

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 741 and 748

RIN 3313-AE25

Filing financial and other reports.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule to amend its regulations regarding filing financial, statistical, and other reports and credit union profiles by requiring all federally insured credit unions (FICUs) to file this information electronically using NCUA's information management system or other electronic means specified by NCUA. Under the current rule, FICUs are required to file this information online only if they have the capacity to do so.

DATES: This rule is effective January 1, 2014.

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SUPPLEMENTARY INFORMATION:

I. Background and Proposal

II. Summary of Public Comments and Final Rule

III. Regulatory Procedures

I. Background and Proposal

A. Background.

The Federal Credit Union Act (Act) provides NCUA with broad authority to require FICUs, including corporate credit unions, to submit financial data and other information as required by the Board.¹ The Act directs each FICU to make reports of condition to the Board on dates selected by the Board.² The Board has broad discretion to set the conditions and information

¹ 12 U.S.C. 1756, 1766, 1781, and 1782.

² *Id.*

requirements for such reports.³ More specifically, NCUA requires FICUs to submit financial reports, reports of officials, credit union profiles, and other reports.⁴

Section 741.6(a) of NCUA's regulations requires FICUs to file financial, statistical, and other reports, including call reports. Section 748.1 of NCUA's regulations requires the president or managing official of each FICU to certify compliance with a variety of requirements in its credit union profile.

Under NCUA's current regulations, a FICU must use NCUA's information management system, or other electronic means specified by NCUA, to submit its reportable data online, unless it is unable to do so.⁵ In this case, a FICU must file written reports in accordance with NCUA instructions.

B. July 2013 proposal.

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing rules to make their programs more effective and less burdensome. NCUA seeks to reduce operating costs and promote environmentally responsible practices. NCUA estimates it costs the agency \$125 per filer per quarter to process manual filings of call reports alone. In July 2013, NCUA proposed to require all FICUs to submit call reports and other data electronically, and to update their credit union

³ *Id.*

⁴ 12 CFR 741.6 and 748.1.

⁵ *Id.* Currently, corporate credit unions use an electronic system for submitting data online different from the system used by natural person FICUs.

profiles online to reduce the expense of printing and mailing paper forms and other processing costs.⁶ Under the proposed rule, filing manually would no longer be an option.

Additionally, NCUA would increase efficiency, enhance accuracy of data, and provide a secure access portal that is the sole means for FICUs to submit, edit, and view data that NCUA collects. This permits FICUs to submit data securely to NCUA from any computer with Internet access. To assist FICUs making this transition, NCUA already provides instructions on how to report online and has posted a “frequently asked questions” section on NCUA’s website.

II. Summary of Public Comments and Final Rule

NCUA received 12 comments on the proposed rule. The comments were from 3 trade associations representing credit unions, 6 state credit union leagues (some of these leagues represent more than one state), a state-chartered, federally insured credit union, a federal credit union, and a state regulators association.

Six commenters generally supported the proposed rule. Some commenters believed the proposal would lead to increased efficiencies and enhance the accuracy and availability of data. Others maintained that NCUA appropriately considered the burden on filers and made hardware and training available to help small credit unions.

Six commenters generally did not support the proposed rule. Some commenters expressed concerns about the hardships that electronic filing may have on the smallest credit unions who

⁶ 78 FR 46850 (Aug. 2, 2013).

have limited staffing and electronic resources. Others did not believe the proposed rule would sufficiently reduce costs and increase efficiency for NCUA, and found that manual filings were not a significant burden on NCUA's resources.

Commenters also made other recommendations. Some of these recommendations include having NCUA: 1) change the required filing date for call reports to be 30 days after the end of the quarter; 2) encourage manual filers to move toward electronic filing within a reasonable amount of time, the duration of which should depend on the particular credit union; and 3) continue to work with small credit unions, through its Office of Small Credit Union Initiatives (OSCUI), to help move them toward electronic filing.

The Board has considered all public comments carefully. While NCUA appreciates the commenters' concerns for small credit unions, NCUA believes that electronic filing will save time and resources, as well as increase the efficiency in processing all reports. NCUA believes that once manual filers embrace online filing, they will find it is quicker and easier than manual filing, and it will reduce their administrative burden. NCUA will continue to help small credit unions transition to electronic filing and anticipates that OSCUI will continue to participate in this effort.

Accordingly, the Board is adopting the July 2013 proposed rule as final without any changes. The final rule will be effective on January 1, 2014, which means it is applicable to the fourth quarter 2013 call report data, which are due to NCUA later in January 2014.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.⁷ For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.⁸ This final rule requires a very small number of manual filers to transition to electronic filing. This final rule would affect relatively few FICUs and the associated cost is minimal. Accordingly, NCUA certifies this final rule will not have a significant economic impact on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.⁹ For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This final rule requires the same information previously required in a different format, which NCUA believes will

⁷ 5 U.S.C. 603(a).

⁸ Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

⁹ 44 U.S.C. 3507(d); 5 CFR part 1320.

require the same or a lesser amount of time to produce. This final rule will not create new paperwork burdens or modify any existing paperwork burdens.¹⁰

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

¹⁰ The information collection in Call Reports and Credit Union Profiles for natural person credit unions (NCUA Form 5300) is currently approved under OMB Control Number 3133-0004. For corporate credit unions (NCUA Form 5310), the information collection in Call Reports is pending under OMB Control Number 3133-0067.

The Small Business Regulatory Enforcement Fairness Act of 1996¹¹ (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.¹² NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. This final rule requires a very small number of manual filers to file financial, statistical, and other reports electronically, which is minimally intrusive and economically negligible. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects

12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

By the National Credit Union Administration Board on October 24, 2013.

¹¹ Pub. L. 104–121, 110 Stat. 857 (1996).

¹² 5 U.S.C. 551.

Gerard Poliquin

Secretary of the Board

For the reasons stated above, NCUA amends 12 CFR parts 741 and 748 as follows:

PART 741 — REQUIREMENTS FOR INSURANCE

1. The authority for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781-1790, and 1790d; 31 U.S.C. 3717.

2. In §741.6, revise paragraph (a) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Upon written notice from the NCUA Board, Regional Director, Director of the Office of Examination and Insurance, or Director of the Office of National Examinations and Supervision, insured credit unions must file financial and other reports in accordance with the instructions in the notice. Insured credit unions must use NCUA's information management system, or other electronic means specified by NCUA, to submit their data online.

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**PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES,
SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT
COMPLIANCE**

3. The authority for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801-6809; 31 U.S.C. 5311 and 5318.

4. In §748.1, revise paragraph (a) to read as follows:

§ 748.1 Filing of reports.

(a) The president or managing official of each federally insured credit union must certify compliance with the requirements of this part in its Credit Union Profile annually through NCUA's online information management system.

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