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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: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations regarding loans to members and lines of credit to members to reduce regulatory burden, improve clarity, and make compliance easier. The amendments make the NCUA's regulations more user friendly by identifying in one section all of the various maturity limits applicable to federal credit union (FCU) loans, stating that the maturity date for a new loan under generally accepted accounting principles (GAAP) is calculated from the origination date of the new loan, and more clearly expressing the limits for loans to a single borrower or group of associated borrowers.

DATES: The effective date for this rule is April 24, 2019.

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. Final Rule and Summary of Comments
- III. Section-by-Section Analysis
- IV. Legal Authority
- V. Regulatory Procedures

I. Background

In August 2017,¹ the Board published and sought comment on the NCUA Regulatory Reform Task Force's (Task Force) first report on implementing the agency's regulatory reform agenda (Agenda). The Agenda identifies those

regulations the Board intends to amend or repeal because they are outdated, ineffective, or excessively burdensome.² The Board published the Task Force's second and final report in December 2018.³ The final report contains the Task Force's updated recommendations and a refined blueprint for implementing the Agenda.

A number of the items in the Agenda relate to the NCUA's regulations on loans to members and lines of credit to members.⁴ The Board issued a proposed rule in August 2018 to address those items and to request further public comment on other issues.⁵ More specifically, the Board proposed changes to make the NCUA's 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 "new loan" under GAAP is calculated from the new date of origination;⁶ and (3) more clearly expressing the limits in place for loans to a single borrower or group of associated borrowers. The Board also sought advanced comment on: (1) Whether the NCUA should provide for longer, more flexible maturity limits for certain loans as permitted by section 107(5)(A)(i)-(ii) of the FCU Act; and (2) whether the NCUA should establish a single universal limit for loans to a single borrower or group of associated borrowers in lieu of the current system of having various limits depending on the type of loan.⁷

For the reasons discussed below, the Board is adopting the proposed rule largely as proposed. The NCUA is also continuing to evaluate the comments received on the issues for which it sought advanced comment. Any regulatory amendments that the Board decides to propose based on the

² This is consistent with the spirit of the President'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 83 FR 65926 (Dec. 21, 2018).

⁴ 12 CFR 701.21.

⁵ 83 FR 39622 (Aug. 10, 2018).

⁶ 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).

⁷ The proposal sought advanced stakeholder comment on these related issues to help the Board determine what, if any, changes the agency should consider proposing in the future.

advanced comments will be done through the NCUA's normal notice and comment rulemaking process to comply with the Administrative Procedure Act (APA).⁸

II. Final Rule and Summary of Comments

The NCUA received 31 comments on the proposed rule. Those comments generally fell into three categories: (1) Comments addressing the technical and clarifying changes the NCUA specifically proposed; (2) comments addressing the issues on which the NCUA sought advanced comment; and (3) comments addressing subjects outside the scope of the proposed amendments. Commenters were overwhelmingly supportive of the technical and clarifying changes that the proposal made with no commenters generally opposing the proposed changes. As stated above, the Board is finalizing these changes largely as proposed.

The majority of commenters heavily focused on the issues on which the NCUA sought advanced comment, namely: (1) Potential alternate maturity limits; and (2) a potential universal limit on loans to one borrower. The Board reiterates that the proposal sought advanced stakeholder input on these topics with an eye toward making future regulatory amendments. Any future changes related to this request for advanced comment will be done through the NCUA's normal notice and comment rulemaking process to comply with the APA. It is worth noting that, as a general matter, commenters expressed confusion about the maturities applicable to various types of loans and the NCUA's authority to alter them. Commenters also addressed a number of issues that were largely unrelated to the issues on which the proposal sought comment. The Board will continue to evaluate these comments, but notes that such unrelated comments are outside the scope of this rulemaking and would require separate future action.

A. Loan Maturity Limits for Federal Credit Unions

Section 107(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

¹ 82 FR 39702 (Aug. 22, 2017).

⁸ 5 U.S.C. 551 *et seq.*

as otherwise provided herein.”⁹ The NCUA implemented this general maturity limit in § 701.21(c)(4) of its regulations. Sections 107(5)(A)(i)–(iii) of the FCU Act provide exceptions to the general 15-year maturity limit, which 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.”¹⁰ Pursuant to its authority in section 107(5)(A)(i) of the FCU Act 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.¹¹

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 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*.”¹² Pursuant to its authority in § 107(5)(A)(ii) to set alternate maturities for covered loans, the Board has established a 20-year maximum maturity for such loans.¹³

⁹ 12 U.S.C. 1757(5).

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

¹¹ 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”).

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

¹³ 12 CFR 701.21(f)(1) (stating that “[n]otwithstanding the general 15-year maturity

limit is calculated from the new date of origination.”¹⁵ The Board proposed to accomplish this by adding language to § 701.21(c)(4), which articulates the general 15-year maturity limit. The Board is adopting the proposal without change.

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.”¹⁴

i. Identifying the Various Maturity Limits in One Section

Section 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 § 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.

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 a reader and makes it more difficult to understand the lending regulations. To remedy this, in the proposed rule, the Board proposed 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.

More than half of the comments received specifically offered support for the NCUA’s efforts to provide more regulatory clarity and make compliance easier by identifying all loan maturity requirements in one section and adding cross-citations. No commenters opposed the changes. As such, the NCUA is adopting these changes as proposed.

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

The proposal also clarified that, in the case of a lending action qualifying as a “new loan” under GAAP, the 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.).

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

Nearly one-third of commenters addressed this aspect of the proposal. The vast majority of these commenters explicitly supported the proposal. Several commenters noted that it is unclear if the proposal applies only to new loan originations, loan modifications, or both, and they requested further clarity regarding the proposal. To alleviate any potential confusion, the Board clarifies that the final rule applies to any lending action that qualifies as a new loan under GAAP, whether that action is a new origination or a modification.

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

In the proposal, the Board sought advanced comment on whether it should provide 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 remove the case-by-case exception that the Board can provide for covered 1–4 family real estate loans. 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).”¹⁶

Nearly every commenter addressed the various maturity limits in some manner. Comments on the maturity limits generally fell into three categories: (1) Comments asking the NCUA to take action the Board does not believe it is authorized to take under the FCU Act; (2) responses to the request for advanced comment on actions the Board does believe it is authorized to take under the FCU Act, which the Board is taking under advisement for future rulemaking purposes; and (3) unsolicited comments that are more appropriately handled by guidance or legal opinion.

Category 1. Many commenters expressed displeasure with the general

¹⁵ ASC 310–20–35–9 & 10.

¹⁶ 12 CFR 701.21(g)(1).

15-year maturity limit¹⁷ and specifically the 15-year maturity limit on first-lien, 1–4 family real estate loans that are not the principal residence of the borrower. The Board has no authority to alter this statutory limit.

Category 2. Commenters addressed the following provisions on which the Board sought advanced comment: (1) The current 40-year maturity limit on long-term residential real estate loans where the 1–4 family unit is the principal residence of the borrower; (2) the case-by-case exception the Board can use to grant maturity limits that exceed 40 years on long-term residential real estate loans; and (3) the 20-year maturity limit for covered home improvement, mobile home, and second mortgage loans. While the Board has the authority to amend these provisions, they are beyond the scope of what the Board proposed and thus under the APA the Board cannot act on them now, and would have to issue a new proposed rule. The Board is taking these comments under advisement and is considering whether to issue a proposed rule at a later date pursuant to the NCUA's normal notice and comment rulemaking process.

Category 3. Commenters provided unsolicited feedback on issues not specifically raised in the proposed rule. For example, several commenters requested clarification on the proper characterization of a loan on a residential dwelling that includes a detached structure on the same parcel of land, such as a “mother-in-law suite.” The Board believes this is more appropriately handled by guidance or legal opinion and may take such action later this year.

B. Single Borrower and Group of Associated Borrowers Limits

i. More Clearly Identifying the Various Limits

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 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 made clear that all three of these limits exist. Rather than move the provisions that specifically apply to loan participations

and commercial loans from their current regulatory sections to the general limit section, the NCUA proposed to include cross-citations to the more specific loan participation and commercial loan limits in the general limit section (§ 701.21(c)(5)).

