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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

[NCUA-2024-0037]

RIN 3133-AF42

Succession Planning

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: On February 3, 2022, the NCUA Board (Board) published a proposed rule to require federal credit union (FCU) boards of directors to establish processes for succession planning for key positions. Based on the public comments received in response to the proposal, and upon further consideration of the issues involved, the Board is publishing this second proposed rule addressing succession planning. The new proposal is based on the earlier proposed

rule but includes several changes that the Board believes will further strengthen succession planning efforts for both consumer FCUs and consumer federally insured, state-chartered credit unions (FISCUs).

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

ADDRESSES: You may submit written comments, identified by RIN 3133-AF42, by any of the following methods (**Please send comments by one method only**):

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. The docket number for this proposed rule is NCUA–2024–0037. Follow the instructions for submitting comments. A plain language summary of the proposed rule is also available on the docket website.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mailing address.
- *Public inspection:* You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518–6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: *Office of Examination and Insurance:* 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.

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I. Background

A. Succession Planning

Board members play a key role in a federally insured credit union's (FICU) success.¹ The Federal Credit Union Act (FCU Act) vests the general direction and control of an FCU in its board.² The managerial structure for FISCUs is governed by state law; however, in general, the operational oversight of FISCUs is under a board of directors or comparable body.³ FICU boards are faced with a multitude of complicated challenges, such as meeting evolving member needs, fostering employee loyalty and trust, retaining, and developing necessary skills, and keeping pace with technological and industry changes. Among this list of issues, succession planning is one of the most critical.

Succession planning is the process through which an organization helps identify, develop, and retain key personnel to ensure its viability and continued effective performance. It also allows an organization to prepare for the unexpected, including the sudden departure of key staff. Succession planning is recognized as vital to the success of any institution, including FICUs.

¹ The term FICU encompasses both FCUs and FISCUs.

² 12 U.S.C. 1761, 1761b; 12 CFR 701.4, and Article VI, section 6 of the FCU Bylaws codified in Appendix A of 12 CFR part 701.

³ The FCU Act, at 12 U.S.C. 1790a reflects the general proposition that a board of directors governs a FICU (providing that an "insured credit union shall notify the Board of the proposed addition of any individual to the board of directors" and that an "insured credit union may not add any individual to the board of directors" under certain conditions.) This is also reflected in the NCUA regulations. For example, *see* 12 CFR 701.14(a), which provides that 12 USC 1790a "sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors." *See also*, 12 CFR 741.3(a)(2) (providing that a FICU "board of directors may authorize" the designation of certain dividends on nonconforming investments as undivided earnings) and 12 CFR 747.2001(b) (referring to the service of credit union notices, directives, and decisions on appeal to "a dismissed director or officer thereof" of a FICU).

One of the variables over which a FICU board has control is the hiring of the organization's senior management.

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. There are two elements to a FICU board's succession planning strategy. First, the FICU's board should develop a pool of talented candidates to potentially stand for election to the board, to fill temporary board and committee vacancies by appointment, and to fill appointed positions, such as to the FICU's supervisory committee (or equivalent body under state law). The NCUA Board recognizes the importance of the election process in FICU governance and emphasizes that the proposed rule is meant to complement and not supplant the vital role member-owners play in FICU governance. Second, in furtherance of the board's responsibility to oversee the operations of the FICU, it must consider how best to fill vacancies in senior management positions held by employees, such as the chief executive officer and the chief financial officer.⁴ This includes establishing an order of succession among existing employees for temporarily filling senior management roles in the event of a vacancy, as well as the development of strategies to identify, develop, and retain employees capable of filling these senior positions.

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

⁴ The NCUA regulation at 12 CFR 701.14 defines the term "senior executive officer" to include "the chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (*e.g.*, any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller)."

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, and other critical responsibilities. The FICU may also incur higher costs or be unable to recruit and retain new leadership and top talent than would be the case if it had an established succession plan. Failure to plan for succession can also negatively impact the FICU's ability to maintain relationships with members and suppliers and to secure future business opportunities. Accordingly, the failure to adequately plan for changes in leadership can jeopardize the continued viability of a FICU, potentially resulting in the unplanned merger of the FICU or other disruptions to safe and sound operations upon the departure of key personnel.

