

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCY: National Credit Union Administration

ACTION: Notice of regulatory review; request for comments

SUMMARY: The NCUA Board is beginning a review of its regulations to reduce burden imposed on federally-insured credit unions, as required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. As required by section 2222, NCUA has categorized its regulations for the purpose of the review and proposes to publish categories of regulations for review between now and 2006. The categories, and the regulations that NCUA considers to be part of those categories, are detailed below. This review presents a significant opportunity to consider the possibilities for burden reduction among groups of similar regulations. NCUA welcomes comment on the categories, the order of review and all other aspects of the project in order to maximize its effectiveness.

Today, NCUA is publishing its first in a series of public notices, comprising two of the categories – “Applications and Reporting,” and “Powers and Activities” -- for public comment to identify outdated, unnecessary, or burdensome regulatory requirements imposed on federally-insured credit unions. Since NCUA will publish a series of requests for comment on the remaining categories, it is not recommended that burden reduction comments be submitted now for any regulations in other categories.

DATES: Comment must be received on or before October 1, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. E-mail comments to regcomments@ncua.gov. Please send comments by one method only. Because of the number of regulatory matters for which NCUA may be receiving comments during the time this comment period is open, we suggest commenters identify comments in response to this notice by including “EGRPRA” in a subject or reference line in their comments.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress enacted section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) (Pub. L. 104-208) as part of an effort to minimize unnecessary government regulation consistent with safety and soundness, consumer protection, and other public policy goals. Under section 2222 (12 U.S.C. 3311), NCUA and the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (Agencies) must review their regulations to reduce burden on insured depository institutions. We are required, jointly or individually, to categorize regulations by type, such as "consumer regulations" or "safety and soundness" regulations. Once we establish the categories, we must provide notice and ask for public comment on one or more of these regulatory categories. In drafting this notice, the NCUA participated as part of the EGRPRA planning process with the other Agencies. Because of the unique circumstances of federally-insured credit unions and their members, NCUA is issuing a separate notice from the Agencies. NCUA's notice is consistent and comparable with the Agency's notice, except on issues that are unique to credit unions. Section 2222 requires that NCUA ask the public to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome. NCUA must issue these publications for comment at regular intervals such that all of its regulations are published within a 10-year cycle. The first publication cycle will end in September 2006. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.

Section 2222 requires a two-part regulatory response. First, NCUA must publish in the Federal Register a summary of the comments received, identifying the significant issues raised and discussing those issues. Second, NCUA must "eliminate unnecessary regulations to the extent that such action is appropriate." NCUA and the Agencies may prepare the regulatory response individually or jointly.

Section 2222 further requires the FFIEC to submit a report to the Congress within 30 days after NCUA and the Agencies publish the comment summary and discussion in the Federal Register. This report must summarize any significant issues raised by the public comments and the relative merits of those issues. The report also must analyze whether the appropriate federal financial regulator involved is able to address the regulatory burdens associated with the issues by regulation, or whether the burdens must be addressed by legislation.

II. The EGRPRA Review's Special Focus

The regulatory review required by section 2222 provides a significant opportunity for the public and NCUA to step back and look at groups of related regulations and identify possibilities for streamlining. The EGRPRA review's overall focus on the "forest" of regulations will offer a new perspective in identifying opportunities to reduce regulatory burden. Of course, reducing regulatory burden must be consistent ensuring the continued safety and soundness of federally-insured credit unions and appropriate consumer protections.

EGRPRA also recognizes that burden reduction must be consistent with NCUA's statutory mandates, many of which currently require certain regulations. One of the significant aspects of the EGRPRA review program is the recognition that effective burden reduction in certain areas may require legislative change. NCUA will be soliciting comment on, and reviewing the comments and regulations carefully for, the relationship among burden reduction, regulatory requirements and statutory mandates. This will be a key aspect of the report back to Congress.¹

The combination of considering the relationship of regulatory and statutory change on regulatory burden with the section 2222 requirement for grouping regulations by type provides the possibility for particularly effective burden reduction. It may be possible to identify statutes and regulations that share similar goals or complementary methods of compliance monitoring such that the compliance requirements could be combined and overlapping requirements could be eliminated. For example, it may be possible to combine certain types of applications to eliminate duplication.

The EGRPRA review can also significantly contribute to the NCUA's on-going efforts to reduce regulatory burden. For example, since 1987, a formally adopted NCUA policy has required the Board to review each of its regulations at least once every three years with a view toward eliminating, simplifying, or otherwise easing the burden of each regulation.²

Further, NCUA addresses the issue of regulatory burden every time it proposes and adopts a rule. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and internal agency policies, NCUA examines each rulemaking to minimize the burdens it might impose on the industry and considers various alternatives.

NCUA will use both the EGRPRA review and its individual reviews to identify and reduce burdens on "small" institutions. More than half of federally-insured credit unions are small -- having \$10 million in assets or less -- as defined by NCUA in IRPS 03-2. We are particularly concerned about burden on small institutions. When a new regulation is created or an old regulation is changed, small credit unions must devote a large percentage of their staffs' time to review the regulation to determine if and how it will affect them. Compliance with a regulation also can take large amounts of time that cannot be devoted to servicing members or business planning. In a large credit union, ensuring regulatory compliance can take many more hours; however, those hours make

¹ Credit unions are also subject to regulations issued by other non-banking agencies, such as rules issued by the Department of Housing and Urban Development (under Real Estate Settlement Procedures Act of 1974) and by the Department of the Treasury (under the Bank Secrecy Act including rules required by the USA Patriot Act). The rules of these other agencies are beyond the scope of the EGRPRA review and the NCUA's jurisdiction. To the extent the NCUA receives comments raising significant issues regarding these related rules, however, it intends to identify the issues in the Report to Congress and will also notify the related agencies of the substance of the relevant comments.

² Interpretive Ruling and Policy Statement (IRPS) 87-2, 52 FR 35231 (September 8, 1987) as amended by IRPS 03-2, 68 FR 32127 (May 29, 2003).

up a much smaller percentage of the credit union's resources. In situations where a regulation is aimed at an activity engaged in primarily by large credit unions, the compliance burden on small credit unions can outweigh its benefit.

III. NCUA's Proposed Plan

NCUA must categorize its regulations by "type." Section 2222 gives it authority to determine categories, and suggests two possible categories: "consumer regulations" and "safety and soundness." NCUA has regulations on more than 25 subjects covering a wide variety of areas from capital maintenance to the privacy of consumer financial information. A few of these regulations have been issued jointly with the other Agencies and are as uniform as possible. The majority of NCUA's regulations are issued independently by NCUA and apply only to federally-insured credit unions.

NCUA proposes to seek comments on 10 categories of its regulations which impose burden on federally-insured credit unions, including regulations that apply only to federal credit unions, between now and 2006.³ The categories, in alphabetical order, are: Agency Programs; Applications and Reporting; Capital; Consumer Protection; Corporate Credit Unions; Directors, Officers and Employees; Money Laundering; Powers and Activities; Rules of Procedure and Safety and Soundness. NCUA believes that these categories are logical groupings that are not so broad such that the number of regulations presented in any one category would overwhelm potential commenters. The categories also reflect recognized areas of industry interest and specialization or are particularly critical to the health of the credit union system. NCUA recognizes that its regulations could be categorized in other ways and welcomes recommendations about the categories and the regulations placed within them. The Board notes that some regulations, such as lending, pertain to more than one category and are included in all applicable categories.

Joint publication is not required by section 2222. NCUA believes that publishing its rules for public comment separately from the Agencies is the most effective method for achieving EGRPRA's burden reduction goals for federally-insured credit unions. The credit union system is quite different than the banking system. For example, credit unions deal with issues such as membership, credit union service organizations (CUSOs), and corporate credit unions, which are unique to credit union operations. The Agencies have listed four categories: banking operations; community reinvestment; international operations; and securities, which have limited or no applicability in the credit union system. NCUA has included two categories, agency programs and corporate credit unions, which have no applicability in the banking system. Because of these obvious differences, NCUA is publishing its notices separately but maintaining comparability with the Agencies' notices to the extent the issues are the same. NCUA is publishing two categories of rules for burden reduction comment with this notice and

³ Consistent with section 2222's focus on reducing burden on insured institutions, NCUA will not publish its internal organizational and operational regulations to the extent that those regulations impose no, or minimal, burden on insured credit unions.

plans to publish the remaining eight categories in roughly semiannual intervals, with 90-day comment periods for categories under review, through September 2006. NCUA welcomes recommendations on grouping the remaining categories and the order in which to publish them.