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.¹⁸ 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.”¹⁹ Section 701.21(c)(5) also provides an outdated cross-citation to part 723 for the specific limit on commercial lending. The proposal removed this outdated cross-citation and provided updated references to both the current loan participation limit in § 701.22(b)(5) and the commercial lending limit in § 723.4(c).

The Board also proposed 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).

One-third of commenters addressed the technical and clarifying amendments the Board proposed related to the limits on loans to a single borrower or group of associated borrowers. All of these commenters supported adding internal cross-citations to more clearly identify the various limits in the general lending, loan participations, and commercial lending regulations. Three of these commenters specifically stated that this would simplify compliance. Several commenters noted confusion with the current layout.

One commenter said that the fact that part 741 incorporates applicable provisions by reference compounds the difficulty for federally insured, state-chartered credit unions (FISCUs). The commenter recommended that the NCUA incorporate loan limitations applicable to FISCUs in § 741.203 in their entirety. The Board appreciates the commenter's suggestion, but does not believe such a change is necessary for FISCUs to understand the applicable maturity limits.

Another commenter recommended that, because the loan participation and commercial loan limits also apply to a

group of associated borrowers, the NCUA should also include in the general lending regulations reference and cross-citations to the “associated borrower” definition in §§ 701.22 and 723.2 of the NCUA's regulations. The Board is concerned that the commenter's suggestion to include cross-citations in the general lending regulations to the definition of “associated borrower” in the loan participation and commercial lending regulations would cause confusion for credit unions. The term “associated borrower” does not appear in the general lending regulations and does not apply to the general lending limit. As noted, the Board is of the view that cross-citations to the term “associated borrower” in the commercial lending and loan participation regulations would only serve to confuse readers and raise questions of its applicability and relevance to the general lending limit where that term is not defined.

The Board believes that the proposed cross-citations provide an efficient and user-friendly way to identify and comply with the multiple lending limits in the NCUA's regulations. As such, the Board is adopting the amendments as proposed.

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

In the proposal, the Board sought advanced comment on the possibility of establishing a single universal limit on loans to a single borrower or group of associated borrowers in lieu of the current system of having various limits depending on the type of loan. The NCUA noted that such a limit may help facilitate compliance and reduce regulatory burden. Currently, a loans to one borrower limit of 15 percent of a federally insured credit union's net worth exists for: (1) Commercial loans and (2) loan participations. A waiver from this limit is available for loan participations, but not for commercial loans. Instead, an alternate limit is available for commercial loans.

More specifically, the 15 percent limit on loan participations can be waived by the appropriate regional director for FCUs, and, in the case of a federally insured, state-chartered credit union, by the regional director with prior written concurrence of the appropriate state supervisory authority.²⁰ The limit on commercial loans, however, does not provide for a waiver. Instead, it provides

²⁰ 12 CFR 701.22(b)(5)(iv). The appropriate regional director for FCUs with \$10 billion or more in assets is the Director of the Office of National Examinations and Supervision. 12 CFR 700.2.

¹⁷ 12 U.S.C. 1757(5).

¹⁸ 12 U.S.C. 1757(5)(A)(x).

¹⁹ 12 CFR 701.21(c)(5).

that “the aggregate dollar amount of commercial loans to any one borrower or group of associated borrowers may not 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.”²¹

Approximately half of the commenters specifically addressed a potential universal limit. These commenters offered mixed views on the potential limit and provided the Board with a great deal to consider moving forward. The NCUA will continue to evaluate the comments received and determine whether a single universal limit would be beneficial. If the Board determines that a universal limit should be adopted, the Board will issue a proposed rule at a later date pursuant to the NCUA’s normal notice and comment rulemaking process.

III. Section-by-Section Analysis

The clarifying amendments in this final rule are largely technical in nature. As a result, most of the current language in § 701.21 remains. The changes to § 701.21 and the conforming amendments to §§ 701.20 and 701.22 are discussed in more detail below.

Section 701.20 Suretyship and guaranty.

(c) Requirements.

The final rule makes minor conforming amendments to § 701.20(c).
(c)(2).

The final rule makes 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 an updated cross-citation to § 723.4(c).

