



## **Regulatory Comment: Summary and Feedback Request**

### **[NCUA: ANPR on Records Preservation Program and Appendices]**

#### **THE ISSUE:**

The NCUA issued an advance notice of proposed rulemaking (ANPR) to solicit feedback on how the agency can improve and update its records preservation program regulations and guidance. In addition to input on the content of Part 749, the NCUA seeks comments on the Part's structure, which may be confusing since it includes a combination of regulatory requirements and guidance. We appreciate the Board's effort to pursue this rulemaking, which was developed, in part, through recent feedback from America's Credit Unions' Small Credit Union Committee.

#### **IMPACT TO CREDIT UNIONS:**

Part 749 and its records preservation rules apply to all federally insured credit unions. Thus, the specific records retention requirements dictate the scope of records that must be kept, as well as offers implementation guidance in the form of appendices. While the record retention requirements may have a disproportionate impact on smaller credit unions, all credit unions must allocate time and resources for compliance.

#### **KEY POINTS:**

- Part 749 requires all federally insured credit unions to maintain a records preservation program to identify, store, and reconstruct vital records in the event the records are destroyed.

- The NCUA’s records preservation program regulations have not been revised in 15 years. Credit unions continue to raise questions about the specific requirements for certain documents, as well as the time for which documents must be retained.
- This ANPR is an opportunity for credit unions to share concerns and raise questions with the NCUA. The likely next step is a proposed rulemaking with specific revisions to the Part 749 regulations.

### **ACTION NEEDED: Deadlines and contacts**

Please use the comment link below to respond to America’s Credit Unions’ survey regarding *Records Preservation Requirements*. This will help shape the discussion and better address your needs in our comment letter.

- Comments due to America’s Credit Unions: [June 7, 2024] —[Submit here](#)
- Comments due to [NCUA] by [June 24, 2024]
- Questions? Contact [[Luke Martone](#), Senior Director of Advocacy & Counsel]
- Agency contact: [[Matt Huston](#) or [Gira Bose](#)]

## **ANALYSIS:**

### **Current Standards**

Part 749 requires all federally insured credit unions to maintain a records preservation program to identify, store, and reconstruct vital records in the event that a credit union’s records are destroyed. The vital records preservation program must be in writing and contain certain procedures for maintaining duplicate vital records at an offsite vital records center.<sup>1</sup> The regulation defines “vital records”<sup>2</sup> as:

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<sup>1</sup> 12 CFR 749.2 and 749.3.

<sup>2</sup> 12 CFR 749.1.

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

Part 749, Appendix A provides suggested guidelines for record retention. It advises that the following should be retained permanently:

- a) Official records of the credit union:
  - 1) Charter, bylaws, and amendments;
  - 2) 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.
- b) Key operational records:
  - 1) Minutes of meetings of the membership, board of directors, credit committee, and supervisory committee;
  - 2) 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 the NCUA at the end of each quarter;
  - 3) One copy of each supervisory committee comprehensive annual audit report and attachments;
  - 4) Supervisory committee records of account verification;
  - 5) Applications for membership and joint share account agreements;
  - 6) Journal and cash record;
  - 7) General ledger;
  - 8) Copies of the periodic statements of members, or the individual share and loan ledger;
  - 9) Bank reconcilements; and
  - 10) Listing of records destroyed.

Credit unions have expressed confusion regarding the interaction between Part 749's requirements and Appendix A, and between Part 749 and other parts of the NCUA's regulations that have record retention requirements. For example, under Part 749, certain supervisory committee documents are not vital records and are subject to periodic destruction; yet under section 715.8 the supervisory committee must retain the records of each verification

of members' passbooks and accounts until the completion of the next member account verification.<sup>3</sup>

## **QUESTIONS TO CONSIDER:**

Given that ANPRs are used to inform proposed rulemakings, the agency has included a number of specific questions aimed at current practices and areas of confusion. The following questions are directly from the ANPR and will help inform America's Credit Unions' comment letter and related discussions with the NCUA.

### ***Part 749 Definitions***

- 1) Does the definition of "vital records" contain all, and only those, records you would consider to be vital for credit unions?
- 2) Are there additional types of documents not listed as a "vital record" that should be as they are critical for business operations and to properly serve members?
- 3) Are there other industry standards or methodologies outside of Part 749 that the agency should consider for preserving vital records, for defining what vital records are, and for determining minimum retention periods?
- 4) The primary focus of the records retention guidance in Appendix B relates specifically to catastrophic act preparedness. Are there any terms, definitions, or standards that the NCUA should consider updating in Appendix B?
- 5) Are there any other changes to Appendix B that you would recommend?

### ***Records Retention Practices***

- 6) How long, and in what format, does your credit union store its vital records?
- 7) Does your credit union maintain and store any vital records in a physical format due to a regulatory requirement or supervisory expectation?
- 8) What impediments, including estimated costs, does your credit union encounter with storing vital records?
- 9) What records do you deem vital for business operations that a credit union should be required to keep permanently for the purpose of restoring vital member services?
- 10) Other than for records that must be kept permanently, are there specific timeframes you would recommend that other vital records be retained?
- 11) What are the pros and cons of storing vital records physically, electronically, or in other formats, such as cloud computing storage?
- 12) Does your credit union rely on third-party vendors to accurately maintain vital records, and if so, what are some of the challenges that these arrangements present?
- 13) How would you suggest the agency create a more effective framework for credit unions to preserve vital records?

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<sup>3</sup> 12 CFR 715.8(c).

- 14) What are some challenges for smaller credit unions (at or below \$100 million) in maintaining vital records, and what has worked?
- 15) What additional support, training, or technical assistance could the NCUA provide to assist credit unions with both understanding and implementing records retention requirements?

### ***Additional Guidance***

In a prior Part 749 rulemaking, the NCUA attempted to clarify the issue of guidance versus regulation by stating, “The Board has weighed the fact that guidance is available from other sources and the potential for confusion regarding enforceability of a regulation versus guidance. The Board believes the benefit to credit unions in having the guidance in the appendix to the regulatory requirement will enhance access to the guidance and will facilitate compliance.”<sup>4</sup> In that rulemaking, the agency further noted that “including specific words like ‘recommended’ and ‘guidance’ means, as a legal matter, that the guidance is just that—guidance—and is not enforceable as a regulation. These words clarify and minimize, to the extent linguistically possible, the potential for misinterpretation.”<sup>5</sup>

- 16) What provisions of Appendix A or Appendix B do not align with the requirements of Part 749, or are otherwise outdated or unclear examples of the types of records that should be retained? For records you consider outdated, please explain why.
- 17) In terms of the content of any future guidance, what guidance would be helpful to better reflect the types of records that must be retained under Part 749?
- 18) What guidance would be helpful for catastrophic act or other disaster preparedness?
- 19) Is there confusion among stakeholders regarding the enforceability of regulation versus guidance concerning Part 749? If so, what should be revised?

### ***Other Regulations***

- 20) Are there other provisions in the NCUA’s regulations that contain record retention requirements that should be incorporated into Part 749?

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<sup>4</sup> 72 Fed. Reg. 42,271 (Aug. 2, 2007).

<sup>5</sup> 12 U.S.C. 1766(e).