



Office of the Chairman

November 7, 2011

Mr. Cass R. Sunstein  
Administrator, Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Re: Executive Order 13579, Regulation and Independent Regulatory Agencies

Dear Mr. Sunstein:

This letter is in response to President Obama's July 11, 2011, Executive Order 13579, "Regulation and Independent Regulatory Agencies." The Executive Order asks independent regulatory agencies, such as the National Credit Union Administration (NCUA), to join executive agencies in taking steps to review existing rules and to ensure that agencies have smart, cost-effective regulations that are designed to promote economic growth and job creation.

I am writing to assure you that NCUA is committed to working with the Office of Management and Budget (OMB) to improve the federal rulemaking process. In fact, I believe that NCUA has an exemplary record of balancing prudent safety and soundness rules with responsible regulatory relief.

I am pleased to report that NCUA **already** meets or exceeds the key principles of the Executive Order. NCUA achieves these objectives by:

- Conducting regular reviews of all rules;
- Inviting public participation through multiple channels;
- Facilitating coordination with other agencies; and
- Integrating financial data into safety and soundness rulemaking.

Moreover, under my recently announced Regulatory Modernization Initiative, NCUA is publicizing our commitment to *effective*, not excessive, regulation. Where current rules are ineffective or overly burdensome, those regulations will be eliminated or streamlined. Where new risks arise and current rules become outdated or insufficient, those regulations will be modernized or new regulations may be promulgated.

The following narrative describes in greater detail NCUA's leadership in implementing the Executive Order, as well as NCUA's plan to advance the Regulatory Modernization Initiative.

## **Conducting Regular Reviews of All Rules**

NCUA's current rulemaking policies and procedures meet the key principles outlined in Executive Order 13579 and, as included by reference, Executive Order 13563 (Jan. 18, 2011).

- **Three-Year Rolling Reviews**

In particular, NCUA has a well-established regulatory review policy, which is available on NCUA's website ([www.ncua.gov](http://www.ncua.gov)). A copy is attached.<sup>1</sup> Since 1987, NCUA has adhered to this policy to ensure that our regulations:

- Impose only minimum required burdens on credit unions, consumers, and the public;
- Are appropriate for the size of the financial institutions regulated by NCUA;
- Are issued only after full public participation in the rulemaking process; and
- Are clear and understandable.

In accordance with this policy, NCUA reviews every regulation on our books at least every three years. To accomplish this review, NCUA's Office of General Counsel maintains a rolling review schedule that identifies one-third of existing regulations under review each year.<sup>2</sup> This schedule is updated and posted on NCUA's website at the beginning of each year, and the public is invited to comment on all regulations proposed for review.

NCUA regulatory reviews are conducted by the Office of General Counsel. This process includes consultation with other offices and staff, as well as consideration of all public comment letters.

Through this review process, NCUA, for the past 24 years, has regularly updated, clarified, and simplified existing regulations, as well as eliminated redundant and unnecessary provisions.

- **Examination Program Reviews**

NCUA also reviews and revises regulations outside this periodic review. Each year, NCUA identifies additional regulations that merit consideration by reviewing the agency's examination reports, enforcement investigations, and guidance updates.

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<sup>1</sup> NCUA's rules, policies, and procedures for promulgating regulations are codified in part 791.8 of NCUA regulations and in Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2. 12 C.F.R. §791.8; IRPS 87-2, 52 Fed. Reg. 35231 (Sept. 18, 1987); IRPS 03-2, 63 Fed. Reg. 31949 (May 29, 2003). NCUA regulations are listed section-by-section on NCUA's website at <http://www.ncua.gov/Legal/Regs/Pages/Regulations.aspx>.

<sup>2</sup> For the list of the existing regulations under review in 2011 pursuant to this policy, please go to [http://www.ncua.gov/Legal/Documents/NCUA\\_Regulatory\\_Review\\_2011.pdf](http://www.ncua.gov/Legal/Documents/NCUA_Regulatory_Review_2011.pdf).

