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DEPARTMENT OF ENERGY

10 CFR Part 851

[Docket No. EH–RM–04–WSHP]

RIN 1901–AA99

Worker Safety and Health Program; Correction

AGENCY: Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The Department of Energy published in the **Federal Register** of February 9, 2006, a final rule to implement the statutory mandate of section 3173 of the Bob Stump National Defense Authorization Act (NDAA) for Fiscal Year 2003 to establish worker safety and health regulations govern contractor activities at DOE sites. Inadvertently there were some typographical errors made in several sections of the rule. This document corrects that version of the final rule.

DATES: This correction is effective on June 28, 2006.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH–52, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4714.

SUPPLEMENTARY INFORMATION: The Department of Energy published a document in the **Federal Register** of February 9, 2006, (71 FR 6857) establishing (1) the framework for a worker protection program that will reduce or prevent occupational injuries, illnesses, and accidental losses by requiring DOE contractors to provide their employees' with safe and healthful workplaces; and (2) procedures for investigating whether a requirement has been violated, for determining the nature of such violations, and for imposing appropriate remedy.

In FR Doc. 06–964, published in the **Federal Register** of February 9, 2006, (71 FR 6857), make the following corrections to the preamble:

(1) On page 6898, in the third column, at the beginning of the first full paragraph, remove the words ''Section 851.26(a)'' and add in its place ''Section 851.26(a)(1)''.

(2) On page 6898, in the third column, at the beginning of the second paragraph, remove the words ''Section 851.26(a)(1)'' and add in its place ''Section 851.26(a)(2)''.

(3) On page 6898, in the third column, at the beginning of the third paragraph, remove the words ''Section 851(a)(2)'' and add in its place ''Section 851(a)(3)''.

(4) On page 6898, in the third column, at the beginning of the fourth paragraph, remove the words ''Section 851.26(b)'' and add in its place ''Sections 851.26(b)(1) and (2)''.

(5) On page 6898, in the third column, at the beginning of the fifth paragraph, remove the words ''Section 851.26(c)'' and add in its place ''Section 851.26(a)(4)''.

■ In the same document make the following corrections to the regulatory text:

§ 851.7 [Corrected]

■ (1) On page 6933, in the third column, § 851.7(a) add the word ''shall'' before the word ''have''.

§ 851.31 [Corrected]

■ (2) On page 6938, in the first column, paragraph (d)(1) remove the words ''paragraph (b)'' and add in its place ''paragraph (c)''.

■ (3) On page 6938, in the second column, paragraphs (d)(2) and (d)(3)(i), remove the words ''paragraph (b)'' and add in its place ''paragraph (c)''.

Appendix A—[Corrected]

■ (4) On page 6941, in the second column, paragraph (c)(3) add the word ''unique'' before the words ''pressure vessel''.

Issued in Washington, DC on June 20, 2006.

C. Russell H. Shearer,

Acting Assistant Secretary for Environment, Safety and Health.

[FR Doc. 06–5864 Filed 6–27–06; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Third-Party Servicing of Indirect Vehicle Loans

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a final rule to regulate purchases by federally insured credit unions of indirect vehicle loans serviced by third-parties. The rule limits the aggregate amount of these loans serviced by any single third-party to a percentage of the credit union's net worth. The rule ensures that federally insured credit unions do not undertake undue risk with these purchases.

DATES: This rule is effective July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Staff Attorney, Division of Operations, Office of General Counsel, at (703) 518–6540; Matthew Biliouris, Program Officer, Office of Examination and Insurance, at (703) 518–6360; or Steve Sherrod, Division of Capital Markets Director, Office of Capital Markets and Planning, at (703) 518–6620.

SUPPLEMENTARY INFORMATION:

A. Background

In December 2005, the Board issued for public comment a proposed rule establishing concentration limits for indirect automobile loans and loan participations serviced by third-party servicers. 70 FR 75753 (Dec. 21, 2005). As stated in the preamble to the proposed rule, the Board recognizes indirect lending has certain advantages for credit unions, such as growth in membership and loans, but is concerned some credit unions may involve themselves in indirect, outsourced programs—meaning programs in which a third party manages a credit union's relationship with automobile dealers and, because the third party handles loan servicing, with the credit union's members as well—without undertaking adequate due diligence, implementing appropriate controls, and having sufficient experience with a third party servicer.

