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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AD37

Purchase, Sale, and Pledge of Eligible Obligations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule governing the purchase, sale, and pledge of eligible obligations by adding a conflict of interest provision substantially similar to the conflict of interest provision in NCUA's general lending rule. This addition will help ensure that decisions by a federal credit union (FCU) regarding the purchase, sale, and pledge of eligible obligations are made with the FCU's best interests in mind.

DATES: This final rule is effective December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Annette Tapia or Frank Kressman, Staff Attorneys, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA continually reviews its regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." NCUA Interpretive Rulings and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. Under IRPS 87-2, NCUA conducts a rolling review of one-third of its regulations each year, involving both internal review and public comment. NCUA's 2006 review produced a recommendation to include a conflict of interest provision in the eligible obligations rule similar to the one in

NCUA's general lending rule. 12 CFR 701.21(c)(8), 12 CFR 701.23.

B. Discussion

Generally, the eligible obligations rule implements the statutory provisions limiting the purchase, sale, and pledging of an eligible obligation, which is defined by the NCUA Board as a loan or group of loans. 12 U.S.C. 1757(13); 12 CFR 701.23. Subject to certain exceptions, the rule provides that an FCU may purchase eligible obligations, which the regulation defines as loans made to a member by another lender, from any source as long as the loans are ones the FCU is empowered to grant, up to an amount equal to 5% of its unimpaired capital and surplus. 12 CFR 701.23(b)(1). Exceptions in the rule include purchasing nonmember student and real estate secured loans for purposes of completing a loan pool for sale on the secondary market. In addition, loans purchased to complete a pool and loans purchased as part of an indirect lending or indirect leasing program are exempt from the 5% limit on eligible obligations.

The Board issued a proposed rule, with request for comments, to add a conflict of interest provision to the eligible obligations rule that is similar to the conflict provision in NCUA's general lending regulation. 72 FR 35207 (June 27, 2007), 12 CFR 701.21(c)(8)(i). The Board believes eligible obligation transactions, which involve the buying and selling of member loans, potentially present the same kinds of conflicts of interest as where an FCU is the original lender to its member. The proposal provided that an official, employee, or their immediate family members may not receive, directly or indirectly, any commission, fee or other compensation in connection with an eligible obligations transaction. The proposal was intended to help ensure FCUs make decisions concerning the purchase and sale of eligible obligations based on appropriate business considerations rather than any personal benefit to insiders.

C. Summary of Comments

NCUA received only five comments: Two from credit union trade associations, two from state leagues, and one from an FCU.

One of the trade associations stated it did not support the rule because NCUA had not supported "the need" for the

rule, why it was proposed, or "what problems it sought to address." The other trade association stated it recognized that "self-dealing and insider benefit should not be a motivating factor in a credit union's business" and generally supported the rule, emphasizing its strong support for the exceptions in the rule that allow various permissible payments.

One of the state leagues, while stating it agrees with "the concept of avoiding conflicts of interest," thought it was "an important issue" that credit unions should address in an internal policy or guidelines. This same commenter stated it was not aware "that there are any outstanding concerns," did not see the need for the rule and, therefore, did not support it. The other state league that commented stated that, although it knew "of no immediate need for a conflict of interest provision regarding" eligible obligations, it believed "the clarity provided for in the proposed change benefits all affected parties and will help ensure that decisions * * * [are for] sound business considerations rather than any personal benefit to insiders."

The FCU stated it did not feel the rule was necessary to ensure that FCUs make appropriate business decisions, questioned the need for the regulation, and contended the rule "introduced an additional regulatory burden." This commenter asked, if the rule is finalized, that it be narrowly interpreted so as not to inhibit certain activities common in the secondary market and offered the example of credit union attendance at conferences with secondary market participants that include meals. This commenter stated the rule should be interpreted as applicable on a "per transaction basis," meaning the determination should be whether there is prohibited compensation tied to the purchase or sale of a particular loan or group of loans.

Contrary to assertions in a couple of the comment letters, the Board believes the proposal clearly stated the basis for the proposed amendment: "The Board believes eligible obligation transactions, which involve the buying and selling of member loans, potentially present the same kinds of conflicts of interest as where an FCU is the original lender to its member. For that reason, the Board proposes to add a conflict of interest

provision * * * similar to the conflict of interest provision in NCUA's general lending rule." 72 FR 35207, 35208 (June 27, 2007). Some commenters appear to equate the "need" for a rule with instances or evidence of actual problems having occurred. The Board has recognized the potential for conflicts in eligible obligations transactions exists, just as in general lending, and, therefore, believes it should not wait for inappropriate transactions to occur to establish a "need" for a conflicts provision. The amendment is essentially and simply a rule of conduct and does not create any additional regulatory burden, for example, by affecting the current limitations on eligible obligation purchases or requiring FCUs undertake any additional record keeping or disclosures. Finally, the Board concludes having a conflict of interest provision in the eligible obligations rule paralleling the provision in the general lending rule is good regulatory structure and, as one commenter noted, adds clarity beneficial to all parties engaging in eligible obligation transactions with FCUs.

The Board notes it intends the conflict of interest provision to remove the incentive for personal gain at the credit union's expense in connection with an eligible obligations transaction. For example, the rule does not prohibit a credit union employee from attending a secondary market conference for information gathering and other business purposes to enhance the credit union's ability to engage in prudent eligible obligations transactions. Rather, the rule will be interpreted in the context of particular transactions and seeks to prevent purchases of loans that are not in the credit union's best interest. The rule accomplishes this by prohibiting personal economic incentives, such as fees or commissions, from being part of a transaction. NCUA reiterates that there are numerous exceptions built into the rule that allow employees to receive compensation for their eligible obligations activities under controlled circumstances.

The Board adopts the proposed conflict of interest provision for the eligible obligations rule without change as a final rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This rule adds a conflict of interest provision

to the eligible obligations rule. There is minimal regulatory burden associated with this and the rule will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their 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 final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that 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 will 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 Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) provides generally for a 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 this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so this rule may be reviewed.

List of Subjects in 12 CFR Part 701

Conflict of interests, credit unions, eligible obligations, loans.

By the National Credit Union Administration Board on November 15, 2007.

Mary Rupp,

Secretary of the Board.

■ For the reasons discussed above, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

■ 2. Section 701.23 is amended by adding new paragraph (g) to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations.

* * * * *

(g)(1) *Conflicts of interest.* No federal credit union official, employee, or their immediate family member may receive, directly or indirectly, any compensation in connection with that credit union's purchase, sale, or pledge of an eligible obligation under the provisions of § 701.23.

(2) *Permissible payments.* This section does not prohibit:

(i) A federal credit union's payment of salary to employees;

(ii) A federal credit union's payment of an incentive or bonus to an employee based on the credit union's overall financial performance;

(iii) A federal credit union's payment of an incentive or bonus to an employee, other than a senior management employee, in connection with that credit union's purchase, sale or pledge of an eligible obligation. This payment is permissible if the board of directors establishes a written policy and internal controls for the incentive or bonus program and monitors compliance with the policy and controls at least annually; and

(iv) Payment by a person other than the federal credit union of compensation to a volunteer official, non-senior management employee, or their immediate family member, for a service or activity performed outside the credit union provided that the federal credit union, the official, employee, or

their immediate family member has not made a referral.

(3) *Business associates and family members.* All transactions under this section with business associates or family members not specifically prohibited by paragraph (g)(1) of this section must be conducted at arm's length and in the interest of the federal credit union.

(4) *Definitions.* The definitions in § 701.21(c)(8)(ii) of this part apply to this section.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-0176; Directorate Identifier 2007-SW-14-AD; Amendment 39-15263; AD 2007-23-17]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 206A and 206B Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 206A and 206B helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority to identify and correct an unsafe condition on an aviation product. The aviation authority of Canada, with which we have a bilateral agreement, states in the MCAI:

Reevaluation of the structural analysis indicates the need for the removal from service of bolts in this application.

The removal of certain main rotor latch bolts is required because these bolts do not have a mandatory retirement life. Further evaluation has shown that these bolts fail prematurely due to fatigue. This fatigue failure may result in failure of the main rotor and subsequent loss of control of the helicopter. We are issuing this AD to require actions to correct this unsafe condition on these products.

DATES: This AD becomes effective December 6, 2007.

We must receive comments on this AD by January 22, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD may contain text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

Transport Canada, which is the aviation authority for Canada, has issued Airworthiness Directive No. CF-2006-23R1, dated March 12, 2007

(referred to after this as "the MCAI"), to correct an unsafe condition for these Canadian-certificated products.

The MCAI states:

Reevaluation of the structural analysis indicates the need for the removal from service of bolts in this application.

The removal of certain main rotor latch bolts is required because these bolts do not have a mandatory retirement life. Further evaluation has shown that these bolts fail prematurely due to fatigue. This fatigue failure may result in failure of the main rotor and subsequent loss of control of the helicopter. We are issuing this AD to require actions to correct this unsafe condition on these products.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bell Helicopter Textron has issued Alert Service Bulletin No. 206-06-109, dated July 25, 2006. The actions described in this MCAI are intended to correct the same unsafe condition identified in the service information.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of Canada, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and the referenced service information. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. The removal of certain bolts is required within 30 days because these bolts do not have a mandatory retirement life. Further evaluation has shown that these bolts fail prematurely due to fatigue. This fatigue failure may result in failure of the main rotor and subsequent loss of control of the helicopter. We are issuing this AD to require actions to correct this unsafe condition on these products.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.