distributing plants in one of the months of August through December in order for the handler's plant(s) to be a reserve supply plant(s) for the month of December.

(7) A plant must have been a pool plant under this order pursuant to § 1068.7 (a), (b) or (d) during each of the preceding months of August through December to be a pool reserve supply plant during the following months of January through July.

Signed at Washington, DC, on May 23, 1988.

Kenneth A. Gilles,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-12100 Filed 5-27-88; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Refund of Interest

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

ACTION: Final Amendment.

SUMMARY: Pursuant to NCUA's policy to periodically review each of its regulations, in December, 1987, the NCUA issued a proposed revision of § 701.24 ("Refund of Interest") for public comment. The NCUA Board has now approved the proposal in final form. The final rule eliminates unneeded provisions and grants Federal credit unions more flexibility in making interest refunds.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, NCUA, Office of General Counsel, at the above address, or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: Section 701.24 ("Refund of Interest") implements section 113(9) of the Federal Credit Union Act [12 U.S.C. 1761b(9)], which empowers a Federal credit union ("FCU") board of directors to:

> authorize interest refunds to members of record at the close of business on the last day of any dividend period from income earned and received in proportion to the interest paid by them during that dividend period.

Section 701.24 currently provides:

> (a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period.
>
> (b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to classifications of loans established pursuant to 12 CFR 701.21-1(d).
>
> (c) Based upon a determination that such loans have not made a significant contribution to the earnings that make the refund possible, the board of directors may exclude from an interest refund (i) any classification of loans determined in accordance with paragraph (b) of this section, and (ii) all loans delinquent at least two months, or all loans delinquent for such greater period as is determined by the board.
>
> (d) The board of directors' minutes shall document the reasons for any decision to vary interest refund rates or exclude certain loans form a refund.
>
> (e) The board of directors may authorize an interest refund for a dividend period only during such time as it may declare a dividend. However, if in a given calendar year a credit union has dividend periods more frequent than annual and an interest refund was not authorized for one or more dividend periods, the board, during the time permitted for the declaration of the current dividend, may authorize an interest refund for the current dividend period and for any one or more of the omitted dividend periods.
>
> (f) The board of directors shall not authorize an interest refund for any dividend period unless dividends have been declared and paid on share accounts.
>
> (g) An interest refund shall be recorded on the books of the credit union as a reduction of interest income.

On December 3, 1987, the NCUA Board proposed to simplify and clarify this provision (52 FR 46601 (Dec. 9, 1987)):

(a) By eliminating reference in subsection (b) to "12 CFR 701.21-1(d)", since that provision had previously been deleted from the Regulations;

(b) By eliminating subsection (g), since the subject—the required accounting treatment of an interest refund—is already more fully covered in the Accounting Manual and under generally accepted accounting standards;

(c) By eliminating from subsection (d) the Federal paperwork requirement that the board set forth in its minutes the reasons for any variance in interest refund;

(d) By amending subsection (c) to increase FCU board flexibility to exclude classes of loans from an interest refund; and

(e) By deleting subsection (e) and adding a sentence to subsection (a), to simplify an FCU's task of deciding whether it has sufficient dividends to permit an interest refund.

NCUA received three comment letters on its proposed revision; two from credit union trade associations and one from a Federal credit union. Two commenters were in total agreement with the proposal. The third commenter (a credit union trade association) supported maintaining the requirement that the reasons for varying interest refund rates or exclusion of certain loans from interest refunds be documented in the FCU board minutes. This commenter stated that decisions on interest refunds would be made at board meetings; that FCU boards are required by the FCU Act to keep minutes of all meetings (12 U.S.C. 1761b); and that common law generally requires that official actions taken at a meeting of a board of directors be noted in its minutes.

The NCUA Board does not believe a separate paperwork requirement on this subject in NCUA's Rules and Regulations is appropriate. The legal requirement on an FCU Board does not depend upon the language in the present § 701.24. Moreover, the Board believes including a statement of reasons for any variance in interest refunds would be a wise business decision which an FCU board would do even without legal obligation.

The final rule is effective upon publication (no thirty-day delay) since it relieves current restrictions. It allows for interest refunds based on the interest rate of the loan and eliminates the regulatory requirement that reasons for variations in interest rate refunds be set forth in the board minutes.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This rule eliminates the collection of information requirement found in the present rule (documentation in FCU board meeting minutes of loans excluded from interest refunds). Since the final rule eliminates the collection requirement, the rule need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

This rule does not affect state regulation of credit unions. The rule implements a provision of the FCU Act concerning refunds of interest by Federal credit unions.

List of Subjects in 12 CFR Part 701

Credit unions, Interest refund.

