

JUSTIFICATION
For a collection of Information by the National Credit Union Administration
Production of Nonpublic Records and Testimony
of Employees in Legal Proceedings
3133-0146
September 2007

1. Explain the circumstances that make the collection of information necessary, include identification of any legal or administrative requirements that necessitate the collection.

The rule requires anyone requesting or issuing a subpoena for NCUA nonpublic records for use in legal proceedings and testimony of NCUA personal to provide NCUA with information regarding the requester's grounds for the request/subpoena. The information will help the NCUA decide whether to release nonpublic records or permit employees to testify. The attached regulation describes specifically the information the NCUA wants.

These collections required an entity or person in possession of NCUA records to notify the NCUA upon receipt of a request or subpoena for those records. Case law establishes the NCUA's entitlement to receive this notice. The NCUA needs to receive this notice so that it may intervene in litigation and may file an objection to the disclosure of confidential information in the appropriate court or tribunal.

The following is a discussion of the NCUA's basis in statutory and case law for maintaining and, in certain circumstances, releasing NCUA records for use in legal proceedings and authorizing testimony of NCUA personnel, and for prescribing regulatory procedures.

The NCUA maintains the nonpublic nature of certain information pursuant to the bank examination exemption of the Freedom of Information Act (FOIA) [5 U.S.C. 522 (b)(8)], judicial interpretation of the bank examination privilege (see Schreiber v. Society for Savings Bancorp, Inc., 11 F.2d 217 (D.C. Cir. 1993); In Re: Subpoena Served Upon the Comptroller of the Currency and the Secretary of the Board of Governors of the Federal Reserve System, 967 F.2d 630, 634 (D.C. Cir. 1992) (discussing the bank examination privilege, which is analogous to the examination exemption under FOIA), and other agency privileges, such as deliberative process and attorney-client privilege.

Accordingly, and pursuant to 5 U.S.C. 301, the NCUA has procedures, in 12 CFR Part 792, Subpart C, for the production of nonpublic NCUA records for use in legal proceedings and testimony of NCUA personnel. See Moore v. Armour Pharmaceutical Co., 927 F.2d 1194 (11th Cir. 1991). In addition, the regulation

ensures that the NCUA will receive notice of requests and subpoenas for nonpublic NCUA information as was urged by the United States Court of Appeals for the Sixth Circuit in In re Bankers Trust, 61 F.d2 465, 470 (6th Cir. 1995).

2. Indicate how, by whom, and for what purpose the information is to be used and the consequence to the federal program or policy activities if the collection of information was not conducted.

The NCUA will use the information to process requests for nonpublic records and to determine if sufficient grounds exist for NCUA to release the requested records or provide testimony. This information collection will make processing requests and handling subpoenas more efficient.

3. Describe any considerations of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.

Not applicable. The information is specific to each requester's case.

4. Describe efforts to identify duplication.

This information collection does not duplicate any other information already collected.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Not applicable.

6. Describe the consequence to the federal program or policy activities if the collection were conducted less frequently.

Not applicable. The information collection is not part of an agency program or policy.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines of 5 C.F.R. 1320.6.

There are no special circumstances.

8. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, the frequency of collection, the clarity of instructions and recordkeeping, the disclosure or reporting format, and the data elements to be recorded, disclosed, or reported.

Notice will be published as required by PRA.

9. Payment to Respondents.

There are no payments to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Not applicable.

11. Provide additional justification for any questions of a sensitive nature, etc.

Not applicable.

12. Provide estimates of annualized cost to the Federal Government and to the respondents. Also, provide a description of the method used to estimate cost, which should include quantification of hours; operational expenses, such as equipment, overhead, printing, and support staff; and any other expense that would not have been incurred without the paperwork burden.

The NCUA estimates that it will take an average of two to three hours to prepare a written request. The NCUA currently receives two or three requests per month so the total annual burden is estimated to be no more than 72 hours.

13. Provide estimates of burden of the collection of information. The statement should: provide number of respondents, frequency of response, annual burden and an explanation of how the burden was estimated.

Not applicable.

14. Explain reasons for changes in burden, including the need for any increase.

There are no changes in burden.

15. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of reports, publication dates, and other actions.

No plans to publish results.

16. Information regarding collection whose results are planned to be published for statistical use:

Not applicable.

17. Display of expiration date:

Not applicable, these information collection requirements are found in a regulation.

18. Exceptions to certification statement.

There are no exceptions to the certification statement.

B. Collection of Information Employing Statistical Methods.

This collection does not employ statistical methods.