



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-328146

June 15, 2016

The Honorable Richard Shelby
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *National Credit Union Administration: Member Business Loans; Commercial Lending*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the National Credit Union Administration (NCUA) entitled "Member Business Loans; Commercial Lending" (RIN: 3133-AE37). We received the rule on May 31, 2016. It was published in the *Federal Register* as a final rule on March 14, 2016. 81 Fed. Reg. 13,530.

The final rule amends NCUA's member business loans (MBL) regulations to provide federally insured credit unions with what NCUA characterizes as greater flexibility and individual autonomy in safely and soundly providing commercial and business loans to serve their members. The final rule replaces current prescriptive requirements and limitations—such as collateral and security requirements, equity requirements, and loan limits—with a broad principles-based regulatory approach. The rule also eliminates the current MBL waiver process, which NCUA deemed unnecessary under a principles-based rule.

Enclosed is our assessment of the NCUA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that NCUA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Michael J. McKenna
General Counsel
National Credit Union Administration

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
NATIONAL CREDIT UNION ADMINISTRATION
ENTITLED
“MEMBER BUSINESS LOANS; COMMERCIAL LENDING”
(RIN: 3133-AE37)

(i) Cost-benefit analysis

In its submission to us, the National Credit Union Administration (NCUA) noted that preparing a cost-benefit analysis was not applicable.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

NCUA determined and certified that this final rule will not have a significant economic impact on a substantial number of small credit unions.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, NCUA is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On July 1, 2015, NCUA published a proposed rule. 80 Fed. Reg. 37,898. NCUA received nearly 3,000 comments on the proposal, approximately 85 percent of which were form letters or duplicative submissions. NCUA responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

NCUA determined that this final rule contains information collection requirements under the Act. NCUA also determined that this rule contains provisions which relieve existing burdens. NCUA's total estimated one-time net paperwork burden for this proposal is 46,752 hours, with annual recurring paperwork burden reduction of 4,777 hours. NCUA stated it will submit a copy of the rule to the Office of Management and Budget for its review and approval.

Statutory authorization for the rule

NCUA promulgated this final rule under the authority of sections 1752(5), 1756, 1757, 1757A, 1765, 1766, 1770, 1781, 1782, 1785, 1787, 1789; 1790d, and 1831t of title 12, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, NCUA is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, NCUA is not subject to the Order. However, NCUA stated that it voluntarily complies with the Order to adhere to fundamental federalism principles. NCUA determined that this final rule may have an occasional direct effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The final rule may supersede provisions of state law, regulation, or approvals. The final rule could lead to conflicts between the NCUA and state financial institution regulators on occasion. In the proposed rule NCUA requested comment on ways to eliminate or minimize potential conflicts in this area. NCUA solicited comments specifically on how best to approach the issue of state regulation of business lending, as well as recommendations on the potential use of delegated authority, cooperative decisionmaking responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Order. After reviewing the comments, NCUA made adjustments in the final rule to preserve existing state rights in the regulation of credit union business lending. NCUA offered the example of provisions which grandfathered in existing state-specific commercial and member business loan rules, and to allow state supervisory authorities to administer a state commercial and member business loan rule that is no less restrictive than the provisions in NCUA's rule.