

Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We requested comments on whether the proposed rules were understandable and minimally intrusive if implemented as proposed. We received three comments on this issue. Two commenters did not address the proposal, but rather stated that the question and answer format of the CUSO rule is confusing. One commenter stated that the proposal does meet the agency's regulatory goal.

List of Subjects in 12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 26, 2001.

Becky Baker, Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 712 as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

1. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Amend § 712.3 by revising the third sentence of paragraph (a) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

(a) Structure. \* \* \* For purposes of this part, "corporation" means a legally incorporated corporation as established and maintained under relevant federal or state law. \* \* \*

\* \* \* \* \*

4. Amend § 712.5 by revising the second sentence and adding a third sentence to the introductory paragraph to read as follows:

§ 712.5 What activities and services are preapproved for CUSOs?

\* \* \* Otherwise, an FCU may invest in, loan to, and/or contract with only those CUSOs that are sufficiently bonded or insured for their specific operations and engaged in the preapproved activities and services related to the routine daily operations of credit unions. The specific activities listed within each preapproved category are provided in this section as illustrations of activities permissible

under the particular category, not as an exclusive or exhaustive list.

\* \* \* \* \*

5. Add a sentence to the end of § 712.7 to read as follows:

§ 712.7 What must an FCU do to add activities or services that are not preapproved?

\* \* \* Before you engage in the petition process, you should seek an advisory opinion from NCUA's Office of General Counsel as to whether a proposed activity is already covered by one of the authorized categories without filing a petition to amend the regulation.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 749

Records Preservation Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising its regulation establishing standards for vital record preservation. The revised regulation clarifies that a credit union may preserve records in electronic form, as authorized by the Electronic Signatures in Global and National Commerce Act. The revision permits a credit union's board of directors to determine which employee will be responsible for storing vital records under the record preservation program, in contrast to the current regulation which names the credit union's financial officer. It also incorporates an appendix to provide suggested guidelines to credit unions on retention periods for various types of records.

EFFECTIVE DATE: This rule is effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT:

Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at 1775 Duke Street, Alexandria, Virginia 22314, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

NCUA published a proposal to revise its regulation governing the preservation of vital records. 66 FR 11239, February 23, 2001. At the end of the sixty-day public comment period, NCUA had received eleven comment letters. After carefully considering the comments, the NCUA Board is publishing this final rule, which is substantially identical to

the proposal. Only one minor change was made to the appendix to the regulation: the reference to 5300 financial reports as semiannual and annual filings has been omitted since some credit unions now file such reports quarterly.

The revision makes three substantive modifications to the regulation and changes the format to question and answer. First, the revision clarifies that credit unions may store records in any format that is accurate, accessible and capable of being reproduced by printing, transmittal or other methods, as permitted by the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001. Second, it permits a credit union's board of directors to determine which employee will be responsible for carrying out the vital record preservation duties. The current regulation requires that the credit union's financial officer be designated as responsible for those duties. Third, to address the need for guidance about record retention, the revision incorporates an appendix on recommended retention periods for various types of credit union records.

Comments

NCUA received eleven comment letters, all of which expressed general support for the proposal. Four comments letters were from credit unions; two were from national credit union trade associations; four were from state credit union leagues; and one was from a credit union service provider.

Eight commenters strongly supported the change to the regulation to clarify that credit unions may retain records electronically.

Five commenters expressed approval for the addition of the appendix containing record retention guidelines. Of these, three suggested various changes in the guidance for retention periods and types of records that must be retained. The NCUA Board notes that the record retention guidelines are merely recommendations and credit unions may adopt other retention periods for these or other types of records.

Five commenters strongly supported the change to the regulation permitting a credit union's board of directors to determine which employee will be responsible for vital record preservation. Two commenters favored eliminating the requirement that the credit union's financial officer be responsible for vital records preservation but suggested that the credit union manager, rather than the board should determine which employee to designate. The NCUA Board did not adopt that suggestion in

the final rule. The Board believes that a credit union's board of directors is in the best position to know who among the credit union staff should be responsible for carrying out the important responsibilities of the vital records preservation program. In revising this regulation to eliminate the requirement that designated the financial officer as responsible, the NCUA Board does not want to replace it with another provision removing the ability and responsibility of a credit union's board of directors to make the selection itself.

