

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AE34

Requirements for Contacts with Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend part 701 of its regulations to require examinations and other contacts between NCUA staff and staff or officials of a federal credit union (FCU) occur in an FCU's business offices or other public location. This does not include a private residence. The proposal also would require affected FCUs to bring to the meeting site any records or materials NCUA staff requests, and to maintain at least one method for members and NCUA staff to contact the credit union. These requirements would apply upon the effective date of a final rule. Additionally, the proposal would require all FCUs to obtain and maintain a business office, not located on the premises of a private residence address, no later than two years following the effective date of a final rule.

DATES: Comments must be received on or before [Insert date 30 days following date of 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/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.
- **E-mail:** Address to regcomments@ncua.gov. Include “[Your name] – Comments on Notice of Proposed Rulemaking for Part 701” 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: You may view all public comments, as submitted, on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>, except those we cannot post for technical

reasons. NCUA will not edit or remove identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGCMail@ncua.gov.

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

SUPPLEMENTARY INFORMATION:

- I. Background**
- II. Summary of the Proposed Rule**
- III. Regulatory Procedures**

I. BACKGROUND

1. NCUA Authority to Regulate Settings of FCU Examinations and Other On-Site Contacts, Require Production of Records, and Regulate Operating Conditions of FCUs

The Federal Credit Union Act (Act) requires FCUs to “make financial reports to it [the NCUA Board] as and when it may require” and requires FCUs to make “books and records accessible to” NCUA for examination purposes.¹ Likewise, federally insured, state-chartered credit unions must

¹ 12 U.S.C. 1756.

make “reports of condition . . . in such form . . . as the Board may require.”² Under this authority, the Board requires all insured credit unions to file quarterly call reports.³

The Act also requires and authorizes the Board to appoint examiners to examine any insured credit union to determine the credit union’s condition.⁴ NCUA examiners often review and verify the information credit unions submit in their call reports through on-site examinations. Specialized NCUA staff, such as problem case officers, also visit credit unions to address issues identified in the examination process.

In addition to the Board’s statutory responsibilities to obtain financial reports and conduct examinations of insured credit unions, the Act gives the Board general authority to adopt regulations related to the oversight of FCUs. Taken together, these powers give the Board the authority to specify the location and other conditions of examinations and other on-site contacts with FCUs, as well as to require FCUs to conduct business in a commercial setting rather than in a home.

2. NCUA Authority to Direct Conditions of Work for NCUA Employees

The Act grants the Board authority to “direct employees of the Board”⁵ and “define their duties.”⁶ Most of NCUA’s 1,260 employees are credit union examiners who work on-site at credit union locations, performing examinations and other types of reviews. By requiring that all examinations and other on-site contacts between NCUA staff and FCU officials occur in business offices or other

² Id. 1782(a)(1).

³ 12 CFR 741.6.

⁴ 12 U.S.C. 1784.

⁵ Id. 1766(j)(1).

⁶ Id. 1789(a)(4).

public locations, the proposal ensures that examinations and other FCU contacts occur in a professional and safe setting.

3. Home-Based Credit Unions

In the early days of credit union organizing, it was common for a credit union to operate out of the home of one of its officials. As credit unions grew, however, most added offices either at a sponsor's location or in another commercial setting. NCUA has identified approximately 95 remaining home-based, federally insured credit unions. These are credit unions operated out of a home or on the premises of a home address, such as in a garage, sunroom, or basement apartment. Eighty-one of these are FCUs, with assets ranging from \$34,000 to \$12,000,000. Most of these FCUs are very small; 34 have assets below \$1,000,000 and 38 have assets between \$1,000,000 and \$5,000,000.⁷

More recently, NCUA has encouraged examiners and other staff to arrange meetings with officials of home-based FCUs in public places, such as libraries or hotel conference rooms. NCUA did not, however, prohibit staff from meeting with an FCU official at a private home if the official was reluctant to come to another location.

