

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The proposed rule would amend the existing NCUA Regulation regarding the filing of Financial and Statistical Reports, Form 5300 (the "5300 Report") by adding a provision to allow the NCUA to directly assess federally-insured credit unions for the actual cost of repeated incidents of filing inaccurate or late 5300 Reports.

DATES: Comments must be received on or before April 5, 1996.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518-6480. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Director, Division of Risk Management, (703) 518-6363, or Jeffrey Mooney, Staff Attorney, (703) 518-6563, at the above address.

SUPPLEMENTARY INFORMATION: Section 741.6 of NCUA Regulations, 12 CFR § 741.6, requires that federally-insured credit unions with assets in excess of \$50 million file a quarterly 5300 Report (or "call report") with NCUA and that all federally-insured credit unions file semiannually. Each quarter, a significant number of these reports are submitted late or inaccurately. As a result, NCUA is required to undertake review and collection efforts that include: identifying those federally-insured credit unions that have not submitted their call reports; correcting errors; sending notices to federally-

insured credit unions advising them of errors contained in their 5300 Report; asking federally-insured credit unions why they have not submitted a 5300 Report; requiring federally-insured credit unions to submit amended call reports or additional information; and as necessary in some cases, making personal contact with federally-insured credit unions through telephone calls and/or on-site visits to correct the errors or simply to obtain the 5300 Report. NCUA regional offices have indicated that each year an additional 4,000 hours are spent by federal examiners attempting to correct or obtain late call reports.

Sections 120 of the Federal Credit Union Act provides the NCUA Board general rulemaking authority to "prescribe rules and regulations for the administration of this chapter," and, under Section 209 of the Federal Credit Union Act to, "prescribe such regulations as it may deem necessary or appropriate to carry out the provisions of this title." 12 U.S.C. 1766 and 1789. All federally-insured credit unions are required to file call reports with the NCUA. 12 U.S.C. 1782(a)(2) and 12 CFR 741.6. The Board has determined that the cost of correcting or obtaining repeatedly inaccurate or late reports from federally-insured credit unions should be charged to the federally-insured credit unions responsible rather than borne as a shared costs by the vast majority of federally-insured credit unions which routinely comply with the filing requirement. As a result, the Board proposes to assess the agency's actual costs to federally-insured credit unions that cause this unnecessary expense.

The costs will be calculated using the staff time and costs of identifying federally-insured credit unions that have not filed their 5300 Report or corrected inaccurate information. NCUA will multiply the actual NCUA staff time expended to obtain or correct the 5300 Report by the average hourly compensation rate for field staff rate to determine the assessed amount.

Prior to assessing costs for a late call report, the appropriate NCUA regional office will notify the federally-insured credit union in writing that their call report is late, that the federally-insured credit union has in at least one of the three reporting periods prior to the subject call report also filed their report

late, and that the NCUA will assess costs on the federally-insured credit union if the report is not promptly received. The regional office will also inform the federally-insured credit union of the potential costs associated with processing the late submission.

The report is deemed inaccurate if it: (1) Contains a substantive error requiring the federally-insured credit union to submit an amended 5300 Report or (2) when substantive errors are found during the 5300 Report editing process that require correction and verification by the federally-insured credit union, and (3) the federally-insured credit union has, at least twice during four continuous reporting periods to include the report at issue, produced a 5300 Report with substantive errors that require the region's direct efforts to correct. A 5300 Report can also be considered inaccurate if numerous nonsubstantive errors affect the integrity of the submitted data and correction is required in at least two of the past four reporting periods to include the period at issue. A substantive error is one where a correction would result in changing any amount reported in the 5300 Report by one or more percent or \$5,000, whichever is less.

If a 5300 Report is inaccurate, the NCUA regional office will notify the federally-insured credit union in writing accordingly, describe the substantive errors and suggest steps on how to avoid committing similar errors, request a response, and advise the federally-insured credit union that the NCUA will assess costs if the error(s) are not promptly corrected without further NCUA involvement. The regional office will also inform the federally-insured credit union of NCUA's estimate costs associated in obtaining a corrected submission.

