

National Credit Union Administration

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information relating to fraudulent transactions deleted;

d. An explanation of how the member may obtain a credit report free of charge; and

e. Information about the availability of the FTC's online guidance regarding steps a consumer can take to protect against identity theft. The notice should encourage the member to report any incidents of identity theft to the FTC, and should provide the FTC's Web site address and toll-free telephone number that members may use to obtain the identity theft guidance and report suspected incidents of identity theft.¹⁴

2. NCUA encourages credit unions to notify the nationwide consumer reporting agencies prior to sending notices to a large number of members that include contact information for the reporting agencies.

C. Delivery of Member Notice

Member notice should be delivered in any manner designed to ensure that a member can reasonably be expected to receive it. For example, the credit union may choose to contact all members affected by telephone or by mail, or by electronic mail for those members for whom it has a valid e-mail address and who have agreed to receive communications electronically.

[70 FR 22778, May 2, 2005, as amended at 85 FR 62214, Oct. 2, 2020; 88 FR 12817, Mar. 1, 2023; 89 FR 79393, Sept. 30, 2024]

PART 749—RECORDS PRESERVATION PROGRAM AND APPENDICES—RECORD RETENTION GUIDELINES; CATASTROPHIC ACT PREPAREDNESS GUIDELINES

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¹⁴Currently, the FTC Web site for the ID Theft brochure and the FTC Hotline phone number are <http://www.ftc.gov/idtheft> and 1-877-IDTHEFT. The credit union may also refer members to any materials developed pursuant to section 15(1)(b) of the FACT Act (educational materials developed by the FTC to teach the public how to prevent identity theft).

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

SOURCE: 66 FR 40579, Aug. 3, 2001, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 749, appear at 84 FR 1609, Feb. 5, 2019.

§ 749.0 Purpose and scope.

(a) 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 and provides recommendations for restoring vital member services. All credit unions must have a written program that includes plans for safeguarding records and reconstructing vital records. To complement these plans, it is recommended a credit union develop a method for restoring vital member services in the event of a catastrophic act as defined in § 748.1(b) of this chapter. Additionally, the regulation establishes flexibility in the format credit unions may use for maintaining writings, records or information required by other NCUA regulations.

(b) Appendix A to this part provides guidance concerning the appropriate length of time credit unions should retain various types of operational records. Appendix B to this part also provides guidance for developing a program for responding to a catastrophic act to ensure duplicate vital records can be used for restoration of vital member services.

[72 FR 42273, Aug. 2, 2007]

§ 749.1 Definitions.

For purposes of this part:

Vital member services mean informational account inquiries, share withdrawals and deposits, and loan payments and disbursements.

Vital records refer to the following records:

(a) A list of share, deposit, and loan balances for each member's account as of the close of the most recent business day that:

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

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

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(3) Contains information sufficient to enable the credit union to locate each member, such as address and telephone number.

(b) A financial report, which lists all of the credit union's asset and liability accounts and bank reconcilements, current as of the most recent month-end.

(c) A list of the credit union's accounts at financial institutions, insurance policies, and investments along with related contact information, current as of the most recent month-end.

(d) Emergency contact information for employees, officials, regulatory offices, and vendors used to support vital records.

[72 FR 42273, Aug. 2, 2007]

§ 749.2 Vital records preservation program.

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 program must be in writing and contain procedures for maintaining duplicate vital records at a vital records center. The procedures must include: designated staff responsible for vital records preservation, a schedule for the storage and destruction of records, and a records preservation log detailing for each record stored, its name, storage location, storage date, and name of the person sending the record for storage. It is recommended credit unions include in these procedures a method for using duplicate records to restore vital member services in the event of catastrophic act. 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 if the service agreement specifies the data processor safeguards against the simultaneous destruction of production and back-up information.

[72 FR 42273, Aug. 2, 2007]

§ 749.3 Vital records center.

A vital records center is defined as a storage facility, which may include another federally insured credit union, at any location far enough from the credit

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union's offices to avoid the simultaneous loss of both sets of records in the event of a catastrophic act. A credit union must maintain or contract with a third party to maintain any equipment or software for its vital records center necessary to access records.

[72 FR 42273, Aug. 2, 2007]

§ 749.4 Format for vital records preservation.