After the conclusion of the comment period for each EGRPRA review notice published in the Federal Register, NCUA will review the comments it has received and decide whether further action is appropriate with respect to the categories of regulations included in that notice. In the case of rules that NCUA has issued jointly with the Agencies, NCUA will make that decision jointly with the Agencies. Any rulemaking to amend or revise those rules would similarly be undertaken jointly and will provide the public with an opportunity to comment on any proposed amendment. NCUA will separately determine whether amendments to its own rules are appropriate in light of comments submitted during the EGRPRA review and, if so, will separately initiate a rulemaking to modify its rules.

NCUA has prepared two charts to assist public understanding of the organization of its section 2222 review. The first chart, at V. A., presents the two categories of regulations on which NCUA is requesting burden reduction recommendations in this notice. The two categories are shown in the left column. In the middle column are the subject matters that fall within the categories and in the far right column are the regulatory citations. The second chart, at V. B., presents the remaining eight categories in alphabetical order in a similar format.

IV. Request for Burden Reduction Recommendations About the First Two Categories of Regulations: “Applications and Reporting” and “Powers and Activities”

NCUA is asking the public to identify areas of regulations within two categories – “Applications and Reporting,” and “Powers and Activities” – that impose outdated, unnecessary, or unduly burdensome regulatory requirements on federally-insured credit unions. It is not necessary for the public to provide burden reduction recommendations about categories of rules other than these two categories at this time since NCUA will publish the remaining categories before the end of the first review cycle in 2006. Comments that cite particular provisions or language, and provide reasons why such provisions should be changed, would be most helpful to NCUA’s review efforts. Suggested alternative provisions or language, where appropriate, would also be helpful. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change.

Specific issues for commenters to consider. While all comments related to any aspect of section 2222 are welcome, NCUA invites comment on the following issues:

- **Need and purpose of the regulations.** Do the regulations in these categories fulfill current needs? Have industry or other circumstances changed since a regulation was written such that the regulation is no longer necessary? Have

there been shifts within the industry or consumer actions that suggest a re-focus of the underlying regulations?

Do any of the regulations in these categories impose burdens not required by their authorizing statutes?

- **Need for statutory change.** Do the statutes impose unnecessary requirements? Are any of the statutory requirements underlying these categories redundant, conflicting or otherwise unduly burdensome?
- **Overreaching approaches / flexibility of the regulatory standards.** Generally, is there a different approach to regulating that NCUA could use that would achieve statutory goals while imposing less burden? Do any of the regulations in these categories or the statutes underlying them impose unnecessarily inflexible requirements?
- **Effect of the regulations on competition.** Do any of the regulations in these categories or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry?
- **Reporting, recordkeeping and disclosure requirements.** Do any of the regulations in these categories or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? What, if any, of these requirements could be fulfilled electronically to reduce their burden?
- **Consistency and redundancy.** Do any of the regulations in these categories impose inconsistent or redundant regulatory requirements that are not warranted by the circumstances?
- **Clarity.** Are the regulations in these categories and the underlying statutes drafted in clear and easily understood language? Are there specific regulations or underlying statutes that need clarification?
- **Burden on small insured institutions.** NCUA has a particular interest in minimizing burden on small insured credit unions (those with less than \$10 million in assets). NCUA solicits comment on whether any regulations within these categories should be continued without change, amended or rescinded in order to minimize any significant economic impact the regulations may have on a substantial number of small federally-insured credit unions.

V. A. Regulations about which Burden Reduction Recommendations Are Requested Currently

Category	Subject	Reg. Cite
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1. Applications and Reporting	Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or in Troubled Condition	12 C.F.R. §701.14
	Field of Membership/Chartering	12 C.F.R. §701.1; IRPS 03-1
	Fees Paid by Federal Credit Unions	12 C.F.R. §701.6
	Conversion of Insured Credit Unions to Mutual Savings Banks	12 C.F.R. Part 708a
	Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status	12 C.F.R. Part 708b
	Applications for Insurance	12 C.F.R. §§741.0; 741.3; 741.4; 741.6
	Conversion to a state-chartered credit union	12 C.F.R. §741.7
	Purchase of assets and assumption of liabilities	12 C.F.R. §741.8
2. Powers and Activities		
a. Lending, Leasing And Borrowing	Loans to Members and Lines of Credit to Members	12 C.F.R. §701.21
	Participation Loans	12 C.F.R. §701.22
	Borrowed Funds from Natural Persons	12 C.F.R. §701.38
	Statutory Lien	12 C.F.R. §701.39
	Leasing	12 C.F.R. Part 714
	Member Business Loans	12 C.F.R. Part 723
	Maximum Borrowing	12 C.F.R. §741.2
b. Investment and Deposits	Investment and Deposit Activities	12 C.F.R. Part 703
	Fixed Assets	12 C.F.R. §701.36
	Credit union Service Organizations (CUSOs)	12 C.F.R. Part 712
	Payment on Shares by Public Units and Nonmembers	12 C.F.R. §701.32
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 C.F.R. §701.34
	Share, Share Draft, and Share Certificate Accounts	12 C.F.R. §701.35
	Treasury Tax and Loan Depositories; Depositories and Financial Agents of the Government	12 C.F.R. §701.37
	Refund of Interest	12 C.F.R. §701.24
c. Miscellaneous Activities	Incidental Powers	12 C.F.R. Part 721
	Charitable Contributions and Donations	12 C.F.R. §701.25
	Credit Union Service Contracts	12 C.F.R. §701.26
	Purchase, Sale and Pledge of Eligible Obligations	12 C.F.R. §701.23

V. B. Categories and Regulations about which NCUA Will Seek Comment Later

Category	Subject	Cite
1. Agency Programs	Community Development Revolving Loan Program	12 C.F.R. Part 705
	Central Liquidity Facility	12 C.F.R. Part 725
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 C.F.R. §701.34
2. Capital	Regulatory Flexibility Program	12 C.F.R. Part 742
	Prompt Corrective Action	12 C.F.R. Part 702
3. Consumer Protection	Adequacy of Reserves	12 C.F.R. §741.3(a)
	Nondiscrimination Requirement (Fair Housing)	12 C.F.R. §701.31
	Truth in Savings (TIS)	12 C.F.R. Part 707
	Loans in Areas Having Special Flood Hazards	12 C.F.R. Part 760
	Privacy of Consumer Financial Information	12 C.F.R. Part 716
	Share Insurance	12 C.F.R. Part 745
	Advertising	12 C.F.R. Part 740
	Disclosure of Share Insurance	12 C.F.R. §741.10
	Notice of termination of Excess Insurance Coverage	12 C.F.R. §741.5
	Uninsured Membership Shares	12 C.F.R. §741.9
4. Corporate Credit Unions	Corporate Credit Unions	12 C.F.R. Part 704
5. Directors, Officers and Employees	Loans and Lines of Credit to Officials	12 C.F.R. §701.21(d)
	Reimbursement, Insurance and Indemnification of Officials and Employees	12 C.F.R. §701.33
	Benefits for Employees of Federal Credit Unions	12 C.F.R. §701.19
	Management Official Interlocks	12 C.F.R. Part 711
	Fidelity Bond and Insurance Coverage	12 C.F.R. §713
6. Money Laundering	Report of Crimes or Suspected Crimes	12 C.F.R. §748.1(c)
	Bank Secrecy Act	12 C.F.R. §748.2
7. Rules of Procedure	Liquidation (Involuntary and Voluntary)	12 C.F.R. Parts 709 and 710
	Uniform Rules of Practice and Procedure	12 C.F.R. Part 747 Subpart A
	Local Rules of Practice and Procedure	12 C.F.R. Part 747 Subpart B
8. Safety & Soundness	Lending	12 C.F.R. 701.21
	Investments	12 C.F.R. Part 703
	Supervisory Committee Audits and Verifications	12 C.F.R. Part 715

	Security Programs	12 C.F.R. §748
	Guidelines for Safeguarding Member Information	12 C.F.R. Part 748, Appendix A
	Records Preservation Program and Record Retention Appendix	12 C.F.R. Part 749
	Appraisals	12 C.F.R. §722
	Examination	12 C.F.R. §741.1
	Regulations Codified Elsewhere in NCUA's Regulations as applying to Federal Credit Unions that also apply to Federally insured state-chartered credit unions	12 C.F.R. Part 741, Subpart B

By the National Credit Union Administration Board on _____, 2003.

 Becky Baker
 Secretary of the Board