

# Rules and Regulations

Federal Register

Vol. 76, No. 144

Wednesday, July 27, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

RIN 3133-AD94

#### Remittance Transfers

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** NCUA is amending its rules to conform to amendments made to the Federal Credit Union Act (FCU Act) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The interim final rule adds remittance transfers, as now defined under the Electronic Fund Transfer Act (EFTA), as an example of money transfer instruments Federal credit unions (FCUs) may provide to persons within their fields of membership.

**DATES:** This interim final rule is effective July 27, 2011. Comments must be received by NCUA on or before September 26, 2011.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *NCUA Web Site:* [http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.

- *E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on Interim Final Rule, Part 701, Remittance Transfers” 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.

**FOR FURTHER INFORMATION CONTACT:** Chrisanthy Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In 2006, the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act), Public Law 109-351, relieved a longstanding limitation on FCUs regarding financial services. Specifically, Section 503 of the Relief Act amended the FCU Act to permit FCUs to provide certain financial services to all persons within their fields of membership. Congress intended to allow FCUs “to sell negotiable checks, money orders, and other similar transfer instruments, including international and domestic electronic fund transfers, to anyone eligible for membership, regardless of their membership status.” S. Rpt. 109-256, p. 5; H. Rpt. 109-356 Part 1, p. 63. To implement this authority, NCUA created a new regulatory section to address the provision of financial services to persons within an FCU’s field of membership and issued § 701.30 to implement Section 503. 71 FR 62875 (Oct. 27, 2006) (interim final rule); 72 FR 7927 (Feb. 22, 2007) (final rule).

Section 1073 of the Dodd-Frank Act added a new Section 919 to the EFTA, entitled “Remittance Transfers.” Public Law 111-203, § 1073, 124 Stat. 2066 (2010). The new Section 919 of the EFTA creates protections for consumers who, through remittance transfer providers, send money to designated recipients located in foreign countries. 15 U.S.C. 1693o-1. Paragraph (d) of Section 1073 of Dodd-Frank amended the FCU Act to specify that a remittance transfer, as defined by new Section 919 of the EFTA, is an example of a money transfer instrument that FCUs may sell to persons within their fields of membership. 12 U.S.C. 1757(12)(A).

Section 919(g)(2) of the EFTA, defines a remittance transfer as an electronic transfer of funds requested by a sender to a designated recipient that is initiated by a remittance transfer provider, regardless of whether the sender has an account with the remittance transfer provider or whether the transfer meets

the statute’s definition of an EFT. 15 U.S.C. 1693o-1(g)(2). The law excludes small value transactions from the definition. Remittance transfers, typically consumer to consumer payments, may be executed through a variety of means, including international wire transfers, international automated clearing house transactions, other account-to-account or account-to-cash products, and reloadable prepaid cards. The law requires remittance transfer providers to give consumers certain disclosures, including a receipt that contains remittance transfer fees, the exchange rate to be used by the remittance transfer provider, the amount of currency to be received by the recipient and the estimated date of delivery. In addition, the law requires the sender to receive a statement that addresses error resolution rights. The Federal Reserve Board’s recently proposed remittance transfer rule, which addresses disclosure requirements and error resolution, provides a detailed analysis of the services offered by remittance transfer providers. 99 FR 29902 (May 23, 2011).

FCUs have had the authority to transfer funds at the request of consumers within their fields of membership to recipients internationally since the adoption of the Reg Relief Act. The amendment to the FCU Act’s powers provision by the Dodd-Frank Act makes plain that FCUs may offer all variations of remittance transfers, as now defined by the EFTA, for the benefit of consumers within their fields of membership, subject to certain consumer protections. The addition of remittance transfers as an example of permissible money transfer instruments, in addition to the newly-enacted consumer disclosures and rights, demonstrate the clear intention of Congress to promote access to remittance transfers and ensure protections for consumers.

Finally, Section 1073(d) of the Dodd-Frank Act adjusted Section 107(12) of the FCU Act by removing the reference to the receipt of international and domestic EFTs from subparagraph (B). As explained below, this simply eliminates a redundancy and does not affect the ability of FCUs to offer EFT services.

