7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133-AF42

Succession Planning

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing this final rule to further strengthen succession planning efforts for all consumer federally insured credit unions (FICUs). This final rule requires that a FICU board of directors establish a written succession plan that addresses specified positions and contains certain information. In addition, the board of directors is required to regularly review the succession plan. The final rule also requires that newly appointed members of the board of directors have a working familiarity with the succession plan no later than six months after appointment. The final rule follows publication of a July 25, 2024, proposed rule and takes into consideration the public comments received on the proposed rule. In

response to comments, the Board has amended the proposal to provide that a credit union board must review its succession plan no less than every 24 months, as opposed to the annual review that would have been required under the proposed rule. The Board has also revised the proposed rule by removing loan officers, credit committee members, and supervisory committee members from the list of FICU officials that must be covered by the succession plans. In addition, non-substantive changes have been made to the wording used in the list of covered officials for purposes of clarity. The final rule also streamlines the required contents of the succession plans and no longer requires that deviations from approved succession plans be documented in the FICU board's meeting minutes. Further, to help ensure that FICUs have the necessary time to develop their succession plans, the Board is delaying the effective date of the final rule until January 1, 2026.

DATES: This final rule is effective on January 1, 2026.

FOR FURTHER INFORMATION CONTACT: *Office of Examination and Insurance:* John Berry, Policy Officer, at (703) 664-3909 or at 1775 Duke Street, Alexandria, VA 22314. *Office of General Counsel:* Ariel Pereira, Senior Attorney, Office of General Counsel, at (703) 548-2778 or at the above address.

Supplementary Information:

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I. Background

At its July 18, 2024, meeting, the Board approved a proposed rule to address succession planning at FICUs. The proposed rule was published in the *Federal Register* on July 25, 2024,

and provided for a 60-day public comment period.[1] The proposal followed publication of the Board's earlier 2022 proposed rule on the same topic.[2] The July 25, 2024, proposed rule was based on that earlier proposed rule but included several changes that the Board believed would further strengthen succession planning efforts for both consumer federal credit unions (FCUs) and consumer federally insured, state-chartered credit unions (FISCUs), which collectively are referred to as FICUs.

Under the July 25, 2024, proposed rule a FICU board of directors would have been required to establish a written succession plan that addresses specified positions and contains certain information. In addition, the board of directors would have been required to review the succession plan in accordance with an established schedule, but no less than annually. The proposed rule would also have required that newly appointed members of the board of directors have a working familiarity with the FICU's succession plan no later than six months after appointment. Interested readers are referred to the preamble of the proposed rule for additional details regarding the proposed regulatory amendments.

Two ongoing factors highlighted the need for rulemaking on succession planning. The long-running trend of consolidation across all depository institutions has remained relatively constant across all economic cycles for more than three decades. Voluntary mergers can be used to create economies of scale to offer more or better products and services to FICU members. However, the Board is also aware of numerous instances in recent years where FICUs merged

[1] 89 FR 60329 (July 25, 2024).
[2] 87 FR 6078 (Feb. 3, 2022).

because of a lack of succession planning. More emphasis on succession planning would help reduce the number of such mergers.

Another reason for a heightened focus on succession planning are the ongoing retirements of the "Baby Boomer" generation (individuals born between 1946 and 1964). According to some sources, approximately 10 percent of credit union chief executive officers were expected to retire between 2019 and 2021.[3] Succession planning is critical to the continued operation of those credit unions with board members and executives that are part of this retirement wave.

Given the importance of the topic, the NCUA has taken several steps to strengthen current succession planning efforts of FICUs. For example, in March 2022 the NCUA issued Letter to Credit Unions 22-CU-05, *CAMELS Rating System*, which provides that "succession planning for key management positions" is a key factor considered when assessing the Management CAMELS component rating of a credit union.[4] Letter to Credit Unions 23-CU-01 included succession planning as one of the NCUA's supervisory priorities for 2023.[5] The July 25, 2024, proposed rule was designed to build upon these prior NCUA efforts.

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[3] CUtoday.info, *CUNA ACUC Coverage: What's Happening in Executive Compensation* (June 19, 2019), https://www.cutoday.info/Fresh-Today/CUNA-ACUC-Coverage-What-s-Happening-in-Executive-Compensation.

[4] NCUA, *Letter to Credit Unions 22-CU-05, CAMELS Rating System* (March 2022), https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/camels-rating-system. CAMELS is the acronym for the rating system used by the NCUA to assess a FICU's performance and risk profile derived from the six critical elements of a FICU's operations: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk.

[5] NCUA, *Letter to Credit Unions 23-CU-01, NCUA's 2023 Supervisory Priorities* (January 2023), https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/ncuas-2023-supervisory-priorities.

This final rule follows publication of the July 25, 2024, proposed rule and takes into consideration the public comments received on the proposed rule. In this final rule, the Board has incorporated the following amendments to the July 25, 2024, proposal:

1. In response to public comments, the final rule provides that a board must review its succession plan no less than every 24 months, as opposed to the annual review that would have been required under the proposed rule.

2. Also in response to public comments, the Board has revised the proposed rule by removing loan officers, credit committee members, and supervisory committee members from the list of FICU officials who must be covered by the succession plans.

3. In addition, non-substantive changes have been made to the wording used in the list of covered officials for purposes of clarity. Specifically, the proposed rule listed "management officials" (as defined in the model FCU bylaws) and the "senior executive officers" identified in 12 CFR 701.14(b)(2). Given the potential overlap between these two categories of officials, the final rule merges their listing in a single paragraph of the regulation. The final rule also simplifies the regulatory text by cross referencing to § 701.14(b)(2), rather than listing the senior executive officers.

4. The final rule also streamlines the required contents of the succession plans. Specifically, the rule no longer specifies that a succession plan must address unexpected or temporary vacancies in covered positions. Although the Board encourages a FICU to consider these types of vacancies in its plan, it believes FICUs, and not the NCUA, are best positioned to determine how much detail is necessary to address the required plan elements.

5. The final rule no longer requires that deviations from approved succession plans be documented in the FICU board's meeting minutes.

6. The final rule also makes a few technical, non-substantive, edits for clarity and precision of language.

The final rule otherwise adopts the proposed regulatory requirements. FICUs are reminded that succession plans should include an estimate of the budgetary impacts of executing the succession plan, including costs associated with new hires, such as any hiring of recruitment firms and any increased compensation packages for new hires. Credit unions are not required to have an exact figure for any such anticipated costs, but at a minimum should provide an estimate to allow for better planning.

To help ensure that FICUs have the necessary time to develop their succession plans, the Board is delaying the effective date of the final rule until January 1, 2026. This rule will be reapproved three years after its effective date for a term of the Board's choosing.

II. Discussion of Public Comments

The comment period on the proposed rule closed on September 23, 2024. The NCUA received 187 public comments on the proposal. Comments were received from individual FICUs, state and regional credit union organizations, credit union trade organizations, credit union consulting services providers, and individuals. Approximately 116 of the comments were form letters with nearly identical wording. The issues raised in the form letters were similar to those

made in many of the other comment letters. This section of the preamble summarizes the significant issues raised by the commenters and the Board's responses to these comments.

A. The Comments, Generally

The majority of commenters, while acknowledging the importance of succession planning and agreeing with the intent of the proposed rule, raised concerns about the need for succession planning regulations, as well as some of the specifics of the proposed regulatory amendments.