### ➤ **Loss Reports**

As part of these specialized reviews of the examination program, NCUA responds to recommendations from statutory Material Loss Reviews (MLRs) conducted by the Inspector General. In addition, NCUA's Office of Examination and Insurance collaborates with NCUA's five Regional Offices, including field examiners, to issue reports on credit union failures that fall below the statutory MLR threshold of \$25 million in losses.

Collectively, these reports identify causes of credit union failures across a wider range of loss sizes. The NCUA Board and management teams respond promptly to these reports with constructive changes in regulations and supervision policies to protect against losses.

### ➤ **Promulgating Best Practices Guidance**

NCUA has found that effective guidance often becomes a precursor for effective regulation. Guidance that describes best practices for credit unions provides a solid benchmark for safety and soundness standards. Credit unions that adhere to NCUA guidance tend to adopt best practices and operate in a safe and sound manner.

However, credit unions that fail to follow NCUA guidance typically develop unsafe and unsound practices, which lead to financial instability. When the NCUA Board determines that the guidance is not sufficient to deter certain risky behaviors, a regulation is implemented to codify the guidance. This empowers NCUA examiners with stronger enforcement authority to mitigate potentially unsafe and unsound business plans before they impact a credit union's and the National Credit Union Share Insurance Fund's (NCUSIF) financial condition.

### **Inviting Public Participation**

In addition to NCUA's internal reviews, members of the public are encouraged to contact NCUA to recommend that the agency develop a regulation or revise or repeal an existing regulation.<sup>3</sup>

To ensure maximum opportunities for public participation, NCUA proactively reaches out to stakeholders throughout the credit union industry and provides a wide variety of communication channels to gather input.

- **Semiannual Regulatory Agenda**

Twice each year, NCUA releases an agenda of proposed regulations that have been issued or are expected to be issued, as well as existing regulations that are under review. Each release also includes information on regulations that have been completed since publication of the last agenda. Each semiannual agenda is voluntarily submitted to OMB for inclusion in the Unified Agenda of Federal Regulations, published in the *Federal Register* each April and October.

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<sup>3</sup> 12 C.F.R. §791.8(c).

NCUA's semiannual agenda contains a description of the regulation being considered and a summary of the nature of any regulation that NCUA expects to propose or promulgate; the objectives and legal basis for the issuance of the regulation; an approximate schedule for completing action on any regulation for which NCUA has issued a general notice of proposed rulemaking; and the name and number of an NCUA official knowledgeable with the agenda item.

- **Communications Outreach**

Before proposing a significant regulatory change, NCUA Board members and staff personally communicate to stakeholders, through speeches and private meetings with credit union and trade association officials, why the regulation is planned. Information obtained from these forums helps determine the scope, structure and timing of NCUA rulemaking priorities.

Once a significant rule is proposed, NCUA Board members and staff expand the communications outreach. Speeches and other public meetings are viewed as opportunities to discuss specific provisions of the proposal.

- **Webinars**

As NCUA Chairman, I hold quarterly webinars free of charge and open to all credit unions so they can be briefed on NCUA issues and ask questions of me and senior staff. Typically there are several thousand participants on these webinars. Staff often host additional interactive webinars to explain highly technical issues.

- **Town Hall Meetings**

When an NCUA initiative is critical to the stability of the credit union system, NCUA Board members and senior staff hold in-person town hall meetings. NCUA has hosted 10 town hall meetings across the country since October 2010.

- **Websites and Publications**

NCUA also utilizes a variety of written communications channels in addition to the *Federal Register*. NCUA publishes complete lists of regulations under periodic review, as well as all proposed and final rules, online at [www.ncua.gov](http://www.ncua.gov) and [www.regulations.gov](http://www.regulations.gov). Both websites encourage public participation and offer direct links to file comment letters.

In compliance with the Plain Writing Act of 2010 (Public Law 111-274), every NCUA proposal and every NCUA final rule is described in plain English in the *NCUA Report*. The *NCUA Report* is a free monthly newsletter provided on-line to all federally insured credit unions and accessible to all other interested parties.

- **Comment Periods**

Consistent with President Obama's directive and as a matter of policy, NCUA generally affords the public 60 days to comment on each proposed rule. If a comment period is less than 60 days, NCUA publishes a statement in the *Federal Register* and the *NCUA Report* to explain the necessity for the shorter turnaround time.

