Rules and Regulations

Federal Register
Vol. 64, No. 76
Wednesday, April 21, 1999

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule that incorporates into its regulations the agency's longstanding interpretation that federal credit unions (FCUs) are authorized, within limits, to make charitable contributions and donations. NCUA seeks to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations.

DATES: This rule is effective May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1998, the NCUA Board requested comments on a proposed rule to incorporate into NCUA regulations the requirements of Interpretive Ruling and Policy Statement 79–6, Donations/ Contributions (IRPS 79–6). 63 FR 57942, October 29, 1998. Tracking IRPS 79–6, the proposed rule permitted an FCU to make charitable contributions to a recipient that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code (501(c)(3) organization) and located in or conducting its activities in a community in which the FCU has a principal place of business. 26 U.S.C. 501(c)(3) (1998). The proposed rule also permitted FCUs to make charitable contributions to a 501(c)(3) organization that operates primarily to promote and develop credit unions. Finally, the proposed rule provided that an FCU's board of directors must approve charitable contributions based on a determination that the contributions are in the best interests of the credit union and are reasonable given the financial condition of the credit union.

Summary of Comments

The NCUA Board received thirty-four comment letters regarding the proposal: three from national trade associations; seven from credit union leagues; twenty-three from FCUs; and one from a state-chartered credit union.

Comments on Proposed Section 701.25(a)

Twenty-six commenters stated that limiting donation recipients to 501(c)(3) organizations is too restrictive and could exclude organizations and causes that are otherwise worthy of receiving donations from FCUs. One commenter suggested broadening the 501(c)(3) restriction by defining eligible recipients as ''organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code.'' Revised Code of Washington 31.12.402(20). We note that, while Washington state law does not require that recipients are tax exempt organizations under 501(c)(3), it requires credit unions to work with community leaders and limits donations to ''efforts to improve areas where their [credit union] members reside.''

Since issuance of IRPS 79–6, the NCUA has viewed the legal authority for FCUs to make contributions as ''an activity incidental to an FCU's business'' under the provision of the FCU Act that authorizes FCUs ''to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.'' 44 FR 56691 (Oct. 2 1979); 12 U.S.C. 1757(17). An FCU's purpose, as a nonpropfit cooperative, is to benefit its members by ''promoting thrift among its members and creating a source of credit for provident or productive purposes.'' 12 U.S.C. 1752(1). Prior to issuance of IRPS 79–6, the NCUA had permitted FCUs to make donations only where the FCU would derive a direct benefit. While IRPS 79–6 broadened an FCU's ability to make contributions by permitting contributions for ''diverse, charitable, recreational and educational needs of the public,'' it limited permissible donations to 501(c)(3) organizations. The discussion accompanying IRPS 79–6 specifically prohibited contributions for candidates to league or trade association positions or for political office and cautioned FCUs about the applicability of the conflict of interest provisions of the FCU bylaws.

The range of organizations that qualify as 501(c)(3) organizations is very broad, permitting donations to community chests and religious, charitable, scientific, and educational organizations, institutions and foundations. In addition, the 501(c)(3) designation insures a degree of credibility and independence in the exercise of the board of directors' decision as fiduciaries for member funds. These factors are important given that the funds an FCU will use for contributions would otherwise be available for dividends to members who, in turn, could use their dividends to make their own decisions about charitable giving.

NCUA acknowledges that there may be cases where an FCU may want to contribute to a worthy cause or activity that is not part of or sponsored by a 501(c)(3) organization and that boards of directors should have the discretion to do so. Examples that appear appropriate would be good will, scholarships, not for profit projects as contributing to a community sports team, local clean-up projects, or community festivals or fairs. Accordingly, the final rule permits FCUs to make donations to recipients without regard to their status as 501(c)(3) organizations. The reasonableness of a donation will depend on the size and financial condition of the FCU. Finally, FCUs should be aware that, while the final regulation does not require that recipients be 501(c)(3) organizations, the regulation is not authority for contributions to candidates for a trade association or credit union league office or for other political contributions which, as noted in the preamble to the proposed regulation, are governed by the Federal Election Campaign Act (2 U.S.C. 441b).

