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SUMMARY: The NCUA Board (Board) is continuing its comprehensive review of its regulations to identify outdated, unnecessary, or burdensome regulatory requirements imposed on federally insured credit unions, as contemplated by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). This second decennial review of regulations began when the Board issued its first EGRPRA notice on May 22, 2014, covering the two categories of "Applications and Reporting" and "Powers and Activities."[1] Today, the Board continues the review process with the publication of this second notice, covering the next three categories of rules: "Agency Programs," "Capital," and "Consumer Protection." This review presents a significant opportunity to consider the possibilities for burden reduction in groups of similar regulations. The Board welcomes comment on the categories, the order of review, and all other aspects of this initiative in order to maximize the review's effectiveness.

[1] 79 FR 32121 (June 4, 2014)

DATES: Comment must be received on or before [INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: **http://www.regulations.gov.** Follow the instructions for submitting comments.
- NCUA Web Site: **http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.** Follow the instructions for submitting comments.
- E-mail: Address to **regcomments@ncua.gov.** Include "[Your name] Comments on Regulatory Review pursuant to EGRPRA" in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: All public comments are available on the agency's website at http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Special Counsel to the General Counsel, at the above address, or telephone: (703) 518-6562.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress enacted EGRPRA[2] as part of an effort to minimize unnecessary government regulation of financial institutions consistent with safety and soundness, consumer protection, and other public policy goals. Under EGRPRA, the appropriate federal banking agencies (Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation; herein Agencies[3]) and the Federal Financial Institutions Examination Council (FFIEC) must review their regulations to identify outdated, unnecessary, or unduly burdensome requirements imposed on insured depository institutions. The Agencies are required, jointly or individually, to categorize regulations by type, such as "consumer regulations" or "safety and soundness" regulations. Once the categories have been established, the Agencies must provide notice and ask for public comment on one or more of these regulatory categories.

[2] Pub. L. 104-208, Div. A, Title II, §2222, 110 Stat. 3009 (1996); codified at 12 U.S.C. 3311.
[3] The Office of Thrift Supervision was still in existence at the time EGRPRA was enacted and was included in the listing of Agencies. Since that time, the OTS has been eliminated and its responsibilities have passed to the Agencies and the Consumer Financial Protection Bureau.

NCUA is not technically required to participate in the EGRPRA review process, since NCUA is not an "appropriate Federal banking agency" as specified in EGRPRA. In keeping with the spirit of the law, however, the Board has once again elected to participate in the review process. Thus, NCUA has participated along with the Agencies in the planning process, but has developed its own regulatory categories that are comparable with those developed by the Agencies. Because of the unique circumstances of federally insured credit unions and their members, the Board is issuing a separate notice from the Agencies. NCUA's notice is consistent and comparable with the Agencies' notice, except on issues that are unique to credit unions.

In accordance with the objectives of EGRPRA, the Board asks the public to identify areas of its regulations that are outdated, unnecessary, or unduly burdensome. In addition to this second notice, the Board will issue two more notices for comment during 2015, at regular intervals. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.[4]

As the Board noted in its initial EGRPRA notice in May 2014, the creation of the Consumer Financial Protection Bureau (CFPB) resulted in the transfer to CFPB of responsibility for certain consumer protection rules that had previously been the responsibility of the Agencies and/or NCUA, such as Regulation Z and rules governing consumer privacy. Because the CFPB is not covered by EGRPRA or required to participate in this regulatory review process, the Agencies and NCUA have excluded certain consumer protection regulations from the scope of the current

[4] Interpretive Ruling and Policy Statement (IRPS) 87-2, 52 FR 35231 (Sept. 8, 1987) as amended by IRPS 03-2, 68 FR 32127 (May 29, 2003.)(Reflecting NCUA's commitment to "periodically update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.")

review.[5] In the case of rules implementing specific aspects of the Fair Credit Reporting Act, the Truth in Savings Act, rules pertaining to fair lending in the housing area, and flood insurance, NCUA has retained rule-writing authority. Therefore, these rules are retained for purposes of the EGRPRA review and comprise one of the categories for which comment is currently being solicited. Rules pertaining to share insurance and advertising also remain within NCUA's province and, therefore, are included as well.

EGRPRA contemplates a two-part regulatory response. First, NCUA will publish in the *Federal Register* a summary of the comments it receives, identifying and discussing the significant issues raised. Second, the law directs the Agencies to "eliminate unnecessary regulations to the extent that such action is appropriate." As was done during the initial decennial review process, the Board anticipates that it will prepare its response separately from the Agencies, but at around the same time.

EGRPRA further requires the FFIEC to submit a report to the Congress within 30 days after NCUA and the Agencies publish the comment summary and analysis 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. The FFIEC report submitted to Congress following the initial decennial EGRPRA review included an Agency

[5] In addition to rules that have been transferred to the CFPB, insured credit unions are also subject to certain other regulations that are not required to be reviewed under the EGRPRA process, such as regulations issued by the Department of the Treasury's Financial Crimes Enforcement Network. Any comment received during the EGRPRA process that pertains to such a rule will be forwarded to the appropriate agency.

section discussing banking sector issues and a separate section devoted to NCUA and credit union issues. It is likely that the FFIEC will follow a similar approach in this second decennial EGRPRA review and report process.

II. The EGRPRA Review's Special Focus

The regulatory review contemplated by EGRPRA provides a significant opportunity for the public and the Board to consider groups of related regulations and identify possibilities for streamlining. The EGRPRA review's overall focus on the totality of regulations will offer a new perspective in identifying opportunities to reduce regulatory burden. For example, the EGRPRA review may facilitate the identification of regulatory requirements that are no longer consistent with the way business is conducted and that therefore might be eliminated. Of course, reducing regulatory burden must be consistent with 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. The Board 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 to Congress.

The Board views the approach of considering the relationship of regulatory and statutory change on regulatory burden, in concert with EGRPRA's provisions calling for grouping regulations by type, to provide the potential for particularly effective burden reduction. The Board believes the EGRPRA review can also significantly contribute to its on-going efforts to reduce regulatory burden. 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.[6] Further, the Board addresses the issue of regulatory burden every time it proposes and adopts a rule. NCUA complies with the Paperwork Reduction Act of 1995[7] the Regulatory Flexibility Act[8] and the Small Business Regulatory Enforcement Fairness Act of 1996[9] in connection with each rulemaking and evaluates the burdens the rulemaking might impose on the industry, consistent with safety and soundness and consumer protection considerations.

The Board is particularly sensitive to the impact of agency rules on small institutions. In 2013, the Board formally increased the threshold for meeting the "small" classification to having assets of $50 million or less. The Board is cognizant that each new or amended regulation has the potential for requiring significant expenditures of time, effort, and money to achieve compliance, and also that this burden can be particularly difficult for institutions of smaller asset size, with fewer resources available.

III. The Board's Proposed Plan

[6] IRPS 87-2, 52 FR 35231 (Sept. 8, 1987) as amended by IRPS 03-2, 68 FR 32127 (May 29, 2003).
[7] 44 USC 3501 et seq.
[8] 5 USC 601 et seq.
[9] Pub. L. 104-121, 110 Stat 857 (1996).

EGRPRA contemplates the categorization of regulations by "type." During the initial decennial review, the Board developed and published for comment ten categories for NCUA's rules, including some that had been issued jointly with the Agencies. The Board believes these initial categories worked well for the purpose of presenting a framework for the review and so has retained them for this second review.[10] 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. As noted above, some of the rules in the consumer protection category are now under CFPB's jurisdiction and administration, and those affected rules have been eliminated. Any rules adopted for the first time since 2006 have been included in the appropriate category.[11] Rules still in proposed form are not included in this review; commenters may be sure that comments submitted directly in response to proposed rules will be given due consideration within that process.

As the Board noted during the initial decennial review, although there are other possible ways of categorizing its rules, these ten 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." As was also noted during the

[10] Consistent with EGRPRA's focus on reducing burden on insured credit unions, the Board has not included internal, organizational or operational regulations in this review. These regulations impose minimal, if any, burden on insured credit unions.

[11] Commenters should note, in this respect, that for new regulations that have only recently gone into effect, some passage of time may be necessary before the burden associated with the regulatory requirements can be fully and properly understood.

initial review, some regulations, such as lending, pertain to more than one category and are included in all applicable categories.

The Board remains convinced 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. Owing to differences in the credit union system as compared to the banking system, there is not a direct, category by category, correlation between NCUA's rules and those of the Agencies. For example, credit unions deal with issues such as membership, credit union service organizations, and corporate credit unions, all of which are unique to credit union operations. Similarly, certain categories identified by the Agencies have limited or no applicability in the credit union sector, such as community reinvestment, international operations, and securities. The categories developed by the Board and the Agencies reflect these differences. The Board intends to maintain comparability with the Agencies' notices to the extent there is overlap or similarity in the issues and the categories.

After the conclusion of the comment period for each EGRPRA notice published in the *Federal Register*, the Board 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.

The Board has prepared two charts to assist public understanding of the organization of its review. The first chart, set forth at Section V.A. below, presents the three categories of regulations on which NCUA is requesting burden reduction recommendations in this notice. The three 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, set forth at Section V.B. below, presents the remaining five categories in alphabetical order in a similar format.

IV. Request for Burden Reduction Recommendations for the Categories of Regulations: "Agency Programs," "Capital," and "Consumer Protection"

The Board seeks public comment on regulations within the following three categories – "Agency Programs," "Capital," and "Consumer Protection" – that may impose outdated, unnecessary, or unduly burdensome regulatory requirements on federally insured credit unions. 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 the EGRPRA review are welcome, the Board specifically invites comment on the following issues:

- **Need and purpose of the regulations.** Do the regulations in these categories fulfill current needs? Has 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? If so, how should the statutes be amended?

- **Overarching approaches / flexibility of the regulatory standards.** Generally, is there a different approach to regulating that the Board 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? If so, how should these regulations be amended?

- **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? Please provide specific recommendations.

- **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?

- **Scope of rules.** Is the scope of each rule in these categories consistent with the intent of the underlying statute(s)? Could NCUA amend the scope of a rule to clarify its applicability or to reduce the burden, while remaining faithful to statutory intent? If so, specify which regulation(s) should be clarified.

- **Burden on small insured institutions.** The Board has a particular interest in minimizing burden on small insured credit unions (those with less than $50 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

Agency Programs	Community Development Revolving Loan Program	12 CFR 705
	Central Liquidity Facility	12 CFR 725
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 CFR 701.34
Capital	Prompt corrective action	12 CFR 702
	Adequacy of reserves	12 CFR 741.3(a)
Consumer Protection	Nondiscrimination requirement (Fair Housing)	12 CFR 701.31
	Truth in Savings (TIS)	12 CFR 707
	Loans in areas having special flood hazards	12 CFR 760
	Fair Credit Reporting – identity theft red flags	12 CFR 717, Subpart J
	Fair Credit Reporting – disposal of consumer information	12 CFR 717.83
	Fair Credit Reporting – duties regarding address discrepancies	12 CFR 717.82
	Share insurance	12 CFR 745
	Advertising	12 CFR 740
	Disclosure of share insurance	12 CFR 741.10
	Notice of termination of excess insurance coverage	12 CFR 741.5
	Uninsured membership shares	12 CFR 741.9
	Member inspection of credit union books, records, and minutes	12 CFR 701.3

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

Corporate Credit Unions	Corporate credit unions	12 CFR 704
Directors, Officers, and Employees	Loans and lines of credit to officials	12 CFR 701.21(d)
	Reimbursement, insurance, and indemnification of officials and employees	12 CFR 701.33
	Retirement benefits for employees	12 CFR 701.19
	Management officials interlock	12 CFR 711
	Fidelity bond and insurance coverage	12 CFR 713
	General authorities and duties of federal credit union directors	12 CFR 701.4
	Golden parachutes and indemnification payments	12 CFR 750

Money Laundering	Report of crimes or suspected crimes	12 CFR 748.1
	Bank Secrecy Act	12 CFR 748.2
Rules of Procedure	Liquidation (involuntary and voluntary)	12 CFR 709 and 710
	Uniform rules of practice and procedure	12 CFR 747, subpart A
	Local rules of practice and procedure	12 CFR 747, subparts B - M
Safety and Soundness	Lending	12 CFR 701.21
	Investments	12 CFR 703
	Supervisory committee audit	12 CFR 715
	Security programs	12 CFR 748.0
	Guidelines for safeguarding member information and responding to unauthorized access to member information	12 CFR 748, Appendices A and B
	Records preservation program and appendices - record retention; catastrophic act preparedness	12 CFR 749
	Appraisals	12 CFR 722
	Examination	12 CFR 741.1
	Liquidity and contingency funding plans	12 CFR 741.12
	Regulations codified elsewhere in NCUA's regulations as applying to federal credit unions that also apply to federally insured state-chartered credit unions	12 CFR 741, subpart B

By the National Credit Union Administration Board on December 11, 2014.

Gerard Poliquin
Secretary of the Board