

with the executive order. This rule will apply to all federally-insured credit unions offering secondary capital accounts pursuant to § 701.34, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA, 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on April 13, 2000.

Becky Baker,
Secretary of the Board.

For the reasons set forth above, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Section 701.34 is amended by adding paragraphs (b)(12) and (b)(13) to read as follows:

§ 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

* * * * *

(b) * * *

(12) As provided in § 702.204(b)(11) of this chapter, 60 days after the effective date of a credit union being classified as “critically undercapitalized” under NCUA’s prompt corrective action rules, the NCUA Board may prohibit payments of principal, dividends or interest on the credit union’s uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

(13) As provided in §§ 702.304(b) and 702.305(b) of this chapter, the NCUA Board may prohibit payments of principal, dividends or interest on the uninsured secondary capital accounts established after August 7, 2000 of a “moderately capitalized”, “marginally capitalized”, “minimally capitalized” or “uncapitalized” credit union if the credit union’s net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in §§ 702.304(a) or 702.305(a) of this chapter. If NCUA takes this action, unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

* * * * *

3. The Appendix to § 701.34 is amended by adding a paragraph to immediately precede the signature line to read as follows:

Appendix to § 701.34 [Amended]

* * * * *

- The NCUA may prohibit payments of principal, dividends or interest on _____ (name of credit union) uninsured secondary capital accounts established after August 7, 2000, if _____ (name of credit union) has been in operation less than 10 years and has \$10 million or less in assets and the provisions of § 701.34(b)(13) of NCUA’s regulations are met, or, if _____ (name of credit union) has been in operation for 10 years or more or has more than \$10 million in assets and the provisions of § 701.34(b)(12) of NCUA’s regulations are met.

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[FR Doc. 00-9855 Filed 4-19-00; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its regulations that implement the Truth in Savings Act (TISA). This final rule allows credit unions to deliver periodic statement disclosures required by NCUA’s regulations in electronic form if the member agrees to this form of delivery.

DATES: This rule is effective May 22, 2000.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION

A. Background

Part 707 of NCUA’s regulations implements TISA. 12 CFR part 707. The purpose of part 707 and TISA is to assist members in making meaningful comparisons among accounts offered by credit unions and other financial institutions. Part 707 and TISA require, among other things, disclosure of yields, fees and other terms concerning share accounts to members at account opening, upon request, when changes in terms occur and in periodic statements. Many of these disclosures must be written. Many laws requiring that information be in writing consider information in electronic form to be written. Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

The Board of Governors of the Federal Reserve System (Federal Reserve) issued an interim rule amending its Regulation DD, which implements TISA. That rule allows depository institutions to deliver periodic statement disclosures required by Regulation DD in electronic form if the consumer agrees to that form of delivery. 64 FR 49846 (September 14, 1999). In doing so, the Federal Reserve stated that electronic delivery of these kinds of disclosures will reduce paperwork and costs for institutions and may benefit consumers by allowing them to receive their periodic account statements, including required

disclosures, more quickly and in a more convenient form.

The Federal Reserve's interim rule permits depository institutions to deliver periodic statement disclosures electronically if the consumer agrees to this method of delivery, but does not specifically discuss what constitutes a valid agreement between the consumer and depository institution. The Federal Reserve has stated that whether the parties have an agreement is to be determined by state law. It has also stated that consumers should be clearly informed when they consent to electronic delivery of periodic statements and disclosures. The Federal Reserve has further stated that the periodic statement must be provided in a form that can be displayed as visual text and must be clear and conspicuous and in a form that the consumer can retain.

The Federal Reserve's interim rule applies only to periodic statement disclosures. Other disclosures required by TISA and Regulation DD may not be delivered in electronic form, however, the Federal Reserve has issued a proposal addressing electronic delivery of these other disclosures. 64 FR 49740 (September 14, 1999). Because TISA requires NCUA to issue rules substantially similar to those issued by the Federal Reserve, NCUA will continue to follow the development of the Federal Reserve's regulation in this area. As in the past, when the Federal Reserve has issued a final or interim final rule, the NCUA will act to issue a substantially similar rule for credit unions.

TISA requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. In compliance with TISA, NCUA issued an interim final rule with request for comments in November 1999 that is substantially similar to the above rule issued by the Federal Reserve. 64 FR 66355 (November 26, 1999).

B. Comments

The NCUA Board received eight comment letters regarding the interim final rule: four from credit union trade associations; two from federal credit unions; one from a state credit union; and one from an association of state credit union supervisors. The commenters unanimously supported the interim rule.

Three commenters, however, suggested the rule provide additional

clarification with respect to the agreement between a credit union and its member that permits electronic delivery of periodic statement disclosures. Specifically, they wanted guidance on what constitutes a valid agreement and how a member's consent may be obtained. As articulated by the Federal Reserve, the rule purposefully does not define what constitutes a valid agreement or dictate a method of obtaining a member's consent. This is to provide maximum flexibility to credit unions and their members. Whether the parties have a valid agreement is appropriately determined by state law.

Two commenters suggested that a credit union should be permitted to deliver electronic periodic statement disclosures to an e-mail address designated by the member or to an area on a website accessible to the member. NCUA intends for credit unions to have flexibility in how they deliver these electronic disclosures. Both of these methods, among others, are permissible under the rule.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact agency rulemaking may have on a substantial number of small credit unions. For purposes of this analysis, credit unions under \$1 million in assets are considered small credit unions. As of June 30, 1999, there were 1,690 small credit unions with a total of \$807.3 million in assets, having an average size of \$0.5 million. Small credit unions make up 15.6% of all credit unions, but only 0.2% of all credit union assets.

This final rule provides credit unions with an optional and alternative method of delivering certain required disclosures. Credit unions are free to choose not to utilize this alternative. Credit unions that choose to use this alternative will likely realize a reduction in their costs of delivery as a result. The NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that these amendments to part 707 do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to

consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will apply to all federally-insured credit unions, but it will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

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List of Subjects in 12 CFR Part 707

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

By the National Credit Union Administration Board on April 13, 2000.

Becky Baker,

Secretary of the Board.

PART 707—TRUTH IN SAVINGS

Accordingly, the interim final rule amending 12 CFR part 707, which was published at 64 FR 66355 on November 26, 1999, is adopted as a final rule without change.

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