

performs such servicing activities in accordance with the terms of the applicable servicing agreements, with respect to the financial assets included in securitizations that meet the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section.

(f) *Notice for consent.* Any party requesting the NCUA Board's consent as conservator or liquidating agent under 12 U.S.C. 1787(c)(13)(C) pursuant to paragraph (d)(3)(i) of this section must provide notice to the President, NCUA Asset Management & Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin TX 78759-8490, and a statement of the basis upon which such request is made, and copies of all documentation supporting such request, including without limitation a copy of the applicable agreements and of any applicable notices under the contract.

(g) *Contemporaneous requirement.* The NCUA Board as conservator or liquidating agent will not seek to avoid an otherwise legally enforceable agreement that is executed by an insured credit union in connection with a securitization or in the form of a participation solely because the agreement does not meet the "contemporaneous" requirement of 12 U.S.C. 1787(b)(9) and 1788(a)(3).

(h) *Limitations.* The consents set forth in this section do not act to waive or relinquish any rights granted to NCUA in any capacity, including the NCUA Board as conservator or liquidating agent, pursuant to any other applicable law or any agreement or contract except as specifically set forth herein. Nothing contained in this section alters the claims priority of the securitized obligations.

(i) *No waiver.* This section does not authorize the attachment of any involuntary lien upon the property of the NCUA Board as conservator or liquidating agent. Nor does this section waive, limit, or otherwise affect the rights or powers of NCUA in any capacity, including the NCUA Board as conservator or liquidating agent, to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the NCUA Board as conservator or liquidating agent regarding transfers or other conveyances taken in contemplation of the credit union's insolvency or with the intent to hinder, delay or defraud the credit union or the creditors of such credit union, or that is a fraudulent transfer under applicable law.

(j) *No assignment.* The right to consent under 12 U.S.C. 1787(c)(13)(C) may not be assigned or transferred to

any purchaser of property from the NCUA Board as conservator or liquidating agent, other than to a conservator or bridge credit union.

(k) *Repeal.* This section may be repealed by NCUA upon 30 days' notice provided in the **Federal Register**, but any repeal does not apply to any issuance made in accordance with this section before such repeal.

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## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 474**

**RIN 3133-AE67**

### **Civil Monetary Penalty Inflation Adjustment**

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

**ACTION:** Final rule.

**SUMMARY:** On January 23, 2017, the NCUA Board (Board) published an interim final rule amending its regulations to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustments, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This rule finalizes those amendments.

**DATES:** Effective June 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** Ian Marena, Senior Trial Attorney, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518-6540.

#### **SUPPLEMENTARY INFORMATION:**

I. Background

II. Regulatory Procedures

#### **I. Background**

The Debt Collection Improvement Act of 1996<sup>1</sup> (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990<sup>2</sup> (FCPIA Act) to require every federal agency to enact regulations that adjust each CMP provided by law under its jurisdiction by the rate of inflation at least once every four years. In November 2015, Congress further amended the CMP inflation requirements in the

<sup>1</sup> Public Law 104-134, section 31001(s), 110 Stat. 1321-373 (Apr. 26, 1996). The law is codified at 28 U.S.C. 2461 note.

<sup>2</sup> Public Law 101-410, 104 Stat. 890 (Oct. 5, 1990), also codified at 28 U.S.C. 2461 note.

Bipartisan Budget Act of 2015,<sup>3</sup> which contains the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 amendments).<sup>4</sup> This legislation provides for an initial "catch-up" adjustment of CMPs in 2016, followed by annual inflation adjustments starting in 2017.

On January 23, 2017, in compliance with the 2015 amendments, the Board published the annual inflation adjustments for 2017 in an interim final rule with a request for comments in the **Federal Register**.<sup>5</sup> In calculating the adjustments, the Board reviewed and applied government-wide guidance issued by the Office of Management and Budget (OMB).<sup>6</sup> In accordance with the procedures and calculations prescribed by the 2015 amendments and OMB's guidance, the Board adjusted the maximum level of each of the CMPs that NCUA has authority to assess. NCUA is not, however, required to assess at the new maximum levels and retains discretion to assess at lower levels, as it has done historically.<sup>7</sup>

The interim final rule became effective on January 23, 2017. The Board received no comments on the rule. Accordingly, this final rule confirms the adjustments made in the interim final rule without change.

## **II. Regulatory Procedures**

Section III of the Supplementary Information in the January 2017 interim final rule sets forth the Board's analyses under the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act of 1995, the Small Business Regulatory Enforcement Fairness Act (SBREFA), Executive Order 13132, and the Treasury and General Government Appropriations Act.<sup>8</sup> Because the final rule confirms the interim final rule and does not alter the substance of the analyses and determinations accompanying the interim final rule, the Board continues to rely on those analyses and determinations for purposes of this rulemaking. The Board notes that OMB determined that the interim final rule is not a "major rule" within the meaning of SBREFA.

<sup>3</sup> Public Law 114-74, 129 Stat. 584 (Nov. 2, 2015).

<sup>4</sup> 129 Stat. 599.

<sup>5</sup> 82 FR 7637 (Jan. 23, 2017).

<sup>6</sup> Office of Management and Budget, Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-17-11 (Dec. 16, 2016).

<sup>7</sup> 82 FR 7637, 7639 (Jan. 23, 2017).

<sup>8</sup> See 82 FR 7640.

By the National Credit Union Administration Board on June 23, 2017.

**Gerard Poliquin,**  
*Secretary of the Board.*

■ For the reasons stated above, the interim final rule amending 12 CFR part 747, published at 82 FR 7637 (Jan. 23, 2017) is adopted as a final rule without change.

[FR Doc. 2017-13643 Filed 6-29-17; 8:45 am]

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 792

RIN 3133-AD44

#### Revisions to the Freedom of Information Act Regulation

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

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is finalizing its interim final rule amending its Freedom of Information Act (FOIA) regulation. The FOIA Improvement Act of 2016 amended the FOIA and required agencies to review their FOIA regulations and issue certain amendments by December 27, 2016. The amendments included revised procedures for disclosing records under the FOIA, assessing fees, and notifying requestors of options for resolving disputes through the NCUA FOIA Public Liaison and the Office of Government Information Services (OGIS) within the National Archives and Records Administration. The interim final rule became effective on December 22, 2016. This rulemaking finalizes the interim rule with minor edits for consistency and clarification.

**DATES:** Effective June 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** Regina Metz, Senior Staff Attorney, or Linda Dent, Associate General Counsel, Administrative Law Section, Office of General Counsel, at 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 22, 2016, NCUA published an interim final rule<sup>1</sup> to revise its FOIA regulation at part 792, subpart A of the agency's regulations<sup>2</sup> in accordance with new requirements under the FOIA Improvement Act of 2016.<sup>3</sup> The interim final rule became

effective on December 22, 2016. The NCUA accepted public comments, however, until January 23, 2017.

The interim final rule revised procedures for the disclosure of records, including procedures for engaging in dispute resolution through the FOIA Public Liaison and the OGIS. The revisions were necessary to comply with amendments to the FOIA Improvement Act of 2016. NCUA is issuing this rulemaking to finalize the interim rule with minor wording changes for consistency and clarification.

##### II. Summary of Public Comments and Final Rule

NCUA received two comments on the interim final rule. One was from a trade organization and one was from an institute. One comment was fully supportive of the Act, noting that the interim rule met all the technical statutory requirements. The comment, however, also urged the NCUA to exceed the requirements and continue to adopt a presumption of openness. NCUA's longstanding FOIA practices include a presumption of openness which will continue under the final rule.

In addition, the commenter believes the NCUA should post every FOIA response to its Web site. The FOIA and the interim final rule, in section 792.03(c), already provide that NCUA must post on its Web site records released in response to a FOIA request that are either: Likely to be the subject of subsequent requests because of the nature of their subject matter; or records that have been requested three or more times. NCUA generally exceeds these requirements, posting on its FOIA page records requested more than once and considering each record requested for possible routine Web site posting. As every record requested, however, is not of interest to the general public, NCUA is adopting this section in the final rule without change.

The other commenter requested that NCUA revise its definition of "representative of the news media" in § 792.20 to be consistent with the FOIA at 5 U.S.C. 552(a)(4)(A)(ii) and also to consider additional technical matters. As a change to this definition and the other issue raised were not included in the interim final rule, NCUA will address this in an upcoming technical amendment rule. The final rule does contain minor changes to wording for consistency and clarification.

##### III. Regulatory Procedures

###### A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995,<sup>4</sup> the Board has reviewed the final rule and determined it does not contain or modify a collection of information subject to the PRA. The PRA applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. Information collected as part of an affidavit, oath, affirmation, certification, receipt, changes of address, consent, or acknowledgment, however, is not considered an information collection for purposes of the PRA.

This category is limited to those disclosures that require persons to provide or display only facts necessary to identify themselves. For example, they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument. "Nature of the instrument" refers to a respondent's request for materials, such as publications or other information from an agency. To facilitate such requests for information from an agency, an agency may ask requesters to describe the material or information sought in detail sufficient to describe the individual desires.

The final rule implements the FOIA Improvement Act of 2016 by amending the agency's FOIA regulations. Because the only paperwork burden in this final rule relates to activities that are not considered to be information collections, NCUA has determined that this rule is exempt from the requirements of the PRA.

###### B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under \$100 million in assets). This final rule does not impose any requirements on federally insured credit unions. Therefore, it will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required. Because this final rule would affect few, if any, small entities, the Board certifies that the final rule will

<sup>1</sup> 81 FR 93792 (Dec 22, 2016).

<sup>2</sup> 12 CFR part 792.

<sup>3</sup> Public Law 114-185, 130 Stat. 538.

<sup>4</sup> 44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1.