Section 701.21

(c) General rules.

(c)(4) Maturity.

The final rule divides § 701.21(c)(4) into two new paragraphs. One

paragraph, § 701.21(c)(4)(i), states the general rule that loans carry a 15-year maturity. The other, § 701.21(c)(4)(ii), makes 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.

(c)(4)(i) General rules.

The final rule maintains all of current § 701.21(c)(4) in § 701.21(c)(4)(i), which articulates the general 15-year maturity limit that exists on FCU loans. However, the final rule also adds language to clarify that the maturity for a new loan under GAAP is calculated from the new date of origination.

(c)(4)(ii) Exceptions.

Section 701.21(c)(4)(ii) of the final rule explicitly states, in three paragraphs ((c)(4)(ii)(A), (B), and (C)), that there are three exceptions to the general 15-year maturity limit and cross-cites to § 701.21(e) through (g) as follows:

(c)(4)(ii)(A).

Section 701.21(c)(4)(ii)(A) of the final rule cross-cites to the exception to the general 15-year maturity limit 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.

(c)(4)(ii)(B).

Section 701.21(c)(4)(ii)(B) of the final rule cross-cites to the exception to the general 15-year maturity limit in § 701.21(f) regarding covered home improvement, mobile home, and second mortgage loans.

(c)(4)(ii)(C).

Section 701.21(c)(4)(ii)(C) of the final rule cross-cites to the exception to the general 15-year maturity limit in § 701.21(g) regarding covered 1–4 family real estate loans.

(c)(5) Ten percent limit.

The final rule revises § 701.21(c)(5) to add cross-citations to the specific requirements 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).

(e) Insured, Guaranteed, and Advance Commitment Loans.

The final rule revises § 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 final rule also adds a cross-citation to paragraph (c)(4).

(f) 20-Year Loans.

The final rule retains almost all of current § 701.21(f), but inserts some additional language to improve clarity.

(f)(1).

The final rule revises § 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 final rule also adds a cross-citation to paragraph (c)(4).

(g) Long-Term Mortgage Loans.

The final rule retains almost all of § 701.21(g), but inserts some additional language to improve clarity.

(g)(1).

The final rule revises § 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 final rule also adds a cross-citation to paragraph (c)(4).

Section 701.22

(b).

As described in more detail below, the final rule makes minor conforming amendments to § 701.22(b) regarding loan participations.

(b)(1).

The final rule updates 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 final rule changes the outdated cross-citation in § 701.22(b)(1) from § 723.8 to § 723.4(c).

IV. Legal Authority

The Board is issuing this rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for federally insured credit unions.²² The FCU Act grants NCUA a broad mandate to issue regulations governing both FCUs and all federally insured credit unions. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.²³ Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.²⁴ Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all federally insured credit unions.²⁵

²² 12 U.S.C. 1752–1775.

²³ 12 U.S.C. 1766(a).

²⁴ 12 U.S.C. 1787.

²⁵ 12 U.S.C. 1789.

²¹ 12 CFR 723.4(c).

Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the National Credit Union Share Insurance Fund remain safe and sound.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final 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)²⁶ and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. The final rule reduces regulatory burden through clarifying and technical changes and will not have an impact on small credit unions. Accordingly, the NCUA certifies that this final 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.²⁷ For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The final rule does not contain information collection requirements that require approval by OMB under the PRA.²⁸ The final rule only makes 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 that this final rule 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, 1999.²⁹

E. Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. The NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. The NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 14, 2019.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the Board amends 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 words “723.2 and 723.8” and adding in their place “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.

²⁶ See 80 FR 57512 (Sept. 24, 2015).

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

²⁸ 44 U.S.C. chap. 35.

²⁹ Public Law 105–277, 112 Stat. 2681 (1998).

(f) * * *

(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) * * *

(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]

■ 4. Amend § 701.22(b)(1) by removing the words “§ 723.8” and adding in their place “§ 723.4”.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9852]

RIN 1545-BL96

Chapter 4 Regulations Relating to Verification and Certification Requirements for Certain Entities and Reporting by Foreign Financial Institutions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document finalizes (with limited revisions) certain proposed regulations. The final regulations provide compliance requirements and verification procedures for sponsoring entities of foreign financial institutions (FFIs) and certain non-financial foreign entities (NFFE), trustees of certain trustee-documented trusts, registered deemed-compliant FFIs, and financial institutions that implement consolidated compliance programs (compliance FIs). These final regulations affect certain financial institutions and NFFEs.

