

higher limit than that allowed under State law. Instances in which it would seem appropriate to seek a waiver could include a situation where, for example, the borrowing has minimal risk associated with it but the FISCUs are unable to enter into the transaction because of the regulatory prohibition. Circumstances presenting minimal risk could be, for example, a transaction where the FISCUs are acting as a co-borrower with a member and the member has provided collateral sufficient to cover its obligation if the member defaults on the loan. The waiver process will permit regional directors to take into consideration the circumstances of the FISCUs, its community, and members, and provide additional flexibility to address particular needs or benefits on a case-by-case basis. The proposed regulation contemplates that FISCUs wishing to engage in particular transactions, programs or projects, which would otherwise take their borrowings above the regulatory limitation, will have the opportunity to apply for a waiver, which will include a thorough explanation of the business purposes and strategies the FISCUs have in place to mitigate risk, so that regional directors may make an informed determination regarding safety and soundness.

To apply for a waiver, an FISCUs must submit its request to the appropriate regional director. The request must include a detailed analysis of the safety and soundness implications of the waiver, a proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation, a letter from the State regulator approving the request, and an explanation demonstrating the need for a higher limit. The regional director will approve the waiver request if he or she determines that the proposed borrowing limit will not adversely affect the safety and soundness of the FISCUs.

### C. Regulatory Procedures

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The

proposal authorizes FCUs to enter into surety and guaranty agreements and permits FISCUs to request a waiver from the maximum borrowing limitation. It is unlikely that small credit unions will participate in either of these activities. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

#### *Paperwork Reduction Act*

The NCUA Board has determined that the proposal that would allow FISCUs to file for a waiver from the borrowing limitations in § 741.2 is covered under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review.

The NCUA Board estimates it will take an FISCUs 8 hours on average to complete a waiver request. The NCUA Board also estimates, based on past interest in increased borrowing authority, that two FISCUs per year will request a waiver. Based on this, the NCUA Board estimates that the proposed rule will have an estimated net burden of 16 additional hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimate on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

*Comments should be sent to:* OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Joseph Lackey, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule will apply directly to federally insured state-chartered credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect on the States, on the connection between the National

government and the States, or on the distribution of power and responsibilities among the various levels of Government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

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

### D. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

### List of Subjects

#### *12 CFR Part 701*

Credit unions.

#### *12 CFR Part 741*

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on September 24, 2003.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR parts 701 and 741 as follows:

### **PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

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

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

2. Add new § 701.20 to read as follows:

#### **§ 701.20 Suretyship and guaranty.**

(a) *Scope.* This section authorizes a Federal credit union to enter into a suretyship or guaranty agreement as an incidental powers activity. This section does not apply to the guaranty of public deposits or the assumption of liability for member accounts.

(b) *Definitions.* A suretyship binds a Federal credit union with its principal