

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 741**

**RIN 3133-AD96**

**Maintaining Access to Emergency Liquidity**

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

**ACTION:** Notice of proposed rulemaking with request for comment (NPRM).

**SUMMARY:** The NCUA Board (Board) is requesting public comment on a proposed regulation requiring federally insured credit unions (FICUs) with assets of \$10 million or more to have a contingency funding plan that clearly sets out strategies for addressing liquidity shortfalls in emergency situations. The NPRM also requires FICUs with assets of \$100 million or more to have access to a backup federal liquidity source for emergency situations. Finally, the NPRM requires FICUs with less than \$10 million in assets to maintain a basic written policy that provides a board-approved framework for managing liquidity and a list of contingent liquidity sources

that can be employed under adverse circumstances. The NPRM follows an earlier Advance Notice of Proposed Rulemaking (ANPR) requesting public comment on the scope and requirements of a regulation regarding backup liquidity requirements.

**DATES:** We must receive your comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any one of the following methods  
**(Please send comments by one method only):**

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]--Comments on Notice of Proposed Rulemaking for Part 741, Maintaining Access to Emergency Liquidity” in the e-mail subject line.
- **Fax:** (703) 518-6319. Use the subject line described above for e-mail.
- **Mail:** Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- **Hand Delivery/Courier:** Same as mail address.

**PUBLIC INSPECTION:** You can view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may

inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Lisa Henderson, Staff Attorney, Office of General Counsel, at the address above or telephone (703) 518-6540; or J. Owen Cole, Jr., Director, Division of Credit and Capital Markets, Office of Examination and Insurance, at the address above or telephone (703) 518-6620.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

### **II. Proposed Rule**

### **III. Regulatory Procedures**

#### **I. Background**

##### *A. Why Did NCUA Initiate this Rulemaking?*

The recent financial crisis demonstrated the importance of access to reliable emergency liquidity. Currently, 6,019<sup>1</sup> FICUs have access to the Central Liquidity Facility (CLF or facility) by belonging to a corporate credit union that is in turn part of

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<sup>1</sup> This number is based on the 2012 agent member annual stock adjustment. It excludes credit unions that are not regular members of the CLF and not members of a corporate credit union.

the agent group headed by U.S. Central Bridge Corporate Federal Credit Union (U.S. Central Bridge).<sup>2</sup> U.S. Central Bridge temporarily holds CLF stock on behalf of the whole agent group, but it is expected to close in October 2012. When U.S. Central Bridge redeems the CLF stock upon its closure,<sup>3</sup> these FICUs will no longer have the CLF as a source of backup liquidity, unless they choose to join the CLF directly. In light of these changes, the Board issued an ANPR on the issue of maintaining credit union system liquidity. 76 FR 79553 (Dec. 22, 2011).

*B. What Is the CLF and How Does it Operate?*

Before discussing the specifics of the ANPR's request, the Board believes it may be helpful to repeat some of the background material the ANPR provided regarding the recent financial crisis and the structure and operations of the CLF.

Depository institutions need to have access to sources of emergency liquidity from both their own balance sheets and through credit facilities. When a depository institution exhibits liquidity problems and its credit providers have uncertainty about its true financial condition, that institution's ability to obtain credit can rapidly diminish or cease altogether. The inability of a depository institution to fund its business-as-usual operations by borrowing can, in turn, cause its ultimate insolvency and failure if, for example, it were forced to sell assets at distressed prices to raise necessary funds. In

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<sup>2</sup> NCUA established U.S. Central Bridge to provide an orderly transition in resolving the failure of U.S. Central Corporate Federal Credit Union, which historically held the CLF capital stock on behalf of the majority of credit unions.

<sup>3</sup> See 12 USC 1795d(c); 12 C.F.R. §725.6(d)(1).

the financial crisis, even institutions that were healthy used emergency liquidity facilities when risk aversion reduced the availability of even short-term liquidity and funding costs became prohibitively high. Without access to governmental liquidity facilities, the scope of the crisis and damage to the economy would have been much more severe.