For the above reasons, the Board 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 National Credit Share Insurance Fund (NCUSIF). 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. Board action is also consistent with the guidance issued by the other banking agencies to address succession planning.⁵

B. Increased Relevance of Succession Planning

⁵ See e.g., Federal Reserve Board, *Supervisory Guidance on Board of Directors' Effectiveness* (Feb. 26, 2021); also, the guidelines of the Office of the Comptroller of the Currency (OCC) at 12 CFR part 30, Appendix D, captioned "*OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.*"

Several factors have contributed to the increased relevance of succession planning for FICU boards. In 2000, the credit union system had 10,316 FICUs.⁶ The total number of FICUs declined to 4,645 by the third quarter of 2023.⁷ This decline is largely attributable to the long-running trend of consolidation across all depository institutions.⁸ This trend has remained relatively constant across all economic cycles for more than three decades. In 1999, the NCUA approved 431 FICU consolidations.⁹ The number of annual consolidations has decreased since that time but remains steady. For example, in 2022, the Board approved 181 FICU consolidations.¹⁰ In 2023, the number of approved consolidations was only slightly lower at 145.¹¹

Data suggests that smaller FICUs may be more likely to merge. The decline in the total number of FICUs has been particularly steep among the smallest FICUs with less than \$10 million in assets. At the close of 2015, there were 1,816 FICUs with less than \$10 million in assets.¹² By the third quarter of 2023, the number of these smallest FICUs was 938.¹³ This figure represents a decrease from 975 FICUs the previous year.¹⁴ By comparison, during the same period, the number of FICUs with assets of at least \$1 billion increased to 424 from 414.¹⁵

⁶ NCUA, *Historical Timeline*, <https://ncua.gov/about/historical-timeline#:~:text=2000,more%20than%2077%20million%20members>.

⁷ NCUA, *Quarterly Credit Union Data Summary 2023 Q3*, <https://ncua.gov/files/publications/analysis/quarterly-data-summary-2023-Q3.pdf>.

⁸ *Id.*

⁹ NCUA, *NCUA 2000 Annual Report*, <https://ncua.gov/files/annual-reports/2000AR.pdf>.

¹⁰ NCUA, *Merger and Insurance Reports*, <https://ncua.gov/analysis/chartering-mergers/merger-activity-insurance-report>.

¹¹ *Id.*

¹² NCUA, *Quarterly Credit Union Data Summary 2015 Q4*, <https://ncua.gov/files/publications/analysis/PACA-Facts-2015-12.pdf>.

¹³ *Supra*, note 7.

¹⁴ *Id.*

¹⁵ *Id.*

The available data does not differentiate between those smaller FICUs that consolidated or were liquidated, versus those that expanded into a larger asset category. However, the sharper decline of FICUs in the smaller asset categories, combined with the ongoing industry trend of consolidation, suggests that mergers may be more prevalent among smaller FICUs.

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 because of a lack of succession planning. An NCUA analysis found that poor succession planning was either a primary or secondary reason for almost a third (32 percent) of FICU consolidations.¹⁶ This data has been corroborated by industry participants.¹⁷ The Board is interested in helping FICUs reduce the number of mergers resulting from the lack of succession planning.

The Board finds that this goal is consistent with the FCU Act, which contains provisions that disfavor consolidation, implying a presumption that the public is better served with a greater number of credit unions. For example, the statute imposes added limitations on the addition of larger groups to multiple common-bond credit unions, prompting the Board to consider the feasibility of formation of a separate credit union.¹⁸ Further, the FCU Act provides that the Board shall “encourage the formation of separately chartered credit unions instead of approving an application to include an additional group within the field of membership of an existing credit

¹⁶ NCUA, *Truth in Mergers: A Guide for Merging Credit Unions*, page 9, <https://www.ncua.gov/files/publications/Truth-In-Mergers.pdf>.

¹⁷ See, for example, CUtoday.info, *A Look at What Members, Mgmt. Get in Mergers* (November 16, 2021) (“Credit unions merging out of existence, nearly all of them smaller, shared reasons for merging that included inability to invest in technology (even though some had very high capital levels), inability to find volunteers and staff and, a common theme, a lack of any succession planning and a retiring CEO”), available at: <https://www.cutoday.info/THE-feature/A-Look-at-What-Members-Mgmt.-Get-in-Mergers>.

