive requirements and the associated waiver process, focusing instead on broad principles that clarified regulatory expectations for safe and sound commercial lending. To facilitate the shift, the 2016 final rule included transitional provisions at § 723.9, which became generally effective on January 1, 2017. This section was intended to govern circumstances where, at the time the new rule took effect, a FICU was operating under a waiver approved by the NCUA or was subject to an enforcement constraint related to its commercial lending activities.

Section 723.9(a) addresses previously approved waivers. Because the 2016 rule eliminated the prescriptive requirements for which waivers were typically granted, it

[1] 81 FR 13554.

rendered most such waivers moot as of the effective date. The provision established a specific exception, however, for waivers that had been granted for borrowing relationship limits. These specific waivers were grandfathered, allowing the existing debt relationship to continue, but prohibited any increase in the debt associated with those relationships.

Section 723.9(b) addresses ongoing enforcement constraints. This provision clarified that any limitations or other conditions imposed on a FICU through a written directive from the NCUA, such as a Document of Resolution or a Letter of Understanding and Agreement, were unaffected by the adoption of the new part. All such pre-existing constraints were to remain in place until formally modified or removed by the NCUA.

B. Legal Authority

The Federal Credit Union (FCU) Act grants the Board a broad mandate to issue regulations governing both insured federal and state-chartered credit unions. Section 120 of the FCU Act is a general grant of regulatory authority, and it authorizes the Board to prescribe regulations for the administration of the FCU Act. 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 insured credit unions.

II. Discussion of the Interim Final Rule

The Board now amends its commercial lending regulations by removing the transitional provisions at § 723.9, which was intended to provide a clear and orderly transition from the former framework to the current principles-based approach to commercial lending. Paragraph (a) of the section rendered most pre-2017 waivers moot while grandfathering certain borrowing relationship waivers. Paragraph (b) clarified that existing enforcement constraints remained in effect. The circumstances this section was designed to address are no longer relevant to the ongoing operations of FICUs. The continued presence of this historical text in the Code of Federal Regulations (CFR) serves

no practical function. The Board notes that any outstanding loans that were grandfathered remain grandfathered. As such, the Board finds that § 723.9 has served its purpose and is now outdated and requests comment on its removal from the CFR.

III. Regulatory Procedures

A. Administrative Procedure Act

The Administrative Procedure Act (APA) authorizes agencies to issue regulations without notice and public comment when an agency finds for good cause (and incorporates the finding and a brief statement of reasons thereof in the rules issued) that notice and comment is "impracticable, unnecessary, or contrary to the public interest."[2] With respect to the "unnecessary" prong of the good cause exception, courts have generally held that its use is "confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public."[3] The Board has determined that this rulemaking to remove an obsolete provision is exempt from the APA's notice and comment requirement.

Circumstances warrant publishing the removal of § 723.9 as an interim final rule. Effective January 1, 2017, § 723.9 was intended to govern circumstances where a FICU was operating under a waiver approved by the NCUA at the time the new rule took effect or was subject to an enforcement constraint related to its commercial lending activities.[4] Section 723.9(a) addresses previously approved waivers and (b) governs enforcement. Because the 2016 rule eliminated the prescriptive requirements for which waivers were typically granted, it rendered most such waivers moot as of the effective date.[5] At present, this transitional provision has been in place for eight years.[6]

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[2] 5 U.S.C. 553(b)(B).
[3] *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C.Cir. 2012) (*citing South Carolina* v. *Block*, 558 F.Supp. 1004, 1016 (D.S.C.1983)).
[4] 81 FR 13554 (Mar. 14, 2016).
[5] The Board notes that any outstanding loans that were grandfathered remain grandfathered.
[6] During this time, most commercial loans from 2017 would have been refinanced during the COVID-19 emergency's historical lowering of rates. *See* Federal Funds Effective Rate (FEDFUNDS) | FRED | St. Louis Fed. On March 13, 2020, President Trump issued Proclamation 9994 "Declaring a National

In consultation with our regions, the Board renders this provision obsolete. Accordingly, the Board finds good cause exists to forego pre-promulgation notice and comment and issue this IFR. However, the Board seeks public comment on the removal of § 723.9 and will carefully consider each comment received to determine whether further changes are needed.

B. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (Act) requires that a notice of proposed rulemaking includes 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 (commonly known as regulations.gov).[7] 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. As stated previously, this rulemaking is not subject to notice and comment as it removes an obsolete provision, and the Board will not issue a notice of proposed rulemaking. Nevertheless, to promote consistency and transparency, the Board is providing a plain language summary that meets the Act's requirements.

In summary, the Board is amending its regulations governing member business loans and commercial lending by eliminating an obsolete transitional provision.

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

Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. 85 FR 15337. In April 2020, the unemployment rate reached 14.8 percent—the highest rate observed since data collection began in 1948. In July 2021, unemployment remained higher (5.4 percent) than it had been in February 2020 (3.5 percent). *See* "Unemployment Rates During the COVID-19 Pandemic" (2025), https://www.congress.gov/crs_external_products/R/PDF/R46554/R46554.9.pdf.

[7] 5 U.S.C. 553(b)(4); 44 U.S.C. 3501 note.

C. Executive Order 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 Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order.[8] 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.[9] This interim final rule was drafted and reviewed in accordance with Executive Order 12866 and Executive Order 13563. OIRA has determined that this interim final rule is not a "significant regulatory action" as defined by 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.[10] This interim final rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

D. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that special consideration be given to the effects of regulations on small entities.[11] When an agency engages in notice and comment rulemaking or is required to publish a Notice of Proposed Rulemaking it must prepare a regulatory flexibility analysis describing the impact of the rule on small entities 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

[8] 58 FR 51735 (Oct. 4, 1993).
[9] 76 FR 3821 (Jan.21, 2011).
[10] 90 FR 9065 (Feb. 6, 2025).
[11] 5 U.S.C. 601–612.

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.

As previously discussed, consistent with the APA, the Board has determined that general notice and opportunity for public comment does not apply to the removal of § 723.9's obsolete transition provision.[12] Rules that are exempt from notice and comment procedures are also exempt from RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

The Board, however, has elected to address the Act's requirement in the interests of administrative consistency and transparency. For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets. Accordingly, the NCUA certifies the proposed rule would not have a significant economic impact on a substantial number of small credit unions.

E. The Paperwork Reduction Act of 1995

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 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 reporting, recordkeeping, or a third-party disclosure requirement. The member business loan information collection is assigned OMB Control Number 3133-0101. This rule does not revise OMB Control Number 3133-0101.

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[12] 5 U.S.C. 553(b)(B).

F. Executive Order 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. The IFR does not have substantial direct effects on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. While the rule applies to federally insured, state-chartered credit unions, its goal is to eliminate an outdated provision. The Board does not anticipate any impact on state-chartered credit unions and state regulators but welcomes comments on this issue.

G. Assessment of Federal Regulations and Policies on Families.

The NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations, 1999. The proposed rule merely removes obsolete regulatory provisions.

F. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA) generally provides for congressional review of agency rules.[13] NCUA must submit a report to Congress and the Comptroller General when it issues a final rule, as defined by the CRA.[14] An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a "major rule." OIRA has determined that this interim final rule is not a major rule as defined by the CRA.[15] The delayed effective date required by the CRA does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that

[13] 5 U.S.C. 801-808.
[14] 5 U.S.C. 804(3).
[15] 5 U.S.C. 804(2).

notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[16] For the same reasons noted above with respect to forgoing notice and comment in adopting this final rule, NCUA is adopting the final rule without the delayed effective date generally prescribed under the CRA.

List of Subjects in 12 CFR Part 723

Credit, Loan programs-business, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on this 2nd day of November, 2026.

Melane Conyers-Ausbrooks

Secretary of the Board

For the reasons discussed in the preamble, the NCUA Board amends 12 CFR part 723 as follows:

PART 723 – MEMBER BUSINESS LOANS; COMMERCIAL LENDING

1. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

§ 723.9 [Removed and Reserved]

2. Remove and reserve § 723.9.

[FR Doc. 2026-22537 Filed: 11/3/2026 8:45 am; Publication Date: 11/4/2026]

[16] 5 U.S.C. 808.