The Board proposed to limit the aggregate amount of outsourced loans and participations in outsourced loans a credit union may purchase from any one servicer to 50 percent of the credit union's net worth. After 30 months of experience with a particular servicer, the limit increases to 100 percent of net worth. The proposal exempted federally-insured depositories and wholly-owned subsidiaries of those depositories from the definition of servicer. The proposal also included a process and requirements for a credit union to request a waiver from the concentration limits from its regional director.

Briefly summarized, this final rule retains the concentration limits, the servicer exemptions, and the waiver provision as proposed but, in response to public comments, the Board has made certain changes in the final rule. The final rule includes an additional exemption for certain credit union service organization (CUSO) servicers and excludes loans in which the servicer and its affiliates were not involved in the origination process from the concentration limits. These changes, while not affecting the rule's substantive and procedural rationales, are beneficial to credit unions by narrowing the rule's scope and impact. The final rule also includes a 45-day time period for a regional director to act on waiver requests and provides for an appeal to the NCUA Board. These changes are discussed in more detail in the following section on public comments.

B. Public Comments on the Proposed Rule

NCUA received 27 comment letters from a variety of sources, including a state supervisory authority (SSA), credit unions, credit union trade organizations, and vendors involved in third-party servicing. The following summary categorizes the comments into general comments about the rule and comments about specific provisions with the Board's response to comments, as appropriate.

General Comments

Several commenters believe this rulemaking is a good idea. One commenter stated ''NCUA's concerns are valid, and its proposal basically sound.'' Several commenters stated the specific concentration limits were reasonable and the waiver provisions appropriate. The SSA stated it shares NCUA's concern about indirect lending in general and specifically the risks related to third-party servicing arrangements for indirect vehicle lending. This SSA stated it had reviewed a number of these programs and found structural weaknesses and that reported returns failed to reflect credit losses and collection costs.

Several commenters were generally opposed to the rulemaking. A few of these commenters contended NCUA's existing guidance was sufficient to deal with the risks of indirect automobile loans serviced by third-party servicers. One of these commenters stated that each credit union's board should have flexibility to set policy limits in indirect lending just as they do with other types of lending. One commenter stated the proposal manages credit unions to the lowest common denominator and unnecessarily encumbers a credit union's ability to use indirect lending to manage the asset liability management (ALM) process.

The Board appreciates these concerns and does not wish to unnecessarily limit the flexibility of credit union management or encumber a credit union's ability to manage its ALM process. As stated in the preamble to the proposed rule, indirect lending programs with third-party servicing carry risk for credit unions. When these programs involve a significant percentage of the credit union's net worth, these programs also create risks for the National Credit Union Share Insurance Fund (NCUSIF). Accordingly, the Board believes concentration limits are appropriate but credit unions demonstrating sufficient due diligence should be permitted to apply for and receive waivers to the concentration limits.[1]

Comments About the Specific Concentration Limits

As proposed, the rule permits a credit union to buy indirect vehicle loans serviced by a third-party servicer in an amount up to 50 percent of net worth for the first 30 months of the servicing relationship and, thereafter, up to 100 percent of net worth.

Some commenters contended the rule should permit a credit union to invest up to 100 percent of its net worth after only 18 or 24 months in a program instead of having to wait 30 months. A few commenters also thought the initial concentration limit should be 75 percent of net worth instead of 50 percent. Some of these latter commenters thought that a 75 percent limit would be appropriate but only for credit unions with a composite CAMEL 1 rating.[2] A few commenters contended credit unions qualifying for the NCUA Regulatory Flexibility Program should be entirely exempt from the proposed limits. 12 CFR part 742.

The Board believes a credit union should have sufficient experience with a third-party servicer before entrusting it with indirect vehicles loans in an amount equaling the credit union's entire net worth. Given the expected lives of various types of vehicle loans, the Board continues to believe 30 months is a reasonable time for a credit union to obtain the experience. Accordingly, the final rule retains the 30-month time period.