¹⁸ 12 U.S.C. 1759(d)(1).

union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.”¹⁹

Another reason for a heightened focus on succession planning is the ongoing retirements of the “Baby Boomer” generation (individuals born between 1946 and 1964). According to the U.S. Census Bureau, there are approximately 73 million Baby Boomers, the second-largest age group after “Millennials” (those born between 1982 and 2000).²⁰ By 2030, all Baby Boomers will have reached age 65 and be eligible for retirement.²¹ The COVID-19 pandemic accelerated the pace of retirements among this generational cohort.²² These retirements include credit union board members and executives. According to some sources, approximately 10 percent of credit union chief executive officers were expected to retire between 2019 and 2021.²³ Succession planning is critical to the continued operation of those credit unions with board members and executives that are part of this retirement wave.

C. NCUA Efforts to Strengthen FICU Succession Planning Efforts

Given the increased importance of the topic, the NCUA has taken several steps to strengthen current succession planning efforts being taken by FICUs, and to encourage others that have not yet done so to commence their succession planning process.

¹⁹ 12 U.S.C. 1759(f).

²⁰ U.S. Census Bureau, *By 2030, All Baby Boomers Will Be Age 65 or Older*, (December 10, 2019), <https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html>.

²¹ *Id.*

²² Kevin McCarthy, “*Just Tired:*” *Why So Many Bank, Credit Union CEOs Are Calling it Quits*, *American Banker* (December 7, 2021), <https://www.americanbanker.com/creditunions/news/just-tired-why-so-many-bank-credit-union-ceos-are-calling-it-quits>; and Richard Fry, *The Pace of Boomer Retirements Has Accelerated in the Past Year*, *Pew Research Center* (November 9, 2020), <https://www.pewresearch.org/fact-tank/2020/11/09/the-pace-of-boomer-retirements-has-accelerated-in-the-past-year/>.

²³ 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>.

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 of a credit union.²⁴ The Letter to Credit Unions 23-CU-01 included succession planning as one of the NCUA’s supervisory priorities for 2023.²⁵

Several factors have highlighted the need for rulemaking in this area. While the NCUA does assess succession planning as part of the CAMELS Management component, there is no NCUA regulation requiring FICUs to 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. For example, Letter to Credit Unions 23-CU-01 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.”²⁶ 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).”²⁷ The absence of specific regulations on this topic also means there are no requirements as to what constitutes an

²⁴ 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.

²⁵ 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>.

²⁶ *Id.*

²⁷ *Id.*

acceptable succession plan. A regulation would therefore establish a needed, clearly articulated, and consistently enforceable set of succession planning standards.

II. The Board's February 3, 2022, Proposed Rule

At its January 27, 2022, meeting, the Board approved a proposed rule to establish succession planning requirements for FCUs. The proposed rule was published in the *Federal Register* on February 3, 2022.²⁸ The proposed rule would have required FCU boards of directors to establish succession plans for key positions, such as officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the FCU's bylaws) the members of the credit committee. Directors would have been required to have a working familiarity with the succession plan. The board of directors would also have been required to review the succession plan in accordance with a schedule established by the board, but no less than annually. While the proposed rule would have applied only to consumer FCUs (excluding corporate FCUs), the preamble noted that the Board's purpose was to encourage and strengthen succession planning for all FICUs. The preamble of the February 3, 2022, proposed rule provides additional details regarding the proposed regulatory amendments.

The preamble to the proposed rule presented nine questions on which the Board specifically sought public input. The proposed rule provided for a 60-day comment period, which closed on April 4, 2022. The Board received 26 public comments on the proposal.²⁹ Comments were received from individual credit unions, individuals, a law firm, and from

²⁸ 87 FR 6078 (Feb. 3, 2022).

²⁹ Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Board also published a separate notice soliciting comments for a period of 60 days on the information collection requirements contained in the 2022 proposed rule. (87 FR 7502, Feb. 9, 2022.) The Board did not receive comments specifically in response to the February 9, 2022, notice.

national, state, and regional organizations representing credit unions. All of the public comments received by the Board are available for public review on the Regulations.gov web portal, at: <https://www.regulations.gov/document/NCUA-2022-0016-0002/comment>.

Most commenters opted to provide general comments rather than address the specific questions posed in the preamble. Most commenters acknowledged the importance of succession planning but questioned the need for succession planning regulations and raised concerns about the specifics of the proposed regulatory amendments.

Based on the comments received in response to the 2022 proposed rule, and upon further consideration of the issues involved, the Board is publishing this second proposed rule addressing succession planning. The new proposal is based on the earlier proposed rule but includes several changes that the Board believes will further strengthen succession planning efforts for all FICUs. This proposed rule would require that consumer FICUs have succession plans to proactively address key positions, such as officers of the board and management officials. The succession plans will also aid FICU efforts to foster a culture of growth and development.

III. Legal Authority

The Board is issuing this proposed rule pursuant to its authority under the FCU Act. The proposed rule would establish succession planning requirements for an FCU. Section 113 of the FCU Act provides that an FCU's board of directors shall have the general direction and control of the affairs of the FCU.³⁰ The board of directors must oversee the credit union's operations to

³⁰ 12 U.S.C. 1716b.

ensure the credit union operates in a safe and sound manner. For example, the board must be kept informed about the credit union's operating environment, hire and retain competent management, and ensure that the credit union has a risk management structure and process suitable for the credit union's size and activities.

Further, under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.³¹ The FCU Act grants the NCUA a broad mandate 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.³² Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.³³ 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.³⁴ Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

IV. This Proposed Rule

While the data discussed previously, on their own, support the need for this rulemaking, the Board finds the need for succession planning as a sound governance practice equally compelling. As noted, succession planning is a vital element of a FICU's long-term strategic

³¹ 12 U.S.C. 1752-1775.

³² 12 U.S.C. 1766(a).

³³ 12 U.S.C. 1787(b)(1).

³⁴ 12 U.S.C. 1789(a)(11).

plan. This rule will further strengthen FICU succession planning efforts. The following presents an overview of the proposed regulatory changes.

A. Applicability of Proposed Rule

These proposed regulatory amendments would apply to all consumer FICUs. The Board recognizes the importance of state law in FISCUs' internal governance and that some FISCUs may already be subject to state-specific succession planning requirements.³⁵ However, as discussed, the Board finds the proposed rule is appropriate to protect the NCUSIF from undue risk associated with mergers that may cause a loss to the NCUSIF or negatively affect the credit union industry's overall health. The Board also recognizes that under its statutory authorities relating to unsafe or unsound practices, the NCUA may act to address such practices in all FICUs.³⁶ However, to the extent that a FICU is subject to a state statutory or regulatory requirement that conflicts with the proposed rule, the NCUA will defer to the state requirement.

The Board specifically invites public comment on the inclusion of FISCUs within the scope of the regulatory amendments.

Consistent with the prior proposal, this proposed rule would not amend the regulations in 12 CFR part 704, which establish requirements applicable to federally insured corporate credit unions. These regulations contain provisions that address succession planning. For example, § 704.13(c)(1) requires that the corporate's board of directors must ensure that "[s]enior managers ... are capable of identifying, hiring, and retaining qualified staff." Further, paragraph (c)(2) of

³⁵ The Board recognizes that state law also plays a role in FCUs' governance, as the model FCU bylaws reflect in several instances; however, the Board performs a significant role in this process in preparing the form of the bylaws under 12 U.S.C. 1758.

³⁶ See 12 U.S.C. 1786(e), (k).

the section requires that the corporate's board of directors ensure that "[q]ualified personnel are employed or under contract for all line support and audit areas, and designated back-up personnel or resources with adequate cross-training are in place." While the scope of the proposed rule does not include corporate credit unions, the Board welcomes public comment on whether changes to the wording of § 704.13 are necessary to effectuate the purposes of the proposed regulatory amendments.

Additionally, while the proposed rule does not add any specific requirements for Minority Depository Institutions (MDI), the Board encourages MDIs to consider how their succession plans will affect their MDI designation status. Recently the Board voted to update its policy to preserve MDI institutions. To that end, we encourage federally insured credit unions to the greatest extent possible, to develop a succession plan that maintains the board and senior leadership composition to maintain MDI eligibility. The Board also invites public comment on how the NCUA can support this effort and any unique barriers MDIs may face when developing succession plans.

