

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 725

RIN 3133-AF18

#### Central Liquidity Facility

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** In response to the COVID-19 pandemic, the NCUA Board (Board) is issuing this interim final rule to provide credit unions with greater access to liquidity to help ensure they remain operational throughout the crisis. This rule will make it easier and more attractive for credit unions to join the NCUA's Central Liquidity Facility (Facility). In addition, this rule makes several amendments to conform to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

**DATES:** This rule is effective on April 29, 2020, except for the amendment to § 725.6 in amendatory instruction 5, which is effective April 29, 2020 until January 1, 2022. Comments must be received on or before June 29, 2020.

**ADDRESSES:** You may submit written comments, identified by RIN 3133-AF15, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (703) 518-6319. Include "[Your Name]—Comments on Interim Final Rule: CLF" in the transmittal.

- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

*Public inspection:* You may view all public comments on the Federal eRulemaking Portal at <http://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.

*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.

#### FOR FURTHER INFORMATION CONTACT:

Owen Cole, Associate Director of the Office of Examination and Insurance; or Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428. Owen Cole can also be reached at (703) 518-6621, and Justin Anderson can be reached at (703) 518-6556.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Facility, a mixed-ownership government corporation within the NCUA, established in 1979, serves as a liquidity source for its member credit unions.<sup>1</sup> Its purpose is to improve general financial stability by meeting the liquidity needs of credit unions and thereby encouraging savings, supporting consumer and mortgage lending, and providing basic financial resources to all segments of the economy.

Section 1795f of the Federal Credit Union Act (the FCU Act), among other things, gives the Board the authority to prescribe the manner in which the general business of the Facility shall be conducted and prescribe rules and regulations to carry out the Facility-related provisions of the FCU Act.<sup>2</sup> Under this authority, the Board is issuing this interim final rule to enhance liquidity for credit unions during the COVID-19 pandemic and to make regulatory changes that cohere to the CARES Act.<sup>3</sup>

The Board emphasizes that while some of the amendments in this rule are temporary, they will afford significant liquidity support to the entire credit union system. However, action is needed on the part of credit unions that are not already members of the Facility in order for this liquidity solution to reach its greatest potential. *The Board urges all natural person and corporate credit unions that do not already belong to the Facility to join.*

<sup>1</sup> Public Law 95-630, 92 Stat 3641 (Nov. 10, 1978), codified at 12 U.S.C. 1795, *et seq.*

<sup>2</sup> 12 U.S.C. 1795f.

<sup>3</sup> *Coronavirus Aid, Relief, and Economic Security Act*, Public Law 116-136, 134 Stat 281 (March 27, 2020).

The Board underscores that growing the Facility's membership in turn enhances its ability to borrow increasingly greater amounts of funds to provide liquidity to the credit union system. By significantly increasing access to external funding, the Facility can better fulfill its central purpose to improve general financial stability by meeting the liquidity needs of credit unions. The Facility is able to borrow from the U.S. Treasury. The Facility's ability to borrow from the U.S. Treasury's Federal Financing Bank was an essential element of the NCUA's and the credit union system's ability to work through the last economic crisis.

The Board notes that several of the changes in this interim final rule are conforming changes based on the recently enacted CARES Act, which temporarily amends the FCU Act. The CARES Act specifically sunsets these changes to the FCU Act. As such, the changes in this rule that correspond to the CARES Act will also sunset in accordance with the CARES Act on December 31, 2020. To provide clarity and transparency, the Board has included these temporary changes in this rule and explains what will occur upon the sunset of the aforementioned amendments.

The specific amendments made by this interim final rule are detailed in the next section.

##### II. Amendments

The following is a section-by-section analysis of the changes in this interim final rule.

###### Part 725

###### A. Definitions

In accordance with the CARES Act, the Board is amending the definition of "Liquidity needs" to remove the words "primarily serving natural persons." This change is intended to mirror the statutory change in the CARES Act, and clarifies that liquidity needs are not limited to only natural person credit unions, but may also include those of corporate credit unions or a corporate credit union group. This will allow corporate credit unions to obtain loans for their own liquidity needs. The Board notes that this amendment will sunset in accordance with the CARES Act on December 31, 2020.

## B. Regular Membership Requirements

The Board is eliminating the six-month waiting period on obtaining Facility advances for a credit union that becomes a regular member. Currently § 725.3 provides that, with limited exception, any credit union that becomes a regular member of the Facility may not receive Facility advances, without approval of the NCUA Board, for a period of six months after becoming a member.

