

exercise of its discretionary function under the CSA has been sustained on review. *Mackay*, 664 F.3d at 822.

The Respondent's owner, Mr. Sanders, has accepted no measure of responsibility for the established misconduct in the record. The preponderant evidence that the Respondent's owner and PIC had actual knowledge that the pharmacy was providing large amounts of dangerous controlled substances to drug-dealer runners presenting illegitimate scripts and photocopied driver's licenses on a regular basis. That actual knowledge, which was supplied, not by an anonymous source, but by an employee, was met with a dismissive rejection at the time it was provided and at the hearing. There is nothing in the record to rebut the persuasive record evidence that the conduct of the owner and PIC exceeded inaction and rose to the level of willing complicity in controlled substance diversion on a massive scale. The equally persuasive evidence that multiple audits demonstrated alarming shortages and overages, profound recordkeeping issues, and pervasive incompetence was met in these proceedings with an attempt to deflect the blame to subordinates. Based on his testimonial performance at the hearing, a decision to rely upon the expertise of PIC Grape to ensure that the Respondent pharmacy fulfilled its obligations as a DEA registrant (to the extent that the *bona fides* of such reliance is accepted) is patently unreasonable. Mr. Sanders' inconsistent positions as to whether an initial inventory ever existed have amplified the probative value of this recordkeeping shortcoming in support of the Government's case. The Respondent pharmacy did not have the paperwork required for inventory control or transfer, and its personnel were bereft of any means to discern how much controlled substance the enterprise should have on board when the audits took place and when theft/loss reports were prepared. The evidence here does not show a reduced level of control demonstrated by imperfect paperwork, but rather an absence of any measure of control. Indeed, the most credible aspect of Mr. Sanders' testimony is that he has no training or expertise in the field of pharmacy. Tr. 262–63; *see also*, Resp't Brief at 11. The continuation of the Respondent's COR under the circumstances is untenable.

On the issue of remedial steps, Mr. Sanders offered a new computer software system and a new PIC.<sup>77</sup> Regrettably, the software system addresses none of the pernicious issues related to supplying runners with controlled substances that the Respondent (through its owner and PIC) knew were authorized on a large scale through illegitimate prescriptions. Regarding the replacement of PIC Grape, Mr. Sanders' testimony made it clear that he does not acknowledge that PIC Grape was ever part of the problem. Tr. 264, 287–88. Thus, his replacement cannot be perceived as a cognizable remedial step.

<sup>77</sup> In his post-hearing brief, the Respondent states that a new PIC has been hired. Resp't Brief at 3. This fact is not a matter of record, and, based on the posture of the case wherein the Respondent has consistently embraced PIC Grape's qualifications and abilities, would be unavailing in any event.

To be clear, this is not a case like *Terese*, where recordkeeping violations were acknowledged and addressed with alacrity. 76 Fed. Reg. at 46848. There has been no acceptance of responsibility or any demonstration of genuine attempts at remedial action. The Respondent's owner, Mr. Sanders, has consistently claimed that the runners did not exist, that his employees should have known better, or (in the case of Ms. Tippie) have fabricated lies against him, and that any auditing issues were a natural result of the hiccups associated with a nascent pharmacy. In short, the posture taken by Mr. Sanders has made it virtually impossible for the Agency to continue to entrust the Respondent pharmacy with a DEA registration.

Accordingly, in view of the fact that the Government has established its *prima facie* case by a preponderance of the evidence, and the Respondent has declined to accept responsibility, the Respondent's Certificate of Registration should be REVOKED and any pending applications for renewal should be DENIED.

Dated: November 8, 2012  
s/John J. Mulrooney, II  
*Chief Administrative Law Judge*  
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## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

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

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. NCUA is proposing a data collection change to the credit union Profile as well as the 5300 Call Report. NCUA is proposing to add fields to the General, Information Systems and Technology, Regulatory, Disaster Recovery, Member Services and Grant sections of the Profile. This data will assist NCUA in monitoring and supervising credit unions. On the 5300 Call Report, NCUA is proposing to add fields to the Miscellaneous Loan Information, Additional Share Information, Miscellaneous, Delinquency, Loan Charge Off and Recoveries, Liquidity, Commitments and Sources, Purchased Credit Impaired Loans, and

Supplemental Investment Information sections. The new data collection provides more detailed delinquent, charge off and recovery loan information. Additionally, these fields provide information for offsite monitoring of risks to the National Credit Union Share Insurance Fund.

**DATES:** Comments will be accepted until June 3, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

**NCUA Contact:** Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov*.

**OMB Contact:** Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

### SUPPLEMENTARY INFORMATION:

#### I. Abstract and Request for Comments

NCUA is amending the currently approved collection for 3133–0004. Two specific forms are used, NCUA Form 5300 and NCUA Profile Form 4501A, also known as the Call Report and Profile, respectively. Section 741.6 of the NCUA Rules and Regulations requires all federally insured credit unions to submit a Call Report quarterly, 12 CFR 741.6. The information enables the NCUA to monitor credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund. NCUA uses the information collected from these Call Reports to fulfill its mission of supervising credit unions and the Federal Reserve Board uses it to monitor and control the nation's money supply and the system of financial institutions. Congress and various state legislatures use this information to monitor, regulate, and control credit unions and financial institutions. The changes made to the Profile and Call Report form for June 2013 will provide data to assist the National Credit Union Administration in assessing regulatory compliance and financial and operational risks. There is a decrease of 6,045 hours from the last submission

(2012). The decrease is a result of an adjustment to the number of credit unions completing the Call Report from 7,093 to 6,864. This decline is from credit union mergers and liquidations.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

## II. Data

Proposal for the following collection of information:

*OMB Number:* 3133–0004.

*Form Number:* NCUA 5300.

*Type of Review:* Revision to the currently approved collection.

*Title:* Revisions to NCUA Call Reports.

*Description:* The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

*Respondents:* All Credit Unions.

*Estimated No. of Respondents/Recordkeepers:* 6,864

*Estimated Burden Hours per Response:* 6.6 hours.

*Frequency of Response:* Quarterly.

*Estimated Total Annual Burden Hours:* 181,210.

*Estimated Total Annual Cost:* \$5,318,513.

By the National Credit Union Administration Board on April 30th, 2013.

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

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## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

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

**ACTION:** 30-day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

**SUMMARY:** As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, NCUA has submitted a Generic Information Collection Request (Generic ICR): “Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery” to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.).

**DATES:** Comments must be submitted June 3, 2013.

**ADDRESSES:** Written comments may be submitted to NCUA and OMB Contacts as listed below:

**NCUA Contact:** Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–837–2861, Email: [OCIOPRA@ncua.gov](mailto:OCIOPRA@ncua.gov)

**OMB Contact:** Desk Officer for National Credit Union Administration, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428 or at (703) 518–6444.

#### SUPPLEMENTARY INFORMATION:

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service,

or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide NCUA's projected average estimates for the next three years:<sup>1</sup>

*Current Actions:* New collection of information.

*Type of Review:* New Collection.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Average Expected Annual Number of Activities:* 22,500.

*Respondents:* 7,500.

*Annual Responses:* 3.

<sup>1</sup> The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

*Average Expected Annual Number of activities:* 25,000

*Average number of Respondents per Activity:* 200.

*Annual responses:* 5,000,000.

*Frequency of Response:* Once per request.

*Average minutes per response:* 30.

*Burden hours:* 2,500,000.