Governmental liquidity facilities were created by Congress to provide a stability mechanism to preempt illiquidity situations before they lead to unnecessary insolvencies or cause systemic disruptions to the depository industry. This is because depository institutions are a key element of financial services and the overall economy. Federal entities that exist to provide liquidity assistance are unique in their capacity to obtain funding in times of crisis, and this is based on their backing by the full faith and credit of the U.S. government. These liquidity facilities are viewed as the ultimate backstop for institutions seeking emergency liquidity in time of need and have proven to be a critical component of the U.S. government's contingency management during times of widespread instability.

By way of example, CLF figured prominently in NCUA's contingency plans during the financial crisis. Through various contingency programs, such as the Credit Union System Investment Program, the Credit Union Homeowners Affordability Relief Program, and loans to the National Credit Union Share Insurance Fund (NCUSIF), CLF facilitated access to billions of dollars of external liquidity. These programs totaled approximately \$18.4 billion and were orchestrated during the period between December 2008 and March 2009. Total CLF activity during the height of the crisis reached as

much as \$20.5 billion, including approximately \$2.1 billion in liquidity-need loans outstanding. By having ready access to contingent liquidity through CLF, NCUA was in a position to inject a critical amount of emergency liquidity into the credit union system. These liquidity injections helped stabilize confidence and gave NCUA time to work through the financial difficulties arising from the failure of the system's largest corporate credit unions. They, combined with other actions taken by the Board, were instrumental in maintaining the continuity of vital credit union services and helped avert higher potential losses to the system.

Essentially, CLF provides a form of liquidity insurance to its member credit unions through its ability to make liquidity advances to members funded with matched borrowings from the Federal Financing Bank.<sup>4</sup> A credit union primarily serving natural persons may become a "regular" member of the facility by subscribing to the capital stock of the facility. 12 U.S.C. 1795c(a); 12 CFR §725.3. A credit union or group of credit unions primarily serving other credit unions may become an agent member of the facility by obtaining approval from the Board and subscribing to the capital stock of the facility on behalf of credit unions in its membership that are not regular members. 12 U.S.C. 1795c(b); 12 CFR §725.4. Currently, there is one agent group representative, with 19 agent members within that group.

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<sup>4</sup> The Federal Financing Bank (FFB) is a government corporation, created by Congress in 1973 under the general supervision of the Secretary of the Treasury. The FFB was established to centralize and reduce the cost of federal borrowing, as well as federally-assisted borrowing from the public. 87 STAT. 937, 12 U.S.C. 2281.

Historically, most natural person credit unions have not elected to become regular members. Instead, they have qualified for membership in CLF by joining a corporate that was in turn a CLF agent and part of the agent group headed by U.S. Central Bridge. As the agent group representative, U.S. Central Bridge subscribed to, and absorbed the costs of, capital stock on behalf of all underlying natural person credit unions represented by the respective corporate credit unions in U.S. Central Bridge's agent group. U.S. Central Bridge is expected to close in October 2012, and its role as CLF agent group representative will cease at that time. When that occurs, the natural person credit unions that have relied on the existing agent group arrangement for liquidity insurance will no longer have that protection.

### *C. What Did the ANPR Do?*

The ANPR requested public comment on the scope and requirements of a regulation to require FICUs to have access to backup federal liquidity sources for use in times of financial emergency and distressed economic circumstances. The ANPR stated that the Board was contemplating requiring FICUs to demonstrate this access in one of four ways: (1) becoming a member in good standing of the CLF directly; (2) becoming a member in good standing of the CLF through a corporate credit union; (3) obtaining and maintaining demonstrated access to the Federal Reserve Discount Window (Discount Window), through which the Federal Reserve System lends reserve funds to depository institutions; or (4) maintaining a certain percentage of assets in highly liquid Treasury securities.

*D. What Did the Commenters Say About the ANPR?*

NCUA received a total of 60 comments on the ANPR. Approximately two-thirds of the commenters were either in favor of issuing a regulation to require FICUs to have access to emergency liquidity or were silent on the issue but offered suggestions if a regulation was developed. The remaining one-third opposed a liquidity requirement.

The commenters who supported a regulation argued that an emergency liquidity requirement would strengthen the credit union movement, help protect the NCUSIF, and improve the safety and soundness of the industry. The commenters who opposed the regulation primarily argued that a liquidity backstop requirement would be counterproductive and that NCUA should address liquidity concerns about individual credit unions through the exam process. They argued that existing tools, such as the Interagency Policy Statement on Funding and Liquidity Risk Management (Liquidity Policy Statement),<sup>5</sup> were adequate.

