

# Rules and Regulations

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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:** Final rule.

**SUMMARY:** On June 24, 2009, the NCUA published an interim final rule 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. This rule confirms those amendments as final without change.

**DATES:** Effective December 24, 2009, the interim final rule amending 12 CFR Parts 701 published on June 24, 2009 (74 FR 29933) which was effective June 24, 2009 is confirmed as final.

**FOR FURTHER INFORMATION CONTACT:** Pamela Yu, Staff Attorney, at 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In June 2009, NCUA issued an interim final rule, with request for comments, to create a limited exception to the 20-year maturity limit on second mortgage loans. 74 FR 29933 (June 24, 2009). In this final rule, NCUA is finalizing the amendments to its lending rules to 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.

##### 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 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 who qualify for a first mortgage modification, yet are still faced with the difficulty of affording their housing payments due to a second lien. 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

The interim rule sought to provide 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. Absent a

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.

##### II. Summary of Public Comments

NCUA received six comments on the interim final rule: Three from Federal credit unions, two from credit union trade associations, and one from a State credit union league. All the commenters were supportive of the interim final rule but urged NCUA to permit Federal credit unions to extend the term of second mortgages to be coextensive with the term of existing first mortgages without participating in the MHA Second Lien Program. Some commenters stated the MHA Second Lien Program was cumbersome for some credit unions because of reporting requirements and others stated some credit unions are not interested in the government payment but simply wanted additional flexibility in modifying member loans. A couple of the commenters believed the 20-year maturity limit for second liens should be eliminated entirely, contending it would make Federal credit unions more competitive with other lenders. These comments are beyond the scope of the interim final rule and, therefore, the Board is constrained by the provisions of the Administrative Procedure Act

from making such changes in a final rule. The Board, however, may take these comments into consideration if it considers other changes to NCUA's lending regulation in the future.

### III. Final Rule

This final regulation adopts the amendments made in the interim final rule without change. The final rule creates a limited exception to the 20-year maturity limit on second mortgage loans. The new provision, § 701.21(f)(3), permits 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 are still subject to the current 20-year maturity limitation on second liens. The final rule is intended to create a narrow exception to NCUA's lending rules to enable Federal credit unions to fully participate in the MHA Second Lien Program.

### 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 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. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, has determined that this is not a major rule for purposes of SBREFA.

#### List of Subjects in 12 CFR Part 701

Credit, Credit Unions, Mortgages.

■ For the reasons discussed above, NCUA confirms as final without change, the interim final rule amending 12 CFR Parts 701 published on June 24, 2009, 74 FR 29933.

By the National Credit Union Administration Board, this 17th day of December 2009.

**Mary F. Rupp,**

*Secretary of the Board.*

[FR Doc. E9-30435 Filed 12-23-09; 8:45 am]

**BILLING CODE 7535-01-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 730, 734, 736, 738, 742, 744, 745, 754 and 774

[Docket No. 0910231376-91377-01]

RIN 0694-AE76

#### Updated Statements of Legal Authority To Reflect Continuation of Emergency Declared in Executive Order 12938 and Changes to the United States Code

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the Code of Federal Regulations (CFR) legal authority citations for the Export Administration Regulations (EAR) to replace citations to the President's Notice of November 10, 2008—*Continuation of Emergency Regarding Weapons of Mass Destruction* with the President's Notice of November 6, 2009 on the same subject and to reflect the recodification of former 42 U.S.C app. 466c as 15 U.S.C 1824a. BIS is making these changes to keep the CFR legal authority citations for the EAR current.

**DATES:** *Effective Date:* December 24, 2009.

**ADDRESSES:** Comments concerning this rule should be sent to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov), fax (202) 482-3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694-AE76 in all comments, and in the subject line of e-mail comments.

**FOR FURTHER INFORMATION CONTACT:** William Arvin, Regulatory Policy Division, Bureau of Industry and Security, *telephone:* (202) 482-2440.

#### SUPPLEMENTARY INFORMATION:

##### Background

In Executive Order 12938 of November 14, 1994 (59 FR 59099, 3 CFR, 1994 Comp., p. 950), the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy and economy of the United States posed by the proliferation of nuclear, biological and chemical weapons and the means of delivering such weapons. That emergency has been continued in effect through successive annual presidential notices. By Notice of November 6, 2009 (74 FR 58187, (Nov. 10, 2009)), the President continued that emergency for another one-year period. The authority for parts 730, 734, 736, 742, 744 and 745 of the EAR is based in part on Executive Order 12938, as amended, and the successive annual notices continuing the national emergency declared in that executive order. This rule revises the authority citations in the CFR for parts 730, 734, 736, 742, 744 and 745 of the EAR (15 CFR parts 730, 734, 736, 742, 744 and 745) to cite the notice of November 6, 2009, and to remove the citation to the notice of November 10, 2008 on the same topic.

Certain provisions of the Horse Protection Act of 1970, as amended (15 U.S.C. 1821-1831 (HPA)), relating to export of horses by sea, are implemented through parts 730, 738, 754 and 774 of the EAR. Those provisions of the HPA were codified at 46 U.S.C. app. § 466c prior to the completion of the enactment of Title 46, Shipping, by Public Law 109-304, Oct. 6, 2006, 120 Stat. 1485. Pursuant to the 2006 law, those provisions were transferred and are now codified at 15 U.S.C. 1824a. This rule revises the authority citations in the CFR for parts 730, 738, 754 and 774 of the EAR (15 CFR parts 730, 738, 754 and 774) to cite 15 U.S.C. 1824a and to remove the citation to 46 U.S.C. app. § 466c.