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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AD94

Remittance Transfers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

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 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: Effective on November 30, 2011 NCUA is adopting the interim final rule published on July 27, 2011, 76 FR 44761, without change.

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

I. Background ¹

Why is NCUA adopting this rule?

Since 2006, FCUs have had the authority to provide certain financial services to all persons within their

fields of membership under the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act), Public Law 109-351. 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. As a result, NCUA created a rule, § 701.30, to address an FCU’s authority to provide financial services to persons within its field of membership. 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 electronic funds transfer (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 Board of Governors of the Federal Reserve proposed a remittance transfer rule, which addresses disclosure requirements and error resolution, and provides a detailed analysis of the services offered by remittance transfer providers. 99 FR 29902 (May 23, 2011). The Consumer Financial Protection Bureau assumed responsibility for issuing the final remittance transfer rule after the close of the comment period on July 22, 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.

What changes did the interim final rule make?

In the interim final rule, the NCUA Board (Board) amended § 701.30 to directly track the statutory provisions of Section 1073 of the Dodd-Frank Act. 76 FR 44761 (Jul. 27, 2011). The Board added remittance transfers as defined by Section 919 of the EFTA as an example of permissible money transfer instruments in paragraph (a). The Board also amended paragraph (b) to remove the language referring to an FCU’s receipt of international and domestic EFTs.

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.

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]

BILLING CODE 7535–01–P

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