Dated: September 18, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–20570 Filed 9–30–19; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE84

Payday Alternative Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule (referred to as the PALs II rule) to allow federal credit unions (FCUs) to offer additional payday alternative loans (PALs) to their members. The final rule does not replace the NCUA's current PALs rule (referred to as the PALs I rule). Rather, the PALs II rule grants FCUs additional flexibility to offer their members meaningful alternatives to traditional payday loans while maintaining many of the key structural safeguards of the PALs I rule.

DATES: The final rule is effective on December 2, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew Biliouris, Director, Office of Consumer Financial Protection; Joseph Goldberg, Director, Division of Consumer Compliance Policy and Outreach, Office of Consumer Financial Protection; or Marvin Shaw, Staff Attorney, Division of Regulations and Legislation, Office of General Counsel; 1775 Duke Street, Alexandria, VA 22314–6113 or telephone: (703) 518–1140 (Messrs. Biliouris and Goldberg), or (703) 518–6540 (Mr. Shaw).

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Comments
III. Summary of the Final Rule
IV. Statement of Legal Authority
V. Section-by-Section Analysis
VI. Regulatory Procedures

I. Background

Federal credit unions (FCUs) provide individuals of modest means access to affordable credit for productive and provident purposes.[1] This core credit union mission puts FCUs in natural competition with short-term, small-dollar lenders that offer payday, vehicle title, and other high-cost installment loans to borrowers of modest means.[2]

A ''payday loan'' generally refers to a short-term, small-dollar loan repayable in one or more installments with repayment secured by a pre- or post-dated check or a preauthorized electronic fund transfer (EFT) from the borrower's checking account.[3] A payday loan usually matures in 14 days, around the borrower's next payday, at which time the borrower is often required to repay the loan in a single balloon payment. The borrower typically does not pay interest on a payday loan. Rather, payday lenders charge high ''application'' fees relative to the amount borrowed, which typically range between $15 and $35 per 100 borrowed.[4] This pricing structure produces a triple-digit annual percentage rate (APR).[5]

Despite marketing payday loans as a temporary lifeline to borrowers, most payday lenders refinance or ''rollover'' the borrower's initial payday loan charging additional fees without a significant economic benefit to the borrower. In fact, the Center for Responsible Lending estimates that 76 percent of payday loans are rollovers.[6] Borrowers most often rollover a payday loan because the borrower does not have the ability to repay the initial loan upon maturity or will have limited funds to meet other obligations.[7] This pattern of repeated borrowings creates a ''cycle of debt'' that can increase the borrower's risk of becoming unbanked, filing for bankruptcy, or experiencing severe financial hardship.[8]

2010 Payday Alternative Loan Rulemaking (PALs I Rule)

In 2010, the Board amended the NCUA's general lending rule, § 701.21, to provide a regulatory framework for FCUs to make viable alternatives to payday loans, the PALs I rule.[9] The PALs I rule, § 701.21(c)(7)(iii), permits an FCU to offer to its members a PAL loan, a form of closed-end consumer credit, at a higher APR than other credit union loans as long as the PAL has certain structural features, developed by the Board, to protect borrowers from predatory payday lending practices that can trap borrowers in repeated borrowing cycles.

For example, the PALs I rule eliminates the potential for ''loan churning,'' the practice of inducing a borrower to repay an existing loan with another loan without significant economic benefit to the borrower, by prohibiting an FCU from rolling one PALs I loan into another PALs I loan.[10] As the Board previously explained, ''these provisions of the [PALs I rule] will work to curtail a member's repetitive use and reliance on this type of product, which often compounds the member's already unstable financial condition . . . The Board recognizes that continuously 'rolling-over' a loan can subject a borrower to additional fees and repayment amounts that are substantially more than the initial amount borrowed.'' [11] However, to avoid the possibility of a default in cases where the borrower cannot repay the initial PAL loan, an FCU may extend the maturity of an existing PALs I loan to the maximum term limit permissible under the regulation as long as the borrower does not pay any additional fees or receive additional credit. An FCU may also refinance a traditional payday loan into a PALs I loan.[12]

The PALs I rule also eliminates the underlying borrower payment shock from a single balloon payment, which often forces a borrower to rollover a payday loan, by requiring that each PAL loan fully amortize over the life of the loan.[13] As the Board previously stated in the preamble to the final PALs I rule, ''balloon payments often create additional difficulty for borrowers trying to repay their loans, and requiring FCUs to fully amortize the loans will allow borrowers to make manageable payments over the term of the loan, rather than trying to make one large payment.'' [14] Accordingly, an FCU must structure a PALs I loan so that a member repays principal and interest in

[1] *See* Credit Union Membership Access Act, Public Law 105–219, section 2, 112 Stat. 913 (Aug. 7, 1998) (*codified as* 12 U.S.C. 1751 note).

[2] Roy F. Bergengren, *Coöperative Credit,* 191 The Annals of the American Academy of Political and Social Science 144–148 (1937).

[3] Robert W. Snarr, Jr., Fed. Reserve Bank of Phila., *No Cash 'til Payday: The Payday Lending Industry,* Compliance Corner (1st Quarter 2002) *available at www.philadelphiafed.org/bank-resources/publications/compliance-corner/2002/first-quarter/q1cc1_02.cfm.*

[4] *See* National Consumer Law Center, *Consumer Credit Regulation* 403–6 (1st ed. 2012).

[5] The ''annual percentage rate'' is a ''measure of the cost of credit, expressed as a yearly rate.'' 12 CFR 1026.14(a).

[6] Uriah King & Leslie Parrish, Center for Responsible Lending, *Phantom Demand: Short-Term Due Date Generates 76% of Total Volume* 15 (July 2009) *available at www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-short-term-due-date-genderates-need-for-repeat-payday-loans-accounting-for-76-of-total-volume.html.*

[7] *Id.*

[8] *Id.*

[9] Short-Term, Small Amount Loans, 75 FR 58285 (Sept. 24, 2010).

[10] 12 CFR 701.21(c)(7)(iii)(A)(*4*).

[11] Short-Term, Small Amount Loans, 75 FR 24497, 24499 (May 5, 2010).

[12] Short-Term, Small Amount Loans, 75 FR 58285, 58286 (Sept. 24, 2010).

[13] 12 CFR 701.21(c)(7)(iii)(A)(*5*).

[14] Short-Term, Small Amount Loans, 75 FR 58285, 58287 (Sept. 24, 2010).

approximately equal installments on a periodic basis until loan maturity.[15] While the Board does not prescribe a specific payment schedule—*e.g.,* bi-weekly or monthly—the Board expects an FCU to structure the repayment of each PALs I loan to ensure that the member has a reasonable ability to repay the loan without the need for another PALs I loan or traditional payday loan. Accordingly, an FCU may not require that a borrower repay a PAL loan using a single balloon payment.

Moreover, the PALs I rule removes the economic incentive for an FCU to encourage a borrower to take out multiple PALs I loans by limiting the permissible fees that an FCU may charge that borrower to a reasonable application fee.[16] The non-credit union payday lending business model depends on repeated borrowings from a single borrower of small dollar amounts with high fees and associated charges. A traditional payday lender has every incentive to make multiple payday loans to that borrower to maximize the profitability of that relationship at the expense of the borrower. By limiting the scope of permissible fees, the PALs I rule realigns economic incentives to encourage an FCU to provide a PALs I loan as a pathway towards mainstream financial products and services rather than as a separate profit center for the credit union.

The Board recognizes that the PALs I rule contains recommended best practices that, when exercised in conjunction with a PALs I loan, help put credit union members on the pathway to mainstream financial products and services. This includes reporting to credit reporting agencies and providing financial education. As of December 2018, almost eighty-five percent of FCUs reported sharing PALs I loan information with credit reporting agencies and nearly forty-five percent reported providing financial education services to PALs I loan borrowers. The Board commends FCUs for undertaking these additional steps to assist their members.

