

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 721

RIN 3133-AF90

Powers of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is proposing to amend the NCUA's regulations regarding incidental powers to clarify that federal credit unions (FCUs) are not required to seek an advisory opinion from the NCUA's Office of General Counsel before petitioning the Board to engage in an activity that does not fall within an FCU's preapproved incidental powers.

DATES: Comments must be received by December 14, 2026.

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-2026-1883. 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.

FOR FURTHER INFORMATION CONTACT: John H. Brolin, Senior Staff Attorney, Division of Regulations and Legislation, 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) expressly grants FCUs the power to, among other activities, purchase, hold, and dispose of property; make loans to members; make certain investments; accept share, share draft, and share certificate accounts; and sell and cash negotiable instruments.¹ The accompanying incidental powers provision states that an FCU may "exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated."²

In 2001, the NCUA adopted regulations providing that FCUs could seek advisory opinions from the NCUA's General Counsel as to whether a proposed incidental powers activity fits into one of the preapproved categories of incidental powers under § 721.3 of the NCUA's regulations.³ It also established a process for FCUs to petition the NCUA to approve new activities or categories of activities.⁴ It is clear from the preamble to the 2001 rulemaking that seeking a legal opinion from the NCUA's General Counsel is optional.⁵ A great deal of confusion has arisen, however, regarding whether FCUs are required to obtain an advisory opinion from the NCUA's Office of General Counsel before petitioning the Board.

The Board periodically amends rules to clarify confusing information. Consistent with confusion experienced by FCUs as a result of the language in § 721.4(a) regarding obtaining legal opinion letters, this proposed rule would remove the language regarding obtaining an advisory opinion before petitioning the Board. The Board invites comments on all aspects of this proposal.

B. Legal Authority

The Board has the legal authority to issue this proposed rule pursuant to its plenary rulemaking authority under the FCU Act and its specific rulemaking

authority under the various acts the Board administers.⁶

II. Proposed Rule

A. 721.1 What activities does this part cover?

Current § 721.1 provides, among other things, that part 721 describes how interested parties may request a legal opinion from the NCUA's Office of General Counsel on whether an activity is within an FCU's incidental powers or apply to add new activities or categories to the regulation. The section provides further that an activity determined to be an incidental power for an FCU in an NCUA legal opinion to an interested party, or as a result of an application by an interested party to add new activities or categories, is recognized as an incidental powers activity for all FCUs. For reasons explained in more detail in the part of the preamble on § 721.4, the NCUA is proposing to remove from § 721.1 the language regarding obtaining legal opinions from the NCUA. This information has caused confusion for the credit union industry in the past and is unnecessary. Accordingly, the proposal would amend § 721.1 to provide that part 721 authorizes an FCU to engage in activities incidental to its business as set out in part 721. The section would provide further that part 721 also describes how interested parties may apply to add new activities or categories to the regulation. The section would also provide that an activity approved as a result of an application by an interested party to add new activities or categories is recognized as an incidental powers activity for all FCUs. Finally, the section would provide that part 721 does not apply to the activities of corporate credit unions.

B. § 721.4 How may a credit union apply to engage in an activity that is not preapproved as within a credit union's incidental powers?

Current § 721.4(a) provides, among other things, that to engage in an activity that may be within an FCU's incidental powers but that does not fall within a preapproved category listed in § 721.3, an FCU may submit an application to the Board. Paragraph (a) also outlines what information an application must contain and states that before an FCU engages in the petition process it *should* seek an advisory opinion from the NCUA's Office of General Counsel as to whether a proposed activity fits into one of the authorized categories or is otherwise

¹ 12 U.S.C. 1757(4)–(7), (12), (15).

² 12 U.S.C. 1757(17).

³ 66 FR 40845 (Aug. 6, 2001).

⁴ *Id.*

⁵ See, *Id.* at 40855 (providing "An FCU is not required to obtain an opinion from the NCUA's Office of General Counsel . . .").

⁶ 12 U.S.C. 1766, 1757, 1789.

within the FCU's incidental powers without filing a petition to amend the regulation.⁷ The last sentence in paragraph (a) and its use of the word "should" has caused confusion for FCUs wishing to petition the Board to engage in a non-preapproved incidental power. FCUs are often unsure whether seeking an advisory opinion is mandatory or optional. As the NCUA made clear in its 2001 final rule regarding incidental powers, an FCU is not required to obtain an opinion from the NCUA's Office of General Counsel before petitioning the Board.⁸ Moreover, credit unions are always able to ask the NCUA's Office of General Counsel questions on any provisions within the NCUA's regulations, not just with regard to part 721. It is commonly known throughout the credit union industry that credit unions, members, and other interested parties can contact the NCUA's Office of General Counsel, and the contact information for the office is easy to find and clearly displayed on the NCUA's website. Accordingly, consistent with other parts of the NCUA's regulations, the proposed rule would remove the last sentence of § 721.4(a) to clarify that FCUs are not required to obtain an advisory opinion from the NCUA's General Counsel's Office before submitting an application to the Board.

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*). In summary, the proposed rule would amend the NCUA's regulations regarding incidental powers to clarify that FCUs are not required to seek a legal opinion from the NCUA's Office of General Counsel before petitioning the Board to engage in an activity that does not fall within an FCU's preapproved incidental powers.

