National Credit Union Administration

February 10, 2012

Federal Credit Unions

Re: 40-Year Real Estate Loan Modifications

Dear Federal Credit Unions:

Recently, our office has received requests for guidance regarding the maturity limitations for long-term residential mortgage loan modifications under NCUA's lending rule. Specifically, federal credit unions (FCUs) have asked if, for purposes of the 40-year long-term maturity limitation, 12 C.F.R. §701.21(g), the term of a modified loan is determined from the date of origination or the date of the modification.

Section 107 of the Federal Credit Union Act (the Act) permits FCUs to make long-term mortgage loans. 12 U.S.C. §1757(5)(A)(i). Section 701.21(g) of NCUA's regulations, which implements Section 107 of the Act, states: "A federal credit union may *make* residential real estate loans to members . . . with maturities of up to 40 years." (emphasis added). 12 C.F.R. §701.21(g). Based on a plain reading of the statute and regulation, when an FCU is "modifying" an existing loan, it is not "making" a loan. Thus, our opinion is that a loan modification that renegotiates an existing loan conforms with the 40-year maturity rule if the loan was originated with a maturity not greater than 40 years. In other words, a loan that complies with the long-term maturity limitation at the time it is *made* (i.e., the date of origination) will continue to comply with the maturity rule, even if it is later renegotiated and its maturity is modified. The term of this renegotiated loan, however, cannot exceed 40 years from the modification date.

For example, where an FCU renegotiates an existing 40-year mortgage loan to extend its term for 10 additional years, the modified maturity date is 50 years from the date of origination. If the FCU made that loan in June 1980 with a maturity in June 2020, and the renegotiation occurred prior to the June 2020 maturity, the loan's new maturity date would be in June 2030. This new maturity date would comply with the regulatory 40-year maturity limit because the loan complied with the long-term maturity limitation at the time it was made (i.e., originated).

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Based on this reading of the rule, when a loan modification is a new or subsequent transaction, the loan term is determined from the modification date. A loan modification that is a new or subsequent transaction complies with the 40-year maturity rule if, at the time the FCU *makes* the new loan (i.e., the date of the modification), the new loan is made for a period not exceeding 40 years.

For example, where a modified loan meeting market terms creates a separate and distinct obligation,[1] and thus is properly characterized as a new or subsequent loan, the new loan would comply with the long-term maturity limit if it is made with a maturity not exceeding 40 years from the date of the issuance of the new loan note. If the FCU made a loan in June 1980 with a maturity in June 2020, and that loan was replaced with a new 40-year obligation in June 2010, the new loan would mature in June 2050. Under this scenario, this new maturity date would comply with the regulatory 40-year maturity limit because the loan complied with the long-term maturity limit at the time it was made (i.e., modified as a new and subsequent transaction).

We believe this reading of the rule is consistent with guidance provided under Federal residential mortgage loan modification programs. It also enables FCUs to provide residential mortgage loan modification programs consistent with Federal initiatives aimed toward financial recovery for troubled homeowners.

We note that all long-term mortgage loans and loan modifications are, of course, subject to safety and soundness review. Your examiner may have a basis to object to a particular loan modification for safety and soundness reasons, even if all regulatory requirements are satisfied.

Sincerely,

Michael J. McKenna
General Counsel

[1] In some cases, a credit union may refer to a transaction as a "loan modification" when it is in fact a new loan, or vice versa. For example, a credit union may treat a loan as a "modification" as opposed to a subsequent loan or refinancing in order to reduce costs to the member, to retain its lien status, or to avoid the necessity and expense of preparing new loan documents and providing loan disclosures, as required under Regulation Z. Whether a transaction is a new loan or a renegotiation of an existing loan depends on all the particular facts and circumstances. As a general guideline, based on input from NCUA's Office of Examination and Insurance regarding sound lending practices, if a member can obtain funds from sources other than the existing credit union at market interest rates at or near those for nontroubled debt, then the credit union's granting of revised, market based lending terms is likely a new loan.