The Board has carefully considered all of the comments and continues to believe that it is essential for every FICU, regardless of size and complexity, to have a management process for identifying, measuring, monitoring, and controlling liquidity risk that is commensurate with its respective needs. As the Liquidity Policy Statement advises, all

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<sup>5</sup> See 75 FR 13656 (Mar. 22, 2010); see also NCUA Letter to Credit Unions No. 10-CU-14, available at <http://www.ncua.gov/Resources/Pages/LCU2010-14.aspx>.

financial institutions should have a formal contingency funding plan (CFP) that clearly sets out the strategies for addressing liquidity shortfalls in emergency situations.

At this time, however, for FICUs under \$10 million in assets, the Board proposes to require only the maintenance of a basic written policy that provides a board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances. The Board determined that the very smallest credit unions present relatively limited safety and soundness liquidity concerns. This determination was made in light of the fact that these institutions tend to have lower loan-to-share ratios, shorter duration assets, and higher amounts of balance sheet liquidity than larger credit unions.

NCUA's primary concern with liquidity adequacy in credit unions is their ability to handle a rapid loss of liquidity, including a rapid loss of shares or loss of access to sources of borrowing. When a credit union's cash and liquid assets are depleted, it naturally will turn to external funding sources and may even need to tap an emergency liquidity lender like CLF or the Discount Window to maintain stability of operations. The level of a credit union's on-balance sheet liquidity provides a measure of its capacity to respond to such events and, in turn, its vulnerability to a liquidity loss scenario. NCUA views the capacity to handle runoff as a major indicator for liquidity risk and a useful way to evaluate a credit union's liquidity risk management.

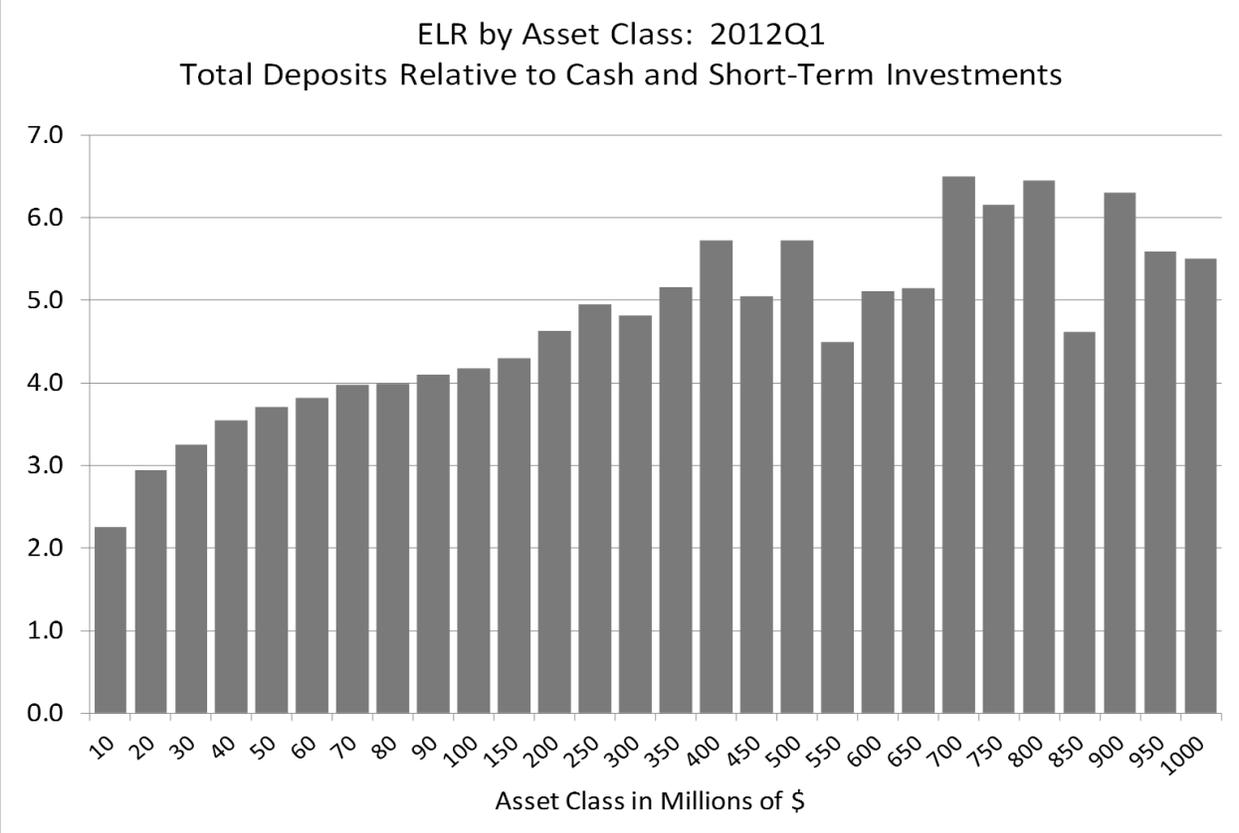
NCUA has analyzed credit unions' contingent liquidity needs using a measure of interest rate-sensitive liabilities held by each credit union as a proportion of its cash and short-term investments and a measure of all deposits as a proportion of its cash and short-term investments. These measures are highly correlated. The second, broader, measure is called the "emergency liquidity ratio" or "ELR." The ELR can be calculated for every FICU from existing call report information<sup>6</sup> and has been used to inform determination of asset thresholds in the proposed rule. It provides a comparison among FICUs of the relative amount of short-term assets available to fund an unexpected and immediate outflow of deposits.

