



Submitted via email to: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)

Oct. 2, 2018

Mr. Gerard Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke St.  
Alexandria, VA 22314-3428

Re: Proposed Rule 701, Loans to Members and Lines of Credit to Members  
RIN 3133-AE88

Dear Mr. Poliquin:

The Wisconsin Credit Union League, representing Wisconsin's credit unions® and their 3 million plus members, appreciates the opportunity to comment on the National Credit Union Administration's (NCUA's) proposal to amend its regulations on loans and lines of credit to members.

The NCUA has proposed to make its regulations more user-friendly by: 1) identifying in one section the various maturity limits applicable to FCU loans; 2) clarifying that the maturity for a lending action that qualifies as a "new loan" under Generally Accepted Accounting Principles is calculated from the new date of origination; and 3) adding internal cross-references to more clearly identify the various regulatory limits on loans to a single borrower or group of associated borrowers. We support these proposed amendments.

In addition, the NCUA has asked for comments on whether it should 1) provide for longer, more flexible maturity limits on certain loans; and 2) provide a "universal standard limit" for loans to a single borrower or group of associated borrowers. Our comments will focus on these issues.

### **Limits on mortgage loan maturities**

The League urges the NCUA to change its maturity limits for mortgage loans, so that covered credit unions have more flexibility in making loans that meet members' needs and do not face a competitive disadvantage against other mortgage lenders who are not encumbered by similar limits.

### **Background**

Federal credit unions (FCUs) face a general 15-year loan maturity limit under the Federal Credit Union Act (FCU Act), as implemented by §701.21(c)(4) of the NCUA Regulation. Three exceptions are available for certain mortgage loans:

- One exception is found in §107(5)(A)(i) of the FCU Act, allowing terms of up to 30 years if a loan is secured by a first lien on a 1- to 4-family dwelling that "is or will be the principal residence of the member-borrower." Section §701.21(g) of the NCUA regulations extends this maturity limit to 40 years.
- Another exception is found in §107(5)(A)(i) of the FCU Act, allowing terms of up to 15 years – which is extended to 20 years by §701.21(f) of the NCUA regulations – if a loan is secured by a "residence," but not necessarily a "principal residence." Specifically, 20-year mortgages are allowed in the case of:
  - i. A loan to finance the purchase of a mobile home to be used as the member-borrower's residence, if the loan is secured by a first lien on the mobile home; or

---

### **The Wisconsin Credit Union League**

1 East Main Street, Suite 101, Madison, WI 53703-5109

Phone: (608) 640-4040 (800) 242-0833 Fax: (262) 549-7722 Web: [www.theleague.coop](http://www.theleague.coop)

- ii. A second mortgage loan (or a non-purchase money first mortgage loan where there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower; or
- iii. A loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

Where a loan will not be secured by a member-borrower's residence – such as a loan to buy or remodel non-owner-occupied property – the rules default to the 15-year loan maturity limit.

#### Longer maturity limits for second mortgage loans secured by residential real estate

We do not believe that the 40-year maturity limit in §701.21(g) should be lengthened. We also feel that a 20-year maturity limit is generally appropriate for most mobile home loans.

However, we believe that at least a 30-year maturity limit should apply to second mortgage loans secured by real property that is a residence of the member-borrower – regardless whether the loan is to repair, alter or improve the property or for any other purpose – under §701.21(f)(ii) and (iii) of the NCUA regulations. When an applicant wants a loan to buy a second home or vacation home or to repair an existing home, the current 20-year maturity limit under §701.21(f) puts FCUs at a competitive disadvantage. The applicant could easily visit a bank or a state-chartered credit union and apply for a standard 30-year mortgage. FCUs could try to work around the restriction by offering 20-year balloon loans, but that's an unattractive option because balloon loans cannot be considered "qualified mortgages" under the CFPB's Ability-to-Repay / Qualified Mortgage rules.

Unless the NCUA can show a compelling need to protect the safety and soundness of the credit union system by imposing a mortgage maturity limit that it outside the norm in the mortgage lending industry, it should put FCUs on a level playing field with other lenders and extend these maturity limits to at least 30 years.

#### 40-year maturity limits for loans on both residences and principal residences

In fact, we think that the NCUA can – and should – extend to 40 years the maturity limit on any loan secured by residential real estate, not just first-lien loans secured by a dwelling that is or will be a member-borrower's principal residence.

The FCU Act distinguishes between mortgage loans based on 1) lien position and on 2) whether the property securing the loan is the member-applicant's residence vs. his/her "principal" residence. The NCUA regulations reflect this distinction – but they don't have to. The FCU Act allows the NCUA by regulation to extend the Act's maturity limits, and the NCUA is free to allow the same 40-year maturity limit for loans secured by a member-borrower's residence under §701.21(f)(ii) and (iii) that it already allows for loans secured by a member-borrower's principal residence.