B. Succession Plan Requirements

The Board proposes to establish the new succession planning requirements by amending part 701 of its regulations, which govern the organization and operation of FCUs. Specifically, the proposed rule would add a new paragraph (e) to § 701.4, which sets forth the general duties and responsibilities of FCU directors. The proposed rule would make these amendments applicable to FISCUs through an amendment to 12 CFR part 741, subpart B, which sets forth regulations codified elsewhere in the NCUA's regulations as applying to FCUs that also apply to FISCUs. The Board proposes to add a new § 741.228 that addresses succession planning.

The proposal would require 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 would be required to review the succession plan in accordance with a schedule it establishes, but no less than annually. The Board recognizes that circumstances might necessitate deviations from the plan in filling specific vacancies. The proposed regulatory text accommodates such exigencies but, as with substantive deviations in budgets and strategic plans, it would be expected the board would be informed of changes and rationale and document them in its meeting minutes.

The Board invites comments on the proposed board responsibilities in the development of succession plans. Would the succession planning process be better served by restricting or prohibiting deviations from the succession plan in between the mandated regular review period? Additionally, the Board invites comments on how the NCUA can provide better support to credit unions in developing succession plans, and attracting new talent to the credit union system? The Board is also interested in comments on the timetable for regular review of the plans and whether the final rule should provide for a different timeframe or grant boards additional flexibility in establishing the review period.

In specifying the officials covered by the succession plan, the Board has relied on the language of the FCU Act, which 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.”³⁷ The model FCU bylaws codified in Appendix A of 12 CFR part 701 expand the

³⁷ 12 U.S.C. 1761.

list of senior FCU officials to include management officials, assistant management officials, and loan officers. In addition, 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).³⁸

Accordingly, under the proposed rule, the written succession plan must, at a minimum, cover the following FICU positions, or their equivalent if the FICU has adopted different position titles:

- Members of the board of directors;
- Members of the supervisory committee;
- Members of the credit committee, where such a committee is provided for in the FICU’s bylaws and is involved daily in the review of loans;
- Loan officers, where provided for in the FICU’s bylaws in lieu of a credit committee and the loan officers are involved daily in the review of loans;
- Management officials and assistant management officials, as those terms are defined in the model FCU bylaws, if the FICU has provided for such positions in its bylaws; and

³⁸ This provision applies to all FICUs. *See also* 12 CFR 741.205 (Reporting requirements for credit unions that are newly chartered or in troubled condition). In the preamble to the 1990 final rule establishing the definition of “senior executive officer,” the Board clarified the intended scope: “By definition, a vice president or assistant manager holds a senior position, ranking immediately below the president or manager, serves as a deputy or assistant in carrying out management functions, and is empowered, among other things, to assume the duties of president or manager in that individual’s absence” 55 FR 43084, 43085 (Oct. 26, 1990).

- The FICU’s “senior executive officers” as defined in 12 CFR 701.14 and any other FICU 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.

As noted, the succession plans would be required to address credit committee members and loan officers only if such personnel are involved on a daily basis in the review of loans. The succession plans are intended to cover senior leadership positions responsible for the oversight of the FICU or its day-to-day management. Accordingly, the NCUA believes credit committee members and loan officers may not merit inclusion if their duties are limited to the review of periodic, specific lending decisions or other “as-needed” basis. However, the Board invites public comments on the inclusion of credit committee members and loan officers.

The proposed rule would also establish certain required contents for a written succession plan. First, the succession plan would be required to identify the title of the incumbent for each covered position, the expiration of the incumbent’s term (if serving in a term-limited capacity) or other anticipated vacancy date (such as the incumbent’s retirement eligibility date or announced departure date). The succession plan must also describe the FICU’s general plan or strategy for temporarily and permanently filling vacancies for each of the positions, including vacancies due to unexpected circumstances.

For example, the plan could provide an order of succession among the FICU’s senior executive officers for temporarily assuming the role of chief executive officer in the event of vacancy until such time as a permanent hiring decision is made. Similarly, the plan might establish an order of succession within individual components of the FICU for temporarily filling

specific senior executive positions (for example, the deputy chief financial officer temporarily filling the role of chief financial officer). Likewise, to the extent provided in the bylaws, certain board members might be designated to assume specific duties until the selection of a permanent successor (for example, a specified board member temporarily assuming the duties of a vacated position on the investment committee). Also, a smaller credit union could establish a relationship with a larger credit union to help manage the credit union during the time it takes to recruit and fill a senior executive vacancy.

There is no expectation the plan specify particular successors, only how the FICU will go about appointing interim replacements and recruiting for a permanent replacement. The FICU's bylaws may establish procedures for filling vacancies on the board of directors and certain other positions. The succession plan should be consistent with any such provisions of the bylaws. Further, FICUs must continue to comply with all applicable employment or personnel laws and other requirements in making hiring decisions.

In addition, the succession plan would be required to address the FICU's strategy for recruiting candidates with the potential to assume each of the positions. This could include, for example, the availability of associate director positions on the FICU's board, mentorship programs, educational opportunities offered by the FICU, internships, staff development plans, and other similar efforts. The strategy must consider how the selection and diversity among the employees covered by the succession plan collectively and individually promotes the safe and sound operation of the FICU. The board of directors should also consider budgetary impacts in the development of its succession plans. For example, the plan should consider the compensation that will be required to attract talented candidates, given such factors as the necessary education

and skills, or the market for comparable positions at other FICUs. The decision regarding the compensation for one position may impact the FICU's ability to budget for other staffing needs. Accordingly, FICUs should account for these future needs in financial planning to strengthen their ability to plan for future personnel needs.

The Board emphasizes 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. A FICU is owned by its members, who elect the board and to whom the directors are ultimately answerable. Accordingly, the Board believes it is vital that succession plans be clearly and concisely written, use everyday language to the extent possible, and avoid ambiguous phrasing open to differing interpretations.

The Board welcomes comment on the list of covered positions and the other proposed contents of the succession plan, and whether the final rule should require FICUs to address additional or different information in the plans. Depending on the comments and its continued consideration of this issue, in finalizing the proposed rule, the Board may adopt minor changes or additions to these requirements to meet the proposal's goal of promoting thorough succession planning.

The proposed rule would also amend § 701.4(b)(3), which sets forth certain education requirements for FCU directors, to require that directors have a working familiarity with the FCU's succession plan no later than 6 months after appointment. In making this change, the Board also proposes to reorganize the current contents of paragraph (b)(3) for clarity and grammar. No additional substantive changes are proposed to the current requirements of

§ 701.4(b)(3). These amendments would be made applicable to FISCUs through proposed new § 741.228.

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. In evaluating whether a succession plan meets the requirements of the rule, the NCUA will consider the size of the FICU, as well as the complexity and risk of its operations.

The Board emphasizes that succession plans should include an estimate of the budgetary impacts of executing the succession plan, including costs associated with new hires, such as the hiring of recruitment firms and increased compensation packages for new hires. It is not required for credit unions to have an exact figure but at a minimum consider an estimate to allow for better planning.

C. Available Resources

The NCUA offers training and other resources to aid FICUs in developing their succession plans. For example, the NCUA has posted a video series on succession planning on the internet.³⁹ In addition, the Board's 2019 final rule on FCU bylaws promoted succession

³⁹ NCUA, *Succession Planning* (2021), https://ncua.csod.com/LMS/catalog/Welcome.aspx?tab_page_id=-67&tab_id=221000382.

planning efforts by providing guidance to FCUs on associate director positions.⁴⁰ The final rule clarified, through staff commentary, that these positions may be thought of as apprenticeships in which the incumbent receives training and knowledge about the business of the board, with the expectation that the experience will prepare the individual to serve as a director if elected for such a position by the membership or appointed on an interim basis in an exigent circumstance.⁴¹ FISCUs may wish to provide for similar positions if consistent with applicable state law and regulation, and applicable credit union bylaws.

In addition, credit union trade associations may also provide training and have guidance available to assist credit unions in the development of their succession plan. 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. FICUs are encouraged to make use of these and other available resources in complying with the proposed rule.

FICUs are also encouraged to use already existing information in preparing their plans. For example, 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. The codified guidelines suggest that the program 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.”

⁴⁰ 84 FR 53278 (Oct. 4, 2019).

⁴¹ *Id.* at 53301.

