

government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed rule may supersede provisions of state law, regulation or approvals. Since the proposed rule might lead to conflicts between the NCUA and state financial institution regulators on occasion, comments are requested on means and methods to eliminate, or at least minimize, potential conflicts in this area. Commenters may wish to provide recommendations on the potential use of delegated authority, cooperative decision-making responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Executive Order.

*D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

*E. Agency Regulatory Goal*

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

**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 July 21, 2005.

**Mary Rupp,**

*Secretary of the Board.*

For the reasons stated above, 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(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

2. Revise § 741.8 to read as follows:

**§ 741.8 Purchase of assets and assumption of liabilities.**

(a) Any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) must receive approval from the NCUA before purchasing loans

or assuming an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured by the NCUSIF;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1)(iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions;

(2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which a federally-insured credit union perfects a security interest in connection with an extension of credit to any member; or

(3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities by any credit union insured by the NCUSIF from another credit union insured by the NCUSIF, except a purchase or assumption as a part of a merger under part 708b of this chapter.

(c) A credit union seeking approval under paragraph (a) of this section must submit a letter to the regional office with jurisdiction for the state where the credit union operates. The letter must request approval and state the nature of the transaction and include copies of relevant transaction documents. The regional director will make a decision to approve or disapprove the request as soon as possible depending on the complexity of the proposed transaction. Credit unions should submit a request for approval in sufficient time to close the transaction.

[FR Doc. 05–14807 Filed 7–28–05; 8:45 am]

**BILLING CODE 7535–01–P**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 742**

**Regulatory Flexibility Program**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The National Credit Union Administration (NCUA) seeks public comment on a proposal to modify the minimum net worth and CAMEL criteria for eligibility for NCUA's Regulatory Flexibility Program. Federally-insured credit unions that qualify for the Program are exempt in whole or in part from a series of regulatory restrictions and also are allowed to purchase and hold an expanded range of eligible obligations.

**DATES:** Comments must be received on or before September 27, 2005.

**ADDRESSES:** You may submit comments by any one of the following methods (Please send comments by one method only):

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *NCUA Web Site:* [http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html).

Follow the instructions for submitting comments.

• *E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on Proposed Rule 742, RegFlex Program” in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Steven W. Wideman, Trial Attorney, Office of General Counsel, at 703/518–6557; or Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, at 703/518–6396.

**SUPPLEMENTARY INFORMATION:**

**A. Background of Existing Part 742**

Effective in 2002, the NCUA Board established a Regulatory Flexibility Program (“RegFlex”) that exempts qualifying credit unions in whole or in part from a series of regulatory restrictions, and grants them additional powers. 12 CFR part 742; 66 FR 58656 (Nov. 23, 2001). Under existing part 742, a credit union may qualify for RegFlex automatically or by application to the appropriate Regional Director.

*RegFlex Designation.* To qualify automatically under the existing RegFlex Program, a credit union must meet two criteria. First, it must have a composite CAMEL rating of “1” or “2” for two consecutive examination cycles. Second, it also must achieve a net worth

ratio of 9 percent (200 basis points above the net worth ratio to be classified “well capitalized”) for a single Call Reporting period, unless it is subject to a risk-based net worth (“RBNW”) requirement. 12 CFR 742.1. In that case, the credit union’s net worth must surpass its RBNW requirement by 200 basis points. As of December 31, 2004, 3457 credit unions automatically qualified for RegFlex.

Under existing part 742, a credit union that is unable to qualify for RegFlex automatically may be eligible to apply to the appropriate Regional Director for a RegFlex designation. To be eligible to apply, a credit union must have either a CAMEL rating of “3” or better or meet the 9 percent net worth criterion, but not both. 12 CFR 742.2. A credit union that neither has a CAMEL of “3” or better nor meets the net worth criterion is ineligible for RegFlex. A credit union that is eligible may be granted RegFlex relief in whole or in part, at the Regional Director’s discretion. In 2004, four out of four applications for a RegFlex designation were granted.

Once attained under current part 742, RegFlex authority can be lost or revoked. A credit union that qualified for RegFlex automatically is disqualified once it fails, as the result of an examination (but not a supervision contact), to meet either the CAMEL or net worth criteria in § 742.2(a). 12 CFR 742.6. RegFlex authority can be revoked by action of the Regional Director for “substantive and documented safety and soundness reasons.” § 742.2(b). The decision to revoke may be appealed to NCUA’s Supervisory Review Committee,<sup>1</sup> and thereafter to the NCUA Board. 12 CFR 742.7. In 2004, only one credit union’s RegFlex authority was revoked, with no appeal.

RegFlex authority ceases when that authority is lost or revoked (even if an appeal of a revocation is pending). 12 CFR 742.6, 742.7. But past actions taken under that authority are “grandfathered,” *i.e.*, they will not be disturbed or undone.

**RegFlex Relief.** As originally adopted, the RegFlex program gave qualifying credit unions relief from a variety of regulatory restrictions, 12 CFR 742.4(a) and 742.5:

- The maximum limit on fixed assets (5 percent of shares and retained earnings), 12 CFR 701.36(c)(1).
- The maximum limit on non-member deposits (20 percent of total shares or \$1.5 million, whichever is greater), 12 CFR 701.32(b).

- Conditions on making charitable contributions (relating to the charity’s location, activities and purpose, and whether the contribution is in the credit union’s best interest and is reasonable relative to its size and condition), 12 CFR 701.25.

- The maximum limit on investments over which discretionary control can be delegated (100 percent of credit union’s net worth), 12 CFR 703.5(b)(1)(ii) and (2).

- The maximum limit on the maturity length of zero-coupon securities (10 years), 12 CFR 703.16(b).

- The mandate to “stress test” securities holdings to assess the impact of a 300-basis points shift in interest rates, 12 CFR 703.12(c) (2001).

- Restrictions on the purchase of eligible obligations, 12 CFR 701.23(b), thus expanding the range of loans RegFlex credit unions could purchase and hold as long as they are loans those credit unions would be authorized to make (auto, credit card, member business, student and mortgage loans, as well as loans of a liquidating credit union up to 5 percent of the purchasing credit union’s unimpaired capital and surplus).

With the overhaul of parts 703 and 723 in 2003,<sup>2</sup> RegFlex credit unions received further relief from the following restrictions on member business lending and investments:

- The mandate that principals personally guarantee and assume liability for member business loans. 12 CFR 723.7(b).

- The maturity limit on investments purchased with the proceeds of a borrowing repurchase transaction. 12 CFR 703.13(d)(3).

- The prohibition on purchasing a commercial mortgage related security that is not permitted by the Federal Credit Union Act, 12 U.S.C. 1757(7)(E). 12 CFR 703.16(d).

## B. Proposal To Modify Reg Flex Qualifying Criteria

The NCUA Board is reassessing the RegFlex program to ensure that it is available to credit unions that are least likely to encounter safety and soundness problems, thus minimizing the risk of loss to the Share Insurance Fund. Experience indicates that such credit unions consistently maintain a high net worth ratio and a high CAMEL rating. Accordingly, the proposed rule modifies the RegFlex eligibility criteria to fully reflect sustained superior performance as measured by net worth and CAMEL rating.

**Net worth level.** To qualify for RegFlex automatically or by application, existing part 742 requires a credit union to achieve a net worth of 9 percent—200 basis points in excess of the 7 percent net currently needed to be classified “well capitalized.”<sup>3</sup> The proposed rule brings the net worth criterion for RegFlex into alignment with the “well capitalized” net worth category under NCUA’s system of prompt corrective action (“PCA”). 12 U.S.C.

1790d(c)(1)(A). Congress determined that it is unnecessary for credit unions in that category—the highest of the five net worth categories—to undertake any PCA whatsoever. The NCUA Board believes there is no reason to set a higher net worth standard to qualify for RegFlex than Congress has set for credit unions to be free of PCA. Accordingly, the proposed rule reduces the qualifying minimum net worth classification to “well capitalized,” requiring a minimum net worth of 7 percent under existing part 702.<sup>4</sup> Credit unions that are subject to an RBNW requirement would qualify for RegFlex if they remained “well capitalized” after applying any RBNW requirement applicable under part 702.

