



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

August 6, 1986

GC/YG:sg
1250

Office of General Counsel

Professor William V. Luneburg
University Of Pittsburgh
School of Law
3900 Forbes Avenue
Pittsburgh, PA 15260

Dear Professor Luneburg:

This responds to your questionnaire, submitted on June 30, 1986, by the Administrative Conference of the United States. Generally speaking, the questionnaire seeks information about NCUA's rulemaking petition procedures and practice.

After reviewing our files, it appears that NCUA has not previously received any formal petitions for rulemaking. Accordingly, we are unable to provide responses to some of your inquiries. Nevertheless, we have provided responses to your queries, as well as documents, wherever possible.

I hope we have been of assistance. If you have further questions, please contact Yvonne Gilmore at (202) 357-1030.

Sincerely,

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STEVEN R. BISKER
Assistant General Counsel

Enclosures

FOIA

Vol IV Part II

QUESTIONNAIRE

Petitions for Rulemaking

[For the purpose of the following questions, the terms "agency" and "rule" have the same meanings given to them by § 551 of the APA.]

1. Is your agency subject to any statutory requirement [other than the Administrative Procedure Act, §§ 553(e), 555(e)] that it receive and consider petitions for the issuance, amendment or repeal of a rule? If so, please cite the applicable statutory provision(s). No
2. Has your agency adopted any regulations governing the receipt, consideration, and disposition of petitions for rulemaking? If so, please supply a citation to the regulations. If not, why not? Yes- 12 C.F.R. §790.10(b)
3. Does your agency have procedures for dealing with petitions for rulemaking that are described or elaborated in any other agency decisions, staff manuals, memoranda or other documents? If so, please supply a citation or a copy. IRPS 81-4 (copy provided)
4. As a matter of statute, regulation or agency practice, does the process for the receipt, consideration, grant or denial of petitions vary depending on whether the petition is related to the (a) issuance, (b) amendment or (c) repeal of a rule? If so, how and why. No
5. On the average, how many petitions for rulemaking are filed with your agency each year? How many are granted? How many are denied? N/A
6. How many petitions for rulemaking are currently pending with your agency? N/A
7. Does your agency have time limits applicable to the consideration and response to a petition? If so, what are they? Are they imposed by statute, regulation, or internal agency policy? No
8. What is the average time for processing a petition from its filing to its grant or denial? N/A
9. Does the agency publish petitions in the Federal Register? If some or all petitions are not published in the Federal Register, why not? N/A
10. Does the agency compile a record in the petition proceeding? If not, why not? If so, what types of documents are included

in the record? Are docket numbers assigned? If the petition is granted, do these materials become part of the rulemaking record for the rulemaking later commenced? N/A

11. If a petition is denied, what steps does the agency take to inform the petitioner, other interested persons, and the public at large of the agency action? If granted, what steps are taken to inform them of the agency's action? N/A

12. Are there any attorneys, law firms, persons or organizations that are particularly active in filing petitions with your agency? If so, what are their names and addresses, if known? N/A

13. Please give the names and telephone numbers of agency employees who are particularly familiar with your petition process. N/A

TITLE 12 - BANKS AND BANKING

CHAPTER VII - NATIONAL CREDIT UNION ADMINISTRATION

PART 720 - DEVELOPING GOVERNMENT REGULATIONS

STATEMENT OF POLICY

AGENCY: National Credit Union Administration (NCUA)

ACTION: Statement of Policy

SUMMARY: This policy statement sets forth NCUA's procedures for developing regulations. These procedures are intended to ensure compliance with the Financial Regulation Simplification Act of 1980 and the Regulatory Flexibility Act of 1980.

EFFECTIVE DATES: June 1, 1981. However, comments are requested and will be evaluated through July 1, 1981.

