

Attachment 2

**THE OFFICE OF GENERAL COUNSEL'S
2014 REGULATION REVIEW**

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748 Security Program, Report of Suspected Crimes, Suspicious Transactions,
Catastrophic Acts and Bank Secrecy Act Compliance

This regulation requires a federally-insured credit union to develop a written security program and to develop a Bank Secrecy Act (BSA) compliance program with procedures. Part 748 was amended in April 2011 to make technical corrections related to the reorganization of the Financial Crimes Enforcement Network (FinCEN) regulations.¹

We received three public comment letters that addressed the data security requirements of Part 748. Two commenters asked NCUA to provide more resources and assistance to credit unions; recommended NCUA work closely with other agencies focusing on cyber security; and urged the establishment of a credit union cyber security council or working group to address the needs of credit unions in this context. Another commenter recommended that NCUA update the guidance provided in Appendix B to Part 748 to help credit unions better understand how to establish an information security policy.

NCUA program offices have formed an internal working group in this regard and are currently participating in interagency activities regarding security-related issues. The working group has already updated various guidance documents in this context. In consideration of the ongoing nature of the work NCUA is doing in this area, we believe it would be premature to recommend any specific security-related regulatory changes at this time. However, we recommend the Board consider the findings of the working group, when available, in determining whether to amend Part 748.

We received three public comment letters that addressed the BSA provisions of Part 748. Two commenters: 1) referenced FinCEN's newly proposed customer due diligence rule² and suggested that NCUA work to exempt credit unions from the proposal or otherwise improve the proposal; 2) suggested federal and state authorities cooperate when supervising BSA compliance; and 3) suggested legislative and regulatory changes to minimize compliance costs. Another commenter requested that NCUA update previously issued guidance regarding credit union management notifying its board that a suspicious activity report was filed. Much of what the commenters requested is outside of the regulatory process. From a regulatory perspective, we do not recommend making any changes to the BSA portions of Part 748 at this time.

749 Records Preservation Program and Appendices – Record Retention
Guidelines; Catastrophic Act Preparedness Guidelines

This regulation sets out the procedures that federally-insured credit unions must follow for records retention. The regulatory text of Part 749 was last amended in August 2007. Appendices A and B to Part 749 were last amended in July 2009 and November 2012, respectively.

¹ 76 FR 18365 (Apr. 4, 2011).

² 79 FR 45151 (Aug. 4, 2014).

We received three comments on Part 749. One said that NCUA should update the regulation to allow for the storage of records in forms other than their original forms.³ A second commenter asked for guidance on whether records stored using obsolete technology really need to be retained permanently, arguing that such records are “unlikely to be able to be retrieved due to not having the equipment to do so” or are “likely unreadable due to age.”⁴ The third commenter praised the flexibility built into Part 749 but asked for non-regulatory guidance on what records a credit union should retain post-merger.

Presently, there is a working group reviewing Part 749 to determine the kind and extent of revisions that need to be made. The issues the working group is considering include reviewing current credit union practices to determine if they offer sufficient protection for vital records and/or ensure that a credit union can resume operations quickly after a disaster. The working group is also considering whether it is necessary to update the definition of a “vital records center” and its concomitant regulatory requirements and whether the guidance in the appendices to Part 749 should be incorporated into the regulatory text.

We recommend the Board consider acting on the working group’s findings when they are available.

750 Golden Parachute and Indemnification Payments

This regulation was adopted in May 2011. It prohibits, in certain circumstances, a federally-insured credit union from making golden parachute and indemnification payments to an institution affiliated party. In November 2011, NCUA issued a technical correction relating to the definition of golden parachute payment pertaining to plans offered under §457 of the Internal Revenue Code. We are unaware of any problems with the rule that would suggest it should be revised at this time.

760 Loans in Areas Having Special Flood Hazards

This regulation sets forth interagency flood insurance requirements. There have been no substantive final amendments to this regulation recently. In July 2009, NCUA and other financial regulatory agencies (the Agencies) jointly issued interagency questions and answers (Q&As) to provide guidance to address the most frequently asked questions about flood insurance. Since then, the Agencies have revisited the Q&A’s but have not finalized all of them.