**Net worth duration.** To qualify for RegFlex, existing part 742 requires a credit union to achieve the minimum net worth for just a single quarter. This momentary “snapshot” of net worth is too fleeting to be evidence of sustained superior performance; only successive “snapshots” of net worth would suffice to demonstrate such performance. To that end, the proposed rule requires a credit union to meet a dual standard: to be “well capitalized” and to maintain that level for six consecutive quarters. The six-quarter period coincides with the eighteen-month examination schedule that applies to most RegFlex qualifying credit unions. A credit union that is unable to maintain the minimum net worth for six consecutive quarters still would be eligible to apply to the appropriate Regional Director for a RegFlex designation provided the credit union is rated a CAMEL “2” or better.

The proposed rule strikes a balance—decreasing the minimum net worth while compensating for the relative increase in risk exposure by extending

<sup>3</sup> December 2004 Call Report data indicates that 73 percent of all RegFlex credit unions have a net worth in excess of 11 percent—fully 200 basis points above the qualifying minimum net worth. In contrast, only 8.9 percent of RegFlex credit unions have a net worth of 9.5 percent or less—within fifty basis points of the qualifying minimum net worth.

<sup>4</sup> Should the minimum net worth to be classified “well capitalized” under PCA be adjusted by law, or as permitted by law, 12 U.S.C. 1790d(c)(2), the minimum net worth to qualify for RegFlex would change accordingly.

<sup>1</sup> See Interpretive Ruling and Policy Statement 95–1, 60 FR 14795 (March 20, 1995).

<sup>2</sup> See 68 FR 32960, 32966 (June 3, 2003) and 68 FR 56537, 56542, 56553 (Oct. 1, 2003).

the number of quarters that the minimum net worth must be maintained to qualify for RegFlex. For example, there is no limit on the amount of fixed assets a RegFlex credit union can acquire. 12 CFR 742.4(a). Thus, a RegFlex credit union is entitled to build or purchase a new building that increases its aggregate fixed assets to an inordinate proportion of total assets. If the credit union no longer qualifies for RegFlex in the next quarter due to a decline in net worth, the "grandfather" provision in both the existing and the proposed rule would leave intact all actions formerly taken under RegFlex authority. 12 CFR 742.8. That provision would entitle the ex-RegFlex credit union to keep the building, provided that it absorbs the expenses of maintenance, debt service and depreciation, etc., potentially having a negative affect on its profitability and net worth.

Under the existing rule, the ex-RegFlex credit union would have a net worth cushion of at least 300 basis points against possible losses due to expenses of maintaining its fixed assets.<sup>5</sup> But under the proposed rule, the net worth cushion against such losses dwindles to zero. Credit unions that demonstrate sustained superior performance as evidenced by a qualifying net worth ratio lasting over a series of quarters, instead of just one, are better able to prepare for and manage the risks to profitability and net worth. The NCUA Board invites public comment on what is the appropriate number of quarters the minimum net worth should be required to last before a credit union qualifies for RegFlex.

**Notification.** Existing part 742 requires NCUA to notify a credit union on three occasions: when it first qualifies automatically for RegFlex; during an examination to confirm whether it still qualifies or has become ineligible; and after it applies to the appropriate Regional Director for a RegFlex designation. These notification requirements are redundant in the case of credit unions that qualify automatically for RegFlex. Part 742's net worth and CAMEL criteria are discrete and as apparent to credit unions themselves as to NCUA, making it unnecessary for NCUA to notify each credit union that it has qualified for RegFlex, and then to notify it again during successive examinations that it

still qualifies. Accordingly, the proposed rule eliminates the requirement that NCUA notify credit unions that qualify automatically for RegFlex. But left intact is the requirement for a Regional Director to notify a credit union that has applied for RegFlex designation whether or not it has been granted.

**Other modifications.** The substantive modifications to part 742 are limited to reducing the level and extending the duration of the minimum qualifying net worth, and eliminating the notification requirement for credit unions that qualify automatically for RegFlex. No substantive revisions at all are proposed for the RegFlex relief (fully described in section A. above) that existing part 742 provides qualifying credit unions. 12 CFR 742.4. However, the NCUA Board invites public comment on whether RegFlex credit unions should be exempt from any additional regulations.