NCUA computed the ELR for all FICUs using March 2012 call report data. The data reveal that generally the ratio of shares to cash and short-term assets gets larger in larger total asset cohorts. In other words, small credit unions tend to have a lower ELR and larger credit unions tend to have a higher ELR. The ELR is a risk ratio: the higher the measure, the greater the implied susceptibility to a liquidity event. In light of the general rise in ELR with increasing asset size, the proposed rule requires FICUs with assets of at least \$10 million to have formal CFPs, as defined in the rule.

The following chart illustrates first quarter 2012 median ELR by asset class for FICUs.

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<sup>6</sup> A credit union's ELR is computed by dividing total deposits by the sum of cash plus investments less than one year. Deposits include all deposits and shares. Cash and investments less than one year include cash on hand, total cash on deposit, cash equivalents, and total investments less than one year.



In general, over the \$100 million asset threshold, the ELR generally rises to a level that, combined with institution size, suggests the need for demonstrated access to a source of emergency liquidity. Furthermore, larger credit unions have a greater degree of interconnectedness with other market entities and are more likely to adversely affect the credit union system, public perception, and the NCUSIF when experiencing unexpected or severe liquidity circumstances. The recent financial crisis serves as a stark reminder of how large-scale liquidity events imperil even the strongest and most well-capitalized institutions if they do not have ready access to a reliable source of emergency funds. Consistent with the Liquidity Policy Statement, the Board seeks to strengthen the credit union system’s ability to withstand the potential impact of stressful liquidity events and circumstances, and believes this comes in part from strengthening capacity at the

institutional level. The proposed rule requires these larger FICUs to have a pre-established contingency capability to respond to unexpected and/or severe liquidity events.

The Board is proposing different asset thresholds in this rule to minimize regulatory burden on smaller FICUs, while simultaneously ensuring adequate regulatory coverage of total FICU assets. It specifically requests comment, however, on whether such asset thresholds are appropriate for this rule. It also seeks comment on whether NCUA should use a specific liquidity risk measure – such as the ELR – to further distinguish among FICUs with the most significant liquidity risk and should, in turn, use those levels to determine the scope of the rule’s application.

While it is beyond the scope of this proposed rule, the Board is exploring whether certain Basel III<sup>7</sup> liquidity measures and monitoring tools should be incorporated into NCUA’s supervisory expectations for the very largest credit unions, those over \$500 million.<sup>8</sup> Basel III’s proposed standards include, for example, the potential use of such measures as a liquidity coverage ratio and a net stable funding ratio. The standards also include liquidity monitoring tools to track maturity mismatches on the balance sheet, funding concentrations, and the amount of unencumbered assets available for secured borrowing. These measures and monitoring tools are designed to enhance the liquidity risk management framework and improve the banking sector’s ability to absorb

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<sup>7</sup> See Basel Committee on Banking Supervision, “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring,” Dec. 2010, available at <http://www.bis.org/publ/bcbs188.htm>.