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

B. Executive Orders 12866, 13563, 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.⁹ Executive Order 13563 ("Improving Regulation and Regulatory Review") supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866.¹⁰ This proposed rule was drafted and reviewed in accordance with Executive Order 12866 and Executive Order 13563. OIRA has determined that this proposed 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.¹¹ This proposed rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act¹² 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.¹³ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.¹⁴ The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

This proposed rule would amend the NCUA's incidental powers regulation to

remove references to an optional process for FCUs wishing to apply to the Board to engage in an activity that does not fall within an FCU's preapproved incidental powers. This proposal would not impose any requirements on interested parties. 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 NCUA has determined that the changes described 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.¹⁵ The proposed rule does not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does 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. Part 721 applies solely to FCUs. The NCUA has therefore determined that this proposed rule does 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 will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act.¹⁶ The proposed

⁹ 58 FR 51735 (Oct. 4, 1993).

¹⁰ 76 FR 3821 (Jan. 21, 2011).

¹¹ 90 FR 9065 (Feb. 6, 2025).

¹² 5 U.S.C. 601 *et seq.*

¹³ 5 U.S.C. 605(b).

¹⁴ 80 FR 57512 (Sept. 24, 2015).

¹⁵ "Federalism," E.O. 13,132 (Aug. 10, 1999).

¹⁶ Public Law 105-277, sec. 654, 112 Stat. 2681, 2681-528 (1998).

⁷ (emphasis added).

⁸ 66 FR 40855 (providing "An FCU is not required to obtain an opinion from the NCUA's Office of General Counsel . . .").

rule merely removes confusing regulatory provisions, which discusses an optional process for FCUs to obtain advisory opinions from the NCUA's Office of General Counsel.

List of Subjects in 12 CFR Part 721

Credit Unions.

By the National Credit Union Administration Board, this 13th day of October, 2026.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR part 721 as follows:

PART 721—INCIDENTAL POWERS

■ 1. The authority section continues to read as follows:

Authority: 12 U.S.C. 1757(17), 1766 and 1789.

■ 2. Revise § 721.1 to read as follows:

§ 721.1 What does this part cover?

This part authorizes a federal credit union (you) to engage in activities incidental to your business as set out in this part. This part also describes how interested parties may apply to add new activities or categories to the regulation. An activity approved as a result of an application by an interested party to add new activities or categories is recognized as an incidental powers activity for all federal credit unions. This part does not apply to the activities of corporate credit unions.

§ 721.4 [Amended]

■ 3. In § 721.4, remove the last sentence in paragraph (a).

[FR Doc. 2026-21088 Filed 10-14-26; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 725

RIN 3133-AF91

Central Liquidity Facility

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is proposing to adopt as final the revisions to the Central Liquidity Facility (CLF) rule made under two interim final rules (IFRs) published in the **Federal Register** on April 29, 2020, and March 24, 2021. The proposal would adopt the amendments made by these IFRs and, where appropriate, would remove

provisions from the NCUA's regulations that have lapsed under the terms of the IFRs. The proposal would also remove or modify certain filing requirements and criteria the Board uses to approve CLF members. Finally, the proposal would amend the timing requirements related to pay adjustments to the capital stock subscription, clarify various regulatory provisions, and make necessary conforming edits.

DATES: Comments must be received by December 14, 2026.

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-2026-1889. 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.

FOR FURTHER INFORMATION CONTACT:

Policy: Matthew J. Biliouris, Acting President, Central Liquidity Facility, at 1775 Duke Street, Alexandria, VA 22314 or by telephone at (703) 518-1161. Legal: John H. Brolin, Senior Staff Attorney, Division of Regulations and Legislation, Office of General Counsel, at 1775 Duke Street, Alexandria, VA

22314 or by telephone at (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

In response to the COVID-19 pandemic, the Board issued an IFR on April 29, 2020 (April 29th IFR), which provided credit unions with greater access to liquidity to help ensure they remain operational throughout the crisis.¹ The IFR made it easier and more attractive for credit unions to join the NCUA's CLF. In addition, the rule made several amendments to conform to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).²

The CLF, a mixed-ownership government corporation managed by the Board, established in 1979, serves as a liquidity source for its member credit unions.³ Its purpose is to improve general financial stability by meeting the liquidity needs of credit unions and thereby encouraging savings, supporting consumer and mortgage lending, and providing basic financial resources to all segments of the economy.

Section 307 of the FCU Act, 12 U.S.C. 1795f, among other things, gives the Board the authority to prescribe the manner in which the general business of the CLF shall be conducted and to prescribe rules and regulations to carry out the CLF-related provisions of the FCU Act.⁴ Under this authority, the Board issued the April 29th IFR to enhance liquidity for credit unions during the COVID-19 pandemic and to make regulatory changes that cohere to the CARES Act.

The Board emphasized in the April 29th IFR that, while some of the amendments in the rule were temporary, they would afford significant liquidity support to the entire credit union system. The Board also noted that several of the changes in the IFR were conforming changes based on the recently enacted CARES Act, which temporarily amended the FCU Act. As such, the changes in the IFR that corresponded to the CARES Act were initially set to sunset in accordance with the CARES Act on December 31, 2020. To provide clarity and transparency, the Board included the temporary changes in the IFR and explained what would occur upon the sunset of the amendments.

¹ 85 FR 23731 (Apr. 29, 2020).

² *Coronavirus Aid, Relief, and Economic Security Act*, Public Law 116-136, 134 Stat 281 (Mar. 27, 2020).

³ Public Law 95-630, 92 Stat 3641 (Nov. 10, 1978), codified at 12 U.S.C. 1795, *et seq.*

⁴ 12 U.S.C. 1795f.