

entities must provide to NCUA and how interested parties may access that information, rather than management of NCUA itself or its personnel, it is not a rule of agency management or personnel.

(3) Rule of Agency Organization, Procedure, or Practice With No Substantial Effect on Non-Agency Parties

Third, the withdrawal of the Reporting Requirements is not a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. We have previously explained that this exception was modeled on the APA exception to notice-and-comment rulemaking requirements for “rules of agency organization, procedure, or practice,” which some courts have limited to rules that do not have a substantial impact on non-agency parties. The purpose of the APA exception is to ensure “that agencies retain latitude in organizing their internal operations,” so long as such rules do not alter the rights or interests of parties.

As an initial matter, we must first determine whether the withdrawal of the Reporting Requirements is a rule of agency organization, procedure, or practice. Rules of agency organization, procedure, or practice are “limited to an agency’s methods of operation or how the agency organizes its internal operations,” including the way that regulated entities submit information to an agency, how the agency reviews that information, and rules that affect the type or timing of actions the agency will take based on that submission. We have only applied this exception to rules that primarily focus on the internal operations of an agency.

Here, the withdrawal of the Reporting Requirements deals with how regulated entities present information regarding fee collection to NCUA as part of the Call Report process. NCUA will no longer collect this information from all FICUs with over \$1 billion in assets in the mandatory quarterly Call Report process, but instead will only collect this information through its private examination process. Therefore, the withdrawal of the Reporting Requirements is a rule of agency organization, procedure, or practice.

Next, we must determine whether the withdrawal of the Reporting Requirements substantially affects the rights or obligations of non-agency parties. We have previously determined that “[a] rule that does not alter the rights or interests of non-agency parties but merely alters the manner in which parties present themselves or their viewpoints to the agency does not substantially affect those parties’ rights or obligations.” For example, in B-329916, May 17, 2018, we evaluated an Internal Revenue Service (IRS) Statement announcing that it would be altering the timing of certain compliance checks it conducted on individual income tax returns. IRS’s previous policy was to assess compliance with certain statutory requirements after the tax return had been filed. IRS had processed the return, and the taxpayer paid taxes due or received a refund. In its Statement, IRS announced that it would instead be assessing compliance when the taxpayer filed the return, and that it would no longer accept noncompliant filings. There, we concluded that the IRS Statement did not substantially affect the rights or obligations of non-agency parties because the Statement merely altered the timing of IRS’s compliance assessment but did not alter the underlying substantive obligations of the taxpayers to comply with the relevant statutes. Because the Statement did not impose or confer new burdens, penalties, or rights on the taxpayers, we concluded that the Statement fell within that exception.

Similarly, in B-336217, Aug. 6, 2024, we concluded that a Supervision and Regulation

Letter from the Board of Governors of the Federal Reserve System (FRB) that, among other things, set a 30-day deadline for state member banks to submit a required notification to FRB relating to certain dollar token activities did not substantially affect the rights or obligations of non-agency parties. There, the state member banks already had an underlying obligation to report the required information to FRB relating to their dollar token activities. Therefore, the imposition of a new 30-day deadline for submission “merely affect[ed] the manner in which state member banks present[ed] themselves and their viewpoints to FRB and [did] not substantially affect the banks’ rights or obligations.”

Here, the withdrawal of the Reporting Requirements means that for FICUs with greater than \$1 billion in assets, data related to overdraft and NSF fees will no longer be collected in quarterly Call Reports at all and will no longer be publicly available at an individualized level. Instead, these credit unions will only be required to report this information to NCUA when NCUA chooses to engage in the examination process—the results of which will not be made public. Whereas in B-329916 and B-336217, only the timing or manner of submission to the agency was changed, here, the withdrawal of the Reporting Requirements removed the mandatory reporting requirement altogether and eliminated the publication of this information for individual credit unions. Interested parties will no longer have access to overdraft and NSF fee income information for individual credit unions, and, according to NCUA, this information is also exempt from release under FOIA.

In the Press Statement announcing the withdrawal of the Reporting Requirements, NCUA’s chairman discussed the effect of previously publishing this information for individual credit unions, stating that it “incentivized credit unions to avoid serving the needs of low-income and underserved communities” and that overdraft and NSF fees can be the best option in certain situations. The withdrawal of the Reporting Requirements was thus aimed at encouraging credit unions to use overdraft and NSF fees when appropriate, which affects the non-agency parties who would be subject to the imposition of such fees. We have previously held that rules that encourage regulated entities to change internal operations or policies have a substantial impact on non-agency parties. Similarly, the withdrawal of the Reporting Requirements substantially affects the rights or obligations of affected credit unions. As a result, no CRA exception applies to the withdrawal of the Reporting Requirements.

CONCLUSION

The withdrawal of the Reporting Requirements is a rule for purposes of CRA because it meets the APA definition of a rule and no CRA exception applies. Therefore, the withdrawal of the Reporting Requirements is subject to CRA’s requirement that it be submitted to Congress and the Comptroller General before it can take effect.

EDDA EMMANUELLI PEREZ,
General Counsel.

ADDITIONAL STATEMENTS

REMEMBERING RICHARD SMALLWOOD

• Ms. ALSO BROOKS. Mr. President, Mr. Smallwood was once asked about the enduring impact of gospel music,

and he said, “It’s something about the spirit of gospel music that unifies.” Countless souls have been blessed by his decision to use his gifts in this way. Mr. Smallwood was a classically trained musician, an incredible singer, an amazing writer, and a brilliant composer. And in addition to his God-given gifts, he was a student of music. He was a perfectionist that cared about the details.

But the art that Mr. Smallwood created has never been above our heads or too complex to understand. He had a special ability to touch hearts on the most basic level because it came from his own. He gave us pure, genuine worship. As much as his creativity stretched the bounds of gospel music, his worship never failed to connect with us because his music always remembered Who is the center of our joy.

Mr. Smallwood’s gift led him to perform before Presidents and dignitaries and filled concert halls around the globe. But it also touches people who feel forgotten in their most isolated moments. It has changed people who never had the opportunity to meet him. His music not only speaks to us, but also speaks for us. It expresses our emotion. It describes our feelings of gratitude. And it translates for us in those low points when words fail us, and all we can do is lift our hands in total praise.

We may not be able to sing or play like him. We may not have his trained ear or his talented pen. But we share life’s joys and challenges. And his consistent theme was, no matter if we are in our mountaintop experience or if we are in need of healing in the valley, to worship anyhow.

So, for all the awards and honors that were given to Mr. Smallwood throughout his life, what endures is what he gave to us: the gift of timeless, unifying music; songs that people around the world can feel in any language; poetry that future generations will appreciate just as we have; melodies of healing and praise for every season of life.

I ask that you join me, the residents of Maryland, and souls across the globe in honoring and celebrating the life of Richard Smallwood.●

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 1834. An act to advance policy priorities that will break the gridlock.

H.R. 6500. An act to extend duty-free treatment provided with respect to imports from certain countries in Africa under the African Growth and Opportunity Act, to extend customs user fees, and for other purposes.

S. 3805. A bill to amend chapter 93 of title 18, United States Code, to prohibit obstruction of immigration laws by official interference.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with