<sup>8</sup> NCUA has previously imposed additional requirements on credit unions with assets of \$500 million or greater. *See* 12 CFR 715.5, 715.6, 741.202; *see also* 77 FR 5155 (Feb. 2, 2012) (adding Appendix B to 12 CFR part 741, effective Sept. 30, 2012).

shocks arising from financial and economic stress. NCUA must similarly consider the impact that its very largest FICUs could have on the liquidity of the credit union system and the NCUSIF by virtue of their size, complexity, and potential interconnectedness. The Board requests comment on the costs and benefits of applying Basel III liquidity measures and monitoring tools to FICUs with assets over \$500 million.

*E. What Did the Commenters Say in Response to Specific Questions in the ANPR?*

The ANPR asked commenters to address a number of specific questions. The questions and comments received are discussed below.

*(1) What are the standards and provisions, along with associated considerations, that should accompany a requirement for federally insured credit unions to maintain access to backup federal liquidity sources for use in times of financial emergency and distressed economic circumstances? Should an NCUA requirement to maintain access to backup federal liquidity sources contain an exemption for credit unions under a certain asset threshold, and if so, what should that threshold be?*

In response to this question, most commenters suggested that membership in a Federal Home Loan Bank (FHLB) should be an acceptable backup liquidity option. This is discussed further in the responses to Question (2) below.

Nine commenters stated that any liquidity requirement should contain an exemption for small credit unions. The Board agrees that regulatory burden needs to appropriately match the safety and soundness risks. As a result, the proposed rule imposes minimal new requirements on FICUs with less than \$10 million in assets. For FICUs with between \$10 million and \$100 million in assets, the proposed rule only requires the development and maintenance of a CFP to address emergency liquidity shortfalls.

*(2) Are there other sources of credit beyond the CLF and Discount Window the Board should consider as acceptable to satisfy the need for a backup federal liquidity source? For example, would a credit union's maintenance of a certain percentage of its assets in highly liquid (maturity of 90 days or less) Treasury securities satisfy the need? If so, what is the appropriate percentage? Also, how should NCUA ensure that these securities are available to be pledged or sold?*

Forty-seven commenters stated that any emergency liquidity regulation should include the option of membership in a FHLB. However, two commenters explicitly stated that FHLB membership should not be included as an emergency liquidity option, arguing that the FHLBs do not serve as emergency liquidity providers.

The Board believes it is important to draw a distinction between ordinary funding and emergency liquidity. Well-diversified sources of external funding are central to sound liquidity risk management. FHLB membership is certainly one way a credit union can

diversify to guarantee a smooth flow of funding for ordinary operations. Another key element of liquidity risk management, however, is reliable emergency funding. Institution-specific issues and market conditions can combine to quickly deplete a credit union's on-balance sheet liquidity reserve. In such situations, the Discount Window and the CLF stand ready to lend on pre-specified terms as long as a credit union meets minimal borrowing standards and possesses eligible collateral. The FHLBs can and do offer short-term loans, in addition to longer-term advances. The Board recognizes, however, that the FHLBs are private institutions which are not obligated, and may not be able, to meet emergency liquidity demands in the same way the Discount Window and CLF are statutorily designed to do. Accordingly, the Board has not included FHLB membership as an emergency liquidity option in the proposed rule. The Board notes, however, that FHLBs can provide valuable services to credit unions of all sizes and encourages credit unions to consider the merits of FHLB membership.

Several commenters stated that, rather than holding Treasury securities, FICUs should be able to demonstrate liquidity by holding cash, short-term marketable securities, certificates of deposit, saleable loans, and other similar assets. However, the commenters did not specify the percentage of a FICU's assets that should be maintained in liquid assets, saying that the amount would be different for each credit union and would depend on the makeup of the credit union's balance sheet. The Board generally disagrees that there are other assets apart from cash and short-term Treasury securities that, during a liquidity crisis, truly can be converted into cash

quickly with minimal price impact. During the recent financial crisis, even seemingly highly liquid money market mutual funds temporarily could not easily be exchanged for cash and had to be stabilized with federal government guarantee programs.