By the National Credit Union Administration Board on May 20, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 701—[AMENDED]

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

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798.

In addition, § 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1761 and 42 U.S.C. 3601–3610.

2. Section 701.24 is revised to read as follows:

§ 701.24 Refund of interest.

(a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period. Interest refunds may be made for a dividend period only if dividends on share accounts have been declared and paid for that period.

(b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to the type of extension of credit and the interest rate charged.

(c) The board of directors may exclude from an interest refund:

(1) A particular type of extension of credit;

(2) Any extension of credit made at a particular interest rate; and

(3) Any extension of credit that is presently delinquent or has been delinquent within the period for which the refund is being made.

[FR Doc. 88-11992 Filed 5-27-88; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 701

Fees Paid by Federal Credit Unions; Share, Share Draft, and Share Certificate Accounts

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

ACTION: Final amendment.

SUMMARY: This amendment makes certain technical changes to §§ 701.6(a) and 701.35(c) of NCUA's Rules and Regulations. The change to § 701.6(a) conforms the rule of a prior NCUA Board decision to assess its operational fees based on the Agency's fiscal year, rather than the calendar year. The changes in § 701.35(c): (a) Clarify that Federal credit unions ("FCU's") must comply with all applicable Federal laws concerning the types of disclosures, fees or charges, time for crediting of deposited funds, and other matters relating to share, share draft and share certificate accounts; and (b) simplify the provision's wording. The amendments do not alter any existing obligations or liabilities.

EFFECTIVE DATE: May 31, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Timothy P. McCollum, Assistant General Counsel, or Roy DeLoach, Staff Attorney, Office of General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

I. Section 701.6(a)

Section 701.6(a) of NCUA's Rules and Regulations now provides for NCUA's assessment of an operational fee for its "calendar year" costs. On July 16, 1985, however, the Board changed NCUA's accounting of operational fees assessed FCU's to apply to NCUA's fiscal year rather than the calendar year. Notification was sent to all Federal credit unions at that time; and the annual operating fees notification letter states that the fee is for the NCUA fiscal year's operating expenses.

The Board amendment of § 701.6(a) would change reference to "calendar year" to "National Credit Union Administration fiscal year (October 1 to September 30)". The change therefore simply conforms the rule to the Board's prior decision and current practice.

II. Section 701.35(c)

Section 701.35(c) of NCUA's Rules and Regulations [12 CFR 701.35(c)] provides:

> A Federal credit union is empowered to determine the types of disclosures, fees or charges, time for crediting of deposited funds, and all other matters, not inconsistent with this Section, affecting the opening, maintaining or closing of a share, share draft or share certificate account. To the extent that state law attempts to regulate such activity, it is not applicable. Nothing herein is intended, however, to allow a Federal credit union to amend or modify its contract with a member unilaterally unless it has previously reserved the right to do so.

Under authority granted by Title VI of the Competitive Equality Banking Act of 1987 ("Expedited Funds Availability"), the Federal Reserve Board has issued proposed regulations which would require an FCU to make funds placed in share draft accounts available to members by certain times and disclose its funds availability policy to its members. The Federal Reserve Board expects to issue final rules by June 1988, which will become effective later this year.

The NCUA Board believes a general reference to "other Federal law," which would include these requirements and others that may follow, will be helpful to alert FCU's to the need to look beyond the FCU Act and NCUA's Rules and Regulations in assuring compliance with Federal laws.

The Board has also taken this opportunity to simplify some of the wording in § 701.35(c). The last sentence, regarding the need of an FCU to comply with its contractual obligations, has been deleted, and a similare statement added in the first sentence. The preemption language has also been shortened.

III. Changes Effective Immediately

These changes in no way alter existing FCU authorities or responsibilities. The amendments are therefore being made effective immediately, without request for public comment.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this amendment will not have a significant economic impact on a substantial number of small credit unions because the charges are directed at clarification of present regulations rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The amendment does not contain any collection of information requirements.

Executive Order 12612

The amendment does not affect state regulation of state chartered credit unions. The amendment simplifies, but does not change the substance of, a provision preempting certain state regulation of Federal credit unions. This provision has previously been subject to public notice and comment.

List of Subjects in 12 CFR Part 701

Credit unions, fees paid by Federal credit unions, Share, Share draft, Share certificate accounts, Federal laws.

By the National Credit Union Administration Board on May 20, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its Regulations as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority for Part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798.

In addition § 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1781 and 42 U.S.C. 3601–3610.

2. Section 701.6(a) is revised to read as follows:

§ 701.6 Fees Paid by Federal Credit Unions.