To make part 742 more user-friendly, the proposed rule makes several fundamental changes to the existing format. First, the proposed rule abandons the question-and-answer format in favor of organizing the rule by stated subjects. Second, in several provisions of the rule, items listed within narrative text have been broken out into numbered and subtitled lists that make individual items more accessible. *E.g.*, 12 CFR 742.2. Finally, in the section on RegFlex relief, instead of incorporating the affected regulations simply by reference to other sections of chapter VII, the proposed rule lists and describes the regulatory requirements and restrictions that RegFlex credit unions are exempt from, as well as the obligations they are authorized to purchase and hold. 12 CFR 742.4.

**Impact on Credit Unions.** Were the NCUA Board to adopt the proposed substantive modifications, December 2004 Call Report data shows that 3,919 credit unions would qualify for RegFlex automatically—a 13.36 percent increase over the number of credit unions that qualify under existing part 742. Further, the proposed modifications would make an additional 462 credit unions that do not automatically qualify eligible to apply for a RegFlex designation.

## Regulatory Procedures

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis describing any significant economic impact a proposed regulation may have on a substantial number of small credit unions (those having under \$10 million in assets). The proposed rule reduces the level and increases the duration of

the minimum net worth required to qualify for RegFlex, without imposing any additional regulatory burden. If adopted, the proposed rule will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

### *Paperwork Reduction Act*

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on State and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This proposed rule would not have would 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. Accordingly, this proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

### *Treasury and General Government Appropriations Act, 1999*

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

### *Agency Regulatory Goal*

NCUA's goal is to promulgate clear, understandable regulations that impose a minimal regulatory burden. The proposed rule seeks to improve and simplify the existing RegFlex Program. We request your comments on whether the proposed rule would be understandable and minimally intrusive if implemented as proposed.

## List of Subjects in 12 CFR Part 742

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 21, 2005.

**Mary F. Rupp,**  
*Secretary of the Board.*

For the reasons set forth above, 12 CFR part 742 is proposed to be revised to read as follows:

<sup>5</sup> A net worth ratio of 6.99 percent or lower triggers the PCA requirement to make quarterly transfers of earnings to net worth. 12 U.S.C. 1790d(e); 12 CFR 702.201(a). A net worth ratio of 5.99 percent or below triggers all four PCA mandatory supervisory actions. 12 U.S.C. 1790d(f)–(g); 12 CFR 702.202(a).

## PART 742—REGULATORY FLEXIBILITY PROGRAM

Authority: 12 U.S.C. 1756, 1766.

### § 742.1 Regulatory Flexibility Program.

NCUA's Regulatory Flexibility Program (RegFlex) exempts from all or part of the NCUA regulatory restrictions identified elsewhere in this part credit unions that demonstrate sustained superior performance as measured by CAMEL rating and net worth classification. RegFlex credit unions also are authorized to purchase and hold an expanded range of obligations.

### § 742.2 Criteria to qualify for RegFlex designation.

(a) *Automatic qualification.* A credit union automatically qualifies for RegFlex designation, without formal notification, when it has:

(1) *CAMEL.* Received a composite CAMEL rating of "1" or "2" for the two (2) preceding examinations; and

(2) *Net worth.* Maintained a net worth classification of "well capitalized" under part 702 of this chapter for all six (6) preceding consecutive quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained "well capitalized" for all six (6) preceding consecutive quarters after applying the applicable RBNW requirement.

(b) *Application for designation.* A credit union that does not automatically qualify under paragraph (a) of this section may apply for a RegFlex designation, which may be granted in whole or in part upon notification by the appropriate Regional Director, if the credit union has either:

(1) *CAMEL.* Received a composite CAMEL rating of "3" or better for the preceding examination; or

(2) *Net worth.* Maintained a net worth classification of "well capitalized" under part 702 of this chapter for less than all six (6) preceding consecutive quarters or, if subject to an RBNW requirement under part 702 of this chapter, has remained "well capitalized" for less than all six (6) preceding consecutive quarters after applying the applicable RBNW requirement.

### § 742.3 Loss and revocation of RegFlex designation.

(a) *Loss of authority.* RegFlex authority is lost when a credit union that qualified automatically under the CAMEL and net worth criteria in § 742.2(a) no longer meets either of those criteria. Once the authority is lost, the credit union may no longer claim the exemptions and authority set forth in § 742.4.

