



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/MM:sg
SSIC 3501
89-0838

October 2, 1989

Ms. Vicki A. Tupker
Oregon Employees Federal Credit Union
P.O. Box 2227
Salem, Oregon 97308

Re: Home Equity Loans (Your August 23, 1989, Letter)

Dear Ms. Tupker:

You have asked two questions. (1) Can the payment on a closed-end home equity loan, with a variable interest rate, remain constant and the term of the loan exceed 180 months? No. (2) Will NCUA establish new regulations that will require home equity loans to meet secondary market requirements? See response below.

ANALYSIS

(1) If the interest rate is variable, can the payments on a closed-end home equity loan remain constant and the term of the loan exceed 180 months? According to NCUA Rules and Regulations §701.21(f), "notwithstanding the general 12 year maturity limit on loans to members, a Federal credit union may make loans with maturities of up to 15 years in the case of . . . a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and . . . a loan to finance the repair, alteration, or improvement, of a residential dwelling which is the residence of the member-borrower." Payments on a closed-end home equity loan, regardless of the interest rate, may not exceed 180 months. To extend the limit past 180 months would eviscerate the clear meaning of the regulation.

For your information, the NCUA Board issued a proposed regulation in May of this year that would extend the maturity on these types of loans from 15 to 20 years. (See 54 Fed. Reg. 21967, 5/22/89,

FOIA Vol. I, Part C, 6 Real Estate Loans

Ms. Vicki A. Tupker
October 2, 1989
Page 2

copy enclosed.) The Board plans to make a final determination on the extended maturity before the end of 1989.

(2) Will NCUA establish regulations that require home equity loans to meet secondary market requirements? NCUA is presently reviewing NCUA Rules and Regulations Sections 701.21(f) and (g). Although the review is still in progress, a regulation requiring real estate loans to meet secondary market requirements will probably not be proposed. However, guidelines may be issued in the area of standardizing long-term mortgage loans to meet secondary market requirements. At this time, any proposed guidelines concerning secondary market requirements will probably not be applied to home equity loans.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

Enclosure

(1) Compliance with the Fair Housing Act is achieved when each loan applicant's creditworthiness is evaluated on an individual basis, without presuming that the applicant has certain characteristics of a group. If certain lending policies or procedures do presume group characteristics, they may violate the Fair Housing Act, even though the characteristics are not based upon race, color, sex, national origin, religion, handicap, or familial status. Such a violation occurs when otherwise facially nondiscriminatory lending procedures (either general lending policies or specific criteria used in reviewing loan applications) have the effect of making real estate-related loans unavailable or less available on the basis of race, color, sex, national origin, religion, handicap, or familial status. Note, however, that a policy or criterion which has a discriminatory effect is not a violation of the Fair Housing Act if its use achieves a legitimate business necessity which cannot be achieved by using less discriminatory standards. It is also important to note that the Equal Credit Opportunity Act and Regulation B prohibit discrimination, either *per se* or in effect, on the basis of the applicant's age, marital status, receipt of public assistance, or the exercise of any rights under the Consumer Credit Protection Act.

(2) Paragraph (b)(3) of this section prohibits consideration of certain factors because of their likely discriminatory effect and because they are not necessary to make sound real estate-related loans. For purposes of clarification, the prohibited use of location factors in this section is intended to prevent abandonment of areas in which a Federal credit union's members live or want to live. It is not intended to require loans in those areas that are geographically remote from the FCU's main or branch offices or that contravene the parameters of a Federal credit union's charter. Further, this prohibition does not preclude requiring a borrower to obtain flood insurance protection pursuant to the National Flood Insurance Act and Part 760 of NCUA's Rules and Regulations, nor does it preclude involvement with Federal or state housing insurance programs which provide for lower interest rates for the purchase of homes in certain urban or rural areas. Also, the legitimate use of location factors in an appraisal does not constitute a violation of the provision of paragraph (b)(3) of this section, which prohibits consideration of location of the dwelling. Finally, the prohibited use of

prior home ownership does not preclude a Federal credit union from considering an applicant's payment history on a loan which was made to obtain a home. Such action entails consideration of the payment record on a previous loan in determining creditworthiness; it does not entail consideration of prior home ownership.

(3)(i) Paragraph (c)(3) of this section prohibits consideration of the age or location of a dwelling in a real estate-related loan appraisal. These restrictions are intended to prohibit the use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Appraisals should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan.

(ii) The term "age of the dwelling" does not encompass structural soundness. In addition, the age of the dwelling may be used by an appraiser as a basis for conducting further inspections of certain structural aspects of the dwelling. Paragraph (c)(1) of this section does, however, prohibit an unsubstantiated determination that a house over X years in age is not structurally sound.

(iii) With respect to location factors, paragraph (c)(2) of this section recognizes that there may be location factors which may be considered in an appraisal, and requires that the use of any such factors be specifically documented in the appraisal. These factors will most often be those location factors which may negatively affect the short range future value (up to 3-5 years) of a property. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not affect the market values of a property because the cause of abandonment is unrelated to high risk. Proper considerations include the condition and utility of the improvement and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults.

