

percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;

- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- An area where the unemployment rate is at least 1.5 times the national average;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;
- An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent;
- An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the five-year period preceding the most recent decennial census of at least 5 percent;
- An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its rule limiting compensation to officials. The amendment changes the definition of the term "compensation" to exclude the reimbursement or payment of business-related travel costs for an official to be accompanied by a guest.

EFFECTIVE DATE: This rule is effective January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, 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:

Background

NCUA published a proposal to amend its regulation covering travel reimbursements for guests accompanying Federal Credit Union (FCU) officials on business. 66 FR 40641, August 3, 2001. During the sixty-day comment period, NCUA received thirty-seven comment letters. After carefully considering the comments, NCUA is publishing this final rule, which is identical to the proposal.

The Federal Credit Union Act (the FCU Act) and NCUA regulations provide that only one board officer of an FCU may be compensated as such and that no other official may receive compensation for serving as a board or

committee member. 12 U.S.C. 1761(c), 1761a; 12 CFR 701.33. NCUA has defined compensation to exclude reasonable and proper expense reimbursement for costs incurred by FCU officials in carrying out the responsibilities of the positions to which they were appointed or elected.

Section 701.33 currently permits reimbursement of a board official and one immediate family member for travel expenses incurred in performing board duties if the payment is necessary and appropriate as determined by the FCU board and is made in accordance with written board policies and procedures. 12 CFR 701.33(b)(2)(i).

To give FCUs additional flexibility regarding the reimbursement of reasonable and proper expenses, NCUA has determined to amend § 701.33(b)(2)(i) to use the term "guest" rather than "immediate family member." All other provisions of the regulation remain unchanged. Travel and reimbursement policies must still provide for payment of only those costs that are reasonable in relation to the FCUs resources and financial condition. NCUA cautions FCUs that this proposal has no effect on Internal Revenue Service (IRS) regulations regarding the reporting and taxing of any payments or reimbursements. FCUs should consult their tax advisors or attorneys concerning IRS requirements related to their travel reimbursement policies.

Comments

NCUA received thirty-seven comment letters. Seventeen letters were from natural person credit unions and two were from corporate credit unions. Two were from credit union trade associations. Eight were from state credit union leagues and eight were from credit union officials or other individuals.

Twenty-seven of the commenters strongly support the proposal and applaud the agency efforts to minimize government intrusion and maximize flexibility.

Four commenters opposed it, pointing to possible increases in costs to members and concerns of its effect on family unity. The NCUA Board expects that any increase in costs to members will be minor and will support the business of the credit union. Furthermore, any FCU that adopts a new policy must still limit its travel expenditures to amounts that are reasonable in relation to its resources and financial condition. Of course, the amended rule does not require FCUs to change their current travel expense reimbursement or payment policies. The NCUA Board determined to amend the

regulation to allow FCUs greater flexibility to accommodate the needs of officials whose duties include business-related travel. Under the current regulation, FCUs may not pay or reimburse the cost of travel for an official's grandson to accompany her to an FCU-sponsored program, or for an official whose mobility is impaired to be accompanied by an aide, even if the FCU thought it necessary or appropriate. With this amendment, the FCU will have the discretion to adopt policies that provide for the reimbursement or payment of such travel costs. Again, the amendment does not require FCUs to do so.

Five commenters, while generally supportive, suggested that the proposal did not go far enough in expanding credit union authority. These commenters believe that it is unnecessary for NCUA to have a regulation concerning such reimbursements or payments. They suggest that NCUA rescind the regulation so that FCUs can establish reimbursement policies that fit their individual needs. They argue that such policies would be subject to scrutiny in the examination process and would therefore pose no risk to safety and soundness. Two commenters also stated that NCUA should not have a regulation on travel reimbursement, but should rely on the examination process to ensure that FCUs have reasonable and appropriate policies. The NCUA Board believes that it is appropriate for the agency to maintain a regulation in this area. There is a tension between the need of FCUs to attract competent and dedicated officials and the prohibition in the FCU Act against compensating all but one of them. FCUs regularly question NCUA about the permissibility of new types of reimbursements. These new ideas for reimbursements to officials frequently fall beyond the limits of the FCU Act. This regulation provides FCUs with NCUA's interpretation of the FCU Act by clearly stating what types of travel reimbursements NCUA has found to be consistent with the law.

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 entities (primarily those under one million dollars in assets). This rule will not have a significant economic impact on a substantial number of small credit

unions, and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this regulation does 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 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 only to all federal credit unions. It will not have substantial direct effects 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 the rule does not constitute a policy that has federalism implications for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget (OMB) has determined that this is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements, Travel and transportation expenses, Travel restrictions.

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,
Secretary of the Board.

For the reasons set forth in the preamble, the National Credit Union Administration 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. Revise the last sentence of paragraph (b)(2)(i) of § 701.33 to read as follows:

§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.

* * * * *

(b) * * *

(2) * * *

(i) * * * Such payments may include the payment of travel costs for officials and one guest per official;

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–51–AD; Amendment 39–12559; AD 2001–25–06]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76B and S–76C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76B and S–76C helicopters. This action requires modifying the electrical power distribution system to change the source of the 28 volts supplied to Nos. 1 and 2 attitude and heading reference (AHRS) WARN circuits. This amendment is prompted by a ground test simulating loss of the essential bus by pulling both bus tie circuit breakers and switching off both batteries. As a result of this action, both autopilots went off-line. The actions specified in this AD are intended to prevent an AHRS fail signal to both autopilots due to a failure of the essential bus, loss of autopilot functions, and subsequent loss of control of the helicopter.

DATES: Effective January 4, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation