



Credit Union National Association

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cuna.org

May 11, 2007

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

Re: Proposed Rule on 12 CFR Parts 748 and 749, Records Preservation Program and Appendixes – Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

Dear Ms. Rupp:

On behalf of the Credit Union National Association, thank you for the opportunity to file comments on the National Credit Union Administration Board's proposal to amend its regulations on records preservation requirements for federally insured credit unions. The purpose of the proposal is to clarify credit unions' responsibilities in this area and to provide a new appendix designed to help credit unions in their recovery efforts following a catastrophic act. By way of background, CUNA represents approximately 90 percent of our nation's 8,600 state and federal credit unions, which serve 87 million members.

Summary of CUNA's Comments

- CUNA generally supports efforts to clarify regulations and some illumination of records preservation requirements could be useful to credit unions and facilitate their ability to resume operations following a disaster. It could also be helpful to examiners so that they have a better understanding of what the agency is expecting of credit unions.
- The clarification in the proposal that credit unions may utilize another federally insured credit union for vital records storage is particularly useful.
- However, we think some changes to the proposal could assist with compliance without undermining current requirements regarding records preservation.
- While the proposal retains language from the current rule providing flexibility to credit unions in terms of the format they chose for maintaining records, requiring updating of accounts on a daily basis for small non-automated credit unions may be problematic and we encourage the agency to reconsider the impact of this requirement on such institutions, as outlined below.



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- We also have concerns about including “recommendations” in the body of the regulation as well as the agency’s expectations regarding the use of Appendix B by credit unions and examiners, as discussed below.

Discussion

While important at all times, the subject of records preservation and retrieval became a very significant issue in the wake of Hurricanes Katrina and Rita. As the days and weeks following those catastrophes demonstrated, credit unions want to become operational and return to normal procedures as soon as possible to meet their members’ needs for cash and other financial services. In that connection having clearer language in the agency’s regulations regarding what is expected of credit unions could be useful and could also assist examiners to ensure they have an understanding of such requirements that is consistent with the Board’s directives. We also support the clarification in the proposal that credit unions may use another federally insured credit union as their records storage facility, as long as certain location and other criteria are met.

Nonetheless, we do have some concerns about the proposal and recommend some changes that in our view would improve the clarity of records requirements and facilitate compliance for credit unions.

The proposal clarifies that credit unions must have a written program that addresses their plans for preserving and reconstructing vital records. This is consistent with the current rule which requires credit unions to establish and maintain a program for records preservation. Our concerns relate to the new proposed language in 12 CFR 749.0(a) that “it is recommended a credit union develop a method for restoring vital member services in the event of a catastrophic act.” While it is essential that a credit union have a method to restore services, business continuity planning as well as the ongoing desire to serve members would drive the restoration of services and we do not feel it is necessary to include this provision in this regulation. We also feel it is potentially confusing for examiners and credit unions to include recommendations in the regulation, which should address requirements. If a credit union chooses not to follow the recommendations, will the examiner still try to enforce them because they are addressed within the rule? Recommendations in our view should be included in guidance or “best practices” information rather than in the body of the regulation. Similar same concerns apply to the recommendation in proposed Section 749.2 regarding having a method for using duplicate records to restore vital member services.

The proposal would require the listing of information relating to share, deposit and loan balances as of the most recent business day. Currently, such information is included with vital records as of the most recent month-end. We are concerned that nonautomated smaller credit unions may have problems complying with the shorter time frame. NCUA has provided some flexibility for nonautomated credit unions under regulations such as Truth in Savings and we recommend NCUA consider whether a similar approach for records preservation is appropriate, which give smaller institutions would more time to update the required information.

Section 749.3 includes a new statement that a “credit union must maintain or contract with a third party to maintain any equipment or software for its vital records center

necessary to access records.” Section 749.5 already requires the credit union to maintain equipment or software so that the examiner may access records during the examination process. Because maintaining the equipment or software to access records is an obvious step and because it is already addressed in the current rule, we do not think this addition is necessary or useful.

The proposal includes a new Appendix B to provide guidance on preparing and maintaining a program to prepare for catastrophes and their aftermath. Credit unions who responded to us on this proposal had mixed reactions. Those who did not favor retaining the Appendix felt its recommendations could be enforced as a regulation while others felt that the recommendations have already addressed by the agency. In light of those concerns, we recommend that NCUA not adopt the Appendix as a supplement to the regulation but make the information available to credit unions on the agency’s website as a separate reference tool.

Thank you for the opportunity to comment on the proposal.

Sincerely,

A handwritten signature in cursive script that reads "Mary Mitchell Dunn". The signature is written in black ink and is positioned to the left of a vertical red line.

Mary Mitchell Dunn
Senior Vice President and Deputy General Counsel