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National Association of Federally-Insured Credit Unions

October 9, 2018

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

RE: Loans and Lines of Credit to Members (RIN 3133-AE88)

Dear Mr. Poliquin:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing in response to the National Credit Union Administration's (NCUA) proposed rulemaking on loans and lines of credit to members. NAFCU and its members appreciate the NCUA's continued commitment to easing compliance burdens on credit unions. With the recent passage of the *Economic Growth, Regulatory Relief and Consumer Protection Act* (S.2155), which provided that a non-owner occupied, one-to-four family dwelling loan will no longer be considered a member business loan (MBL), we expect to see positive lending results. We thank the NCUA for their quick adoption of the amendment.

NAFCU recognizes that extending the general 15-year maturity limit requires legislative action, and we urge the NCUA to support any legislative efforts in amending the general maturity limit as set forth in the *Federal Credit Union Act* (FCU Act) and to make raising this limit a legislative priority. We do, however, believe that the NCUA has flexibility to expand certain maturity limits under existing parameters in the FCU Act and encourage the agency to do so as outlined below.

NAFCU recommends that the NCUA extend maturity terms for those loans permitted by 12 U.S.C. 1757(5)(A)(i) by reinterpreting the definition of "principal residence." The NCUA should also extend maturity limits for those loans under 1757(5)(A)(ii). Additionally, NAFCU recommends that the NCUA expand the advanced commitment exception to include the government sponsored enterprises (GSEs).

General Comments

NAFCU wholly supports the technical amendments to the NCUA's regulations, especially providing all maturity limits in one section, as well as a clearer definition of when a loan constitutes a "new" loan under generally accepted accounting principles (GAAP). In the context of a refinance, what constitutes a "new" loan under the current rule was unclear and the technical amendments will alleviate regulatory burden and ease compliance.

NAFCU members generally support longer maturity limits. As the financial and home mortgage industry evolves, so too should the maturity limits. We have seen an increase in NAFCU member questions regarding investment properties, second homes, and vacation homes, and whether a loan for these types of properties may exceed the general 15-year maturity limit.

The *Federal Credit Union Act* (FCU Act) vests authority in the NCUA to regulate rates and terms of repayment to members as set forth in § 1757(5). Section 1757(5)(A) vests authority in the NCUA Board to establish the maturity limits for loans allowable under sub-paragraphs (i) and (ii). The NCUA Board has the statutory authority to expand the set maturity limits in keeping with the FCU Act. Further, the FCU Act provides in § 1752a(d) that the NCUA Board “shall adopt such rules as it sees fit for the transaction of its business.” NAFCU strongly recommends the NCUA support legislative efforts to expand the general 15-year maturity limit and encourages the agency to evaluate providing longer maturity limits for one-to-four family real estate loans and other loans as permitted by the FCU Act. Expanding such maturity limits would provide needed parity with other lenders and ensure members have greater access to credit while preserving the credit union-member relationship.

The NCUA should support expansion of the general 15-year maturity rule.

NAFCU members feel strongly about expanding the general 15-year maturity limit rule. NAFCU believes that Congress should give the NCUA Board the authority to establish maturity limits longer than 15 years for any loans it deems appropriate. The current 15-year maturity limit is not on par with what other lenders in the marketplace are setting as maximum maturity limits. Due to these constraints, credit unions may be compelled to offer balloon type loan products which are deemed unfavorable by the Bureau of Consumer Financial Protection (BCFP). Credit unions are at a competitive disadvantage with traditional and non-traditional lenders due to the constraints of the existing general maturity limit rule. The strong labor market means there is continued lending demand, magnifying the need for immediate reform of the general 15-year maturity limit.

Given the disparity of allowable maturity limits between credit unions and other lenders, NAFCU members have experienced situations where member-borrowers are approved for a loan and subsequently decide to procure a loan from a different lender in order to alleviate the future impact of a balloon payment when the loan comes due. As we see members walk away from loan approvals and seek out other lenders, there is the possibility that these same members will close their accounts, choosing to have all their banking needs fulfilled by the other lender for ease of management.

Members face increased costs due to the general maturity limit cap. For example, if a member-borrower procures a loan from a bank for a commercial mortgage, the bank is able to provide a 20-year, 25-year, or in certain cases a 30-year fully amortized loan, whereas a credit union can only provide a 15-year loan. Further, the NCUA encourages most commercial mortgages to be completed in 10 years or less, which means the borrower may incur thousands of dollars in closing costs every 5, 10 or 15 years due to balloon payments. If a member-borrower wants to hold onto a

commercial property long-term, then the member incurs an added financial burden by choosing to procure a loan with a credit union versus a bank.

NAFCU recognizes the statutory limitations the NCUA faces in modifying its maturity limits for loans to members. The NCUA should support a legislative fix to the FCU Act that provides the agency with discretion to set extended maturity limits for various loan products as it deems appropriate. This flexibility would put credit unions on a level playing field with other lenders by offering competitive loan products in the marketplace.

The NCUA should evaluate whether the definition of “principal residence” needs to be reinterpreted.