NCUA requested comment concerning whether the rule is understandable and minimally intrusive. One commenter praised the rule for being clear and understandable. Two commenters expressed dislike for the question and answer format. One commenter, while acknowledging that the proposal is designed to be more user friendly, questioned whether the question and answer format makes the rule easier to understand. The NCUA Board finds that the question and answer format is understandable and is appropriate for this regulation. One commenter suggested that additional records, sufficient for auditing or to detect fraud, should be included among vital records. Two commenters suggested that the term "vital record" should be defined with more specificity and the description should be augmented with more examples. The Board notes that the proposed rule did not materially alter the description of vital records from that in the current regulation. To give credit unions maximum flexibility, the description of vital records is brief and lists only the minimum types of records included. A credit union may include additional records it determines would be necessary to carry on its business in the event of a catastrophe.

### Regulatory Procedures

#### *Paperwork Reduction Act*

This regulation will impose no additional information collection, reporting or record keeping requirements.

#### *Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), NCUA certifies that these amendments will not have a significant economic impact on a substantial number of small entities. NCUA expects that these regulations will not: (1) Have significant secondary or incidental effects on a substantial number of small entities; or (2) create any additional burden on small entities. Accordingly, a

regulatory flexibility analysis is not required.

#### *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. Since this regulation will only apply to federal credit unions, it will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### *Small Business Regulatory Enforcement Fairness Act*

The Office of Management and Budget has determined that this rule is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

#### List of Subjects in 12 CFR Part 749

Archives and records, Credit unions, Reporting and recordkeeping requirements.

#### Becky Baker,

*Secretary of the Board.*

For the reasons set forth in the preamble, 12 CFR Part 749 is revised to read as follows:

### PART 749—RECORDS PRESERVATION PROGRAM AND RECORD

#### Retention Appendix

Sec.

749.0 What is covered in this part?

749.1 What are vital records?

749.2 What must a credit union do with vital records?

749.3 What is a vital records center?

749.4 What format may the credit union use for preserving records?

749.5 What format may credit unions use for maintaining writings, records or information required by other NCUA regulations?

Appendix A to Part 749—Record Retention Guidelines

**Authority:** 12 U.S.C. 1766, 1783 and 1789, 15 U.S.C. 7001(d).

#### § 749.0 What is covered in this part?

This part describes the obligations of all federally insured credit unions to maintain a records preservation program to identify, store and reconstruct vital records in the event that the credit union's records are destroyed. It

establishes flexibility in the format credit unions may use for maintaining writings, records or information required by other NCUA regulations. The appendix also provides guidance concerning the appropriate length of time credit unions should retain various types of operational records.

#### § 749.1 What are vital records?

Vital records include at least the following records, as of the most recent month-end:

(a) A list of share, deposit, and loan balances for each member's account which:

(1) Shows each balance individually identified by a name or number;

(2) Lists multiple loans of one account separately; and

(3) Contains information sufficient to enable the credit union to locate each member, such as address and telephone number, unless the board of directors determines that the information is readily available from another source.

(b) A financial report, which lists all of the credit union's asset and liability accounts and bank reconciliations.

(c) A list of the credit union's financial institutions, insurance policies, and investments. This information may be marked "permanent" and stored separately, to be updated only when changes are made.

#### § 749.2 What must a credit union do with vital records?

The board of directors of a credit union is responsible for establishing a vital records preservation program within 6 months after its insurance certificate is issued. The vital records preservation program must contain procedures for storing duplicate vital records at a vital records center and must designate the staff member responsible for carrying out the vital records duties. Records must be stored every 3 months, within 30 days after the end of the 3-month period. Previously stored records may be destroyed when the current records are stored. The credit union must also maintain a records preservation log showing what records were stored, where the records were stored, when the records were stored, and who sent the records for storage. Credit unions, which have some or all of their records maintained by an off-site data processor, are considered to be in compliance for the storage of those records.

#### § 749.3 What is a vital records center?

A vital records center is defined as a storage facility at any location far enough from the credit union's offices to

avoid the simultaneous loss of both sets of records in the event of disaster.

**§ 749.4 What format may the credit union use for preserving records?**

Preserved records may be in any format that can be used to reconstruct the credit union's records. Formats include paper originals, machine copies, micro-film or fiche, magnetic tape, or any electronic format that accurately reflects the information in the record, remains accessible to all persons who are entitled to access by statute, regulation or rule of law, and is capable of being reproduced by transmission, printing or otherwise.

**§ 749.5 What format may credit unions use for maintaining writings, records or information required by other NCUA regulations?**

Various NCUA regulations require credit unions to maintain certain writings, records or information. Credit unions may use any format, electronic or other, for maintaining the writings, records or information that accurately reflects the information, remains accessible to all persons who are entitled to access by statute, regulation or rule of law, and is capable of being reproduced by transmission, printing or otherwise. The credit union must maintain the necessary equipment or software to permit an examiner access to the records during the examination process.