The Board believes it is important to remove this restriction in light of the overarching need to make such liquidity assistance timely. The advantages of accelerating liquidity-need loans to new members outweigh the practical reasons that having the waiting period affords to the Facility's operations.

## C. Agent Membership

In accordance with the CARES Act, the Board is amending the nature of the requirement for a corporate credit union or group of corporate credit unions to subscribe to the capital stock of the Facility in an amount equal to one-half of 1 percent of the paid-in and unimpaired capital and surplus of all of the corporate credit union's or corporate credit union group's natural person credit union members. This change, which mirrors the statutory change in the CARES Act, allows the Board, in its sole discretion, to determine which grouping of natural person member credit unions of the applying corporate credit union or corporate credit union group are considered covered by the Agent's membership in the Facility. In turn, this approved group is the basis for calculating the amount of Facility capital stock the corporate credit union or corporate credit union group is required to purchase. This will provide a corporate credit union with the flexibility to subscribe to the capital stock of the Facility up to the maximum extent it can afford to do so.

The Board notes that this amendment will sunset in accordance with the CARES Act on December 31, 2020. Upon the sunset of this amendment, any corporate credit union or corporate credit union group that became an agent member under this provision must, within one-year from the sunset date, either:

1. Purchase Facility stock in accordance with the terms of the regulation as written post sunset of the CARES Act amendments; or
2. terminate its membership in the facility.

The Board believes that these two options take into account the temporary nature of the CARES Act amendments,

while not causing undue disruption to the operations of a corporate credit union or corporate credit union group that joined the Facility under the CARES Act amendments. The Board, however, invites comments on the one-year time frame to complete the aforementioned actions. The Board requests specific comment on determining if this timeframe should be shorter or longer.

## D. Agent Member Borrowing

To effectuate the intent of the CARES Act in a safe and sound manner, the Board is including a clarifying amendment to § 725.4. Such amendment clarifies that an agent member may borrow from the Facility for its own liquidity needs, but, to do so, such agent must first subscribe to the capital stock of the Facility in an amount equal to one-half of 1 percent of the Agent's own paid-in and unimpaired capital and surplus.<sup>4</sup> The Board believes this requirement will ensure that Facility advances for an agent's own needs are consistent with the design and intent of how the Facility grants extensions of credit to its natural person credit union members. The Board notes that agents have total discretion as to whether to subscribe to the capital stock and borrow for their own needs. This is a business decision for an agent to make and not doing so will not affect its standing with the Facility or impact its ordinary duties and responsibilities in fulfilling the needs of its agent group. The Board believes expanding the liquidity resources of corporate credit unions, even for a temporary period, is an added measure of liquidity strength for the system as a whole.

In addition, the Board is amending § 725.17(b)(2) to clarify that an agent may apply for a Facility advance based on its own liquidity needs.

Finally, the Board notes that the foregoing amendments will sunset in accordance with requirements of the CARES Act on December 31, 2020. As such, the Board is including language to clarify the ramifications of the sunset of this provision. Specifically, this interim final rule provides that upon sunset of this provision, an agent must:

- (1) Not request any additional Facility advances for its own liquidity needs; and
- (2) continue to follow the terms of the Facility advance agreement entered into between the agent and the Facility.

<sup>4</sup> A credit union is required to pay into the Facility one-half of the amount required by the regulations and to hold the other one-half in liquid assets on its balance sheet.

The Board believes the inclusion of this provision appropriately accounts for the temporary nature of this provision, while assuring agents that loan agreements made during this period will not also be subject to a sunset provision or be terminated before maturity. The Board believes this strikes the appropriate balance between Congressional intent and the tenets of contract law.

In addition to the aforementioned changes, the Board is also making cohering changes to §§ 725.18(a) and 725.19(b) to clarify the requirements applicable to a Facility advance to an agent for such agent's own needs. The Board notes that such changes apply to these agent loans the same creditworthiness and collateral requirements that currently apply to Facility advances to regular members. The Board believes these changes are necessary because a Facility advance to an agent for its own needs will be similar to a facility advance to a regular member, and, therefore, should be subject to the same terms and conditions.

## E. Termination of Membership

The Board is amending the waiting periods for a credit union to terminate its membership in the Facility between April 29, 2020 and January 1, 2022. Under the FCU Act and current § 725.6 of the NCUA's regulations, a credit union member may terminate its membership after a specified amount of time based on that credit union's stock subscription in the Facility. Currently, a member of the Facility may terminate its membership:

1. Six months after notifying the NCUA Board in writing of its intention to do so, if the member's stock subscription constitutes less than 5 percent of total subscribed Facility stock; or

2. Twenty-four months after notifying the NCUA Board in writing of its intention to do so, if the member's stock subscription constitutes 5 percent or more of total subscribed Facility stock.<sup>5</sup>

The Board is amending this section of part 725 to temporarily permit a credit union, regardless of its percentage amount of stock subscription, to withdraw from membership in the Facility after notifying the NCUA Board in writing on the sooner of:

- (A) Six months from the date of its written notice to the NCUA Board; or
- (B) December 31, 2020.

Further, any credit union, that remains a member after December 31, 2020, may, under this rule, withdraw

<sup>5</sup> 12 CFR 725.6.

from membership immediately upon notifying the Board in writing of its intent to do so. The Board notes that such immediate withdrawal period will expire on December 31, 2021. After December 31, 2021, the termination requirements of current paragraphs (a) and (b) of this section shall be reinstated and apply to all members. The Board believes that this flexibility is necessary to encourage the greatest number of eligible credit unions to join the Facility.

The Board notes that having waiting periods for stock redemptions is a provision that is designed to prevent unpredictable disruptions in the balance sheet and operations of the Facility. Ordinarily, such waiting periods provide flexibility to the Facility to manage transitions of membership in a way that makes its balance sheet and pro forma financial information more stable and predictable. These are important factors for any financial entity to have so that it can plan its needs and capacity with adequate reliability for its stakeholders. The Board is providing the above redemption flexibilities only during the current COVID-19 pandemic. Given the anticipated temporary nature of this pandemic and the need for increased liquidity during this event, the Board is comfortable that expediting membership termination is both manageable and necessary.

#### F. Collateral Requirements

The Board is reducing the amount of collateral required for certain assets used to secure each Facility advance and each agent loan. Currently, this section of the NCUA's regulations requires that each Facility advance and each agent loan be secured by a first priority security interest in collateral of the credit union with a net book value at least equal to 110% of all amounts due under the applicable Facility advance or agent loan, or by guarantee of the NCUSIF. For the reasons described below, the Board is replacing the 110% requirement with a requirement that a credit union collateralize a Facility advance or Agent loan in accordance with the Facility collateral table posted on the NCUA's website, [www.NCUA.gov](http://www.NCUA.gov). The collateral table varies the required collateral percentages based upon different types of assets, and in some cases requires less than 110%. Depending on the types of assets a member has available to secure an advance request, this may ease the collateral requirements somewhat and permit a greater amount of borrowing overall.

#### G. CARES Act Changes Not Included in This Interim Final Rule

The Board notes that the CARES Act includes two additional amendments to the FCU Act that are not reflected in this rule. Specifically, those changes are as follows.

It considerably increases the Facility's borrowing capacity. The FCU Act normally provides the Facility with the authority to borrow, provided that these obligations do not exceed twelve times the subscribed capital stock and surplus of the Facility (that is, the sum of its retained earnings and capital stock).<sup>6</sup> The CARES Act temporarily increases the multiplier from "twelve times" to "sixteen times." This means that for every \$1 of capital and surplus, the Facility may now borrow \$16. As credit unions that join the Facility only have to pay in one-half of the capital stock subscription amount, this means that for every new dollar paid in of the capital stock subscription amount, the Facility can now borrow \$32.<sup>7</sup> As there is currently no corresponding provision in the NCUA's regulations, the Board is not including any related regulatory change in this interim final rule.

Further, the legislation provides more clarity about the purposes for which the NCUA Board can approve liquidity-needed requests by removing the phrase "the Board shall not approve an application for credit the intent of which is to expand credit union portfolios."<sup>8</sup> The NCUA Board now has more flexibility and discretion to approve applications for Facility members that have made a reasonable effort to first utilize primary sources of funding. This change increases the transparency and efficiency of the loan-approval process by removing doubt about whether a credit union's portfolio is allowed to expand if it borrows from the Facility to meet liquidity needs. The Board notes that part 725 does not use the "expand credit union portfolios" language. Further, the Board believes the current construction of part 725 is flexible enough to encompass this change in the CARES Act without a corresponding regulatory change. However, the Board is including this discussion to alert the public of this

additional flexibility provided by Congress.

