

Rules and Regulations

Federal Register

Vol. 64, No. 227

Friday, November 26, 1999

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its regulations that implement the Truth in Savings Act (TISA). This interim rule allows credit unions to deliver in electronic form periodic statement disclosures required by NCUA's regulations if the member agrees to this form of delivery.

DATES: This rule is effective November 26, 1999. Comments must be received on or before January 25, 2000.

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 boardmail@ncua.gov. Please send comments by one method only.

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

SUPPLEMENTARY INFORMATION:

Background

Part 707 of NCUA's regulations implements TISA. 12 CFR part 707. The purpose of part 707 and TISA is to assist members in making meaningful comparisons among share accounts offered by credit unions. Part 707 and TISA require, among other things, disclosure of yields, fees and other terms concerning share accounts to members at account opening, upon

request, when changes in terms occur and in periodic statements. Many of these disclosures must be written. Many laws that require information to be in writing consider information in electronic form to be written. Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

The Board of Governors of the Federal Reserve System (Federal Reserve) has issued an interim rule that allows depository institutions to deliver periodic statement disclosures required by its Regulation DD in electronic form if the consumer agrees to this form of delivery. 64 FR 49846 (September 14, 1999). In doing so, the Federal Reserve has stated that electronic delivery of these kind of disclosures will reduce paperwork and costs for institutions and may benefit consumers by allowing them to receive their periodic account statements, including required disclosures, more quickly and in a more convenient form.

The Federal Reserve's interim rule does not permit a depository institution to deliver periodic statement disclosures electronically unless the consumer agrees to this method of delivery, but does not specifically discuss what constitutes a valid agreement between the consumer and depository institution. The Federal Reserve has stated that whether the parties have an agreement would be determined by state law, but does not intend to require a formal contract. It has also stated that consumers should be clearly informed when they are consenting to electronic delivery of periodic statements and disclosures. The Federal Reserve has further stated that the periodic statement must be provided in a form that can be displayed as visual text and must be clear and conspicuous and in a form that the consumer can retain.

The Federal Reserve's interim rule applies only to periodic statement disclosures. Other disclosures required by TISA and Regulation DD may not be delivered in electronic form. The Federal Reserve, however, has issued a proposal addressing electronic delivery of these other disclosures. 64 FR 49740 (September 14, 1999).

TISA requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve. 12 U.S.C. 4311(b). In doing so, NCUA is to

take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. NCUA's interim rule is substantially similar to that issued by the Federal Reserve.

Interim Final Rule

The NCUA Board is issuing this rule as an interim final rule because there is a strong public interest in having in place consumer oriented rules that are consistent with those promulgated by the Federal Reserve. Additionally, NCUA is required to issue rules substantially similar to those issued by the Federal Reserve within ninety days of the effective dates of the Federal Reserve's rules. 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 proposed regulation may have on a substantial number of small credit unions, meaning those under \$1 million in assets.

The NCUA has determined and certifies that this interim rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that the amendments to part 707 provide credit unions with an optional and alternative method of delivering certain required disclosures. Credit unions are free to choose not to utilize this alternative. Other credit unions, who choose to use this alternative, will likely realize a reduction in their costs of delivery as a result. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the amendments to part 707 do not increase

paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope." This interim rule will not have a 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 interim rule does not constitute a significant regulatory action for purposes of the executive order.

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 is reviewing this rule. We are awaiting its determination whether this is a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 707

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

By the National Credit Union Administration Board on November 18, 1999.
Becky Baker,
Secretary of the Board.

For the reasons set forth above, 12 CFR part 707 is amended as follows:

PART 707—TRUTH IN SAVINGS

1. The authority citation for part 707 continues to read as follows:

Authority: 12 U.S.C. 4311.

2. Section 707.6 is amended by revising the heading and adding a new paragraph (c) to read as follows:

§ 707.6 Periodic statement disclosures.

* * * * *

(c) *Electronic communication.* (1) *Definition.* The term "electronic

communication" means a message transmitted electronically between a member and a credit union in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between credit union and member.* A credit union and a member may agree that the credit union will send by electronic communication periodic statement disclosures required by § 707.6. Periodic statement disclosures sent by electronic communication to a member must comply with § 707.3 and any applicable timing requirements contained in this part.

[FR Doc. 99-30691 Filed 11-24-99; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PART 711

Management Official Interlocks

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) revises its rule regarding management interlocks. The final rule conforms to recent statutory changes, modernizes and clarifies the rule, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements. The final rule was drafted through a coordinated effort among the following other federal financial regulatory agencies: the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), (collectively "the banking agencies").

EFFECTIVE DATE: This rule is effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201-3208) (the Interlocks Act) generally prohibits financial institution management officials from serving simultaneously with two unaffiliated depository institutions or their holding

companies (depository organizations). The Interlocks Act exempts interlocking arrangements between credit unions and, therefore, in the case of credit unions, only restricts interlocks between credit unions and other institutions—banks and thrifts and their holding companies.

The scope of the prohibition depends on the size and location of the involved organizations. For instance, the Interlocks Act prohibits unaffiliated depository organizations, regardless of size, from establishing an interlock if both organizations have an office in the same community (the community prohibition). Unaffiliated depository organizations may not form an interlock if both organizations have total assets of \$20 million or more and are located in the same Relevant Metropolitan Statistical Area (RMSA) (the RMSA prohibition). The Interlocks Act also prohibits unaffiliated depository organizations, regardless of location, from establishing an interlock if each organization has total assets exceeding specified thresholds (the major assets prohibition).

Section 2210 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPR Act) amended §§ 204, 206, and 209 of the Interlocks Act (12 U.S.C. 3203, 3205 and 3207).¹ Section 2210(a) of the EGRPR Act amended the Interlocks Act by changing the thresholds for the major assets prohibition under 12 U.S.C. 3203. Prior to the EGRPR Act, management officials of depository organizations with total assets exceeding \$1 billion were prohibited from serving as management officials of unaffiliated depository organizations with assets exceeding \$500 million, regardless of the location of the organizations or their depository institution affiliates.² The EGRPR Act raised the thresholds to \$2.5 billion and \$1.5 billion, respectively. The revision also authorized NCUA to adjust the thresholds by regulation, as necessary to allow for inflation or market conditions.

Section 2210(b) of the EGRPR Act permanently extended the grandfather and diversified savings and loan holding company exemptions in 12 U.S.C. 3205. Prior to the EGRPR Act, these exemptions were subject to a 20-year time limit beginning November 10,

¹ The OCC, the Board, the FDIC, and the OTS, (collectively, the Agencies) recently published final rules similar to NCUA to implement the EGRPR Act. 51673 (September 24, 1999).

² The Agencies, and NCUA, define "total assets" of diversified savings and loan holding companies and bank holding companies exempt from § 4 of the Bank Holding Company Act to include only the assets of their depository institution affiliates. See 12 CFR 26.2(r), 212.2(q), 348.2(q), 348.2(q), 711.2(r), and 563f.(r).