NCUA will assess and recover the costs in the quarter immediately following the call report's filing date. NCUA examiners will recommend the assessment of costs to their supervisors by describing the facts and circumstances surrounding the call report's deficiencies or lateness. The examiner will itemize the time and expense used resolving the matter. The examiner will also provide any prior recent history where the federally-insured credit union has filed late or inaccurate call reports. The regional

director will issue the final assessment. The regional director may decide to waive or abate costs after taking into account the size of a federally-insured credit union, the gravity of the error, the federally-insured credit union's efforts in correcting the error or the promptness in responding to the request for the late call report and reviewing any submissions from the federally-insured credit union that sets forth a reasonable basis for waiving or abating the costs. Costs will not be assessed unless the assessment is based on the same type of error, repeated numerous errors, or repeated lateness. For example, a federally-insured credit union may not be assessed costs if in the first reporting period it files a late 5300 Report and during the fourth reporting period it files an inaccurate 5300 Report.

A federally-insured credit union may appeal a cost assessment by a regional director by submitting written reasons why the assessment should be abated to the NCUA Board within 30 days of receiving the final assessment from the region. The Board may delegate the authority to determine appeals. The Board or its designee will review all of the relevant facts, consult with the regional director involved and any other appropriate party including the affected federally-insured credit union and issue a final agency determination. There is no right to a hearing.

In order to assure uniformity, the regional offices will inform the Director of the Office of Examination and Insurance of the facts and circumstances surrounding each assessment of costs during the prior quarter, including those circumstances that warranted waiver or abatement.

These costs are not being assessed as part of an administrative action or civil money penalty as defined by the Federal Credit Union Act, 12 U.S.C. 1786(k)(2). The costs are assessed to recover the agency's expenses based upon the amount of additional time and resources that NCUA must devote to a particular federally-insured credit union's 5300 Report. NCUA may choose to seek civil money penalties or take other administrative actions against the federally-insured credit union for violating the regulatory requirement to file timely and accurate call report. The purpose of the proposed rule is to recover the additional costs the NCUA incurs when collecting late and correcting inaccurate call reports.

The NCUA requests comment on any aspect of this proposal.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small federally-insured credit unions, primarily those under \$1 million in assets. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on the collection of information should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 1020, Washington, DC 20503. Attn: Milo Sunderhauf. NCUA will publish a notice in the Federal Register once OMB action is taken on the submitted request.

The collection of information requirements in this proposed regulation are found in 12 CFR 741.6 (c)(4)(f), (c)(6) and (c)(7). This information is required to proposed implementing procedures that will enable the federally-insured credit union to comply with the requirements of this section, and to challenge the assessment of costs. The likely respondents/recordkeepers are federally insured credit unions.

Estimated number of respondents and/or recordkeepers: 630.

Estimated average annual burden hours per respondent/recordkeeper: 2 hours.

Estimated total annual reporting and recordkeeping burden: 1260 hours.

Start up cost to respondents: \$29.76.

Executive Order 12612

The proposed change in § 741.6 will apply to both federal credit unions and federally-insured, state chartered credit union. The NCUA Board, pursuant to Executive Order 12612, has determined that the proposed amendment will not have substantial direct effect on the states, on the relationship between hat national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 25, 1966.
Becky Baker,
Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781 through 1790.

2. Section 741.6 is amended by adding paragraph (c):

§ 741.6 Financial and statistical and other reports.

* * * * *

(c) If NCUA incurs costs due to a federally-insured credit union's failure to file an accurate or timely Financial and Statistical Report on Form 5300 (5300 Report), the federally-insured credit union involved will be assessed those costs if during any of the prior three reporting periods the federally-insured credit union has also filed its 5300 Reports late, or during any of the prior three reporting periods the federally-insured credit union has also filed the 5300 Report with substantive or numerous inaccuracies.

(1) A 5300 Report is considered late if it is postmarked after the date prescribed in paragraph (a) above.

(2) A 5300 Report is inaccurate if it contains one or more substantive errors or numerous nonsubstantive errors requiring an amended report or when substantive errors or numerous nonsubstantive errors are found during the editing process that require correction and verification by the federally-insured credit union.

(i) A substantive error exists if correction would result in changing any amount reported in the 5300 Report by more than one percent of the correctly reported amount or \$5,000, whichever is less.

(3) The appropriate NCUA regional office will provide written notice to the federally-insured credit union if the federally-insured credit union will be assessed a fee for late or inaccurate filing under this section. The NCUA will provide the federally-insured credit union with the following information:

(i) whether the federally-insured credit union has filed its 5300 Report inaccurately or late;

(ii) a recent history of the accuracy or timeliness of the federally-insured credit union's prior 5300 Reports;

(iii) the estimated costs to NCUA as a result of the inaccuracy or late filing;

(iv) whether the errors, if any, were substantive and why and;

(v) steps that the federally-insured credit union could take to avoid filing future inaccurate or late 5300 reports.