[FR Doc. 89-12212 Filed 5-19-89; 8:45 am]

BILLING CODE 7530-01-M

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed revision to regulation.

SUMMARY: The NCUA Board (Board) is proposing to revise § 701.21(f) (15 Year Loans) of its Rules and Regulations. The proposal results from an amendment to the Federal Credit Union Act and NCUA's policy to periodically review each of its regulations. This revision will permit a Federal credit union to make loans with maturities of up to 20 years for mobile home, secondary mortgage and home improvement loans.

DATE: Comments must be received on or before August 21, 1989.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, NCUA, Director, Office of Examination and Insurance, 1776 G Street NW., Washington, DC 20456, telephone: (202) 682-9640 or Roy DeLoach, NCUA, Office of General Counsel, 1776 G Street NW., Washington, DC 20456, telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION: Federal credit unions are currently authorized to make loans to members at maturities of up to 12 years with certain exceptions. Lines of credit have no statutory or regulatory maturity limitations. First mortgage loans secured by a first lien on the principal residence of the member-borrower may be granted with maturities of up to 40 years. Section 701.21(f) of the NCUA Rules and Regulations currently implements an FCU's authority to make loans with maturities of up to 15 years in the case of: (1) A loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, (2) a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and (3) a loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

Section 702 of the Competitive Equality Banking Act of 1987 (CEBA) amended the Federal Credit Union Act

to give the Board authority to set maturity limits for second mortgage loans, mobile home loans and home improvement loans at up to 15 years or any longer term which the Board may allow." Prior to the CEBA, the maturity for these loans was 15 years. In November 1988, the Board requested public comment on whether it should exercise its regulatory authority to allow maturities in excess of 15 years on second mortgage and home improvement loans. Although not stated in the request, mobile home loans are also being considered within the scope of this review.

A total of 28 comments were received in response to the request for comments. The comments came from 23 Federal credit unions, two state credit union leagues, two national credit union trade organizations and one national banking trade organization. Of these comments, 25 supported extending the maturity limit. Only three commenters believed that the authority should remain at 15 years. Commenters who supported extending the maturity limits recommended various maximum maturity limits to consider ranging from 20 years to unlimited maturity. Many commenters cited the difficulty borrowers face when fluctuating interest rates result in an increase in payments or a balloon payment in order to ensure a 15-year term as their rationale for an increase in the maturity limit. In addition, several commenters expressed the opinion that loans with maturities in excess of 15 years should be variable rate in order to provide some interest rate risk protection to the credit union.

The Board is proposing to revise § 701.21(f) by permitting maturities of up to 20 years. In issuing this proposal, the Board is attempting to provide credit unions and their member-borrowers with the flexibility to make certain loans so that the total maturity will not extend beyond 20 years notwithstanding market interest rate fluctuations near the end of the term. In addition, credit unions are expected to take appropriate steps to adjust underwriting standards to ensure that the extension of credit is appropriate for the total term of the loan.

Regulatory Procedures

Regulatory Flexibility Act

The Board has determined and certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). Accordingly, the Board has determined

that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal credit unions.

List of Subjects in 12 CFR Part 701

Credit unions, 20-year loans, Second mortgages, Mobile home loans, Home improvement loans.

By the National Credit Union Administration Board on May 11, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—(AMENDED)

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

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1796. Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601-3610.

2. Section 701.21(f) is proposed to be revised as follows:

§ 701.21 (Amended)

(f) *20-year loans.* Notwithstanding the general 12-year maturity limit on loans to members, a Federal credit union may make loans with maturities of up to 20 years in the case of:

(1) A loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home.

(2) A second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and

(3) A loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

[FR Doc. 89-12218 Filed 5-19-89; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 708

Mergers of Federally-Insured Credit Unions: Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed amendment.

SUMMARY: The NCUA Board proposes to amend its regulation relating to mergers of federally-insured credit unions and changes in insured status. This proposal will add "approval" and "disapproval" boxes to the ballots used for membership voting on termination of Federal insurance or conversion from Federal insurance to non-Federal insurance. The proposal will not affect the day-to-day operations of federally-insured credit unions.

DATES: Comments must be received on or before August 21, 1989.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: In April, 1987, the NCUA adopted regulations that added new provisions regarding the termination or conversion of Federal share insurance and set forth forms to be used in obtaining membership approval of those actions. (See 52 FR 12370, April 16, 1987, effective May 18, 1987.) Three of those provisions, §§ 708.301(a)(2), 708.302(a)(2) and (b)(2), contained the language that is to appear on the ballot used to obtain membership approval. A fourth provision, § 708.301(b)(2), references the language set forth in § 708.301(a)(2). Although the provisions required a signature line for a member to use, they did not prescribe the method for indicating whether the member approved or disapproved of the proposed action.

Generally, this has not caused any problems because "yes" or "no" boxes have been included along with the required language on the ballots provided to the members. Where only the language required by the regulation is used, however, all returned ballots have counted as affirmative votes. In a recent instance, members who returned their ballots were eligible for prizes to be awarded at the credit union's annual meeting. While this did provide incentive to return the ballot, it did not necessarily reflect the member's position on the proposed action since the ballot did not indicate whether the