



7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

[RIN 3133-AE88]

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend its regulations regarding loans to members and lines of credit to members. The proposal would reduce regulatory burden by making amendments to improve clarity and to make compliance easier. Specifically, the Board proposes to make the NCUA’s loan maturity requirements more user friendly by identifying in one section all of the various maturity limits applicable to federal credit union (FCU) loans. The Board also proposes to make explicit in its regulations that the maturity date for a “new loan” under generally accepted accounting principles (GAAP) is calculated from the new date of origination. Additionally, the Board seeks comment on whether the agency should provide longer maturity limits for 1-4 family real estate loans and other loans permitted by the Federal

Credit Union Act (FCU Act) such as home improvement, mobile home, and second mortgage loans. Finally, the Board proposes to more clearly express the limits for loans to a single borrower or group of associated borrowers.

DATES: Comments must be received on or before [INSERT DATE THAT IS 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site: <https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx>. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule 701, Loans to Members and Lines of Credit to Members” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

Public Inspection: You may view all public comments on the NCUA’s website at <https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in the NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Thomas I. Zells, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 548-2478.

SUPPLEMENTARY INFORMATION:

- I. Background**
- II. Summary of the Proposed Rule**
- III. Section-by-Section Analysis**
- IV. Regulatory Procedures**

I. Background

In August 2017, the Board published and sought comment on the NCUA’s regulatory reform agenda (Agenda).¹ The Agenda identifies those regulations the Board intends to amend or repeal because they are outdated, ineffective, or excessively burdensome.²

A number of the items in the Agenda relate to the NCUA’s regulations on loans to members and lines of credit to members.³ In order to provide regulatory relief to credit unions, the Board proposes to address in this rulemaking the substance of several of those items and request further public comment on another. More specifically, the Board proposes to make the NCUA’s regulations on loans to members and lines of credit to members 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 GAAP is calculated from the new date of origination;⁴ (3) seeking comment on whether the NCUA should provide for longer, more flexible maturity limits on certain loans; and (4) more clearly expressing the limits in place for loans to a single borrower or group of associated borrowers.

II. Summary of the Proposed Rule

A. Loan Maturity Limits for Federal Credit Unions

¹ 82 FR 39702 (Aug. 22, 2017).

² This is consistent with the spirit of President Trump’s regulatory reform agenda and Executive Order 13777. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the Board has chosen to comply with it in spirit and has reviewed all of the NCUA’s regulations to that end.

³ 12 CFR 701.21.

⁴ GAAP is defined as generally accepted accounting principles in the United States as set forth in the Financial Accounting Standards Board’s (FASB) Accounting Standards Codification (ASC).

Section 107(5) of the FCU Act grants FCUs the power “to make loans, the maturities of which shall not exceed 15 years, except as otherwise provided herein...”⁵ The NCUA implemented this general maturity limit in § 701.21(c)(4) of its regulations. Section 107(5)(A)(i)-(iii) of the FCU Act provide exceptions to the general 15-year maturity limit, and have been implemented in § 701.21(e) through (g) of the NCUA’s regulations. Section 107(5)(A)(i) of the FCU Act, implemented in § 701.21(g) of the NCUA’s regulations, states that “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[.]”⁶ Pursuant to the authority § 107(5)(A)(i) of the FCU Act grants the Board to set alternate maturities for covered 1-4 family real estate loans, 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.⁷ Section 107(5)(A)(ii) of the FCU Act, implemented in § 701.21(f) of the NCUA’s regulations, states that “a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by

⁵ 12 U.S.C. 1757(5).

⁶ 12 U.S.C. 1757(5)(A)(i) (emphasis added); 12 CFR 701.21(g).

⁷ 12 CFR 701.21(g)(1) (stating that “[a] federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph[.]”).

a residential dwelling which is the residence of a credit union member, shall have a maturity not to exceed 15 years *or any longer term which the Board may allow[.]*⁸ Pursuant to the authority section 107(5)(A)(ii) grants the Board to set alternate maturities for covered loans, the Board has established a 20-year maximum maturity for such loans.⁹ Finally, section 107(5)(A)(iii) of the FCU Act, implemented in § 701.21(e) of the NCUA’s regulations, states that “a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided[.]”¹⁰

i. Identifying the Various Maturity Limits in One Section

Presently, § 701.21 of the NCUA’s regulations addresses various loan maturity limits in paragraphs (c), (e), (f), and (g). Paragraph (c) provides the general rules applicable to all loans to members and, where indicated, all lines of credit (including credit cards) to members, except as otherwise provided in the remaining provisions of § 701.21. Paragraph (c)(4) implements the general 15-year maturity limit that section 107(5) of the FCU Act places on loans to members. Paragraphs (e), (f), and (g) of § 701.21 implement the three exceptions to this general 15-year limit that appear in section 107(5)(A)(i)-(iii) of the FCU Act.

