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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD64

Exception to the Maturity Limit on Second Mortgages

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its lending rules to create a limited exception to the 20-year maturity limit on second mortgage loans. The amendment will permit federal credit unions participating in the Department of the Treasury's Making Home Affordable Program to modify a second mortgage loan, beyond 20 years, to match the term of a modified first mortgage loan.

DATES: This rule is effective June 24, 2009. Written comments must be received on or before August 24, 2009.

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: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Exception to the Maturity Limit on Second Mortgages" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in 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: Pamela Yu, Staff Attorney, at the above address, or telephone: (703) 518–6593.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Financial Stability Plan

The Emergency Economic Stabilization Act of 2008 (EESA) granted the Secretary of the Treasury emergency authorities and facilities to help restore liquidity and stability to the U.S. financial system. To address the ongoing financial crisis, the Department of the Treasury (Treasury) established the Financial Stability Plan, a comprehensive plan designed to address the credit crisis on multiple fronts. As part of this plan, Treasury has launched a series of initiatives toward financial recovery, including the Making Home Affordable (MHA) Program.

B. Making Home Affordable Program

In February 2009, Treasury introduced the MHA Program to stabilize the American housing market and help struggling homeowners reduce their monthly mortgage payments to more affordable levels. The MHA Program aims to help millions of homeowners by providing new access to low-cost refinancing and by creating an affordable loan modification program to help families stay in their homes.

Treasury estimates up to 50 percent of at-risk mortgages currently have second liens. In these cases, even if the first lien is modified to improve affordability, a second lien can put a homeowner at risk of foreclosure. To address this problem, Treasury recently launched a Second Lien Program in an effort to reach more troubled homeowners, and to maximize the effectiveness of the first lien modification program. The MHA Second Lien Program coordinates with the first lien program to help create a sustainable mortgage payment for those homeowners whoqualify for a first mortgage modification, yet are still faced with the difficulty of affording their housing payments due to a second lien.

Highlights of the MHA Second Lien Program:

- In general, MHA will share the cost with lenders of reducing payments for homeowners on second mortgages by:
  - Reducing the interest rate;
  - Extending the term of the modified second mortgage to match the term of the modified first mortgage;
  - Forbearing principal in the same proportion as any principal forbearance on the first lien, with the option of extinguishing principal under a set extinguishment schedule;
  - After five years, the interest rate on the second lien will step up to the then current interest rate on the modified first mortgage, subject to certain conditions; and
  - Investors will receive an incentive payment from Treasury.

The MHA Second Lien Program includes pay-for-success incentives and guidelines for servicers modifying amortizing and interest-only second liens. Full details about the MHA Second Lien Program are available online at *http://makinghomeaffordable.gov* and *http://www.financialstability.gov/docs/042809SecondLienFactSheet.pdf.*

C. Loans to Members

Absent this rulemaking, federal credit union participation in the MHA Second Lien Program would be limited because NCUA's lending rules impose a 20-year maturity limit on second mortgage loans that are secured by the member-borrower's primary residence. 12 CFR 701.21(f)(1)(ii). First mortgages, however, may be made with maturities of up to 40 years, or longer if permitted by the NCUA Board. 12 CFR 701.21(g).

The MHA Secondary Lien Program guidelines require that, for amortizing loans, mortgage servicers "[e]xtend the term of the modified second mortgage to match the term of the modified first mortgage, by amortizing the unpaid principal balance of the second lien over a term that matches the term of the modified first mortgage.'' For interest-only loans, ''[t]he second lien will amortize over the longer of the remaining term of the modified first lien or the originally scheduled amortization term, with amortization to begin at the time specified in the original contract.'' Without an amendment to § 701.21(f), federal credit unions cannot participate in the MHA Second Lien Program if the first mortgage is for a term longer than 20 years.

This interim final rule creates a limited exception to the 20-year maturity limit on second mortgage loans. The new provision, § 701.21(f)(3), will permit federal credit unions participating in Treasury's MHA Program to modify a second mortgage to match the term of a modified first mortgage, beyond 20 years. Credit unions that are not participating in the MHA Second Lien Program will still be subject to the current 20-year maturity limitation on second liens.

II. Interim Rule and Immediate Effective Date

NCUA is issuing this rulemaking as an interim final rule, effective upon publication. The Administrative Procedure Act (APA), 5 U.S.C. 553, requires that, before a rulemaking can be finalized, it must first be published as a notice of proposed rulemaking with the opportunity for public comment, unless the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Additionally, the APA requires that, once finalized, a rulemaking must have a delayed effective date of 30 days from the date of publication, except for good cause.

In this regard, NCUA invokes the good cause exception to the requirements of the APA. NCUA believes good cause exists for issuing these amendments as an interim rule effective immediately. Due to the deep contraction in the American economy and, in particular, the housing market, millions of homeowners are struggling with unaffordable housing payments and are at risk of foreclosure. The interim rule provides credit unions with the ability to participate in the MHA Second Lien Program and, thus, to better assist struggling homeowners unable to afford their housing payments. The interim rule is limited in scope and does not impose any regulatory burden; rather, the rule provides greater flexibility for credit unions to assist their members in these turbulent economic times.

For these reasons, NCUA has determined that the public notice and participation that the APA ordinarily requires before a regulation may take effect would, in this case, be contrary to the public interest and, further, that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, NCUA would like the benefit of public comment before adopting a permanent final rule and, thus, invites interested parties to submit comments during a 60-day comment period. In adopting the final regulation, NCUA will revise the interim rule in light of the comments received on the interim rule, if appropriate.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This interim final rule does not impose any regulatory burden but provides flexibility to all federal credit unions to allow for participation in the MHA Second Lien Program. Accordingly, it will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA does not believe this interim final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. 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, Mortgages.

By the National Credit Union Administration Board, this 18th day of June 2009.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons discussed above, NCUA 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, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 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.

■ 2. Section 701.21 is amended by adding new paragraph (f)(3) to read as follows:

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

* * * * *

(f) * * *

(3) Notwithstanding the general 20-year maturity limit on second mortgage loans, a federal credit union participating in the Department of the Treasury's Making Home Affordable Program may extend the term of a modified second mortgage to match the term of a modified first mortgage, in accordance with applicable program guidelines.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD60

Operating Fees

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule on the assessment of the Federal credit union (FCU) operating fee by permitting FCUs to subtract investments made under the Credit Union System Investment Program (CU SIP) and the