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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally-Insured Credit Unions in Liquidation

AGENCY: National Credit Union Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: The National Credit Union Administration (NCUA) is adopting a rule clarifying that as conservator or liquidating agent of a federally-insured credit union, the NCUA Board (Board) will honor a claim for prepayment fees by a Federal Home Loan Bank under the circumstances set forth in the rule.

DATES: Effective February 23, 2001. NCUA welcomes comments on this interim final rule. Comments must be received on or before April 24, 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. You may also fax comments to (703) 518-6319 or e-mail comments to regcomments@ncua.gov. *Please send comments by one method only.*

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

SUPPLEMENTARY INFORMATION: Federally-insured credit unions (FICUs) are eligible for membership at the Federal Home Loan Bank in their district provided they meet certain statutory requirements. 12 U.S.C. 1422(1)(B), 1424. As members of a Federal Home Loan Bank, FICUs may receive long term, secured advances for the purpose

of providing funds for residential loans. *See* 12 U.S.C. 1430(a). Under the Affordable Housing Program, Federal Home Loan Banks "subsidize the interest rate on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates." 12 U.S.C. 1430(j). Federal Home Loan Banks also make advances to members that undertake community-oriented mortgage lending. 12 U.S.C. 1430(i). Under the Community Investment Program, advances to members are "priced at the cost of consolidated Federal Home Loan Bank obligations of comparable maturities, taking into account reasonable administrative costs." *Id.* Therefore, these advances may be available to members at costs lower than alternative sources of funds.

The Board, when acting as conservator or liquidating agent of any FICU, has the power to disaffirm or repudiate contracts or leases (i) to which the credit union is a party; (ii) the performance of which the conservator or liquidating agent, in the conservator's or liquidating agent's discretion, determines to be burdensome; and (iii) the disaffirmance or repudiation of which the conservator or liquidating agent determines, in the conservator's or liquidating agent's discretion, will promote the orderly administration of the credit union's affairs. 12 U.S.C. 1787(c)(1). Repudiation of a contract relieves the Board from performing any unperformed obligations remaining under the contract. Repudiation also entitles the other party to the contract to a claim for damages, which are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the liquidating agent or conservator. *See* 12 U.S.C. 1787(c)(3).

The Federal Credit Union Act establishes an exception to the Board's authority to repudiate contracts entered into by an FICU before the Board is appointed the FICU's conservator or liquidating agent. The Board may not repudiate a contract regarding an extension of credit from any Federal Home Loan Bank to an FICU. 12 U.S.C. 1787(c)(13).

This rule, § 709.12, sets forth the circumstances under which the Board, as conservator or liquidating agent, will honor a claim for prepayment fees by a Federal Home Loan Bank (Bank) when

an FICU in conservatorship or liquidation has an outstanding extension of credit with the Bank. The rule tracks one used by the Federal Deposit Insurance Corporation (FDIC) when federally-insured banks with extensions of credit from a Federal Home Loan Bank are conserved or placed in receivership. *See* 12 CFR 360.2(e). Like the Board, the FDIC has the statutory authority to repudiate contracts when appointed conservator or receiver for a federally-insured bank under section 11(e) of the Federal Deposit Insurance Act. 12 U.S.C. 1821(e). Likewise, the Federal Deposit Insurance Act also carves out an exception for extensions of credit from any Federal Home Loan Bank. 12 U.S.C. 1821(e)(13)(A). By providing these exceptions for Federal Home Loan Banks in both the Federal Credit Union Act and the Federal Deposit Insurance Act, Congress recognized that they have a unique role as special lenders to depository institutions.

Prepayment fees are an integral part of the operations of Federal Home Loan Banks because they issue long term obligations in order to make prudent long term advances to members. The prepayment of long term advances can result in losses to a Bank, depending upon reinvestment opportunities available at the time of such prepayment. 54 FR 19155, May 4, 1989. The rule allows the payment of a prepayment fee to the Bank if set forth in a written contract, provided: (1) That the fee does not exceed the present value of any economic loss suffered by the Bank; and, (2) the collateral is sufficient to pay in full the principal and interest due on secured advances and the applicable prepayment fee.

Interim Final Rule

The NCUA Board is issuing this rule as an interim final rule because there is a strong public interest in assuring that FICUs are in the same position as other depository institutions that obtain advances from Federal Home Loan Banks as soon as possible. This interim rule benefits FICUs with no additional burden by giving them the opportunity to receive advances from Federal Home Loan Banks at a lower cost of funds than may be available from alternative sources. Accordingly, for good cause,

the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice of publication. Although the rule is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comments.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. For purposes of this analysis, credit unions under \$1 million in assets will be considered small entities.

The NCUA Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule allows FICUs that are members of Federal Home Loan Banks to receive advances at lower rates of interest for the benefit of their members without any additional regulatory burden or expense to credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

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 Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this is not a major rule.

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 some state-chartered 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.

Agency Regulatory Goal

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

List of Subjects in 12 CFR Part 709

Credit unions, Liquidations.

By the National Credit Union Administration Board, on February 15, 2001.

Becky Baker,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR part 709 as follows:

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY-INSURED CREDIT UNIONS IN LIQUIDATION

1. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1767, 1786, 1787, 1788, 1789, 1789a.

2. Amend § 709.0 by revising the first sentence to read as follows:

§ 709.0 Scope.

The rules and procedures in this part apply to charter revocations of federal credit unions under 12 U.S.C. 1787(a)(1)(A), (B), the involuntary liquidation and adjudication of creditor claims in all cases involving federally-insured credit unions, the treatment by the Board as conservator or liquidating agent of financial assets transferred in connection with a securitization or participation or of public funds held by a federally-insured credit union, and the allowance of prepayment fees to Federal Home Loan Banks under specified conditions. * * *

3. Add § 709.12 to part 709 to read as follows:

§ 709.12 Prepayment Fees to Federal Home Loan Bank.

The Board as conservator or liquidating agent of a federally-insured credit union in receipt of any extension of credit from a Federal Home Loan

Bank will allow a claim for a prepayment fee by the Bank if:

(a) The claim is made pursuant to a written contract that provides for a prepayment fee but the prepayment fee allowed by the Board will not exceed the present value of the loss attributable to the difference between the contract rate of the secured borrowing and the reinvestment rate then available to the Bank; and

(b) The indebtedness owed to the Bank is secured by sufficient collateral in which a perfected security interest in favor of the Bank exists or as to which the Bank's security interest is entitled to priority under section 306(d) of the Competitive Equality Banking Act of 1987, 12 U.S.C. 1430(e) footnote (1), or otherwise so that the aggregate of the outstanding principal on the advances secured by the collateral, the accrued but unpaid interest on the outstanding principal and the prepayment fee applicable to the advances can be paid in full from the amounts realized from the collateral. For purposes of this paragraph, the adequacy of the collateral will be determined as of the date the prepayment fees are due and payable under the terms of the written contract.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00-ANM-33]

RIN 2120-AA66

Revision of Legal Descriptions of Multiple Federal Airways in the Vicinity of Douglas, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of three Federal airways that use the Douglas, WY, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) in their route structure. Currently, the Douglas VOR/DME and the Converse County, WY, Airport share the same location identifier. The fact that the VOR/DME and the airport are not collocated has led to confusion among users. To eliminate this confusion, the Douglas VOR/DME will be renamed the "Hipsher VOR/DME," and all the airways with "Douglas VOR/DME" included in their legal descriptions will be amended, concurrent with the