List of Subjects in 12 CFR Part 747

Civil monetary penalties, Credit unions.

By the National Credit Union Administration Board on December 30, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated in the preamble, the Board amends 12 CFR part 747 as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 1. The authority for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 15 U.S.C. 1639e; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; Pub. L. 114–74.

■ 2. Revise § 747.1001 to read as follows:

§ 747.1001 Adjustment of civil monetary penalties by the rate of inflation.

(a) The NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)), to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction by the rate of inflation. The following chart displays those adjusted amounts, as calculated pursuant to the statute:

U.S. Code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	$4,404.
(2) 12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	$44,043.
(3) 12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	$2,202,123 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A)	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to the National Credit Union Share Insurance Fund (NCUSIF), or inadvertent submission of false or misleading statement.	$4,027.
(5) 12 U.S.C. 1782(d)(2)(B)	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement.	$40,259.
(6) 12 U.S.C. 1782(d)(2)(C)	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done knowingly or with reckless disregard.	$2,013,008 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(a)(3)	Non-compliance with insurance logo requirements	$137.
(8) 12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security requirements	$320.
(9) 12 U.S.C. 1786(k)(2)(A)	Tier 1 CMP for violations of law, regulation, and other orders or agreements.	$11,011.
(10) 12 U.S.C. 1786(k)(2)(B) ..	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe or unsound practices or breaches of fiduciary duty.	$55,052.
(11) 12 U.S.C. 1786(k)(2)(C) ..	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person).	$2,202,123.
(12) 12 U.S.C. 1786(k)(2)(C) ..	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (insured credit union).	$2,202,123 or 1 percent of the total assets of the credit union, whichever is less.
(13) 12 U.S.C. 1786(w)(5)(A)(ii).	Non-compliance with senior examiner post-employment restrictions	$362,217.
(14) 15 U.S.C. 1639e(k)	Non-compliance with appraisal independence requirements	First violation: $12,647; Subsequent violations: $25,293.
(15) 42 U.S.C. 4012a(f)(5)	Non-compliance with flood insurance requirements	$2,392.

(b) The adjusted amounts displayed in paragraph (a) of this section apply to civil monetary penalties that are assessed after the date the increase takes effect, including those whose associated violation or violations pre-dated the increase and occurred on or after November 2, 2015.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG94

Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correcting amendment.

SUMMARY: The U.S. Small Business Administration (SBA) is correcting a final rule that was published in the **Federal Register** on October 16, 2020. The rule merged the 8(a) Business Development (BD) Mentor-Protégé Program and the All Small Mentor-Protégé Program to eliminate confusion and remove unnecessary duplication of functions within SBA. This document is making a correction to the final regulations.

DATES: Effective January 5, 2022.

FOR FURTHER INFORMATION CONTACT: Mark Hagedorn, U.S. Small Business Administration, Office of General Counsel, 409 Third Street SW, Washington, DC 20416; (202) 205–7625; *mark.hagedorn@sba.gov.*

SUPPLEMENTARY INFORMATION: On October 16, 2020, SBA published a final rule revising the regulations pertaining to the 8(a) BD and size programs in order to further reduce unnecessary or excessive burdens on small businesses and to more clearly delineate SBA's

intent in certain regulations (85 FR 66146). This is the fifth set of corrections. The first set of corrections was published in the **Federal Register** on November 16, 2020 (85 FR 72916). The second set of corrections was published in the **Federal Register** on January 14, 2021 (86 FR 2957). The third set of corrections was published in the **Federal Register** on February 23, 2021 (86 FR 10732). The fourth set of corrections was published in the **Federal Register** on July 22, 2021 (86 FR 38538). This document augments those corrections.

It is well established that business concerns are not affiliates of joint ventures of which they are members for size purposes. However, SBA regulations have long provided that when determining a concern's size SBA will consider all revenue in whatever form received or accrued from whatever source. Therefore, since 2004 SBA regulations have required a joint venture partner to include its proportionate share of joint venture receipts and employees in its own receipts and employee count, respectively. (69 FR 29192). The final rule of October 16, 2020, revised § 121.103(h) to clarify how a joint venture partner must calculate its proportionate share of joint venture receipts and employees for purposes of determining its own size status. Specifically, the final rule provided that the joint venture partner must include its percentage share of joint venture receipts and employees in its own receipts or employees. The appropriate percentage share is the same percentage figure as the percentage figure corresponding to the joint venture partner's share of work performed by the joint venture. For employee-based size standards, the appropriate way to apportion individuals employed by the joint venture is the same percentage of employees as the joint venture partner's percentage ownership share in the joint venture, after first subtracting any joint venture employee already accounted for in the employee count of one of the partners.

It has come to SBA's attention that some have misinterpreted the intent of the final rule. Specifically, because the regulations no longer allow joint ventures to be populated with individuals intended to perform small business set-aside contracts awarded to the joint venture, some have reasoned that a joint venture populated with its own separate contracting-performing employees does not qualify as a joint venture for all SBA program purposes. From this logic it ostensibly follows that a joint venture partner need not include in its own receipts its proportionate share of receipts and employees from populated joint ventures. This was not SBA's intent.

When SBA revised its regulations to 2016 to prohibit populated joint ventures on small business contracts, it did so in response to programmatic concerns that allowing populated joint ventures between a mentor and its protégé would not ensure that the protégé firm and its employees benefit by developing new expertise, experience, and past performance. (81 FR 48558). As SBA explained, if the individuals hired by the joint venture to perform the work under the contract did not come from the protégé firm, there is no guarantee that they would ultimately end up working for the protégé firm after the contract is completed. In such a case, the protégé firm would have gained nothing out of that contract. The protégé itself did not perform work under the contract and the individual employees who performed work did not at any point work for the protégé firm. Additionally, SBA believed that requiring joint ventures to be unpopulated ensures that the lead small business partner to the joint venture will meet its performance of work requirements and will actually benefit from the joint venture arrangement. This is especially important for joint ventures between a mentor and its protégé as well as joint ventures to perform socio-economic set-aside contracts, where the lead joint venture partner has the necessary size or socio-economic status and the non-lead partner does not. Nothing, however, in the final rule or the 2016 rulemaking signaled a change in policy concerning the treatment of receipts and employees from populated joint ventures for purposes of determining a joint venture partner's size. SBA never intended to change how revenues earned by a joint venture should be counted for size purposes. As noted above, a joint venture partner of any kind must include its proportionate share of joint venture receipts and employees in its own receipts and employee count to ensure that all its revenues and employees are properly considered in determining that partner's size. In this context it is irrelevant whether the joint venture partner's proportionate share of receipts and employees are from populated or unpopulated joint ventures. Thus, while populated joint ventures are no longer eligible to submit offers for small business contracts, receipts and employees from populated joint ventures are still attributable to the underlying joint venture partners for size purposes. This rule corrects the above misconception by clarifying that a concern must include in its receipts and employee count its proportionate share of joint venture receipts and joint venture employees, respectively, regardless of whether the joint venture is populated or unpopulated.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

Accordingly, 13 CFR part 121 is corrected by making the following correcting amendment:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 2. Amend § 121.103 by revising the paragraph heading and the first and second sentences of paragraph (h) introductory text to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(h) *Receipts/employees attributable to joint venture partners.* For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts (whether that joint venture is populated or unpopulated), unless the proportionate share already is accounted for in receipts reflecting transactions between the concern and its joint ventures (*e.g.,* subcontracts from a joint venture entity to joint venture partners). In determining the number of employees, a concern must include in its total number of employees its proportionate share of joint venture employees (whether the joint venture is populated or unpopulated). * * *

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Antonio Doss,

Deputy Associate Administrator, Office of Government Contracting and Business Development.

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