

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

[NCUA-2021-NCUA-2022-0016]

RIN 3133- 3133-AF42

Succession Planning

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Through this proposed rule, the NCUA Board (Board) would require that Federal Credit Union (FCU) boards of directors establish and adhere to processes for succession planning. The succession plans will help to ensure that the credit union has plans to fill key positions, such as officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the bylaws) the members of the

credit committee to provide continuity of operations. In addition, the proposed rule would require directors to be knowledgeable about the FCU's succession plan. Although the proposed rule would apply only to FCUs, the Board's purpose is to encourage and strengthen succession planning for all credit unions. The proposed rule would provide FCUs with broad discretion in implementing the proposed regulatory requirements to minimize any burden.

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

ADDRESSES: You may submit comments, 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-2021-NCUA-2022-0016 and is available at <https://www.regulations.gov>.

Follow the instructions for submitting comments.

- Fax: (703) 518-6319. Include “[Your name] Comments on “Succession Planning” in the transmittal.

- 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 mail address.

Public inspection: All public comments are available on the Federal eRulemaking Portal at: <https://www.regulations.gov> as submitted, except as may not be possible for technical reasons.

Public comments will not be edited to remove any identifying or contact information.

Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or e-mailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Ariel Pereira, Senior Staff Attorney, Office of General Counsel, at (703) 548-2778; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

- I. Background
 - A. Succession Planning
 - B. Increased Relevance of Succession Planning
- II. Legal Authority
- III. This Proposed Rule
 - A. Applicability of Proposed Rule
 - B. Proposed Regulatory Amendments
 - C. Current Succession Planning Efforts
 - D. Minimizing Burden
 - E. Questions for Comment
- IV. Regulatory Procedures
 - A. Regulatory Flexibility Act

- B. Paperwork Reduction Act
- C. Executive Order 13132 on Federalism
- D. Assessment of Federal Regulations and Policies on Families

I. Background

A. Succession Planning

Board members play a key role in a credit union's success.¹ The Federal Credit Union Act (FCU Act) vests the general direction and control of an FCU to its board.² Credit union 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 credit unions. One of the variables over which a credit union board has control is the hiring of the organization's senior management. A board's failure to plan for the transition of its management

¹ Unless otherwise specified, the term "credit union" as used in this preamble refers to all federally insured credit unions, whether federally or state chartered. As noted in this preamble, the proposed regulatory amendments would apply only to FCUs; however, the Board's intent in issuing the proposed rule is to encourage and strengthen succession planning for all federally insured credit unions.

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

could potentially come with high costs, including the potential for the unplanned merger of the credit union upon the departure of key personnel.

Conversely, good succession planning confers a variety of benefits, including:

- Minimizing service disruptions during management transitions;
- Ensuring organizational viability over the long term;
- Clarifying the employee development path;
- Developing current talent;
- Creating opportunities for employees; and
- Bringing in new ideas from outside hires.

Succession planning is a critical component of a credit union's overall strategic plan. It ensures that the appropriate personnel are available to execute the credit union's strategic plan and mission. As noted, the goal of succession planning is to build and/or identify a pool of qualified individuals who can be recruited or selected to fill a vacancy in a key position. To be successful, succession planning should be an ongoing and iterative process, not a one-time event.

B. Increased Relevance of Succession Planning

Several factors have contributed to increase the relevance of succession planning for credit union boards. First, there has been a decline in the number of credit unions mainly resulting from the long-running trend of consolidation across all depository institutions. This trend has remained relatively constant across all economic cycles for more than three decades.

During the third quarter of 2021, the number of FICUs increased in every asset category tracked by the NCUA, except for those with less than \$50 million in assets.³ The number of FICUs with assets of at least \$10 million but less than \$50 million declined to 1,467 in the third quarter of 2021 from 1,561 in the third quarter of 2020 (a decline of 94 credit unions).⁴ The decline in the number of FICUs with less than \$10 million in assets was even greater. The number of FICUs with less than \$10 million in assets declined to 1,068 in the third quarter of 2021 from 1,199 in the third quarter of 2020 (a decline of 131 credit unions).⁵ The available data does not differentiate between those smaller credit unions that consolidated or were liquidated, versus those that expanded into a larger asset category. However, the decrease in the total number of FICUs with less than \$50 million in assets (especially those with assets of less than \$10 million), combined with the ongoing industry trend of consolidation, suggests that mergers may be more prevalent among smaller credit unions.

One of the reasons for the consolidation is the lack of succession planning. An NCUA analysis found that poor management succession planning was either a primary or secondary reason for almost a third (32 percent) of credit union consolidations.⁶

³ NCUA, *Financial Trends in Federally Insured Credit Unions Q3*, page iii, available at: <https://www.ncua.gov/files/publications/analysis/quarterly-data-summary-2021-Q3.pdf>

⁴ *Id.*

⁵ *Id.*

⁶ NCUA, *Truth in Mergers: A Guide for Merging Credit Unions*, page 9, available at: <https://www.ncua.gov/files/publications/Truth-In-Mergers.pdf>

The FCU Act 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.⁷ 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 union whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.”⁸

Another reason for a heightened focus on succession planning is the ongoing retirements of the so-called “Baby Boomer” generation (individuals born between 1946 and 1964). These individuals comprise more than a quarter of the total population of the United States.⁹ Each day, commencing in 2011 (when the oldest members of the generation turned 65) and continuing until 2030, approximately 10,000 Baby Boomers will turn age 65.¹⁰ The COVID-19 pandemic has accelerated the pace of retirements among this generational cohort.¹¹ 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 2021.¹²

⁷ 12 U.S.C. 1759(d)(1).

⁸ 12 U.S.C. 1759(f).

⁹ Russell Heimlich, *Baby Boomers Retire*, Pew Research Center (December 20, 2010) <https://www.pewresearch.org/fact-tank/2010/12/29/baby-boomers-retire/>

¹⁰ *Id.*

¹¹ 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/>

¹² 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>

Succession planning is critical to the continued operation of those credit unions with board members and executives that are part of this retirement wave.

II. 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 the board of directors shall have the general direction and control of the affairs of the FCU.¹³ The board of directors must oversee the credit union's operations to 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.¹⁴ 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.¹⁵ Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.¹⁶ Section 209 of the FCU Act is a plenary grant of regulatory authority to the Board to issue rules and regulations

¹³ 12 U.S.C. 1716b.

¹⁴ 12 U.S.C. 1752-1775.

¹⁵ 12 U.S.C. 1766(a).

¹⁶ 12 U.S.C. 1787(b)(1).

necessary or appropriate to carry out its role as share insurer for all FICUs.¹⁷ Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

III. This Proposed Rule

A. Applicability of Proposed Rule

As described in more detail in the following discussion, the proposed regulatory amendments would apply solely to FCUs. FISCUs must comply with any state-specific requirements pertaining to succession planning. However, the Board encourages FISCU boards, to the extent compatible with state law, to undertake succession planning efforts to help ensure continued viability of their credit union.

In addition, the proposed rule would not amend the regulations in 12 CFR part 704, which establishes requirements applicable to federally insured corporate credit unions, since the Board believes these regulations already adequately address succession planning. For example, §704.13(c)(1) requires that the board must ensure that “[s]enior managers ... are capable of identifying, hiring, and retaining qualified staff.” Further, paragraph (c)(2) of the section requires that the board also 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.” 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.

¹⁷ 12 U.S.C. 1789(a)(11).

The proposed rule applies to all FCUs, irrespective of asset size. However, as discussed above, smaller credit unions may be more susceptible to consolidation. Further, data demonstrates that the lack of succession planning is a major cause of credit union mergers.¹⁸ Accordingly, smaller credit unions may be the most likely to benefit from the proposed rule. The Board specifically invites comment from smaller credit unions on the proposed regulatory amendments, as well as other suggestions, to improve credit union succession planning.

B. Proposed Regulatory Amendments

The proposed rule would amend § 701.4, which sets forth the general duties and responsibilities of FCU directors. The proposal would add a new paragraph (e) requiring that FCU directors must establish and adhere to processes for succession planning for key positions. 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.”¹⁹ The FCU bylaws codified in Appendix A of 12 CFR part 701 expand the list of senior FCU executives to include the members of an executive committee and management officials.

The board of directors or an appropriate committee of the board would be required to review and approve a written succession plan regarding the specified FCU executives and officials. The succession plan must, at a minimum, identify the credit union’s key positions,

¹⁸ *Supra*, note 6.

¹⁹ 12 U.S.C. 1761.

necessary competencies and skill sets for those positions, and strategies to identify alternatives to fill vacancies. The board of directors must review the succession plan in accordance with a schedule established by the board, but no less than annually.

In addition, the proposed rule would 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. In making this change, the Board also proposes to reorganize the current contents of paragraph (b)(3) for clarity and grammar. No substantive changes are proposed to the current requirements of § 701.4(b)(3).

C. Current Succession Planning Efforts

This proposed rule is intended to strengthen current succession planning efforts being taken by credit unions, and to require others that have not yet done so to commence their succession planning process. The proposed rule is also consistent with the guidance issued by the other banking agencies to address succession planning.²⁰

The Board is aware that many credit unions have already adopted succession planning strategies and models. The NCUA 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.²¹ In addition, the Board's 2019 final rule on FCU bylaws

²⁰ 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.*"

²¹ [NCUA, *Succession Planning* \(2021\), https://ncua.csod.com/LMS/catalog/Welcome.aspx?tab_page_id=67&tab_id=221000382.](https://ncua.csod.com/LMS/catalog/Welcome.aspx?tab_page_id=67&tab_id=221000382)

promoted succession planning efforts by providing guidance to FCUs on associate director positions.²² The proposed 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 for an eventual election to a director position.²³

D. Minimizing Burden

In designing this proposed rule, the Board has endeavored to minimize the burden on FCUs, especially small FCUs. The proposed regulatory amendments provide FCUs with broad discretion in how to implement the new requirements. For example, while the proposed rule would require succession plans to include certain mandatory elements, the rule neither specifies how the topics should be addressed nor does it otherwise prescribe the contents of the succession plans. Similarly, the proposal would require that directors have a working familiarity with the FCU's succession plan but does not mandate the contents of training to meet this requirement. The expectation is for credit unions to develop a plan and provide training that is consistent with the size and complexity of the credit union. Therefore, smaller credit unions are more likely to have a simple succession plan that only addresses a few key leadership positions. The Board envisions that the examination program would confirm the existence of a succession plan and training. The examination program will defer to a credit union's self-assessment of its succession planning needs and the information contained in the plan, so long as its plan addresses the elements required by the rule.

²² 84 FR 53278 (Oct. 4, 2019).

²³ *Id.* at 53301.

Further, the Board envisions that, as a result of other planning and documentation efforts, many FCUs already have the necessary data and information to complete their succession plans. Rather than undertaking new analysis specifically for the succession plan, FCUs are 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 federally insured credit unions 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.”

The Board is committed to assisting credit unions in implementing their succession plans. For example, the NCUA has posted online training on succession planning through its Learning Management System.²⁴ 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 process. Credit unions with 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. Credit unions are encouraged to make use of these and other available resources in complying with the proposed rule. The NCUA will develop additional guidance, as it deems necessary, to aid credit union succession planning efforts.

²⁴ *Supra*, note 21.

E. Questions for Comment

The Board welcomes comments on all aspects of this proposed rule. It is especially interested in comments addressing ways the NCUA may better support succession planning in small credit unions and suggestions on ways the final rule might minimize burden. In particular, the Board requests public input on the following questions:

1. What do you believe will be the quantified burden imposed by the rule, be it in hours, dollars, or effort?

2. It is anticipated that most FCUs already possess the information needed to comply with the proposed rule, and thus that most FCU will not have to create any new documentation as a result of the rule. Do you agree with this view? Why or why not?

3. As noted, the Board anticipates that the examination program will establish an FCU's compliance with the proposed rule by confirming the existence of a succession plan and training. Do you have any other suggested methods of establishing compliance?

4. This preamble provides that smaller credit unions with less than \$10 million in assets will be the primary beneficiaries of the proposed rule. What benefits do you think smaller credit unions will receive from the Board's adoption of this proposed rule?

5. What benefits do you anticipate larger FCUs will receive from adoption of the proposed rule? For purposes of this question, “larger FCUs” may include FCUs with more than \$10 million in assets or FCUs in another higher asset category.

6. What benefits do you anticipate members will receive from the adoption of the proposed rule?

7. What impact do you believe this rule will have on credit union consolidations?

8. The NCUA believes that the proposed rule will result in benefits for the National Credit Union Share Insurance Fund, to the overall safety and soundness of the credit union system, and to FCU members. If the rule is adopted as is, what would you suggest the NCUA do to test the assumption above?

9. The NCUA reviews all of its existing regulations every three years. The NCUA’s Office of General Counsel maintains a rolling review schedule that identifies one-third of the NCUA’s existing regulations for review each year and provides notice to the public of those regulations under review so the public may have an opportunity to comment.²⁵ In addition, should the NCUA commit to revisiting this rule within a specific period, say after 7 years, at which time the rule would either be rescinded or approved by the Board for renewal? The Board might also choose, at that time to renew the rule but with some revisions.

²⁵ See, <https://www.ncua.gov/regulation-supervision/rules-regulations/regulatory-review>

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.²⁶ For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.²⁷ The Board fully considered the potential economic impacts of the proposed succession planning requirements on small credit unions during the development of the proposed rule. As noted in the preamble, the proposed rule would provide FCUs with discretion in how to implement the new regulatory requirements. For example, the rule does not specify how specific succession plan topics should be addressed. Similarly, the proposal does not mandate the contents of succession plan training. Accordingly, the NCUA certifies that it would not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or amends an existing burden.²⁸ For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure, or recordkeeping requirement, each referred to as an information collection. The proposed changes to part 701 would establish new information collections in the form of succession policies, plans, and related trainings. These revisions will be addressed in a separate *Federal Register* notice and

²⁶ 5 U.S.C. 603(a).

²⁷ 80 FR 57512 (Sept. 24, 2015).

²⁸ 44 U.S.C. 3501-3520.

will be submitted for approval by the Office of Information and Regulatory Affairs at the Office of Management and Budget.

C. Executive Order 13132 on Federalism

Executive Order 13132²⁹ 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. The proposed rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.³⁰

List of Subjects in 12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination,

²⁹ Executive Order 13132 on Federalism, was signed by former President Clinton on August 4, 1999, and subsequently published in the *Federal Register* on August 10, 1999 (64 FR 43255).

³⁰ Pub. L. 105-277, 112 Stat. 2681 (1998).

Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

By the National Credit Union Administration Board on January 27, 2022.

Melane Conyers-Ausbrooks
Secretary of the Board

For the reasons stated in the preamble, the NCUA proposes to amend 12 CFR part 701, as follows:

PART 701 – ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNION

1. The authority 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, 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. In § 701.4, revise paragraph (b)(3) and add paragraph (e) 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.* (1) *General.* A Federal credit union board of directors must establish a process to ensure proper succession planning to include officers of the board, management officials, executive committee members, supervisory committee members, and (where provided for in the bylaws) the members of the credit committee, as described in Appendix A.

(2) *Board responsibilities.* The board of directors or an appropriate committee of the board must:

(i) Approve a written succession plan that covers the individuals described in paragraph (e)(1) of this section; and

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

(3) *Succession plan contents.* The succession plan must, at a minimum, identify key positions covered by the plan, necessary general competencies and skills for those positions, and strategies to identify alternatives to fill vacancies.