

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 790**

**RIN 3133-AE57**

**Technical Amendments**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board is amending the section of NCUA's regulations addressing the description of NCUA to make minor, non-substantive technical corrections. The technical amendments update the regulations to reflect current agency office functions and responsibilities and will not cause any substantive changes.

**DATES:** The final rule is effective on [**insert date of publication in the FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Linda Dent, Associate General Counsel, or Jacqueline Lussier, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

- I. Background and Purpose of the Final Rule
- II. Regulatory Amendments
- III. Regulatory Procedures

**I. Background and Purpose of the Final Rule**

*Why is the NCUA Board issuing this rule?*

*Office of Minority and Women Inclusion.*

The NCUA Board (Board) is issuing this rule to accurately reflect the functions and responsibilities of the Office of Minority and Women Inclusion (OMWI) and the direct reporting line for its director.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)<sup>1</sup> required several agencies to establish OMWI offices with each OMWI Director appointed by and

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<sup>1</sup> 12 U.S.C. 5452.

reporting to “the agency administrator.”<sup>2</sup> The Dodd-Frank Act defines the term “agency administrator” as “the head of an agency.”<sup>3</sup> NCUA’s Office of General Counsel determined that at NCUA, the Chairman is the “agency administrator” or the head of the agency for reporting purposes. Additionally, pursuant to delegated authorities, the Executive Director could serve as the reporting conduit to the Chairman.

In 2011, the Board appointed an OMWI Director who began reporting to the Executive Director under delegated Board authority. The Dodd-Frank Act does not prohibit this delegation.

Subsequently, in November 2013, the Board added the equal employment opportunity (EEO) program to OMWI’s functions, removing the program from the Office of the Executive Director. The Board regarded the realignment as strengthening OMWI’s compliance with Dodd-Frank Act requirements concerning equal employment opportunity and diversity of the agency workforce and senior management.

NCUA implemented the realignment in January 2014, but the Executive Director remained the EEO Director due to a vacancy in the OMWI Director’s position. In July 2015, NCUA hired an OMWI Director and, accordingly, is transferring the EEO Director designation to the OMWI Director.

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<sup>2</sup> Id. at § 5452(b)(1).

<sup>3</sup> Id. at § 5452(g)(2).

In implementing federal anti-discrimination laws, the Equal Employment Opportunity Commission requires each executive agency to designate an EEO Director who “shall be under the *immediate* supervision of the agency head.”<sup>4</sup> This regulatory requirement does not permit further delegation. Accordingly, assigning the EEO Director designation to the OMWI Director necessitates a change in the OMWI Director’s direct reporting line.

In addition, other agencies that were required to establish an OMWI office currently have the OMWI Director reporting directly to the agency’s top official.<sup>5</sup>

For the reasons discussed above, this final rule amends the description of OMWI to reflect the transfer of the designation of Director of EEO to the OMWI Director. This rule change also amends the description of OMWI to reflect that the OMWI Director reports directly to the NCUA Chairman.

*Office of the Executive Director.*

This final rule amends the description of the Office of the Executive Director to delete the statement that the Executive Director serves as the Director of EEO because this designation has transferred to the Director of OMWI.

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<sup>4</sup> 29 CFR 1614.102(b)(4) (emphasis added).

<sup>5</sup> OMWI Directors report to the Comptroller of the Currency, the Consumer Financial Protection Bureau Director, the Federal Deposit Insurance Corporation Chairman, the Federal Housing Finance Agency Director, the Federal Reserve Board Chairman, and the Securities and Exchange Commission Chairman.

In addition, the list of offices in the description that are coordinated by the Executive Director is outdated. This final rule amends the description to update the list of offices currently coordinated by the Executive Director. This rule change reflects all current offices within NCUA's organizational structure.

To effect these changes, the Board is making two conforming technical amendments to part 790, as described in section II.

## **II. Regulatory Amendments**

### *Part 790—Changes to NCUA's Central Office Structure*

As discussed above, the Board is amending part 790 of NCUA's regulations to conform it to NCUA's current central office structure.

