

Rules and Regulations

Federal Register

Vol. 71, No. 16

Wednesday, January 25, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule concerning financial and statistical reports to require all federally insured credit unions to file the same quarterly Financial and Statistical Report with NCUA. The amendment requires all federally insured credit unions to file Form NCUA 5300 quarterly and, beginning with the third quarter 2006 cycle, eliminates the alternate Form NCUA 5300SF for credit unions with assets of less than ten million dollars. In conjunction with the change in the reporting requirement for small credit unions, NCUA is issuing a number of revisions to Form 5300. All credit unions must use the revised form beginning with the second quarter 2006 reports, due July 20, 2006.

DATES: This rule is effective February 24, 2006, and applies to quarters beginning on or after April 1, 2006.

FOR FURTHER INFORMATION CONTACT: Debra Tobin, Risk Management Officer, or Larry Fazio, Director, Division of Risk Management, Office of Examination and Insurance, at the above address or telephone number (703) 518-6360; or Regina M. Metz or Elizabeth Wirick, Staff Attorneys, Office of General Counsel, at the above address or telephone number (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 2005, the NCUA Board issued proposed revisions to § 741.6(a), the provision governing the filing of quarterly Financial and Statistical Reports, also known as Call

Reports or 5300 reports. 70 FR 55308 (Sept. 21, 2005). The NCUA Board is issuing the final rule without change from its proposal. The effect of this revision is that all federally insured credit unions will file the same quarterly call report form beginning with the second quarter of 2006 and the revision eliminates the special short form for credit unions with less than ten million dollars in assets beginning with the third quarter of 2006.

The NCUA Board last revised § 741.6(a) in 2002. 67 FR 12464, March 19, 2002. Before those 2002 revisions, this section required all federally insured credit unions with assets in excess of \$50 million to file a quarterly call report with NCUA. All other federally insured credit unions filed semiannually.

Since the 2002 amendments, all federally insured credit unions are required to file quarterly Call Reports, but credit unions with less than ten million dollars in assets have the option of filing a short form for the first and third quarters. The amendment requires all federally insured credit unions to file the same quarterly call report form, a revised Form NCUA 5300. Small credit unions, accordingly, will no longer have the option of using a short form beginning with the third quarter 2006 reporting cycle.

NCUA has also revised its Call Report form, and will require credit unions to use the new form for reporting cycles beginning with the second quarter of 2006. NCUA usually makes revisions to Form 5300 every year and requires use of the revised form for the first quarter of each year. Revisions to the Form 5300 do not require a change to NCUA's regulation. Because this rule change eliminates the short form for small credit unions, NCUA has delayed implementation of the revised form until the second quarter in 2006.

The revised Form NCUA 5300 consolidates information, reduces ancillary schedules, and is easier to read and use. Based on the revisions, the short form is no longer needed, and the new design provides many benefits for credit unions. The Call Report form will have a consistent appearance each cycle, which will eliminate confusion for smaller credit unions, and it is shorter: 16 pages compared to 19 pages in the current version. In addition, the revised form is designed so small credit

unions generally will not have to complete supporting schedules. Only the first ten pages require input by all credit unions. For comparison, the current short form is only eight pages but the new, easier format will reduce the burden. NCUA currently reports to the Office of Management and Budget an average completion time of 6.6 hours for the regular Form NCUA 5300 and 6.0 hours for the Form NCUA 5300SF. The consolidated form should not materially impact the time spent by smaller credit unions, meaning those under ten million dollars in assets.

The new design also provides efficiencies and benefits to NCUA. By eliminating the short form NCUA only has to maintain one 5300 form, one set of edits and warnings, and one set of Financial Performance Report specifications. This will improve efficiency and reduce the likelihood of introducing errors in the reporting system. In addition, the burden on the Office of the Chief Financial Officer and the cost of printing and mailing will be reduced with the distribution of a single form. Both internal and external quarterly financial trend analysis will be improved, since comprehensive quantitative data will be reported by all credit unions. Further, the shift to one Call Report will simplify maintenance of the Financial Performance Report and provide additional data needed for small credit unions to use the expanded Financial Performance Report fully. Additionally, trend reports from NCUA's Automated Integrated Regulatory Examination System (AIRES) will be more consistent and detailed for smaller credit unions. For example, quarterly detail that is currently not provided for real estate loans and investments will be available.

In summary, the consolidation of the Call Report and elimination of the Form NCUA 5300SF will improve the agency's efficiency, increase the accuracy of the information collected, and simplify the reporting process for credit unions, large and small. The revised form will be used beginning with the second quarter 2006 call reports, due July 20, 2006.