When an on-site contact occurs at the home of an FCU official, NCUA has no way of ensuring the environment is safe for its employees or conducive to working efficiently and securely. NCUA staff who have conducted on-site contacts in homes have recently raised concerns about the conditions they sometimes face. These concerns include: aggressive animals; lack of proper

⁷ The 14 federally insured, state-chartered, home-based credit unions have assets ranging from \$115,000 to nearly \$11,000,000. The state-chartered, home-based credit unions are located in nine states as follows: Kansas has five, Utah has two, and Alabama, Illinois, Minnesota, Nebraska, Ohio, Pennsylvania, and Vermont each have one.

seating, lighting, and rest room access; interruptions from other residents of the home; exposure to allergens; poorly maintained driveways that pose hazards to examiners' vehicles; and low clearances or dilapidated stairways to access basement home offices. These types of concerns are much less likely to arise in a public, non-residential setting. For those home-based credit unions located in rural areas, NCUA is also concerned about the potential for examiners being isolated in a remote location.

Recently, NCUA began extensive efforts to encourage home-based credit unions to obtain commercial office space. NCUA's Office of Small Credit Union Initiatives (OSCUI) has worked with NCUA's Regional Offices to identify home-based credit unions. OSCUI then contacted each of these credit unions to offer assistance in planning for the credit union's long-term viability, including obtaining office space. OSCUI also offered grants to support relocation of home-based credit unions holding the NCUA Low Income Designation. To date, no home-based credit union has taken advantage of these services.

4. Why is NCUA Proposing This Rule?

The Board proposes to amend its regulations to require that any examinations or other on-site contacts between NCUA staff and FCU officials occur at an FCU's business offices or at a mutually agreeable public location. This does not include a private residence. No later than two years following the effective date of a final rule, the proposal would also require all FCUs to obtain and maintain a business office, not located in a private residence. The Board is proposing this rule because, as discussed above, it is concerned that continuing to allow NCUA staff to meet with FCU officials at private residences poses safety risks and is not favorable to conducting business in an

appropriate fashion. In addition, the lack of a business office impedes the ability of FCUs to thrive and grow by obtaining new members or providing additional services to existing members.

The proposed rule would also require FCUs to maintain and monitor telephone numbers or electronic mail addresses, or both. The Board believes another impediment to an FCU's long-term viability is the inability of members to contact the FCU. In the recent outreach to home-based credit unions, OSCUI staff discovered that many of these credit unions lacked a dedicated telephone number with an answering system, a monitored electronic mail address, or both. Lacking both telephone and electronic mail access is not acceptable for a present-day financial institution. NCUA staff, FCU members, and potential FCU members need a reliable way to reach the FCU by electronic mail or telephone, leave messages, and receive prompt replies.

Operating an FCU out of a private residence also creates significant operational risks. The preservation and security of records is a critical concern, and NCUA is concerned many home-based FCUs are storing records in areas where they are at risk for accidental destruction, such as in basements near water heater tanks. Member privacy is also at risk if records are stored where other residents of the household could access them. Finally, as occurred in a recent situation, if an FCU official operating a home-based credit union dies or becomes disabled, NCUA can face barriers to accessing the FCU's records.

Further, a home-based FCU that pays rent for its space to the residing official creates disincentives for FCU management to procure appropriate space. These rental arrangements, by their nature, pose a potential conflict of interest for FCU officials.

The Board also notes that requiring examinations and other contacts with NCUA staff to occur in an alternative public location for credit unions that lack offices is not an ideal long-term solution.

While addressing NCUA's concerns about staff safety and working conditions, meeting in public locations raises other risks. The main concern is the potential for inadvertent violations of privacy laws, or disclosure of confidential supervisory information related to the FCU's condition. For example, credit union examinations frequently involve discussion of the details of particular member loan files, which contain personally identifiable information (PII) that can be used to distinguish or trace an individual's identity. Likewise, examination contacts focus on the FCU's operations and often involve discussions of corrective actions the FCU must take. If these discussions occur in the alternative public locations, as permitted for the first two years under the proposal, NCUA staff and FCU officials must exercise caution that no other parties can overhear any PII or confidential supervisory information.

Having credit union officials move paper files to and from meeting locations, as would be required by the proposal if the credit union is unable to send records electronically, also entails privacy risks. When examiners take possession of an FCU's books and records outside of a credit union's office, the potential for inadvertent disclosure of PII increases further. As required by the Office of Management and Budget, NCUA has adopted guidance for staff regarding privacy responsibilities. These instructions require staff to take a variety of steps to safeguard PII.⁸ One requirement is that staff taking possession of an FCU's records must conduct the contact in a non-public place.⁹ Combining this requirement with the proposal's prohibition on meetings in residences limits the number of acceptable locations for off-site contacts.

⁸ NCUA Instruction 01200.15, Rules and Consequences for Safeguarding Personally Identifiable Information (Oct. 5, 2007).

⁹ NCUA Instruction 13500.09, Security of External Party's Documentation (Mar. 25, 2008).

In summary, while conducting contacts in alternative public locations, NCUA staff and credit union officials must exercise extreme care to avoid violations of privacy laws or revealing confidential supervisory information about the credit union. In the longer term, the Board has determined to eliminate this risk by requiring all FCUs to have an office that will facilitate discussions involving members' PII and confidential supervisory information without the risk of unauthorized disclosure of this sensitive information.

The Board emphasizes that it is sensitive to the challenges the smallest FCUs face, and wants to ensure the long-term viability of all FCUs. Lacking appropriate commercial office space, however, is a significant barrier to both long-term viability and effective supervision. As noted above, over the past year, NCUA has undertaken extensive efforts to assist home-based credit unions, and these efforts will continue. OSCUI will offer another round of grants to support relocation of home-based credit unions that hold the NCUA Low Income Designation in 2014. OSCUI will also produce a Home Relocation Guide best practice document and work with all affected FCUs to provide guidance on relocation.

II. SUMMARY OF THE PROPOSED RULE

The proposed rule adds new section 701.40 to part 701 of NCUA's regulations. Paragraph (a) requires that any meetings between an FCU and NCUA staff occur at an FCU's offices or another alternative public location. This paragraph excludes from the definition of "office," private homes, as well as separate areas of residential premises. Defining "office" in this manner will address the many varieties of home-based offices, including rooms in homes, separate apartments attached to

homes, separate buildings on residential premises such as garages, and separate apartments within a residential apartment building not zoned for retail use. All of these types of locations raise similar concerns in terms of working conditions and safety for NCUA staff, as well as member accessibility.

Paragraph (b) specifies that any home-based FCU official that meets with NCUA staff at an alternative public location must deliver all necessary records to that location. The proposal lists examples of acceptable alternative public locations, such as restaurants, hotel lobbies or meeting rooms, libraries, and community centers. For FCUs that operate from churches or other communal sites such as lodges, the church or lodge office would also be an acceptable alternative public location under the proposed rule. FCU officials and NCUA staff must, however, find a meeting space that complies with NCUA's privacy regulations related to the security of records provided to NCUA. Where an FCU's records with PII are present and in the possession of NCUA staff, the meeting space must be in a separate area, such as a conference room in a hotel, library, or community center.

Subparagraph (c) requires FCUs to maintain and monitor, at a minimum, either an electronic mail address or a telephone number.

The proposed rule applies only to FCUs, not all federally insured credit unions. State supervisory authorities may continue to conduct their examinations of home-based, state credit unions at any location they choose.

Two years after the final rule's effective date, the proposal would revise §701.40 to prohibit FCUs from operating out of homes. The proposal would also prohibit storage of FCU records at residential locations and continue to require FCUs to maintain at least one method of contact. As permitted in conjunction with the requirement that NCUA staff meet with FCU officials at an office or other public location, an FCU that operates out of a church office or similar location will be deemed in compliance with the requirement to obtain office space. OSCUI will consult with affected FCUs to determine if specific situations meet the office requirement.