The Board also believes half of a credit union's net worth is a reasonable exposure during its initial involvement with a third-party servicer, regardless of a credit union's CAMEL rating. As stated in the preamble to the proposed rule, risks associated with these programs are similar to risks associated with asset backed securities (ABS). While natural person credit unions generally may not invest in ABS, national banks may, and the Office of the Comptroller of the Currency (OCC) limits a bank's aggregate investments in ABS issued by any one issuer to 25 percent of capital and surplus. 12 CFR 1.3(f). Since the capital and surplus of a national bank is roughly equivalent to the net worth of a natural person credit union, the 50 percent and 100 percent limits in the proposed rule are significantly less restrictive than the 25 percent that the OCC permits for national bank investment in ABS. In addition, the OCC's 25 percent concentration limit on ABS applies to all banks, regardless of the bank's asset size or net worth ratio or the general performance ratings that OCC examiners assign to a particular bank. NCUA's proposal is less restrictive than the OCC's ABS limits because NCUA wants to encourage lending, but some safety and soundness limits are necessary. Accordingly, the final rule retains 50 percent as the initial limit for credit unions and 100 percent as the general limit, subject to a credit union receiving a waiver.

One commenter analogized the risks the proposal addressed to the risks of participation lending and suggested concentration limits should be related to loans to a single borrower, not to a particular servicer. The Board believes risks associated with third-party servicing of indirect vehicle loans apply equally to whole loans and participation interests in loans and these risks are best constrained by limits expressed in

[1] A credit union below the concentration limits must still perform due diligence at a level commensurate with the program risks.

[2] For a discussion of CAMEL ratings, see NCUA Letter to Credit Unions No. 03–CU–04, Subject: CAMEL Rating System, dated March 2003, located on NCUA's Web site at *http://www.ncua.gov*.

terms of exposure to particular servicers. Another commenter stated concentration limits should be set as a percentage of paid-in and unimpaired capital and surplus rather than as a percentage of net worth. This commenter believes using net worth in the calculation encourages credit unions to maintain unnecessarily high levels of net worth.

The Board believes third-party servicer concentration limits, which protect the viability of the credit union and also limit risk to the NCUSIF, are best expressed in terms of a credit union's net worth and not in terms of paid-in and unimpaired capital and surplus. Paid-in and unimpaired capital and surplus includes both shares and undivided earnings. 12 CFR 700.2(f). Including shares in this definition means a credit union with relatively low levels of net worth could have significant paid-in and unimpaired capital. Accordingly, concentration limits calculated as a percentage of the paid-in and unimpaired capital and surplus may not adequately protect a credit union or the NCUSIF.

The Board confirms, as some commenters requested, that the concentration limits are calculated based on the outstanding loan balance. Further, the Board clarifies, as requested by one commenter, that a credit union may calculate the initial 30-month servicing relationship period from a date preceding this rulemaking. The 30-month servicing relationship period starts from the date a credit union first acquires an interest in loans from a particular third-party servicer.

Comments About Exemptions for Certain Types of Servicers

The proposal exempted servicers that are federally-insured depository institutions or wholly-owned subsidiaries of federally-insured depository institutions from the concentration limits. The rationale for this exemption is federal regulators have access to and oversight of these entities. Many comment letters addressed this exemption.

Several commenters contended the ''wholly-owned subsidiary'' exemption should be broadened to include servicers that are only partially owned by credit unions. These commenters suggested various alternatives to the ''wholly-owned subsidiary'' language, including: exempting any servicer that is also a CUSO; any CUSO that has a majority of voting interests owned by federally-insured depository institutions; or any CUSO that has a majority of voting interests owned by federally-insured depository institutions and to which SSAs have access. One commenter also stated additional language could be added to require access by a Federal regulatory authority.

NCUA understands the concerns of these commenters. As suggested by some of the commenters, the final rule exempts any servicing entity that has a majority of its voting interests owned by federally-insured credit unions and that includes in its servicing agreements with credit unions a provision providing NCUA with access to the servicer's books and records and the ability to review its internal controls. This written access provision is similar to the CUSO rule requirement that federal credit unions and their CUSOs must agree in writing to permit NCUA access to the CUSO. 12 CFR 712.3(d)(3). Credit unions relying on this exemption must provide the regional director a copy of the servicing agreement. This will keep regional directors informed of the number of these arrangements, particularly regarding state-chartered credit unions that NCUA does not examine on a regular basis.

