



NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 749

RIN 3133-AF61

Records Preservation Program and Appendices – Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: On April 24, 2024, the NCUA Board (Board) published an advance notice of proposed rulemaking (ANPR) to solicit comments on ways the agency can improve and update its vital records preservation program regulation and accompanying guidelines. Based on public comments received in response to the ANPR and upon further consideration of the issues involved, the Board is publishing this proposed rule to simplify and streamline part 749. The Board is proposing to update part 749 by clarifying the purpose of the regulation, updating the definitions, and removing the appendices.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted in one of the following ways. **(Please send comments by one method only):**

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for Docket Number NCUA-2025-0045.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the Federal eRulemaking Portal at <https://www.regulations.gov> as submitted, except when impossible for technical reasons. Public comments will not be edited to remove any identifying or contact information. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: *Office of General Counsel:* Gira Bose, Senior Staff Attorney, Office of General Counsel, at (703) 518-6540 or at 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The NCUA's first vital records preservation program rule was promulgated in 1972 with the purpose of ensuring "off-site storage for duplicate vital records which will

be used for reconstruction purposes in the event of a catastrophe.”¹ The purpose of the rule is to ensure that federally insured credit unions (FICUs or credit unions) can continue providing vital member services if their records are destroyed as a result of a catastrophic event. This purpose was reiterated when the agency revised the rule between 1980 and 1981 because, “[w]hen catastrophic acts occur, such as the Johnstown flood, Hurricane Agnes, or the Mount St. Helens volcano, credit union records can be destroyed. When members may most need funds, the credit union can be completely without records. A records preservation program is the only way to assure that back-up records are available when needed.”²

Part 749 was further amended in 2007 to build in lessons learned from Hurricane Katrina and Hurricane Rita. At that time, the Board concluded that “NCUA’s review of events in the hurricanes’ aftermath demonstrates the need for advance planning and preparation in successfully responding to a catastrophic act.”³ Specifically, “challenges such as providing members with access to funds and account information, loss of, or lack of, access to facilities, and locating and communicating with staff were some of the immediate issues credit unions faced.”⁴ The preamble to the proposed rule recounted the many ways in which the NCUA, credit unions, trade organizations, and service providers assisted impacted credit unions by helping to restore share and loan data where necessary, making staff available, operating a call center, and assisting with equipment needs.⁵ Drawing on those experiences, the Board determined that the FICUs that had identified

¹ Records Preservation Program, 37 FR 19387 (Sept. 20, 1972) (establishing 12 C.F.R. 749).

² Board Action Memorandum (Nov. 12, 1980).

³ Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines, 72 FR 14251 (Mar. 27, 2007) (amending 12 CFR parts 748 and 749).

⁴ *Id.*

⁵ *Id.*

critical functions for the retrieval of vital records were better able to address unforeseen difficulties and restore vital member services.⁶

Part 749 continues to serve an important purpose. However, it has not been updated since 2007, and Appendix A, which was promulgated in 2001, has never been updated. Appendix A was added to part 749 to provide guidance, which the Board determined was needed in light of the frequency of requests for assistance from credit unions.⁷ The 2001 proposed rule received 11 comment letters, all of which expressed general support for the proposal. Five of these comment letters expressed approval specifically for the addition of Appendix A.⁸ While some commenters suggested various changes, in finalizing Appendix A the Board noted that “the record retention guidelines are merely recommendations and credit unions may adopt other retention periods for these or other types of records.”⁹ In 2007, NCUA issued Appendix B – Catastrophic Act Preparedness Guidelines to facilitate the recovery of essential operations after a catastrophic act with the expectation that these guidelines would result in continued member confidence in the credit union system.¹⁰ When Appendix B was initially proposed, most commenters opposed it on the grounds that sufficient guidance already existed and that including it in the regulation would cause examiners and credit union staff to misconstrue the guidance as being enforceable like a regulation.¹¹

In August 2017, the Board published and sought comment on the NCUA Regulatory Reform Task Force’s (Task Force) first report on implementing the agency’s

⁶ *Ibid.*

⁷ Records Preservation Program, 66 FR 11239 (Feb. 23, 2001) (amending 12 CFR 749).

⁸ *Id.*

⁹ Records Preservation Program, 66 FR 40578 (Aug. 3, 2001) (amending 12 CFR 749).

¹⁰ 72 FR 42271 (Aug. 2, 2007).

¹¹ *Id.*

regulatory reform agenda (Agenda).¹² The Agenda identified those regulations the Board intended to amend or repeal because they were outdated, ineffective, or excessively burdensome.¹³ The Board published the Task Force’s second and final report in December 2018.¹⁴ The final report contained the Task Force’s updated recommendations and a refined blueprint for implementing the Agenda. With regard to part 749, the Task Force suggested the Board “review this regulation to identify if any changes or improvements are needed” and recommended using an ANPR due to the complexity of the endeavor.¹⁵ Over the next few years, the NCUA received feedback that part 749 is unnecessarily burdensome and unclear to credit unions. In 2024, the Board issued an ANPR on part 749, as detailed in Section II below.¹⁶

B. *Summary of Proposed Rule*

The Board is proposing to update part 749 by clarifying the purpose of the regulation, updating the definitions, and removing unnecessary references to recommendations and guidance. The main proposed change is to remove both Appendix A and Appendix B entirely. Appendix A was added to part 749 as “suggested guidelines” based on the frequency of requests for assistance from credit unions. However, many commenters to the ANPR stated that, in practice, Appendix A is followed as if it were a requirement; thus, Appendix A has become an obstacle to sound record retention practices and has resulted in credit unions retaining unused and obsolete records. In further reviewing Appendix A, the Board has determined that several Appendix A sections – specifically, sections A, B, and D – duplicate language in the regulatory text of part 749 and are more appropriately addressed in the regulation. Section C of Appendix

¹² Regulatory Reform Agenda, 82 FR 39702 (Aug. 22, 2017).

