

INTERPRETIVE RULING AND POLICY STATEMENT NUMBER 87-2 (as amended by Interpretive Ruling and Policy Statements 03-2 and 15-1)

DEVELOPING AND REVIEWING GOVERNMENT REGULATIONS

I. Statement of Policy and Coverage

It is the policy of NCUA to ensure that its regulations:

- impose only minimum required burdens on credit unions, consumers, and the public;
- are appropriate for the size of the financial institutions regulated by NCUA;
- are issued only after full public participation in the rule making process; and
- are clear and understandable.

II. Procedures for the Development of Regulations

1. Proposed Regulations

The Office of General Counsel (OGC) will oversee the development of regulations. Input on regulations will be obtained from other NCUA offices when appropriate, OGC will prepare a draft of the proposed regulation for submission to the NCUA Board for approval. The proposed regulation will then be published in the Federal Register and other appropriate publications.

2. Initial Regulatory Flexibility Analysis

When NCUA is required by 5 U.S.C. § 553, or any other law, to publish a general notice of proposed rule making for any proposed regulation, NCUA will prepare and make available for public comment an initial regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. NCUA will designate federally insured credit unions with less than \$100 million in assets as small entities. Credit unions having less than ten million dollars in assets will be considered to be small entities. Such analysis will describe the impact of the regulation upon small entities, and will be published in the Federal Register at the time of general notice of proposed rule making for the regulation. A copy of the analysis will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The content of the initial regulatory flexibility analysis will be in accordance with the provisions of 5 U.S.C. § 603. In addition, NCUA staff will consult applicable U.S. Small Business Administration guidance, including The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies, when interpreting and implementing the requirements of the Regulatory Flexibility Act. Every three years, the NCUA Board will review and consider adjusting the asset threshold it uses to define small entities for purposes of analyzing whether a regulation will have a significant economic impact on a substantial number of small entities.

3. Compliance With the Paperwork Reduction Act

If a proposed regulation contains an information collection request such as a recordkeeping or reporting requirement that, if adopted, will be imposed upon ten or more persons (including

credit unions), the proposed regulation will be sent to the office of Management and Budget (OMB) prior to publication in the Federal Register, OMB will then have 60 days after publication to comment on the information collection request. If OMB thereafter disapproves of the information collection request, the NCUA can override this by a majority vote and certify such override to OMB in the manner described in 44 U.S.C. § 3507(c).

4. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis will be prepared for all regulations that required the publication of a general notice of proposed rule making and that will have a significant economic impact on a substantial number of small entities. The content of the final regulatory flexibility analysis will be in conformance with 5 U.S.C. § 604. Initial and final regulatory flexibility analyses need not be prepared if the Board certifies that a regulation will not have a significant economic effect on a substantial number of small entities. The certification will be published in the Federal Register with the final rule, along with a statement providing the factual basis for such certification. A copy of the certification and statement will be provided to the Chief Counsel for Advocacy of the SBA.

5. Final Rule

OGC will prepare a draft final regulation to be presented to the NCUA Board for approval. Following Board approval, the final regulation will be published in the Federal Register and other appropriate publications.

III. Opportunity for Public Participation

A member of the public may recommend that NCUA develop a regulation or revise an existing regulation. A number of methods will be used by NCUA to encourage public participation in the development and review of regulations, including: notifying the public of the status of regulations being reviewed and developed through publication of the semiannual agenda; publication of advance notices of proposed rule making with requests for public comment; the use of questionnaires to solicit information; publication of articles; and by making copies of proposed regulations available to the public.

When any regulation is promulgated which will have a significant economic impact on a substantial number of small entities, the NCUA will assure that small entities have been given an opportunity to participate in the rule making process through the types of methods listed in 5 U.S.C. § 609.

NCUA will continue to solicit public comment on proposed regulations as required by 5 U.S.C. § 553. As a matter of policy, NCUA believes that the public should be given at least 60 days to comment on a proposed regulation. If the comment period is less than 60 days, or is extended beyond 60 days, NCUA will publish a statement in the Federal Register explaining the change.

IV. Review of Existing Regulations

NCUA shall periodically update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions. 5 U.S.C. § 610 requires that regulations having a significant economic impact on a substantial number of small entities will be reviewed every ten years, As a matter of policy, NCUA will continue with its efforts to review all its existing regulations every three years. To accomplish a review every three years of all regulations, the Office of General Counsel will maintain a rolling review schedule that identifies one-third of existing regulations for review each year and will provide notice to the public of that portion of the regulations under review each year so the public may have an opportunity to comment.

V. Semiannual Agenda

Twice each year, NCUA will adopt an agenda of proposed regulations that the Agency has issued or expects to issue and currently effective regulations that are under NCUA review, Incorporated into the agenda, when necessary, will be the regulatory flexibility agenda required by 5 U.S.C. § 602, Each semiannual agenda will be voluntarily submitted to the Office of Management and Budget for inclusion in the "Unified Agenda of Federal Regulations" published in the Federal Register in April and October of each year.

The semiannual agenda will contain the following: a brief description of the subject area being considered and a summary of the nature of any regulation which NCUA expects to propose or promulgate; the objectives and legal basis for the issuance of the regulation; an approximate schedule for completing action on any regulation for which NCUA has issued a general notice of proposed rulemaking; and the name and number of an NCUA official knowledgeable with respect to each agenda item. The agenda will identify any regulation that the NCUA expects to have a significant economic impact on a substantial number of small entities. When there are proposed regulations listed in the agenda that will have such an impact on small entities, NCUA will endeavor to provide notice of the agenda to small entities in the manner set forth in 5 U.S.C. § 602(c). Where the regulatory flexibility agenda is incorporated into the semiannual agenda, the latter will be transmitted to the Chief Counsel for Advocacy of the SBA for comment.