#### *Office of Minority and Women Inclusion*

The final rule amends the description of OMWI to reflect that the Director of OMWI is the NCUA's Director of EEO. Previously, the Executive Director served as the agency's EEO Director. The final rule also amends the description to reflect that the Director of OMWI reports directly to the NCUA Chairman. Previously, the OMWI Director reported to the Executive Director, who in turn reported directly to the NCUA Chairman.

### *Office of the Executive Director*

The final rule amends the description of the Office of the Executive Director to delete the statement that the Executive Director serves as the Director of EEO because this designation has transferred to the Director of OMWI.

The final rule also amends the list of offices coordinated by the Executive Director to reflect NCUA's current organizational structure.

### **III. Regulatory Procedures**

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under \$100 million in assets). This final rule only makes non-substantive, technical changes. NCUA certifies that these technical amendments will not have a significant economic impact on a substantial number of small credit unions.

#### *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.<sup>6</sup> For purposes of the PRA, a paperwork burden may take the form of either a reporting or a

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<sup>6</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

recordkeeping requirement, both referred to as information collections. NCUA has determined that the technical amendments in this final rule do not increase the paperwork requirements under the PRA or regulations of the Office of Management and Budget.

#### *Executive Order 13132*

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

#### *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.<sup>7</sup>

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<sup>7</sup> Pub. L. 105-277, 112 Stat. 2681 (1998).

### *Final Rule*

Generally, the Administrative Procedure Act (APA) requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendments in this rule are non-substantive and technical, involve only matters relating to agency management and personnel and are exempt from APA notice and comment requirements.<sup>8</sup> They reflect changes to NCUA's organizational structure. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and non-substantive. NCUA finds that, in this instance, notice and public comment are unnecessary under section 553(b)(3)(B) of the APA.<sup>9</sup> NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.<sup>10</sup> The rule, therefore, will be effective immediately upon publication.

### **List of Subjects**

#### **12 CFR Part 790**

Organization and functions (Government agencies).

By the National Credit Union Administration Board on January 21, 2016.

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<sup>8</sup> 5 U.S.C. 553(a)(2) and 553(b)(3)(B).

<sup>9</sup> 5 U.S.C. 553(b)(3)(B).

<sup>10</sup> 5 U.S.C. 553(d)(3).



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Gerard Poliquin

Secretary of the Board

For the reasons discussed above, the NCUA Board amends 12 CFR part 790 as follows:

**PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION**

1. The authority citation for part 790 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789, 1795f.

2. In § 790.2, revise paragraphs (b)(6) and (b)(13).

The revisions read as follows:

**§ 790.2 Central and field office organization.**

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(b) \* \* \*

(6) *Office of the Executive Director.* The Executive Director reports to the entire NCUA Board.

The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the activities of the senior executive staff, which includes: the General Counsel; the Regional Directors; and the Office Directors for the Asset Management and Assistance Center, Chief Economist, Chief Financial Officer, Chief Information Officer, Consumer Protection, Continuity and Security Management, Examination and Insurance, Human Resources, Minority and Women Inclusion, National Examinations and Supervision, Public and Congressional Affairs and Small Credit Union Initiatives. Because of the nature of the attorney/client relationship between the Board and General Counsel, the General Counsel may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility. The Office of the Executive Director also supervises the agency's ombudsman. The ombudsman investigates complaints and recommends solutions on regulatory issues that cannot be resolved at the regional level.

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(13) *Office of Minority and Women Inclusion.* The Office of Minority and Women Inclusion (OMWI) was established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Director of OMWI reports to the NCUA Chairman. OMWI has the responsibility for all NCUA matters relating to diversity in management, employment, and

business activities. Specific duties of the office include developing and implementing standards for: equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of NCUA; increased participation of minority-owned and women-owned businesses in the programs and contracts of NCUA, including standards for coordinating technical assistance to such businesses; assessing the diversity policies and practices of credit unions regulated by NCUA; and preserving credit unions run by minorities and/or serving minorities. The Director of OMWI also serves as NCUA's Director of Equal Employment Opportunity.

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