

**Supporting Statement**  
**For a Collection of Information by the National Credit Union Administration**  
**Production of Non-public Records and Testimony**  
**of Employees in Legal Proceedings (Touhy Request)**  
**3133-0146**  
**2013**

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

12 CFR Part 792, Subpart C requires anyone requesting NCUA non-public records for use in legal proceedings, or similarly the testimony of NCUA personnel, to provide NCUA with information regarding the requester's grounds for the request. This process is also known as a "Touhy Request". The information collected will help the NCUA decide whether to release non-public records or permit employees to testify in legal proceedings. The attached regulation describes specifically the information the NCUA requires.

NCUA regulations also require an entity or person in possession of NCUA records to notify the NCUA upon receipt of a subpoena for those records. The NCUA requires this notice to protect its records and, when necessary, intervene in litigation or file an objection to the disclosure of its confidential information in the appropriate court or tribunal. Case law establishes the NCUA's entitlement to receive this notice.

The following is a discussion of the NCUA's basis in statutory and case law for maintaining and, in certain circumstances, releasing NCUA non-public 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 the 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 (11<sup>th</sup> 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.2d 465, 470 (6<sup>th</sup> 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 non-public 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 of the proposed information collection and request for public comment was published in the Federal Register with a 60-day comment period on July 19, 2013 (78 FR 43232). No public comments were received.

**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.**

There are no questions of a sensitive nature.

**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.**

Not applicable.

**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.**

The NCUA estimates that it will take an average of two hours to prepare a written request. The NCUA currently receives twenty requests per year so the total annual burden is estimated to be no more than 40 hours.

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

This a reinstatement of a previously approved collection.

**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.**

There are 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.

**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.