¹³ *Id.*

¹⁴ Regulatory Reform Agenda, 83 FR 65926 (Dec. 21, 2018).

¹⁵ *Id.*

¹⁶ Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines, 89 FR 31117 (Apr. 24, 2024).

A, titled “What Procedures Should a Credit Union Follow When Destroying Records?,” is overly prescriptive on the procedures a credit union should use to destroy records. The Board proposes to eliminate this language on the basis that processes for records destruction are better left to the judgment of a credit union’s board of directors.

Section E of Appendix A in particular appears to be a significant source of confusion as FICUs attempt to balance the recommendation to maintain documents permanently with the need to reduce the burden of maintaining old documents indefinitely. Section E of Appendix A lists a number of documents for permanent retention that, while important to the founding of a credit union or to its operations, are not necessarily critical to the restoration of vital member services in the aftermath of a catastrophic event. Thus, while it is important for a FICU to retain the documents listed in Appendix A section (E)(1) – charter, bylaws, amendments, and certificates or licenses to operate under programs of various government agencies – part 749 may not be the best place for the NCUA to communicate this information. Furthermore, it should be reasonable for the Board and for a FICU’s membership to expect that a FICU’s leadership would retain these key foundational documents of its own volition.

For the key operational records listed in Appendix A section (E)(2), credit unions should determine how long to retain these documents based on their operations and any requirements of other laws or regulations, with the assistance of counsel if necessary. Removing this provision from part 749 does not mean the Board considers key operational documents to be unimportant, but rather a reflection of the fact that part 749 is focused on vital records that a credit union needs to restore vital member services. Part 749 does not preclude a credit union from classifying additional records to be vital as it determines necessary.

The Board is proposing to remove Appendix B because, upon reconsideration, it no longer believes that the benefit of having the guidance in proximity to the regulation outweighs the potential for misinterpretation. As guidance, Appendix B is for informational purposes only and is not a regulatory requirement for credit unions.

II. Overview of the ANPR and Comments Received in Response

The purpose of the 2024 ANPR was to solicit comments on ways the agency can improve and update its vital records preservation program regulation and accompanying guidelines. The ANPR asked a series of questions focused on the definitions in part 749, current credit union records retention practices, the use of guidance in part 749, and any interplay between part 749 and other NCUA regulations.

The agency received 25 comments in response to the ANPR. Commenters were 17 credit unions, 5 state and regional credit union leagues, 1 national credit union trade association, 1 trade association for state credit union supervisors, and 1 individual member of the public who did not disclose a group affiliation.

The ANPR questions were grouped into four categories: part 749 definitions, records retention practices, additional guidance, and other NCUA regulations. The questions and responses are summarized below.

Part 749 Definitions

(1) Does the definition of vital records in 12 CFR 749.1 contain all, and only those, records you would consider to be vital for credit unions?

Ten commenters stated that the definition of “vital records” in 12 CFR 749.1 is generally reasonable and appropriate. However, five of these commenters noted that it is only reasonable to retain these documents in the short term, i.e., retain only the most recent and current versions of these documents. If the expectation is that credit unions should retain them permanently, it is unreasonable.

An additional three commenters noted confusion with the definition of vital records due to the lack of clarity surrounding the retention period for such records. By way of example, commenters noted that the types of records identified in § 749.1 were different than the types of records listed in Appendix A, and that the NCUA recommended the records in Appendix A be held permanently. Commenters suggested that the NCUA should clarify what it means by the terms *vital* and *permanent* because documents that may be vital for restoring member services in the event that a credit union’s records are destroyed would rarely, if ever, need to be maintained permanently.

One commenter noted that while it believes only the most recent versions of vital records are necessary to restore service and must be retained under the current language of § 749.1, an explicit statement would help alleviate confusion between that provision and Appendix A.

(2) Are there additional types of documents not listed as a vital record that you think should be as they are critical for business operations and to properly serve members?

Six commenters stated that no additional documents needed to be added to the list of vital records, with one stating that a comprehensive list would be unwieldy. One commenter stated that the list excludes key foundational and key operational documents

such as board of directors meeting minutes or board-approved policies. One commenter suggested that “loan and mortgage documents” should be included, and three commenters suggested that “contracts and agreements with vendors” should be included but that any retention periods should reflect the limited useful life of these documents. One commenter suggested including a list of current critical vendors and a list of all parties that have access to or store the personally identifiable information of the credit union’s members.

One commenter stated that while all the records listed in § 749.1 are vital, the language of the provision needs to be updated to reflect modern storage and retention practices. For example, lists of member accounts and loan balances are outdated because that information is now more often stored digitally with regular backups to the cloud, and other vital records are maintained by third-party data processors with agreements that guarantee record preservation and reproduction.

(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?