## II. Summary of the Rule

Similarly to the rulemakings that implemented Section 503 of the Reg Relief Act, the NCUA Board (Board) is adopting amendments to § 701.30 that directly track the statutory provisions of Section 1073 of the Dodd-Frank Act. The Board amends paragraph (a) of § 701.30 to include remittance transfers as defined by Section 919 of the EFTA as an example of permissible money transfer instruments. The Board also makes a corresponding amendment to paragraph (b) to remove the language referring to an FCU's receipt of international and domestic EFTs.

The Board notes the amendment to § 701.30(b) will have no effect on FCUs. The Board views the deletion of the phrase "and receive international and domestic electronic fund transfers" from the Section 107(12)(B) of the FCU Act as a housekeeping amendment.

When adopting the phrase in Section 107(12)(B) through the Reg Relief Act, Congress simply clarified the authority it granted to FCUs in Section 107(12)(A). 12 U.S.C. 1757(12). Section 903 of the EFTA defines "electronic fund transfer" as "any transfer of funds \* \* \* initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account." 15 U.S.C. 1693a(6); *see also* 12 CFR 205.3(b). By expressly authorizing FCUs "to sell" international and domestic EFTs in Section 107(12)(A) of the FCU Act, Congress permitted FCUs to send or receive funds upon instruction because, by definition, EFTs are authorizations to debit or credit an account. To read the power "to sell" EFT services separately from the ability to "receive" EFTs would be wholly inconsistent with Congressional intent to provide EFT services to persons in the field of membership, particularly for those who may not have ready and affordable access to these services. It would also be unfeasible for an FCU to offer consumers the ability to initiate transfers from their accounts but not receive EFTs. As discussed above, Congress clearly intended to promote the availability of services to consumers under Section 1073 of the Dodd-Frank Act by explicitly referencing remittance transfers services. The amendment to FCU Act Section 107(12)(B) was not meant to restrict or otherwise limit an FCU's ability to effectively provide services to consumers.

## III. Interim Final Rule

As with the initial rulemaking adopting § 701.30, the Board is issuing

this rulemaking as an interim final rule because there is a strong public interest in having advantageous and consumer-oriented rules that enhance credit union services for members and consumers. The amendments of Section 1073 of the Dodd-Frank Act are self-implementing. The rule strictly conforms to the statutory language and expressly recognizes FCU authority to provide remittance transfers to persons within their fields of membership, subject to new consumer protections. The Board finds these reasons are good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the Administrative Procedure Act. Accordingly, the Board finds that, pursuant to 5 U.S.C. 553(b)(3), notice and public procedures are unnecessary and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule will be effective upon publication in the **Federal Register**. Although the rule is being issued as an interim final rule and is effective upon publication, the Board encourages interested parties to submit comments.

## IV. Regulatory Procedures

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule only clarifies and improves the available services FCUs may provide to their members and persons within their fields of membership, without imposing any regulatory burden. The interim final amendments would 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 interim final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

### *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 interim final 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 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 interim final 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).

### *Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (SBREFA), 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. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

### *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 amendments are understandable and minimally intrusive if implemented as proposed.

## List of Subjects in 12 CFR Part 701

Credit unions.

By the National Credit Union Administration Board on July 21, 2011.

### **Mary Rupp,**

*Secretary of the Board.*

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

## **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, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, and 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 3601–3619. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

### § 701.30 [Amended]

■ 2. Amend § 701.30 as follows:

■ a. Add to paragraph (a) the phrase “and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act” after the words “electronic fund transfers.”

■ b. Remove the phrase “and receiving international and domestic electronic fund transfers” after the words “money orders” from paragraph (b).

[FR Doc. 2011–18930 Filed 7–26–11; 8:45 am]

BILLING CODE 7535–01–P

## FINANCIAL STABILITY OVERSIGHT COUNCIL

### 12 CFR Chapter XIII and Part 1320

RIN 4030–AA01

#### Authority To Designate Financial Market Utilities as Systemically Important

**AGENCY:** Financial Stability Oversight Council.

**ACTION:** Final rule.

**SUMMARY:** Section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “DFA”) provides the Financial Stability Oversight Council (the “Council”) the authority to designate a financial market utility (“FMU”) that the Council determines is or is likely to become systemically important because the failure of or a disruption to the functioning of the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the United States financial system. This final rule describes the criteria that will inform and the processes and procedures established under the DFA for the Council’s designation of FMUs as systemically important under the DFA. The Council published an advance notice of proposed rulemaking regarding the designation criteria in section 804 on December 21, 2010, followed by a notice of proposed rulemaking (“NPRM”) on March 28, 2011. The Council notes that this final rule only addresses the designation of FMUs. The Council expects to address the designation of payment, clearing, or

settlement activities as systemically important in a separate rulemaking.

