

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 Congress adopted the phrase in Section 107(12)(B) through the Reg Relief Act, it 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 allowing 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.

II. Summary of Public Comments

In response to the Board’s request for comments, NCUA received only one comment letter. The commenter, a credit union trade association, fully supported the interim rule and the Board’s reading of Section 1073 of the Dodd-Frank Act. The commenter agreed the Dodd-Frank Act did not change FCUs’ authorized business activities but simply added “remittance transfers,” as now defined by and regulated under the EFTA, as an example of a type of international electronic funds transfer service. The commenter also had the understanding that Congress’s deletion from FCU Act Section 107(12) of the express authority for persons within the field of membership to receive electronic funds transfers was simply to

remove redundant language and has no substantive effect.

III. Final Rule

As discussed above, the Board is adopting the interim final rule published on July 27, 2011, 76 FR 44761, without change.

IV. Regulatory Procedures

Regulatory Flexibility Act

NCUA must prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under ten million dollars in assets) the Regulatory Flexibility Act. This proposed rule reduces compliance burden and extends regulatory relief while maintaining existing safety and soundness standards. NCUA has determined this rule will not have a significant economic impact on a substantial number of small credit unions, so NCUA is not required to conduct a regulatory flexibility analysis.

Paperwork Reduction Act

NCUA has determined that this rule will 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 actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This would not have a 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.

The Treasury and General Government Appropriations Act, 1999—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, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

When NCUA issues a final rule, as defined in the Section 551 of the Administrative Procedure Act, it triggers a reporting requirement for congressional review of agency rules, under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA). The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA.

List of Subjects in 12 CFR Part 701

Credit unions.

By the National Credit Union Administration Board on November 17, 2011.

Mary Rupp,
Secretary of the Board.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Accordingly, the interim final amending 12 CFR part 701 which was published at 76 FR 44761 on July 27, 2011, is adopted as a final rule without change.

[FR Doc. 2011–30365 Filed 11–29–11; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 750

RIN 3133–AD73

Golden Parachute and Indemnification Payments; Technical Correction

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is finalizing an interim rule to make a technical correction to its rule restricting a federally insured credit union (FICU) from making golden parachute and indemnification payments to an institution-affiliated party (IAP). The amendment corrects an exception to the definition of golden parachute payment pertaining to plans offered under section 457 of the Internal Revenue Code. The interim final rule became effective on June 27, 2011. This rulemaking finalizes the interim rule without change.

DATES: Effective on November 30, 2011 NCUA is adopting the interim final rule published on June 24, 2011, 76 FR 36979, without change.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, Office of

General Counsel, at 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of Public Comments
- III. Final Rule
- IV. Regulatory Procedures

I. Background¹

A. Why is NCUA adopting this rule?

On June 24, 2011, NCUA published an interim final rule to correct new part 750, which restricts a FICU from making certain golden parachute and indemnification payments to an IAP. 76 FR 36979. The interim rule became effective June 27, 2011 to correspond with the effective date of the new part 750. Public comments were accepted, however, until July 24, 2011. NCUA is issuing this rulemaking to finalize the interim rule without change.

B. What changes did the interim final rule make?

The interim final rule corrected an exception to the definition of golden parachute payment in § 750.1(e)(2) pertaining to plans offered under § 457 of the Internal Revenue Code of 1986, as amended (IRC). The technical amendment was necessary to conform the regulatory text with the rule's intent, as described in the preamble to the final rule. 76 FR 30510 (May 26, 2011).

II. Summary of Public Comments

NCUA received two comments on the interim final rule: one from a trade organization and one from a state credit union league. One comment was supportive of the interim final rule, noting that the correction is consistent with the intent of the rule to permit post-employment payments that have reasonable business purposes. The other commenter, however, expressed concern about the amendment and suggested alternative language for the golden parachute exception at § 750.1(e)(2). NCUA has reviewed and analyzed both comment letters and, as discussed in more detail below, has determined to finalize the interim rule without change.

III. Final Rule

Part 750 establishes a comprehensive framework for golden parachute and indemnification payments made by a FICU to an IAP. The intent of the rule

is to prevent the wrongful or improper disposition of FICU assets and inhibit unwarranted rewards to IAPs that can contribute to a FICU's troubled condition. The purpose of the rule is not, however, to prohibit post-employment payments having reasonable business purposes. Accordingly, the rule excludes from the definition of "golden parachute payment" certain qualified retirement plans such as those permitted under § 401 of the IRC. As discussed in the preamble to the final rule, in response to comments on the proposed rule, the NCUA Board (Board) intended to provide similar treatment to retirement plans that are permissible under § 457 of the IRC, which are frequently used by credit unions and other tax exempt organizations.

Plans qualifying as eligible deferred compensation plans under § 457(b) of the IRC exhibit characteristics that are similar to the more common § 401(k) deferred compensation plans that many employers make available to their employees. For example, the amount of income that may be deferred under such a plan is equivalent to that which may be deferred under § 401, which for 2011 is \$16,500. As with § 401 plans, moreover, manipulation of the timing and amount of the payout are also closely circumscribed by law. For example, these plans may not typically provide for an in-service distribution prior to retirement. Accordingly, the Board intended for § 457(b) plans to be treated like § 401 plans and excluded from the definition of golden parachute payment.