Summary of Comments

The NCUA Board received six comment letters regarding the proposal: Three from national trade associations; one from a state credit union league;

and two from FCUs. All commenters supported the proposed changes and stated that the benefit of having a consistent reporting system outweighs any possible new burden for smaller credit unions. All commenters also supported NCUA's goals to streamline the reporting process and reduce regulatory burdens and agreed that the proposed revisions would contribute to these goals. Three commenters stated that credit unions should only be required to submit revised reports for the third quarter cycle ending in September 2006 if the final revisions to the call report were issued before year-end 2005. One commenter stated support for the planned implementation date without any conditions. One commenter requested that credit unions have six months to one year after the issuance of the final form before they are required to use it.

NCUA agrees that credit unions need sufficient time to prepare for filing the new form. The final version of the form is unchanged from the proposal issued in September 2005 and is being issued January 19, 2006. Three commenters suggested that the final rule should be issued by the end of 2005 if compliance for the third quarter of 2006 would be required. This final rule is being issued less than a month after the issuance date suggested by the three commenters and NCUA has determined that credit unions will have ample time, approximately six months, to become familiar with the new form before its due date.

For Call Report revisions occurring apart from regulatory changes, NCUA generally provides about three months' notice. Thus, by implementing the changes for the second quarter, NCUA has at least doubled its usual notice for changes of this type.

Two commenters suggested other ways that NCUA could make the call report process less burdensome. These suggestions included: Not requiring credit unions to repeat information that is unchanged from previous call reports, making reporting categories mutually exclusive and improving explanations for requested information, and importing information between sections of the report. These suggestions are outside the scope of the proposed rule and, therefore, NCUA cannot incorporate them into the final rule; NCUA would have to issue a second proposal with a second comment period. NCUA wants to implement the single call report form for the reasons discussed above without delay but believes the commenters have made interesting suggestions that deserve further review. NCUA notes it welcomes

these suggestions for further improvement and will consider them in future call report revisions.

Regulatory Procedures

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board previously determined that the rule to require all federally insured credit unions to file a Call Report form on a quarterly basis is covered under the Paperwork Reduction Act.

Currently, credit unions with assets less than ten million dollars have the option in the first and third quarters of filing the NCUA 5300SF with NCUA. We now report to OMB an average completion time of 6.6 hours for the regular Form NCUA 5300 and 6.0 hours for the Form NCUA 5300SF. NCUA estimated annually 38,050 forms are submitted to NCUA, with an average annual completion time of 251,130 hours, at an annual cost of \$5,497,542. OMB approved the information collections under both Forms NCUA 5300 and NCUA 5300SF as OMB number 3133-0004.

NCUA submitted a copy of the proposed rule and revised Form NCUA 5300 to OMB and has received its approval under OMB number 3133-0004.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. 5 U.S.C. 601-612. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The final rule requires all federally insured credit unions to complete the same, revised, Form NCUA 5300.

The NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required. NCUA requested comments on its determination and received no comments either agreeing or disagreeing with this analysis.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory 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 substantial direct effects on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined the final 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 the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's seeks to minimize the reporting burdens on federally insured credit unions. Commenters agreed that the amendment is understandable and imposes minimal regulatory burden.

List of Subjects in 12 CFR Part 741

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on January 19, 2006.

Mary Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

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

Authority: 12 U.S.C. 1757, 1766(a), and 1781-1790; Pub. L. 101-73.

■ 2. Amend § 741.6 by revising paragraph (a) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Each operating insured credit union must file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300 according to the deadlines published on the Form NCUA 5300, which occur in January (for quarter-end December 31), April (for quarter-end March 31), July (for quarter-

end June 30), and October (for quarter-end September 30) of each year.

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[FR Doc. 06-684 Filed 1-24-06; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 742

Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule.

SUMMARY: The National Credit Union Administration (NCUA) is modifying the eligibility criteria for its Regulatory Flexibility Program by reducing the minimum net worth, and extending the duration that it must be maintained, to qualify for the Program. Federally-insured credit unions that qualify are exempt in whole or in part from a series of regulatory restrictions and also are allowed to purchase and hold an expanded range of eligible obligations. **DATES:** This rule is effective February 24, 2006.

FOR FURTHER INFORMATION CONTACT: Steven W. Wideman, Trial Attorney, Office of General Counsel, at 703/518-6557; or Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, at 703/518-6396.

SUPPLEMENTARY INFORMATION:

A. Background

1. RegFlex Program Under Part 742

The NCUA Board established a Regulatory Flexibility Program ("RegFlex") in 2002 to exempt qualifying credit unions in whole or in part from a series of regulatory restrictions, and grants them additional powers. 12 CFR part 742 (2005); 66 FR 58656 (Nov. 23, 2001). A credit union may qualify for RegFlex automatically or by application to the appropriate Regional Director.

To qualify automatically for RegFlex, a credit union must have a composite CAMEL rating of "1" or "2" for two consecutive examination cycles and, under existing part 742, also must achieve a net worth ratio of 9 percent (200 basis points above the net worth ratio to be classified "well capitalized") for a single Call Reporting period. If the credit union is subject to a risk-based net worth ("RBNW") requirement, however, the credit union's net worth must surpass that requirement by 200 basis points. 12 CFR 742.1 (2005).

A credit union that is unable to qualify automatically for RegFlex may

apply to the appropriate Regional Director for a RegFlex designation. To be eligible to apply, a credit union must either have a CAMEL rating of "3" or better or meet the present 9 percent net worth criterion, but not both. 12 CFR 742.2 (2005). A Regional Director has the discretion to grant RegFlex relief in whole or in part to an eligible credit union.

A federal credit union's RegFlex authority can be lost or revoked. A credit union that qualified for RegFlex automatically is disqualified once it fails, as the result of an examination (but not a supervision contact), to meet either the CAMEL or net worth criteria in § 742.2(a). 12 CFR 742.6 (2005). RegFlex authority can be revoked by action of the Regional Director for "substantive and documented safety and soundness reasons." § 742.2(b) (2005). The decision to revoke is appealable to NCUA's Supervisory Review Committee,¹ and thereafter to the NCUA Board. 12 CFR 742.7 (2005). RegFlex authority ceases when that authority is lost or revoked (even if an appeal of a revocation is pending). *Id.*; 12 CFR 742.6 (2005). But past actions taken under that authority are "grandfathered," *i.e.*, they will not be disturbed or undone.

2. RegFlex Relief

As originally adopted, the RegFlex program gave qualifying credit unions relief from a variety of regulatory restrictions, 12 CFR 742.4(a) and 742.5 (2005):

- **Fixed assets.** The maximum limit on fixed assets (5 percent of shares and retained earnings), 12 CFR 701.36(c)(1).

- **Nonmember deposits.** The maximum limit on non-member deposits (20 percent of total shares or \$1.5 million, whichever is greater), 12 CFR 701.32(b).

- **Charitable contributions.** Conditions on making charitable contributions (relating to the charity's location, activities and purpose, and whether the contribution is in the credit union's best interest and is reasonable relative to its size and condition), 12 CFR 701.25.

- **Discretionary control of investments.** The maximum limit on investments over which discretionary control can be delegated (100 percent of credit union's net worth), 12 CFR 703.5(b)(1)(ii) and (2).

- **Zero-coupon securities.** The maximum limit on the maturity length of zero-coupon securities (10 years), 12 CFR 703.16(b).

¹ See Interpretive Ruling and Policy Statement 95-1, 60 FR 14795 (March 20, 1995).

- **"Stress testing" of investments.** The mandate to "stress test" securities holdings to assess the impact of a 300-basis points shift in interest rates, 12 CFR 703.12(c) (2001).

- **Purchase of eligible obligations.** Restrictions on the purchase of eligible obligations, 12 CFR 701.23(b), thus expanding the range of loans RegFlex credit unions could purchase and hold as long as they are loans those credit unions would be authorized to make (auto, credit card, member business, student and mortgage loans, as well as loans of a liquidating credit union up to 5 percent of the purchasing credit union's unimpaired capital and surplus).

With the overhaul of parts 703 (investments) and 723 (member business loans) in 2003,² RegFlex credit unions received further relief from the following restrictions:

- **Member business loans.** The requirement that principals personally guarantee and assume liability for member business loans. 12 CFR 723.7(b).

- **Borrowing repurchase transactions.** The maturity limit on investments purchased with the proceeds of a borrowing repurchase transaction. 12 CFR 703.13(d)(3).

- **Commercial mortgage-related securities.** The restriction on purchasing commercial mortgage-related securities of issuers other than the government-sponsored enterprises.³ 12 CFR 703.16(d).

3. 2005 Proposed Rule

In 2005, the NCUA Board reassessed the RegFlex program to ensure its availability to credit unions that are least likely to encounter safety and soundness problems, thus minimizing the risk of loss to the Share Insurance Fund. Experience indicates that such credit unions consistently maintain a high net worth ratio and a high CAMEL rating. Accordingly, the NCUA Board issued a proposed rule reducing from 9 to 7 percent the minimum net worth ratio to qualify for RegFlex, but extending from one to six quarters the period the minimum net worth must be maintained to qualify. 70 FR 43769 (July

² See 68 FR 32960, 32966 (June 3, 2003) and 68 FR 56537, 56542, 56553 (Oct. 1, 2003).

³ Federal credit unions are permitted to invest in commercial mortgage-related securities issued by the government-sponsored enterprises ("GSEs") enumerated in 12 U.S.C. 1757(7)(E). "Subject to such regulations as the Board may prescribe," 12 U.S.C. 1757(15)(B), federal credit unions also may invest in commercial mortgage-related securities of issuers other than GSEs. Section 742.4(a)(9) of the final rule prescribes conditions under which RegFlex credit unions may invest in commercial mortgage-related securities of non-GSEs.