⁸ 12 U.S.C. 1757(5)(A)(ii) (emphasis added); 12 CFR 701.21(f).

⁹ 12 CFR 701.21(f)(1) (stating that “[n]otwithstanding the general 15-year maturity limit on loans to members, a federal credit union may make loans with maturities of up to 20 years” for loans covered by this paragraph.).

¹⁰ 12 U.S.C. 1757(5)(A)(iii); 12 CFR 701.21(e).

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 to the reader and makes it more 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 (§ 701.21(c)(4)), including cross-citations, all of the maturity limits applicable to FCU loans.

ii. The Treatment of Maturities for Lending Actions that Qualify as “New Loans” Under GAAP

The proposal also clarifies that in the case of a lending action qualifying as a “new loan” under GAAP, the maturity limit is calculated from the new date of origination.¹¹ The Board proposes to accomplish this by adding language to § 701.21(c)(4), which articulates the general 15-year maturity limit.

iii. Request for Comment on Providing Longer Maturity Limits for Certain Loans

The Board is considering providing longer maturity limits for 1-4 family real estate loans and other loans (such as certain home improvement, mobile home, and second mortgage loans) as permitted by section 107(5)(A)(i)-(ii) of the FCU Act and removing the case-by-case exception

¹¹ ASC 310-20-35-9 & 10.

the Board can grant. As discussed earlier, these maturity limits are implemented in § 701.21(f) and (g) of the NCUA's regulations. The case-by-case exception is located in § 701.21(g)(1) of the NCUA's regulations and provides that the Board can permit an FCU to make loans with maturities that exceed the regulation's 40-year limit "on a case-by-case basis, subject to the conditions of this paragraph (g)."¹² The Board believes that more input is necessary to determine whether longer maturity limits should be adopted and, if so, the proper maturity lengths and the reasons such longer maturities are warranted. As such, the Board asks that commenters provide detailed comments addressing: (1) whether the NCUA should provide longer maturity limits for certain lending actions permitted by section 107(5)(A)(i)-(ii) of the FCU Act; (2) the appropriate maturity limits for such lending actions; (3) whether the case-by-case Board exemption should be retained and, if so, under what circumstances would such exemptions be appropriate; and (4) any other issues stakeholders believe relevant. The Board also requests that commenters consider FCU Act limitations when requesting relief and changes in this area.

B. Single Borrower and Group of Associated Borrowers Limits

i. More Clearly Identifying the Various 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 limit; (2) § 701.22(b)(5)(iv) addresses the limit on loan participations; and (3) § 723.4(c) addresses the limit

¹² 12 CFR 701.21(g)(1).

on commercial loans. Because these provisions are spread among several sections of the NCUA's regulations, some stakeholders are not aware that there are multiple limits that apply in different contexts. To rectify this, the proposal makes clear that all three of these limits exist. Rather than move the loans to one borrower or group of associated borrowers limits that specifically apply to loan participations and commercial loans from their current regulatory sections to the general limit section, the Board proposes to include cross-citations to the more specific loan participation and commercial loan limits in the general limit section (§ 701.21(c)(5)). The Board believes that inserting cross-citations is a more efficient and user friendly way to identify that there are multiple lending limits throughout the NCUA's regulations.

Section 701.21(c)(5), as part of the general rules on loans and lines of credit to members, imposes the FCU Act's ten percent limit on loans and lines of credit to any member.¹³ Specifically, § 701.21(c)(5) requires that "[n]o loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in the aggregate amount exceeding 10% of the credit union's total unimpaired capital and surplus."¹⁴ Section 701.21(c)(5) also provides an outdated cross-citation to part 723 for the specific limit on commercial lending. The Board proposes to remove this outdated cross-citation and provide updated references to both the current loan participation limit in § 701.22(b)(5) and the commercial lending limit in § 723.4(c).

