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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2008–12]

Extension of Administrative Fines Program

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of rule to Congress.

SUMMARY: Congress amended the Federal Election Campaign Act of 1971, as amended (''FECA''), to extend the expiration date for the Administrative Fines Program (''AFP'') from December 31, 2008 to December 31, 2013. Under the AFP, the Commission may assess civil monetary penalties for violations of the reporting requirements of section 434(a) of the FECA. Accordingly, the Commission is extending the applicability of the AFP rules and the AFP penalty schedules. Further information is provided in the Supplementary Information that follows.

DATES: *Effective Date:* December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Albert J. Kiss, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Explanation and Justification for 11 CFR 111.30

Section 640 of the Treasury and General Government Appropriations Act, 2000, Public Law No. 106–58, 113 Stat. 430, 476–77 (1999) (''2000 Appropriations Act''), amended 2 U.S.C. 437g(a)(4) to provide for a modified enforcement process for violations of certain reporting requirements. Under 2 U.S.C. 437g(a)(4)(C), the Commission may assess a civil monetary penalty for violations of the reporting requirements of 2 U.S.C. 434(a). These amendments to 2 U.S.C. 437g(a)(4) originally applied only to violations occurring between January 1, 2000 and December 31, 2001. *See* 2000 Appropriations Act, section 640(c). Congress, however, extended authorization for the AFP several times. *See, e.g.*, section 721 of the Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006, Public Law No. 109–115, 119 Stat. 2396, 2493 (2005) (extending the AFP to December 31, 2008).

Commission regulations governing the AFP can be found at 11 CFR part 111, subpart B. The Commission incorporated the legislative sunset date into its rule describing the applicability of the AFP in 11 CFR 111.30, and has consistently revised section 111.30 to extend the AFP sunset date in accordance with subsequent legislation. *See, e.g., Final Rule on Extension of Administrative Fines Program*, 70 FR 75717 (Dec. 21, 2005) (changing sunset date in 11 CFR 111.30 to December 31, 2008).

Congress amended the FECA by extending the Commission's authority to assess civil monetary penalties under the Administrative Fines Program to violations of the Act's reporting requirements for reporting periods that began on or after January 1, 2000, and that end on or before December 31, 2013. *See* Public Law No. 110–433, 122 Stat. 4971 (2008), sec. 1(a). It also struck section 640(c) of the 2000 Appropriations Act. *See* Public Law No. 110–433, sec. 1(b). These amendments are effective as if included in the 2000 Appropriations Act at its enactment (i.e., on September 29, 1999). *See* Public Law No. 110–433, sec. 1(c).

This final rule implements Congress's extension of the AFP by revising section 111.30 to reflect the extension of the Commission's authority to impose civil monetary penalties for violations that relate to reporting periods that end on or before December 31, 2013. It also deletes the second sentence of section 111.30, which formerly provided that the AFP did not apply to reports that were due between January 1, 2004 and February 10, 2004 and that related to reporting periods that began and ended between January 1, 2004 and February 10, 2004. The Commission is not making any other revisions to the AFP rules at this time.

The Commission is promulgating this final rule without notice or an opportunity for comment because it falls under the ''good cause'' exemption in the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). This exemption allows agencies to dispense with notice and comment when ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* A notice and comment period for this final rule is impracticable because it would result in a gap in the applicability of the AFP rules between when the current regulation expires on December 31, 2008 and the date when a new final rule could be effective after additional notice and comment. *See* Administrative Procedure Act: Legislative History, S. Doc. No. 248, at 200 (1946) (''`Impracticable' means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings''). In addition, this final rule merely extends the applicability of the AFP and does not change the substantive regulations themselves. Those regulations were already subject to notice and comment three times: first, when they were proposed in March 2000, 65 FR 16534, and adopted in May 2000, 65 FR 31787; second, when substantive revisions to the AFP were proposed in April 2002, 67 FR 20461, and adopted in March 2003, 68 FR 12572; and third, when substantive revisions to the AFP were proposed in December 2006, 71 FR 71093, and adopted in March 2007, 72 FR 14662. Thus, this final rule satisfies the ''good cause'' exemption, and it is appropriate and necessary for the Commission to publish this final rule without providing a notice and comment period.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on November 24, 2008. Because this is a non-major rule, it is not subject to the delayed effective date provisions of 5 U.S.C. 801(a)(3).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The provisions of the Regulatory Flexibility Act are not applicable to this final rule because the Commission was not required to publish a notice of proposed rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a). Therefore, no regulatory flexibility analysis is required.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

■ For the reasons set out in the preamble, subchapter A, Chapter I of Title 11 of the *Code of Federal Regulations* is amended as follows:

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

■ 2. Section 111.30 is revised to read as follows:

§ 111.30 When will subpart B apply?

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers that relate to the reporting periods that begin on or after July 14, 2000 and end on or before December 31, 2013.

Dated: November 24, 2008.

On behalf of the Commission,

Donald F. McGahn II,

Chairman, Federal Election Commission.