A few commenters suggested NCUA should exempt any servicer that agrees to allow NCUA access, whether or not the servicer is affiliated with a federally-insured credit union. Absent at least majority ownership of the servicer by federally insured credit unions, the Board does not believe an agreement will assure unfettered and cooperative access. Similarly, while a few commenters stated access by an SSA should be sufficient to exempt a servicer from the rule, the Board concludes the circumstances this rule addresses present particular safety and soundness concerns requiring NCUA or another Federal insurer to have access to the servicing entity.

One commenter suggested the rule should be changed to apply only to those servicers involved in the loan origination process. This commenter contended that, where a credit union controls the underwriting process, uses its own dealer relationships for originations, and contracts directly with an independent, financially sound servicer with appropriate asset class experience, the credit union's risks are not significantly different from risks in its internal programs and, therefore, should not have different concentration limits.

As stated in the preamble to the proposed rule, NCUA is primarily concerned with indirect vehicle lending programs where both control over the loan origination process and servicing are outsourced to a third-party. While NCUA drafted the proposed concentration limits so as to apply to any indirect loan serviced by a third-party servicer, regardless of the servicer's involvement in the loan origination process, after considering the comments, the Board agrees separating servicing from other aspects of the loan, such as underwriting, originating, or insuring, mitigates the overall risk. Accordingly, the Board has determined to exclude loans in which the servicer and its affiliates have no involvement with the loan other than servicing from the concentration limit. Specifically, the final rule excludes from the definition of covered vehicle loans any loan where neither the third-party servicer nor any of its affiliates are involved in underwriting, originating, or insuring the loan or the process by which the credit union acquires its interest in the loan.

Aside from this modification, the final rule retains the basic definition of vehicle loan, that is, ''any installment vehicle sales contract or its equivalent that is reported as an asset under generally accepted accounting principles [GAAP].'' The Board notes that, under GAAP, an interest in a vehicle loan transferred with recourse may not be a true sale. *See* Financial Accounting Standards Board Standard No. 140. If the transfer does not warrant true sale accounting, the transferred loan interest would remain as an asset on the transferring credit union's books and, if serviced by a third-party servicer, count toward the concentration limits.

Comments About Definitions

The proposal defined net worth as:

> [T]he retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the National Credit Union Share Insurance Fund.

Proposed § 701.21(h)(3)(iv). A few commenters believe this definition of ''net worth'' should be modified to permit calculation of the appropriate limits from the line items on NCUA's Call Report, NCUA Form 5300.

NCUA's current Call Report has an automated ''PCA Net Worth Calculation Worksheet.'' If a credit union makes accurate Call Report entries, line 7 of this Worksheet, entitled ''Total Net Worth,'' will provide the credit union with its retained earnings balance as determined under generally accepted accounting principles. This information can help credit unions determine their net worth for purposes of these concentration limits. The final rule text, however, does not refer to the Call

Report directly since NCUA modifies the Call Report and the specific line items change on occasion.

The concentration limits will apply to all indirect vehicle loans serviced by a particular third-party servicer and its affiliates. The proposal defined affiliate as follows:

> The term ''its affiliates,'' as it relates to the third-party servicer, means any entities that: (A) Control, are controlled by, or are under common control with, that third-party servicer; or (B) are under contract with that third-party servicer or other entity described in paragraph (h)(3)(ii)(A) of this section.

Proposed § 701.21(h)(3)(ii). One commenter asked why the proposed definition includes entities under contract as well as entities under common control. If a credit union is using two or more servicers to service indirect automobile loans, the Board believes the loans of both servicers should be aggregated for purposes of the concentration limits if there is any contractual connection between the two servicers.[3] If the contractual relationship does not increase the risk to a credit union in a particular case, it may seek a waiver from the regional director under the rule's waiver provisions and provide the regional director with details about the contractual relationship.

One commenter thought that, in the definition of ''servicer,'' the phrase ''pursuant to the terms of a loan'' should be clarified to ensure that lockbox relationships are not inadvertently covered by the regulation.[4] The Board understands lockbox accounts are typically established at banks, and the rule's definition of servicer specifically excludes banks and other federally-insured depository institutions and their wholly-owned subsidiaries. While a bank is excluded from the rule, any other entity falling within the definition of servicer is subject to the rule whether or not it employs a lockbox account arrangement as part of its servicing activities.

[3] Although a credit union has a contract with its third-party servicer, the credit union is not an affiliate servicer for purposes of calculating compliance with its own concentration limits. In other words, a credit union does not have to aggregate any loans that it services in-house with loans serviced by third-party servicers.

[4] A ''lock box'' is a ''[c]ash management system whereby a company's customers mail payments to a post office box near the company's bank. The bank collects checks from the lock box * * * deposits them directly to the account of the firm, and informs the company's cash manager by telephone of the deposit. This reduces the float and puts cash to work more quickly.'' J. Downes and J. Goodman, Barron's Dictionary of Finance and Investment Terms, 333 (5th ed. 1998).

Comments About the Waiver Provision

The proposal provided that a regional director, upon request, could grant a credit union a waiver from the concentration limits. The proposal provided criteria a regional director will consider when evaluating a waiver request, including: a credit union's understanding of the third-party servicer's organization, business model, financial health, and the related program risks; the credit union's due diligence in monitoring and protecting against program risks; the contracts between the credit union and the third-party servicer; and other factors relevant to safety and soundness. Many commenters thought this waiver provision was a good idea and the provision for a waiver and proposed criteria are retained in the final rule.

Several commenters suggested the waiver provision should set a time period for a regional director's decision. A few commenters thought the rule should permit appeal of a waiver decision to the NCUA Board. The Board agrees with these commenters. The final rule provides that a regional director will make a written determination on a waiver request within 45 calendar days after receipt of the request. The 45-day period will not begin until a credit union has submitted all necessary information to the regional director. A credit union may appeal any part of the determination to the NCUA Board. Appeals must be submitted through the regional director within 30 days of the date of the determination. The Board believes these time periods are reasonable and notes they are similar to other waiver processes the Board has adopted. *See, e.g.,* 12 CFR 701.36(a)(2)(iii).

Two commenters thought the rule should permit state chartered credit unions to obtain waivers from their SSAs rather than from a regional director. The proposed rule required the SSA of a state chartered credit union to concur before the regional director grants a waiver, and the final rule retains this requirement. Because third-party servicing of indirect vehicle loans creates risk for the NCUSIF, however, NCUA should have a role in the decision to grant or deny all waivers.

One commenter thought the waiver procedure was overly burdensome. The Board understands the commenter's concern, but believes it has balanced safety and soundness concerns appropriately with the burden associated with requesting a waiver. Another commenter questioned why an approved waiver should have an expiration date. Circumstances change with the passage of time, including the structure of the servicer, the content of its program, and the composition of the credit union's internal staff and due diligence. Given the significance of the risks, a credit union with an existing waiver should demonstrate periodically that it understands and controls the risks associated with a servicer's program.

Two commenters sought clarification that credit unions could request a waiver from the initial concentration limit of 50 percent as well as the 100 percent concentration limit. The Board confirms that, as proposed and as provided in the final rule, credit unions may request waivers of either limit.

One commenter noted one of the criteria a regional director will consider when reviewing a waiver is the ability of a credit union to replace an inadequate servicer. This commenter expressed concern that credit unions purchasing participation interests generally have little or no ability under standard servicing contracts to replace the servicer. The Board agrees an owner of a loan participation interest is unlikely to have much say in replacing a poor servicer but notes this criterion is only one factor among several a regional director considers in determining whether to grant a waiver request.

Several commenters stated they would like additional information about the requirements for a waiver. Two commenters thought waiver criteria should include information about the rating of any associated insurance company. The Board believes the rule sufficiently describes the criteria a regional director will consider but provides the following additional discussion of the criteria and documentation for waiver requests. Much of this discussion is repeated from the preamble of the proposed rule. 70 FR 75753, 75756 (Dec. 21, 2005).

Credit unions seeking higher concentration limits should have high levels of due diligence and tight controls. Due diligence, in turn, begins with a demonstrated understanding of the third-party servicer's organization, business model, financial health, and program risks. Accordingly, a waiver request should provide information about the following:

- The vendor's organization, including identification of subsidiaries and affiliates involved in the program and the purpose of each;
- The various sources of income to the vendor and the credit union in the program and any potential vendor conflicts with the interests of the credit union;

- The experience, character, and fitness of the vendor's owners and key employees;
- The vendor's ability to fulfill commitments, as evidenced by aggregate financial commitments, capital strength, liquidity, reputation, and operating results; [5]
- How loan-related cash flows, including borrower payments, borrower payoffs, and insurance payments, are tracked and identified in the program;
- An analysis of whether, in the event of the servicer's insolvency, the various borrower, insurance, and resale payments in the possession of the servicer and the vehicle collateral are protected from the bankruptcy trustee;
- The vendor's internal controls to protect against fraud and abuse, as documented by, for example, a current SAS 70 type II report prepared by an independent and well-qualified accounting firm;
- Insurance offered by the vendor, including interrelated insurance products, premiums, conditions for coverage beyond the control of the credit union (*e.g.*, a prohibition on extension of the insured loans past maturity), the rating of the insurer, and limitations such as aggregate loss limits;
- The underwriting criteria provided by the vendor, including an analysis of the expected yield based on historical loan data, and a sensitivity analysis considering the potential effects of a deteriorating economic environment, failure of associated insurance, the possibility of fraud at the servicer, a decline in average portfolio credit quality, and, if applicable, movement in the program back toward industry-wide performance statistics; [6]
- Vendor involvement in the underwriting and processing of loan applications, including use of proprietary scoring or screening models not included in the credit union approved underwriting criteria; and
- The program risks, including (1) Credit risk, (2) liquidity risk, (3) transaction risk, (4) compliance risk, (5) strategic risk, (6) interest rate risk, and (7) reputation risk.

To qualify for a waiver of concentration limits, the servicing agreement should also include more than minimal protections for the credit union. Servicer performance standards should be objective and clear, and a waiver request should clearly articulate how the performance standards protect the interests of the credit union. The exit clause, including any cure period, should be exercisable in a reasonable period of time. The more intensive the requisite servicing, such as for nonprime or subprime loans, the shorter that period of time should be. A credit union's right to exit the servicing agreement should be exercisable at a reasonable cost to the credit union. If a credit union must pay a punitive fee to replace a poor servicer, give up valuable insurance protection, or forfeit legal rights without adequate compensation, the servicing agreement will not satisfy this waiver criterion.

Some indirect, outsourced programs have complex business models that include vendor management of the dealer relationship and also insurance provided by the vendor. These business models can produce situations where the vendor's financial interests are not aligned with the credit union's interests. The credit union needs to be aware of these situations and, if appropriate, take protective action.

For example, a dealer's interest in an indirect lending situation is to obtain financing so the dealer can sell a vehicle. A credit union's interest is to ensure loan applications are properly underwritten and only members meeting the underwriting standards receive loans. With an indirect, outsourced program, a third-party vendor controls information on the quality of a particular dealer's originations. A vendor could present loans to a credit union from a changing list of dealers, making it difficult for a credit union to identify and screen substandard dealers. This creates a potential for the vendor to permit dealers with substandard underwriting performance to remain active in the program.

Unlike typical indirect lending where a dealer receives an origination fee, in some vendor programs, a vendor processes loan applications for the credit union and also receives significant income from dealer fees. A credit union needs to fully understand the relationship between the vendor and the dealers. Credit unions seeking a concentration limit waiver should review agreements between the vendor and associated dealers.

Some vendors provide third-party default insurance or reinsurance and this presents a potential conflict between the vendor as servicer and the vendor as insurer. Accordingly, a credit union needs to understand the relationship between the vendor and the insurance company and the associated risks to the credit union. To understand this relationship fully, a credit union desiring a concentration limit waiver should review all agreements between the vendor, affiliates of the vendor, and the associated insurance companies.

Another potential conflict exists where the vendor controls the dealer relationship and can route a potential loan to multiple funding sources. For example, some vendors track statistics on loan performance by dealership. A credit union should be aware if a vendor then routes loan applications from the preferred dealerships to the preferred funding sources. A credit union desiring a waiver should understand the various funding sources available to the vendor and document how the vendor tracks vendor performance and makes funding decisions.

With each identified risk, a credit union should explain to the regional director how it plans to eliminate or mitigate the risk. Some, but not all, risks may be dealt with through contractual arrangements. For example, the credit union must ensure that its contracts with the servicer grant the credit union sufficient control over the servicer's actions and provide for replacing an inadequate servicer. As NCUA stated in Letter to Credit Unions No. 04–CU–13, and, again, in NCUA Risk Alert No. 05–01, safety and soundness requires a credit union to limit the power of a third-party servicer to alter loan terms. Also, the servicing contract must contain a mechanism, or exit clause, to replace an unsatisfactory servicer.