(vi) request that the federally-insured credit union respond within 30 days with a written proposal that describes how it intends to avoid submitting another late or inaccurate 5300 Report, seeks a waiver or abatement of the assessment or states why the federally-insured credit union's 5300 Reports is not inaccurate or late.

(4) The costs for a late or inaccurate 5300 Report shall be calculated based on the actual hours expended by NCUA personnel multiplied by the average hourly cost of the salaries and benefits of such personnel.

(5) Prior to making a final assessment determination, the NCUA regional director may waive or abate any costs assessed against a federally-insured credit union after taking into account the size of federally-insured credit union that sets forth a reasonable basis for waiving or abating the costs.

(6) A federally-insured credit union may challenge a final assessment by submitting written reasons why the assessment should be waived or abated to the NCUA Board within 30 days of receiving the final assessment from the region. The Board may delegate the authority to determine an appeal of an assessment. The Board or its designee shall consider all relevant facts and consult with any relevant parties prior to making a final agency determination.

[FR Doc. 96-2017 Filed 2-2-96; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Parts 701 and 705

Community Development Revolving Loan Program For Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Amendments.

SUMMARY: The purpose of the Community Development Revolving Loan Program for Credit Unions is to make reduced rate loans and provide technical assistance to both federal and state-chartered credit unions serving low-income communities. The Board is proposing to modify this regulation to: eliminate the limits on technical assistance that may be provided per year to participating credit unions; clarify

that student credit unions may not participate in the Program; clarify that credit unions may receive up to \$300,000 in loans in the aggregate at any one time; and require additional documentation from nonfederally insured credit unions that may wish to participate in the Program. Finally, the Board is requesting comment on updating the percentage of the differentials used to calculate the low-income levels.

DATES: Comments must be received on or before April 5, 1996.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518-6480. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Joyce Jackson, Special Assistant, Office of Community Development Credit Unions, at the above address or telephone (703) 518-6610 or Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION: The purpose of the Community Development Revolving Loan Program ("Program") is to make reduced rate loans and provide technical assistance to federal and state-chartered credit unions serving low-income communities so that they may provide needed financial services and help to stimulate the economy in the community served.

Although the Program has functioned well, the Board is proposing five amendments to improve and clarify certain aspects of the Program.

Section 705.3 Definitions

This section, among other things, defines the term low-income members. In documenting its low-income membership, a credit union that serves a geographic area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members. In applying the low-income standard the Regional Director must use specifically defined differentials for geographical areas with a higher cost of living. These differentials were originally obtained from a list maintained by the Bureau of Labor Statistics, as updated by the Employment and Training Administration. In order to recognize

geographic economic differences, cities that were above the national average for the lower level standard of living numbers for the 25 largest metropolitan areas were provided differentials to be applied by the Regional Director. Since the differentials were added to the regulation in April 1993, there have been changes in economic conditions in many cities. NCUA is studying how the differentials should be adjusted and invites comment on how they should be updated.

Some in the credit union community have questioned whether student credit unions are eligible to participate in the Program. The preamble to the final 1993 amendments stated that although "student federal credit unions are 'low-income credit unions' for purposes of receiving nonmember deposits, they do not qualify for participation in the Program because they are not specifically involved in the stimulation of economic development activities and community revitalization efforts." 58 FR 21642, 21645 (April 23, 1993). The Board proposes to amend Section 705.3(b) to clarify that student credit unions may not participate in the Program.

Section 705.5 Application for Participation

The Board is proposing that a nonfederally insured credit union that wishes to participate in the Program provide additional documentation during the application process. Because NCUA neither regulates nor insures nonfederally insured state chartered credit unions, additional information is required so that NCUA may properly consider the application. This change would provide documentation that is comparable to the information accessible to NCUA for federally insured credit unions. Accordingly, the Board is proposing that Section 705.5(b)(1) be amended to require nonfederally insured credit union to provide in its application for Program participation a copy of its most recent outside audit report and proof of deposit and surety bond insurance which states the maximum insurance levels permitted by the policies.

Section 705.7 Loans to Participating Credit Unions

Section 705.7 states that a participating credit union is eligible "to receive up to \$300,000, as determined by the NCUA Board, in the form of a loan from the Community Development Revolving Loan Fund for Credit Unions." Some have questioned whether this means that a credit union may receive more than one \$300,000