

October 04, 2018

National Credit Union Administration
Gerald Poliquin, Secretary of the Board
1775 Duke Street
Alexandria, VA 22314-3428

RE: Comments on Proposed Rule 701, Loans to Members and Lines of Credit to Members

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 260 credit unions and their approximately 10.7 million members.

The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on the proposed rule regarding loans and lines of credit to members. We applaud the NCUA Board (Board) for its efforts to provide clarity and make compliance easier. We also thank the Board for considering and seeking comments regarding maturity limits. While we do not support maturities beyond 40 years for 1-4 family real estate loans, we do support other possible amendments to modernize the regulation, and we respectfully offer the following comments and recommendations.

Background

Section 1757(5) of the Federal Credit Union Act (FCU Act) grants FCUs the power “to make loans, the maturities of which shall not exceed 15 years, except as otherwise provided herein....” The NCUA implemented this general maturity limit in § 701.21(c)(4) of its regulations.

Sections 1757(5)(A)(i)-(iii) of the FCU Act provide exceptions to the general 15-year maturity limit, and these exceptions have been implemented in §§ 701.21(e)-(g) of the NCUA’s regulations.

- **General Limit; 15 Years; 701.21(c)(4):**

The maturity of a loan to a member may not exceed 15 years. Lines of credit are not subject to a statutory or regulatory maturity limit. Amortization of line of credit balances and the type and amount of security on any line of credit shall be as determined by contract between the federal credit union and the member/borrower.

- **Maturity Limits for Insured, Guaranteed and Advance Commitment Loans; 701.21(e):**

A loan secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government, a State government or any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

- **Maturity Limits for Other Loans; 20 Years; 701.21(f):**

Loans to finance the purchase of a mobile home to be used as the member’s residence, loans for the repair, alteration, or improvement of a residential dwelling which is the residence of the member, or a second mortgage loan secured by a residential dwelling which is the residence of the member; the Board has established a 20-year maximum maturity for such loans.

- **Maturity Limits for 1-to-4-Unit Family Real Estate Loans; 40 Years; §701.21(g):**

Residential real estate loans, including loans secured by manufactured homes permanently affixed to the land, on a one to four family dwelling that is or will be the principal residence of the member-borrower; the Board has established a 40-year maximum maturity for such loans and has provided that longer periods may be permitted by the Board on a case-by-case basis.

As permitted by the FCU Act, §§ 1757(5)(A)(i)-(ii), the Board is considering longer maturity limits for certain loan types.

Maturity Limits

Better Identify Loan Maturity Limits

Having the various maturity limits spread among numerous sections of the NCUA's regulations, often separated by large amounts of regulatory text unrelated to maturities, can be confusing and make it difficult to understand the lending regulations.

To remedy this, the Board proposes to make the NCUA's loan maturity requirements more understandable and user-friendly by identifying in one section, including cross-citations, all of the maturity limits applicable to FCU loans. Part 701.21(c)(4) would be amended to add a new subparagraph for exceptions and explicitly state that three exceptions exist to the general 15-year maturity limit and cross-cite to §§ 701.21(e)-(g).

The Leagues support the proposed method of identifying all of the various loan maturity limits in one section of the regulations and including cross-citations. The proposed amendment will be very useful and eliminate potential confusion or misinterpretation.

Treatment of Maturities for "New Loans" Under GAAP

The proposed rule also would clarify that in the case of a lending action that qualifies as a "new loan" under generally accepted accounting principles (GAAP), the new loan's maturity is calculated from the new date of origination. The Board proposes to accomplish this by adding this language to § 701.21(c)(4), which articulates the general 15-year maturity limit.

The Leagues appreciate the clarification that in the case of a lending action that qualifies as a "new loan" under GAAP, the new loan's maturity is calculated from the new date of origination. However, further clarity is needed on the definition "new loan." It is unclear if this applies only to new loan originations, loan modifications, or both.

1-to-4-Unit Family Real Estate Loans – Maturity Limits

The Board requests comments on whether longer maturity limits should be adopted for 1-4 family real estate loans; currently 40 years under § 701.21(g)(1).

The Leagues do not believe maturities beyond 40 years are necessary, nor prudent, for several reasons. Currently, few credit unions take advantage of the 40-year maturity. Most lenders are reluctant to extend maturity limits beyond 30 years due to not meeting the criteria for a Qualified Mortgage (QM). Therefore, even if offering a 40- or 50-year term loan helps address affordability in high cost areas like California, credit unions would be exposed to litigation risk as a result of the QM rules.

Additionally, an increased maturity limit provides marginal payment relief at an interest rate comparable to a 30-year maturity. If a lender were to charge a higher rate due to an extended 40-plus-year term, the payment benefit would be negated. We also fear that going beyond a 40-year term would help drive ever-increasing housing prices.

The NCUA already applies additional scrutiny to credit unions with extended auto loan maturities over seven years^[1]. How would the NCUA measure and treat additional risk associated with extended mortgage loan terms?

The NCUA Board further requests comments on whether the case-by-case Board exemption for maturity limits on 1-to-4-unit family real estate loans should be retained.

The Leagues support retaining the case-by-case exemption, particularly if the 40-year maturity limit is retained. A path for exceptions is always good. Not all geographic and demographic areas in the United States are the same, and a case-by-case exemption may be valuable in specialized cases. As a request for an exemption would need to be well articulated, quantified, and should address any additional risks and benefits, we support retaining the case-by-case exemption authority.

1-to-4-Unit Family Real Estate Loans - Non-Owner Occupied

In addition to considering whether longer maturity limits should be adopted for 1-to-4-unit family real estate loans, the Leagues stress that the NCUA should also provide clarity related to the maturity limits for non-owner occupied 1-to-4-unit family real estate loans and seek to provide parity with banks and other mortgage lenders.