One commenter stated that the NCUA and credit unions are the best judges of what records are vital and the advice in Appendix A section (D) to consult counsel is sound. Two commenters stated that the NCUA should look at the statutes of limitations for financial crimes as a straightforward and helpful model for determining minimum retention periods. Two commenters suggested looking at Internal Revenue Service and legal lookback periods as guides, and two other commenters offered the Association of Records Managers and Administrators standards, the National Archives and Records

Administration standards, and the Records Information Management system as sources for records retention standards that are widely available and well understood.

(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 Board should consider updating in Appendix B?

Five commenters stated that Appendix B is sufficient. One commenter added that the Disaster Recovery Institute is an excellent resource should the NCUA want to consider the issue further. Another commenter added that while Appendix B is fine and should remain as guidance, the recommendation that credit unions review their plans annually is unnecessary and not feasible for many credit unions. The commenter suggested no less than once every three years as a more workable recommendation.

Three commenters did not see the need for Appendix B. Two stated that it appears to be repetitive of other guidance. Another commenter stated that Appendix B lacks detail and does not address record retention or retention periods or define the terms it uses.

(5) Are there any other changes to Appendix B that you would recommend?

One commenter suggested adding a recommendation that credit unions conduct regular testing of their plans as appropriate for their size. Five commenters had no suggested changes. Of these five, two stated that Appendix B is redundant considering the availability of other guidance, such as that of the Federal Financial Institutions Examination Council (FFIEC) and thus should be removed.

Records Retention Practices

(6) How long, and in what format, does your credit union store its vital records?

Thirteen commenters responded to this question. Most store the bulk of their records electronically, but some still use a physical format, particularly for older documents. One commenter is in the process of converting their records to digital format. The physical formats used include paper, microfilm, floppy disk, and microfiche. One commenter stated that the older vital records listed in Appendix A are kept permanently in their original form.

One commenter stated that, per its records retention schedule, most corporate and employee vital records are retained permanently, although some have a 15- or 20-year retention period. This commenter generally keeps member vital records related to operations and lending for 5 to 10 years unless a different timeframe is required based on the life of a loan. Financial records are typically retained for 10 years, but reconciliations are retained permanently. Account records, insurance policies, and investment records are retained indefinitely until closed, sold, or matured.

(7) Does your credit union maintain and store any vital records in a physical format due to a regulatory requirement or supervisory expectation?

Nine commenters responded to this question. One stated that all documents are maintained electronically. Three stated that they maintain some vital records physically but did not provide a reason why. One commenter stated that some documents are kept in physical format at the information owner's request. Two stated that they maintain records in physical format because the cost to digitize them is prohibitive. One stated that they

maintain vehicle titles in paper format because their state has not switched to electronic titles. This commenter also maintains contracts and some human resources documents in paper format.

(8) What impediments, including estimated costs, does your credit union encounter with storing vital records?

Fourteen commenters responded to this question. Four commenters stated explicitly that the recommendation in Appendix A (to keep certain key operational documents permanently) is a big source of frustration because it results in the retention of records that have no real use or benefit to the credit union or its members. One of these four commenters stated that if by *vital records* the agency means records needed to restore current business within a month or two, then the costs to the credit union are no more than the cost of doing business. But if *vital* implies that the records must be maintained permanently, then the commenter would incur significant expenses.

Another commenter stated that permanent records have a rapidly declining useful life where the security liabilities and storage costs outweigh the benefits. These costs include maintaining equipment to reconstruct old documents and legal and reputational costs in the event of a breach. Another noted that the cost of storage space and storage security is an ongoing challenge, and the long timelines for retention mean costly format management and conversion, including retaining and maintaining obsolete technology.

Two commenters noted the high cost of converting documents to digital format and the increased risk of data theft – through digital or paper formats – when keeping documents permanently. Another noted they have an entire secure room filled with boxes of old documents, which is a waste of space and employee time. Four commenters noted

the dollar costs of renting storage space, purchasing equipment, or converting to newer storage methods.

(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?

Fifteen commenters responded to this question and universally expressed the opinion that no document is needed to be kept permanently to restore vital member services. One commenter stated that it was chartered in 1948. This commenter noted that it saves some documents and photos from that period for archival and historical purposes but none of those would provide data that would be helpful in restoring vital member services today.

A common theme in the comments was the need for NCUA to reevaluate the definitions of *vital* and *permanent*. Three commenters noted that 10 to 15 years is long enough for maintaining accounting records. The types of documents that commenters suggested are permanent include board meeting minutes (not the packets/information that accompany the board meetings), supervisory committee minutes, charters, bylaws, and founding documents.

One commenter stated that the documents listed in §§ 749.1(a) through (d) are vital but should not be kept permanently. The documents listed in Appendix A, sections (E)(1)(a) and (b) and sections (E)(2)(a) through (c) are important to reference business decisions and financial results and should be kept permanently, but the records in Appendix A sections (E)(2)(d) through (j) become outdated and should not be kept permanently. The minimum retention periods should consider the business purpose of the

record, protect consumer data, and align with retention periods established in other regulations.

Another commenter stated that it makes sense to permanently retain official records of the credit union as stated in Appendix A, such as its charter, bylaws, amendments, and certificates or licenses. In addition, the NCUA should address any retention requirements for legal documents associated with mergers. However, other documents that NCUA recommends to be retained permanently are not appropriate to retain because permanent retention is challenging with no clear benefits, especially for those credit unions that have experienced mergers over the years. The commenter also noted that this over-retention practice is legally risky.

(10) Other than for records that must be kept permanently, are there specific timeframes you would recommend that other vital records be retained?