The Board still believes that maintaining a portfolio of short-term Treasury securities remains an important source of funds to meet emergency liquidity demands. It encourages all FICUs to ensure that Treasury securities are readily available and not pledged or otherwise encumbered for some other purpose. However, the Board does not wish to impose a one-size-fits-all requirement on a FICU's portfolio of liquid assets. Instead, it encourages each FICU to determine its own appropriate level of liquid assets as part of its normal asset-liability and interest rate risk management programs. NCUA will evaluate all FICUs' liquidity in the normal course of examination and supervision reviews, including their contingency options for meeting unexpected or emergency needs. The Board believes that it is prudent for FICUs to have both a cushion of highly liquid assets on its balance sheet and access to contingent sources of liquidity, but it does not believe it is sound practice for larger credit unions to meet their emergency liquidity needs solely by holding highly liquid assets. A credit union may need to use its portfolio of highly liquid assets as collateral to secure an advance from contingency funding and/or emergency liquidity providers. The Board does not wish to limit the liquidity insurance of credit unions to their existing holdings of highly liquid assets, as these alone may be insufficient in a crisis. Accordingly, the proposed rule does not include Treasury securities as an option for demonstrating access to a backup liquidity source.

*(3) How can CLF best play a role in the immediate term upon U.S. Central Bridge's wind down and over the long term in satisfying a credit union's need for a contingency liquidity source? How should that role be executed? Are changes to the CLF statute to modernize the way the CLF functions over the long term warranted, and if so what changes should be pursued? For example, should the CLF function more like the Discount Window?*

Some commenters questioned the value of the CLF, while others argued for its ongoing utility. The Board believes the CLF will continue to serve as an important emergency funding source for FICUs and is including it as an optional liquidity backstop in the proposed rule.

*(4) What is the best way for credit unions to access CLF (e.g., either directly or through an agent)? Should corporate credit unions continue to play a role and, if so, to what extent should they be encouraged to purchase CLF stock as agents for natural person credit unions?*

Six commenters were in favor of corporates continuing to act as CLF agents for natural person credit unions, and six were opposed. Of those who were opposed, several stated that the corporates cannot afford to recapitalize the CLF.

The Board understands that many corporates cannot afford to purchase stock for all member credit unions, as required by the FCU Act and NCUA regulations. See 12 U.S.C. 1757c(b)(2); 12 CFR §725.4(a)(2). However, as discussed more fully below, the Board believes that corporates, independent of agent membership, can still facilitate natural person credit union membership in the CLF by acting as advisors and financial intermediaries for credit unions that wish to join the facility directly.

## **II. Proposed Rule**

### *A. How Would the Proposed Rule Affect FICUs With Less Than \$10 Million in Assets?*

The Board is proposing to add new §741.12 to part 741, to be titled “Access to Emergency Liquidity.” The requirement for FICUs under \$10 million, set forth in paragraph (a), is to maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances. However, the Board encourages such FICUs to follow all of the liquidity risk management guidance in the Liquidity Policy Statement, including having a fully developed CFP to address emergency liquidity shortfalls. A basic liquidity policy involves merely specifying an overall approach to managing an institution’s liquidity risk. Such a policy establishes liquidity measures and associated benchmarks, a reporting requirement to keep the

board apprised of the institution's liquidity position, and a contingent source, or sources, of funding, such as a corporate credit union or correspondent bank. In contrast, a fully developed CFP also provides for evaluation of liquidity stress scenarios, outlines specific actions to be taken and specific sources of liquidity in emergency liquidity events, and provides for periodic testing of contingent liquidity sources. Specific features of a sound CFP appear in paragraph (d) of new §741.12. As the Liquidity Policy Statement notes, failure to maintain an adequate liquidity risk management process raises safety and soundness concerns. See 75 FR 13656, 13660 (Mar. 22, 2010).

*B. How Would the Proposed Rule Affect FICUs With \$10 Million to \$100 Million in Assets?*

Paragraph (b) of new §741.12 requires any FICU with assets of at least \$10 million to have a fully developed, written CFP that clearly sets out strategies for addressing liquidity shortfalls in emergency situations. Paragraph (d) of the new section details the requirements of a CFP.