Such a change would eliminate the need to distinguish whether a member-borrower intends to make a property his/her principal residence. Right now, the 40-year maturity limited in §701.21(g) is only available if the residence securing the loan "is or will be" the member-borrower's "principal" residence. That standard is vague and invites abuse. The standard leaves credit unions to rely on the representations of borrowers at loan application, which may be false, inaccurate or subject to change. NCUA has said that a member can only have one principal residence at a time, and so a 40-year loan to finance a member's secondary principal residence is not permissible. *See, [NCUA Legal Opinion 92-0330](#)*. However, NCUA has also said that an FCU may finance a future principal residence with a 40-year mortgage loan. In other words, a member who already has a 40-year mortgage loan from an FCU may get another one to buy a second home if that home is his/her intended future principal residence. *See, [NCUA Legal Opinion Letter 10-0729](#)*. An FCU must determine the member's intent when the loan is originated. Even if a member's stated intent to move into the second dwelling is genuine at the time of application, the member-borrower has no obligation to follow through within any given time – or ever. In fact, the member is free to rent out his/her "future principal residence" in the interim without violating the maturity limit rule. *Id.* This opens the door to abuse by applicants who can get a 40-year mortgage on a second home from an FCU by doing nothing more than stating an intention to move, even if they never make that second home their "principal" residence.

### Longer maturity limits for non-owner-occupied property

We also believe that the NCUA should, if allowed under the FCU Act, extend maturity limits to at least 30 years for loans secured by any residential real estate – even if not owner-occupied – such as loans to buy or remodel non-owner-occupied residences. The Economic Growth Act removed the requirement to include loans on 1- to 4-family, non-owner-occupied properties in calculating an FCU’s cap on member business loans, but it did not address maturity limits on those loans. Since FCUs are subject to both MBL caps and loan maturity caps (and banks are not), it makes sense to consider loosening the unreasonably short 15-year maturity limit on such loans and give FCUs parity with competing mortgage lenders.

### **Limits on loans to a single borrower or group of associated borrowers**

Currently, three provisions of the NCUA’s regulations address limits on loans to a single borrower or group of associated borrowers:

- §701.21(c)(5) addresses the general limit – 10% of the credit union's total unimpaired capital and surplus, with no waiver available;
- §701.22(b)(5)(iv) addresses the limit on loan participations – 15% of a credit union’s net worth, unless that limit is waived by regulators; and
- §723.4(c) addresses the limit on commercial loans – the greater of 15% of a credit union’s net worth “or \$100,000, plus an additional 10 percent of the credit union's net worth if the amount that exceeds the credit union's 15 percent general limit is fully secured at all times with a perfected security interest by readily marketable collateral ...” No waiver from this limit is available.

The NCUA has asked whether a “universal standard limit” should be adopted instead of the three distinct limits now in place. We suggest keeping the three limits as they are, because each addresses a unique area. While having a single limit might “facilitate compliance and reduce regulatory burden,” as the proposal suggests, the existing limits have been carefully tailored by NCUA to meet distinct needs and potential risks. They should not be set aside in the interest of expediency.

### **Conclusion**

The League generally supports the three “technical” aspects of this proposal: 1) identifying in one section the various maturity limits applicable to FCU loans; 2) clarifying that the maturity for a lending action that qualifies as a “new loan” under Generally Accepted Accounting Principles is calculated from the new date of origination; and 3) adding internal cross-references to more clearly identify the various regulatory limits on loans to a single borrower or group of associated borrowers.

We urge the NCUA to change its maturity limits for mortgage loans, so that covered credit unions have more flexibility in making loans that meet members’ needs and do not face a competitive disadvantage against other mortgage lenders who are not encumbered by similar limits. We believe that at least a 30-year maturity limit (and perhaps 40 years) should apply to second mortgage loans secured by real property that is a residence of the member-borrower – regardless whether the loan is to repair, alter or improve the property or for any other purpose – under §701.21(f)(ii) and (iii) of the NCUA regulations. We also believe that the NCUA should, if allowed under the FCU Act, extend maturity limits to at least 30 years for loans secured by any residential real estate – even if not owner-occupied.

Finally, we believe that a “universal standard limit” should not be adopted to replace the three distinct limits now found in the NCUA regulations for loans to a single member or group of associated members.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul E. Guttormsson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Paul E. Guttormsson  
Vice President of Legal & Compliance  
Wisconsin Credit Union League & Affiliates  
(608) 640-4052