**DATES:** *Effective date:* August 26, 2011.

**FOR FURTHER INFORMATION CONTACT:** Lance Auer, Deputy Assistant Secretary (Financial Institutions), Treasury, at (202) 622–1262, Patrick Pinschmidt, Senior Policy Advisor, Treasury, at (202) 622–2495, Jordan Bleicher, Financial Analyst, Treasury, at (202) 622–6491 or Steven D. Laughton, Senior Counsel, Office of the General Counsel, Treasury, at (202) 622–8413.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### *Dodd-Frank Wall Street Reform and Consumer Protection Act*

Title VIII of the DFA is entitled the “Payment, Clearing, and Settlement Supervision Act of 2010.”<sup>1</sup> FMUs form a critical part of the nation’s financial infrastructure. They exist in many markets to support and facilitate the transfer, clearing or settlement of financial transactions, and their smooth operation is integral to the soundness of the financial system and the overall economy. However, their function and interconnectedness also concentrate a considerable amount of risk in the financial system due, in large part, to the interdependencies, either directly through operational, contractual or affiliation linkages, or indirectly through payment, clearing, and settlement processes. In other words, problems at one FMU could trigger significant liquidity and credit disruptions at other FMUs or financial institutions.

Section 804(a)(1) of the DFA states that the Council, “on a nondelegable basis and by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.” Subject to certain exclusions, the DFA defines an FMU as “any person that manages or operates a multilateral system for the purposes of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.”<sup>2</sup>

Section 111 of the DFA establishes the Council. Among the duties of the

Council under section 112(a)(2) is to “identify systemically important FMUs,” as defined in the statute.<sup>3</sup> Section 804 of the DFA requires the Council, after consultation with the Board of Governors of the Federal Reserve System (the “Board of Governors”) and the relevant federal agency that has primary jurisdiction over an FMU under federal banking, securities, or commodity futures laws (“Supervisory Agency”), to identify and designate an FMU that is, or is likely to become, systemically important if the Council determines that a failure of or disruption to an FMU could create, or increase, the risk of significant liquidity or credit problems spreading across financial institutions and markets and thereby threaten the stability of the U.S. financial system.<sup>4</sup>

The designation of an FMU as systemically important by the Council subjects the designated FMU to the requirements of Title VIII of the DFA (“Title VIII”). For example, section 805(a) authorizes the Board of Governors, the Commodity Futures Trading Commission (“CFTC”), and the Securities and Exchange Commission (“SEC”), in consultation with the Council and one or more Supervisory Agencies and taking into consideration relevant international standards and existing prudential requirements, to prescribe risk management standards governing the operations related to the payment, clearing, and settlement activities of systemically important FMUs.<sup>5</sup> The objectives and principles for the risk management standards are to promote robust risk management and safety and soundness, reduce systemic risk, and support the stability of the broader financial system.<sup>6</sup> These standards may address areas, as outlined in section 805(c), such as risk management policies and procedures, margin and collateral requirements, participant or counterparty default policies and procedures, the ability to complete timely clearing and settlement of financial transactions, capital and financial resource requirements for designated FMUs, as well as other areas that are necessary to achieve these

<sup>3</sup> See 12 U.S.C. 5322(a)(2)(f).

<sup>4</sup> Section 804(a)(1) of the DFA states that the Council, “on a nondelegable basis and by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.” 12 U.S.C. 5463(a)(1). See also DFA section 803(9) (defining systemic importance). 12 U.S.C. 5462(9).

<sup>5</sup> See 12 U.S.C. 5464(a).

<sup>6</sup> See 12 U.S.C. 5464(b).

<sup>1</sup> 12 U.S.C. 5461 *et seq.*

<sup>2</sup> See 12 U.S.C. 5462(6). Section 5462(6)(B) specifically excludes a number of entities, such as designated contract markets and national securities exchanges meeting certain criteria, from the definition of an FMU.