ADDRESS: Send comments to: Robert S. Monheit, Regulatory Development Coordinator, Office of General Counsel, National Credit Union Administration, 1776 G St., N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert S. Monheit, Senior Attorney or Beatrix D. Fields, Attorney-Advisor, Office of General Counsel at the above address or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: This policy statement sets forth NCUA's procedures for developing regulations. The procedures are intended to ensure compliance with the requirements of the "Financial Regulation Simplification Act of 1980", Title VIII of P.L. 96-221, and the "Regulatory Flexibility Act of 1980", P.L. 96-354. The Financial Regulation Simplification Act requires that NCUA (as well as other Federal financial regulatory agencies) ensure that the need for a regulation is clearly established, that alternatives are considered, that compliance costs are minimized, that duplicative regulations are avoided, and that existing regulations are periodically reviewed. The Regulatory Flexibility Act establishes as a principle of rulemaking that, whenever possible, agencies will fit regulatory and informational requirements to the scale of the businesses, organizations and governmental jurisdictions subject to the rule.

In 1979, NCUA published its procedures for developing and improving its regulations within the spirit of the former E.O. 12044. These procedures were set forth in a Final Report: In Response to E.O. 12044, Appendix A to 12 C.F.R. Part 720 ("Final Report"). This policy statement will replace and supercede the Final Report by discussing the basic procedures and statutory requirements for developing regulations. The internal procedures for developing a regulation have been revised and set forth in a specific instruction to agency staff.

In accordance with the Regulatory Flexibility Act's provision defining "small entities", 5 U.S.C. §601, NCUA is seeking comments on a definition of

"small credit unions". This policy statement includes an interim standard defining a "small credit union" as one having less than \$1 million in assets. We invite comment on this standard and suggestions for other appropriate standards.

By the National Credit Union Administration Board on the 21st day of May, 1981.

Beatrice H. Fields

BEATRIX FIELDS

Acting Secretary of the Board

IRPS 81-4

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 financial institutions regulated by NCUA;
- are issued only after full public participation in the rulemaking process; and

- are clear and understandable.

The procedures outlined below are designed to achieve these goals. In some cases, the procedures may, however, be inappropriate either because of factors outside of NCUA's control or because following the procedures is determined not to be in the public interest. Therefore, NCUA will not apply the procedures contained in this policy statement in the development of:

1. regulations that are required by statute to be developed on the record after oral hearings before the Administration;
2. regulations that are prepared in response to an emergency or that a statute or a court requires to be developed under a short deadline;
3. regulations where the process would be unnecessary or contrary to the public interest; and
4. matters that relate to the management of NCUA, its personnel, and its procurement of goods and services.

In the event that one of these exemptions is used and the procedures outlined in this policy statement are not followed, NCUA will notify the public and explain the reasons for not following the procedures.

II. Regulatory Development Coordinator

NCUA has designated a Regulatory Development Coordinator in the Office of General Counsel. It is this individual's responsibility to ensure that the development of regulations is accomplished in accordance with applicable laws and this policy statement. Specifically, the Regulatory Development Coordinator

is responsible for: (a) coordinating the rulemaking process; (b) reviewing the issues raised by initiation statements and maintaining a record of the development of those issues; (c) preparing and publishing in the Federal Register the semi-annual agenda of regulations being developed by NCUA and of existing regulations being reviewed by NCUA; and (d) reviewing proposed and final regulations to ensure compliance with the requirements of the Administrative Procedures Act, the Regulatory Flexibility Act, the Financial Regulation Simplification Act, and the requirements of this policy statement.

III. Procedures For the Development of Regulations

1. Proposed Rule. The NCUA Board will designate an Office as the Office of Primary Interest (OPI) to oversee the development of a particular regulation. The OPI will prepare a draft of the proposed rule and an accompanying memorandum for submission to the Board, unless the Board finds that consideration of the memorandum is impracticable. The accompanying memorandum will include:

- a. a description of the problem to be addressed by a regulation;
- b. an assessment of the need for a regulation and a statement of the purpose and legal basis of a regulation;
- c. meaningful alternative approaches that can be developed to address the problem, and which approach, if developed into a final rule, may have a significant economic impact on small entities;

- d. a statement, if applicable, of the reasons for concluding that the proposed rule will not have a significant economic impact on a substantial number of small entities;
- e. an identification of other Federal regulations that may conflict with, be duplicated by, or be made inconsistent, as a result of adopting any of the alternatives;
- f. plans for obtaining public participation and for consulting with other regulatory agencies;
- g. anticipated target dates; and
- h. recommendations for further action.

The preamble to the proposed rule will include:

- a. a description of the need, purpose, and legal basis for the proposed rule;
- b. the name of a knowledgeable official who can be contacted for further information on the proposed rule;
- c. a request for comments for a period of 60 days from publication (or shorter if accompanied by a statement explaining the reasons for a shorter comment period); and
- d. either a summary of the initial regulatory flexibility analysis and a statement describing how a copy can be obtained, or a certification by the NCUA Board that the proposed rule will

not have a significant economic impact on a substantial number of small entities, accompanied by an explanation of the reasons for the certification.

The proposed rule will be circulated for comment within the agency and then presented to the NCUA Board for approval. The proposed rule will then be published in the Federal Register and other appropriate publications. Comments received by NCUA on the proposed rule will be publicly available in the Office of General Counsel.

2. Initial Regulatory Flexibility Analysis. Prior to publishing a proposed rule subject to the general notice requirements of 5 U.S.C. 553, NCUA will prepare an initial regulatory flexibility analysis if the proposed rule will have a significant economic impact on a substantial number of small entities. Credit unions having less than \$1 million in assets will be considered to be small entities. The initial regulatory flexibility analysis may be combined with the memorandum accompanying the proposed rule, which addresses issues that the Simplification Act requires to be considered (see: Part III, section 1, above). This analysis will describe the impact of the proposed rule on small entities. A summary of the analysis will be published in the Federal Register as part of the preamble to the proposed rule. A copy of the analysis shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration.

Each initial regulatory flexibility analysis shall contain:

- a. a description of the reasons why action by the agency is being considered;

- b. a succinct statement of the objectives of, and legal basis for, the proposed rule;
- c. a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- d. a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report of record;
- e. an identification, to the extent practicable, of all relevant Federal rules which may duplicate overlap or conflict with the proposed rule; and
- f. a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities, including, when possible, consideration of: (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; or (iv) an exemption from coverage under the rule, or any part thereof, for such small entities.

In describing effects and alternatives, a quantifiable or numerical description may be used, or if not practicable or reliable, more general descriptive statements may be used. This analysis may be prepared in conjunction with or as part of any other analysis. Any series of closely related rules may be considered as one rule for purposes of preparing the initial regulatory flexibility analysis.

The initial regulatory flexibility analysis need not be prepared for any proposed rule if the Board certifies that the rule will not, if adopted, have a significant economic impact on a substantial number of small entities. The certification shall be published in the Federal Register at the time the proposed or final rule is published along with a succinct statement explaining the reasons for the certification. A copy of the certification and statement shall be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

The Board may waive or delay the completion of some or all of the requirements of the initial regulatory flexibility analysis by publishing in the Federal Register, no later than publication of the final rule, written findings and reasons for the delay provided that the final rule is promulgated in response to an emergency that makes compliance or timely compliance impracticable.

3. Compliance With the Paperwork Reduction Act. If a proposed regulation contains a recordkeeping or reporting requirement that, if adopted, will be imposed upon 10 or more credit unions or persons, then a copy of the proposed rule will be sent to the Office of Management and Budget (OMB) prior to

publication. OMB will then have 60 days after publication to comment on the recordkeeping or reporting requirement, and may request additional information from NCUA. If OMB does comment, NCUA will respond to those comments in the preamble to the final rule. If OMB thereafter disapproves the reporting or recordkeeping requirement, the NCUA Board can override this by a majority vote. NCUA may ask for an expedited clearance if the normal review period may cause public harm or if it will disrupt the collection of information related to an unanticipated event or if it will result in missing a statutory deadline.

4. Final Regulatory Flexibility Analysis. A final regulatory flexibility analysis is prepared for all rules that required the publication of a general notice of proposed rulemaking and that will have a significant economic impact on a substantial number of small entities. This analysis may be included in the Final Review Memorandum (see Part III, section 5, below).

Each final regulatory flexibility analysis shall contain:

- a. a succinct statement of the need for, and the objectives of, the rule;
- b. a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment by the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and
- c. a description of each of the significant alternatives to the rule which were considered by the agency, and a statement of the

reasons why each one of such alternatives was rejected.

In describing effects and alternatives, a quantifiable or numerical description may be used, or if not practicable or reliable, more general descriptive statements may be used. Any series of closely related rules may be considered as one rule for purposes of preparing the final regulatory flexibility analysis.