*C. How Would the Proposed Rule Affect FICUs With \$100 Million or More in Assets?*

In addition to the requirement to have a written CFP, paragraph (c) of new §741.12 would require any FICU with assets of \$100 million or more to ensure it has

immediate, established access to a federal backup liquidity source. The proposed rule provides that a FICU could demonstrate access by any one of the following three ways:

1) Becoming a regular member of the CLF. The FCU Act and NCUA regulations establish the requirements for regular CLF membership. See 12 U.S.C. 1795c(a); 12 CFR §725.3. The primary requirement is subscribing to CLF capital stock in an amount not less than one half of one percent of the credit union's unimpaired capital and surplus. The Board believes that there are instances in which natural person credit unions are willing and financially able to become regular members, but may be discouraged by the administrative requirements of regular membership and the provisions of the CLF Repayment, Security, and Credit Reporting Agreement governing extensions of credit. The Board notes that, pursuant to the authority of corporate credit unions to provide liquidity-related services to their members,<sup>9</sup> and in accordance with procedures established by the Board, corporates may facilitate natural person credit unions becoming regular CLF members. For example, a corporate may perform services such as assisting with applications of credit, serving as a collateral custodian and administrator, and assisting with credit reporting requirements. The Board recognizes that some credit unions that rely on their corporate for correspondent activities would benefit if such activities included an arrangement designed to simplify understanding and compliance with facility

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<sup>9</sup> See 12 CFR §704.12(a)(5).

requirements and assist with advances of credit before and after a liquidity-need application is approved by CLF.<sup>10</sup>

2) Becoming a member of the CLF through an Agent. As noted above, for a corporate to serve as a CLF agent, it must subscribe to CLF stock for all of its members that are not regular CLF members.

3) Establishing borrowing access through the Discount Window. The Discount Window serves all depository institutions that meet eligibility requirements established by Federal Reserve regulations.<sup>11</sup> To gain access to the Discount Window, the Federal Reserve requires specific agreements to be executed. Information regarding these agreements, as set forth in Operating Circular No. 10, and Discount Window operation can be found at [www.frbdiscountwindow.org](http://www.frbdiscountwindow.org).

#### *D. How Would the Proposed Rule Work?*

Credit unions' assets can grow and shrink rapidly, and a particular FICU's assets may cross the \$10 million or \$100 million threshold repeatedly over a short period of time. In light of this fluctuation, paragraph (e) of the proposed rule provides that a

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<sup>10</sup> A corporate acting as a CLF correspondent would not be an agent member of the CLF within the meaning of 12 U.S.C. 1795c(b) or 12 CFR §725.4, as it would not subscribe to CLF stock for its members. For a natural person credit union to be a regular member of the CLF, it must subscribe to CLF stock.

<sup>11</sup> Any depository institution holding liabilities potentially subject to reserve requirements under Federal Reserve regulations, can establish access to the Discount Window. Such "reserveable liabilities" include transaction accounts and nonpersonal time deposits. For most credit unions, share draft accounts would be the principal reserveable liability.

FICU is subject to the requirements of a higher asset category when two consecutive Call Reports show its assets to be in that higher category. A FICU will then have 120 days from the effective date of that second Call Report to meet the triggered requirements.

### **III. Regulatory Procedures**

#### **a. Regulatory Flexibility Act**

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under \$10 million in assets). The proposed rule requires small FICUs to establish a basic liquidity policy, a best practice for every depository institution. Since the policy should require only modest effort, it will not have a significant economic impact on a substantial number of small credit unions.

#### **b. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a

paperwork burden may take the form of a reporting, recordkeeping, or disclosure requirement, each referred to as an information collection.

NCUA has determined the proposed requirement that credit unions under \$10 million in assets maintain a basic written liquidity policy will require some institutions to formalize liquidity risk management procedures. NCUA conservatively estimates that all 2,475 credit unions under \$10 million in total assets may have to formalize their liquidity risk policies and that this task should take approximately 8 hours per credit union. The expected burden of the requirement is:  $2,475 \text{ FICUs} \times 8 \text{ hours} = 19,800 \text{ hours}$ .

NCUA has further determined the proposed requirement to establish and document a CFP constitutes an information collection requirement but that, because of the Liquidity Policy Statement, approximately 610 out of 3,110 (or 20%) of FICUs with assets of at least \$10 million will already have established such a plan. NCUA estimates that 2,500 FICUs will have to develop a written CFP and that the task should take a FICU approximately 24 hours. The expected burden of the requirement is:  $2,500 \text{ FICUs} \times 24 \text{ hours} = 60,000 \text{ hours}$ .