2012 Payday Alternative Loan Advanced Notice of Proposed Rulemaking (PALs I ANPR)

As part of the 2010 rule making process, the Board indicated that it would review PALs I loan data collected on FCU call reports after one year to reevaluate the requirements of the PALs I rule.[17] As of September 2011, 372 FCUs offered PALs I loans with an aggregate balance of $13.6 million or 36,768 outstanding loans. Six months later, as of March 31, 2012, approximately 386 FCUs reported offering PALs I loans with an aggregate balance of $13.5 million on 38,749 outstanding loans. While the Board acknowledged at that time that some FCUs might make an independent business decision not to offer PALs I loans, it nevertheless sought to increase the number of FCUs making PALs I loans in a meaningful way and to ensure that all FCUs that chose to offer PALs I loans were able to recover the costs associated with making these types of loans.

For that reason, the Board issued an advanced notice of proposed rulemaking (PALs I ANPR) seeking comments on specific aspects of the PALs I rule at its September 2012 meeting.[18] These questions included, but were not limited to, asking whether the Board should allow an FCU to charge a higher application fee, whether the Board should increase the permissible PALs I loan interest rate, and whether the Board should expand the maximum permissible loan amount. The Board also asked commenters to provide information on any small dollar, short-term loans offered outside of the PALs I rule.

The Board received comments from trade organizations, state credit union leagues, consumer advocacy groups, lending networks, private citizens, and FCUs suggesting changes to at least one aspect of the PALs I rule. However, these commenters offered no consensus regarding which aspects of the PALs I rule the Board should modify. Consequently, the Board chose not to undertake any changes to the PALs I rule at that time.

2018 Payday Alternative Loan II Notice of Proposed Rulemaking (PALs II NPRM)

In May 2018, the Board approved a notice of proposed rulemaking to amend the NCUA's general lending rule to allow FCUs to make an additional viable alternative to predatory payday loans (PALs II NPRM).[19] As of December 2017, 518 FCUs reported offering PALs I loans with 190,723 outstanding loans and an aggregate balance of $132.4 million.[20] These figures represent a significant increase in loan volume from 2012 when the Board issued the PALs I ANPR. However, the number of FCUs offering these products has only grown modestly.

The purpose of the PALs II NPRM was to provide FCUs with additional flexibility to offer PALs loans to their members. The PALs II NPRM did not propose to replace the PALs I rule. Rather, it allowed an FCU to offer a more flexible PALs loan while retaining key structural features of the PALs I rule designed to protect consumers from predatory payday lending practices, including restrictions on permissible fees, rollovers, and amortization. The Board intended the PALs I rule and proposed PALs II rule to create distinct products (referred to in this document, respectively, as PALs I and PALs II loans) that must satisfy similar regulatory requirements tailored to the unique aspects of each product.

Features Incorporated From the PALs I Rule

The PALs II NPRM proposed to incorporate many of the structural features of the PALs I rule designed to protect borrowers from predatory payday lending practices. Those features included a limitation on rollovers, a requirement that each PALs II loan must fully amortize over the life of the loan, and a limitation on the permissible fees that an FCU may charge a borrower related to a PALs II loan. An FCU would also have had to structure each loan as closed-end consumer credit. As discussed in more detail below, the PALs II NPRM modified other features of the PALs I rule for PALs II loans. The purpose of these modifications was to encourage additional FCUs to offer PALs II loans as an alternative to predatory payday loans and to meet the needs of certain payday loan borrowers that may not be met by PALs I loans.

Loan Amount

The PALs II NPRM proposed to allow an FCU to make a PALs II loan for a loan amount up to $2,000 without any minimum loan amount. The PALs I rule currently limits PALs I loan amounts to a minimum of $200 and a maximum of $1,000.[21] The PALs II NPRM noted that allowing a higher loan amount would give an FCU the opportunity to meet increased demand for higher loan amounts from payday loan borrowers and provide some borrowers with an opportunity to consolidate multiple payday loans into one PALs II loan. The Board was particularly interested in allowing a sufficient loan amount to encourage borrowers to consolidate

[15] *Id.*

[16] 12 CFR 701.21(c)(7)(iii)(A)(*3*).

[17] 75 FR 58285, 58288 (Sept. 24, 2010).

[18] Payday-Alternative Loans, 77 FR 59346 (Sept. 27, 2012).

[19] Payday Alternative Loans, 83 FR 25583 (June 4, 2018).

[20] As of December 2018, 606 FCUs reported offering PALs I loans with 211,589 outstanding loans and an aggregate balance of $145.2 million.

[21] *See* 12 CFR 701.21(c)(7)(iii)(A)(*1*).

payday loans into PALs II loans to create a pathway to mainstream financial products and services offered by credit unions.

Loan Term

Consistent with the proposal to increase the permissible loan amount to $2,000, the PALs II NPRM proposed increasing the maximum loan term for a PALs II loan to 12 months. The PALs I rule currently limits PALs I loan maturities to a maximum term of 6 months.[22] The increased loan term would allow a borrower sufficient time to repay their loans, thereby avoiding the types of borrower payment shock common in the payday lending industry that force borrowers to repeatedly rollover payday loans. The PALs II NPRM noted that an FCU would be free to choose an appropriate loan term, provided the loan fully amortized, and encouraged FCUs to select loan terms that were in the best financial interests of PALs II borrowers.

Membership Requirement

The PALs II NPRM also proposed to allow an FCU to offer a PALs II loan to any member regardless of the length of membership. The PALs I rule currently requires a borrower to be a member of the credit union for at least one month before receiving a PALs I loan.[23] The PALs II NPRM eliminated the membership time requirement to allow an FCU to make a PALs II loan to any member borrower that needed access to funds immediately and would otherwise turn to a payday lender to meet that need. Nevertheless, the PALs II NPRM still encouraged FCUs to consider a minimum membership requirement as a matter of prudent underwriting.

Number of Loans

Finally, the PALs II NPRM proposed to remove the restriction on the number of PALs II loans that an FCU may make to a single borrower in a rolling 6-month period. The PALs I rule currently prohibits an FCU from making more than three PALs loans in a rolling 6-month period to a single borrower.[24] An FCU also may not make more than one PALs I loan to a borrower at a time. The Board suggested removing the rolling 6-month requirement for PALs II loans to provide FCU's with maximum flexibility to meet borrower demand. However, the PALs II NPRM proposed to retain the requirement from the PALs I rule that an FCU can only make one loan at a time to any one borrower. Accordingly, the PALs II NPRM did not allow an FCU to provide more than one PALs product, whether a PALs I or PALs II loan, to a single borrower at a given time.

Request for Additional Comments

In addition to the proposed PALs II framework, the PALs II NPRM asked general questions about PAL loans, including whether the Board should prohibit an FCU from charging overdraft fees for any PAL loan payments drawn against a member's account. The PALs II NPRM also asked questions, in the nature of an ANPR, about whether the Board should create an additional kind of PAL loan, referred to as PALs III, which would be even more flexible than what the Board proposed in the PALs II NPRM. Before proposing a PALs III loan, the PALs II NPRM sought to gauge industry demand for such a product, as well as solicit comment on what features and loan structures should be included in a PALs III loan.

II. Summary of Comments on the PALs II NPRM

The Board received 54 comments on the PALs II NPRM from 5 credit union trade organizations, 17 state credit union leagues, 5 consumer advocacy groups, 2 state and local governments, 2 charitable organizations, 2 academics, 2 attorneys, 3 credit union service organizations, 14 credit unions, and 2 individuals. A majority of the commenters supported the Board's proposed PALs II framework but sought additional changes to provide FCUs with more regulatory flexibility. These commenters focused on ways to increase the profitability of PALs loans such as by allowing FCUs to make larger loans with longer maturities, or charge higher fees and interest rates.

