

May 11, 2007

Ms. Mary F. Rupp  
Secretary of Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: Proposed Rule Parts 748 and 749,  
Records Preservation Program

Dear Ms. Rupp:

Navy Federal Credit Union provides the following comments in response to the National Credit Union Administration's (NCUA) proposed amendments to its regulations for credit union records preservation programs. Navy Federal supports the maintenance of solid record preservation programs for all credit unions and believes that these types of programs are necessary to keep credit unions safe and sound.

We fully support NCUA's proposal to eliminate the question and answer format of Part 749. While question and answer formats may be effective for certain types of communications, we believe they generally are not conducive to the effective implementation of intricate regulatory requirements placed on the financial services industry. We recommend that NCUA eliminate all question and answer formats as it periodically reviews and updates its rules and regulations.

Navy Federal is concerned that in the transition from the question and answer format and in recent piecemeal amendments to Parts 748 and 749, the organization and content of the current proposal has become overly confusing and convoluted. In November 2006, NCUA amended Part 748 to include Suspicious Activity Report requirements that duplicate Department of Treasury regulations. We believe the partial duplication of Treasury regulations leads to confusion for those who must comply. Additionally, the duplication is inconsistent with Executive Order 12866, *Regulatory Planning and Review*. Notwithstanding, the current proposal should be reorganized and clarified to facilitate effective compliance by credit unions. Please consider the following and make appropriate clarifications before issuing a final rule that would implement the proposed amendments to Parts 748 and 749:

- As proposed, Catastrophic Act Preparedness Guidelines (Business Continuity) presented as Appendix B to Part 749, Records Preservation Program, appears as a subset of a credit union's records preservation program. In reality, if the two subjects must be commingled, we believe it is more reasonable for Records Preservation regulations to be a subset of Business Continuity regulations.
- The current Appendix A, *Record Retention Guidelines*, and proposed Appendix B, *Catastrophic Act Preparedness Guidelines*, use the word guidelines in their titles. NCUA should clearly communicate the difference between regulations and guidance or guidelines and whether credit unions are expected to partially or fully comply with guidance or guidelines.
- Proposed Part 748 defines *catastrophic act* with no reference as to whether the definition carries over to Part 749. Proposed Part 749 does not define *catastrophic act* but uses the term eight times. We do not believe credit unions should be expected to read all of Part 748 with its duplication of information on *Suspicious Activity Reports* to understand how to implement requirements or guidelines for business continuity.
- Proposed Part 749 defines *vital member services* explicitly for the purposes of Part 749. However, proposed Part 748, does not define *vital member services*, but uses the term in its definition of *catastrophic act* which is critical to implementing the proposed requirements and guidelines of Part 749.

Apart from the confusion created by the organization of Parts 748 and 749, the proposed definition of catastrophic act lacks specificity. Literally interpreted, the proposed regulation would require a credit union to report to the regional director a torn carpet (physical damage) resulting from moving furniture (any event, natural or otherwise). We do not believe the Board intended that such an event be considered a catastrophic act. Physical damage by itself is not germane to a catastrophic act but rather the extent of vital member service interruptions that the event (including one that causes physical damage) may cause. We strongly recommend that catastrophic act be defined only in terms of the extent of vital member service disruption.

Further, a mere inconvenience to some credit union members should not be considered a catastrophic act. For example, if vital member services might be obtained via an alternate delivery channel (via an ATM or phone versus a teller station) the event should not be considered a catastrophic act. To rise to the catastrophic level, we believe an act should be of such a magnitude that members' quality of life is significantly impacted by the credit union's inability to provide services. Webster's II New Riverside University Dictionary defines catastrophic as; "1. A sudden, terrible calamity: DISASTER. 2. A total failure: FIASCO." In the vast majority of cases we do not believe such a level is attained by a two day absence of credit union services.


Ms. Mary Rupp  
Page 3  
May 11, 2007

We are very concerned that the proposed changes to Part 749 would impose general disaster recovery rules without regard for each credit union's unique circumstances including its relationship with its members. We believe each credit union is in the best position to determine which of its member services are vital to its members and to what extent an interruption of those services rises to the level of "catastrophic." We strongly recommend that NCUA permit each credit union to document its critical member services and to what extent an interruption of those services rises to the level of a catastrophic act.

Finally, we ask NCUA to include in its amended regulation a point of contact within the regional office for responding to credit union questions concerning specific events that may trigger a report. This would save time for credit unions and improve the quality of reports on catastrophic acts.

We appreciate the opportunity to provide comments in response to NCUA's proposal on records preservation requirements. If you have any questions, please contact Patrick Caldwell, Policy Analyst, at (703) 206-4161.

Sincerely,



John R. Peden  
Acting President/CEO

JP/pc