(a) *Basis for assessment.* Not later than January 31 of each calendar year or as otherwise directed by the Board, each Federal credit union shall pay to the Administration for the current National Credit Union Administration fiscal year (October 1 to September 30) an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of June 30 of the preceding year or as otherwise determined pursuant to paragraph (b) this section.

* * * * *

3. Section 701.35(c) is revised to read as follows:

§ 701.35 Share, share draft, and share certificate accounts.

* * * * *

(c) A Federal credit union may, consistent with this Section, other Federal law, and its contractual obligations, determine the type of disclosures, fees or charges, time for crediting of deposited funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

* * * * *

[FR Doc. 88–11993 Filed 5–27–88; 8:45 am]
BILLING CODE 7535–01–M

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12 CFR Parts 701 and 703

Loans to Members and Lines of Credit to Members

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

ACTION: Interim final amendment.

SUMMARY: This amendment gives Federal credit unions ("FCU's") an additional tool for use solely to reduce risk of loss from interest rate increases between the time the interest rate commitment is made to a member on a real estate loan and the time the loan is sold on the secondary market. This additional tool must be used in accordance with written policies and procedures prepared by the FCU.

Because the seasonal peak in FCU real estate lending is at hand, the amendment has been made effective immediately, without prior public comment, but temporarily requires NCUA Regional Office permission prior to an individual FCU's engaging in the activity, and monthly reporting to NCUA. These temporary requirements are planned to be deleted after public comments have been received and further study has been completed.

EFFECTIVE DATE: This amendment is effective on an interim basis May 31, 1988. Comments must be received on or before August 29, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 204546.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley or Edward P. Dupcak, Office of Examination and Insurance, at the above address, or telephone: (202) 357–1065; Timothy P. McCollum or Julie Tamuleviz, Office of General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

I. Loan Production Risks

There are two kinds of risks an FCU must manage from the time a member applies for a loan to the time the loan is sold on the secondary market or included in its loan portfolio as an FCU investment:

a. "Fallout risk," the possibility that a party making a commitment to the FCU on the loan will fail to perform, either because there is no legal obligation to do so or because that obligation is breached. There are two kinds of fallout risk:

1. "Borrower fallout," where the member fails to close on a loan commitment. This may occur, for example, if interest rates decrease after the commitment is made and the member finds a better rate elsewhere; if the member is unable to perform; or, in real estate loans particularly, the seller of the property fails to perform.

2. "Investor fallout," where the party committed to taking the loan as an investment, either the FCU or a purchaser on the secondary market, fails to close. This can occur, for example, if the investor finds a higher-rate loan elsewhere; or if the investor or the FCU itself is without sufficient capital to perform.

b. "Price risk," the possibility that the value of the commitment the FCU makes to the borrower will decrease relative to the value of the FCU commitment to the investor or to the anticipated value to the FCU as an investment. There are three kinds of price risk:

1. Increased interest-rate price risk, where an FCU commits at application to a specified interest rate and rates increase.

2. Decreased interest-rate price risk, where an FCU commits to sell an uncommitted loan at a specified interest rate and rates decrease.

3. Product risk, where unusual characteristics in a loan arrangement—e.g., interest-only payment for an extended term—depress its fair market value.

II. Tools Available to an FCU for Managing Loan Production Risks

A. General

There are, in general, three ways to reduce loan production risks: (1) Asset/liability management; (2) forward sale of loans, on a mandatory or optional basis; and (3) sale or purchase of substitute assets with characteristics similar to a loan in production, on a mandatory or optional basis. As the NCUA Board has previously pointed out (49 FR 12,671 (March 30, 1984)), an FCU presently has authority to use the first two:

> [The] range of business strategies available to FCU's [includes]: (a) not investing or lending at long-term fixed rates; (b) using variable rate lending and floating rate investments; (c) using secondary markets to sell long-term loans to limit or manage the level of exposure; (d) using improved funds management strategies under deregulation to create a "basket" of share maturities which would complement the duration of longer-term assets; and (e) using reserves (established for this purpose) to temporarily cover losses should rising interest rates lead to short-term mismatches.

B. Sale and Purchase of Substitute Assets

Congress recently granted FCU's the power to invert in mortgage-related securities [12 U.S.C. 1757(16)(b)]. Through interest-only ("IO"), principal only ("PO"), and "residual" variations on these investments are sometimes marketed as risk management tools, as explained in Letter to Credit Unions No. 96 and IRPS 88–1, such instruments are so complex, varied, and volatile, there use to manage risk is almost always unwise.

The other kinds of transactions in substitute assets widely available involve futures and options (or standby commitments) on interest-sensitive