### III. Regulatory Procedures

#### A. Administrative Procedure Act

The Board is issuing this interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

The Board believes that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. As discussed above, the Board notes that the COVID-19 crisis is unprecedented. It is a rapidly changing and difficult to anticipate how the disruptions caused by the crisis will manifest themselves within the financial system and how individual credit unions may be impacted. Because of the widespread impact of a pandemic and the speed with which disruptions have transmitted throughout the United States, the Board believes it is has good cause to determine that ordinary notice and public procedure are impracticable and that moving expeditiously in the form of an interim final rule is in the best of interests of the public and the federally insured credit unions that serve that public.

The Board views this crisis as one which has the potential to disrupt liquidity within the system. Liquidity needs are of a nature that if not addressed swiftly and decisively, can translate into rapid financial distress for individual institutions or even the broader system. These actions are proactive steps that are designed to alleviate potential liquidity strains and are undertaken with expedience to ensure the maximum intended effects are in place at the earliest opportunity.

In addition, the Board notes that the provisions in this rule are temporary in nature, and designed specifically to help credit unions affected by the COVID-19 pandemic. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or

<sup>6</sup> See, 12 U.S.C. 1795f(a)(4)(A).

<sup>7</sup> Credit unions have to subscribe to the Facility capital stock in the amount of one half of one percent of the credit union's six month average of paid-in and unimpaired capital and surplus (that is, the total of shares/deposits and undivided earnings). Credit unions only have to remit to the Facility one-half of the subscription amount—that is one-quarter of one-percent of paid-in and unimpaired capital and surplus. The other half may be held by the credit union on call of the NCUA Board.

<sup>8</sup> See, 12 U.S.C. 1795e(a)(1).

recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause. Because the rules relieve a restriction, the interim final rule is exempt from the APA's delayed effective date requirement.

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the Board is interested in the views of the public and requests comment on all aspects of the interim final rule.

#### *B. Congressional Review Act*

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a "major" rule. If a rule is deemed a "major rule" by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds 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.

For the same reasons set forth above, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. In light of current market uncertainty, the Board believes that delaying the effective date of the rule would be contrary to the public interest for the same reasons discussed above.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

#### *C. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection.

The NCUA is amending part 725 to eliminate the six-month waiting period on Facility advances for a credit union that becomes a new regular member. By removing this restriction, the NCUA can provide needed liquidity assistance in an expedited manner. The NCUA is also modifying the waiting period for a credit union to terminate its membership in the Facility with the intent of providing added flexibility to encourage the greatest number of eligible credit unions to join the Facility immediately to help the Agency and the system at large leverage these temporary measures and secure an adequate amount of external liquidity resources. By significantly increasing access to external funding, the Facility can better fulfill its central purpose to improve general financial stability by meeting the liquidity needs of credit unions.

The information collection requirements of part 725 are currently covered by OMB control number 3133-0061. These temporary amendments are estimated to increase the number of respondents from its current estimate of 5 annually to 269 during this period; with a total information collection burden of 691 hours.

NCUA has obtained emergency approval from the Office of Management and Budget for a 6-month period. During this time the Agency will accept public comments on the information collection requirements and take appropriate action in the final request for PRA approval.

*OMB Control Number:* 3133-0061.

*Title of information collection:* Central Liquidity Facility, 12 CFR part 725.

*Estimated number of respondents:* 269.

*Estimated number of responses per respondent:* 4.26.

*Estimated total annual responses:* 1,146.

*Estimated burden per response:* 0.60.

*Estimated total annual burden:* 691.

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 records. Comments regarding the information collection requirements of this rule should be sent to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6018, Alexandria, Virginia 22314; Fax No. 703-519-8579; or Email at [PRAComments@NCUA.gov](mailto:PRAComments@NCUA.gov). Given the limited in-house staff because of the COVID-19 pandemic, email comments are preferred.

#### *D. Executive Order 13132*

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

#### *E. Assessment of Federal Regulations and Policies on Families*

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

#### *F. Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and

publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are "small entities." Similarly, for purposes of the RFA, individual persons are not small entities.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.<sup>9</sup> Accordingly, the NCUA is not required to conduct a regulatory flexibility analysis for the reasons stated above relating to the good cause exemption.

#### List of Subjects in 12 CFR Part 725

Credit unions, Reporting and recordkeeping requirements.

By the NCUA Board on April 13, 2020.