Twenty-one commenters stated that limiting donation recipients to

organizations that are located in or conduct their activities in a community in which the FCU has a principal place of business is too restrictive and could exclude organizations and causes that are otherwise worthy of receiving donations from FCUs. The typical examples noted by commenters were organizations serving victims of distant natural disasters such as hurricanes or earthquakes and well-known national organizations that may not have a local office near the FCU. Most of these commenters favored removing the restriction from the regulation while others only suggested that it be broadened to include donation recipients located or conducting activities anywhere the FCU has members. The final rule, consistent with IRPS 79–6 and the proposed rule, permits contributions to national charitable organizations such as the Red Cross which, as needed, conduct activities in the community where the credit union is located and, therefore, would qualify as permissible recipients.

One commenter noted that the proximity requirement is particularly restrictive for some community chartered credit unions, especially those in rural areas. NCUA believes that any organization located or conducting activities within the geographic boundaries of a community chartered credit union is, by definition, located in the community in which the FCU has a principal place of business and would be eligible to receive contributions under the final regulation. To provide additional flexibility and avoid questions that could arise about whether a particular office or branch of an FCU is a ''principal'' place of business, the Board has decided to delete the word ''principal'' from this description in the final rule. By stating in the final regulation that a recipient be located or conduct activities in a community where the FCU has a place of business, the Board means a branch or office of the FCU. Place of business would not, however, include an ATM location.

Another commenter noted that members of some multiple group FCUs are spread over large geographic areas and contended that there may be members located far from any of the FCU's principal places of business. Credit unions generally locate their places of business where a relatively significant number of their members will have access to services. NCUA recognizes an FCU's interest in serving communities where its members reside or carry on their activities through charitable donations and believes there should be flexibility in construing the term ''community.'' Donating to recipients in areas where relatively few members are located, however, would not serve the needs of the FCU's community. NCUA believes that limiting donation recipients to organizations located in or conducting activities in a community in which the FCU has a place of business helps to ensure that the FCU's charitable donations will be used to serve the needs of communities where its members are located.

Finally, without regard to the location of the organization, NCUA has maintained in the final regulation the provision from the proposed rule that permits FCUs to make charitable donations to organizations that operate primarily to promote and develop credit unions even if the organization is not located or does not conduct activities in a community where the FCU has a place of business. For these contributions to be permissible, the final rule retains the requirement that these organizations be 501(c)(3) organizations.

Comments on Proposed Section 701.25(b)

Twelve commenters suggested that an FCU's board of directors should be permitted to approve a budget for charitable donations and delegate authority to other FCU officials to allocate these funds. The preamble to the proposed rule stated that this would be an appropriate approach. Some commenters suggested including this in the regulation and the final rule incorporates this provision. Seven other commenters suggested that an FCU's board of directors should be permitted to delegate authority to make charitable donations to other FCU officials, including complete discretion to determine donation amounts without the board approving a budget for this purpose. While delegation of the approval of the recipients of charitable donations within an FCU board-approved budget category is permitted, the NCUA Board has rejected complete delegation without a budget item being approved by the FCU's board because it believes that an FCU's decision as to the amount of donations is a significant one that warrants the consideration of its board of directors.

Other Comments

Ten commenters stated that NCUA oversight of contributions and donations is more appropriately accomplished through guidelines, as opposed to regulations. Four commenters stated that charitable giving should not be the subject of NCUA oversight at all. The NCUA Board notes that FCUs do not have the express authority to make contributions or donations. IRPS 79–6 was a formal ruling by the NCUA Board regarding the incidental power of FCUs that has permitted them to make donations and contributions. As noted in the preamble to the proposed rule, NCUA's foremost intention in incorporating IRPS 79–6 into its regulations is to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations.

The NCUA notes that this final rule provides broad discretion and flexibility for FCUs in determining the amount, the administration, and recipients for contributions but the incidental power to make contributions is not unlimited. The NCUA believes that contributions and donations may raise safety and soundness concerns and deserve regulatory oversight. The limitations and requirements in the final rule balance the interests of FCU members with the responsibility of FCU boards of directors to exercise their fiduciary responsibility to make independent and prudent decisions about contributions and donations.

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 (primarily those under $1 million in assets). The NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule does 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. The final rule only applies to federal credit unions. NCUA has determined that the proposed amendment does not constitute a significant regulatory action for purposes of Executive Order 12612.

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 rule does not constitute a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Charitable contributions, Credit unions.

By the National Credit Union Administration Board on April 15, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Part 701 is amended by adding § 701.25 to read as follows:

§ 701.25 Charitable contributions and donations.

(a) A federal credit union may make charitable contributions and/or donate funds to recipients not organized for profit that are located in or conduct activities in a community in which the federal credit union has a place of business or to organizations that are tax exempt organizations under Section 501(c)(3) of the Internal Revenue Code and operate primarily to promote and develop credit unions.

(b) The board of directors must approve charitable contributions and/or donations, and the approval must be based on a determination by the board of directors that the contributions and/or donations are in the best interests of the federal credit union and are reasonable given the size and financial condition of the federal credit union. The board of directors, if it chooses, may establish a budget for charitable contributions and/or donations and authorize appropriate officials of the federal credit union to select recipients and disburse budgeted funds among those recipients.

[FR Doc. 99–9931 Filed 4–20–99; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

Federal Aviation Administration Policy on Enforcement of the Hazardous Materials Regulations: Penalty Guidelines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: General statement of policy.

SUMMARY: This document states that FAA policy on determining the sanction amounts in FAA enforcement actions addressing violations of the Department of Transportation Hazardous Material Regulations (HMR). This policy statement provides guidance for agency personnel in the exercise of the FAA's prosecutorial discretion in enforcement cases concerning transportation of hazardous materials by air. The guidance should aid in analysis of the facts and circumstances of each case so as to arrive at an appropriate sanction in light of the statutorily defined penalty considerations. The analytical framework should also promote a relative consistency in determining civil penalties for violations of the HMR.

EFFECTIVE DATE: April 14, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Wilkening, Office of Civil Aviation Security, Dangerous Goods and Cargo Security Division, telephone: (202) 267–9864, facsimile (202) 267–5760, email: Bill.Wilkening@faa.gov, mailing address: ACO–800, 800 Independence Avenue, S.W., Washington, D.C. 20591, or Allan H. Horowitz, Enforcement Division, Office of the Chief Counsel, telephone (202) 267–3137, facsimile (202) 267–5106, email: *Allan.Horowitz@faa.gov*, mailing address: AGC–300, 800 Independence Avenue, S.W., Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION:

Background

Congress determined that the unregulated transportation of hazardous materials constitutes a threat to public safety in all forms of transportation. Congress addressed that threat in 1974 by enacting the Hazardous Materials Transportation Act (HMTA). By 1990, Congress determined that effective enforcement of the HMTA required more severe action, and enacted the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law No. 101–615, 1990 U.S. Code Congress. & Admin. News 104 Stat. 4605. The primary effect of this 1990 revision of the HMTA was to raise the maximum civil penalty for violation of any regulation enacted under the HMTA to $25,000, and, for the first time, to require a $250 minimum penalty for any such violation. The HMTA was recodified in 1994 and is now referred to as the ''Federal hazardous material transportation law,'' 1994 U.S. Code Congress. & Admin. News 108 Stat. 759, codified at 49 U.S.C. 5101–5127. In the 1994 recodification, Congress specifically stated that the recodification created no substantive change to the earlier form of the statute.

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, provides a mechanism for adjustments for monetary civil penalties for inflation in order to maintain the deterrent effect of monetary civil penalties and promote compliance with the law. Under the statute, the new civil penalty maximums cannot be applied unless they are implemented by regulation. On December 20, 1996, the FAA published a final rule (61 FR 6744), implementing the statute for each civil penalty subject to the FAA's jurisdiction. On January 21, 1997, the FAA published a correction to the final rule (62 FR 4134). The final rule is codified at 14 CFR Part 13, Subpart H. Pursuant to 14 CFR 13.305(d), the maximum civil penalty that may be assessed for a violation of the Federal hazardous material law or a hazardous material regulation is now $27,500.

Congress assigned the responsibility for the enforcement of the Federal hazardous material transportation law to the Secretary of Transportation. Within the Department of Transportation, the Research and Special Programs Administration (RSPA) adopts the Hazardous Materials Regulations (HMR), 49 CFR parts 171 through 178, which govern the transportation of hazardous materials (Hazmat). Although RSPA has some enforcement responsibilities, the responsibility for enforcing the HMR with respect to civil aviation is delegated by the Secretary of Transportation to the FAA. 49 CFR 1.47(k).

The HMR set forth regulations for the transportation of Hazmat. A knowing violation of the statute or of the HMR can support the assessment of a civil