- **Video**

In March 2011, NCUA posted on its website a video I made to encourage the public to better understand the importance of the rulemaking process, how to participate, and how to write an effective comment letter.

- **Rule Changes**

NCUA issues final rules only after full public participation in the rulemaking process. As a result of this input, virtually all NCUA final rules include changes based on public comments.<sup>4</sup>

### **Facilitating Coordination with other Agencies**

- **Federal Financial Institutions Examination Council**

To eliminate redundant, inconsistent, or overlapping regulatory requirements across agencies, NCUA coordinates with the other federal financial regulators as a member of the Federal Financial Institutions Examination Council (FFIEC), which I currently chair. FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions.<sup>5</sup>

- **Financial Stability Oversight Council**

I also serve as a member of the Financial Stability Oversight Council (FSOC), an even broader interagency body developing regulations and supervision strategies to ensure the safety and soundness of entities that are systemically significant to the U.S. financial system.<sup>6</sup>

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<sup>4</sup> Regulations mandated by law are more likely to be finalized without changes, consistent with statutory requirements.

<sup>5</sup> FFIEC members include NCUA, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the State Liaison Committee (SLC). The SLC consists of representatives from the American Council of State Savings Supervisors, the Conference of State Bank Supervisors, and the National Association of State Credit Union Supervisors. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the Consumer Financial Protection Bureau (CFPB) will become a FFIEC member once the Senate confirms a CFPB director. In the interim, CFPB staff are participating on FFIEC task forces in a non-voting capacity.

<sup>6</sup> FSOC was established by the Dodd-Frank Act. It is charged with identifying threats to the financial stability of the United States, promoting market discipline, and responding to emerging risks to the stability

- **Consumer Financial Protection Bureau**

NCUA's Office of Consumer Protection coordinates with the Consumer Financial Protection Bureau (CFPB) on a routine basis. Such coordination is essential given the respective roles of NCUA and CFPB. At the current asset size of America's credit unions, only three credit unions exceed the \$10 billion threshold to receive consumer compliance examinations from CFPB. The remaining 7,236 credit unions will continue to be examined by NCUA and/or state regulators, yet will be subject to all CFPB regulations.

- **State Credit Union Supervisors**

Before considering a proposed rule that would apply to state-chartered credit unions, NCUA shares a draft of the proposed rule with the National Association of State Credit Union Supervisors (NASCUS). NCUA often provides NASCUS representatives with private briefings as well.

NCUA facilitates a unique relationship with NASCUS based on our ability to exchange confidential supervisory information regulator-to-regulator. This confidentiality is critical because many safety and soundness proposals are based on issues that have been raised in examination findings. NCUA's coordination with NASCUS empowers federal and state regulators to share examination experiences and work collaboratively to strengthen the regulatory framework.

### **Integrating Financial Data**

NCUA collects and produces volumes of publicly available data to report on the financial conditions of each federally insured credit union.<sup>7</sup> Each quarter, NCUA aggregates this financial data. The Board uses this data to identify current and emerging risks, together with data compiled by NCUA's Chief Economist and other public and confidential sources, when formulating policy.

In addition, NCUA collects and aggregates private financial data obtained through examinations and other confidential supervisory contacts.

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of the United States financial system. The 10 voting members are the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Consumer Financial Protection Bureau, the Chairman of the Securities and Exchange Commission, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, the Chairman of the National Credit Union Administration Board, and an independent member with insurance expertise that is appointed by the President and confirmed by the Senate.

<sup>7</sup> Quarterly Call Reports are posted at <http://www.ncua.gov/DataApps/QCallRptData/Pages/default.aspx> and quarterly Financial Performance Reports are posted at <http://www.ncua.gov/DataApps/FPR/Pages/default.aspx>

Wherever appropriate, supportive public data is summarized and discussed in the preamble to proposed and final rules.

### **Regulatory Modernization Initiative**

On September 19, 2011, I announced to the credit union industry a comprehensive Regulatory Modernization Initiative.<sup>8</sup>

Consistent with Executive Order 13579, this initiative builds upon NCUA's ongoing efforts to review all rules and invite public participation.