Thirteen commenters responded to this question. Six commenters stated that they would not recommend specific timeframes, with some stating that the NCUA should defer to credit unions on retention periods and others suggesting that the statute of limitations for financial crimes is a good guide, beyond which credit unions may be exposed to unnecessary litigation risk. One commenter stated that it had a list of timelines for various documents based on legal advice. For example, adverse action notices are kept for 24 months and checks are kept for 7 years. Two other commenters suggested retaining documents for 7 years after account or loan closure or transaction completion. Two commenters provided lists of suggested retention periods including, for example, 10 years for meeting minutes, 2 to 3 years for member statements, 5 years for audits and

payment systems, and 5 years after the date of document submission to the requesting authority in the case of subpoenas.

(11) What are the pros and cons of storing vital records physically, electronically, or in other formats, such as cloud computing storage?

Fourteen commenters responded to this question and generally provided a range of overlapping pros and cons for any method of storage. Many suggested that, while there are pros and cons to any method, the credit union should be able to choose the storage method. The important considerations should be ease of access, reducing the number of records, minimizing costs, and increasing member security.

(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?

Of the eight commenters who responded to this question, only two stated that they do not rely on third-party vendors. One commenter stated that it uses third-party vendors but did not note any challenges. The other commenters noted the following challenges: data access if a vendor goes out of business; timely retrieval when the data is not under one's immediate control and space; additional vendor costs; lack of providers who offer this service; planning for future, potentially increased costs; and greater security considerations.

One commenter stated that it is currently paying \$25,000 per year for third-party vendor storage, and the biggest challenges are ensuring the vendor maintains appropriate information security standards, disaster recovery plans, and security of their sites. Thus,

drafting contracts with strong security provisions, along with ongoing monitoring and due diligence, is very important.

(13) How would you suggest the agency create a more effective framework for credit unions to preserve vital records?

Fourteen commenters responded to this question. One stated that the current framework is effective. Five commenters suggested removing the permanent retention recommendation in Appendix A. One commenter recommended focusing on clarifying the distinction between *vital* and *operational* records.

One commenter stated that “journal and cash record” and “banking reconcilements” are confusing terms and should be clarified. Another commenter stated that a credit union should not need to maintain a destruction log for a vital record whose retention period has expired. This commenter also noted that typically consumers do not request account records from their financial institution beyond a certain point after account closure, especially now that consumers have more direct access to their records through online and mobile banking platforms.

Two commenters stated that the NCUA should articulate an actual definition of *vital records* instead of providing a bulleted list. A third commenter suggested defining records by category (e.g., accounting, administration, cards, loans, checks, disclosures) rather than listing individual documents.

Two commenters suggested clearly differentiating between a regulation versus a best practice or recommendation, and another commenter suggested consolidating all records preservation requirements into one regulation.

(14) What are some challenges for smaller credit unions, defined as credit unions with total assets of \$100 million or less, in maintaining vital records, and what has worked?

Six commenters responded to this question. Most noted that smaller credit unions have less resources and limited space and data capabilities. One said it is getting difficult for smaller credit unions to permanently keep copies of member statements as recommended in Appendix A. The commenter noted that the credit union system is celebrating 90 years of the Federal Credit Union Act, and some credit unions may have 90 years' worth of account records with no benefit to permanent retention of these documents. One commenter stated that credit unions follow guidance as requirements and another stated that it is important for the NCUA to provide clear direction on its recovery expectations, such as delineating what a credit union must be able to retrieve or reproduce and over what duration, and what retention periods apply for vital records that do not have to be kept permanently.

(15) What additional support, training, or technical assistance could the NCUA provide, if any, to assist credit unions with both understanding and implementing records retention requirements?

Fifteen commenters responded to this question. One stated that no additional training is needed. Six commenters suggested providing pre-recorded webinars and trainings. Two stated that webinars with a question-and-answer component are particularly helpful. One commenter asked that the NCUA do annual or pre-recorded trainings to help with interpreting what is a regulation and what is a recommendation, and training on why the NCUA recommends retaining so many documents permanently.

One commenter suggested the NCUA create a detailed, standard retention schedule for use by all credit unions and informed by well-known records management organizations, such as Information Governance Professionals or the Institute of Certified Records Managers. This commenter also suggested the NCUA perform a comprehensive review of all documents with a view to reducing the permanent retention recommendation in Appendix A.

Another commenter stated that the NCUA should acknowledge the costs and challenges of moving from physical to electronic formats, provide guidance on managing and mitigating them, and provide training and webinars on the difference between records necessary for operational recovery and those preserved for historical significance.

One commenter stated the NCUA needs to explain the purpose of the records retention program because, while it is helpful that the regulation lets credit unions form their own systems, the definitions of *vital* and *permanent* are too vague. The commenter asserted that it is unclear whether the purpose of part 749 is so credit unions can recreate enough information to carry on member services or so they can preserve the history of the credit union. This commenter suggested the NCUA go through the list of permanent records listed in Appendix A and contemplate the “why” behind suggesting that credit unions keep certain records permanently.

Additional Guidance

(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.

Thirteen commenters responded to this question with eight reiterating the main point referenced throughout many comment letters that the NCUA remove the recommendation in Appendix A that credit unions retain certain documents permanently. Two commenters noted that while Appendix A is only guidance, as written it appears more as a requirement, which credit unions follow in the event examiners seek compliance.

One commenter stated that the Appendix A guidance on destruction of records is outdated because it does not consider automated processes for document destruction, which are more prevalent today. One commenter noted that referring to the appendices in § 749.0 while simultaneously saying the appendices are only guidance adds to the confusion.

(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?

Eleven commenters responded to this question and, again, most focused on the need to revise Appendix A's recommendation that some records be retained permanently and to ensure that each record has a purpose and value with a reasonable retention period.

(18) What guidance would be helpful for catastrophic act or other disaster preparedness?

Nine commenters responded to this question with four stating that Appendix B is sufficient and two stating that it is unnecessarily duplicative of business continuity plan guidance. Two commenters stated the NCUA should mimic the FFIEC guidance on Business Continuity Management. One commenter stated that Appendix B should include expectations or standards that third-party vendors need to maintain so that credit unions are better able to negotiate contracts with third parties.

(19) Is there confusion among stakeholders regarding the enforceability of regulation versus guidance concerning part 749? If so, what should be revised?

Thirteen commenters responded to this question. One commenter stated that the NCUA should be consistent in its approach to regulations versus guidance. This commenter noted that the regulation on derivatives contains a record retention provision that cites Appendix A as a requirement.¹⁷ One commenter stated there is no confusion while 11 stated there is confusion primarily because examiners do not differentiate between guidance and enforceable regulation.

Other NCUA Regulations

(20) Are there other provisions in the NCUA's regulations that contain record retention requirements that should be incorporated into part 749?

¹⁷ 12 CFR 703.105(d) ("Reports required by this section must, at a minimum, be retained in accordance with the requirements in Appendix A to part 749").

Nine commenters responded to this question. Three stated that there are no other provisions that need to be incorporated into part 749. Six commenters stated that the NCUA should be mindful of retention periods and requirements in other regulations and statutes and ensure that part 749 does not conflict.

III. Section-by-Section Analysis of the Proposed Rule

The Board has considered the comments received in response to the ANPR and proposes to amend part 749 as follows:

Heading of part 749

The Board proposes to add the term *vital* so that the heading of the part will read: Vital Records Preservation Program. This makes clear that the scope of this part is limited to vital records.

Section 749.0 Purpose and scope

This section lays out the purpose of part 749, which is for FICUs to maintain a written vital records preservation program to identify, store, and reconstruct vital records in the event that such records are destroyed. The proposed rule does not substantively change the purpose statement. The proposed changes streamline the section and add the term *vital* to further clarify the scope of part 749, which is vital records. Another proposed addition to this section is to make clear that part 749 does not supersede records preservation requirements that may apply to a credit union pursuant to other law or regulation. Finally, all references to the appendices are also being removed because the Board is proposing to remove both appendices A and B.

Section 749.1 Definitions

The current rule defines *vital member services* and *vital records* only through examples. The proposed rule provides definitions for these terms followed by the same examples that are in the current rule. Commenters generally did not take issue with the examples but did suggest that the agency draft definitions for these terms. One commenter suggested additional documents be added, such as “loan and mortgage documents.” The Board has determined not to add to the list of examples at this time and is, instead, incorporating a clarifying statement in § 749.1 that credit unions may classify additional records as vital and maintain older versions of any vital records as they determine necessary.

One commenter stated that lists of member accounts and their loan balances is an outdated example of a vital record because information is now more often stored digitally and records are also maintained by third-party service providers. The Board is retaining this example because current loan balances can reasonably be considered vital to members seeking access to their accounts. While the information contained in the record is considered vital, the proposed rule continues to provide credit unions with the flexibility to store such records in any format, including but not limited to digital storage methods.

The definition of *vital records center* in § 749.3 is moved to § 749.1 as it is more appropriately located with the other definitions used in this part.

Section 749.2 Vital records preservation program

This section sets forth a credit union's obligation to establish a vital records preservation program. The first change is to make clear that a records preservation log may be in electronic format. This information is being added for clarity. This is not a substantive change. Electronic storage of vital records is already permitted, and the rule does not mandate any particular format for records storage. The second proposed change to this section is to reference the legal implications of records destruction and to permit destruction of older versions of records unless required by other law or regulation.

The Board proposes to continue its longstanding practice of not prescribing specific retention periods for individual documents that would then apply to all credit unions. There are too many variables that can inform decisions about retention periods, including the application of various state and federal laws, industry best practices, statutes of limitations, and a credit union's unique operations and membership. Thus, credit unions should continue to make these judgments based on the many factors that inform such decisions. Some commenters to the ANPR shared their lists of document retention periods, further informing the Board's decision to provide flexibility and discretion for credit unions to craft their own retention periods.

Section 749.3 Vital records center

This provision continues to require that a credit union maintain, or contract with a third party to maintain, any equipment or software necessary for the credit union to access its records from a vital records center. As noted above, the Board is proposing to move the definition of *vital records center* to § 749.1 with other definitions used in this part. The other proposed change to this section is to state clearly the NCUA's expectation

that, if a credit union contracts with a third-party service provider to maintain its vital records, the credit union must maintain effective oversight of the third-party service provider to ensure the credit union meets its obligations under part 749. With this addition, the heading of this section is being amended to include an explicit reference to third-party service providers. Thus, the heading for this section now reads, “Vital records center and third-party service providers.”

Section 749.4 Format for vital records preservation

The Board is not proposing any changes to this section.

Section 749.5 Format for records required by other NCUA regulations

The Board is not proposing any changes to this section.

