List of Subjects in 12 CFR Part 708b

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 708b as follows:

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

1. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1766, 1785, 1786, 1789.

2. In § 708b.301, paragraph (a)(1) is amended by revising the second paragraph of the *Notice of Proposal to Terminate Federal Insurance* and paragraph (b)(1) is amended by revising the third paragraph of the *Notice of Proposal to Merge and Terminate Federal Insurance* to read as follows:

§ 708b.301 Termination of insurance.

(a) * * *

(1) *Notice of Proposal to Terminate Federal Insurance*

* * * * *

If approved, any deposits made by you after the date of termination, either new deposits or additions to existing accounts, will not be insured by the NCUA or any other entity. In the event the credit union fails, these deposits are not insured by the federal government. No provision has been made for alternative insurance, therefore, these deposits will be uninsured.

* * * * *

(b) * * *

(1) *Notice of Proposal to Merge and Terminate Federal Insurance*

* * * * *

Any deposits made by you after the effective date of the merger, either new deposits or additions to existing accounts, will not be insured by the NCUA or any other entity. In the event the credit union fails, these deposits are not insured by the federal government. No provision has been made for alternative insurance, therefore, these deposits will be uninsured. Accounts in the *merging* Credit Union on the date of the merger, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the date of the merger, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

* * * * *

3. In § 708b.302, paragraph (a)(1) is amended by adding two sentences at the end of the second paragraph of the *Notice of Proposal to Convert to Nonfederally-Insured Status,* paragraph (a)(2) is amended by adding a sentence at the end of the second paragraph of the ballot, paragraph (b)(1) is amended by adding two sentences at the end of the second paragraph of the *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status* and paragraph (b)(2) is amended by adding a sentence at the end of the second paragraph of the ballot to read as follows:

§ 708b.302 Conversion of insurance.

(a) * * *

(1) *Notice of Proposal to Convert to Nonfederally-Insured Status*

* * * * *

* * * The insurance provided by the National Credit Union Administration, an independent agency of the United States, is backed by the full faith and credit of the United States government. The private insurance you will receive from _____ is not guaranteed by the federal or any state government.

(2) * * * The private insurance provided by _____ is not backed by the full faith and credit of the United States government as is the federal insurance provided by the National Credit Union Administration.

* * * * *

(b) * * *

(1) *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status*

* * * * *

* * * The insurance provided by the National Credit Union Administration, an independent agency of the United States, is backed by the full faith and credit of the United States government. The private insurance you will receive from _____ is not guaranteed by the federal or any state government.

(2) * * * The private insurance provided by _____ is not backed by the full faith and credit of the United States government as is the federal insurance provided by the National Credit Union Administration.

* * * * *

[FR Doc. 97–31502 Filed 12–3–97; 8:45 am]

BILLING CODE 7535–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 211

RIN 3220–AB23

Creditable Railroad Compensation

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board hereby proposes to amend its regulations to limit the crediting of pay for time lost to periods prior to the judgment or agreement establishing that payment or in the case of pay for time lost not attributable to a judgment or settlement, prior to the date of payment.

DATES: Comments must be received on or before February 2, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611, telephone 312–751–4513, TTD 312–751–4701.

SUPPLEMENTARY INFORMATION: Payments made for periods during which an employee is absent from the active service of an employer are considered to be ''pay for time lost'' and creditable compensation under the Railroad Retirement Act. Pay for time lost includes pay received due to an injury or due to loss of earnings attributable to the employee being placed in a position paying less money. Employers are required to allocate pay for time lost to the months in which the time was actually lost. Pursuant to section 211.3 of the current regulations, the Board will accept an allocation of pay for time lost for periods after the judgment or settlement, and after the payment is made. The practice has been costly to the railroad retirement system in that taxes under the Railroad Retirement Tax Act are imposed on railroad compensation at the time of payment up to the maximum taxable amount for the year in which the payment is made. Accordingly, if a personal injury suit is settled in 1997 and the railroad agrees to pay the employee $300,000 to be allocated as pay for time lost over the period 1997 through 2002 with $50,000 being designated to each year as pay for time lost, the employee would receive six years of retirement credit, but taxes would cover only one year of those additional credits.

There is no requirement in the statute that pay for time lost be creditable prospectively and, in the view of the majority of the Board, to allow prospective crediting of pay for time lost cannot be justified in view of the additional, potentially large costs to the system.

Section 1(h)(2) of the Railroad Retirement Act requires that pay for time lost must be paid with respect to an identifiable period of absence. This language, in the view of a majority of the Board, suggests that pay for time lost should be credited only to a known period of absence in the past. It is impossible to predict whether or not an

employee will remain absent from work in the future as a result of injury; accordingly, there is no truly identifiable period for prospective crediting of pay for time lost. Moreover, to allow parties to private litigation to pass on a portion of the costs of litigation to a Federal benefit program simply makes no sense.

Based on its review of the statutory language and the legislative history, a majority of the Board, Labor Member dissenting, proposes to amend its regulations to prohibit crediting of pay for time lost beyond the date of the judgment or settlement or, in the absence of a judgment or settlement, beyond the date of payment. The proposed regulation excepts from these restrictions the crediting of deemed service months pursuant to section 3(i)(4) of the Railroad Retirement Act. That section provides that an employee who has performed service for compensation in less than twelve months of a calendar year, but has received compensation in excess of the amount that may be credited to the months of actual service, may have the excess credited to an additional month or months in that same year.

The Labor Member has made a proposal that he believes resolves the financial problem with the existing procedure by requiring that taxes be paid in each of the years for which pay for time lost credit is sought. While the majority appreciates the Labor Member's efforts in attempting to resolve the problems with the current policy, the majority does not believe that the payment of taxes will fully fund the additional benefit payment and believes that the better approach would be to scrap what it believes to be a bad policy rather than tinker with it.

Employees who negotiate prospective pay for time lost credits do so because without the additional credits they would not meet the service requirement of 20 years for an occupational disability annuity. Accordingly, without the prospective pay for time lost credits, no benefits would be payable to these employees until they reach age 60 or become totally and permanently disabled. Railroad retirement taxes paid for several years of pay for time lost will not cover the additional costs to the system of the occupational disability annuities that otherwise would not have been paid. Moreover, under the regulations, a month of pay for time lost credit may be granted based on an allocation of compensation to the month of at least 10 times the employee's daily wage rate. Accordingly, taxes would be payable on an allocation of as little as fifty percent of the employee's normal monthly compensation, but the employee would receive a full month credit for retirement purposes. The Labor Member's proposal does nothing to address this shortfall. The majority simply does not believe that it is appropriate to use trust fund moneys to subsidize the costs of private litigation.

Finally, the majority views the Labor Member's proposal as, in effect, allowing employees to purchase retirement credit. In the view of the majority, this is simply bad policy.

Views of the Labor Member of the Board

Section 1(h) of the Railroad Retirement Act authorizes the crediting of pay for time lost as compensation insofar as the employee and his or her railroad employer agree to that crediting in connection with an on-the-job injury. That provision thereby encourages the settlement of disputes and permits the allocation of loss between parties, in whatever way those parties themselves see fit and so negotiate, see 211.3(b) of the Board regulation 20 CFR § 211.3(b).

The majority, by limiting the employer's ability to provide for future lost wages as the result of an on-the-job injury, as proposed in this rule, interferes with an employer's and employee's ability to settle Federal Employers' Liability Act (FELA) claims. This needless intrusion into FELA disputes by the Board will only increase litigation of disputes which could easily have been settled. It also prevents personal injury settlements from achieving the goal of making injured employees, as far as possible, whole.

The majority of the Board states that pay for time lost is being credited prospectively, after the date of settlement or judgment (or, in the absence of a settlement or judgment, after the date of payment), without taxes under the Railroad Retirement Tax Act being paid for those payments. This can be true where pay for time lost in the future is compensated for by a lump sum payment at the time of settlement. The Labor Member notes the majority says the current procedures are costly, but never states what that cost is, as requested by OMB. Nevertheless, the Labor Member has a proposal, explained below, that directly addresses this concern.

The majority also suggests that the statute, by providing that pay for time lost may only be credited to an identifiable period of lost time, precludes prospective crediting of pay for time lost. This view reads more into the statute than is actually there. The Labor Member agrees with the majority that pay for time lost may be credited only to an identifiable period of lost time. That, he notes, does not mean that the statute precludes, in any way, the crediting of pay for time lost to a period of lost time after the date of settlement where agreed to by the parties. This was recognized by the Board as early as 1947 in an opinion by the Board's General Counsel, L–47–146. Indeed, the cases where pay for time lost is allocated into the future are generally those where the employee is so badly injured that he or she will never again be able to work in the railroad industry. The only way the employee may be made whole in such cases is by paying the employee for future lost wages and providing the retirement credits that would accrue from such future lost wages. As noted above, the Labor Member believes that the past policy of allowing the crediting of pay for time lost into the future has facilitated out-of-court settlement of disputes and has served the interests not only of employees, but also of employers. Although it is the opinion of the Labor Member that the past policy is good policy, he believes that the problem with prospective crediting of pay for time lost noted by the majority can be addressed by simply prohibiting pay for time lost in the future to be paid in the form of a lump sum. The Labor Member proposes that prospective crediting of pay for time lost be limited to periodic payments made in the year or years for which the credit is sought and where the employment taxes are paid with respect to those payments. Such payments are in the nature of wage continuation payments or dismissal payments which are clearly compensation under the Act, see 20 CFR 211.9.