(b) *Revocation of authority.* The Regional Director may revoke a credit union's RegFlex authority under § 742.2, in whole or in part, for substantive and documented safety and soundness reasons. When revoking RegFlex authority, the regional director must give written notice to the credit union stating the reasons for the revocation. The revocation is effective upon the credit union's receipt of notice from the regional director.

(c) *Appeal of revocation.* A credit union has 60 days from the date of the regional director's determination to revoke RegFlex authority to appeal the action, in whole or in part, to NCUA's Supervisory Review Committee. The Regional Director's determination will remain in effect unless and until the Supervisory Review Committee issues a different determination. If the credit union is dissatisfied with the decision of the Supervisory Review Committee, the credit union has 60 days from the date of the Committee's decision to appeal to the NCUA Board.

(d) *Grandfathering of past actions.* Any action duly taken in reliance upon RegFlex authority will not be affected or undone by subsequent loss or revocation of that authority. Any actions exercised after RegFlex authority is lost or revoked must comply with all applicable regulatory requirements and restrictions. Nothing in this part shall affect NCUA's authority to require a credit union to divest its investments or assets for substantive safety and soundness reasons.

### § 742.4 RegFlex relief.

(a) *Exemptions.* RegFlex credit unions are exempt from the following regulatory restrictions:

(1) *Charitable contributions.* § 701.25 of this chapter concerning charitable contributions;

(2) *Nonmember deposits.* § 701.32(b) and (c) of this chapter concerning the maximum amount of non-member deposits a credit union can accept; and

(3) *Fixed assets.* § 701.36(a), (b) and (c) of this chapter concerning the maximum amount of fixed assets a credit union can acquire;

(4) *Member business loans.* § 723.7(b) of this chapter concerning the personal liability and guarantee of principals for member business loans.

(5) *Discretionary control of investments.* § 703.5(b)(1)(ii) and (2) of this chapter concerning the maximum amount of investments over which discretionary control can be delegated;

(6) *"Stress testing" of investments.* § 703.12(c) of this chapter concerning "stress testing" of securities holdings to

assess the impact of an extreme interest rate shift;

(7) *Zero-coupon securities.* § 703.16(b) of this chapter concerning the maximum maturity length of zero-coupon securities;

(8) *Borrowing repurchase transactions.* § 703.13(d)(3) of this chapter, concerning the maturity of investments a credit union purchases with the proceeds received in a borrowing repurchase transaction, provided the value of the investments that mature later than the borrowing repurchase transaction does not exceed 100 percent of the federal credit union's net worth;

(9) *Commercial mortgage related security.* § 703.16(d) of this chapter prohibiting the purchase of a commercial mortgage related security that is not otherwise permitted by 12 U.S.C. 1757(7)(E), provided:

(i) The security is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization;

(ii) The security meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of commercial mortgage related security as defined in § 703.2 of this chapter;

(iii) The security's underlying pool of loans contains more than 50 loans with no one loan representing more than 10 percent of the pool; and

(iv) The aggregate total of commercial mortgage related securities purchased by the Federal credit union does not exceed 50 percent of its net worth.

(b) *Purchase of obligations from a FICU.* A RegFlex credit union is authorized to purchase and hold the following obligations, provided that it would be empowered to grant them:

(1) *Eligible obligations.* Eligible obligations pursuant to § 701.23(b)(1)(i) of this chapter without regard to whether they are obligations of its members, provided they are purchased from a federally-insured credit union only;

(2) *Student loans.* Student loans pursuant to § 701.23(b)(1)(iii) of this chapter, provided they are purchased from a federally-insured credit union only;

(3) *Mortgage loans.* Real-state secured loans pursuant to 701.23(b)(1)(iv) of this chapter, provided they are purchased from a federally-insured credit union only;

(4) *Eligible obligations of a liquidating credit union.* Eligible obligations of a liquidating credit union pursuant to § 701.23(b)(1)(ii) of this chapter without regard to whether they are obligations of the liquidating credit union's members,

provided that such purchases do not exceed 5 percent (5%) of the unimpaired capital and surplus of the purchasing credit union.

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BILLING CODE 7535-01-P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 796

#### Post-Employment Restrictions for Certain NCUA Examiners

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** NCUA proposes to add a new part to NCUA's regulations to implement new, post-employment restrictions that will apply to certain senior NCUA examiners starting December 17, 2005. The proposed rule 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 two or more months during their last 12 months of NCUA employment.

**DATES:** Comments must be received on or before September 27, 2005.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- NCUA Web Site: <http://www.ncua.gov/>

[RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.

- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Proposed Rule 796, Post-Employment Restrictions," in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Regina M. Metz, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

**SUPPLEMENTARY INFORMATION:** On December 17, 2004, Congress enacted

the Intelligence Reform Act, Public Law 108-458, creating new, post-employment restrictions for certain federal employees who examine banks and credit unions. The law requires NCUA to prescribe its own regulation implementing this section for federal examiners of federally insured credit unions and consult to the extent it deems necessary with the federal banking agencies. NCUA staff has consulted with their interagency group so that our proposed rule is consistent and comparable with the joint notice of proposed rulemaking the federal banking agencies are issuing.

#### Proposed Changes

The Board is proposing post-employment restrictions for certain NCUA examiners to implement recent amendments to the Federal Credit Union (FCU) Act. Pub. L. 108-458, § 6303(c), 118 Stat. 3754 (2004); 12 U.S.C. 1786(w). The post-employment restrictions will apply to senior examiners starting December 17, 2005. For a year after leaving NCUA employment, senior examiners would be prohibited from accepting employment with a federally insured credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment.

The proposed rule implements the statutory provisions by giving NCUA the authority to issue administrative orders removing a person from a position with a federally insured credit union and barring further participation with that credit union or any federally insured credit union for up to five years. Also, the proposed rule implements the statute by imposing civil money penalties for violations of up to \$250,000.

The proposed rule clarifies the NCUA employees to whom the restriction will apply. 12 U.S.C. 1786(w)(3). Congress intended the one-year post-employment prohibition to apply to examiners with a "meaningful" relationship to the credit union.<sup>1</sup> Consistent with that intent, the proposal defines a "senior examiner" as an NCUA employee, commissioned as an examiner, who has continuing, broad, and lead responsibility for examining a particular federally insured credit union, routinely interacts with officers or employees of the credit union, and devotes a substantial portion of his or her time to

supervising or examining that credit union.

The reference to a "substantial portion of time" in the definition of senior examiner is intended to address the situation in which an NCUA employee examines or inspects a group of federally insured credit unions. The Board believes such an examiner would be a senior examiner for purposes of the proposed rule only for those credit unions to which he or she devotes substantial time. The Board believes that an examiner who divides his or her time across a portfolio of federally insured credit unions is less likely to develop a meaningful relationship with any one credit union. The determination of whether an examiner devotes a substantial portion of his or her time is necessarily case by case.

While the one-year post-employment restriction can apply by its terms to all examiners, NCUA expects very few examiners to actually qualify as senior examiners. For example, NCUA expects most examiners in charge will not be subject to the one-year prohibition. Most NCUA examiners in charge examine multiple, federally insured credit unions in a single year and typically do not develop a sustained or meaningful relationship with any one credit union. Therefore, they would not be considered senior examiners under the proposal.

Although NCUA expects very few of its employees will be subject to the restriction, NCUA anticipates these few would involve specialty examiners, such as corporate examiners or problem case officers. These specialty examiners are sometimes assigned to be dedicated to and in residence at a credit union for an extended period of time. Thus, the proposed rule includes an example that an NCUA resident corporate credit union examiner assigned to work at a federally insured, corporate credit union for two or more months during the last 12 months of that individual's employment with NCUA will be subject to the one-year prohibition.

The proposal defines the term consultant to include individuals who work directly on matters for, or on behalf of, a federally insured credit union. NCUA construes this to mean that a covered employee may not join a consulting group and accept an assignment directly for the credit union for which he or she served as senior examiner in two of the last 12 months of his or her NCUA employment. The employee, however, may join the consulting firm as long as he or she does not directly participate in a matter involving the relevant credit union. NCUA requests comment on whether the meaning of consultant is sufficiently

<sup>1</sup> 150 Cong. Rec. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).