Preserved records may be in any format that can be used to reconstruct the credit union's records. The format used must accurately reflect the information in the record, remain accessible to all persons entitled to access by statute, regulation or rule of law, and be capable of reproduction by transmission, printing, or otherwise.

[72 FR 42273, Aug. 2, 2007]

§ 749.5 Format for records required by other NCUA regulations.

Where NCUA regulations require credit unions to retain certain writings, records or information, credit unions may use any format that accurately reflects the information in the record, is accessible to all persons 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 to access the records during the examination process.

[72 FR 42273, Aug. 2, 2007]

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.

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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.
- 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 financial report, NCUA Form 5300 or 5310, or their equivalent, and the Credit Union Profile report, NCUA Form 4501, or its equivalent as submitted to NCUA at the end of each quarter.
 - (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 reconciliations.
 - (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.

[66 FR 40579, Aug. 3, 2001, as amended at 74 FR 35769, July 21, 2009]

Pt. 749, App. B

APPENDIX B TO PART 749—CATASTROPHIC ACT PREPAREDNESS GUIDELINES

Credit unions often look to NCUA for guidance on preparing for a catastrophic act. While NCUA has minimal regulation in this area,¹ as an aid to credit unions it is publishing this appendix of suggested guidelines. It is recommended that all credit unions develop a program to prepare for a catastrophic act. The program should be developed with oversight and approval of the board of directors. It is recommended the program address the following five elements:

- (1) A business impact analysis to evaluate potential threats;
- (2) A risk assessment to determine critical systems and necessary resources;
- (3) A written plan addressing:
 - i. Persons with authority to enact the plan;
 - ii. Preservation and ability to restore vital records;
 - iii. A method for restoring vital member services through identification of alternate operating location(s) or mediums to provide services, such as telephone centers, shared service centers, agreements with other credit unions, or other appropriate methods;
 - iv. Communication methods for employees and members;
 - v. Notification of regulators as addressed in 12 CFR 748.1(b);
 - vi. Training and documentation of training to ensure all employees and volunteer officials are aware of procedures to follow in the event of destruction of vital records or loss of vital member services; and
 - vii. Testing procedures, including a means for documenting the testing results.
- (4) Internal controls for reviewing the plan at least annually and for revising the plan as circumstances warrant, for example, to address changes in the credit union's operations; and
- (5) Annual testing.

[72 FR 42274, Aug. 2, 2007, as amended at 77 FR 71085, Nov. 29, 2012]

PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.

750.0 Scope.

750.1 Definitions.

¹See 12 CFR 748.1(b) concerning a FICU's reporting of any catastrophic act that occurs at its office to its regional director and 12 CFR 749.3 concerning the location of a FICU's vital records center to avoid the simultaneous loss of both sets of records in the event of disaster.

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750.2 Golden parachute payments prohibited.

750.3 Prohibited indemnification payments.

750.4 Permissible golden parachute payments.

750.5 Permissible indemnification payments.

750.6 Filing instructions; appeal.

750.7 Applicability in the event of liquidation or conservatorship.

AUTHORITY: 12 U.S.C. 1786(t).

SOURCE: 76 FR 30517, May 26, 2011, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 750 appear at 84 FR 1609, Feb. 5, 2019.

§ 750.0 Scope.

(a) This part limits and prohibits, in certain circumstances, the ability of federally insured credit unions, including Federally and state chartered natural person credit unions and Federally and state chartered corporate credit unions, to enter into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties (IAPs).

(b) The limitations on golden parachute payments apply to troubled federally insured credit unions that seek to enter into contracts to pay or to make golden parachute payments to their IAPs. A “golden parachute payment” is generally considered to be any payment to an IAP which is contingent on the termination of that person's employment and is received when the federally insured credit union making the payment is troubled. The definition of golden parachute payment does not include payments pursuant to qualified retirement plans, non-qualified bona fide deferred compensation plans, nondiscriminatory severance pay plans, other types of common benefits plans, state statutes and death benefits. Certain limited exceptions to the golden parachute payment prohibition are provided for in cases involving unassisted mergers and the hiring of new management to help improve a troubled federally insured credit union's financial condition. A procedure is also set forth to permit a federally insured credit union to request permission to make what would otherwise be a prohibited golden parachute payment.