D. Small FICU Considerations

As discussed previously, smaller FICUs may be more likely to merge, and data indicates the lack of succession planning is a significant cause of mergers.⁴² Accordingly, smaller FICUs may be the most likely to benefit from the proposed rule. The Board recognizes, however, that these FICUs 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 Support Program is another available resource through which FICUs with less than \$100 million in total assets may seek assistance in a variety of areas, including succession planning. 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. FISCUs electing to use the template should consult applicable state requirements to ensure their succession plans are consistent with any such requirements. The proposed template is available for review and comment within the *Regulations.gov* docket for this notice of proposed rulemaking.

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 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. In general, a FICU may engage outside parties to assist in compliance, so long as the FICU's board retains authority and is cognizant that it is responsible for compliance.

⁴² *Supra*, note 16.

The Board specifically invites comment from smaller credit unions on the proposed template, as well as other suggestions, to improve succession planning and reduce any burden associated with the proposal.

V. Regulatory Procedures

A. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) (Act) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as regulations.gov). The Act, under its terms, applies to notices of proposed rulemaking and does not expressly include other types of documents that the Board publishes voluntarily for public comment, such as notices and interim-final rules that request comment despite invoking “good cause” to forgo such notice and public procedure. The Board, however, has elected to address the Act’s requirement in these types of documents in the interests of administrative consistency and transparency.

In summary, the proposed rule would require that FICU boards of directors establish succession plans to proactively address any vacancies that may occur for key positions. The proposal is based on a prior February 3, 2022, proposed rule but includes several changes that the Board believes will further strengthen FICU succession planning.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act⁴³ 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.⁴⁴ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.⁴⁵ The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

The proposed rule would require that 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 would be required to review the succession plan no less than annually. 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.

First, the preamble makes clear that an 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

⁴³ 5 U.S.C. 601 *et seq.*

⁴⁴ 5 U.S.C. 605(b).

⁴⁵ 80 FR 57512 (Sept. 24, 2015).

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. 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. Smaller FICUs are encouraged to seek assistance from larger or more sophisticated FICUs in the development of the required 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 the succession plans.

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

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 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

⁴⁶ 44 U.S.C. 3501-3520; 5 CFR part 1320.

is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The proposed changes to part 701 would establish new information collections in the form of succession policies and plans. These revisions will be submitted for approval by the Office of Information and Regulatory Affairs at OMB. Persons interested in submitting comments with respect to the information collection aspects and the estimated burden of the proposed rule should submit them via email or to OMB as noted below.

Estimated PRA Burden

The NCUA estimates a total annual burden of 46,750 hours as follows:

- OMB Control Number: 3133-NEW.
- Title of Information Collection: Succession Planning.
- Estimated number of respondents: 4,675.
- Estimated number of responses per respondent: 1.
- Estimated total annual responses: 4,675.
- Estimated total annual burden hours per response: 10.
- Estimated total annual burden hours: 46,750.

The NCUA invites comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the 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; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to submit written comments via email to (1) PRAComments@ncua.gov or (2) visit www.reginfo.gov/public/do/PRAMain (find this particular information collection by selecting the tab titled “Information Collection Review” and click on to the section titled “Currently under Review – Open for Public comment”).

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 proposed rule applies to FCUs and, if adopted, will also apply 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. The Board specifically requests comment on ways to eliminate, or at least minimize, potential conflicts in this area. Based on the comments received, the final rule may

modify the application of the succession planning requirements to FISCUs as necessary to carry out the purposes of this rulemaking and the intent of the Executive Order.

E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.⁴⁷ The proposed regulatory requirements are exclusively concerned with succession planning policies of FICUs for replacing vacancies among board members and other key management officials. While the proposed 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.

12 CFR Part 741

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

By the National Credit Union Administration Board, this 18th day of July 2024.

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

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board proposes to amend 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.

* * * * *

(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) Members of the supervisory committee;

(iii) Members of the credit committee, where such a committee is provided for in the federal credit union's bylaws and is involved daily in the review of loans;

(iv) Loan officers, where provided for in the Federal credit union's bylaws in lieu of a credit committee and the loan officers are involved daily in the review of loans;

(v) 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

(vi) The Federal credit union'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), the chief financial officer (controller), and 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 (such as the incumbent's retirement eligibility date or announced departure date).

(ii) The Federal credit union's plan for temporarily and permanently filling vacancies for each of the positions, including vacancies due to unexpected circumstances.

(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 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 annually.

(5) *Adherence to plan.* The board of directors shall approve and document in its meeting minutes the rationale for substantive deviations from its approved succession plan.

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.