Although the preamble to the final rule made reference to plans under subsection (b) and (f) of § 457, it did not provide any substantive discussion concerning the differences between them. In fact, however, § 457 plans that are permissible under subsection (f) are significantly broader and are accorded much greater flexibility in terms of structure, coverage, eligibility, participation, vesting, *etc.* Section 457(f) plans are sometimes referred to as "golden handcuffs" because the contribution rules are generous but there is a risk of forfeiture if the individual leaves prior to retirement. These plans are highly customizable, and can be designed in a broad variety of ways. As such, the intent of the rule has always been that § 457(f) plans must meet the "bona fide" criteria outlined in § 750.1(c) to qualify as exceptions to the otherwise applicable golden parachute restrictions. Because of the limits inherent in § 457(b) and the constraints governing plans offered under that subsection, the Board intended to

specify that only § 457(b) plans are excluded by definition from the term "golden parachute payment".

Accordingly, the interim final rule amended § 750.1(e) to clarify that plans offered by FICUs under § 457(b) of the IRC are specifically excluded from the definition of a prohibited golden parachute payment. Although not specifically excluded under § 750.1(e), certain plans offered under § 457(f) may also be permissible if the plan meets the "bona fide" exemption criteria outlined in § 750.1(c). In other words, all § 457(b) are excluded under the rule; however, § 457(f) plans must meet the "bona fide" criteria outlined in § 750.1(c) to qualify as exceptions to the golden parachute payment definition.

One commenter expressed concern about the amendment and suggested that the provision should specifically exclude § 457(b) plans and any § 457(f) plans that meet the criteria of the "bona fide deferred compensation" definition. This commenter also suggested alternative language for the exception at § 750.1(e)(2), to exclude any payment made pursuant to a deferred compensation plan under § 457(b) "or under section 457(f) * * * if such payment is a "bona fide deferred compensation" plan under § 750.1(c)."

The Board has determined not to adopt this commenter's proposed language because the technical correction made by the interim rule results in the same effect but in a more clear and concise manner. Because § 457(f) plans have the potential for broader flexibility than § 457(b) plans, FICUs could exploit this flexibility to make abusive arrangements for their senior staff. By contrast, § 457(b) plans are, by statutory definition, sufficiently narrow such that additional controls are not necessary. Accordingly, the Board permanently adopts the technical amendment to the golden parachute exception at § 750.1(e) without alteration. The Board emphasizes that § 457(f) plans are not prohibited outright under the rule. Rather, to be permissible such plans must be "bona fide."

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under \$10 million in assets). This final rule provides clarification regarding the applicability of one of the exceptions to otherwise applicable regulatory restrictions. Accordingly, it will not have a

¹ President Obama signed the Plain Writing Act of 2010 (Pub. L. 111-274) into law on October 13, 2010 "to improve the effectiveness and accountability of federal agencies to the public by promoting clear Government communication that the public can understand and use." This preamble is written to meet plain writing objectives.

significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

The Treasury and General Government Appropriations Act, 1999—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, Public Law 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) (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 does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. These technical corrections do not impose any new paperwork burden.

List of Subjects in 12 CFR Part 750

Credit unions, Golden parachute payments, Indemnity payments.

By the National Credit Union Administration Board, this 17th day of November, 2011.

Mary F. Rupp,

Secretary of the Board.

For the reasons discussed above, the National Credit Union Administration confirms as final without change, the interim final rule amending 12 CFR Part 750 published on June 24, 2011, 76 FR 36979.

[FR Doc. 2011-30313 Filed 11-29-11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2011-0994]

RIN 1625-AA08

Special Local Regulations; Orange Bowl International Youth Regatta, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of Biscayne Bay in Miami, Florida during the Orange Bowl International Youth Regatta, a series of sailboat races. The Orange Bowl International Youth Regatta is scheduled to take place from Tuesday, December 27, 2011 through Friday, December 30, 2011. The regatta will be at four separate race courses. Approximately 50 to 200 participants will race on each race course. These special local regulations are necessary to provide for the safety of life on navigable waters during the regatta. The special local regulations establish four race areas, one around each race course. All persons and vessels that are not participating in the regatta are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless authorized by the Captain of the Port Miami or a designated representative. **DATES:** This rule is effective from 9:30 a.m. on December 27, 2011 through 5 p.m. on December 30, 2011. This rule will be enforced daily from 9:30 a.m. until 5 p.m. on December 27, 2011 through December 30, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0994 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0994 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, Coast Guard; telephone (305) 535-8724, email

Jennifer.S.Makowski@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the Orange Bowl International Youth Regatta until October 11, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to regatta participants, participant vessels, spectators, and the general public.

Basis and Purpose

The legal basis for the rule is the Coast Guard’s authority to establish special local regulations: 33 U.S.C. 1233.

The purpose of the rule is to insure safety of life on navigable waters of the United States during the Orange Bowl International Youth Regatta.

Discussion of Rule

From December 27, 2011 through December 30, 2011, the Coral Reef Yacht Club is hosting the Orange Bowl International Youth Regatta on Biscayne Bay in Miami, Florida. The regatta will take place at four separate race courses. Over 600 sailboats are expected to participate in the regatta, with an anticipated 50-200 vessels participating at each race course. Although this event occurs annually, and special local regulations have been promulgated in the Code of Federal Regulations at 33 CFR 100.701, these regulations do not: (1) Establish multiple race areas on Biscayne Bay for the regatta; (2) provide sufficient detail regarding the special local regulations that will be enforced during the regatta; (3) list the correct dates for this year’s regatta; and (4)