March 16, 2026

Via Federal eRulemaking Portal

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: NCUA Proposed Rule, "Nondiscrimination Requirements," RIN 3133-AF85

Dear Secretary Conyers-Ausbrooks:

I write to offer brief comment on a proposed rule by the National Credit Union Administration (NCUA) Board, involving "a redundant and outdated regulation regarding nondiscrimination in lending."[1] I am a Fellow at the Ethics and Public Policy Center (EPPC), director of EPPC's Administrative State Accountability Project (ASAP), and a former attorney with the Equal Employment Opportunity Commission.

The proposed rule would remove 12 CFR § 701.31, which covers nondiscrimination in lending, appraisals, and advertising (including notices and logos), as well as guidelines for compliance with the Fair Housing Act (FHA) (which prohibits discrimination related to real estate-related loans, appraisals, and advertising).[2] **I support the elimination of 12 CFR § 701.31**.

There are several independent reasons for why NCUA should eliminate the regulation.

First, the regulation is unnecessary because it is redundant (and potentially inconsistent) with other federal laws and regulations, like the FHA, the Equal Credit Opportunity Act (ECOA), and their implementing regulations.[3] Those laws and regulations are more comprehensive and better suited to address nondiscrimination in lending.

Second, the regulation is outdated. Originally, the regulation was intended "to summarize in one place the lending discrimination requirements applicable to [federal credit unions (FCUs)]," but the last substantive change to the regulation was finalized approximately 25 years ago![4] This means that the regulation has not kept pace with relevant case law or FHA regulations. Indeed, within just the last year, the Department of Housing and Urban Development (HUD), the federal

[1] 91 Fed. Reg. 1467, 1467 (Jan. 14, 2026), https://www.federalregister.gov/d/2026-00591.

[2] *See* 91 Fed. Reg. at 1468.

[3] *See* 91 Fed. Reg. at 1467.

[4] 91 Fed. Reg. at 1467.

agency primarily tasked with enforcing the FHA, has proposed significant changes to FHA regulations.[5]

Instead of a formal regulation, requiring regular updates, NCUA could achieve the same goal of summarizing FCUs nondiscrimination obligations through other means. For example, the Board could post relevant nondiscrimination laws and links to FHA and ECOA regulations on a webpage, which could easily and nimbly be updated as necessary. The Board could also issue a Dear Colleague letter about any key updates that are particularly important to flag for FCUs.

Third, I agree with the Board that having a nondiscrimination regulation that is redundant and out-of-date can "cause confusion and unnecessary burden."[6] This is particularly true where, as here, regulations are not statutorily required.[7]

Fourth, eliminating the regulation does not eliminate FCUs' obligations to comply with federal nondiscrimination laws like the FHA and the ECOA. Even without the regulation, FCUs are and will continue to be prohibited from discriminating in lending. I agree with the Board that eliminating this "redundant regulation" does not "weaken[] anti-discrimination protections."[8]

Finally, eliminating the regulation aligns with President Trump's executive orders on deregulation. EO 14192, "Unleashing Prosperity Through Deregulation," seeks to "alleviate unnecessary regulatory burdens placed on the American people."[9] EO 14219, "Ensuring Lawful Governance and Implementing the President's 'DOGE' Deregulatory Initiative," directs agencies to rescind regulations including those that are "not authorized by clear statutory authority," "impose significant costs upon private parties that are not outweighed by public benefits," and "impose undue burdens on small business and impede private enterprise and entrepreneurship."[10]

For these reasons, **NCUA should finalize the proposed rule**.

Sincerely,

Rachel N. Morrison, J.D.
Fellow and Director
Administrative State Accountability Project
Ethics & Public Policy Center

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[5] *See* HUD, Affirmatively Furthering Fair Housing Revisions, 90 Fed. Reg. 11020 (Mar. 3, 2025), https://www.federalregister.gov/d/2025-03360; HUD, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, 91 Fed. Reg. 1475 (Jan. 14, 2026), https://www.federalregister.gov/d/2026-00590.

[6] 91 Fed. Reg. at 1467.

[7] *Cf.* 91 Fed. Reg. at 1467 ("The preamble to the 1989 final rule stated, the 'NCUA is not required by either the Fair Housing Act or the Equal Credit Opportunity Act to promulgate regulations.'" (quoting 54 FR 46222 (Nov. 2, 1989))).

[8] 91 Fed. Reg. at 1467.

[9] 90 Fed. Reg. 9065 (Jan. 31, 2025), https://www.federalregister.gov/d/2025-02345.

[10] 90 Fed. Reg. 10583 (Feb. 19, 2025), https://www.federalregister.gov/d/2025-03138.