The proposed rule does not immediately require FCUs to operate out of an office location, so that all affected FCUs have time to adapt to this change. The delayed effective date for obtaining office space, combined with the immediate requirement to meet in public places, improves working conditions for NCUA staff in the short term without immediately imposing a new requirement on small FCUs. As noted above, OSCUI staff will continue to be available to assist affected FCUs as they transition to obtaining business office locations, with appropriate and secure records storage areas, over the next two years.

The proposed rule intends to ensure that all FCUs operate in a manner consistent with modern-day expectations for insured financial institutions. In conjunction with its recent rule requiring all federally insured credit unions to file quarterly call reports electronically, NCUA provided grants so that all credit unions with NCUA's Low Income Designation that lacked computers could obtain them. NCUA will make similar efforts to assist home-based FCUs to comply with these proposed requirements.

III. REQUEST FOR COMMENTS

NCUA requests comments on all aspects of the proposed rule. In light of NCUA's concerns about staff safety and working conditions, NCUA particularly requests comments about whether the portion of the rule requiring home-based credit unions to meet NCUA staff at an alternative public location should also apply to state-chartered, federally insured credit unions.

IV. REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (primarily those under \$50 million in assets). Although this rule would affect relatively few FCUs, NCUA recognizes that all of the affected FCUs are small credit unions. As discussed above, NCUA is offering assistance to locate suitable meeting space at low or no cost as well as assistance with initial relocation expenses. Over the longer term, NCUA will work with officials of affected FCUs to provide consulting, training, and education and resource support as home-based FCUs transition to commercial locations. Accordingly, NCUA certifies this rule 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 creates a new paperwork burden on regulated entities or modifies an existing burden. 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. The proposed change to part 701 simply requires examinations and other meetings with NCUA staff to occur in certain authorized locations, and that

FCUs maintain a functioning telephone number or electronic mail address, or both. This proposed rule will not create new paperwork burdens or modify any existing paperwork burdens.

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. Given the minor requirements the rule imposes on FCUs only, it will not have substantial direct effects 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 proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.¹⁰

List of Subjects

12 CFR part 701

Credit unions, Reporting and recordkeeping requirements

¹⁰ Pub. L. 105-277, 112 Stat. 2681 (1998).

By the National Credit Union Administration Board on December 12, 2013.

Gerard Poliquin

Secretary of the Board

For the reasons set forth above, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701 – ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Add §701.40 to part 701 to read as follows:

§701.40. Examinations and Communication Requirements.

(a) Office Location. All examinations, on-site contacts, and other meetings between a federal credit union and NCUA, where NCUA staff are physically present, must be held in a federal credit union's offices or at an alternative public location. For purposes of this section, a federal credit

union's offices do not include an office maintained in a home or on the premises of a residential address.

(b) Alternative Public Location. For purposes of this section, an alternative public location means a place designated by NCUA staff that is open and available to the general public and that is generally accessible during normal business hours. Alternative public locations may include, but are not limited to, restaurants, hotel lobbies or meeting rooms, libraries, and community centers. Federal credit union officials meeting with NCUA staff at an alternative public location must deliver to that location all credit union records required by NCUA staff. For contacts where member information protected under federal privacy law or regulation is present or discussed, the meeting location must allow for necessary safeguards of this information.

(c) Required Communication Services. All federal credit unions must maintain either an electronic mail address or telephone service, or both. The electronic mail address or telephone number must be dedicated exclusively for the credit union's business purposes, and authorized credit union officials must monitor them regularly.

3. Effective [DATE 24 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], revise §701.40 to read as follows:

§701.40. FCU Office Location and Requirements.

(a) Office Location. Federal credit unions must maintain at least one office in a building that is accessible to credit union members during the federal credit union's normal business hours. Office space maintained in a home or on the premises of a residential address does not meet this requirement.

(b) Records. An FCU's records must be stored either at the FCU's office location or another commercial location designed for secure records storage.

(c) Required Communication Services. All federal credit unions must maintain either an electronic mail address or telephone service, or both. The electronic mail address or telephone number must be dedicated exclusively for the credit union's business purposes, and authorized credit union officials must monitor them regularly.

DRAFT