For rules that NCUA can control, the Regulatory Modernization Initiative will ensure that those rules are in sync with the modern marketplace, clearly written, and targeted to areas of risk.

NCUA's new regulatory focus will target risky behaviors in credit unions, not credit unions themselves. The last several years have seen an unprecedented number of financial innovations which have the unintended consequence of syndicating the inherent risks in financial products. At the same time, many credit unions have grown more complex and now engage in more sophisticated risk-taking ventures.

This increased sophistication is generally a positive trend for the credit union industry. However, it presents a significant challenge to the regulator. A new product, service, tool or relationship – when adopted by many credit unions – can pose significant risks to the NCUSIF.

In order to keep credit unions safe and sound while relieving regulatory burdens, the Regulatory Modernization Initiative will balance two key principles:

- 1) **Safety and Soundness** — strengthening regulations necessary to protect the 91 million credit union members and the NCUSIF;
- 2) **Regulatory Relief** — eliminating or revising regulations that limit flexibility and growth, without jeopardizing safety and soundness.

NCUA is planning to modernize four significant rules in an effort to strengthen safety and soundness – and to protect against events that could affect economic growth – by addressing marketplace practices and emerging risks:

- **Investment Concentration Exposure**

This modernized rule will implement lessons learned from the financial crisis. The proposed rule will limit concentrations in the riskiest investments for consumer credit unions, similar to NCUA's new investment standards for wholesale credit unions.

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<sup>8</sup> My speech with further details on the Regulatory Modernization Initiative is posted at <http://www.ncua.gov/News/Documents/SP20110919Matz.pdf>.

- **Loan Participation Protection**

This modernized rule will address a growing trend in the lending marketplace: Originators of risky loans are increasingly selling participation interests in those loans to a widespread group of credit unions.

Again, however, the proposed rule will target only the risky behaviors that pose a threat to safety and soundness. It will require originators to retain some of the original loan risk on their balance sheets, and require buyers to perform due diligence not only at origination but on an ongoing basis just as they would for loans they originated in-house.

- **Credit Union Service Organization Risk Transparency**

NCUA is the only FFIEC agency without statutory examination and enforcement authority over vendors of federally insured financial institutions. To the extent permitted by law, this modernized rule will provide a clearer picture of the off-balance sheet risks at credit union-owned organizations that sell high-risk services to credit unions.

- **Interest Rate Risk Management**

This modernized rule will require certain credit unions to have an appropriate policy to manage their risk.<sup>9</sup> Rather than applying to all federally insured credit unions, the proposed rule targeted only those credit unions that have sufficient size and/or interest rate risk to pose a threat to the NCUSIF. While the proposed rule applied to only 43% of all credit unions, it covered more than 96% of all credit union assets. In those cases, the proposed rule allows the interest rate risk policy to be customized to the risk profile of each particular credit union.

After reviewing public comments, the NCUA Board anticipates issuing a final rule in December 2011.

Balancing these four safety and soundness rules is an equal number of regulatory relief measures. As part of the Regulatory Modernization Initiative, the NCUA Board has finalized or is planning to propose four rules to reduce credit unions' compliance burdens:

- **Community Development Revolving Loan Fund Access**

On October 27, 2011, the NCUA Board approved a final rule to improve access to the Community Development Revolving Loan Fund. This final rule provides interest rate relief and additional flexibility to low-income credit unions applying for loans through this congressionally appropriated fund administered by NCUA. The rule reduces costs, eliminates outdated processes, expands transparency, and creates a streamlined user-friendly regulation.<sup>10</sup>

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<sup>9</sup> 76 Fed. Reg. 16570 (Mar. 24, 2011).

<sup>10</sup> NCUA's modernized rule on Community Development Revolving Loan Fund Access is posted at <http://www.ncua.gov/about/Documents/Agenda%20Items/AG20111027Item1b.pdf>.

- **Derivatives as an Interest Rate Risk Hedge**

To provide a new tool for credit unions subject to the Interest Rate Risk Management Rule, NCUA is considering a proposal to allow qualified credit unions to use simple derivatives as an interest rate risk hedge. Relatively low-risk derivatives could be matched to certain assets part of a sound interest rate risk policy.