NCUA has also determined the proposed requirement to either become a member of the CLF or establish borrowing access through the Federal Reserve's Discount Window creates a new information collection requirement. There are 1,434 FICUs with assets of at least \$100 million, 1,048 of which are not currently regular members

of CLF and/or do not report having established Discount Window access. NCUA estimates that it should take a FICU approximately 4 hours to complete the necessary paperwork to establish either CLF or Discount Window access. The expected burden of the requirement is: 1,048 FICUs x 4 hours = 4,192 hours.

While the proposed regulation provides the option of establishing CLF membership through an agent, NCUA estimates that no corporates will opt to be agent members at this time and, therefore, no FICUs will establish membership in this manner.

#### Summary of Collection Burden

Written Liquidity Policy: 2,475 FICUs x 8 hours = 19,800 hours.

CFP: 2,500 FICUs x 24 hours = 60,000 hours.

Regular CLF membership or Discount Window borrowing access: 1,048 FICUs x 4 hours = 4,192 hours.

Total Burden Hours: 83,992 hours.

As required by the PRA, NCUA is submitting a copy of this proposal to OMB for its review and approval. Persons interested in submitting comments with respect to the

information collection aspects of the proposed rule should submit them to OMB at the address noted below.

The NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30

days of publication. This does not affect the deadline for the public to comment to the NCUA on the substantive aspects of the proposed regulation.

Comments on the proposed information collection requirements should be sent to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503; Attention: NCUA Desk Officer, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

c. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The proposed rule would 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. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

d. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

#### List of Subjects

12 CFR part 741

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 24, 2012.

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Mary F. Rupp

Secretary of the Board

For the reasons stated above, the National Credit Union Administration proposes to amend 12 CFR part 741 as follows:

## **PART 741—REQUIREMENTS FOR INSURANCE**

1. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), 1781-1790, and 1790d; 31 U.S.C. 3717.

2. Amend part 741 by adding a new §741.12 to read as follows:

\* \* \* \* \*

### **§741.12 Access to Emergency Liquidity**

(a) Any credit union insured pursuant to Title II of the Act which has assets of less than \$10 million must maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances.

(b) Any credit union which is insured pursuant to Title II of the Act which has assets of \$10 million or more must establish and document a contingency funding plan (CFP) that meets the requirements of paragraph (d).

(c) In addition to the requirement specified in paragraph (b) to establish and maintain a CFP, any credit union which is insured pursuant to Title II of the Act and which has assets of \$100 million or more must establish and document access to at least one contingent federal liquidity source for use in times of financial emergency and distressed economic circumstances. Credit unions must conduct advance planning and periodic testing to ensure that contingent funding sources are readily available when needed. A credit union may demonstrate access to a contingent federal liquidity source by:

(1) Maintaining Regular membership in the Central Liquidity Facility (Facility), as described in part 725 of this chapter;

(2) Maintaining membership in the Facility through an Agent, as described in part 725 of this chapter; or

(3) Establishing borrowing access at the Federal Reserve Discount Window.

(d) CFP. A credit union must have a written CFP commensurate with its complexity, risk profile, and scope of operations that sets out strategies for addressing liquidity shortfalls in emergency situations. The CFP may be a separate policy or may be incorporated into an existing policy such as an asset/liability policy, a funds management policy, or a business continuity policy. The CFP must address, at a minimum, the following:

(1) The sufficiency of the institution's liquidity sources to meet normal operating requirements as well as contingent events;

(2) The identification of contingent liquidity sources;

(3) Policies to manage a range of stress environments, identification of some possible stress events, and identification of likely liquidity responses to such events;

(4) Lines of responsibility within the institution to respond to liquidity events;

(5) Management processes that include clear implementation and escalation procedures for liquidity events; and

(6) The frequency that the institution will test and update the plan.

(e) A FICU is subject to the requirements of paragraphs (b) or (c) of this section when two consecutive Call Reports show its assets to be at least \$10 million or \$100 million, respectively. A FICU then has 120 days from the effective date of that second Call Report to meet the new requirements.

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