To answer the NCUA’s question regarding whether longer maturity limits for a one-to-four family real estate loan should be provided, NAFCU members believe that the current limit of 40-years is sufficient, and a longer maturity limit is not warranted at this time. However, NAFCU members are more frequently confronted with the question of maturity limits as their members wish to purchase more than one home. We recommend that the NCUA reevaluate whether the definition of principal residence needs to be reinterpreted, and we believe that the NCUA can interpret principal residence to include non-owner occupied residences in certain scenarios. 12 U.S.C. 1757(5)(A)(i) permits:

“...[A] residential real estate loan on a one-to-four-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 the National Credit Union Administration Board (except that a loan on an individual cooperative unit shall be adequately secured as defined by the Board), subject to the rules and regulations of the Board” (emphasis added).

Traditionally, the NCUA has interpreted this statute via regulation to allow for a 40-year maturity limit if the member is, or at some point in the future is, to use the property as their principal residence. Based on the NCUA’s longstanding Legal Opinion Letter 92-0330, member-borrowers are only allowed one principal residence, therefore loans for non-primary residences do not qualify for a “long-term mortgage loan” and members may only obtain a loan pursuant to the general 15-year maturity limit. However, if a member is obtaining a loan for a retirement home that at some point in the future will be the member’s home, then they may obtain a “longer-term mortgage loan.”

Credit unions must make risk-based decisions about obtaining certification of occupancy in order to ensure that the member-borrower has only one principal residence. NAFCU asks the NCUA to consider this provision of the FCU Act anew for the following reasons. First, we believe a member-borrower can have more than one principal residence. Second, we believe that the language of that provision is broader than had previously been interpreted by the NCUA. The language of the FCU Act in this section refers to the principal residence of “a” member. For the purposes of maturity limits, we recommend that the NCUA reinterpret the definition of “principal residence” to include

a one-to-four family home where at least one of the residents is a credit union member and the residence is the principal residence of that credit union member. Nothing in the FCU Act requires the same member to be the borrower of the loan. In fact, in other paragraphs of this same section, the FCU Act references “the” member. This demonstrates a distinction in Congressional intent that permits a different interpretation. Furthermore, the allowance of a “long-term mortgage loan” for non-owner occupied residences will not affect safety and soundness, as credit unions will continue to implement rigorous underwriting procedures but will continue to expand the available credit to consumers.

This change would additionally coincide with the Congressional intent in recently amending the FCU Act to remove a one-to-four family dwelling that is not the “primary residence” of a member from the MBL definition. Congress made this change to encourage more credit union lending for one-to-four family real estate transactions, paving the way for the NCUA to adopt changes to the maturity limit for these types of loans in order to carry out the congressional intent. This can be accomplished by the NCUA reinterpreting “principal residence” to include those one-to-four family real estate loans where at least one of the residents is a credit union member and the residence is the principal residence of that credit union member.

The NCUA should expand the maturity limit for loans for mobile homes, second mortgages, and improvements to residences.

Credit unions may make 20-year loans to members for the purchase of a mobile home as the member-borrower’s residence, for a second mortgage secured by a residential dwelling which is the residence of the member-borrower, or for loans to finance the repair, alteration or improvements of a residential dwelling. The NCUA has the power to expand the maturity limits of these loans pursuant to FCU Act § 1757(5)(A)(ii) as the language states “or any longer term which the Board may allow.” NAFCU members support a longer maturity limit for those loans allowable under 12 C.F.R. § 701.21(f) to also give parity between credit unions and other lenders.

The NCUA should expand the advanced commitment exception to include GSE commitments.

Section 701.21(e) provides that a maturity term may be made under the terms and conditions of an advanced commitment by the federal government, a state government, or any agency of either. The GSEs are willing to assume the risks of credit union loans and offer longer maturity terms. There is no reason why the NCUA should restrict maturity limits beyond what the GSEs are willing to allow in the secondary market. The GSEs are subject matter experts in mortgage lending, and if they are willing to purchase loans from credit unions and offer longer maturities, then surely there is low risk in affording a longer maturity limit.

Numerous NAFCU members receive advanced commitments from the GSEs. According to NAFCU’s February 2018 Economic & CU Monitor, 35 percent of members are selling to Fannie Mae, 12 percent to Freddie Mac, and 12 percent to both GSEs. Additionally, 39 percent of NAFCU members sell mortgages to the Federal Home Loan Banks, 11 percent use credit union service organizations (CUSOs) or mortgage wholesalers, and 6 percent use Ginnie Mae or private

placement. For example, NAFCU members have received advanced commitments from Freddie Mac for a one-to-four family, non-owner occupied dwelling that is not the principal residence of the member, with a maturity limit longer than 15 years. However, due to the NCUA's longstanding position that the GSEs are not deemed to be federal government agencies within the exception, credit unions are confined in offering a 15-year maturity limit, and conceivably face the risk of the member obtaining financing from an alternative lender.

Also, NAFCU members currently originate loans and then sell them to the secondary market once the maturity limit expires so the credit union retains the servicing of the loan for the member in order to continue to be the member's primary financial institution. The NCUA's regulations are not clear on whether credit unions may continue to service a loan once it is sold to the secondary market and the NCUA should clarify this point.

Conclusion

NAFCU recommends that the NCUA evaluate whether the definition of a "principal residence" needs to be reinterpreted, and to extend the maturity terms for those loans permitted by 12 U.S.C. 1757(5)(A)(i) and (ii). Also, NAFCU recommends that the NCUA expand the advanced commitment exception to include the government sponsored enterprises (GSEs). NAFCU appreciates the opportunity to share its members' views on this matter. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafc.org.

Sincerely,



Kaley Schafer
Regulatory Affairs Counsel