¹³ 12 U.S.C. 1757(5)(A)(x).

¹⁴ 12 CFR 701.21(c)(5).

The NCUA also proposes to make conforming amendments to update cross-citations to the single borrower and group of associated borrower limits in §§ 701.20(c)(2) and 701.22(b)(1).

ii. Request for Comment Regarding the Limits Applicable to Loan Participations and Commercial Loans

In addition, the NCUA believes that providing a universal standard limit for loans to a single borrower or group of associated borrowers, in lieu of the current loan product specific standards, may help facilitate compliance and reduce regulatory burden. As such, the agency seeks stakeholder input on whether the agency should provide such 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.

More specifically, the 15 percent limit on the aggregate amount of loan participations that may be purchased with respect to a single borrower or group of associated borrowers can be waived by the appropriate regional director, and, in the case of a federally insured, state-chartered credit union, with prior written concurrence of the appropriate state supervisory authority.¹⁵ The limit on commercial loans does not provide for waiver. Instead, it provides that "the aggregate dollar amount of commercial loans to any one borrower or group of associated borrowers may not

¹⁵ 12 CFR 701.22(b)(5)(iv).

exceed the greater of 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 as defined in §723.2 of this part. Any insured or guaranteed portion of a commercial loan made through a program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the loan in full, is excluded from this limit.”¹⁶

The Board believes that more input is necessary to determine whether a universal limit would be beneficial and should be adopted in place of the current product specific limits. As such, the Board asks that commenters provide comments addressing: (1) whether the NCUA should provide a single universal standard limit for commercial loans and loan participations that may be purchased with respect to a single borrower or group of associated borrowers; (2) if so, the appropriate limit for such a standard; (3) if not, why not; and (4) any other issues stakeholders believe are relevant to this determination. The Board also requests that commenters consider FCU Act limitations, specifically the general limit on loans to a single borrower of “10 per centum of the credit union’s unimpaired capital and surplus” in section 107(5)(A)(x), when commenting.¹⁷

III. Section-by-Section Analysis

¹⁶ 12 CFR 723.4(c).

¹⁷ 12 U.S.C. 1757(5)(A)(x).

This proposed rule reduces regulatory burden and makes the NCUA's regulations more user-friendly for credit unions. As such, it is largely clarifying and technical in nature and would maintain most of the current language in § 701.21. The proposed changes to § 701.21 and the conforming amendments to §§ 701.20 and 701.22 are discussed in more detail below.¹⁸

Section 701.20 Suretyship and guaranty.

The proposal would make minor conforming amendments to § 701.20(c).

The proposal would make conforming amendments to the section governing requirements for suretyship or guaranty agreements by removing outdated cross-citations to the loans to one borrower or group of associated borrowers limit in §§ 723.2 and 723.8 of the member business lending regulation and adding updated cross-citations to 701.22(b)(5)(iv) of the NCUA's loan participation regulation and 723.4(c) of the NCUA's member business lending regulation.

Section 701.21

The proposal would divide current § 701.21(c)(4) into two new subparagraphs. One paragraph, § 701.21(c)(4)(i), would state the general rule that loans carry a 15-year maturity. The other, § 701.21(c)(4)(ii), would make more explicit that there are exceptions to the general 15-year maturity limit in § 701.21 (e) through (g) for various types of credit union loans.

¹⁸ All citations to §§ 701.20, 701.21, 701.22, and part 723 in this preamble section refer to the NCUA's regulations in 12 CFR chapter VII.

The proposal would maintain all of current § 701.21(c)(4) in proposed § 701.21(c)(4)(i), which articulates the general 15-year maturity limit that exists on FCU loans. However, the proposal also would add language to clarify that the maturity for a lending action that qualifies as a new loan under GAAP is calculated from the new date of origination.

Section 701.21(c)(4)(ii) of the proposal would explicitly state, in three subparagraphs, that three exceptions exist to the general 15-year maturity limit and cross-cite to §§ 701.21(e)-(g), which detail them as follows:

Paragraph (c)(4)(ii)(A) of the proposal would explicitly cross-cite to the exception to the general 15-year maturity limit that exists in § 701.21(e) regarding covered loans 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.

