

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**RIN 3133-AD60**

**Operating Fees**

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

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending its rule on the assessment of the federal credit union (FCU) operating fee by permitting FCUs to subtract investments made under the Credit Union System Investment Program (CU SIP) and the Credit Union Homeowners Affordability Relief Program (CU HARP) from their total assets; total assets is the basis on which the operating fee is currently calculated. The Board believes this amendment will remove a disincentive for some FCUs from participating in the CU SIP or the CU HARP.

**DATES:** This rule is effective January 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Justin M. Anderson, Staff Attorney, Office of General Counsel, at (703) 518-6540.

## **SUPPLEMENTARY INFORMATION.**

### **A. Background**

In February 2009, the NCUA Board issued a proposed rule to amend §701.6 of NCUA's regulations. 74 FR 9573 (Mar. 5, 2009). The proposed rule recommended allowing FCUs to deduct investments under the CU SIP and CU HARP from the calculation of total assets for purposes of assessing the operating fee.

Currently, §701.6 sets out the basis on which NCUA assesses the operating fee. Briefly summarized, this section provides that FCUs must pay NCUA an annual operating fee based on the credit union's total assets. 12 CFR §701.6(a). NCUA calculates an FCU's operating fee by multiplying the dollar amount of the total assets by a percentage set by the Board after considering the expenses of NCUA and the ability of FCUs to pay the fee. The term "total assets" generally includes all assets created on an FCU's books related to investments made by an FCU that are currently outstanding as of the close of the previous fiscal year. Based on this calculation, an increase in the dollar amount of investments will increase total assets and, thereby, may increase an FCU's operating fee.

The Board recognized an increase in an FCUs operating fee might be a disincentive for FCUs to participate in the CU SIP and CU HARP. The Board, therefore, issued a proposed rule permitting FCUs to calculate their total assets less any asset created by an investment in the CU SIP or CU HARP. Because the operating fee is based on an FCU's total assets as of the close of the previous fiscal year and funding for the CU SIP and CU HARP took place after January 1, 2009, the proposed amendments would not affect the computation of the operating fee until 2010.

## **B. Discussion**

The NCUA Board received seven comment letters regarding the proposal: two from credit union trade associations; two from state credit union leagues; and three from FCUs. All of the comment letters generally supported the amendment in the proposed rule and six of the commenters offered no additional comments or suggestions. One commenter suggested NCUA also amend the definition of total assets for purposes of prompt corrective action, 12 CFR Part 702, to exclude guaranteed or no/low risk assets from net worth ratio calculations. This comment is outside the scope of this rulemaking; NCUA may consider this suggestion when it reviews the prompt corrective action rule as part of its rolling regulation review under Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations.

In the final rule, the Board is adopting a recommendation from agency staff to revise the regulatory language to describe the calculation more clearly. The proposed rule stated the term “total assets” does not include investments made under the CU SIP and CU HARP. The final rule has been revised to state the operating fee is determined based on total assets less the assets created on the books of a natural person FCU by investments under CU SIP and CU HARP. This revision does not change the substance of the proposed amendment or its intended effect, which is to ensure that FCUs will not pay an increased operating fee because of their participation in the CU SIP or CU HARP.

## **REGULATORY PROCEDURES**

### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under \$10 million in assets). This final rule revises the calculation of total assets for purposes of the assessment of the FCU operating fee and permits FCUs to subtract investments made under the CU SIP and the CU HARP from the calculation. The operating fee is calculated as a percentage of total assets and, as such, the calculation already is geared to impose a smaller fee on smaller credit unions. In addition, the operating fee schedule has historically imposed no operating fee on FCUs with assets up to \$500,000 and a flat fee of \$100 for FCUs of up to \$750,000 in assets. The

benefit of the amendment would apply equally to small credit unions, to the extent they participate in the CU SIP or the CU HARP, and would not have a significant effect on their operating fees. The final rule, therefore, will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

#### Paperwork Reduction Act

NCUA has determined that the amendment will not increase paperwork requirements and a paperwork reduction analysis is not required.

#### 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 Procedure Act. 5 U.S.C. 551. NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

#### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their 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. The final rule does not have substantial direct effects on the states, on the connection 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 final 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 final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

**List of Subjects**

**12 CFR part 701**

Credit unions, Operating fee.

By the National Credit Union Administration Board on June 18, 2009.

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Mary Rupp

Secretary of the Board

For the reasons stated in the preamble, the National Credit Union Administration is amending 12 CFR part 701 as set forth below:

## **PART 701 – Organization and Operations 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, 766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

1. In §701.6, add a new sentence to the end of paragraph (a) to read as follows:

- a. (a) \* \* \* The operating fee is determined based on total assets less the assets created on the books of a natural person federal credit union by investments made in a corporate credit union under the Credit Union System Investment Program or the Credit Union Homeowners Affordability Relief Program.