

75-35-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AD64

Exception to the Maturity Limit on Second Mortgages

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its lending rules to create a limited exception to the 20-year maturity limit on second mortgage loans. The amendment will permit federal credit unions participating in the Department of the Treasury's Making Home Affordable Program to modify a second mortgage loan, beyond 20 years, to match the term of a modified first mortgage loan.

DATES: This rule was effective June 24, 2009.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, at 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

Supplementary Information

I. Background

In June 2009, NCUA issued an interim final rule, with request for comments, to create a limited exception to the 20-year maturity limit on second mortgage loans. 74 FR 29933 (June 24, 2009). In this final rule, NCUA is finalizing the amendments to its lending rules to permit federal credit unions participating in the Department of the Treasury's Making Home Affordable Program to modify a second mortgage loan, beyond 20 years, to match the term of a modified first mortgage loan.

A. The Financial Stability Plan

The Emergency Economic Stabilization Act of 2008 (EESA) granted the Secretary of the Treasury emergency authorities and facilities to help restore liquidity and stability to the U.S. financial system. To address the ongoing financial crisis, the Department of the Treasury (Treasury) established the Financial Stability Plan, a comprehensive plan designed to address the credit crisis on multiple fronts. As part of this plan, Treasury

has launched a series of initiatives toward financial recovery, including the Making Home Affordable (MHA) Program.

B. Making Home Affordable Program

In February 2009, Treasury introduced the MHA Program to stabilize the American housing market and help struggling homeowners reduce their monthly mortgage payments to more affordable levels. The MHA Program aims to help millions of homeowners by providing new access to low-cost refinancing and by creating an affordable loan modification program to help families stay in their homes.

Treasury estimates up to 50 percent of at-risk mortgages currently have second liens. In these cases, even if the first lien is modified to improve affordability, a second lien can put a homeowner at risk of foreclosure. To address this problem, Treasury launched a Second Lien Program in an effort to reach more troubled homeowners, and to maximize the effectiveness of the first lien modification program. The MHA Second Lien Program coordinates with the first lien program to help create a sustainable mortgage payment for those homeowners who qualify for a first mortgage modification, yet are still faced with the difficulty of affording their housing payments due to a second lien. Full details about the MHA Second Lien Program are available online at <http://makinghomeaffordable.gov> and <http://www.financialstability.gov/docs/042809SecondLienFactSheet.pdf>.

C. Loans to Members

The interim rule sought to provide credit unions with the ability to participate in the MHA Second Lien Program and, thus, to better assist struggling homeowners unable to afford their housing payments. Absent a rulemaking, federal credit union participation in the MHA Second Lien Program would be limited because NCUA's lending rules impose a 20-year maturity limit on second mortgage loans that are secured by the member-borrower's primary residence. 12 C.F.R. §701.21(f)(1)(ii). First mortgages, however, may be made with maturities of up to 40 years, or longer if permitted by the NCUA Board. 12 C.F.R. §701.21(g).

The MHA Secondary Lien Program guidelines require that, for amortizing loans, mortgage servicers “[e]xtend the term of the modified second mortgage to match the term of the modified first mortgage, by amortizing the unpaid principal balance of the second lien over a term that matches the term of the modified first mortgage.” For interest-only loans, “[t]he second lien will amortize over the longer of the remaining term of the modified first lien or the originally scheduled amortization term, with amortization to begin at the time specified in the original contract.” Without an amendment to §701.21(f), federal credit unions cannot participate in the MHA Second Lien Program if the first mortgage is for a term longer than 20 years.

II. Summary of Public Comments

NCUA received six comments on the interim final rule: three from federal credit unions, two from credit union trade associations, and one from a state credit union league. All the commenters were supportive of the interim final rule but urged NCUA to permit

federal credit unions to extend the term of second mortgages to be coextensive with the term of existing first mortgages without participating in the MHA Second Lien Program. Some commenters stated the MHA Second Lien Program was cumbersome for some credit unions because of reporting requirements and others stated some credit unions are not interested in the government payment but simply wanted additional flexibility in modifying member loans. A couple of the commenters believed the 20-year maturity limit for second liens should be eliminated entirely, contending it would make federal credit unions more competitive with other lenders. These comments are beyond the scope of the interim final rule and, therefore, the Board is constrained by the provisions of the Administrative Procedure Act from making such changes in a final rule. The Board, however, may take these comments into consideration if it considers other changes to NCUA's lending regulation in the future.

III. Final Rule

This final regulation adopts the amendments made in the interim final rule without change. The final rule creates a limited exception to the 20-year maturity limit on second mortgage loans. The new provision, §701.21(f)(3), permits federal credit unions participating in Treasury's MHA Program to modify a second mortgage to match the term of a modified first mortgage, beyond 20 years. Credit unions that are not participating in the MHA Second Lien Program are still subject to the current 20-year maturity limitation on second liens. The final rule is intended to create a narrow

exception to NCUA's lending rules to enable federal credit unions to fully participate in the MHA Second Lien Program.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This final rule does not impose any regulatory burden but provides flexibility to all federal credit unions to allow for participation in the MHA Second Lien Program. Accordingly, it will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

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

The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub.L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, has determined that this is not a major rule for purposes of SBREFA.

List of Subjects

12 CFR Part 701

Credit, Credit Unions, Mortgages.

By the National Credit Union Administration Board, this 17th day of December 2009.

Mary F. Rupp

Secretary of the Board

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

PART 701 — ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789.

Section 701.6 is also authorized by 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.

§701.21 [Amended]

2. Section 701.21(f) is amended by adding new paragraph (3) to read as follows:

§ 701.21 Loans to Members and Lines of Credit to Members.

* * * * *

(f) * * *

(3) Notwithstanding the general 20-year maturity limit on second mortgage loans, a federal credit union participating in the Department of the Treasury's Making Home Affordable Program may extend the term of a modified second mortgage to match the term of a modified first mortgage, in accordance with applicable program guidelines.