Paragraph (c)(4)(ii)(B) of the proposal would explicitly cross-cite to the exception to the general 15-year maturity limit that exists in § 701.21(f) regarding covered home improvement, mobile home, and second mortgage loans.

Paragraph (c)(4)(ii)(C) of the proposal would explicitly cross-cite to the exception to the general 15-year maturity limit that exists in § 701.21(g) regarding covered 1-4 family real estate loans.

The proposal would revise § 701.21(c)(5) to add cross-citations to the specific requirements that exist on loans to a single borrower or group of associated borrowers in the loan participation rule, § 701.22(b)(5)(iv), and member business lending rule, § 723.4(c).

The proposal would revise § 701.21(e) to make more explicit that the maturity limits applicable to loans covered by paragraph (e) are notwithstanding the general 15-year limit in paragraph (c)(4). The proposal would also add a cross-citation to paragraph (c)(4).

The proposal would retain almost all of current § 701.21(f), but would insert some additional language to improve clarity.

The proposal would revise § 701.21(f)(1) to make more explicit that the maturity limit applicable to loans covered by paragraph (f) is notwithstanding the general 15-year limit in paragraph (c)(4). The proposal would also add a cross-citation to paragraph (c)(4).

The proposal would retain almost all of current § 701.21(g), but would insert some additional language to improve clarity.

The proposal would revise § 701.21(g)(1) to make more explicit that the maturity limit applicable to loans covered by paragraph (g) is notwithstanding the general 15-year limit in paragraph (c)(4). The proposal would also add a cross-citation to paragraph (c)(4).

Section 701.22

As described in more detail below, the proposal would make minor conforming amendments to § 701.22(b) regarding loan participations.

The proposal would update the cross-citation in § 701.22(b)(1), which provides that for a federally insured credit union to purchase a participation interest in a loan, the loan must comply with all regulatory requirements to the same extent as if the purchasing federally insured credit union had originated the loan. Specifically, the cross-reference in § 701.22(b)(1) is outdated and would be changed from § 723.8 to § 723.4(c).

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule.

The proposed rule reduces regulatory burden through clarifying and technical changes and will

not have an impact on small credit unions. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates new or amends existing information collection requirements.¹⁹ For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The proposed rule does not contain information collection requirements that require approval by OMB under the PRA.²⁰ The proposed rule would only make clarifying and technical changes.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined

¹⁹ 44 U.S.C. 3507(d); 5 CFR part 1320.

²⁰ 44 U.S.C. Chap. 35.

that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.²¹

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on August 2, 2018.

Gerard Poliquin,

Secretary of the Board.

²¹ Public Law 105–277, 112 Stat. 2681 (1998).

For the reasons discussed above, the NCUA Board proposes to amend 12 CFR part 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, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 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.

§ 701.20 [Amended]

2. Amend § 701.20(c)(2) by removing the citation “723.2 and 723.8” and adding in its place “701.22(b)(5)(iv) and 723.4(c)”.

3. Amend § 701.21 by revising paragraphs (c)(4) and (5), (e), (f)(1) introductory text, and (g)(1) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(4) *Maturity*—(i) *In general*. 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. 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.

(ii) *Exceptions*. Notwithstanding the general 15-year maturity limit on loans to members, a federal credit union may make loans with maturities:

(A) As specified in the law, regulations or program under which a loan is 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, as provided in paragraph (e) of this section;

(B) Of up to 20 years or such longer term as is provided in paragraph (f) of this section;
and

(C) Of up to 40 years or such longer term as is provided in paragraph (g) of this section.

(5) *Ten percent limit.* No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired capital and surplus. In the case of loan participations as defined in §701.22(a) of this part and commercial loans as defined in §723.2 of this chapter, additional limitations apply as set forth in § 701.22(b)(5)(iv) of this part and § 723.4(c) of this chapter.

* * * * *

(e) *Insured, guaranteed and advance commitment loans.* Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, 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.

(f) *20-year loans.* (1) Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, a federal credit union may make loans with maturities of up to 20 years in the case of:

* * * * *

(g) *Long-term mortgage loans*—(1) *Authority*. Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, a federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph (g).

* * * * *

§ 701.22 [Amended]

3. Amend § 701.22(b)(1) by removing the citation “§723.8” and adding in its place “§723.4”.

[FR Doc. 2018-17087 Filed: 8/9/2018 8:45 am; Publication Date: 8/10/2018]