

In our December 1999 interim rule, we specifically invited comments concerning the potential economic effects of that interim rule on small entities. In particular, we requested information that would enable us to determine the number and kind of small entities that might incur benefits or costs from the implementation of the interim rule, including the new treatments for premises and regulated articles contained in that interim rule. We did not receive any comments. Based on the available information, the economic effect of the actions taken in our December 1999 and June 2000 interim appears to be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rules that amended 7 CFR part 301 and that were published at 64 FR 52211–52212 on September 28, 1999; 64 FR 71267–71270 on December 21, 1999; 65 FR 20705–20706 on April 18, 2000; and 65 FR 37005–37006 on June 13, 2000.

**Authority:** 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 27th day of July 2001.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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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:** Final rule.

**SUMMARY:** The National Credit Union Administration (NCUA) is issuing a final 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:** The rule is effective September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:** The Board issued an interim final rule addressing a statutory exception to the Board's repudiation powers, when acting as a conservator or liquidating agent, for extensions of credit from a Federal Home Loan Bank to a federally-insured credit union. 66 FR 11229 (Feb. 23, 2001). The final rule is identical to the interim final rule except for one minor technical amendment that corrects an inaccurate statutory citation.

Federally-insured credit unions (FICUs) are eligible for membership at the Federal Home Loan Bank (FHLB) in their district provided they meet certain statutory requirements. 12 U.S.C. 1422(12)(B), 1424. As a member of an FHLB, an FICU may obtain a variety of advances for the purpose of providing funds for housing loans. *See* 12 U.S.C. 1430(a), (j).

The Board, when acting as a conservator or liquidating agent of an FICU, has the discretion to disaffirm or repudiate contracts or leases (i) to which the FICU is a party; (ii) the performance of which the Board determines to be burdensome; and (iii) the disaffirmance or repudiation of which the Board determines will promote the orderly administration of the FICU's affairs. 12 U.S.C. 1787(c)(1). 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 FHLB to an FICU. 12 U.S.C. 1787(c)(13).

The final rule sets forth the circumstances under which the Board, as conservator or liquidating agent, will honor a claim for prepayment fees by an FHLB when an FICU has an outstanding extension of credit with the FHLB. The rule allows the payment of a prepayment fee to an FHLB 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 FHLB; and, (2) the collateral is sufficient to pay in full the principal and interest due on secured advances and the applicable prepayment fee.

The rule tracks one used by the Federal Deposit Insurance Corporation (FDIC) when federally-insured banks with extensions of credit from an FHLB 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 bank under section 11(e) of the Federal Deposit Insurance Act, but it is prohibited from repudiating extension of credit agreements with FHLBs. 12 U.S.C. 1821(e).

#### Comments

The comment period ended on April 24, 2000. The Board received eight comments on the interim final rule. One credit union, one national credit union trade group, three state credit union leagues, one corporate credit union, one corporate credit union trade group and an association representing state regulators nationwide submitted comments. Of the commenters who commented on the general merits of the rule, all supported the Board's adoption of the rule. One commenter noted that the statutory provision that prohibits the Board from repudiating terms of a loan agreement with a FHLB is adequate without a rule. Two commenters stated that the rule places credit unions on equal footing with other depository institutions that obtain advances from FHLBs. One commenter specifically mentioned that prior to the rule, certain FICUs could not obtain long-term advances from the FHLB in their district.

Five commenters requested the Board extend the application of the rule to loan advances from corporate credit unions. One expressed concern that the rule shows a preference for FHLBs, but acknowledged that the rule is consistent with the statutory prohibition. This commenter noted that corporate credit

unions, like FHLBs, make long-term advances to members and may suffer opportunity or real losses from prepayments. Two commenters asked that the Board recognize the role of corporates, in the credit union movement and as liquidity providers for natural-person credit unions, by honoring their claims for prepayment fees.

The Board may consider the comments regarding extensions of credit by corporate credit unions in another rulemaking. The Board issued § 709.12 as an interim final rule based on having made the requisite findings for issuance of an interim final rule as required by the Administrative Procedure Act. 5 U.S.C. 553. The Board believes an amendment of Part 709 limiting the Board's authority as conservator or liquidating agent to repudiate corporate credit union advances would require an opportunity for public notice and comment.

## 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.

### List of Subjects in 12 CFR Part 709

Credit unions, Liquidations.

By the National Credit Union Administration Board, on July 26, 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. Revise § 709.12 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), 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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## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 712**

#### **Credit Union Service Organizations (CUSOs)**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is revising its rule concerning federal credit union (FCU) investments in and loans to credit union service organizations (CUSOs). The first change clarifies that the list of permissible activities in the CUSO regulation is intended to establish broad categories of permissible activities. The listing of particular activities under these categories is for illustrative purposes and not exhaustive of activities that may be permissible. In conjunction with this change, the provision for adding new activities to the regulation is amended to encourage FCUs to seek an advisory opinion from