For example, John Doe and ABC Railroad enter into a settlement agreement in July 1996 pursuant to which John Doe retains an employment relationship with ABC Railroad through 1998 and ABC Railroad agrees to pay John Doe pay for time lost in the amount of $150,000 for the years 1996 ($50,000), 1997 ($50,000), and 1998 ($50,000). ABC issues a check to John Doe in 1996 for $50,000, minus the employee tax under the Railroad Retirement Tax Act, and pays the employer tax and the withheld employee tax under the Railroad Retirement Tax Act. ABC Railroad makes the same payments to John Doe on January 1, 1997 and January 1, 1998. John Doe would, under the Labor Member's proposal, receive credit for pay for time lost in 1996, 1997, and 1998. If ABC Railroad were to pay the $150,000 in a lump sum in 1996, John Doe would receive credit only in 1996. The payments in the

above example would be reported on the Employer's Annual Report of Compensation required under 20 CFR 209.6 along with other wages paid to other employees that year. Pay for time lost payments would be indistinguishable from regular wages. The Labor Member believes that his proposal would address the concern of the majority by fully funding the prospective pay for time lost credits while continuing to allow railroad employees and railroad employers to use pay for time lost allocations in a positive way to resolve disputes.

With the modification he suggested, the Labor Member feels there is no further justification in the majority's position on this regulation. The majority has indicated that it is better to scrap a ''bad'' regulation rather than ''tinker'' with it. The Labor Member believes that making employees who are injured in service to the rail industry whole is not tinkering. It is a moral obligation.

The majority also believes that the Labor Member's proposal amounts to allowing employees to purchase retirement credits. This is true. It would be allowed, however, for only those employees who have demonstrated through long years of service a career commitment to the rail industry, and then, only when they have been severely injured or otherwise incapacitated while performing rail service. Finally, it would be further limited to only those in the foregoing category who receive compensation from a settlement based on a conviction of both the railroad and the employee that the railroad would probably be found negligent in causing the employee's injury.

The majority points out that the additional tax paid for several years of pay for time lost will not finance the additional benefits which would be paid under the Labor Member's proposal. The Labor Member believes that this is true but irrelevant. Completely aside from the obligation to make injured employees whole, whatever the cost, is the well established, clearly understood, and universally accepted feature of social insurance programs that the contributions paid by a disabled participant will rarely ever finance the actual benefits paid to such individual. Covering the cost of such eventualities from contributions of the remaining participants, including the negligent railroads, is the purpose of an insurance program. Disability benefits would virtually never be paid by any program under the condition laid down in this regulation by the Board majority.

The majority notes that ten times the employee's daily rate of pay is too low an amount for a month of compensation. The Labor Member points out that an employee who is not injured need perform only one hour of service to get a month of railroad retirement credit. However, whenever low compensation months are used to obtain additional service, the compensation average on which the annuity is based is depressed, producing a lower benefit. In any event, the ten times daily pay rate rule has been set by regulation by a previous Board after full and careful review of the issue. The issue ought not be reopened now.

Finally, the Labor Member notes that the majority references ''employees who *negotiate*'' pay for time lost. This terminology clearly acknowledges that, under current procedures, prospective credit can be given only when the railroads have agreed to do so. Thus, the railroads already control the use of this procedure through their right to simply refuse to go along with prospective crediting. Therefore, there is no need for the regulation change herein proposed by the Board majority.

The Office of Management and Budget has determined that this is a significant regulatory action under Executive Order 12866. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 211

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 continues to read as follows:

Authority: 45 U.S.C. 231(f).

2. Section 211.3 is amended by adding paragraph (c):

§ 211.3 Compensation paid for time lost.

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, pay for time lost may not be credited to any period after the date of the judgment or settlement agreement providing pay for time lost. If the payment is not the result of a judgment or settlement, pay for time lost may not, except as provided in paragraph (c)(2) of this section, be credited to any period after the date of payment.

(2) Pay for time lost may be creditable as deemed service under section 3(i)(4) of the Railroad Retirement Act in the year in which either the judgment or settlement occurred or in the case of pay for time lost not attributable to a judgment or settlement, in the year in which the payment occurred.

Dated: November 21, 1997.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–31725 Filed 12–3–97; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105160–97]

RIN 1545–AV17

Qualified Nonrecourse Financing Under Section 465(b)(6); Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 465(b)(6) regarding qualified nonrecourse financing.

DATES: The public hearing originally scheduled for Wednesday, December 10, 1997, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 465 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Wednesday, August 13, 1997 (62 FR 43295), announced that the public hearing on proposed regulations under section 465 of the Internal Revenue Code would be held on Wednesday, December 10, 1997, beginning at 10:00 a.m., in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Wednesday, December 10, 1997 is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–31806 Filed 12–3–97; 8:45 am]

BILLING CODE 4830–01–P