The final regulatory flexibility analysis need not be prepared for any final rule if a proposed rule was not required by 5 U.S.C. §553 or if the Board certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The certification shall be published in the preamble to the final rule along with a succinct statement explaining the reasons for the certification. A copy of the certification and statement shall be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

The Board may not waive the completion of any of the requirements of the final regulatory flexibility analysis but the Board may delay the completion of the requirements for not more than 180 days after publishing the final rule. The Board must publish in the Federal Register, no later than publication of the final rule, a written finding and reasons for the delay and indicate that the final rule is being promulgated in response to an emergency that makes timely compliance with the requirements of the final regulatory flexibility analysis impracticable. If the final regulatory flexibility analysis is not prepared within 180 days of publishing the final rule, the rule lapses and has no effect, and it may not be repromulgated until the analysis has been completed.

NCUA will make copies of the analysis available to members of the public and will describe in the Federal Register, at the time the final rule is published, how copies can be obtained.

5. Final Review Memorandum. Following the comment period and after public participation procedures have been completed, all information received is reviewed. Along with the NCUA Board's review of the draft final regulation, the NCUA Board evaluates the final review memorandum which indicates that the following policy issues have been considered with regard to developing the final regulation:

- a. the need for and purpose of the regulation is established clearly;
- b. meaningful alternatives to the promulgation of the regulation were considered;
- c. compliance costs, paperwork, and other burdens on federal credit unions, consumers, and the public are minimized;
- d. conflicts, duplication and inconsistencies between the regulations issued by the Federal financial regulatory agencies have been avoided to the extent possible taking into account differences in statutory responsibilities, the classes of regulation and methods of implementation or policy objectives;
- e. timely participation and comment by other Federal agencies, appropriate State and local agencies, financial institutions, and consumers was available; and

f. the regulation appeared to be as clearly written as possible and understandable by those subject to the regulation.

Support for establishing that these issues have been considered may be set forth in the final memorandum or in the preamble to the final regulation or as part of a final regulatory flexibility analysis.

7. Final Rule.

The Office of Primary Interest will prepare a draft final rule to be circulated within NCUA for comments. The preamble of final rule will contain:

- a. a statement of the need, purpose, and legal basis for the rule;
- b. the name of a knowledgeable official who can be contacted for further information on the final rule;
- c. a summary of the significant comments received in the proposed rule;
- d. a description of how a copy of the final regulatory flexibility analysis (if any) can be obtained; and
- e. a statement responding to comments submitted by OMB on the recordkeeping or reporting requirements (if any).

The final rule will be presented to the NCUA Board for approval. It will then be published in the Federal Register and other appropriate publications.

IV. Review of Existing Regulations

NCUA shall periodically update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions. The regulations under review are listed in the semi-annual regulatory agenda (see Part VI). After the initial review, regulations will be reviewed for need, clarity, and efficiency at least once every ten years.

V. Opportunity for Public Participation

This part describes the methods provided by NCUA for the public to participate in the development of its regulations.

1. Initiating a regulation. A member of the public may recommend that NCUA develop a regulation or revise an existing regulation. The recommendation should be submitted, in writing, and should contain a statement of the issues, the opinion and recommendations of the person submitting the statement, any data that is relevant to the issues, an indication of the support of others for the recommendations, and a description of the interest that the person has in the action requested.

2. Public participation in rulemaking. A number of methods will be used by NCUA to encourage public participation in the development and review of regulations. The methods used will depend upon the stage of the proceedings, the issues involved, the amount of expressed interest, and the public sector affected by the regulation.

a. The Semi-Annual Regulatory Agenda. The agenda, which is described in detail in Part VI, will advise the public on the

status of regulations being developed, will give target dates for the review of existing regulations, will identify regulations that may have significant economic impact on small entities, and will provide the name of an NCUA official to contact for further information. The Agenda can be used by the public to track the development of regulations and to identify opportunities to participate in the rulemaking process.

b. Advance notice of proposed rulemaking. This notice, when the Board determines it is appropriate, will be published in the Federal Register and will set forth the problems identified by NCUA that may give rise to a regulation. The Advance Notice will briefly describe some of the options being considered and the restrictions that the law imposes, and will ask the public to send written comments to an NCUA official named in the notice. This will permit public participation before a proposed rule is drafted.

c. Questionnaires. When it is determined that there is not sufficient data to proceed with the development of a regulation, NCUA will (in accordance with the requirements of the Paperwork Reduction Act of 1980) send out questionnaires to parties likely to be affected by the regulation. The information obtained from the questionnaires should enable NCUA to decide whether there is a need for a regulation and the most efficient and effective means for dealing with the subject of the regulation.

d. Articles. NCUA will publish articles in its own publications, and will, on occasion, contribute articles to interested trade publications. These articles will discuss regulations being developed and will include the name of an NCUA official to whom comments can be sent. Also, NCUA will publish copies of proposed and final regulations.

e. Copies of proposed regulations. Members of the public can regularly receive copies of proposed regulations by being included on NCUA's regulation mailing list. To be included on the mailing list, persons should write to the Office of Administration, National Credit Union Administration, Washington, D.C. 20456. In this way, persons who have expressed an interest in the development of a regulation, but who do not have regular access to the Federal Register, will be assured of receiving a copy of a proposed regulation with sufficient time to comment prior to the close of the comment period.

f. Public comment. NCUA will continue to solicit public comment on proposed regulations as required by the Administrative Procedures Act, 5 U.S.C. Section 553. As a matter of policy, NCUA believes that the public should be given at least 60 days (from the date of publication in the Federal Register) 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 (usually along

with the publication of the proposed regulation) explaining the reasons for the change. NCUA will consider, during the comment period, any request to extend the comment period.

g. Public hearings or conferences. If NCUA determines that the written comments that it has received do not provide sufficient information or do not adequately represent significantly varying public interests, public hearings or conferences will be held. Depending upon the nature of the issues involved and the interest expressed in the written comments received, these public meetings will vary from informal conferences between NCUA officials and interested members of the public at which the issues are discussed, to hearings at which oral testimony is recorded and written testimony may be submitted. NCUA will also consider, where appropriate, holding hearings or conferences at each NCUA Regional Office around the country as well as at the Central Office in Washington, D.C. Further, NCUA will consider funding appropriate groups and individual credit union members when appropriate to attend the hearings held in Washington. Eligible applicants must represent a significant viewpoint that would not otherwise be adequately represented and must not have available resources to attend.

h. Procedures for consulting State and local government officials. When it appears that a regulation under development will have significant impact on relations between NCUA and State or local governments, NCUA will send to the appropriate

government official an advance notice of the development of a regulation or an advance copy of the proposed regulation being developed. This will ensure that affected State and local governments have an opportunity to submit their views.

1. Participation by small entities. When a rule, if promulgated, will have a significant economic impact on a substantial number of small entities, NCUA will make additional efforts to ensure that small entities will participate in the rulemaking process. When appropriate, NCUA will: (1) if an advance notice of proposed rulemaking is issued, identify those alternatives that may have significant economic effect on a substantial number of small entities; (2) publish proposed rules in publications likely to be obtained by small entities; (3) send notices directly to interested small entities; or (4) conduct open conferences or public hearings on proposed rules having significant economic impacts on a substantial number of small entities.

VI. Semi-Annual Regulatory Agenda

In April and October, NCUA will publish in the Federal Register an agenda listing the regulations being considered and/or developed by NCUA and also listing those existing regulations undergoing periodic review. However, NCUA is not precluded from considering or acting on any matter not included in the agenda and is not required to consider or act on any matter listed in the agenda. The agenda will, for each regulation listed in it, contain the

following information:

- a. the need for a objectives of the regulation and the legal basis for issuing it;
- b. a brief indication, where applicable, of whether the regulation will have a economic impact on a substantial number of small entities;
- c. the status of the regulation at the time the agenda is published, the approximate schedule for completing action on a proposed rule that has been issued, and the target date for the review of an existing regulation; and
- d. the name and telephone number of an NCUA official who is familiar with the regulation.

Each agenda shall be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any. Further, NCUA will provide notice of the agenda to small credit unions through direct notification or through publications likely to be obtained by small credit unions. Comments on each regulation discussed in the agenda are invited.