**Gerard Poliquin,**

*Secretary of the Board.*

For the reasons discussed above, the NCUA Board is amending 12 CFR part 725 as follows:

#### PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

■ 1. The authority citation for part 725 continues to read as follows:

**Authority:** 12 U.S.C. 1795f(a)(2).

■ 2. In § 725.2, revise paragraph (i) introductory text to read as follows:

##### § 725.2 Definitions.

\* \* \* \* \*

(i) *Liquidity needs* means the needs of credit unions for:

\* \* \* \* \*

##### § 725.3 [Amended]

■ 3. In § 725.3, remove and reserve paragraph (b).

■ 4. In § 725.4, revise paragraph (a)(2) to read as follows:

##### § 725.4 Agent membership.

(a) \* \* \*

(2) Subscribing to the capital stock of the Facility in an amount equal to:

(i) One-half of 1 percent of the paid-in and unimpaired capital and surplus (as determined in accordance with § 725.5(b) of this part) of all the corporate credit union's or corporate credit union group's member natural person credit unions, except those which are Regular members of the Facility or which have access to the Facility through, and are included in the stock subscription of, another Agent (a natural person credit union which is a member of more than one Agent member of the Facility must designate through which Agent it will deal with the Facility, and the designated Agent will be responsible for including the capital and surplus of such credit union in the calculation of its stock subscription). Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility;

(ii) From April 29, 2020 until December 31, 2020, one-half of 1 percent of the paid-in and unimpaired capital and surplus (as determined in accordance with § 725.5(b) of this part) of such credit union members of the corporate credit union or corporate credit union group as the Board may determine in its sole discretion, except those which are Regular members of the Facility or which have access to the Facility through, and are included in the stock subscription of, another Agent (a natural person credit union which is a member of more than one Agent member of the Facility must designate through which Agent it will deal with the Facility, and the designated Agent will be responsible for including the capital and surplus of such credit union in the calculation of its stock subscription). Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility. A corporate credit union or corporate credit union group that became an Agent member of the Facility under this paragraph shall, after December 31, 2020, but before January 1, 2022, either:

(A) Purchase Facility stock in accordance with the terms of paragraph (a)(2)(i) of this section or

(B) Terminate its membership in the facility.

(iii) From April 29, 2020 until December 31, 2020, if borrowing for its own liquidity needs, one-half of 1 percent of the Agent's own paid-in and

unimpaired capital and surplus. Upon approval of the application, the Agent shall forward funds equal to one-half of this stock subscription to the Facility. This amount shall be in addition to the amounts required by paragraph (a)(2)(i) or (ii) of this section, if a corporate credit union or corporate credit union group joined the facility as an Agent and intends to borrow for its own liquidity needs. Any corporate credit union or corporate credit union group that received a Facility advance for its own liquidity need under the temporary requirements set forth in this paragraph must, as of January 1, 2021 and thereafter:

(A) Not request any additional Facility advances for its own liquidity needs; and

(B) Continue to follow the terms of the Facility advance agreement entered into between the Agent and the Facility.

\* \* \* \* \*

■ 5. In § 725.6, effective April 29, 2020 until January 1, 2022, paragraphs (a) and (b) are stayed and paragraph (e) is added.

The addition reads as follows:

##### § 725.6 Termination of membership.

\* \* \* \* \*

(e) The following requirements apply to a credit union's termination of membership in the Facility:

(1) A member, regardless of its amount of stock subscription, may withdraw from membership in the Facility after notifying the NCUA Board in writing on the sooner of:

(i) Six months from the date of its written notice to the NCUA Board; or

(ii) December 31, 2020.

(2) Any credit union that does not elect to withdraw from membership in the Facility during the time periods prescribed in paragraph (e)(1) of this section, may immediately withdraw from membership in the Facility after notifying the NCUA Board in writing of its intention to do so from January 1, 2021, to January 1, 2022. As of January 1, 2022, the requirements of paragraphs (a) and (b) of this section, as in effect on March 1, 2020, shall apply.

(3) The Facility will process requests under this paragraph (e) upon demand and deliver funds as soon as practicable, allowing for the time necessary for settlement and transfer of funds in these transactions.

■ 6. In § 725.17, revise paragraph (b)(2) to read as follows:

##### § 725.17 Applications for extensions of credit.

\* \* \* \* \*

(b) \* \* \*

<sup>9</sup> 5 U.S.C. 553(a).