A regional director may also consider any legal reviews obtained by the credit union on these contracts and should consider the scope and depth of the review and the reviewer's qualifications.

Regional directors may consider other relevant factors when determining whether to grant a waiver of concentration limits as well as the size of any substitute limit. Other factors include the demonstrated strength of the credit union's management and the credit union's previous history in exercising due diligence over similar programs. In addition, higher concentration levels entail more risk to the net worth of a credit union, and so the requisite due diligence also depends on the substitute concentration limit the credit union requests.

C. Effective Date

The effective date of this final rule is 30 days from the date of publication in the **Federal Register**.

[5] Nationally recognized statistical rating organization (NRSRO) ratings, multi-year audited and segmented financials, and explanations of related party transactions and changes to the net worth of the vendor, if any, are also relevant.

[6] If the program loans have historically outperformed industry averages, perhaps because of lower prepayment rates or lower default proportions, a credit union should calculate expected yield if the prepayment rates or default proportions move upwards toward the industry averages.

As discussed in the preamble to the proposed rule, 70 FR 75753, 75757 (Dec. 21, 2005), several credit unions that currently participate in indirect, outsourced programs have concentration levels that exceed the proposed concentration limits. For those credit unions that exceed the concentration limits on the effective date, the rule will not require any divestiture. The rule will prohibit these credit unions from purchasing any additional loans, or interests in loans, from the affected vendor program until such time as the credit union either reduces its holdings below the appropriate concentration limit or the credit union obtains a waiver to permit a greater concentration limit.

The Board is concerned that some credit unions may consider making large purchases of loans that would be subject to the rule before the effective date of the final rule. NCUA will review any large purchases closely and credit unions should be advised that NCUA may consider appropriate supervisory action, including divestiture, to ensure that the credit union's actions were safe and sound.

D. 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 establishes for federally-insured credit unions a concentration limit on indirect vehicle loans serviced by certain third parties. In the preamble of the proposed rule NCUA published its estimate that no more than five small credit unions were involved in purchasing vehicle loans, or interests in loans, from an indirect, outsourced vendor program. NCUA received no comments on this estimate. Accordingly, NCUA has determined that the rule will not have a significant economic impact on a substantial number of small credit unions and that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The waiver provision in § 701.21(h)(2) contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), NCUA submitted a copy of the proposed rule as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval of a new Collection of Information, Third-Party Servicing of Indirect Vehicle Loans. On March 1, 2006, OMB approved this new Collection of Information. The OBM Collection Number is 3133–0171.

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. This rule will 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 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 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).

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects

12 CFR Part 701

Credit unions, Loans.

12 CFR Part 741

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on June 22, 2006.

Mary Rupp,

Secretary of the Board.

■ For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR parts 701 and 741 as set forth below:

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. 1981 and 3601–3619. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Add a new paragraph (h) to § 701.21 to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(h) *Third-party servicing of indirect vehicle loans.* (1) A federally-insured credit union must not acquire any vehicle loan, or any interest in a vehicle loan, serviced by a third-party servicer if the aggregate amount of vehicle loans and interests in vehicle loans serviced by that third-party servicer and its affiliates would exceed:

(i) 50 percent of the credit union's net worth during the initial thirty months of that third-party servicing relationship; or

(ii) 100 percent of the credit union's net worth after the initial thirty months of that third-party servicing relationship.

(2) Regional directors may grant a waiver of the limits in paragraph (h)(1) of this section to permit greater limits upon written application by a credit union. In determining whether to grant or deny a waiver, a regional director will consider:

(i) The credit union's understanding of the third-party servicer's organization, business model, financial health, and the related program risks;

(ii) The credit union's due diligence in monitoring and protecting against program risks;

(iii) If contracts between the credit union and the third-party servicer grant the credit union sufficient control over the servicer's actions and provide for replacing an inadequate servicer; and

(iv) Other factors relevant to safety and soundness.

(3) A regional director will provide a written determination on a waiver request within 45 calendar days after receipt of the request; however, the 45-day period will not begin until the requesting credit union has submitted all necessary information to the regional director. If the regional director does not

provide a written determination within the 45-day period the request is deemed denied. A credit union may appeal any part of the determination to the NCUA Board. Appeals must be submitted through the regional director within 30 days of the date of the determination.

(4) For purposes of paragraph (h) of this section:

(i) The term ''third-party servicer'' means any entity, other than a federally-insured depository institution or a wholly-owned subsidiary of a federally-insured depository institution, that receives any scheduled, periodic payments from a borrower pursuant to the terms of a loan and distributes payments of principal and interest and any other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan. The term also excludes any servicing entity that meets the following three requirements:

(A) Has a majority of its voting interests owned by federally-insured credit unions;

(B) Includes in its servicing agreements with credit unions a provision that the servicer will provide NCUA with complete access to its books and records and the ability to review its internal controls as deemed necessary by NCUA in carrying out NCUA's responsibilities under the Act; and

(C) Has its credit union clients provide a copy of the servicing agreement to their regional directors.

(ii) The term ''its affiliates,'' as it relates to the third-party servicer, means any entities that:

(A) Control, are controlled by, or are under common control with, that third-party servicer; or

(B) Are under contract with that third-party servicer or other entity described in paragraph (h)(4)(ii)(A) of this section.

(iii) The term ''vehicle loan'' means any installment vehicle sales contract or its equivalent that is reported as an asset under generally accepted accounting principles. The term does not include:

(A) Loans made directly by a credit union to a member, or

(B) Loans in which neither the third-party servicer nor any of its affiliates are involved in the origination, underwriting, or insuring of the loan or the process by which the credit union acquires its interest in the loan.

(iv) The term ''net worth'' means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the National Credit Union Share Insurance Fund.

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PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d. Section 741.4 is also authorized by 31 U.S.C. 3717.

■ 4. Add a new paragraph (c) to § 741.203 to read as follows:

§ 741.203 Minimum loan policy requirements.

* * * * *

(c) Adhere to the requirements stated in § 701.21(h) of this chapter concerning third-party servicing of indirect vehicle loans. Before a state-chartered credit union applies to a regional director for a waiver under § 701.21(h)(2), it must first notify its state supervisory authority. The regional director will not grant a waiver unless the appropriate state official concurs in the waiver. The 45-day period for the regional director to act on a waiver request, as described § 701.21(h)(3), will not begin until the regional director has received the state official's concurrence and any other necessary information.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its field of membership rules regarding service to underserved areas to limit underserved area additions to multiple common-bond credit unions and revise facility requirements for underserved areas. These amendments are being made after a comprehensive review of chartering policy based upon NCUA's experience addressing field of membership issues and the uncertainty resulting from recent litigation challenging service to underserved areas in Utah and the current ambiguity in the Federal Credit Union Act on this issue. This final rule will ensure continued reliable and efficient service to federal credit union members located in approved underserved areas and continue to allow multiple common-bond credit unions to add underserved areas to their charters. The final rule generally adopts the amendments as proposed. In addition, the final rule retains the definition of service facility as a credit union owned facility where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed.

DATES: Effective July 28, 2006

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Deputy General Counsel, John K. Ianno, Senior Trial Attorney, or Regina Metz, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA's chartering and field of membership policy is set out in NCUA's Chartering and Field of Membership Manual (Chartering Manual), Interpretive Ruling and Policy Statement 03–1. 68 FR 18333, Apr. 15, 2003. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. On December 29, 2005, the NCUA Board issued a moratorium suspending that portion of its chartering policy allowing non-multiple-common-bond credit unions to add new underserved areas. After establishing a moratorium, the NCUA conducted a comprehensive review of its underserved area policy.

On January 19, 2006, the NCUA Board approved a proposed rule regarding service to underserved areas. 71 FR 4530, Jan. 27, 2006. The NCUA proposed two amendments that would apply only prospectively. The first proposed change was to limit the addition of new underserved areas to only multiple common-bond credit unions. The second proposed change was to the definition and location of the service facility. When adding underserved areas, NCUA proposed requiring a physical presence in the underserved areas to assure better service to members in these locations and deleting the choice of a credit union owned electronic facility with certain functions as a service facility.

B. Comments

NCUA welcomed general comments on the proposed rule and also on all aspects of NCUA's rules on credit unions serving underserved areas. In addition to seeking general comments on the proposed rule, the Board specifically sought comments on a series of questions related to the impact of the proposed changes on consumers and credit unions. The comments were