As discussed in greater detail in the following paragraphs, the large majority of the commenters questioned the need for succession planning regulations. Some of these commenters objected that the NCUA was overstepping its regulatory authority by issuing regulations on internal management matters best left to credit union discretion. Other commenters wrote that the NCUA already has tools capable of addressing succession planning, or that the topic could be better addressed through non-regulatory guidance. These commenters also noted that the other federal banking regulatory agencies have elected to address succession planning through guidance. Commenters also objected to the inclusion of FISCUs and noted potential conflicts with state requirements.

A majority of the commenters also questioned the data cited in the preamble of the proposed rule as justification for the rulemaking. These commenters objected that the data was stale, and that more recent data did not seem to support the need for succession planning regulations to prevent FICU consolidations. The commenters also wrote that the NCUA had underestimated the time and resources required for complying with the proposed requirements,

and that the rule would impose an undue compliance burden. Many commenters wrote that the burden of complying with the rule would actually increase the number of consolidations. Still others wrote that the NCUA's goal of reducing FICU consolidations was misguided.

With regard to the specific amendments, many commenters objected to the list of officials covered by the succession plans, writing that it was overly inclusive for the stated purposes of the rulemaking. Other commenters were concerned about the possibility that succession plans might be publicly posted, potentially raising privacy or age-discrimination issues. Some commenters wrote that requiring boards to review their succession plans at least annually was unnecessarily prescriptive. Commenters also expressed concerns about the proposed board education requirements and requested clarification of other provisions.

B. Comments Regarding Alternatives to Rulemaking

Comment: Guidance is more appropriate than rulemaking. The majority of commenters urged the Board to consider issuing guidance regarding succession planning as an alternative to rulemaking. While generally agreeing that succession planning is an important element of a FICU's overall strategic planning process, the commenters wrote that a rule would only add to growing regulatory burden imposed on FICUs. The commenters noted that the issuance of guidance is consistent with the approach taken by the other federal banking regulatory agencies. The commenters wrote that the banking industry faces consolidation trends similar to those of credit unions. Nonetheless, the other banking agencies have opted to issue guidance regarding succession planning instead of undertaking rulemaking.

NCUA Response. The Board continues to believe that rulemaking on succession planning is appropriate and necessary. While guidance can be helpful in describing sound practices or clarifying existing requirements, the lack of a regulation means there is no requirement that FICUs implement a formal, written succession plan. As a result, the NCUA lacks a full complement of regulatory tools to help address deficiencies in a FICU's succession planning process. The absence of specific regulations on this topic also means there are no requirements as to what constitutes an acceptable succession plan. A regulation is therefore necessary to establish a clearly articulated, consistent, and enforceable set of succession planning standards.

Comment: Succession planning is already addressed under CAMELS. Several commenters wrote that the rule is redundant since succession planning is part of every examination under the CAMELS rating system. The commenters noted that the CAMELS "Management" component already considers succession planning for "key management positions." The commenters wrote that this is consistent with the practice of the other federal banking regulatory agencies, which require their examiners to conduct a high-level assessment of banks' succession planning in their rating of the capability and performance of management. The commenters noted that the examination process is the ideal time to discuss with a board of directors any weaknesses that exist in this area.

NCUA Response. The NCUA does assess succession planning as part of the CAMELS Management component. However, as supervisory guidance, the Letter to Credit Unions that established CAMELS does not provide the NCUA with the authority necessary to fully address any inadequacies in a FICU's succession planning practices and procedures. Letter to Credit

Unions 23-CU-01 establishing the 2023 supervisory priorities acknowledges these limitations. For example, the letter makes clear that NCUA examiners are precluded from evaluating "any formal or informal succession plans developed by credit unions beyond what would normally be considered in assigning the Management component of the CAMELS rating."[6] Moreover, examiners may "not issue an *Examiner's Finding or Document of Resolution* if the credit union has not conducted succession planning, or the planning is not adequate, unless the credit union is in violation of its own policy for conducting succession planning or administering any such plan(s)."[7] Accordingly, the NCUA continues to believe that rulemaking is necessary to establish clear, consistent, and enforceable succession planning standards.

Comment: Succession plan requirements are duplicative of disaster program guidelines. Several commenters noted that under the NCUA guidelines codified in 12 CFR part 749, appendix B, all FICUs are encouraged to develop a program to prepare for a catastrophic act. As a part of this planning and program development, FICUs distinguish the roles of the FICU's leadership and the board of directors, as well as backup personnel for various roles. The commenters wrote that the succession plan requirements are in many ways duplicative of the disaster guidelines and therefore unnecessarily add regulatory compliance burden.

NCUA Response. The Board acknowledges that, as a result of other planning and documentation efforts, many FICUs may already have data and information that is useful to completing their succession plans. FICUs are encouraged to use such existing information, where

[6] *Id.*
[7] *Id.*

appropriate, in preparing their succession plans. Further, the preamble to the July 25, 2024, proposed rule notes that the catastrophic act guidelines may address several elements that are also relevant to succession planning. These suggested elements include a "business impact analysis to evaluate potential threats," the determination of "critical systems and necessary resources," and the identification of the "[p]ersons with authority to enact the plan."[8]

However, the Board does not agree that these codified guidelines are a suitable alternative to this final rule. For one thing, the guidelines are non-regulatory in nature and therefore do not establish the enforceable standards that, as discussed in the preceding responses, the Board has determined are necessary for succession planning. Further, the guidelines are broader in scope than, and only tangentially related to, succession planning. The guidelines are intended to ensure the continued operations of a FICU in response to an external, unforeseen, and hopefully infrequent event, whereas succession planning is meant to address the ongoing retention and recruitment cycle institutions face, including for critical positions and those that have significant influence and impact on a FICU's operations. The guidelines are therefore not an adequate substitute for regulations that specifically address FICU succession planning practices.

Comment: The Call Report offers an alternative means of implementing succession planning. Several commenters wrote that the NCUA could determine the existence of a succession plan at FICUs by asking the question on the 5300 Call Report. Because Call Reports

[8] 89 FR 60329, at 60334.

must be submitted quarterly, the NCUA will always have up-to-date information on a FICU's succession plan. The Call Report is a way for FICUs to report to the NCUA a big picture of what is going on at their credit union and to document any potential risk areas.

NCUA Response. While the suggestion made by the commenters could potentially serve as a means of notifying the NCUA whether a FICU has adopted a succession plan, it fails to ensure that FICUs adopt plans and would not address the quality of those plans. The final rule will clearly communicate the NCUA's expectations regarding succession planning and establish enforceable standards for determining the sufficiency of the plans. Accordingly, the Board has not revised the proposed rule in response to these comments.

C. Comments Regarding Data and the Justification for Rulemaking

Comment: The NCUA relied on outdated or limited data to justify the proposed rule. The majority of commenters objected to the data cited in the preamble as justification for the rulemaking. Among other data, the preamble cites to a 2014 NCUA analysis that found that poor succession planning was either a primary or secondary reason for almost a third (32 percent) of FICU consolidations.[9] The commenters objected to the fact that the analysis dates from over a decade before the publication of this proposed rule and includes the years immediately following the 2007-2008 global financial crisis, which they said was likely a compounding factor in FICU consolidations. Several of the commenters pointed to a more recent NCUA analysis of mergers between 2017 and 2021, which found that an "inability to obtain officials" was the primary cause

[9] 89 FR 60329, at 60330, footnote 16 citing to: NCUA, *Truth in Mergers: A Guide for Merging Credit Unions*, page 9, https://ncua.gov/files/publications/Truth-In-Mergers.pdf.

for under 3 percent of mergers.[10] Other commenters wrote that, based on NCUA data, of the 149 mergers occurring during the second half of 2023 and first half of 2024, only 11 cited the inability to obtain officials as the reason for the merger.

The commenters also objected to the preamble language stating that the 2014 findings had been corroborated by industry participants.[11] The commenters wrote that the article includes information on only 10 mergers with only a few of the credit unions citing a lack of succession planning as a factor in the merger.

NCUA Response. As an initial matter, and as noted in the preamble to the proposed rule, the Board's justification for issuing this final rule is based not only on the data but also on the Board's finding that "the need for succession planning as a sound governance practice [is] equally compelling."[12] The Board found "that a compelling safety and soundness case exists for rulemaking in this area," because the failure to adequately plan for changes in leadership can jeopardize the continued viability of a FICU and disrupt safe and sound operations upon the departure of key personnel.[13] The safety and soundness rationale for this rulemaking remains even if the concerns raised by the commenters were valid. However, the commenters' categorization of the data cited in the preamble is incorrect.

The fact that some of the mergers included in the NCUA's 2014 analysis occurred during the global financial crisis in no way diminishes the validity of the study. Indeed, the analysis

[10] https://ncua.gov/regulation-supervision/manuals-guides/lessons-learned-mergers.
[11] 89 FR 60329, at 60330.
[12] 89 FR 60329, at 60332.
[13] 89 FR 60329, at 60330.

acknowledges that the FICU's weak financial condition was the primary or secondary cause for 78 percent of the consolidations, the largest cause for mergers during the ten-year period under review (2003 to 2012). The fact that during that same period the lack of adequate succession planning was still cited as a primary or secondary cause for 32 percent of mergers only serves to underscore the need for rulemaking in this area.

Neither does the Board believe that the NCUA's more recent analysis of mergers between 2017 and 2021 undermines the earlier study. The 2014 study specifically analyzed succession planning, while the more recent study looked at "inability to obtain officials." While this inability could be partially due to the lack of a succession plan, it might also encompass other factors deterring potential candidates, such as the FICU's inability to offer a competitive compensation package, reputational and operational obstacles to hiring, or geographic undesirability. A succession plan is critical to addressing such factors, but it is not a guarantee, especially when the FICU is faced with a sudden or unexpected leadership vacancy. The more recent study's utility to inform this rulemaking is thus limited by the fact that it does not distinguish between those mergers occurring because of a lack of succession planning and those that happened despite the FICU's best efforts in this regard.

The Board also rejects the objections raised by the commenters regarding the news articles cited in support of the proposition that the merger "data has been corroborated by industry participants." The commenters object to the number of mergers discussed in the articles. However, the footnote citation was included simply to illustrate the credit union industry's general recognition that a failure to plan for succession is a contributing factor in consolidations.

The footnote was included to complement the data and rationale set forth in the main text of the preamble rather than as an independent data source for the rulemaking.

Comment: The proposed rule will have the unintended consequence of increasing the number of consolidations. Many commenters wrote that, contrary to the proposed rule's stated goal of mitigating the effects of industry consolidation, it would actually lead to an increased number of mergers. The majority of these commenters focused on the additional regulatory burden of complying with the proposed rule, especially on smaller FICUs. The commenters wrote the additional time and resources required to comply with the proposed rule might lead smaller FICUs to conclude that a merger with a larger institution is the most sustainable path forward. One commenter wrote that the succession planning process might force smaller FICUs to confront challenging realities about their future prospects, such as their limited internal talent pools and the inability to offer competitive salaries or advancement opportunities. The commenters also expressed concerns that the preamble language noting that smaller FICUs might benefit from the assistance of larger FICUs in developing and implementing their succession plans could inadvertently result in mergers.[14]

NCUA Response. The Board disagrees with the commenters that implementation of this final rule will increase the number of FICU consolidations. In the 2014 analysis of mergers discussed previously, FICUs did not identify regulatory compliance burden as a cause of mergers. The closest analogue among the listed causes—"recordkeeping burden" —was cited by

[14] 89 FR 60329, at 60334.

only two percent of FICUs as either a primary or secondary cause for consolidation. In the more recent NCUA analysis for mergers occurring between 2017 and 2021, regulatory burden was not included among the 11 listed causes for mergers (the term "recordkeeping burden" also did not appear). The NCUA is not aware of other data that supports the claims made by the commenters, and such data was not offered in the comments.

The Board also notes that it has taken several steps to ease the burden imposed on FICUs by the new requirements. For example, the NCUA has posted a video series on succession planning on the internet.[15] In addition, the Board has developed a sample template for a succession plan that may be appropriate for some smaller FICUs, though all FICUs may benefit from it. The Board has also revised the proposed rule by removing loan officers, credit committee members, and supervisory committee members from the list of FICU officials who must be covered by succession plans. This should further minimize burden by enabling FICUs to develop more appropriately tailored succession plans that better reflect their unique circumstances. Further, the Board is delaying effectiveness of the final rule until January 1, 2026, which should also decrease burden by providing FICUs with additional time to make any operational changes or resource allocations necessary for development of the succession plans.

As noted by the commenters, the preamble to the proposed rule discussed that smaller FICUs may also benefit from seeking the assistance of larger and more sophisticated FICUs in developing and implementing their succession plans. For example, a larger FICU may provide

[15] NCUA, *Succession Planning* (2021), https://ncua.csod.com/LMS/catalog/Welcome.aspx?tab_page_id=-67&tab_id=221000382.

technical expertise in the drafting of the plan or may detail personnel to temporarily fill a critical vacancy in a smaller credit union until such time as it is permanently filled. The Board recognizes the concerns raised by the commenters that such strategic partnerships between a larger and smaller FICU may sometimes lead to a merger. However, that is an individual decision that must be made by the FICUs involved, based on their specific facts and circumstances.

Comment: The goal of preventing consolidations is misplaced. Several commenters objected to the preamble language citing increased consolidations as a driving factor for the rule. The commenters wrote that the NCUA has historically been agnostic on the appropriateness of a merger for a particular FICU, leaving the decision to the FICU's management and membership. One commenter noted that there are situations where a smaller FICU may propose a merger as a key component of its succession plan. The commenters wrote that in some instances a merger may be the best approach for a FICU and its members. The commenters wrote that the decision to merge should therefore be left to the FICU.

NCUA Response. One of the Board's stated goals in undertaking this rulemaking is to reduce the number of unplanned or forced mergers resulting from a FICU's failure to adequately plan for changes in leadership. However, the Board agrees with the commenters that voluntary mergers can be used by FICUs to achieve various objectives, including creating economies of scale to offer more or better products and services to members. The reasons for voluntarily merging vary by FICU. For example, mergers may be a strategic decision as part of the continuing credit union's growth strategy, while the merging credit union's management may be

seeking to expand services for the members. This final rule does not change the Board's longstanding position that, to the extent any such decision meets the applicable statutory and regulatory requirements, the determination of whether a merger is appropriate is best left to the particular FICU's management and membership.

D. Comments Regarding Regulatory Burden

Comment: The NCUA underestimated the regulatory burden imposed by succession planning. Many commenters wrote that the proposed rule underestimated the amount of time FICUs would be required to spend ensuring compliance with the succession plan requirements. The Paperwork Reduction Act (PRA) statement contained in the proposed rule estimated about 10 hours per year per FICU.[16] The commenters wrote that this estimate failed to adequately account for all of the time and cost that would be incurred to understand the regulatory requirements and formulate strategies for filling vacancies. The commenters also objected that the estimate did not sufficiently consider the resources required to regularly audit and update the plans, including examiner consultations. One commenter pointed to a proposed rule issued by another federal banking regulatory agency addressing succession planning and noted that agency estimated 40 annual hours for plan development and 20 hours for annual reviews.[17]

[16] 89 FR 60329, at 60335. The PRA is codified at 44 U.S.C. 3501-3520, and the implementing regulations issued by the Office of Management and Budget are located at 5 CFR part 1320.

[17] ***See*, Federal Deposit Insurance Corporation, Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More, 88 FR 70391 (Oct. 11, 2023) (to be codified at**

NCUA Response. The information provided in the proposed rule represents the NCUA's best estimate of the information collection burden associated with the succession planning requirements. As with all PRA collections of information, the estimates of the associated burden may change over time as the agency and regulated entities gain experience with implementation. Under the PRA regulations, Office of Management and Budget (OMB) approval of an agency collection of information is subject to periodic renewal through a notice and comment process.[18] The Board is committed to ensuring the accuracy of its PRA burden estimates, and the information collections established by this final rule are subject to such process.

The estimate noted by the commenters that was provided in the proposed rule issued by another federal banking agency does not provide a useful comparison. Under its own terms, that rulemaking applies solely to covered institutions with total consolidated assets of $10 billion or more. According to the most recent quarterly data available to the NCUA, there were only 21 FICUs in this asset category as of the second quarter in 2024.[19] These institutions are far larger than most FICUs, and their succession plans would necessarily reflect their size and operational complexity. In contrast, the vast majority of FICUs would have more streamlined succession plans. Further, and as noted in a preceding response, the NCUA has made available several

12 CFR parts 308, 364). https://www.federalregister.gov/documents/2023/10/11/2023-22421/guidelines-establishing-standards-for-corporate-governance-and-risk-management-for-covered.

[18] 5 CFR 1320.10. Under § 1320.10(b), OMB will not approve a collection of information for a period longer than three years.

[19] NCUA, Financial Trends in Federally Insured Credit Unions 2024 Q2, page iii, available at:https://ncua.gov/files/publications/analysis/quarterly-data-summary-2024-Q2.pdf.

resources to ease the burden imposed by this final rule, including an optional plan template. The estimated information collection burden reflects the availability of these resources.

Comment: The proposed rule will unduly increase regulatory burden, especially on smaller FICUs. Several commenters wrote that FICU resources are already under strain and the proposed rule would only serve to add to the cumulative regulatory burden faced by FICUs. The commenters wrote that, given the complexity of the business environment over the past several years and the pressures on the industry's business model in general, the NCUA should tread lightly in adding to the list of requirements. The commenters expressing these concerns were particularly focused on the regulatory burden imposed on smaller FICUs that lack the resources and staff available to larger institutions.

NCUA Response: The Board is mindful of the regulatory burden imposed by its regulations and is committed to providing assistance and resources to help FICUs comply with their regulatory obligations. The NCUA currently offers training and other resources to aid FICUs in developing their succession plans. As noted, the NCUA has posted a video series on succession planning on the internet.[20] FICUs with a low-income designation may be able to apply for technical assistance grants to support succession planning or offset training costs through the Community Development Revolving Loan Fund. As also previously discussed, FICUs may use already existing information in preparing their plans. FICUs are encouraged to make use of these and other available resources in complying with the proposed rule. The Board

[20] *Supra*, note 15.

has also narrowed the list of FICU officials that must be covered by the plans, enabling FICUs to develop succession plans that better reflect their unique circumstances. Further, the Board is delaying the effective date of the final rule until January 1, 2026, which will provide FICUs with additional time to develop their succession plans.

The Board is especially mindful of the burden imposed on smaller FICUs, as they may lack the resources or expertise to develop succession plans. Accordingly, smaller FICUs may especially benefit from the existing resources identified above. The NCUA's Small Credit Union and Minority Depository Institution Support Program is another available resource through which FICUs with less than $100 million in total assets and minority depository institutions of any size may seek assistance in a variety of areas, including succession planning. In addition, the Board again notes that it has developed a sample template for a succession plan that may be appropriate for smaller FICUs, though all FICUs may benefit from it. FISCUs electing to use the template should consult applicable state requirements to ensure their succession plans are consistent with any such requirements.

Comment: Classification of the rule as "major" under the Congressional Review Act. One comment expressed concern that the NCUA might not classify the rule as "major" for purposes of the Congressional Review Act (CRA).[21] A rule that is "major" under the CRA may take effect no earlier than 60 calendar days after the Congress receives the statutorily prescribed rule report from the agency or the rule is published in the *Federal Register*, whichever is later.

[21] 5 U.S.C. 801-808. The CRA was included as part of the Small Business Regulatory Enforcement Fairness Act, Public Law 104-121 (March 29, 1996).

The commenter was concerned that not classifying the rule as "major" would underestimate the true impact of the succession planning requirements, particularly on smaller FICUs.

NCUA Response. The NCUA acknowledges its obligations under the CRA. As required by the CRA, the NCUA has submitted this final rule to OMB for it to determine if the final rule is a "major rule." The NCUA also will file appropriate reports with Congress and the Government Accountability Office (GAO) so this rule may be reviewed.

The CRA defines a major rule as one that has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The CRA vests the ultimate decision as to whether this final rule qualifies as "major" with OMB. However, the Board does not believe that this final rule meets the definition of a "major rule" under the CRA.

While the final rule may impose some additional costs on FICUs, it is unlikely that these costs would rise to the $100 million required under the CRA definition of a "major rule." The Board also believes that several factors mitigate the potential costs imposed on FICUs. For example, the Board is providing a sample template for a simple succession plan that may be appropriate for some FICUs. Many FICUs have already adopted succession plans, and these existing plans should already address at least some of the elements required by the final rule, thereby minimizing the cost of complying with the new requirements. As previously noted, the

NCUA also offers training and other resources to aid credit unions in developing their succession plans. FICUs are also encouraged to use already existing information in preparing their plans, such as the data used to develop the recommended program to prepare for a catastrophic act. These resources should further reduce the costs of preparing succession plans.

Neither does the Board believe that the final rule meets the second and third prongs of the CRA "major rule" definition. The final rule imposes new reporting requirements that will not directly impact consumer costs for the financial products offered by FICUs. Nor are these reporting requirements likely to drive up costs for the credit union industry, governments, or geographic regions. The effects of the new requirements are also unlikely to significantly affect employment, competition, investment, or innovation, as contemplated under the CRA.

E. Comments Raising General Objections to Rule

Comment: The proposed rule constitutes regulatory overreach. Several commenters wrote that, while it is the NCUA's responsibility to supervise credit unions so as to protect the safety and soundness of the credit union system, the proposed rule oversteps the agency's regulatory authority. The commenters wrote that succession planning is appropriately the fiduciary responsibility of a FICU's board of directors as only an individual FICU can determine the appropriate timing and extent of succession planning needed to preserve the health of the FICU and its members. The commenters worried that the rule could lead to an unintended consequence where NCUA examiners, rather than focusing on the outcomes and effectiveness of a succession plan, might use their supervisory authority to impose their own views on how succession planning should be managed. The commenters wrote that such a scenario could lead

to a significant administrative workload, diverting attention and resources away from serving members.

NCUA Response. The Board continues to believe that NCUA rulemaking on succession planning is both appropriate and consistent with the agency's statutory authority. While the Board agrees that succession planning is a responsibility of the FICU's board of directors, it also finds that a compelling safety and soundness case exists for rulemaking in this area. The failure of FICUs to adequately plan for succession poses a risk not only to individual FICUs and their member-owners, but to the credit union system as a whole and to the Share Insurance Fund. Without adequate planning, key operations could be impacted during management transitions or leadership vacuums, such as recordkeeping, lending and other member services, liquidity management, cybersecurity, compliance with laws and regulations, and other critical responsibilities.

The proposed regulatory changes are designed to mitigate this risk and are consistent with the Board's statutory duty to ensure a safe and sound system of cooperative credit for its member-owners, as the proposed rule explained. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.[22] The FCU Act grants the NCUA broad authority to issue regulations governing both FCUs and all FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[23] Section 207 of

[22] 12 U.S.C. 1752-1775.
[23] 12 U.S.C. 1766(a).

the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[24] Section 209 of the FCU Act is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[25] Moreover, the NCUA has statutory authority to determine whether FICUs are operated in an unsafe or unsound manner and terminate a FICU's insurance if a FICU is not operated in a safe and sound manner.[26] This final rule will help to identify or prevent unsafe or unsound practices. Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the Share Insurance Fund remain safe and sound and service to members is maintained in compliance with applicable laws and regulations.

In assessing compliance with this rule, the NCUA will focus on whether the FICU has developed a succession plan that addresses the elements required by the final rule and is consistent with the FICU's size and complexity. The Board emphasizes that FICUs, not the NCUA, are best positioned to assess various risks and opportunities related to succession planning. A FICU will need to make its own determinations as to how much detail is necessary to address the required plan elements and whether additional factors, besides those required by this final rule, should be considered in its succession planning process. The NCUA does not intend to micromanage a FICU's succession planning process and may issue guidance, as it deems necessary, to clarify a FICU's discretion in developing its succession plans and further assist FICU succession planning efforts.

[24] 12 U.S.C. 1787(b)(1).
[25] 12 U.S.C. 1789(a)(11).
[26] 12 U.S.C. 1786.

Comment: A "one-size fits all" approach is inappropriate. Several commenters objected to the broad application of the proposed rule to all FICUs, regardless of their size and operational complexity. The commenters wrote that individual FICUs have unique challenges and governance structures. The commenters wrote that uniform requirements might limit the ability of a FICU to design a plan that best aligns with its strategic objectives and long-term viability. Some of these commenters focused on the potential impacts of uniform requirements on smaller FICUs that may not have the resources to meet the detailed requirements. The commenters wrote that the diversity among FICUs—ranging from small, community focused institutions to larger, complex organizations—requires flexibility in succession planning that a rigid regulatory mandate may not accommodate.

NCUA Response. The Board agrees a uniform approach to succession planning would fail to account for the diversity among FICUs. The final rule accommodates such differences. For example, in response to public comment, the Board has revised the proposed rule by narrowing the list of FICU officials that must be covered by the succession plans, thereby enabling FICUs to develop more appropriately tailored plans that better reflect their unique circumstances. So long as succession plans address the elements required by the final rule, FICUs may adjust their plans to reflect operational differences, varying governance structures, and other unique circumstances. FICUs may include within the scope of their plans "other personnel the board of directors deems critical given the [FICU's] size, complexity, or risk of operations. This includes

new positions that may be required due to planned changes in operations, supervisory landscape, or corporate structure."[27]

As the preamble to the proposed rule noted, the expectation is for a FICU to develop a succession plan that is consistent with its size and complexity. Therefore, smaller FICUs are more likely to have a simple succession plan that only addresses a few key leadership positions. Larger and more sophisticated FICUs are expected to have more detailed plans. For example, smaller FICUs may have fewer board members, or have fewer staff that would qualify for the positions listed in the proposed rule for inclusion in the succession plan. Likewise, smaller FICUs are likely to have less expansive employee recruitment, development, and retention strategies.

F. Comments Regarding the Inclusion of FISCUs

Comment: Inclusion of FISCUs is inappropriate. Several commenters objected to the inclusion of FISCUs within the scope of the proposed regulatory requirements. Some of the commenters wrote that the inclusion of FISCUs signals to the states that their regulatory agencies are not equipped to ensure that FISCUs are adequately positioned for the future. These commenters wrote that the assumption is contrary to data that demonstrates state charters have fewer failures, more growth, and a history of strong management performance. The commenters urged the NCUA to narrow the applicability of the rule to exclude FISCUs as was the case in the Board's 2022 proposal.

[27] Proposed § 701.4(e)(2)(vi), finalized as § 701.4(e)(2)(iii)

NCUA Response. As discussed above, the Board finds that compelling safety and soundness reasons exist for undertaking rulemaking on succession planning. The failure of FICUs—whether federal or state-chartered—to adequately plan for succession poses an undue risk to the credit union system and to the Share Insurance Fund. The inclusion of FISCUs within the scope of the final rule is consistent with the Board's statutory authority to ensure a safe and sound system of cooperative credit for its member-owners. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.[28] The FCU Act also grants the NCUA broad authority to issue regulations governing all FICUs.

The Board emphasizes that, contrary to the assertion made by the commenters, this final rule does not reflect a statement on the efficacy of state efforts to address succession planning. Specifically, the final rule provides that for FISCUs in states that have established succession planning requirements, the NCUA will defer to such requirements to the extent no conflict exists between the final rule and the state requirements.[29]

Comment: The FISCU carveout is confusing. Several commenters, while supportive of the proposed rule's carveout for FISCUs in states where succession planning is addressed, found the wording of the provision confusing. The preamble of the proposed rule stated that "to the extent that a FISCU is subject to a state statutory or regulatory requirement that conflicts with the proposed rule, the NCUA will defer to the state requirement."[30] The commenters wrote that this wording implies that if a state rule addresses succession planning, FISCUs in that state would be

[28] 12 U.S.C. 1752-1775.
[29] § 741.228
[30] 89 FR 60329, at 60332.

exempt from the proposed rule. However, the regulatory text of the proposed rule at §741.228 provides that a FISCU must adhere to the succession planning requirements "to the extent these regulatory provisions do not conflict with an applicable state requirement." According to the commenters, this language implies only a partial exemption from specific conflicting provisions. These commenters wrote that while a state may not have a specific statutory or regulatory requirement addressing succession planning, it may use definitions or have issued guidance that differs from that of the NCUA proposed rule.

In addition, one commenter wrote that neither the preamble nor the proposed regulatory text uses the word "exempt" to describe the applicability of the rule to a FISCU in a state that addresses succession planning. Instead, the preamble uses defer, and the regulatory text is silent. The commenter recommended that, absent a total exclusion of FISCUs from the scope of the rule, the Board should provide a simplified exemption provision that exempts FISCUs in a state upon notice from the state regulator to the NCUA regional director that the state supervises succession planning by rule, guidance, or through the examination process. The commenter wrote that this approach would reduce confusion, ease administration, and presents no greater risk of material loss to the Share Insurance Fund.

NCUA Response. The Board has not revised the rule in response to these comments. Contrary to the assertions made by the commenters, there is no conflict between the preamble language and the regulatory text. Both provide that the NCUA's deferral is contingent on a lack

of conflict between the rule and the state requirement.[31] Nowhere does the preamble indicate, as the commenter suggests, that the deferral provision is intended as a complete exemption for FISCUs from the regulatory requirements. Further, as the commenter writes, the deferral only applies to legally enforceable state requirements, such as statutes, regulations, or other issuances that are binding under state law. The deferral does not apply to other issuances in the form of guidance, which may be set forth in policy statements, handbooks, letters, or similar issuances. While these guidance documents may represent supervisory expectations, such as for purposes of determining a credit union's CAMELS and risk ratings, FISCUs are not required to comply with such guidance because it is by definition non-binding. The Board has also not elected to adopt the alternate process suggested by the commenter, because it continues to believe that whether deferral applies is best addressed on a case-by-case basis during the examination process.

Comment: The NCUA should consolidate the regulation applicable to FISCUs. One commenter was concerned regarding the structure of 12 CFR part 741, which identifies the regulatory requirements applicable to FISCUs by cross-referencing regulatory provisions for FCUs codified elsewhere in title 12 of the Code of Federal Regulations. The commenter wrote that, while this might seem like a minor detail, it results in confusion and inefficiency for many FISCUs as they sift through FCU rules to determine what may apply to them. The commenter wrote that there is no compelling argument against consolidating FISCU regulations in a single location.

[31] 89 FR 60329, at 60332; proposed § 741.228.

NCUA Response. The suggestion made by the commenter is outside the scope of the rulemaking, Accordingly, the rule has not been revised in response to the comment. However, the NCUA remains committed to working with all FICUs to ensure the clarity of their regulatory obligations.

G. Comments Raising Potential Privacy and Discrimination Concerns

Comment: Concerns regarding expected retirement and vacancy date requirements. The proposed rule would require that a succession plan identify the anticipated vacancy date for each of the covered positions, "such as the incumbent's retirement eligibility date or announced departure date."[32] Several commenters objected to this provision, writing that it was unduly burdensome and could potentially raise privacy and age discrimination concerns. The commenters wrote that the shift from employee pensions based on years of service to defined contribution plans have dramatically altered the concept of retirement and made it difficult to estimate when an individual will retire. Other commenters wrote that many FICU management officials operate under employment agreements that may be renewed or extended. Requiring that FICUs publish such dates could lead to charges of age discrimination or be used by management to force an employee out who has no intention of retiring.

NCUA Response. As an initial matter, the Board notes that it is not requiring that FICUs make their succession plans public, nor does the Board intend to do so. Succession plans will be

[32] Proposed § 701.4(e)(3)(i).

reviewed by examiners and will be treated as confidential supervisory documents, as with other supervisory matters.

The provision is intended solely as a planning aid. In the case of elected officials, such date is clearly the expiration of the incumbent's term. However, the expected vacancy date for non-elected officials can be less clear. The final rule does not require the FICU use a specific date, but suggests some possible proxies, including the individual's anticipated retirement date or announced departure date. A credit union can also note that a retirement or departure date is unknown. The decision of what to reflect for the date is at the FICU's discretion.

The Board emphasizes that inclusion of any known or estimated retirement or departure date is not intended to create a requirement that an individual will retire or otherwise vacate a position on a specific date. The Board, therefore, understands that these dates may evolve. Nevertheless, the inclusion of a specific or approximate date will promote conversations within the FICU and allow for better planning in advance of a transition, thus accomplishing the purpose of the final rule. Further, the FICU should update the dates as necessary to reflect changes in an individual's circumstances or plans.

Comment: Concerns regarding public posting of succession plans. The preamble to the proposed rule provided that "succession plans should provide sufficient detail and use language that is reasonably understandable to the FICU's member-owners in describing its strategies for filling vacancies and for recruiting, developing, and retaining employees."[33] The preamble

[33] 89 FR 60329, at 60333.

further provided that succession plans should be "clearly and concisely written, use everyday language to the extent possible, and avoid ambiguous phrasing open to differing interpretations."[34] Several commenters wrote that this language implies the succession plans will be publicly available, which raises privacy concerns. The commenters wrote that the succession plans may include retirement information for senior credit union management, which should not be made public. Another commenter wrote that succession plans often reflect a FICUs strategy for maintaining viability in a competitive market. The public posting of plans would enable other financial institutions to access the information for competitive advantage or potential merger opportunities.

NCUA Response. The Board again emphasizes that there is no requirement that succession plans be posted or otherwise made available to the public. Neither does the final rule supersede existing laws or FICU procedures governing the public dissemination of similar governance documents. The public availability of the succession plans should be treated similarly to such documents. The preamble language cited by the commenters was intended solely to emphasize the importance of clarity in drafting, especially in those circumstances where the plan, or portions thereof, may be made available to member-owners.

H. Comments Regarding Specific Rule Provisions

Comment: The scope of covered FICU officials should be narrowed. Many commenters recommended that the NCUA narrow the scope of the positions covered by the succession plans.

[34] *Id.*

The commenters wrote that the proposed list was overly prescriptive and would impose an undue burden to administer. Almost all of these commenters agreed the scope should be limited to those officials most directly responsible for ensuring the FICU's continuity of operations but differed on the specific positions this would include. Some commenters suggested inclusion of the members of the board, the members of the supervisory and credit committees, and key management officials, including the chief executive officer. Other commenters suggested the scope be limited to the chief executive officer and chief financial officer (or equivalent), because the boards of directors are not involved in the FICU's day-to-day operations. Still others suggested that the rule not include a specific list at all, but that FICUs should instead be provided with the flexibility to determine which critical positions should be included in a succession plan based on the specific risks associated with unanticipated or extended vacancies.

Despite their differing recommendations, almost all the commenters writing on this topic suggested that loan officers and assistant managers be excluded from the list. Several of these commenters wrote that larger FICUs may have hundreds of loan officers involved in the daily review of loans. The commenters wrote that, given the decentralized lending structure of many large FICUs, there is likely minimal risk to the ability to serve members if a loan officer vacancy occurs. The commenters wrote the risk is even less for assistant management officials, who are not crucial to a FICU's continuity of operations.

NCUA Response. In response to these comments, the Board has removed loan officers, credit committee members, and supervisory committee members from the list of FICU officials that must be covered by the succession plans. During development of the July 25, 2024,

proposed rule, the Board relied on the language of the FCU Act, the model FCU bylaws, and the definition of " senior executive officer" in 12 CFR 701.14 as a guide in identifying the list of officials that should be covered by the succession plans.[35] As it did in the preamble to the proposed rule, the Board emphasizes that succession plans are intended to cover senior leadership positions responsible for the oversight of the FICU or its day-to-day management.[36] Upon consideration of the comments and the issues involved, the Board recognizes that loan officers and members of credit and supervisory committees may not always meet these criteria depending on the size and structure of a particular FICU. The change will enable FICUs to develop more appropriately tailored succession plans that better reflect their unique circumstances.

As noted in a preceding response, FICUs may include within the scope of their plans "other personnel the board of directors deems critical given the [FICU's] size, complexity, or risk of operations."[37] FICUs should use the flexibility provided by this provision to assess whether the inclusion of loan officers and members of the supervisory and credit committees is appropriate given the institution's characteristics. For example, a smaller FICU with few loan officers may deem the position critical given the impact a departure would have on the

[35] Specifically, section 111 of the FCU Act provides that "[t]he management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee" (12 USC 1761). The model FCU bylaws codified in Appendix A of 12 CFR part 701 expand the list of senior FCU officials to include management officials, assistant management officials, and loan officers. The NCUA regulation at 12 CFR 701.14 defines the term "senior executive officer" to include the FICU's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (for example, any assistant president, any vice president, or any assistant treasurer/manager) and the chief financial officer (controller).
[36] 89 FR 60329, at 60333.
[37] Proposed § 701.4(e)(2)(vi), finalized as § 701.4(e)(2)(iii).

institution's operations. In contrast, a larger FICU that employs many loan officers may determine its operations would not be impacted by the loss of any specific individual and choose to not include this position in their plan.

Comment: The annual plan review requirement is excessive. Several commenters objected to the requirement that a FICU board review the succession plan "no less than annually."[38] The commenters wrote that this requirement is burdensome and excessive. The commenters wrote that succession plans are not a dynamic and ever-evolving document and, therefore, should only be reviewed as needed. One of the commenters recommended that FICUs be provided the flexibility to review the plans once every 24 months. Another commenter suggested a review period of every three years.

NCUA Response. Upon reconsideration, the Board agrees that the annual review of plans is unnecessary. The final rule now requires FICUs to review and update the plan as necessary but at least once every 24 months. The Board believes this change provides FICUs with additional flexibility while still accomplishing the goal of the rulemaking of ensuring that succession plans are regularly reviewed and kept current.

Comment: Education requirements for FICU board members. Several commenters objected to the proposed regulatory language requiring that directors have a "working familiarity" with the FICU's succession plan no later than six months after appointment.[39] The commenters wrote that the focus of newly appointed directors should be on gaining familiarity

[38] Proposed § 701.4(e)(4)(ii).
[39] Proposed § 701.4(b)(3)(ii).

with items such as the FICU's operations, the products and services being offered, and applicable legal authorities. In contrast, a minority of commenters supported the requirement, writing that it is appropriate for boards to maintain a working knowledge of the latest developments in all of the areas of risk confronted by the FICU.

NCUA Response. The Board has not revised the rule in response to these comments. The Board continues to believe that succession planning is one of the most vital responsibilities of a FICU's board of directors. Succession planning is a critical component of a FICU's overall strategic plan. It helps ensure that the appropriate personnel are available to execute the FICU's strategic plan and mission. A board's failure to plan for vacancies in elected and appointed positions, as well as the transition of its management, could come with high costs. The FICU runs the risk of creating a leadership vacuum, disrupting operations, and potentially jeopardizing the FICU's ability to adequately manage liquidity risk, address cybersecurity threats, or ensure continued compliance with consumer protection, Bank Secrecy Act, and other critical responsibilities. Accordingly, and as recognized by the commenters writing in support of the requirement, succession planning merits inclusion among the items new board members must become familiar with.

Comment: The "working familiarity" requirement is vague. Several commenters were concerned about a perceived lack of clarity with the proposed "working familiarity" language. The commenters wrote that, unlike the Board's 2022 proposal, the proposed rule did not include language stating that training is not mandated to meet this requirement. The commenters wrote that it is unclear what steps a board of directors would be expected to take to achieve a "working

familiarity." The commenters were concerned this perceived ambiguity would leave the door open for differing practices among FICUs regarding training, as well as for different interpretations of the requirement between FICUs and examiners. They wrote that this could lead to inconsistencies in the examination process and urged the NCUA to clarify the meaning of the provision.

NCUA Response. The Board has not revised the rule in response to these comments. The Board notes that the "working familiarity" language is not new but comes from existing § 701.4(b)(3). This existing regulation requires new credit union board members to gain a "working familiarity with basic finance and accounting practices" within six months of election or appointment. The final rule does not revise this language but adds succession planning to the list of items that directors must have a working familiarity with no later than six months after appointment. The final rule does not mandate the contents of training to meet this requirement. A FICU may incorporate succession planning into whatever materials it currently uses to comply with the education requirement.

Comment: Deviations from succession plan. Several commenters wrote about potential deviations from the succession plan due to unforeseen circumstances. The commenters wrote that requiring documentation of such changes is overly prescriptive and sometimes not feasible given rapidly changing circumstances. Another commenter asked for additional clarity on the steps a FICU should take if it is unable to adhere to its succession plan, writing that the proposed rule lacked sufficient detail.

NCUA Response. As provided in the preamble to the proposed rule, the Board recognizes that circumstances might necessitate deviations from the succession plan in filling specific vacancies. The final rule accommodates such exigencies. In the event exigent circumstances require a substantial deviation from the board approved plan, management and/or the FICU board has the flexibility to do what it deems necessary at the time, consistent with their fiduciary duties and legal responsibilities. To further emphasize this flexibility, the final rule no longer requires that such deviations be documented in the board's meeting minutes. However, a substantial deviation from the approved plan should be reported to the board as soon as practicable. Credit unions, not the NCUA, are best positioned to assess various risks and exigent circumstances. The agency does not intend to micromanage deviations from succession plans made in response to exigent circumstances. Further, FICU boards have flexibility in determining how to calculate the required 24-month review period. A FICU may determine that the review of a succession plan necessitated by a change to address an exigent circumstance satisfies the required review, therefore restarting the 24-month review cycle.

I. Other Comments

Comment: Exemption for high performing FICUs. One commenter suggested that the Board include an exemption for FICUs of all asset sizes with a CAMELS composite rating of 1 or 2. The commenter wrote that bond requirements for FICUs vary by CAMELS rating, with a greater bond being required for CAMELS 3, 4, and 5 rated FICUs due to the increased risk to the Share Insurance Fund. The commenter wrote that this logic should extend to succession planning as well. The commenter wrote that, at minimum, the final rule should establish such an

exemption for FISCUs with a CAMELS composite rating of 1 or 2 because the NCUA is not the primary federal regulator for FISCUs. The commenter wrote that, given the lower risk to the Share Insurance Fund, the NCUA does not have as much standing to issue regulations covering FISCUs "when it is not necessary, but only a best practice."

NCUA Response. The suggestion made by the commenter is outside the scope of the proposed rule. The Board did not propose or seek public comment on a class-based exemption of this type. Accordingly, the Board has not revised the rule in response to this comment. As discussed, the Board believes that having clearly articulated, consistent, and enforceable succession planning requirements will benefit all FICUs, irrespective of asset size and CAMELS rating. Moreover, the establishment of a succession plan in advance of a FICU potentially becoming a composite CAMELS code 3, 4, or 5 will allow the FICU's leadership to remain focused on the most pressing problems that led to the downgrade.

Comment: Additional resources are necessary to aid compliance. Several commenters wrote that FICUs would require additional resources to comply with the succession plan requirements. While the majority of these commenters focused on the challenges faced by smaller FICUs, others wrote that all FICUs, irrespective of size, would require assistance. The commenters suggested the NCUA develop a broad range of resources to assist all FICUs in developing succession planning. One commenter recommended that the NCUA work with state supervisory authorities to develop recruitment strategies and resources to assist FICUs in developing and implementing their succession plans.

NCUA Response. As discussed, the NCUA makes available several resources to aid FICU succession planning efforts, including online training. The Board has also developed a sample template for a succession plan that may be appropriate for some FICUs. Smaller FICUs with less than $100 million in total assets and minority depository institutions of all sizes may also be eligible for assistance in a variety of areas, including succession planning, through the agency's Small Credit Union and Minority Depository Institution Support Program. FICUs with a low-income designation may be able to apply for technical assistance grants to support succession planning or offset training costs through the Community Development Revolving Loan Fund.

Comment: Additional clarity required regarding examination expectations. Several commenters wrote that the proposed rule was unclear about the potential impact on a FICU if an examiner determines a succession plan to be inadequate. The commenters urged the NCUA to clarify the expectations of the examination program to ensure consistency in evaluations of FICU regulatory compliance. The commenters also suggested that the final rule should identify a reasonable timeline for remediation should a FICU's succession plan be deemed inadequate.

NCUA Response. The expectation is for a FICU to develop a succession plan that meets the regulatory requirements and is consistent with the FICU's size and complexity. Potential examination actions due to inadequate succession plans and possible remediation timelines are outside the scope of this rulemaking. As is current practice, examiners will use discretion and judgment when working with FICUs to remedy a potential negative finding before issuing documents of resolution or other negative findings. The NCUA may, in its discretion, issue guidance on the topic of succession planning as it deems necessary.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act[40] 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.[41] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[42] The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

The final rule requires that a FICU board of directors establish, and comply with, a written succession plan that addresses certain specified positions and contains specified elements. In addition, the board of directors will be required to review the succession plan no less than every 24 months. These requirements may impose some cost on FICUs. However, the NCUA believes several factors mitigate the potential costs, especially for small FICUs with assets of less than $100 million.

[40] 5 U.S.C. 601 *et seq*.
[41] 5 U.S.C. 605(b).
[42] 80 FR 57512 (Sept. 24, 2015).

First, a FICU is expected to develop a succession plan that is consistent with its size and complexity. Therefore, small FICUs may have a simple succession plan that is less costly to prepare than would be the case for larger and more complex FICUs. Further, in recognition that smaller FICUs may lack the resources or expertise to develop succession plans, the Board is providing a sample template for a simple succession plan that may be appropriate for these FICUs. The Board is also aware that many FICUs, including small FICUs, have already adopted succession plans. Many of these existing plans should already address, either partially or in their entirety, the elements that would be required by the proposed rule. This could minimize the burden of complying with the new requirements.

In response to comments, the Board has narrowed the list of FICU officials that must be covered by the succession plans. This should further minimize burden by enabling FICUs to develop more tailored succession plans that reflect their unique circumstances. Further, the Board is delaying the effective date of the final rule until January 1, 2026, which will provide additional time to make any operational changes or resource allocations necessary for development of the succession plans.

The NCUA also offers training and other resources to aid credit unions in developing their succession plans. For example, the NCUA has posted a video series on succession planning on the internet. The NCUA's Small Credit Union and Minority Depository Institution Support Program is an available succession planning resource for FICUs with less than $100 million in total assets and minority depository institutions of any size. Smaller FICUs are also encouraged to seek assistance from larger or more sophisticated FICUs in the development of the required

succession plans.[43] FICUs may also use already existing information in preparing their plans, such as the data used to develop the recommended program to prepare for a catastrophic act. These resources should further reduce the costs of preparing the succession plans.

Accordingly, the NCUA certifies the final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Small Business Regulatory Enforcement Fairness Act/Congressional Review Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[44] generally provides for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act.[45] 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." The NCUA does not believe this rule is a "major rule" within the meaning of the relevant sections of SBREFA.

As required by SBREFA, the NCUA has submitted this final rule to OMB for it to determine if the final rule is a "major rule" for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the GAO so this rule may be reviewed.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemaking in which an agency creates a new or amends existing information collection requirements.[46] For purposes of the

[43] *Supra*, note 15.
[44] Public Law 104-121, 110 Stat. 147 (1996).
[45] 5 U.S.C. 551.
[46] 44 U.S.C. 3501-3520; 5 CFR part 1320.

PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

The final rule establishes new information collections in the form of succession policies and plans. The NCUA estimates a total annual burden of 46,750 hours as follows:

Estimated PRA Burden

- OMB Control Number: 3133-NEW.
- Title of Information Collection: Succession Planning.
- Estimated number of respondents: 4,499.
- Estimated number of responses per respondent: 1.
- Estimated total annual responses: 4,499
- Estimated total annual burden hours per response: 10.
- Estimated total annual burden hours: 44,990.

The NCUA addressed comments on the proposed PRA burden estimate under section II. Discussion of Public Comments. In accordance with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 3133-NEW.

D. Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The 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. This final rule applies to FCUs and to FISCUs. By law, FISCUs are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. The rulemaking may, therefore, have an occasional direct effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[47] The regulatory requirements are exclusively concerned with succession planning policies of FICUs for replacing vacancies among board members and other key management officials. While the final rule is intended to maintain access to quality credit union services by reducing unplanned or forced consolidations, the potential positive effect on family well-being, including financial well-being is, at most, indirect.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

[47] Public Law 105–277, 112 Stat. 2681 (1998).

12 CFR Part 741

Bank deposit insurance, Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, this 17th day of December 2024.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board amends 12 CFR parts 701 and 741, as follows:

Part 701 – ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNION

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Amend § 701.4 by:

a. Revising paragraph (b)(3).

b. Adding paragraph (e).

The addition and revision to read as follows:

§ 701.4 General authorities and duties of Federal credit union directors.

* * * * *

(b) * * *

(3) At the time of election or appointment, or within a reasonable time thereafter, not to exceed six months, have at least a working familiarity with, and to ask, as appropriate, substantive questions of management and the internal and external auditors of:

(i) Basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement; and

(ii) The Federal credit union's succession plan established pursuant to paragraph (e) of this section.

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(e) *Succession planning requirements.* (1) *General.* A federal credit union must establish a written succession plan as provided in this paragraph that is approved by the board of directors and consistent with the credit union's size and complexity. In evaluating whether a succession

plan meets the requirements of this paragraph, the NCUA will consider the size of the federal credit union, as well as the complexity and risk of its operations.

(2) *Covered positions*. The succession plan shall, at a minimum, cover the following positions, or their equivalent if the federal credit union has adopted different position titles:

(i) Members of the board of directors;

(ii) Management officials and assistant management officials, as those terms are defined in Appendix A, if provided for in the federal credit union's bylaws, and, to the extent not already covered, the senior executive officers identified in § 701.14(b)(2); and

(iii) Any other personnel the board of directors deems critical given the federal credit union's size, complexity, or risk of operations. This includes new positions that may be required due to planned changes in operations, supervisory landscape, or corporate structure.

(3) *Contents of succession plan*. The succession plan must, at minimum, contain the following information regarding each of the positions covered under paragraph (e)(2) of this section:

(i) The title for each covered position and the expiration of the incumbent's term (if serving in a term-limited capacity) or other anticipated vacancy date if known (such as the incumbent's retirement eligibility date or announced departure date).

(ii) The federal credit union's plan for permanently filling vacancies for each of the positions.

(iii) The federal credit union's strategy for recruiting candidates with the potential to assume each of the positions.The strategy must consider how the selection and diversity of skills

among the employees covered by the succession plan collectively and individually promotes the safe and sound operation of the federal credit union.

(4) *Board responsibilities.* The board of directors must:

(i) Approve a written succession plan that meets the requirements of paragraphs (e)(2) and (e)(3) of this section; and

(ii) Review, and update as necessary, the succession plan in accordance with a schedule established by the board of directors but no less than every 24 months.

PART 741 – REQUIREMENTS FOR INSURANCE

3. 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.

4. Add § 741.228 to read as follows:

§ 741.228 Succession planning.

Any credit union that is insured pursuant to Title II of the Act must adhere to the requirements in § 701.4(b)(3) and (e) of this chapter, to the extent these regulatory provisions do not conflict with an applicable state requirement.