**Appendix A to Part 749—Record Retention Guidelines**

Credit unions often look to NCUA for guidance on the appropriate length of time to retain various types of operational records. NCUA does not regulate in this area, but as an aid to credit unions it is publishing this appendix of suggested guidelines for record retention. NCUA recognizes that credit unions must strike a balance between the competing demands of space, resource allocation and the desire to retain all the records that they may need to conduct their business successfully. Efficiency requires that all records that are no longer useful be discarded, just as both efficiency and safety require that useful records be preserved and kept readily available.

**A. What Format Should the Credit Union Use for Retaining Records?**

NCUA does not recommend a particular format for record retention. If the credit union stores records on microfilm, microfiche, or in an electronic format, the stored records must be accurate, reproducible and accessible to an NCUA examiner. If records are stored on the credit union premises, they should be immediately accessible upon the examiner's request; if records are stored by a third party or off-site, then they should be made available to the examiner within a reasonable time after the examiner's request. The credit union must

maintain the necessary equipment or software to permit an examiner to review and reproduce stored records upon request. The credit union should also ensure that the reproduction is acceptable for submission as evidence in a legal proceeding.

**B. Who Is Responsible for Establishing a System for Record Disposal?**

The credit union's board of directors may approve a schedule authorizing the disposal of certain records on a continuing basis upon expiration of specified retention periods. A schedule provides a system for disposal of records and eliminates the need for board approval each time the credit union wants to dispose of the same types of records created at different times.

**C. What Procedures Should a Credit Union Follow When Destroying Records?**

The credit union should prepare an index of any records destroyed and retain the index permanently. Destruction of records should ordinarily be carried out by at least two persons whose signatures, attesting to the fact that records were actually destroyed, should be affixed to the listing.

**D. What Are the Recommended Minimum Retention Times?**

Record destruction may impact the credit union's legal standing to collect on loans or defend itself in court. Since each state can impose its own rules, it is prudent for a credit union to consider consulting with local counsel when setting minimum retention periods. A record pertaining to a member's account that is not considered a vital record may be destroyed once it is verified by the supervisory committee. Individual Share and Loan Ledgers should be retained permanently. Records, for a particular period, should not be destroyed until both a comprehensive annual audit by the supervisory committee and a supervisory examination by the NCUA have been made for that period.

**E. What Records Should Be Retained Permanently?**

1. Official records of the credit union that should be retained permanently are:
  - (a) Charter, bylaws, and amendments.
  - (b) Certificates or licenses to operate under programs of various government agencies, such as a certificate to act as issuing agent for the sale of U.S. savings bonds.
  - (c) Current manuals, circular letters and other official instructions of a permanent character received from the NCUA and other governmental agencies.
2. Key operational records that should be retained permanently are:
  - (a) Minutes of meetings of the membership, board of directors, credit committee, and supervisory committee.
  - (b) One copy of each NCUA 5300 financial report or its equivalent.
  - (c) One copy of each supervisory committee comprehensive annual audit report and attachments.
  - (d) Supervisory committee records of account verification.
  - (e) Applications for membership and joint share account agreements.
  - (f) Journal and cash record.

(g) General ledger.

(h) Copies of the periodic statements of members, or the individual share and loan ledger. (A complete record of the account should be kept permanently.)

(i) Bank reconciliements.

(j) Listing of records destroyed.

**F. What Records Should a Credit Union Designate for Periodic Destruction?**

Any record not described above is appropriate for periodic destruction unless it must be retained to comply with the requirements of consumer protection regulations. Periodic destruction should be scheduled so that the most recent of the following records are available for the annual supervisory committee audit and the NCUA examination. Records that may be periodically destroyed include:

- (a) Applications of paid off loans.
- (b) Paid notes.
- (c) Various consumer disclosure forms, unless retention is required by law.
- (d) Cash received vouchers.
- (e) Journal vouchers.
- (f) Canceled checks.
- (g) Bank statements.
- (h) Outdated manuals, canceled instructions, and nonpayment correspondence from the NCUA and other governmental agencies.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 23**

[Docket No. CE165; Special Conditions No. 23-109-SC]

**Special Conditions: Ayres Corporation; Model LM 200, "Loadmaster"; Flight**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Ayres Corporation, Model LM 200 airplane. This airplane will have novel or unusual design feature(s) associated with centerline thrust. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**EFFECTIVE DATE:** September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate,