



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 3, 1992

D. Terry Frazer
Secretary
Circle 10 Federal Credit Union
P.O. Box 47189
Doraville, Georgia 30362

Re: Reimbursement for Lost Wages
(Your Letter of April 24, 1992)

Dear Mr. Frazer:

The NCUA Board directed your letter to me for a response. You request a review by NCUA of its policy of disallowing Federal credit union ("FCU") reimbursements of lost wages of volunteer officials. As it so happens, NCUA recently has requested comment on this, and other related reimbursement issues in a proposed rulemaking. See Notice of Proposed Rulemaking, 57 Fed. Reg. 18837 (May 1, 1992) (enclosed). Since your letter was drafted after the date of the NCUA Board meeting at which the proposed rule was adopted by the Board, we will consider your letter to be a comment to the proposal. The comment period for this proposed regulation extends through June 30, 1992, and we welcome your additional comments, as well as those of the General Motors Council of Automotive Credit Unions and any other General Motors affiliated FCUs on all issues raised by the proposal. If you have further comments, please send them to me at NCUA, 1776 G Street, NW, Washington, DC 20456.

Sincerely,

Becky Baker
Secretary of the Board

Enclosure
GC/MEC:sg
SSIC 4062
92-0519

FOIA Vol. III, A.4

environment in which rate caps may be quickly reached or exceeded. At the time of each required reserve transfer, the credit union must document which assets are exempt.

On January 28, 1992, the President issued a memorandum entitled "Reducing the Burden of Government Regulation." In the memorandum the President urges federal agencies to review existing regulations with an eye toward reducing regulatory burden without risking safety and soundness. The effect of this rule change will be a reduction in reserve transfers that some credit unions are required to make. At the same time, the rule change entails no measurable increase in risk to the National Credit Union Share Insurance Fund or to credit unions or their members.

Regulatory Procedures

Regulatory Flexibility Act

The proposed change will exempt including certain existing assets for purposes of the reserve transfer. It is our belief that small credit unions (under \$1 million in assets) do not carry the assets affected. In addition, there is no burden imposed by the proposed change. Hence, the NCUA Board has determined and certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule, if adopted, will impose no additional collection of NCUA requirements; therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12812

Executive Order 12812 requires NCUA to consider the effect of its actions on state interests. It states that "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope."

The NCUA Board has considered the fact that this proposed rule will affect federally insured state-chartered credit unions (FISCU's) in the determination of reserve transfers. It does not impose any additional cost or burden on the states, nor does it affect the states' ability to discharge traditional state government

functions. The benefits provided and protection afforded by the NCUSIF is the same for FISCU's as it is for federal credit unions. It is protection afforded through a federal system and the responsibility for administering that system lies with the NCUA Board. All federally insured credit unions, whether federal or state chartered, will be subject to the same requirements. The requirement for all federally insured credit unions is the same, i.e., reserve transfers in accordance with section 116 of the Federal Credit Union Act. The acts and requirement subject to this proposed rule have implications for the entire federally insured credit union system and its insureds and are not unique to only type of chartered credit union.

List of Subjects in 12 CFR Part 700

Credit unions, Reserve requirements, Risk assets.

By the National Credit Union Administration Board on April 23, 1992.

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 700—(AMENDED)

The authority citation for part 700 continues to read as follows: Authority: 12 U.S.C. 1770f and 1770g.

2. A Section 700.1(i)(7) is revised to read as follows:

§ 700.1 Definitions

(7) Shares or deposits in a central or corporate credit union that have a remaining maturity of 3 years or less, other than Membership Capital Share Deposit accounts as defined in part 704. For purposes of defining risk assets a central or corporate credit union is defined as a credit union whose membership primarily consists of:

- (i) Other credit unions organized under state or federal law;
- (ii) Officials, committee members, and employees of any credit union organized under state or Federal law; or
- (iii) Any combination of the categories described in subdivisions (i) and (ii) of this subparagraph.

§ 700.1 (Amended)

b. Current § 700.1(i)(17) is redesignated as paragraph (i)(18) and paragraph (i)(16) is redesignated as paragraph (i)(17).

Section 700.1(i) introductory text is republished and paragraph (i)(15) is revised to read as follows:

(i) For the purpose of establishing the reserves required by section 116 of the Federal Credit Union Act, all assets except the following shall be considered risk assets:

(15) Assets included in numbered items 2, 3, 4, 5, 6, and 7, with maturities greater than 3 years are exempt from risk assets if the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly.

A Section 700.1(j)(16) is added to read as follows:

(16) Assets included in numbered items 2, 3, 4, 5, 6, and 7, with remaining maturities greater than 3 years are exempt from risk assets provided they meet the following criteria, irrespective of whether or not the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly:

- (i) The interest rate is reset at least annually;
- (ii) The interest rate is not less than the maximum interest rate for the instrument on the date of the required reset;
- (iii) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index.

[FR Doc. 92-10137 Filed 4-30-92; 8:45 am] BILLING CODE 7535-01-M

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Reimbursement, Insurance and Indemnification of Officials and Employees

Agency: National Credit Union Administration (NCUA). ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would permit federal credit unions (FCUs) to reimburse FCU officials for expenses related to travel costs for an official and one immediate family member, in accordance with written policies established by each FCU's board of directors. Payment of these costs would be conditioned upon a determination by

the board of directors that the payment was necessary or appropriate to carry out FCU official business and reasonable in amount in relation to the resources and financial condition of the FCU. The total amount of all such payments for each year would also be disclosed to the members.

DATES: Comments must be postmarked on or before June 30, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, or Martin E. Conroy, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

A. Background and Discussion

In accordance with its policy to review existing regulations every three years, the NCUA Board proposes an amendment to § 701.33 of its Rules and Regulations to allow FCUs to reimburse travel costs of officials and one immediate family member, under specified conditions. NCUA intends that the reimbursement permitted by this proposal would be discretionary on the part of an FCU board of directors, not mandatory. The proposal is not intended to foreclose an FCU board of directors from adopting a more stringent reimbursement policy, or from prohibiting such payments altogether. Such decisions would be left to the FCU board of directors, within the parameters of the rule.

The background of the proposal is important in understanding the issues upon which NCUA desires public comment. FCU officials serve without compensation, with the exception of one board officer who may be compensated as specified in each FCU's bylaws. 12 U.S.C. 1761a. No other official may receive compensation for performing the duties or responsibilities of the board or committee position held by that person. 12 CFR 701.33. Presently, § 701.33 of the NCUA Rules and Regulations allows payment by reimbursement to the official, or direct FCU payment to a third party, for reasonable and proper costs incurred by the official in carrying out the responsibilities of the position to which that person has been appointed or elected. No provision is made, however, for a family member accompanying the official.

Several months ago, NCUA staff was asked to rule on the issue of FCU reimbursement of spousal expenses when accompanying FCU officials on credit union business. In response, staff

expressed the opinion, based on current law and regulations, that expenses of an official's spouse do not qualify as a proper business expense of an FCU, as there is no direct benefit to the FCU in having the official's spouse accompany the official on business trips or to credit union conferences. This reasoning was based in part on Internal Revenue Service ("IRS") interpretations regarding business expense tax deductions taken for spousal expenses. 26 U.S.C. 162, 26 CFR 1.162-2(c). Further, staff believed that payment of such expenses would be imputed as payment of prohibited compensation to FCU officials. This policy has been the focus of criticism by FCUs as being too restrictive.

In the absence of clear guidance in the FCU Act or NCUA's regulations on this issue, staff's analysis, and reliance on other federal law and regulations, is proper. Pursuant to its general rulemaking authority, however, NCUA has broad authority to interpret and implement the provisions of the FCU Act. In response to many requests for a change in this area, the NCUA Board proposes to amend § 701.33 to permit FCU boards of directors to reimburse officials for expenses related to travel costs for the official and an immediate family member. NCUA proposes to use the term "immediate family member" rather than "spouse" in order to provide greater flexibility to individual FCUs to determine the relationships that qualify for reimbursement. The term "members of their immediate families" has been used for several years by credit unions in connection with field of membership and chartering policy. NCUA has, without incident or controversy, allowed individual credit unions to define that term as deemed appropriate. NCUA proposes to use a similar approach here, so long as reimbursement, if any, is limited to one family member per official and the other conditions of the regulation are met. Further, it would not be necessary for an FCU to use the same definition for purposes of field of membership and reimbursement policies.

In order to pay or reimburse officials for these costs, certain basic conditions are proposed. First, reimbursements would need to be made in accordance with written policies established by the FCU's board of directors. Second, the FCU's board would approve each payment by a recorded vote. The board's approval would be based upon a determination that the payment is necessary or appropriate to carry out FCU official business and reasonable in amount in relation to the resources and financial condition of the FCU. Finally, all payments made to officials under this

new authority would be disclosed in writing to the members of the credit union each year at the FCU's annual meeting or in its annual report.

NCUA anticipates that commenters may view the imposition of all three of these conditions—written policies, board approval, and annual disclosure—as imposing more levels of regulatory control than are needed. The conditions are proposed, however, in order to obtain a full range of comments. Comment is specifically requested on whether one or more of the conditions is unnecessary and, if so, what combination should remain in the final rule.

Although not proposing other amendments at this time, NCUA welcomes comments on other aspects of § 701.33. It should be noted that, in 1988, NCUA proposed a change that would allow reimbursement of volunteer officials for pay or leave actually lost due to attendance at board or committee meetings. (See 53 FR 4592, 2/19/1988.) This proposal was soundly rejected by commenters (see 63 FR 29640, 4/8/1988) and NCUA is not proposing such a change at this time. Commenters should feel free, however, to address this and other issues within the scope of § 701.33.

NCUA also solicits comment on whether it would be useful to provide regulatory guidance as to the meaning of other key phrases of the proposed rule:

1. "travel costs"—Expenses deductible under the regulations of the Internal Revenue Service may provide some guidance to FCUs. See 26 CFR 1.162-2 ("Traveling expenses include travel fares, meals and lodging, and expenses incident to travel"). NCUA requests comment on whether FCUs should adopt some form of "reasonableness test" or "common business practice test" containing specific common examples of what does and does not meet such tests. Comment is requested on whether these issues should be addressed in the regulation itself, or, alternatively, be handled as a management decision of individual FCUs, subject to NCUA's supervisory oversight.

2. "necessary or appropriate in order to carry out the official business of the credit union"—This phrase would indicate the reimbursement is appropriate in order that the volunteer official may fulfill his or her responsibilities to the members in the effective management of the FCU. NCUA solicits comment regarding whether this phrase should be expanded, for example, to include the idea that the meeting or program attended by the volunteer official is

related to current or planned FCU operations and will enhance the FCU and the capability of the FCU volunteer official.

3. "reasonable in amount in relation to the resources and financial condition of the credit union"—This suggests that the reimbursement amount be limited to an amount which the FCU can afford while maintaining financial stability and capital. NCUA requests comment on whether certain FCUs should automatically be excluded from utilizing reimbursement policies for this reason, such as: FCUs that are rated at CAMEL 4 or 5; FCUs with negative earnings, declining or low capital, low liquidity, or weakened financial condition; or FCUs receiving assistance under sections 116 or 208 of the FCU Act.

NCUA also solicits comment on the information to be included in written reimbursement policies. Such policies would presumably include a discussion of safety and soundness procedures, such as requirements for signed travel vouchers, documented receipts, disclosures of the consequences of filing incorrect or fraudulent claims, examples of reimbursable and nonreimbursable costs, maximum lodging and meal expenses, maximum number of trips for which accompaniment is permitted, proper reporting to the IRS, and whether travel to and from meetings is eligible for a reimbursement. NCUA welcomes comment on whether these items should be addressed in the regulation.

Pending the final outcome of this proposal, the NCUA will not take exception to FCU's reimbursement of an official's and one immediate family member's travel expenses as long as the reimbursements are made in accordance with policies established by the FCU's Board of directors and the reimbursements do not raise safety and soundness concerns. NCUA cautions FCUs that this proposal has no effect on applicable IRS regulations regarding the reporting and taxing of any payments or reimbursements. For such information, NCUA recommends that FCUs consult their tax advisors or attorneys. NCUA further cautions FCUs that it will continue to take exception to reimbursements if it finds them excessive, unsubstantiated, or otherwise a violation of safety and soundness.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an

analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). Preliminary analysis concerning the effect the proposed compensation rule will have on small credit unions indicates that no significant economic impact will result if the rule is promulgated in final form by the NCUA Board. Therefore, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic 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

Proposed § 701.33(b)(2)(i) would require that reimbursement payments be made to volunteer officials in accordance with written policies established by the FCU board of directors. Proposed § 701.33(c)(1)-(3) would require that the minutes of FCU board of directors' meetings reflect the board's determination that such reimbursements are reasonable and necessary. Proposed § 701.33(c)(4) would require that the total of all such payments disbursed to officials for the previous year be disclosed in writing to all credit union members. These "reporting or recordkeeping requirements" are considered an "information collection request" under the Paperwork Reduction Act. Therefore, the NCUA must submit the information collection request to the Director, Office of Management and Budget (OMB), and provide certain information as described below.

The written reimbursement policy (section 701.33(b)(1)) is proposed to ensure that reimbursements are made in accordance with standards set in advance by the FCU board of directors and to enable examiners to easily verify compliance by comparing the policies to actual reimbursements made. The respondents to this paperwork requirement are FCU boards of directors. The estimated frequency, based on NCUA's previous experience, is one submission, to be updated intermittently as the policy is amended by the FCU's board of directors. On average, it should take each FCU two hours to draft the reimbursement policies.

The requirement for a vote (section

701.33(e)(1)-(3)) is proposed to ensure compliance with the proposed rule's requirements and to enable examiners to easily verify compliance by reviewing the FCU board's minutes. The respondents are FCU boards of directors. The estimated frequency, based on NCUA's previous experience, is one submission each year for each FCU. On average, it should take each FCU two hours for each response.

The annual meeting disclosure (section 701.33(c)(4)) is proposed to ensure that FCU members have complete information on amounts spent by their board of directors for travel of officials. The likely respondents are FCUs. The estimated frequency, as stated in the rule, is one submission each year for each FCU member. On average, it should take each FCU one-half hour for each response.

The information collection requirements in proposed §§ 701.33(b)(2)(i), 701.33(c)(1)-(3) and 701.33(c)(4) will be submitted to OMB for review under the Paperwork Reduction Act. Written comments and recommendations regarding the collection requirements and NCUA discussion of same should be forwarded directly to the OMB Desk Officer, as indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, room 3206, Washington, DC 20503. Attn: Gary Waxman.

Executive Order 12612.

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation applies only to FCUs and therefore will not affect state interests.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on April 23, 1992.
Becky Baker,
Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR Part 701 is amended 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(3), 1753, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and Public Law 101-73.

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.

2. Section 701.33(b)(2) (i) and (iii) is revised to read as follows:

§ 701.33 Reimbursement, insurance, and indemnification of Officials and Employees.

- (b)
(2)

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, in accordance with written policies established by the board of directors, and subject to paragraph (c) of this section:

(iii) indemnification and related insurance consistent with paragraph (d) of this section.

3. In § 701.33, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

(c) **Payment of costs.** Payment of costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed may properly include the payment of travel costs for an official and one immediate family member. Payments made pursuant to this paragraph are subject to the following conditions:

- (1) the payment has been approved by a recorded vote of the board of directors that is noted in the official board minutes;
- (2) the payment has been determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union;
- (3) the payment has been determined by the board of directors to be reasonable in amount in relation to the resources and financial condition of the credit union; and
- (4) the total of all such payments disbursed to officials for the previous year must be disclosed in writing to all credit union members at the annual meeting or in the annual report of the credit union.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-44-AD]

Airworthiness Directives; Airbus Industrie Model A300-600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to Airbus Industrie Model A300-600 series airplanes. This proposal would require repetitive high frequency eddy current (HFEC) inspections to detect cracks in the center spar sealing angles adjacent to the pylon/rear attachment, cold work, and replacement of any cracked parts, if necessary. This proposal is prompted by reports of cracks in the vertical web of the center spar sealing angles of the wing. The actions specified by the proposed AD are intended to prevent crack formation in the sealing angles; such cracks could rupture, and lead to subsequent crack formation in the bottom skin of the wing, resulting in reduced structural integrity of the center spar sections.

DATE: Comments must be received by June 22, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-44-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140; fax (206) 227-1320. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-44-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-44-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Airbus Industrie Model A300-600 series airplanes. The DGAC advises that a case has been reported of cracks found in the vertical web of the center spar sealing angles of the wing. During full-scale fatigue testing, a crack was discovered in the vertical web of a center spar sealing angle, adjacent to Rib 8, at approximately 45,000 simulated flights. At 72,000 flights, another crack was found in a sealing angle of the opposite wing. Testing established that cracking initiated in the vertical web of the sealing angles. This condition, if not corrected, could result in similar crack formation on the sealing angles; such cracks could rupture, and lead to subsequent crack formation in the bottom skin of the wing, resulting in