- **Regulatory Flexibility**

The NCUA Board is planning a proposed rule that will extend provisions of NCUA's Regulatory Flexibility ("RegFlex") program to all federal credit unions. This proposed rule will provide widespread access to regulatory relief provisions that have previously been available only to a select group of federal credit unions.

- **Zero-Risk Weights**

NCUA is exploring creative options to provide incentives for credit unions to invest in securities backed by the full faith and credit of the U.S. government. Among other provisions, a proposed rule will allow credit unions to assign zero-risk weights to most U.S. Treasury securities.

### **Reducing Compliance Costs**

Whenever finalizing rules, NCUA follows through with plain English articles in the *NCUA Report*. In many cases, further explanation and guidance is provided via system-wide Regulatory Alerts, Letters to Credit Unions, Interpretive Rulings and Policy Statements, and/or Legal Opinions shared with all credit unions.

NCUA's follow-up communications are intended to answer questions, prevent confusion, and reduce compliance costs. This supports NCUA's policy of ensuring that regulations impose minimal burdens on credit unions, consumers, and the public.

### **Balancing our Regulatory Approach**

In the spirit of Executive Order 13579, NCUA strongly supports a balanced regulatory approach. We will continue to protect the safety and soundness of credit unions as new risks emerge.

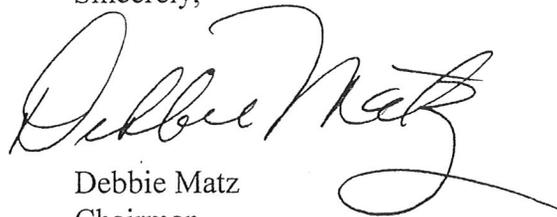
At the same time, we will encourage the industry to remain dynamic and competitive by providing relief from unnecessary burdens.

Mr. Cass R. Sunstein  
NCUA Implementation of Executive Order 13579  
November 7, 2011  
Page 10

NCUA remains committed to ensuring regulations are reasonable, innovative, and cost-effective, and to encouraging robust public participation in the rulemaking process.

Please do not hesitate to contact me with any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Debbie Matz". The signature is fluid and cursive, with a large loop at the end of the last name.

Debbie Matz  
Chairman

Attachment

(ATTACHMENT)

**NATIONAL CREDIT UNION ADMINISTRATION INTERPRETIVE RULING  
AND POLICY STATEMENT NUMBER 87-2  
(as amended by Interpretive Ruling and Policy Statement 03-2)**

**DEVELOPING AND REVIEWING GOVERNMENT REGULATIONS**

**I. Statement of Policy and Coverage**

It is the policy of NCUA to ensure that its regulations:

- impose only minimum required burdens on credit unions, consumers, and the public;
- are appropriate for the size of the financial institutions regulated by NCUA;
- are issued only after full public participation in the rulemaking process; and
- are clear and understandable.

**II. Procedures for the Development of Regulations**

**1. Proposed Regulations**

The Office of General Counsel (OGC) will oversee the development of regulations. Input on regulations will be obtained from other NCUA offices when appropriate; OGC will prepare a draft of the proposed regulation for submission to the NCUA Board for approval. The proposed regulation will then be published in the *Federal Register* and other appropriate publications.

**2. Initial Regulatory Flexibility Analysis**

When NCUA is required by 5 U.S.C. § 553, or any other law, to publish a general notice of proposed rulemaking for any proposed regulation, NCUA will prepare and make available for public comment an initial regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. Credit unions having less than ten million dollars in assets will be considered to be small entities. Such analysis will describe the impact of the regulation upon small entities, and will be published in the *Federal Register* at the time of general notice of proposed rulemaking for the regulation. A copy of the analysis will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The content of the initial regulatory flexibility analysis will be in accordance with the provisions of 5 U.S.C. § 603. In addition, NCUA staff will consult applicable U.S. Small Business Administration guidance, including *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies*, when interpreting and implementing the requirements of the Regulatory Flexibility Act.

