

THE OFFICE OF GENERAL COUNSEL'S
2011 REGULATION REVIEW
FINAL REPORT

Table of Contents

Introduction

748	Security Program, Report of Crime or Catastrophic Act and Bank Secrecy Act Compliance
749	Records Preservation Program and Record Retention Appendix
750	Golden Parachute and Indemnification Payments
760	Loans in Areas Having Special Flood Hazards
790	Description of NCUA; Request for Agency Action
791	Rules of NCUA Board Procedures; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings
792	Requests for Information Under the Freedom of Information Act and Privacy Act, and by Subpoena; Security Procedures for Classified Information
793	Tort Claims Against the Government
794	Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Credit Union Administration
796	Post-Employment Restrictions for Certain NCUA Examiners
797	Procedures for Debt Collection

Introduction

The purpose of this report is to ensure NCUA's compliance with IRPS 87-2, as amended by IRPS 03-2, "Developing and Reviewing Government Regulations." The IRPS provides for a review of all existing regulations every three years with the purpose of that review being to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." To carry out the IRPS, the Office of General Counsel reviews one-third of the regulations each year and identifies those regulations we think should be amended.

At this time, we are reviewing the last third of the regulations to make recommendations for amendments in 2012. In January 2011, public notice of the regulations under review was provided on the NCUA website; seven comment letters were received from CUNA, NAFCU, NASCUS, the Missouri, Ohio and Southeastern Credit Union Leagues, and Salal Credit Union. Most of the comments did not address the regulations under review. In addition, many comments addressed either non-NCUA issued regulations or other issues not addressed in the NCUA Regulations. In preparing this report, OGC staff has considered the public comments, as well as comments from agency offices.

748 Security Program, Report of Crime or Catastrophic Act and Bank Secrecy Act Compliance with Appendices A & B

This regulation requires a federally-insured credit union to develop a written security program and also sets forth Bank Secrecy Act compliance programs and procedures. This regulation was amended in July 2009 and we are unaware of any problems that would suggest that it should be revised at this time. One commenter suggested an update to Appendix B that would clarify a credit union's notification duty when a third party, such as a merchant, has a breach that impacts a credit union's members. One Region suggested removal of a grandfather provision in Appendix A, III, G, 2 as outdated. **We agree that these minor revisions should be made.**

749 Records Preservation Program and Record Retention with Appendices A & B

This regulation sets out the procedures that federally-insured credit unions must follow for records retention. Part 749 and Appendix B were last amended in August 2007; Appendix A was last amended in July 2009. A commenter recommended deleting Section E(1)(c) from Appendix A (permanent retention of current manuals, circular letters, and other official instructions of a permanent character received from the NCUA and other governmental agencies). **We agree with the commenter that NCUA should consider putting this revision out for comment since these materials are generally available electronically on the agencies' websites or would otherwise be available from the agencies.** The commenter also recommended removing the "permanent" retention of several operational records noted in Section E, 2 of Appendix A. We do not agree with this recommendation and do not think this part of the rule should be revised at this time.

750 Golden Parachute and Indemnification Payments

This new final rule, issued in May 2011, prohibits, in certain circumstances, a federally-insured credit union from making golden parachute and indemnification payments to an institution affiliated party. In November 2011, we issued a final rule to making a technical correction to an exception to the definition of golden parachute payment pertaining to plans offered under §457 of the Internal Revenue Code. One Region suggested a broadening of the rule's applicability. This rule is new and closely follows statutory provisions. We believe there has not been adequate time to determine if an expansion of the rule is necessary.

760 Loans in Areas Having Special Flood Hazards

This regulation sets forth flood insurance requirements. This regulation was amended in December 1999 and we are unaware of any problems that suggest it should be revised at this time. In June 2009, interagency questions and answers (Q&As) were jointly issued by NCUA, OCC, FDIC, FRB, FCA and OTS to provide guidance to address the most frequently asked questions about flood insurance. The agencies issued several final Q&As, as well as proposing several new or revised Q&As in 2011. We anticipate that these Q&As will be finalized in 2012. One commenter suggested removing the address noted for FEMA to acquire forms in Section 760.6(a) since addresses frequently change. **We agree and recommend the postal address be removed and replaced with FEMA's website address since forms can be acquired via the website.**

790 Description of NCUA; Request for Agency Action

This regulation sets forth a description of NCUA. This regulation was last amended in June 2010. Several commenters noted the rule requires amendment to reflect the various changes within the agency, including description of the new Office of Minority and Women Inclusion, relocation of the Office of Capital Markets into the Office of Examination and Insurance, an update of the Region II address and a clarification in the description of the Chief Financial Officer. **We agree and recommend the updates be made.**

791 Rules of NCUA Board Procedures; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

This regulation sets forth how the NCUA Board conducts its rulemaking process, including implementation of the Government in the Sunshine Act. This regulation was last amended in June 2010. At this time, staff is unaware of any problems or issues that indicate this regulation should be revised.

792 Requests for Information Under the Freedom of Information Act and Privacy Act, and by Subpoena; Security Procedures for Classified Information

In October 2008, the NCUA Board issued amendments to Subparts A and E, which deal with requests for information under the Freedom of Information Act and the Privacy Act, respectively. Subpart B is reserved. Subpart C deals with the policy and procedures by which an outside party can request NCUA non-public records or employee testimony for use in legal proceedings. This subpart was issued in 1997 and amended in 2000. The NCUA Board also amended Subpart D, which deals with security procedures for classified information, in May 2008. Staff is unaware of any problems or issues that would require a revision to this regulation.

793 Tort Claims Against the Government

This regulation sets forth the procedures for asserting claims under the Federal Torts Claims Act. This regulation was most recently amended in 2010. Staff is unaware of any problems or issues that suggest that this regulation should be revised at this time.

794 Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Credit Union Administration

This regulation requires the NCUA to operate all of its programs and activities in a manner ensuring nondiscrimination against qualified handicapped persons. It is not applicable to credit unions. Because of recent amendments to the Rehabilitation Act of 1973, the regulation should be updated to include certain terminology and definitions in the regulation, e.g. replace “handicapped persons” with “individuals with disabilities.” **Staff recommends updating the regulation to implement the ADA Amendments Act of 2008, H.R. 3195.** Staff notes, however, that amendments are subject to review by DOJ and HHS.

796 Post-Employment Restrictions for Certain NCUA Examiners

This regulation implements statutory post-employment restrictions that apply to certain senior NCUA examiners. It prohibits senior NCUA examiners, for a year after leaving NCUA employment, from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for a total of two or more months during their last 12 months of NCUA employment. The rule was first enacted in December 2005 and we are currently unaware of any problems that would suggest it should be amended.

797 Procedures for Debt Collection

This regulation implements the Debt Collection Practices Act. It was issued by the NCUA in February 2008. It governs NCUA procedures for collecting debts from present and former NCUA employees. Staff is unaware of any problems or issues that would require a revision to this regulation.