Some commenters strongly opposed the proposed PALs II framework. These commenters argued that the proposed framework could blur the distinction between PALs and predatory payday loans, which could lead to greater consumer harm. One commenter in particular argued that the Board has not fully explained why the proposed PALs II framework will encourage more FCUs to offer PALs loans to their members. Instead, these commenters urged the Board to focus on methods to curtail predatory lending by credit unions outside of the PALs I rule and to address potential abuses regarding overdraft fees.

Most commenters offered at least some suggestions on the creation of a PALs III loan. An overwhelming majority of these comments related to increasing the allowable interest rate for PALs III loans and giving FCUs greater flexibility to charge a higher application fee. The commenters that were opposed to the proposed PALs II framework similarly were opposed to the creation of a PALs III loan for the reasons noted above.

III. Summary of Final Rule

With the exception of reconsidering the proposed removal of the limit on the number of PAL loans in a rolling 6-month period, the Board is adopting the PALs II framework largely as proposed in the PALs II NPRM. The requirements for PALs II loans will be set out in a new paragraph of the NCUA's general lending rule, § 701.21(c)(7)(iv). The final rule allows an FCU to offer a PALs II loan to a member for any amount up to a maximum loan amount of $2,000. The PALs II loan must carry a loan term of at least 1 month with a maximum loan maturity of 12 months. The FCU may make such a loan immediately upon the borrower establishing membership in the credit union. However, an FCU may only offer one type of PALs loan to a member at any given time. All other requirements of the PALs I rule will continue to apply to PALs II loans including the prohibition against rollovers, the limitation on the number of PALs loans that an FCU can make to a single borrower in a given period, and the requirement that each PALs II loan fully amortize over the life of the loan.

Additionally, the final rule prohibits an FCU from charging any overdraft or non-sufficient funds (NSF) fees in connection with any PALs II loan payment drawn against a borrower's account. This includes overdraft fees or NSF fees that an FCU could assess against the borrower for paying items presented for payment after the PALs II loan payment creates a negative balance in the borrower's account. As discussed below, while the Board believes that reasonable and proportional fees assessed in connection with an overdraft loan are appropriate in most cases to compensate an FCU for providing an important source of temporary liquidity to borrowers, the Board has serious fairness concerns regarding this practice in connection with PAL loans given the unique characteristics of payday loan borrowers and the Board's stated goal of putting individuals on a path to mainstream financial products and services.

Lastly, the final rule does not take any immediate action with regard to PALs III loans. The Board has taken the comments regarding a PALs III loan under advisement and will determine whether future action is necessary.

[22] *See* 12 CFR 701.21(c)(7)(iii)(A)(*2*).

[23] *See* 12 CFR 701.21(c)(7)(iii)(A)(*6*).

[24] *See* 12 CFR 701.21(c)(7)(iii)(A)(*3*).

IV. Statement of Legal Authority

The Board is issuing this final rule pursuant to its plenary regulatory authority to administer the Federal Credit Union Act (FCU Act) [25] and its specific authority to adopt rules and regulations that it deems necessary or appropriate to ensure the safety and soundness of the credit union system and the National Credit Union Share Insurance Fund (NCUSIF).[26] Given the historic mission of credit unions to serve individuals of modest means, the importance of providing these individuals with a realistic pathway towards mainstream financial products and services, and the high fixed costs associated with offering viable alternatives to payday loans, this final rule is an appropriate exercise of the Board's regulatory authority.

V. Section-by-Section Analysis

Because the PALs II NPRM proposed to apply many of the requirements of the PALs I rule to PALs II loans, the Board received numerous comments regarding the PALs I rule. The Board addresses those comments below in a section-by-section analysis of the PALs I rule, § 701.21(c)(7)(iii). With the exception of one clarification regarding the aggregate concentration limit set out in § 701.21(c)(7)(iii)(A)(*8*), the Board is not adopting any changes to the PALs I rule. However, in response to questions raised by several commenters, the Board does provide additional guidance below regarding application fees and underwriting criteria. Specific comments related to the PALs II NPRM are discussed in the section-by-section analysis of § 701.21(c)(7)(iv), which contains the new PALs II rule.

Section 701.21(c)(7)(iii)—Payday Alternative Loans (PALs I)

Section 701.21(c)(7)(iii)(A)—Minimum Requirements for PALs I

Section 701.21(c)(7)(iii)(A) permits an FCU to charge an interest rate that is 1000 basis points above the usury ceiling established by the Board under the NCUA's general lending rule. The current usury ceiling is 18 percent inclusive of all finance charges.[27] For PALs I loans, this means that the maximum interest rate that an FCU may charge for a PAL is currently 28 percent inclusive of all finance charges.

Many commenters requested that the Board increase the maximum interest rate that an FCU may charge for a PALs loan to 36 percent. These commenters noted that a 36 percent maximum interest rate would mirror the rate used by the Consumer Financial Protection Bureau (CFPB or Bureau) to determine whether certain high-cost loans are ''covered loans'' within the meaning of the Bureau's Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (payday lending rule) [28] and maximum interest rate allowed for active duty service members under the Military Lending Act,[29] providing a measure of regulatory uniformity for FCUs offering PALs loans. These commenters also argued that increasing the maximum interest rate to 36 percent would allow FCUs to compete more effectively with insured depository institutions and payday lenders for market share in this market.

In contrast, two commenters argued that a 28 percent interest rate is sufficient for FCUs. These commenters stated that on higher dollar loans with longer maturities, the current maximum interest rate of 28 percent is enough to allow an FCU to make PALs loans profitably. Another commenter noted that many credit unions are able to make PALs loans profitably at 18 percent, which it believed is evidence that the higher maximum interest rate is unnecessary.

Since the Board originally adopted the PALs I rule, it has observed substantial ongoing changes in the payday lending marketplace. Given all of these developments, the Board does not believe it is appropriate to adjust the maximum interest rate for PALs loans, whether a PALs I loan or PALs II loan, without further study. Furthermore, the Board notes that both the Bureau's payday lending rule and the Military Lending Act use an all-inclusive interest rate limit that may or may not include some of the fees, such as an application fee, that are permissible for PALs loans. Accordingly, the Board will continue to consider the commenters' suggestions and may revisit the maximum interest rate allowed for PALs loans if appropriate.

Section 701.21(c)(7)(iii)(A)(3)

Section 701.21(c)(7)(iii)(A)(*3*) limits the number of PALs I loans that an FCU can make to three in a rolling 6-month period to any one borrower. An FCU also may not make more than one PALs I loan at a time to a borrower. To account for the adoption of the PALs II rule, the final rule amends this section to clarify that an FCU may not offer more than one PALs loan, whether a PALs I or PALs II loan, to a borrower at a time.

Some commenters argued that the limitation on the number of PALs loans that a borrower may receive at a given time would force borrowers to take out a payday loan if the borrower needs additional funds. However, the Board believes that this limitation places a meaningful restraint on the ability of a borrower to take out multiple PALs loans at an FCU, which could jeopardize the borrower's ability to repay each of these loans. While a pattern of repeated or multiple borrowings may be common in the payday lending industry, the Board believes that allowing FCUs to engage in such a practice would defeat one of the purposes of PALs loans, which is to provide borrowers with a pathway towards mainstream financial products and services offered by credit unions.