Appendix A to part 749 – Record Retention Guidelines

The Board is proposing to eliminate Appendix A. Many of the provisions in the Appendix restate the requirements of part 749, and section (E) of Appendix A unnecessarily expands the scope of part 749 by going beyond vital records to discuss the retention of foundational and operational records. While these documents are important and credit unions should be thoughtful in their approach to managing them, they are beyond the scope of part 749. Furthermore, section (E)'s reference to retaining these records permanently has, as reflected in many comments to the ANPR, created much confusion and unnecessary burden.

While eliminating Appendix A, the Board proposes to retain some helpful concepts from Appendix A and move them into the regulatory text of part 749.

The reference in Appendix A section (D) to keeping records until the credit union's annual supervisory committee audit and the NCUA's examination have been completed, is now covered by proposed language in § 749.2(c) that older versions of vital records may be destroyed "unless required by other law or regulation." Appendix A's reference only to part 715 is unnecessarily limited and may create the erroneous impression that there are no other laws or regulations that may require credit unions to maintain more than just the latest version of a vital record. The proposed amendment to § 749.2(c) should clarify the Board's meaning that, unless required by other law or regulation, older versions of vital records may be destroyed once their current versions are stored.

Section A of Appendix A, titled "What Format Should the Credit Union Use for Retaining Records?," is already covered in § 749.4, which permits credit unions to determine the format for preserving their vital records. The reference to maintaining the necessary equipment or software to permit an examiner to review and reproduce stored records upon request is a requirement and is already covered in § 749.5. Appendix A section (B), titled "Who is Responsible for Establishing a System for Record Disposal?," is already covered in § 749.2, which states that a credit union's board of directors is responsible for setting up a vital records preservation program that includes a schedule for storage and destruction of records.

Finally, section (C) of Appendix A, titled "What Procedures Should a Credit Union Follow When Destroying Records?," recommends that credit unions prepare an

index of any records destroyed and retain the index permanently. It further recommends that destruction of records should ordinarily be carried out by at least two persons whose signatures, attesting to the fact that records were destroyed, should be affixed to the listing. The Board proposes to eliminate this language on the basis that processes for records destruction are better left to the judgment of a credit union's board of directors. Furthermore, advances in technology specifically designed to manage records retention schedules provide credit unions with more options for managing the internal controls necessary for a sound records retention program.

Appendix B to part 749 – Catastrophic Act Preparedness Guidelines

The Board is proposing to eliminate Appendix B – Catastrophic Act Preparedness Guidelines. This is consistent with the agency's new approach of streamlining its regulations by removing nonbinding guidance documents.

References to part 749 in other NCUA regulations

With the elimination of the record retention guidelines, the Board is proposing to eliminate the reference to those guidelines in the reporting requirements for derivatives activities. Specifically, 12 CFR 703.105(d) requires federal credit unions to retain any reports required under NCUA's derivatives regulation in accordance with Appendix A of part 749. This is a technical amendment but should also further the Board's goal of better differentiating between regulations and guidance and removing references to requirements in the context of guidance.

As an alternative to the proposed rule, the agency considered rescinding part 749 altogether. Under the Federal Credit Union Act (FCUA or Act), the agency is authorized

to require information and reports from insured credit unions.¹⁸ The FCUA also requires federal credit unions to keep all their books and records.¹⁹ These statutory provisions do not require the agency to issue regulations for them to go into effect. They are self-executing. The FCUA does, however, grant the agency the discretion to prescribe such rules and regulations as it may deem necessary or appropriate to carry out the provisions of the Act.²⁰ And, NCUA has promulgated the record retention regulations that are the subject of the current rulemaking since 1972, for the specific purpose of ensuring that FICUs can continue providing vital member services if their records are destroyed as a result of a catastrophic event.

Rather than rescind the regulation entirely, which may be detrimental to FICUs that have relied on the rule for many years or for new credit unions that may need some direction in this area, the Board believes that the more prudent approach is to streamline the regulation and remove the appendices. This approach is consistent with the recent comments received in response to the ANPR.

IV Request for Comments on this Proposed Rule

The Board is requesting comment on the entire proposed rule, including the following specific areas:

- 1) Are the proposed definitions of *vital member services* and *vital records* helpful and sufficient? If not, please provide alternative suggestions.
- 2) The proposed § 749.2(a)(3) requires that a credit union's procedures for its vital records preservation program contain a records preservation log, which may be in

¹⁸ 12 U.S.C. 1789(a)(8).

¹⁹ 12 U.S.C. 1766(e).

²⁰ 12 U.S.C. 1789(a)(11).

electronic or other format at the credit union's discretion. The regulation currently requires a records preservation log to specify each vital record stored and its name, storage location, storage date, and name of the person sending the record for storage. The Board believes it is important for a credit union and for the agency to know where these records are stored. However, the Board is interested in feedback on whether the provision is unnecessarily prescriptive in mandating other requirements, such as storage date and name of the person sending the record for storage.

- 3) Does the proposed repeal of Appendices A and B clarify the scope of part 749 and reduce the burden and compliance costs for preserving vital records?
- 4) The Board is interested in obtaining feedback from commenters on whether to include a reference in § 749.2 for FICUs to consult legal counsel when setting minimum retention periods. This suggestion is currently made in Appendix A – Record Retention Guidelines. However, with the removal of the record retention guidelines, would it be helpful to remind credit unions in the text of the regulation that they can, at their discretion, consult with legal counsel when setting minimum retention periods? Or do commenters believe that such a reference is unnecessary and would be construed as a *requirement* to consult with counsel when setting minimum retention periods?
- 5) As stated above, the Board considered rescinding part 749 as an alternative to the current proposal. Commenters are invited to provide feedback on this alternative.

