Proposed Rules

Federal Register
Vol. 74, No. 42
Thursday, March 5, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD60

Operating Fees

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to amend its rule on the assessment of the federal credit union (FCU) operating fee to exclude investments made under the Credit Union System Investment Program (CU SIP) and the Credit Union Homeowners Affordability Relief Program (CU HARP) from the calculation of total assets; total assets is the basis on which the operating fee is currently calculated. The Board believes this amendment will remove a disincentive for some FCUs from participating in the CU SIP or the CU HARP.

DATES: Comments must be received on or before May 4, 2009.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Notice of Proposed Rulemaking (Operating Fee)'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, 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 agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1755 of the Federal Credit Union Act (the Act) requires FCUs to pay an annual operating fee to NCUA. 12 U.S.C. 1755(a). This section of the Act provides the NCUA Board (the Board) with broad discretion in deciding how the amount of the operating fee is determined. Specifically, this section states:

> The fee assessed under this section shall be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the Administration in carrying out its responsibilities under this Act and to the ability of Federal credit unions to pay the fee.

12 U.S.C. 1755(b).

Currently, § 701.6 sets out the basis on which NCUA assesses the operating fee. Briefly summarized, this section provides that FCUs must pay NCUA an annual operating fee based on the credit union's total assets. 12 CFR 701.6(a). NCUA calculates an FCU's operating fee by multiplying the dollar amount of the total assets by a percentage set by the Board after considering the expenses of NCUA and the ability of FCUs to pay the fee. The term ''total assets'' generally includes all assets created on an FCU's books related to investments made by an FCU that are currently outstanding as of the close of the previous fiscal year. Based on this calculation, an increase in the dollar amount of investments will increase total assets and, thereby, may increase an FCU's operating fee. The Board recognizes that an FCU making investments under the CU SIP or the CU HARP may be subject to a higher operating fee and this may act as a disincentive for FCU participation in the programs.

B. CU SIP and CU HARP

On December 9, 2008, after receiving concurrences from the Federal Reserve Board and the Secretary of the Treasury, the NCUA Board announced two, new initiatives for Central Liquidity Facility (CLF) extensions of credit to credit unions for system liquidity needs. The two initiatives were the CU SIP and the CU HARP.

Under the CU SIP, participating credit unions can borrow from the CLF and invest the proceeds in participating corporate credit unions. Specifically, the CLF will make a secured, one-year advance to the credit union, which it must, in turn, concurrently invest in a fixed-rate, matched term, guaranteed CU SIP Note issued by a participating corporate credit union. As of February 10, 2009, the CLF has dispersed over seven billion dollars under the CU SIP.

The CU HARP is a two-year, $2 billion program intended to assist homeowners who are facing delinquency, default, or foreclosure on their mortgages, especially in the face of diminished home prices. Under the CU HARP, participating creditworthy credit unions can borrow from the CLF, and receive as much as an additional 100-basis point spread over the cost of borrowing if they modify at-risk mortgages, primarily by lowering interest rates and corresponding monthly payments. Under the CU HARP, the CLF makes a secured, one year advance to the credit union, which is renewable for a term of one year. The credit union must, in turn, concurrently invest the proceeds in a two-year, guaranteed CU HARP Note issued by a participating corporate credit union.

The Board recognizes the CU SIP and the CU HARP are valuable tools to infuse liquidity into the corporate credit union system and support the overall national economic interest. The Board, however, is concerned that requiring FCU's to include CU SIP and CU HARP investments in their total assets, for purposes of calculating their operating fees, may deter participation in the programs. The Board, therefore, is proposing to amend § 701.6 to address the potential disincentive FCUs may face when deciding to participate in the CU SIP and CU HARP.

C. Proposed Amendment

The proposed rule would amend § 701.6 by excluding investments made

under the CU SIP and the CU HARP from an FCU's total assets for purposes of calculating its operating fee. Specifically, the Board is excluding, from the calculation of total assets, the asset that is created on the books of a natural person federal credit union when it makes a CU SIP or CU HARP related investment in a corporate credit union. Under this proposed rule, participating FCUs would continue to calculate their total assets in the same manner, except they would not include the dollar amount of any outstanding CU SIP or CU HARP investments in the calculation. This amendment would insure an increase in operating fees would not deter FCUs from participating in the programs. Because the operating fee is based on an FCU's total assets as of the close of the previous fiscal year and funding for the CU SIP and CU HARP took place after January 1, 2009, the amendments made in this rule will not affect the computation of the operating fee until 2010.

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 credit unions (those under $10 million in assets). This proposed rule revises the calculation of total assets for purposes of the assessment of the FCU operating fee and would exclude investments made under the CU SIP and the CU HARP from the calculation. The operating fee is calculated as a percentage of total assets and, as such, the calculation already is geared to impose a lesser fee on smaller credit unions. In addition, the operating fee schedule has historically imposed no operating fee on FCUs with assets up to $500,000 and a flat fee of $100 for FCUs of up to $750,000 in assets. The benefit of the proposed amendment would apply equally to small credit unions, to the extent they participate in the CU SIP or the CU HARP, and would not have a significant effect on their operating fees. The proposed rule, therefore, will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their 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. The proposed rule would not have substantial direct effects on the states, on the connection 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 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

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, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Credit unions, Low income, Nonmember deposits, Secondary capital, Shares.

By the National Credit Union Administration Board on February 26, 2009.

Mary Rupp,

Secretary of the Board.

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

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, 766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. In § 701.6, add a new sentence to the end of paragraph (a) to read as follows:

§ 701.6 Fees paid by Federal credit unions.

(a) * * * The term total assets does not include the assets created on the books of a natural person federal credit union by investments made in a corporate credit union under the Credit Union System Investment Program or the Credit Union Homeowners Affordability Relief Program.

* * * * *

[FR Doc. E9–4575 Filed 3–4–09; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

RIN 0648–AX34

Changes to the Florida Keys National Marine Sanctuary Regulations; Technical Corrections and Minor Substantive Changes

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Correction; Extend public comment period.

SUMMARY: On December 19, 2008, NOAA published a proposed rule in the **Federal Register** that makes technical corrections and minor modifications to the Florida Keys National Marine Sanctuary (FKNMS) regulations. The preamble of that document contained an inaccurate reference to U.S. Coast Guard regulations, which was a basis for one of the proposed modifications. This document eliminates that reference and clarifies the rationale for making this regulation change. The ONMS is preparing an environmental assessment pursuant to the National Environmental Policy Act.

DATES: The public comment period on the proposed rule published at 73 FR 77557, December 19, 2008, is reopened. Comments will be accepted through March 26, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Submit electronic comments via the Federal e-Rulemaking Portal;
- *Mail:* David A. Score, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040.
- *Instructions:* All comments received are a part of the public record and will be generally posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for