Section 701.21(c)(7)(iii)(A)(7)

Section 701.21(c)(7)(iii)(A)(*7*) permits an FCU to charge a reasonable application fee, not to exceed $20, to all members applying for a PALs I loan. The Board interprets the term ''application fee,'' as used in the PALs I rule, consistently with that of the CFPB's Regulation Z. Accordingly, in order to qualify as an ''application fee'' under the PALs I rule, an FCU must use the charge to recover actual costs associated with processing an individual application for credit such as credit reports, credit investigations, and appraisals.[30] An application fee that exceeds the actual cost of processing a borrower's application is a finance charge under Regulation Z that must be included in the APR and measured against the usury ceiling in the NCUA's rules.[31]

In response to the PALs II NPRM, several commenters argued that the current application fee limit of $20 is too low to allow an FCU to recover the actual costs of processing applications. The majority of these commenters recommended that the Board set the application fee limit between $40 and $50 to create an incentive for more FCUs to offer PALs loans to their members. Because of the limited underwriting involved with a PALs loan, the Board does not believe that an

[25] 12 U.S.C. 1766(a).

[26] 12 U.S.C. 1789(a)(11).

[27] Historically, the Board has interpreted the term ''finance charge'' in the NCUA's general lending rule consistently with that term in the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and the Consumer Financial Protection Bureau's implementing regulation, Regulation Z, 12 CFR part 1026. *See e.g.* Payday Lending, Letter to Federal Credit Unions 09–FCU–05 (July 2009) (''NCUA's long standing policy has been to look to the definition of 'finance charge' in Regulation Z'').

[28] 12 CFR 1041.3(b)(3)(i).

[29] 10 U.S.C. 987; 32 CFR part 232.

[30] 12 CFR 1026.4(c)(1).

[31] *See* 12 CFR part 1026, Supp. I, comment 4(c)(1)–1.

application fee limit between $40 and $50 is appropriate. While one commenter provided a revenue model to help illustrate the potential cost of making a PALs loan, a majority of the commenters have not provided sufficient data to support their conclusion that the $20 application fee limit is too low to allow any FCU to recover the actual costs of processing applications. Furthermore, the Board believes that an increased application fee limit creates unnecessary potential for abuse by an FCU that may use a higher application fee as concealed interest to compensate the credit union for the risk of loss associated with making a PALs loan.

Other commenters asked the Board to clarify whether an application fee may reflect staff and technology costs, investing in loan processing automation, third-party service provider costs, and advertising. As noted above, the Board interprets the term ''application fee'' in the PALs I rule consistently with Regulation Z. An application fee must reflect the actual and direct costs associated with processing an individual application. While certain third-party service provider costs may be included in the application fee, especially if the FCU offers a PALs loan through a third-party vendor and passes any costs associated with using that vendor onto the member borrower, the Board does not believe that other costs, such as investing in loan processing automation or advertising costs, are actual and direct costs associated with processing a borrower's application. Rather, these costs are general business expenses incurred as part of credit union operations and do not relate to costs specifically incurred processing a borrower's PALs loan application.

One commenter stated that the Board should only permit one application fee per year. This commenter argued that the limited underwriting of a PALs loan does not justify allowing an FCU to charge an application fee for each PALs loan. Another commenter similarly requested that the Board adopt some limit on the number of application fees that an FCU may charge for PALs loans in a given year. The Board appreciates the commenters concerns about the burden excessive fees place on borrowers. This is particularly relevant in this area. However, the Board must balance the need to provide a safe product for borrowers with the need to create sufficient incentives to encourage FCUs to make PALs loans. The Board believes that its current approach of allowing FCUs to charge a reasonable application fee, consistent with Regulation Z, which does not exceed $20, provides the appropriate balance between these two objectives.

Several commenters also suggested that the Board permit an FCU to charge a monthly service fee for PALs loans. As noted above, the Board interprets the term ''finance charge,'' as used in the FCU Act, consistently with Regulation Z. A monthly service fee is a finance charge under Regulation Z.[32] Consequently, the monthly service fee would be included in the APR and measured against the usury ceiling in the NCUA's rules. Therefore, while the PALs I rule does not prohibit an FCU from charging a monthly service fee, the Board believes that such a fee will be of little practical value to an FCU because any monthly service fee income likely would reduce the amount of interest income an FCU could receive from the borrower or would push the APR over the applicable usury ceiling.

Section 701.21(c)(7)(iii)(A)(8)

Section 701.21(c)(7)(iii)(A)(*8*) requires an FCU to include a limit on the aggregate dollar amount of PALs I loans in its written lending policies. Under no circumstances may the total amount of PALs I loans be greater than 20 percent of the FCU's net worth. This provision also requires an FCU to adopt appropriate underwriting guidelines to minimize the risks related to PALs I loans. A set of best practices for PALs I loan underwriting is included as guidance in § 701.21(c)(7)(iii)(B)(*2*).

The final rule amends § 701.21(c)(7)(iii)(A)(*8*) to clarify that the 20 percent aggregate limit applies to both PALs I and PALs II loans. The Board adopted this limit in the PALs I rule as a precaution to avoid unnecessary concentration risk for FCUs engaged in this type of activity. While the Board indicated that it might consider raising the limit later based on the success of FCU PAL programs, the Board has insufficient data to justify increasing the aggregate limit for either PALs I or PALs II loans at this time. Rather, based on the increased risk to FCUs related to high-cost, small-dollar lending, the Board believes that the 20 percent aggregate limit for both PALs I and PALs II loans is appropriate. The final rule includes a corresponding provision in § 701.21(c)(7)(iv)(*8*) to avoid any confusion regarding the applicability of the aggregate limit to PALs I and PALs II loans.

Many commenters asked the Board to exempt low-income credit unions (LICUs) and credit unions designated as community development financial institutions (CDFIs) from the 20 percent aggregate limit for PALs loans. These commenters argued that making PALs loans is part of the mission of LICUs and CDFIs and, therefore, the Board should not hinder these credit unions from making PALs loans to their members. Another commenter requested that the Board eliminate the aggregate limit for PALs loans entirely for any FCU that offers PALs loans to their members. The Board did not raise this issue in the PALs II NPRM. Accordingly, the Board does not believe it would be appropriate under the Administrative Procedure Act to consider these requests at this time. However, the Board will consider the commenters' suggestions and may revisit the aggregate limit for PALs loans in the future if appropriate.

Other commenters to the PALs II NPRM asked for clarification regarding the underwriting criteria that an FCU must use in connection with a PALs loan. Specifically, commenters requested guidance on whether an FCU should consider a borrower's debt burden in addition to monthly income or deposit activity when making a PALs loan. The Board has not historically required specific underwriting standards for PALs loans. Rather, the Board has allowed an FCU to develop its own lending policies based on its risk tolerance.[33] At a minimum, however, the Board has recommended that an FCU develop underwriting standards that ''account for a member's need for quickly available funds, while adhering to principles of responsible lending.'' [34] This includes examining a borrower's ''proof of employment or income, including at least two recent paycheck stubs'' to determine a borrower's repayment ability as well as ''developing standards for maturity lengths and loan amounts so a borrower can manage repayment of the loan.'' [35]

The Board continues to believe that an FCU is in the best position to develop its own underwriting standards based on its risk tolerance as long as those standards are consistent with responsible lending principles. While the Board has historically only provided guidance on minimum standards for determining a borrower's recurring income as the key criteria for eligibility for a PALs loan, that does not mean that an FCU may ignore a borrower's debt burden when determining whether to grant a PALs loan. Rather, the FCU must consider the borrower's entire financial position, including debt burden, and make an informed judgment consistent

[32] *See* 12 CFR 1026.4(b)(2).

[33] *See* Short-Term, Small Amount Loans, 75 FR 58285, 58288 (Sept. 24, 2010).

[34] 12 CFR 701.21(c)(7)(iii)(B)(*2*).

[35] *Id.*

with responsible lending principles regarding whether to extend a PALs loan to a borrower. Accordingly, the FCU should conduct some inquiry into whether the borrower can manage to repay the PALs loan without the need for additional PALs loans or traditional payday loans. When considering the application of a member with prior a history at the credit union, a review of credit and debit activity in their account may be sufficient to make this determination.

Section 701.21(c)(7)(iv)—Payday Alternative Loans (PALs II)

The final rule creates a new provision, § 701.21(c)(7)(iv), that sets forth the requirements for PALs II loans. In the PALs II NPRM, a majority of commenters asked that the Board combine the PALs I rule and proposed PALs II rule together in a single PALs regulation. Most of the commenters argued strongly that one PALs loan regulation would reduce confusion and provide FCUs with greater flexibility to structure their PAL programs in ways that best serve their members.

A small number of commenters raised serious concerns regarding the applicability of the CFPB's payday lending rule [36] should the Board adopt any changes to the PALs I rule. The CFPB's payday lending rule establishes consumer protections for certain high-cost credit products, including payday loans, and deems some credit practices related to those products to be unfair or abusive in violation of the Consumer Financial Practices Act.[37] However, the CFPB's payday lending rule provides a ''safe harbor'' for any loan that is made by an FCU in compliance with the PALs I rule with an explicit cross-reference to § 701.21(c)(7)(iii).[38] These commenters argued that any changes to the PALs I rule may eliminate the safe harbor for FCUs in the CFPB's rule. To allow FCUs to continue to avail themselves of the safe harbor, the commenters requested that the Board adopt the PALs II rule as a separate provision within the NCUA's general lending rule.[39]

[36] 12 CFR part 1041.

[37] *See* 12 CFR 1041.1(b) (purpose).

[38] 12 CFR 1041.3(e)(4).

[39] In addition, as noted in the NPRM, the CFPB's current payday lending rule conditionally exempts ''alternative loans,'' which covers loans that meet certain PALs I requirements. The Board notes that the CFPB's rule does not include the minimum membership period or limitation on the number of loans in a six-month period among the criteria for the exemption. The Board's decision to limit the number of loans that may be made in a six-month period does not affect this exemption because the CFPB's rule does not include the number of loans as a criterion for the exemption.

The CFPB has proposed amendments to certain aspects of its payday lending rule.[40] Because the regulatory landscape with respect to payday lending remains somewhat uncertain until the Bureau completes the rulemaking process, the Board believes that adopting the PALs II rule as a separate provision within the NCUA's general lending rule is appropriate at this time to preserve the availability of the safe harbor for FCUs that offer PALs loans that conform to the requirements of the PALs I rule.

Membership Requirement

Current § 701.21(c)(7)(iii)(A)(*6*) requires a borrower to be a member of an FCU for at least one month before the FCU can make a PALs I loan to that borrower.[41] However, an FCU may establish a longer period as a matter of business judgment. The PALs II NPRM proposed to remove this minimum membership time requirement for PALs II loans. The purpose of this change was to allow an FCU to make a PAL II loan to any member borrower that needs access to funds immediately and would otherwise turn to a payday lender to meet that need.

Many of the commenters that addressed this issue favored removing the minimum membership time requirement with respect to PALs II loans. These commenters argued that this change would provide an FCU with the flexibility necessary to serve member borrowers that need immediate access to temporary liquidity who might otherwise turn to a payday lender. In contrast, a few commenters argued against this change, noting that that a minimum membership requirement is a prudent lending practice that helps an FCU establish a meaningful relationship with a potential borrower before offering a PALs II loan to that borrower.

The Board agrees that establishing a meaningful relationship with a potential borrower is a prudent lending practice and protects an FCU from certain risks. Accordingly, the Board encourages FCUs to consider establishing a minimum membership requirement as a matter of sound business judgment. However, the Board believes that granting PALs II loans to member borrowers, who need immediate access to funds, is a better alternative than having those borrowers take out predatory payday loans and wait for 30 days before rolling that predatory payday loan over into a PALs II loan, or worse, never applying for a PALs II loan. Therefore, the Board is adopting this aspect of the PALs II NPRM as proposed. The Board notes, however, that this final rule does not prohibit a credit union from setting a minimum membership term, but it is not required to do so.

[40] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 84 FR 4252 (Feb. 14, 2019).

[41] 12 CFR 701.21(c)(7)(iii)(A)(*6*).

Section 701.21(c)(7)(iv)(A)(1)

The PALs I rule limits the principal amount of a PALs I loan to not less than $200 or more than $1,000.[42] In contrast, the PALs II NPRM proposed to allow an FCU to offer a PALs II loan with a loan amount up to $2,000 without any minimum loan amount. The Board believes that a higher maximum and no minimum loan amount will allow an FCU to meet the demands of more segments of the payday loan market. Furthermore, the PALs II NPRM provided that a higher maximum loan amount will allow some borrowers to cover a larger financial emergency or to consolidate multiple payday loans into a PALs II loan, thereby providing a pathway to mainstream financial products and services offered by credit unions.

Maximum Loan Amount

Many commenters argued against the $2,000 maximum loan amount as too low. These commenters argued that $2,000 is insufficient to cover most large financial emergencies that prompt a borrower to resort to a payday loan or to allow a borrower to consolidate all of the borrower's payday loans. Some of these commenters, however, also argued that a larger maximum loan amount would be more profitable and allow an FCU to make sufficient interest to cover the cost of this type of lending.

In contrast, some commenters argued that allowing an FCU to charge a 28 percent APR for a $2,000 PALs II loan is a slippery slope to allowing an FCU to operate outside of the usury ceiling. These commenters noted that larger, longer-term loans provide increased revenue to the credit union and, therefore, the Board should not adopt a special exception from the general usury ceiling for these types of products.

While the Board recognizes that $2,000 may be insufficient to cover a larger financial emergency or to allow a borrower to consolidate a considerable number of payday loans, it nevertheless believes that allowing an FCU to offer a $3,000 or $4,000 loan at 28 percent interest is too high a limit and would violate the spirit of the FCU Act. In adopting the PALs I rule, the Board reluctantly established a separate usury ceiling for PALs I loans after a careful determination than an FCU could not

[42] 12 CFR 701.21(c)(7)(iii)(A)(*1*).

provide a reasonable alternative to a payday loan under the general usury ceiling. By allowing an FCU to charge a higher interest rate, the Board sought to create a regulatory structure that allowed an FCU to offer a responsible payday loan alternative to members in a prudent manner.

The Board believes that $2,000 is a reasonable limit for the vast majority of PALs II loan borrowers. Accordingly, the Board is also adopting this aspect of the PALs II NPRM as proposed.

Minimum Loan Amount

Several commenters expressed support for removing the minimum loan amount as a means of allowing an FCU to tailor its PALs II program to the unique needs of its members. In contrast, other commenters argued that removing the minimum loan amount would result in a triple digit APR comparable to a traditional payday loan for any PALs II loan under $100 where the credit union also charges an application fee.

The Board believes that an FCU should have the flexibility to meet borrower demand to avoid the need for those borrowers to resort to a traditional payday loan. While the total cost of credit may be high for these loans, the PALs II rule provides significant structural safeguards not present in most traditional payday loans.

Furthermore, the Board does not believe it is prudent for an FCU to require a member to borrow more than necessary to meet the borrower's demand for funds. Establishing a minimum PALs II loan amount would require a borrower to carry a larger balance and incur additional interest charges to avoid an apparently high APR when a smaller PALs II loan would satisfy that borrower's need for funds without the additional interest charges. On balance, the Board believes that the borrower's real need to avoid additional charges outweighs the need to avoid the appearance of a higher APR for smaller PALs II loans. Accordingly, the Board is adopting this aspect of the PALs II NPRM as proposed.

Nevertheless, the Board is mindful that allowing an FCU to charge an application fee up to $20 in connection with a PALs II loan less than $100 is problematic. Depending on the facts and circumstances, the Board believes that charging a $20 application fee for a low amount financed may take unfair advantage of the inability of the borrower to protect his or her interests, especially where minimal underwriting is expected to be performed. The Board reminds commenters that the application fee is to recoup the actual costs associated with processing an application. And more importantly, the $20 maximum amount allowed under this rule is the ceiling, not the floor. Any application fee charged by an FCU should be commensurate with the level of underwriting necessary to process a PALs II loan. Accordingly, the NCUA Board will instruct examiners to thoughtfully scrutinize the application fee charged for a PALs II loan less than $200.

Section 701.21(c)(7)(iv)(A)(2)

The PALs I rule currently limits loan maturities to a minimum of one month and a maximum of 6 months.[43] The PALs II NPRM proposed to allow an FCU to make a PALs II loan with a minimum maturity of one month and a maximum maturity of 12 months. The PALs II NPRM provided that the longer loan term will allow an FCU making a larger PALs II loan to establish a repayment schedule that is affordable for the borrower while still fully amortizing the loan.

All of the commenters that addressed this issue favored a maximum loan term of at least one year. A few commenters believed that a maximum loan term of one year is too short, allowing borrowers insufficient time to pay off larger PALs II loans. These commenters favored a more flexible maximum loan term to allow an FCU to establish a repayment schedule that is appropriate for the unique needs of each individual borrower. Other commenters advocated for the removal of any maximum maturity limit to allow an FCU the greatest amount of flexibility to establish an affordable repayment schedule. A few commenters also suggested that the Board increase the minimum loan term to 90 days to make PALs II loans safer for borrowers.

Each group of commenters made a reasonable argument why the Board should adopt a flexible maximum loan term. After considering these varied viewpoints, the Board has determined to finalize this aspect of the PALs II NPRM as proposed. Should the Board engage in any future rulemaking regarding PALs loans, it will further consider the commenters' suggestions along with any applicable data gathered on PALs II loans.

Section 701.21(c)(7)(iv)(A)(3)

The PALs I rule currently prohibits an FCU from making more than three PALs I loans in a rolling 6-month period to a single borrower.[44] The PALs II NPRM proposed to remove that restriction for PALs II loans. However, an FCU would not be allowed not make more than one of any type of PALs loan, whether a PALs I or PALs II loan, to a single borrower at a time.

Many of the commenters that addressed this issue favored removing the limit on the number of PALs II loans that an FCU may make to a borrower over 6 months as long as the Board retained the restriction of making no more than one PALs loan to a single borrower at a time. These commenters argued that this would provide FCUs with added flexibility to meet the needs of their members, particularly those members that currently use payday loans as a source of temporary liquidity. Other commenters also favored removing the limit, but opposed retaining the limit of one loan per borrower at a time.

Some commenters opposed removal of the limit on the number of PALs II loans an FCU can make to a borrower in a 6-month period. These commenters argued that such a change would allow an FCU to churn loans each month, charging an application fee for each PALs loan, with little economic benefit to the borrower similar to a predatory payday loan. According to these commenters, this would create a strong incentive for FCUs to adopt a business model that maximizes application fee revenue at the expense of the borrower contrary to the purposes of PALs loans.

The Board has reconsidered this aspect of the proposed rule and agrees that removing the limit on the number of PALs II loans an FCU may make to a single borrower at a time may encourage some FCUs to adopt a business model that maximizes fee revenue at the expense of the borrower. The Board fashioned the structural safeguards in the PALs I rule to eliminate the business practices common in the predatory payday lending industry that trap borrowers in cycles of repeated borrowings. Accordingly, the Board is not adopting this aspect of the PALs II NPRM in the final rule.

Section 701.21(c)(7)(iv)(A)(8)

The final rule adds a new § 701.21(c)(7)(iii)(A)(*8*) prohibiting an FCU from charging an overdraft or NSF fee in connection with a PALs II loan payment drawn against a borrower's account.[45] In the PALs II NPRM, the Board asked whether the NCUA should prohibit overdraft or NSF fees charged

[43] 12 CFR 701.21(c)(7)(iii)(A)(*2*).

[44] 12 CFR 701.21(c)(7)(iii)(A)(*3*).

[45] This includes extended overdraft fees or NSF fees that the FCU would assess against the borrower for paying items presented for payment after the PAL payment creates a negative balance in the borrower's account.

in connection with any PALs loan payments. Half of the commenters that responded to this question answered in the affirmative, arguing that an FCU could use overdraft fees in a predatory manner to extract additional revenue from a PALs loan borrower. These commenters also felt that allowing overdraft fees related to a PALs loan is contrary to providing borrowers with a meaningful pathway towards mainstream financial products and services because additional fees can have a devastating impact on the borrower's financial health and leave the borrower trapped in a ''cycle of debt.''

The remainder of the commenters that responded to this question opposed prohibiting an FCU from charging overdraft fees related to PALs loans. These commenters argued that the decision to extend an overdraft loan and charge overdraft fees should be business decisions for each individual FCU and that the Board should not treat overdraft or NSF fees charged in connection with a PALs loan payment any differently from other circumstance when a borrower overdraws an account to make a loan payment. Finally, some cautioned that prohibiting overdraft or NSF fees could pose a safety and soundness risk to an FCU if a borrower routinely overdraws an account because of a PALs loan.

The Board agrees that the decision to extend an overdraft loan to a borrower is a business decision for each FCU to make in accordance with its own risk tolerance. Generally, the Board also believes that an FCU charging a reasonable and proportional overdraft fee in connection with an overdraft loan is appropriate in most cases to compensate the credit union for providing an important source of temporary liquidity to borrowers. However, the Board has serious fairness [46] concerns regarding the potential harm to borrowers caused by allowing an FCU to charge overdraft or NSF fees in connection with a PALs II loan payment given the increased principal amount allowed for PALs II loans.

Charging overdraft fees related to a PALs II loan payment is likely to cause substantial borrower harm.[47] The Board envisions PALs II loan borrowers typically will be in a vulnerable financial position and unable to take on additional expenses. Charging an overdraft fee in this situation will likely weaken the borrower's financial position further and can have cascading consequences including an inability to repay the PALs II loan. Moreover, charging an overdraft fee in addition to requiring repayment of the overdrawn balance makes the borrower even less likely to meet other expenses or obligations.

This type of harm is also not reasonably avoidable by the borrower.[48] A borrower cannot reasonably avoid injury that results from an unpredictable event.[49] The decision whether to extend an overdraft loan and charge an overdraft fee, rests entirely with the FCU and not with the borrower. Accordingly, the borrower does not have an ability to anticipate which items that could overdraw the account that the FCU will honor and take appropriate action to minimize the potential for overdraft fees. Even if the borrower, in the abstract, should have the ability to anticipate such an event, behavioral economics research shows that borrowers are prone to hyperbolic discounting of the risk of potential negative events, making such an ability to anticipate the overdraft more theoretical than actual.[50]

Moreover, a borrower cannot reasonably avoid injury that results from an involuntary event.[51] The Federal Trade Commission (FTC) has compiled an extensive factual record showing that ''the precipitating cause of default is usually a circumstance or event beyond the debtor's immediate control.'' [52] Accordingly, ''among those defaults that do occur, the majority are not reasonably avoidable by consumers. Instead, default is a response to events that are largely beyond the consumer's control.'' [53] Although some precaution ''can reduce the risk of default . . . no reasonable level of precautions can eliminate the risk. Moreover, some consumers are unable to take various precautionary steps.'' [54] While an overdraft loan prevents a borrower from defaulting, many of the same circumstances that would cause a borrower to default would also cause a borrower to overdraw an account. Furthermore, in the case of PALs II loan borrowers, the member borrower may have limited ability to take precautionary steps to limit the harm caused by overdrafts given the borrower's financial position.

Allowing an FCU to charge overdraft fees related to a PALs II loan payment offers an insubstantial benefit to borrowers or competition in the payday lending marketplace when measured against the potential for substantial borrower harm.[55] The Board recognizes that allowing overdraft or NSF fees will make an FCU more likely to extend an overdraft loan to provide temporary liquidity for a PALs II loan borrower. However, the tradeoff for that liquidity is the potential for additional overdraft fees that could cause the borrower to experience other negative consequences such as the loss of a vehicle or eviction while trying to pay off overdraft fees. Moreover, while the Board acknowledges that this provision could result in borrowers receiving less overdraft loans or FCUs receiving less fee income, the Board believes that overdraft loans related to PALs II loans leave the borrower less financially stable and that FCUs already receive sufficient income through application fees and higher APRs charged on PALs II loan balances. Accordingly, the Board believes, on balance, that potential borrower harm outweighs potential tangible benefits.

Finally, the Board believes that allowing overdraft fees related to a PALs

[46] A business practice is unfair if it is likely to cause substantial consumer harm that is not reasonably avoidable by the consumer and not otherwise outweighed by any countervailing benefits to consumers or competition. *See* 15 U.S.C. 45(n).

[47] A harm may be ''substantial'' if ''a relatively small harm is inflicted on a large number of consumers or if a greater harm is inflicted on a relatively small number of consumers . . . [i]n most cases, substantial injury would involve monetary or economic harm or unwarranted health and safety risks.'' *See* Sen. Rep. No. 130, 103d Cong. 2d Sess. 12 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1787–1788.

[48] ''A harm is 'reasonably avoidable' if consumers 'have reason to anticipate the impending harm and the means to avoid it,' or if consumers are aware of, and are reasonably capable of pursuing, potential avenues toward mitigating the injury after the fact.'' *Davis* v. *HSBC Bank Nev., N.A.,* 691 F.3d 1152, 1168–69 (9th Cir. 2012) (*citing Orkin Exterminating Co.* v. *FTC,* 849 F.2d 1354, 1365–66 (11th Cir. 1988)). Thus, ''[i]n determining whether consumers' injuries were reasonably avoidable, courts look to whether the consumers had a free and informed choice.'' *FTC* v. *Neovi, Inc.,* 604 F.3d 1150, 1158 (9th Cir. 2010).

[49] Trade Regulation Rule; Credit Practices, 49 FR 7740, 7747 (Mar 1. 1984).

[50] *See e.g.,* Debra Pogrund Stark & Jessica M. Choplin, *A License to Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities,* 5 N.Y.U. J. L. & Bus. 617, 659–660 (2009).

[51] Trade Regulation Rule; Credit Practices, 49 FR 7740, 7747–8 (Mar 1. 1984).

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] In assessing whether a business practice is ''not outweighed by countervailing benefits to consumers or to competition,'' one is not required to ''quantify the detrimental and beneficial effects of the practice in every case . . . [i]n many instances, such a numerical benefit-cost analysis would be unnecessary; in other cases, it may be impossible.'' Rather, one must ''carefully evaluable the benefits and costs . . .considering reasonably available evidence.'' *See* Sen. Rep. No. 130, 103d Cong. 2d Sess. 12 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1787–1788. If the net effect of a particular business practice is injurious to consumers, then the practice is unfair. *See Am. Fin. Svcs Ass'n* v. *FTC,* 767 F.2d 957 (D.C. Cir. 1985).

II loan payment is contrary to one of the goals of PALs loans,[56] which is to provide borrowers with meaningful pathways towards mainstream financial products and services offered by credit unions. Accordingly, the Board is adopting a provision in the final rule to prohibit an FCU from charging an overdraft or NSF fee in connection with a PALs II loan payment drawn against a borrower's account. It may consider imposing similar requirement on all PALs loans in a future rulemaking should the Board determine that such a restriction is necessary for all PALs loans.

The Board recognizes that certain automated internal processes may cause an FCU to violate this prohibition on charging an overdraft or NSF fee in connection with a PALs II loan payment inadvertently. The Board notes that any FCU that charges an overdraft or NSF fee in connection with a PALs II loan payment should immediately refund the charge to the borrower. If the FCU refunds the charge to the borrower, the Board will not consider the FCU to have violated this aspect of the PALs II rule.

VI. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[57] This rule will provide a limited number of FCUs making PALs with additional flexibility to make such loans. Accordingly, the Board believes that 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.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. The NCUA triggers a SBREFA reporting requirement when the agency issues a final rule as defined by section 551 of the Administrative Procedure Act. As required by SBREFA, the NCUA submitted this final rule to the Office of Management and Budget (OMB) for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The OMB determined that the rule is not major. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), the NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. For purposes of the PRA, an information collection may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as a paperwork burden. The information collection requirements of § 701.21 of NCUA's regulations are assigned OMB control number 3133–0092 and this rule would not impose any new paperwork burden.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[58]

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.[59] The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has therefore determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

List of Subjects in 12 CFR Part 701

Credit unions, Federal credit unions.

By the National Credit Union Administration Board on September 19, 2019.

Gerard S. Poliquin,

Secretary of the Board.

For the reasons stated above, the National Credit Union Administration amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Amend § 701.21 by revising paragraph (c)(7)(iii) and adding paragraph (c)(7)(iv) to read as follows:

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

* * * * *

(c) * * *

(7) * * *

(iii) *Payday alternative loans (PALs I)*—(A) *Minimum requirements for PALs I.* Notwithstanding any other provision of this section, a federal credit union may charge an interest rate that is 1000 basis points above the maximum interest rate established by the Board under paragraph (c)(7)(ii) of this section provided the federal credit union is offering closed-end credit, as defined in § 1026.2(a)(10) of this title, in accordance with the following conditions:

(*1*) The principal of the payday alternative loan is not less than $200 or more than $1,000;

(*2*) The payday alternative loan has a minimum maturity of one month and a maximum maturity of six months;

(*3*) The federal credit union does not make more than three payday alternative loans provided under either this paragraph (c)(7)(iii) or paragraph (c)(7)(iv) of this section in any rolling six-month period to any one borrower and does not make more than one payday alternative loan provided under either this paragraph (c)(7)(iii) or paragraph (c)(7)(iv) of this section at a time to any borrower;

(*4*) The federal credit union does not rollover any payday alternative loan provided under this paragraph (c)(7)(iii) or paragraph (c)(7)(iv) of this section, provided that the prohibition against rollovers does not apply to an extension of a payday alternative loan term within

[56] When determining whether a business practice is fair, one may consider established public policy as evidence to be considered with all over evidence. However, public policy may not serve as the primary basis for determining the fairness of a business practice. *See* 15 U.S.C. 45(n). At least some older cases have found excessive bank fees to be unconscionable. *See Perdue* v. *Crocker Nat'l Bank,* 702 P.2d 503 (Cal. 1985).

[57] 5 U.S.C. 603(a).

[58] Public Law 105–277, section 654, 112 Stat. 2681, 2681–581 (1998).

[59] 64 FR 43255 (Aug. 4, 1999).

the maximum loan term set forth in paragraph (c)(7)(iii)(A)(*3*) of this section that does not include any additional fees assessed or extend additional credit to the borrower;

(*5*) The federal credit union fully amortizes the payday alternative loan;

(*6*) The federal credit union requires the borrower to be a member of the credit union for at least one month before receiving a payday alternative loan provided under this paragraph (c)(7)(iii);

(*7*) The federal credit union charges a reasonable application fee to all members applying for a new payday alternative loan offered under this paragraph (c)(7)(iii) that reflects the actual costs associated with processing the application, but that in no case exceeds $20; and

(*8*) The federal credit union includes, in its written lending policies, a limit on the aggregate dollar amount of payday alternative loans made under this paragraph (c)(7)(iii) and paragraph (c)(7)(iv) of this section that does not exceed an aggregate of 20% of net worth and implements appropriate underwriting guidelines to minimize risk, such as, requiring a borrower to verify employment by providing at least two recent pay stubs.

(B) *PALs I guidance and best practices.* In developing a successful payday alternative loan program, a federal credit union should consider how the program would benefit a member's financial well-being while considering the higher degree of risk associated with this type of lending. The guidance and best practices are intended to help federal credit unions minimize risk and develop a successful program, but are not an exhaustive checklist and do not guarantee a successful program with a low degree of risk.

(*1*) *Program features.* Several features that may increase the success of a payday alternative loan program and enhance member benefit include adding a savings component, financial education, reporting of members' payment of payday alternative loans to credit bureaus, or electronic loan transactions as part of a payday alternative loan program. In addition, although a federal credit union cannot require members to authorize a payroll deduction, a federal credit union should encourage or incentivize members to utilize payroll deduction.

(*2*) *Underwriting.* Federal credit unions should develop minimum underwriting standards that account for a member's need for quickly available funds, while adhering to principles of responsible lending. Underwriting standards should address required documentation for proof of employment or income, including at least two recent paycheck stubs. Federal credit unions should be able to use a borrower's proof of recurring income as the key criterion in developing standards for maturity lengths and loan amounts so a borrower can manage repayment of the loan. For members with established accounts, federal credit unions should only need to review a member's account records and proof of recurring income or employment.

(*3*) *Risk avoidance.* Federal credit unions should consider risk avoidance strategies, including requiring members to participate in direct deposit and conducting a thorough evaluation of the federal credit union's resources and ability to engage in a payday alternative loan program.

(iv) *Payday alternative loans (PALs II)*—(A) *Minimum requirements for PALs II.* Notwithstanding any other provision of this section, a federal credit union may charge an interest rate that is 1000 basis points above the maximum interest rate established by the Board under paragraph (c)(7)(ii) of this section provided the federal credit union is offering closed-end credit, as defined in § 1026.2(a)(10) of this title, in accordance with the following conditions:

(*1*) The principal of the payday alternative loan is not more than $2,000;

(*2*) The payday alternative loan has a minimum maturity of one month and a maximum maturity of 12 months;

(*3*) The federal credit union does not make more than three payday alternative loans provided either under paragraph (c)(7)(iii) of this section or this paragraph (c)(7)(iv) in any rolling six-month period to any one borrower and does not make more than one payday alternative loan provided under either paragraph (c)(7)(iii) of this section or this paragraph (c)(7)(iv) at a time to any borrower;

(*4*) The federal credit union does not rollover any payday alternative loan provided under paragraph (c)(7)(iii) of this section or this paragraph (c)(7)(iv), provided that the prohibition against rollovers does not apply to an extension of a payday alternative loan term within the maximum loan term set forth in paragraph (c)(7)(iv)(A)(*3*) of this section that does not include any additional fees assessed or extend additional credit to the borrower;

(*5*) The federal credit union fully amortizes the payday alternative loan;

(*6*) The federal credit union charges a reasonable application fee to all members applying for a new payday alternative loan offered under this paragraph (c)(7)(iv) that reflects the actual costs associated with processing the application, but that in no case exceeds $20;

(*7*) The federal credit union does not assess a fee or charge, including a non-sufficient funds fee, on the borrower's account pursuant to the federal credit union's overdraft service, as defined in § 1005.17(a) of this title, in connection with any payday alternative loan provided under this paragraph (c)(7)(iv); and

(*8*) The federal credit union includes, in its written lending policies, a limit on the aggregate dollar amount of payday alternative loans made under paragraph (c)(7)(iii) of this section and this paragraph (c)(7)(iv) that does not exceed an aggregate of 20% of net worth and implements appropriate underwriting guidelines to minimize risk, such as, requiring a borrower to verify employment by providing at least two recent pay stubs.

(B) *PALs II guidance and best practices.* In developing a successful payday alternative loan program, a federal credit union should consider how the program would benefit a member's financial well-being while considering the higher degree of risk associated with this type of lending. The guidance and best practices are intended to help federal credit unions minimize risk and develop a successful program, but are not an exhaustive checklist and do not guarantee a successful program with a low degree of risk.

(*1*) *Program features.* Several features that may increase the success of a payday alternative loan program and enhance member benefit include adding a savings component, financial education, reporting of members' payment of payday alternative loans to credit bureaus, or electronic loan transactions as part of a payday alternative loan program. In addition, although a federal credit union cannot require members to authorize a payroll deduction, a federal credit union should encourage or incentivize members to utilize payroll deduction.

(*2*) *Underwriting.* Federal credit unions should develop minimum underwriting standards that account for a member's need for quickly available funds, while adhering to principles of responsible lending. Underwriting standards should address required documentation for proof of employment or income, including at least two recent paycheck stubs. Federal credit unions should be able to use a borrower's proof of recurring income as the key criterion in developing standards for maturity lengths and loan amounts so a borrower

can manage repayment of the loan. For members with established accounts, federal credit unions should only need to review a member's account records and proof of recurring income or employment.

(*3*) *Risk avoidance.* Federal credit unions should consider risk avoidance strategies, including requiring members to participate in direct deposit and conducting a thorough evaluation of the federal credit union's resources and ability to engage in a payday alternative loan program.

* * * * *

[FR Doc. 2019–20821 Filed 9–30–19; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0318; Product Identifier 2019–NM–015–AD; Amendment 39–19745; AD 2019–19–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. This AD was prompted by an analysis conducted on Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes that identified structural areas that are susceptible to widespread fatigue damage (WFD). This AD requires reinforcement modifications of various structural parts of the fuselage, and applicable related investigative and corrective actions if necessary, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 5, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 5, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0318.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0318; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0276R1, dated January 11, 2019; corrected January 15, 2019 (''EASA AD 2018–0276R1'') (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. The NPRM published in the **Federal Register** on May 16, 2019 (84 FR 22075). The NPRM was prompted by an analysis conducted on Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes that identified structural areas that are susceptible to WFD. The NPRM proposed to require reinforcement modifications of various structural parts of the fuselage, and applicable related investigative and corrective actions if necessary.

The FAA is issuing this AD to address structural areas that are susceptible to WFD, which, if not corrected, could lead to crack initiation and undetected propagation, reducing the structural integrity of the airplane, possibly resulting in rapid depressurization and consequent injury to occupants. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. Commenters Christopher Cracraft, Samuel Hazo, and American Airlines (AAL) stated that they support the NPRM.

Request To Use Later-Approved Service Information

AAL requested that the FAA provide a statement in the final rule confirming its approval of later-approved service information since the FAA rarely allows such practice without an alternative method of compliance (AMOC).

This AD does not exclude the ''Ref. Publications'' section of EASA AD 2018–0276R1, so that section is applicable to this AD, which addresses the commenter's concern. The FAA does not find it necessary to provide an additional statement regarding this issue in this AD. Therefore, the FAA has not changed this AD regarding this issue.

Request To Allow Alternative Corrosion-Inhibiting Compounds (CICs)

Delta Airlines (DAL) generally supported the NPRM but requested that the FAA allow operators to use their CICs, which are controlled by their FAA-principal maintenance inspector (PMI), for their corrosion prevention and control program (CPCP). DAL stated that the instructions in the service information include the reapplication of CICs. DAL commented that the CICs do not always align with the CIC products specified in the service information, which forces operators to apply for an AMOC for use of their preferred CICs.

In addition, DAL stated that corrosion is not the subject of the unsafe condition in the proposed AD, and operators should be able maintain their airplanes at their discretion through their FAA-accepted programs. DAL commented that CICs that are PMI accepted have shown an equivalent level of safety, and their use should continue to be accepted