[FR Doc. E8–28398 Filed 11–28–08; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 704

RIN 3133–AD43

Prompt Corrective Action; Amended Definition of Post-Merger Net Worth

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is adopting a final rule implementing a statutory amendment that expands the definition of ''net worth'' that applies to natural person credit unions under regulatory capital standards known as ''prompt corrective action.'' The expanded definition allows the acquiring credit union, in a merger of natural person credit unions, to combine the merging credit union's retained earnings with its own to determine the acquirer's post-merger ''net worth.'' For a merger in which the acquirer is a corporate credit union, the proposed rule similarly redefines corporate credit union capital to allow the acquirer to combine with its capital the retained earnings of the merging credit union to determine the acquirer's post-merger capital.

DATES: This rule is effective December 31, 2008, and applies to credit union mergers that are subject to financial reporting under Financial Accounting Statement No. 141(R), *Business Combinations* (2007).

FOR FURTHER INFORMATION CONTACT: *Technical:* Karen Kelbly, Chief Accountant, Office of Examination and Insurance, at the above address or by telephone: 703/518–6389; *Legal:* Steven W. Widerman, Trial Attorney, Office of General Counsel, at the above address or by telephone: 703/518–6557.

SUPPLEMENTARY INFORMATION:

A. Background

1. Natural Person Credit Unions

a. *Prompt Corrective Action.* The Credit Union Membership Access Act, Pub. L. No. 105–219, 112 Stat. 913 (1998) (''CUMAA''), mandated a system of regulatory capital standards for natural person credit unions called ''prompt corrective action'' (''PCA'' or ''regulatory capital''). 12 U.S.C. 1790d *et seq.* PCA imposes minimum capital standards and corresponding remedies to improve net worth. *Id.* The NCUA Board implemented a comprehensive system of PCA primarily under Part 702.[1] 12 CFR 702 *et seq.*

Under PCA, a natural person credit union's ''net worth ratio'' determines its classification among five statutory net worth categories. 12 U.S.C. 1790d(c); 12 CFR 702.102. CUMMA defined ''net worth ratio'' as the ratio of the credit union's net worth to its total assets. 12 U.S.C. 1790d(o)(3). It then expressly limited a credit union's ''net worth'' to ''the retained earnings balance of the credit union, as determined under generally accepted accounting principles [GAAP].'' *Id.* § 1790d(o)(2)(A).[2] The ''retained earnings only'' definition of net worth thus incorporated GAAP by reference generally, subject to future amendments and interpretations; it did not incorporate GAAP as a snapshot that preserved what GAAP then prescribed or how it was then interpreted.

b. *The ''Pooling Method'' of Financial Reporting.* The predominant practice under GAAP for financial reporting of a merger between credit unions has been to apply the ''pooling method.'' That method required an acquiring or continuing credit union (''acquiring credit union'') to combine with its own financial statement components the like components of the merging credit union. Under CUMAA's ''retained earnings only'' definition of net worth, the ''pooling method'' preserved an incentive to merge because it allowed an acquiring credit union to combine its own retained earnings with that of the merging credit union to determine the acquirer's post-merger net worth ratio.

c. *The ''Acquisition Method'' of Financial Reporting.* In 2001, the Financial Accounting Standards Board (''FASB''), the body that sets GAAP for financial reporting of business combinations, adopted Financial Accounting Statement No. 141, *Business Combinations* (2002). FAS 141 replaced the ''pooling method'' of financial reporting of business combinations between non-mutual ''for profit'' enterprises with the ''purchase method.'' In December 2007, FASB decided to extend the ''purchase method'' of financial reporting—which it renamed the ''acquisition method''—to business combinations between mutual ''for profit'' enterprises (''mutual combinations''), such as credit union mergers, that take place in the first annual reporting period beginning on or after December 15, 2008. Financial Accounting Statement No. 141(R), *Business Combinations* (2007) (''FAS 141(R)'') at ¶74.

[1] This is the fifth amendment to Part 702 since it was originally adopted in 2000. The first amendment incorporated limited technical corrections. 65 FR 55439 (Sept. 14, 2000). The second amendment deleted sections made obsolete by adoption of a uniform quarterly schedule for filing Call Reports. 67 FR 12459 (March 19, 2002). The third amendment incorporated a series of revisions and adjustments to improve and simplify the implementation of PCA. 67 FR 71078 (Nov. 29, 2002). Finally, the fourth amendment added a third risk-weighting tier to the standard risk-based net worth component for member business loans. 68 FR 56537, 56546 (Oct. 1, 2003). A proposal to modify the criteria for filing a net worth restoration plan, 67 FR 7113 (Nov. 29, 2002), was never adopted.

[2] The CUMAA definition of ''net worth'' applies to regulatory capital only. For financial reporting purposes, CUMMA requires credit unions to adhere to GAAP in the Call Reports required to be filed with the NCUA Board. 12 U.S.C. 1782(a)(6)(C)(i). The Financial Services Regulatory Relief Act of 2006, discussed *infra*, did not change that mandate.

Congress gave the other federal financial institution regulators the latitude to prescribe the ''relevant capital measures'' of their institutions. 12 U.S.C. 1831o(c)(1). As a result, the ''core capital'' of banks and thrifts is defined to include virtually all GAAP equity components, 12 CFR 325.2(v), not just the ''retained earnings'' component of equity.