

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

#### Organization and Operation of Federal Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board proposes amending its rule limiting compensation to officials. The proposal amends the definition of the term "compensation" to exclude the reimbursement or payment of business-related travel costs for an official to be accompanied by a guest.

**DATES:** Comments must be received on or before October 2, 2001.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You may fax comments to (703) 518-6319. E-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). *Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

##### Background

NCUA has a policy of continually reviewing its regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." Interpretive Rulings and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. In its review of § 701.33, NCUA found several recent inquiries from federal credit unions (FCUs) and individuals concerning the limitation in § 701.33 on reimbursement of expenses for travel companions of FCU board officials.

The Federal Credit Union Act (the Act) and NCUA regulations provide that only one board officer of an FCU may be compensated as such and that no other official may receive compensation for serving as a board or committee member. 12 U.S.C. 1761(c), 1761a; 12 CFR 701.33. NCUA has defined compensation to exclude reasonable and proper expense reimbursement for costs incurred by FCU officials in carrying out the responsibilities of the positions to which they were appointed or elected. Section 701.33 currently permits reimbursement of a board official and one immediate family member for travel

expenses incurred in performing board duties if the payment is necessary and appropriate as determined by the FCU board and is made in accordance with written board policies and procedures. 12 CFR 701.33(b)(2)(i).

Before, § 701.33 permitted an FCU to pay the reasonable and proper travel expenses of officials, but it did not specifically allow payment for the expenses of a companion traveling with the official. 57 FR 18837, 18838 (May 1, 1992). In 1989 and 1990, NCUA staff received many inquiries asking whether § 701.33 would permit FCUs to pay the travel expenses of an official's spouse who accompanied him or her on FCU business. In January 1991, NCUA staff issued an opinion that the expenses of an official's spouse did not qualify as a proper business expense of an FCU because there is no direct benefit to the FCU in having the official's spouse accompany the official on business trips or to credit union conferences. This reasoning was based in part on Internal Revenue Service (IRS) interpretations regarding business expense tax deductions taken for spousal travel expenses. Staff concluded that payment of these expenses would be considered compensation to FCU officials that would be prohibited by 12 U.S.C. 1761(c) and 1761a. 57 FR 18837, 18838 (May 1, 1992).

NCUA received many complaints that its interpretation was unduly restrictive. Upon consideration of the strong public sentiment in support of a change to the rule, the NCUA Board, relying on its broad authority to interpret and implement the Act, amended the regulation to permit FCUs to pay the travel costs for an FCU official and an immediate family member. 57 FR 54499 (November 19, 1992). The amended regulation imposed the requirement that the FCU's board of directors adopt written policies and procedures covering such travel reimbursements. The policy must ensure that the only permitted reimbursements are for travel that is necessary and appropriate to carry out FCU official business, and reasonable in relation to the FCU's resources and financial condition. NCUA used "immediate family member" rather than "spouse" in the amended regulation to provide greater flexibility to FCUs to determine the relationships that qualify for reimbursement. NCUA's Office of General Counsel has interpreted the phrase to permit reimbursement to those persons who have a "familial" relationship to the FCU official.

Since the amended regulation has been in effect, NCUA has received several inquiries questioning why the

permitted reimbursement is limited to immediate family members of an official. Some FCUs and individuals contend that the rule should permit an FCU to adopt a reimbursement policy for the costs of any travel companion chosen by an FCU official.

The NCUA Board is cautious about expanding the types of payment excluded from the definition of compensation under § 701.33 and notes that, before the last change to the regulation, it received inquiries focusing only on reimbursement for the travel expenses of an official's spouse. At that time, NCUA anticipated that some FCUs might not want to restrict their reimbursement policies to only an official's spouse. NCUA adopted the change to the rule using the term "immediate family member" to permit greater flexibility.

Now the NCUA Board believes that there may be cases when an FCU official wishes to be accompanied by a person other than an immediate family member when on business travel. FCU officials who are unmarried and who do not have immediate family members might be constrained from attending certain events to promote credit union business activities, if not permitted to bring a travel companion. The Board recognizes that § 701.33 currently may not permit an FCU to reimburse the expenses of a travel companion, even in circumstances the FCU believes are necessary, appropriate, and incurred by the official in the performance of credit union duties.

To give FCUs additional flexibility regarding the reimbursement of reasonable and proper expenses, NCUA proposes to amend § 701.33(b)(2)(i) to use the term "guest" rather than "immediate family member." All other provisions of the regulation would remain the same.

NCUA is requesting comment on this proposed change, which is limited to allowing FCUs to adopt written policies that permit the reimbursement or payment of the travel expense of any guest chosen by an FCU official, as long as the policy meets all other requirements in the regulation. As is true under the current regulation, FCUs are free to adopt a more strict reimbursement policy or deny reimbursement entirely. Further, NCUA cautions FCUs that this proposal has no effect on IRS regulations regarding the reporting and taxing of any payments or reimbursements. FCUs should consult their tax advisors or attorneys concerning IRS requirements related to their travel reimbursement policies.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under one million dollars in assets). The proposed rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

NCUA has determined that the proposed regulation does 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 proposed rule, if adopted, will apply only to all federal credit unions. 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. The Board believes that a credit union's board of directors is in the best position to know who among the credit union staff should be responsible for carrying out the important responsibilities of the vital records preservation program. In revising this regulation to eliminate the requirement that designated the financial officer as responsible, the NCUA Board does not want to replace it with another provision removing the ability and responsibility of a credit union's board of directors to make the selection itself. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed 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).

*Agency Regulatory Goal*

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

**List of Subjects in 12 CFR Part 701**

Credit unions, Reporting and recordkeeping requirements, Travel and transportation expenses, Travel restrictions.

By the National Credit Union Administration Board on July 26, 2001.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 701 as follows:

**PART 701—ORGANIZATION AND OPERATION 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. Revise the last sentence of paragraph (b)(2)(i) of § 701.33 to read as follows:

**§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \* Such payments may include the payment of travel costs for officials and one guest per official;

\* \* \* \* \*

[FR Doc. 01-19105 Filed 8-2-01; 8:45 am]

**BILLING CODE 7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Parts 702 and 741**

**Prompt Corrective Action; Requirements for Insurance**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** NCUA proposes to amend its rule concerning financial and statistical reports to require all federally-insured credit unions to file quarterly Financial and Statistical Reports with NCUA. Currently, only federally-insured credit unions with assets over \$50 million must file these reports quarterly. All other federally-insured credit unions are required to file these reports semi-annually. The proposed amendment is a necessary component of NCUA's proposed examination program that will use a risk-focused approach to examination and extend the examination cycle for credit unions that meet certain criteria. If adopted, NCUA plans to implement the change for the March 31, 2002, call report cycle.

**DATES:** Comments must be received on or before November 1, 2001.

**ADDRESSES:** Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. Fax comments to (703) 518-6319. E-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Please send comments by one method only.

**FOR FURTHER INFORMATION CONTACT:** Peter Majka, Data Analysis Officer, Office of Examination and Insurance, at the above address or telephone number: (703) 518-6360 or Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone number: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

**Proposed Change**

The NCUA Board proposes revising § 741.6(a), the provision governing the filing of quarterly Financial and Statistical Reports, also known as call reports or 5300 reports. 12 CFR 741.6(a). Currently, this section requires all federally-insured credit unions with assets in excess of \$50 million to file a quarterly call report with NCUA. All other federally-insured credit unions file semiannually. The proposed amendment will require all federally-insured credit unions to file quarterly call reports.

This amendment is a necessary component of NCUA's proposed examination program. The proposed examination program has two new features. The first is risk based examination scheduling that will result in an extended examination cycle program for credit unions that meet certain risk criteria. Some credit unions