(2) The Agent's application shall be based on the following:

(i) Approved applications to the Agent by its member natural person credit unions for pending loans to meet liquidity needs; or

(ii) Outstanding loans previously made by the Agent to meet liquidity needs of its member natural person credit unions; or

(iii) Such other demonstrable liquidity needs as the NCUA Board may specify; or

(iv) The applicant Agent's own liquidity needs.

■ 7. In § 725.18, revise paragraphs (a) and (d) to read as follows:

**§ 725.18 Creditworthiness.**

(a) Prior to Facility approval of each application of a Regular member for a Facility advance or an Agent member for a Facility advance for such Agent member's own need, the Facility shall consider the creditworthiness of such member.

\* \* \* \*

(d) A credit union (whether a Regular member of the Facility, Agent member, or a member natural person credit union) which does not meet the Facility's creditworthiness standards may be limited in or denied the use of advances for its liquidity needs.

■ 8. In § 725.19, revise paragraphs (a) and (b) to read as follows:

**§ 725.19 Collateral requirements.**

(a) Each Facility advance and each Agent loan shall be secured by a first priority security interest in collateral of the credit union with a net book value at least equal to an amount as required by the Facility's collateral table, published at [www.NCUA.gov](http://www.NCUA.gov), or by guarantee of the National Credit Union Share Insurance Fund.

(b) The Facility may accept as collateral for each Facility advance to a Regular member or to an Agent member, for such Agent member's own needs, a security interest in all assets of the member; provided however, that the value of any assets in which any third party has a perfected security interest that is superior to the security interest of the Facility shall be excluded for purposes of complying with the requirements of paragraph (a) of this section.

\* \* \* \*

[FR Doc. 2020-08101 Filed 4-28-20; 8:45 am]

BILLING CODE 7535-01-P

**DEPARTMENT OF THE TREASURY**

**Office of Investment Security**

**31 CFR Parts 800 and 802**

**RIN 1505-AC65**

**Filing Fees for Notices of Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States**

**AGENCY:** Office of Investment Security, Department of the Treasury.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The interim rule establishes a fee for parties filing a formal written notice of a transaction for review by the Committee on Foreign Investment in the United States (CFIUS). In establishing a fee for such notices, this rule implements section 1723 of the Foreign Investment Risk Review Modernization Act of 2018, which amends section 721 of the Defense Production Act of 1950 to allow CFIUS to collect fees. This interim rule includes a request for additional public comment.

**DATES:**

*Effective date:* The interim rule is effective on May 1, 2020.

*Comment date:* The Department of the Treasury (Treasury Department) is seeking written comments from the public on the interim rule, which must be received by June 1, 2020.

**ADDRESSES:** Written comments on the interim rule may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at <https://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make the comments available to the public.

- *Mail:* Send to U.S. Department of the Treasury, Attention: Laura Black, Director of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

We encourage comments to be submitted via <https://www.regulations.gov>. Please submit comments only and include your name and company name (if any), and cite “Filing Fees for Notices of Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons

*Involving Real Estate in the United States”* in all correspondence. In general, the Treasury Department will post all comments to <https://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** For questions about this rule, contact: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; David Shogren, Senior Policy Advisor; or James Harris, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622-3425; email: [CFIUS.FIRMA@treasury.gov](mailto:CFIUS.FIRMA@treasury.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 9, 2020, the Department of the Treasury (Treasury Department) published a notice of proposed rulemaking amending 31 CFR part 800 (Part 800) and 31 CFR part 802 (Part 802) to establish filing fees. 85 FR 13586 (March 9, 2020). (The Office of the Federal Register made the proposed rule available for public inspection on March 4, 2020.) The proposed rule proposed establishing a filing fee for “covered transactions” under Part 800 and “covered real estate transactions” under Part 802 that are filed with the Committee on Foreign Investment in the United States (CFIUS or the Committee) as formal written notices. The proposed rule created a new subpart K on filing fees in each of Part 800 and Part 802, and made a limited number of revisions to other related sections of those regulations. Public comments on the proposed rule were due by April 3, 2020 and are discussed below. This interim rule establishes the filing fees for Part 800 and Part 802—effective May 1, 2020—and also allows the public an additional opportunity to comment on the rule.

In establishing a fee for formal written notices, this rule implements section 1723 of the Foreign Investment Risk Review Modernization Act of 2018 (FIRMA), which amends section 721 of the Defense Production Act of 1950 (DPA) to allow CFIUS to collect fees. FIRMA authorizes the collection of