### **3. Compliance With the Paperwork Reduction Act**

If a proposed regulation contains an information collection request such as a recordkeeping or reporting requirement that, if adopted, will be imposed upon ten or more persons (including credit unions), the proposed regulation will be sent to the office of Management and Budget (OMB) prior to publication in the *Federal Register*, OMB will then have 60 days after publication to comment on the information collection request. If OMB thereafter disapproves of the information collection request, the NCUA can override this by a majority vote and certify such override to OMB in the manner described in 44 U.S.C. § 3507(c).

### **4. Final Regulatory Flexibility Analysis**

A final regulatory flexibility analysis will be prepared for all regulations that required the publication of a general notice of proposed rulemaking and that will have a significant economic impact on a substantial number of small entities. The content of the final regulatory flexibility analysis will be in conformance with 5 U.S.C. § 604. Initial and final regulatory flexibility analyses need not be prepared if the Board certifies that a regulation will not have a significant economic effect on a substantial number of small entities. The certification will be published in the *Federal Register* with the final rule, along with a statement providing the factual basis for such certification. A copy of the certification and statement will be provided to the Chief Counsel for Advocacy of the SBA.

### **5. Final Rule**

OGC will prepare a draft final regulation to be presented to the NCUA Board for approval. Following Board approval, the final regulation will be published in the *Federal Register* and other appropriate publications.

## **III. Opportunity for Public Participation**

A member of the public may recommend that NCUA develop a regulation or revise an existing regulation. A number of methods will be used by NCUA to encourage public participation in the development and review of regulations, including: notifying the public of the status of regulations being reviewed and developed through publication of the semiannual agenda; publication of advance notices of proposed rulemaking with requests for public comment; the use of questionnaires to solicit information; publication of articles; and by making copies of proposed regulations available to the public.

When any regulation is promulgated which will have a significant economic impact on a substantial number of small entities, the NCUA will assure that small entities have been given an opportunity to participate in the rulemaking process through the types of methods listed in 5 U.S.C. § 609.

NCUA will continue to solicit public comment on proposed regulations as required by 5 U.S.C. § 553. As a matter of policy, NCUA believes that the public should be given at least 60 days to comment on a proposed regulation. If the comment period is less than 60 days, or is extended beyond 60 days, NCUA will publish a statement in the *Federal Register* explaining the change.

#### **IV. Review of Existing Regulations**

NCUA shall periodically update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions. 5 U.S.C. § 610 requires that regulations having a significant economic impact on a substantial number of small entities will be reviewed every ten years. As a matter of policy, NCUA will continue with its efforts to review all its existing regulations every three years. To accomplish a review every three years of all regulations, the Office of General Counsel will maintain a rolling review schedule that identifies one-third of existing regulations for review each year and will provide notice to the public of that portion of the regulations under review each year so the public may have an opportunity to comment.

#### **V. Semiannual Agenda**

Twice each year, NCUA will adopt an agenda of proposed regulations that the Agency has issued or expects to issue and currently effective regulations that are under NCUA review. Incorporated into the agenda, when necessary, will be the regulatory flexibility agenda required by 5 U.S.C. § 602. Each semiannual agenda will be voluntarily submitted to the Office of Management and Budget for inclusion in the "Unified Agenda of Federal Regulations" published in the *Federal Register* in April and October of each year.

The semiannual agenda will contain the following: a brief description of the subject area being considered and a summary of the nature of any regulation which NCUA expects to propose or promulgate; the objectives and legal basis for the issuance of the regulation; an approximate schedule for completing action on any regulation for which NCUA has issued a general notice of proposed rulemaking; and the name and number of an NCUA official knowledgeable with respect to each agenda item. The agenda will identify any regulation that the NCUA expects to have a significant economic impact on a substantial number of small entities. When there are proposed regulations listed in the agenda that will have such an impact on small entities, NCUA will endeavor to provide notice of the agenda to small entities in the manner set forth in 5 U.S.C. § 602(c). Where the regulatory flexibility agenda is incorporated into the semiannual agenda, the latter will be transmitted to the Chief Counsel for Advocacy of the SBA for comment.