DATES:

Effective date: These regulations are effective on March 25, 2019.

Applicability dates: For dates of applicability, see §§ 1.1471-1(c), 1.1471-4(j), 1.1471-5(m), and 1.1472-1(h).

FOR FURTHER INFORMATION CONTACT: Charles Rioux, at (202) 317-6942 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This Treasury decision contains amendments to 26 CFR part 1. On January 6, 2017, a notice of proposed rulemaking (REG-103477-14) proposing regulations under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code of 1986 (Code) relating to verification requirements for certain entities was published in the **Federal Register** (82 FR 1629). The notice of proposed rulemaking also included proposed regulations, unrelated to these verification requirements, by cross-reference to temporary regulations that were published in the same issue of the **Federal Register** (82 FR 2124; TD 9809). On September 15, 2017, a correction to the notice of proposed rulemaking was published in the **Federal Register** (82 FR 43314). No public hearing was requested or held. Written comments were received, and are available at www.regulations.gov or upon request. After consideration of the comments received, the proposed regulations relating to verification requirements for certain entities under chapter 4 are adopted (with limited modifications) by this Treasury decision. This Treasury decision does not finalize the proposed regulations in the notice of proposed rulemaking that cross-reference the temporary regulations. Those proposed regulations (REG-132857-17) will be adopted as final regulations at a later date. Hereinafter, the term “proposed regulations” when used in this preamble means the proposed regulations (REG-103477-14) relating to verification requirements for certain entities under chapter 4.

The existing chapter 4 regulations permit certain FFIs and NFFEs to be sponsored by other entities (sponsoring entities) for purposes of satisfying their chapter 4 requirements. Generally, a sponsoring entity is an entity that agrees to perform chapter 4 due diligence, withholding, and reporting requirements on behalf of certain FFIs (sponsored FFIs) or chapter 4 due diligence and reporting obligations on behalf of certain direct reporting NFFEs (sponsored direct reporting NFFEs). An FFI that is a sponsored FFI is a deemed-compliant FFI, and a NFFE that is a sponsored direct reporting NFFE is an

excepted NFFE. The proposed regulations provide verification requirements (including certifications of compliance) and events of default for sponsoring entities. The proposed regulations also provide certification requirements and procedures for the IRS’s review of trustees of certain trustee-documented trusts and procedures for the IRS’s review of periodic certifications provided by registered deemed-compliant FFIs. In addition, the proposed regulations describe the procedures for future modifications to the requirements for certifications of compliance for participating FFIs. The proposed regulations also clarify the requirements in the chapter 4 regulations for periodic certifications of compliance for consolidated compliance programs of participating FFIs and provide requirements for preexisting account certifications for these programs.

Summary of Comments and Explanation of Revisions

After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and revisions are discussed below.

Definition of Responsible Officer

The proposed regulations require a sponsoring entity of a sponsored FFI to appoint a responsible officer to oversee the compliance of the sponsoring entity with respect to each sponsored FFI. Proposed § 1.1471-1(b)(116) defines the term *responsible officer* with respect to a sponsoring entity as an officer of the sponsoring entity with sufficient authority to fulfill the duties of a responsible officer described in § 1.1471-5(j) or § 1.1472-1(f) (as applicable). A comment requested that the definition of responsible officer be expanded to include an officer of an FFI in the sponsoring entity’s expanded affiliated group that has responsibility for ensuring the compliance of the sponsoring entity. The comment noted that in some cases an investment manager that is a sponsoring entity is a member of an affiliated group in which one member of the group is designated to oversee the compliance of all members with their chapter 4 requirements.

The proposed regulations require the responsible officer of a sponsoring entity to be an individual who is an officer of the sponsoring entity because the certifications required under these regulations should be made by the individual in the best position to know and represent whether the sponsoring entity is complying with its obligations.