In May 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, S. 2155, and eliminated the requirement that a 1-to-4-unit family dwelling be the primary residence of a member in order to be excluded from the member business lending (MBL) cap. Thus, all 1-to-4-unit family dwellings, whether the member's primary residence or non-owner occupied, are excluded from the MBL rule. The NCUA implemented this change on June 5, 2018^[2].

However, Congress failed to consider the maturity limits for these non-owner occupied loans. The Federal Credit Union Act (FCU Act), §1757(5)(A)(i) provides that a residential real estate loan on a 1-to-4-unit family dwelling, including an individual cooperative unit, *that is or will be the principal residence of a credit union member*, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years or such other limits as shall be set by NCUA Board.

The Leagues believe this is an oversight by Congress and that it would prudent to allow the same maturity limits for both owner-occupied and non-owner occupied 1-to-4-unit family real estate loans. The Leagues would support the Board's efforts to correct this oversight.

Many members desire to purchase second homes as vacation homes, income property, or as housing for their elderly parents or young adult children. With a 15-year loan maturity limit, FCU members are forced to take their business elsewhere – to banks or mortgage brokers – for financing. Credit unions strive to help make their members' financial dreams come true and yet, for these loan products, they are constrained in doing so. Credit unions are often a better option, offering lower interest rates and fees. Members should have the ability to borrow from their trusted financial partner—their credit union.

We urge the Board to work towards and support legislative changes that would broaden the exemptions to allow for a 30-year maturity for first or second lien mortgages for non-owner occupied properties.

Correcting the maturity limits for non-owner occupied loans will provide credit unions parity with banks and other mortgage lenders who are not constrained by a 15-year maturity limit on non-owner occupied loans and enable credit unions to better serve their members with affordable mortgage options.

1-to-4-Unit Family Real Estate Loans – Detached Structures

As mentioned above, S. 2155 eliminated the requirement that a 1-to-4-unit family dwelling be the primary residence of a member in order to be excluded from the member business lending (MBL) cap. However, there is some uncertainty over the proper characterization of a 1-to-4-unit family dwelling that includes, on the same parcel of land, a detached structure, such as a "mother-in-law suite" or "casita." These structures are used primarily for personal, family, or household purposes. A member may occupy the main dwelling as their residence and either rent the secondary unit to a tenant or have a family member reside there rent free.

In its final rulemaking, the NCUA should clarify that a loan made on such a property is a loan on a 1-to-4-unit family dwelling; thus, not a member business loan. This clarification will ensure credit unions are able to serve their members and provide them with affordable mortgages.

Other Real Estate Loans – Maturity Limits

The Board requests comments on whether longer maturity limits should be adopted for other loans, such as home improvement, mobile home, and second mortgage loans. These loans currently have a 20-year maturity limit; § 701.21(f).

The Leagues support a 30-year maturity limit for home improvement, mobile home, and second mortgage loans. This would permit federal credit unions to compete with their state-chartered counterparts and banks. A 30-year maturity limit also provides members with greater access and affordability.

Single Borrower and Group of Associated Borrowers Limits

Better Identify Limits

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

- (1) § 701.21(c)(5) addresses the general 10 percent limit on loans and lines of credit to any member;
- (2) § 701.22(b)(5)(iv) addresses the 15 percent limit on loan participations that may be purchased with respect to a single borrower or group of associated borrowers; and
- (3) § 723.4(c) addresses the 15 percent limit on commercial loans to any one borrower or group of associated borrowers.

Because these provisions are spread among several sections of the NCUA's regulations, it is unclear that there are multiple limits that apply in different contexts. To rectify this, the Board proposes to include cross-citations to the more specific loan participation and commercial loan limits in the general limit section. The Leagues support this proposed method of identifying concentration limits. Providing the loan concentration limits in one section of the regulations, with cross-citations, would be very useful and help to limit confusion or misinterpretation.

Because loan participation and commercial loan limits apply to both a single borrower or group of associated borrowers, we recommend the Board also include reference and cross-citations to the "associated borrower" definition in §701.22 and §723.2.

Establish a Universal Standard Limit

Currently, a limit of 15 percent of a federally insured credit union's net worth exists for both commercial loans and loan participations that may be purchased with respect to a single borrower or group of associated borrowers.

However, a waiver is available in the case of the loan participations limit and an alternate limit is available for commercial loans (i.e., 15 percent of the federally insured 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).

The Board seeks comment on whether a universal limit would be beneficial and should be adopted in place of the current product specific limits.

The Leagues support keeping the current requirements for both commercial loans and loan participations that may be purchased with respect to a single borrower or group of associated borrowers. The current regulations provide a limit of 15 percent of net worth along with some flexibility (waiver for loan participations and alternate limit for commercial loans) that is beneficial to credit unions. This flexibility allows credit unions to adopt policies based on their strategy for growth.

Conclusion

The Leagues thank the Board for their efforts to modernize and clarify the loans and lines of credit regulations. We support the proposed methods to better identify the loan maturity limits and loan concentration limits as these amendments will make compliance easier. We do not believe that maturities beyond 40 years for 1-4 family real estate loans are necessary or prudent.

The Leagues do support a 30-year maturity limit for home improvement, mobile home, and second mortgage loans. Further, we strongly encourage the Board to address maturity limits for non-owner occupied 1-4 family real estate loans.

Thank you for the opportunity to comment on the proposed rule and for considering our views and recommendations. If you have any questions regarding our comments, please contact me.

[\[2\]](#) Federal Register; 83 FR 25881; June 5, 2018

Sincerely,

Diana Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL