



Comment Call (14-05) NCUA Regulatory Review 2014

Impact: Federal and State Chartered Credit Unions

Relevant Department: CEO, COO, CFO, Information Technology & Lending

Priority Level: *Medium*

Background

The National Credit Union Administration (NCUA) reviews all of its existing regulations every three years. The NCUA maintains a rolling review schedule that identifies one – third of its regulations for review each year and provides notice to the public of those regulations under review so the public may comment on possible amendments or improvements to the rules.

Based on the NCUA’s Office of General Counsel notification the following regulations will be reviewed in 2014.

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| 12 CFR 748 | Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts and Bank Secrecy Act Compliance |
| 12 CFR 749 | Records Preservation Program and Appendices – Record Retention Guidelines; Catastrophic Act Preparedness Guidelines |
| 12 CFR 750 | Golden Parachute and Indemnification Payments |
| 12 CFR 760 | Loans in Areas Having Special Flood Hazards |
| 12 CFR 761 | Registration of Residential Mortgage Loan Originators |
| 12 CFR 790 | Description of NCUA; Request for Agency Action |
| 12 CFR 791 | Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings |
| 12 CFR 792 | Requests for Information under the Freedom of Information Act and Privacy Act; and by Subpoena; Security Procedures for Classified Information |
| 12 CFR 793 | Tort Claims Against the Government |
| 12 CFR 792 | Enforcement of Nondiscrimination of the Basis of Handicap in Programs or Activities Conducted by the National Credit Union Administration |
| 12 CFR 796 | Post-Employment Restrictions for Certain NCUA Examiners |
| 12 CFR 797 | Procedures for Debt Collection |

The proposal to review the regulations can be found here:

<http://www.ncua.gov/Legal/Documents/Regulations/RegulatoryReview.pdf>

Comments on the regulations are due by ***August 4, 2014***.

Summary of the Proposed Rules

Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts and Bank Secrecy Act Compliance

Section 501(b) of the Gramm-Leach Bliley Act required the NCUA to establish appropriate standards for credit unions subject to its jurisdiction that include administrative, technical, and physical safeguards to protect the security and confidentiality of member information. Accordingly, the NCUA amended Part 748 of its rules to require credit unions to develop appropriate security programs, and issued appendix A, reflecting its expectation that every federally insured credit union would develop an information security program designed to:

1. Ensure the security and confidentiality of member information;
2. Protect against any anticipated threats or hazards to the security or integrity of such information; and
3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any member.

B. Risk Assessment and Controls

1. Appendix A directs every credit union to assess the following risks, among others, when developing its information security program:
 - a. Reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of member information or member information systems;
 - b. The likelihood and potential damage of threats, taking into consideration the sensitivity of member information; and
 - c. The sufficiency of policies, procedures, member information systems, and other arrangements in place to control risks.

Records Preservation Program and Appendices – Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

Federally insured credit unions are obligated to maintain a records preservation program to identify, store and reconstruct vital records in the event the credit union's records are destroyed as well as procedures on how to restore vital member services. All credit unions must have a written program that includes plans for safeguarding records and reconstructing vital records. Appendix A to this rule provides guidance concerning the appropriate length of time credit unions should retain various types of operational records. Appendix B to this part also provides guidance for developing a program for responding to a catastrophic act to ensure duplicate vital records can be used for restoration of vital member services.

Golden Parachute and Indemnification Payments

Federally insured credit unions, including federally and state chartered natural person credit unions and Federally and state chartered corporate credit unions are generally limited and/or prohibited under certain circumstances from entering into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties.

Loans in Areas Having Special Flood Hazards

NCUA Part 760, Loans in Areas Having Special Flood Hazards, is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The part is applicable to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency (FEMA) to have special flood hazards.

Registration of Residential Mortgage Loan Originators

The rules formerly at 12 CFR 761 have been republished by the Consumer Financial Protection Bureau under 12 CFR 1007, "S.A.F.E. Mortgage Licensing Act – Federal Registration of Residential Mortgage Loan Originators (Regulation G)."

Description of NCUA; Requests for Agency Action

Part 790 provides the description of the NCUA's organization and the procedures for public requests for action by the NCUA Board. This portion of the NCUA rules pertains to the practices of the NCUA only and does not apply to credit union operations.

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

Part 791 of the NCUA Rules contains the rules of procedure governing how the NCUA Board conducts its business. These rules concern the Board's exercise of its authority on behalf of the NCUA; the conduct, scheduling and subject matter of Board meetings; and the recording of Board action.

Requests for Information under the Freedom of Information Act (FOIA) and Privacy Act, and by Subpoena; Security Procedures for Classified Information

Part 792 describes the procedures that must be followed to obtain records from the NCUA under the Freedom of Information Act. Except for records that are exempt from public disclosure under the Freedom of Information Act, or are promptly published and copies are available for purchase, NCUA routinely makes the following five types of records available for inspection and copy.

- a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;
- b) Statements of policy and interpretations which have been adopted by the agency but not published in the Federal Register
- c) Administrative staff manuals and instructions to staff that affect a member of the public;
- d) Copies of all records, regardless of form or format, which have been released after March 31, 1997, in response to a FOIA request and which, because of the nature of their subject matter, NCUA determines have been or are likely to become the subject of subsequent requests; and
- e) Indices of the documents referred to in this paragraph.

Tort Claims against the Government

Part 793 applies only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671-2680, accruing on or after January 18, 1967, for money damages against the United States for damage to or loss of property or personal injury or death caused by negligent or wrongful act or omission of any employee of the National Credit Union Administration while acting within the scope of his office of employment.

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Credit Union Administration

Part 794 effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service. This part applies to all programs or activities conducted by the NCUA.

Post-Employment Restrictions for Certain NCUA Examiners

Part 796 identifies those NCUA employees who are subject to the special, post-employment restrictions in section 1786(w) of the Act and implements those restrictions as they apply to NCUA employees.

For purposes of this part, an NCUA employee is considered to be the "senior examiner" for a federally insured credit union if the employee:

- (a) Has been authorized by NCUA to conduct examinations or inspections of federally insured credit unions on behalf of NCUA;

- (b) Has continuing, broad, and lead responsibility for examining or inspecting that federally insured credit union;
- (c) Routinely interacts with officers or employees of that federally insured credit union; and
- (d) Devotes a substantial portion of his or her time to supervising or examining that federally insured credit union.

Procedures for Debt Collection

Part 797 of the NCUA procedures for the collection of certain debts owed to the United States applies to collections by the NCUA from:

- Federal employees who are indebted to NCUA;
- Employees of the NCUA who are indebted to other agencies or the NCUA; and
- Former federal employees who are indebted to the NCUA.

This part does not apply to debts or claims arising under the Internal Revenue code of 1986, the Social Security Act or the tariff laws of the United States

Conclusion

NCUA's goal is to ensure all of their regulations are clearly articulated and easily understood. With that being said, the NCUA encourages public comment on all aspects of the rules up for review in 2014, including substantive suggestions for regulatory changes.

Comment Letters

Please submit a Comment Letter to:

Regulatory Review 2014
Office of General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

E-mail: OGCMAIL@NCUA.GOV, include – “Regulatory Review (2014)” in the subject line