In July 2012, Congress enacted the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). In October 2013, the Agencies proposed a rule to implement certain provisions of the Biggert-Waters Act regarding escrow, force-placement, and

³ We note that Part 749 explicitly provides that credit unions may store records in any format.

⁴ Part 749 requires that information stored remain accessible and capable of reproduction.

private flood insurance. In March 2014, Congress enacted the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), which amended some of the changes from the Biggert-Waters Act. In October 2014, the Agencies issued another proposed rule to implement provisions of HFIAA. In addition, the Agencies plan to finalize the October 2013 proposed rule and the October 2014 proposed rule in the near future. Due to the pendency of the referenced rulemakings, we recommend that NCUA continue to work with the Agencies in this context.

761 Registration of Residential Mortgage Loan Originators

The NCUA Board repealed Part 761 in 2013 because NCUA's rulemaking authority for the S.A.F.E. Act was transferred by statute to the Consumer Financial Protection Bureau.⁵

790 Description of NCUA; Requests for Agency Action

This regulation sets forth a description of NCUA. This regulation was amended in March 2012, May 2013, and September 2014 to reflect organizational and other changes at NCUA. We are unaware of any problems with the rule that would suggest it should be revised at this time.

791 Rules of NCUA Board Procedure; 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 substantively amended in June 2010. No commenters suggested changes to Part 791, and we are unaware of any problems that would dictate revising it at this time.

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

Subpart A of Part 792 was last amended in October 2008. It governs requests for information under the Freedom of Information Act (FOIA). We recommend updating the FOIA regulation to reflect current agency procedures relating to processing requests for information, including those relating to electronic records.

Subpart B to Part 792 is reserved in the Code of Federal Regulations and does not currently contain regulatory provisions.

⁵ 78 Fed. Reg. 32,545 (May 31, 2013).

Subpart C of Part 792 was last amended in 2000. It addresses the production of non-public records and testimony of NCUA employees in legal proceedings. We are not aware of any problems that suggest this rule needs revising at this time.

Subpart D of Part 792 was recently amended in May 2013. It governs security procedures for classified information. We recommend further revising Subpart D to reflect recent authority granted to the Director of the Office of Continuity and Security Management.

Subpart E of Part 792 was last amended in June 2010. It governs requests made under the Privacy Act. NCUA staff is currently conducting an agency wide review of NCUA's privacy practices. We recommend the Board consider the findings from that review, when available, in determining if or how to amend Subpart E.

793 Tort Claims Against the Government

This regulation sets forth the procedures for asserting claims under the Federal Torts Claims Act. It was most recently amended in 2010. Staff is unaware of any problems that suggest it 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 its programs and activities in a manner ensuring nondiscrimination against qualified disabled individuals. It is not applicable to credit unions. We believe this regulation contains outdated references and definitions and should be updated to be consistent with relevant statutory provisions and other NCUA regulations.

796 Post-Employment Restrictions for Certain NCUA Examiners

This regulation implements statutory post-employment restrictions that apply to certain senior NCUA examiners. It prohibits a senior NCUA examiner, for a year after leaving NCUA employment, from accepting employment with a credit union if he or she had performed work on that credit union (onsite or offsite) as the senior examiner for a total of two or more months during his or her last 12 months of NCUA employment. We are unaware of any problems that suggest the regulation should be revised at this time.

797 Procedures for Debt Collection

This regulation was issued by the NCUA in February 2008. It governs NCUA's procedures for collecting certain debts from: 1) current and former federal employees

who are indebted to NCUA; and 2) current NCUA employees who are indebted to NCUA or other agencies.

NCUA staff recommends revising the regulation as it pertains to the procedures for obtaining the services of a hearing official. Section 797.9(c) currently provides that in the event a hearing official is needed to resolve a dispute between NCUA and a debtor, who is an NCUA employee, then NCUA “shall contact any agency designated in appendix A to 5 C.F.R. Part 581 to arrange for a hearing official.” We recommend substituting the word “may” for “shall” and adding to the end of that sentence the phrase “or obtain the services of a hearing official under another lawful arrangement.” There is no statutory requirement, in this regard, that NCUA must obtain a hearing official from a particular agency or firm. This revision would provide NCUA with additional flexibility and efficiencies in the debt collection process. Further, other federal agencies use the more permissive word “may” in their debt collection regulations.