V. Legal Authority

The Board issues this proposed rule pursuant to its authority under the FCUA to prescribe rules and regulations as it deems appropriate for administering the FCUA, including its recordkeeping requirements for federal credit unions. Maintaining vital

records is central to a credit union's ability to properly service its members and to NCUA's ability to fulfill its supervisory and enforcement duties. Sections 120 and 209 of the FCUA are plenary grants of regulatory authority to the Board to examine and require information and reports from credit unions as well as issue rules and regulations necessary or appropriate to carry out its roles as regulator and share insurer.

Section 106 of the FCUA requires the Board to supervise federal credit unions and requires federal credit unions to make their books and records accessible and available for examination to any person designated by the Board. Section 204 of the FCUA requires the Board to appoint examiners who shall have the power to thoroughly examine the affairs of FICUs and report to the Board. Section 206 of the FCUA requires the agency to impose corrective measures whenever, in the opinion of the Board, any credit union is engaged in or has engaged in unsafe or unsound practices in conducting its business. Accordingly, the FCUA grants the Board broad rulemaking authority to ensure that credit unions, their member owners, and the National Credit Union Share Insurance Fund remain safe, sound, and protected. The Board's requirements codified in part 749 help to identify or prevent such unsafe and unsound practices to aid the Board in its duties under the FCUA.

Part 749 also incorporates 15 U.S.C. 7001(d) – the Electronic Signatures in National and Global Commerce Act – which states that if a statute, regulation, or other rule of law requires a record be retained, that requirement is met by retaining an electronic record of the information in the record that accurately reflects the information in the record and remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of

law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

VI. Regulatory Procedures

A. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as regulations.gov).

In summary, on April 24, 2024, NCUA published an ANPR to solicit comments on ways the agency can improve and update its vital records preservation program regulation and accompanying guidelines. Based on public comments received in response to the ANPR, and upon further consideration of the issues involved, the Board is publishing this proposed rule to simplify and streamline part 749. The Board is proposing to update part 749 by clarifying the purpose of the regulation, updating the definitions, and removing the appendices.

The proposed rule and required summary are available at <https://www.regulations.gov>.

B. Executive Orders 12866, 13563, and 14192

Pursuant to Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14215, a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order. OMB has

determined that this proposed rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This proposed rule will reduce the burden of retaining vital records by streamlining 12 CFR part 749 and is consistent with Executive Order 13563.

Executive Order 14192 (Unleashing Prosperity Through Deregulation) was issued on January 31, 2025. Section 3(c) of Executive Order 14192 requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. This proposed rule is expected to be a deregulatory action for purposes of Executive Order 14192.

C. The Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.²¹ If the agency makes such a

²¹ 5 U.S.C. 601 et seq.

certification, it shall publish the certification at the time of publication of either the proposed rule or the final rule, along with a statement providing the factual basis for such certification.²² For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.²³ The Board fully considered the potential economic impacts of the regulatory amendments on small credit unions.

The proposed rule amends part 749 by clarifying the purpose of the regulation, updating the definitions, and removing unnecessary references to recommendations and guidance. Part 749 is a longstanding regulation that requires FICUs to establish a vital records preservation program to identify, store, and reconstruct vital records for the purpose of restoring vital member services after a catastrophic event.

The preamble makes clear that the purpose of the proposed rule is to reduce the regulatory burden of vital records preservation. It does so by streamlining the regulation so that only vital records are preserved and only for so long as they can be used to restore vital member services. The proposed rule is based on industry feedback, particularly from small credit unions, that part 749, particularly Appendix A, is unnecessarily burdensome and unclear. The proposed elimination of Appendix A, which recommends credit unions retain certain documents permanently, should reduce the costs of compliance with part 749.

Accordingly, the NCUA certifies the proposed rule would not have a significant economic impact on a substantial number of small credit unions.

²² 5 U.S.C. 605(b).

²³ 80 FR 57512 (Sept. 24, 2015).

D. *The Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) requires that OMB approve all collections of information by a federal agency from the public before they can be implemented.²⁴

The PRA applies to rulemakings in which an agency creates a new or amends existing information collection requirements. For purposes of the PRA, an information-collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection unless it displays a valid OMB control number.

This action does not impose any new information collection burden under the PRA. The proposed updates will require revision of an existing information collection to be submitted to the Office of Information and Regulatory Affairs at OMB for approval under the PRA. The NCUA is proposing to extend for 3 years, with revision, this information collection.

Title of Information Collection: Records Preservation, 12 CFR Part 749.

OMB Control Number: 3133-0032.

Respondents: All FICUs.

Estimated Annual Burden: 8,886.

²⁴ 44 U.S.C. 3501 et seq.

The proposed rule contains information collection recordkeeping requirements that would impose PRA burden on FICUs. This burden is associated with establishing, retaining and maintaining a written vital records preservation program.

As of September 30, 2025, the NCUA supervised approximately 4,331 FICUs. The NCUA estimates eight new FICUs in the next 3 years. For each information collection activity, the burden table lists the estimated annual number of responses per respondent and estimated time per response.

The NCUA estimates a total annual burden of 8,886 hours as follows:

NCUA Summary of Estimated Annual Burden (3133-0032)

Information Collection Activity	Type of Burden (Frequency of Response)	Number of Respondents	Number of Responses per Respondent	Average Time per Response (Hours)	Total Estimated Annual Burden (Hours)
Retain and maintain a written vital records preservation program	Recordkeeping (On Occasion)	4,331	1	2	8,662
Establish a written program	Recordkeeping (One-time)	8	1	8	64
<i>Total Estimated Annual Burden</i>					8,726

The NCUA invites comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of

the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to (1) submit written comments via email to PRAComments@ncua.gov or (2) visit www.reginfo.gov/public/do/PRAMain (find this particular information collection by selecting the tab titled “Information Collection Review” and click on to the section titled “Currently under Review – Open for Public comment”).

E. *Analysis on Executive Order 13132 on Federalism*

Executive Order 13132 encourages certain regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an agency as defined in 44 U.S.C. 3502(5), complies with the executive order to adhere to fundamental federalism principles. This proposed rule would apply to all FICUs, including state-chartered credit unions. The NCUA expects that any effect on states or on the distribution of power and responsibilities among the various levels of government will be minor. The proposed changes would mainly clarify the existing regulations and guidance in this area and are not intended to affect the division of responsibilities between the NCUA and state regulatory authorities with oversight of federally insured, state-chartered credit unions. The NCUA welcomes comments on ways to eliminate, or at least minimize, any potential impact in this area.

F. *Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999. The proposed rule relates to FICUs' vital records retention programs, and any effect on family well-being is expected to be indirect.

List of Subjects

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 749

Archives and records, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, this 9th day of March 2026.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board proposes to amend 12 CFR parts 703 and 749 as follows:

**PART 703—INVESTMENT AND DEPOSIT ACTIVITIES, SUBPART B—
DERIVATIVES**

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(14), and 1757(15).

2. Amend § 703.105 by removing and reserving paragraph (d).

**PART 749—RECORDS PRESERVATION PROGRAM AND APPENDICES—
RECORD RETENTION GUIDELINES; CATASTROPHIC ACT
PREPAREDENESS GUIDELINES**

3. Revise part 749 to read as follows:

PART 749—VITAL RECORDS PRESERVATION PROGRAM

749.0 Purpose and scope.

749.1 Definitions.

749.2 Vital records preservation program.

749.3 Vital records center and third-party service providers.

749.4 Format for vital records preservation.

749.5 Format for records required by other NCUA regulations.

Authority: 12 U.S.C. 1756, 1766(a), 1784, 1786, 1789; 15 U.S.C. 7001(d).

§ 749.0 Purpose and scope.

(a) This part describes the obligations of a federally insured credit union to maintain a vital records preservation program to identify, store, and reconstruct vital records in the event such records are destroyed

(b) This part does not supersede records preservation requirements that may apply to a credit union pursuant to other law or regulation.

§ 749.1 Definitions.

For purposes of this part:

Vital member services are the essential financial services that a credit union provides to its members, such as member access to their accounts, share withdrawal and deposit facilities, and loan payments and disbursements.

Vital records are the most recent and current versions of those records a credit union needs to restore vital member services. These records are:

- (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, current as of the most recent month-end.

(c) Bank reconcilements, current as of the most recent month-end.

(d) 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.

(e) Emergency contact information for employees, officials, regulatory offices, and vendors used to support vital records.

A credit union may classify additional records as vital and maintain older versions of any vital records as it determines necessary.

Vital records center is a storage facility, which may include another federally insured credit union, at any location far enough from the credit union's offices to avoid the simultaneous loss of both sets of records in the event of a catastrophic act.

§ 749.2 Vital records preservation program.

(a) The board of directors of a credit union is responsible for establishing a vital records preservation program within six months of its insurance certificate being issued. The program must be in writing and contain procedures for maintaining duplicate vital records at a vital records center. The procedures must include:

(1) designated staff responsible for vital records preservation,

(2) a schedule for the storage and destruction of vital records, and

(3) a records preservation log specifying each vital record stored, its name, storage location, storage date, and name of the person sending the record for storage. The log may be in electronic format, for example, a data processing system log.

(b) A credit union that has some or all of its vital records maintained by an off-site data processor is considered to be in compliance for the storage of those records if the service agreement specifies the data processor safeguards against the simultaneous destruction of production and back-up information.

(c) Unless required by other law or regulation, older versions of vital records may be destroyed once their current versions are stored.

§ 749.3 Vital records center and third-party service providers.

A credit union must maintain, or contract with a third-party service provider to maintain, any equipment or software for its vital records center necessary for the credit union to access its records. If a credit union contracts with a third-party service provider to maintain its records, the credit union must maintain effective oversight of the third-party service provider to ensure the records meet the requirements of this section.

§ 749.4 Format for vital records preservation.

Preserved vital records may be in any format that can be used to reconstruct the credit union's vital records. The format used must accurately reflect the information in the

record, remain accessible to all persons entitled to access by statute, regulation, or rule of law, and be capable of reproduction by transmission, printing, or otherwise.

§ 749.5 Format for records required by other NCUA regulations.

Where NCUA regulations require a credit union to retain certain writings, records, or information, the credit union may use any format that accurately reflects the information in the record, is accessible to all persons entitled to access by statute, regulation, or rule of law, and is capable of being reproduced by transmission, printing, or otherwise. The credit union must maintain the necessary equipment or software to permit an examiner to access the records during the examination process.

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