



NCUA Lending Regulations

Presented by

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3:15 – 4:15PM



Legal and Regulatory Basis

Three Regulations	Legal Source of Regulation
Part 701 – Organization and Operation of Federal Credit Unions	
• Section 701.21 Loans to members and lines of credit to members	Section 107(5) of the Federal Credit Union Act (FCU Act)
• Section 701.22 Loan participations	Sections 107(5)(E) of the FCU Act
Part 723 – Member Business Loans; Commercial Lending	Section 107A of the FCU Act



Legal and Regulatory Basis

Section 701.21

- (b) Relation to Other Laws *aka Preemption*
- (c) General Rules
 - (2) Written Policies
 - (3) Credit Applications and Overdrafts
 - (4) Maturity
 - (5) Ten Percent Limit *aka Single Borrower*
 - (6) Early Payment *aka Prepayment Penalty*
 - (7) Loan Interest Rates *aka Usury Ceiling*
 - (iii) Payday Alternative Loans (PALs)
 - (8) Loan-related Compensation**
- (d) Loans to Officials
 - (4) Board of Director Review
 - (5) Non-preferential Treatment**
- (e)-(g) Exceptions to Maturity Rule in (c)(4)
- (h) Indirect Vehicle Loan Servicing**

Section 701.22

Part 723

Federally-Insured Credit Unions

Part 741 Requirements for Insurance

- Section 741.203(a)
- Section 741.225



Agenda

▶ **Section 701.21** Grab-bag of Lending Rules

- | | |
|---------------------------|-----------------------------------|
| • Membership Nexus | • Ten Percent Limitation |
| • Maturity Limits | • Prepayment Penalties |
| • Usury Ceiling | • Loan-Related Compensation |
| • Preemption | • Non-preferential Treatment |
| • Policies and Procedures | • Indirect Vehicle Loan Servicing |

▶ **Section 701.22** Loan Participations

▶ **Part 723** Member Business Loans and Commercial Lending



Membership Nexus

FCUs only have the power to make loans to members.

Nonmembers can participate in a loan in ways that don't distort the relationship between the federal credit union and the member.

- Cosigners or Guarantors
- Authorized Users

NOT: Co-applicants, Co-borrowers, or Co-makers

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Maturity Limits

Applies to closed-end loans only.

15
years

- General, default maturity limit for any FCU loan.
- Will apply to all loans that are not or will not be secured by the borrower's residence.

FCU



Maturity Limits

Applies to closed-end loans only.

15
years

20
years

- First lien, purchase-money loans for mobile home to be used as borrower's residence.
- Second lien or non-purchase money first lien secured by borrower's residence.
- Repair, alteration or improvement on borrower's residence.

FCU



Maturity Limits

Applies to closed-end loans only.

15
years

20
years

45
years

Applies to a loan that:

- Is secured by a perfected first lien;
- Is secured by a 1- to 4-family dwelling;
- Is secured by a dwelling that is/will be the borrower's principal residence;
- Uses a FHA/VA/GSE application (URLA);
- Uses a FHA/VA/GSE standard note and mortgage; and
- All paperwork is properly executed and recorded.

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The Usury Ceiling

(7) *Loan interest rates—(i) General.* Except when the Board establishes a higher maximum rate, federal credit unions may not extend credit to members at rates exceeding 15 percent per year on the unpaid balance inclusive of all finance charges. Federal credit unions may use variable rates of interest but only if the effective rate over the term of a loan or line of credit does not exceed the maximum permissible rate.

August 2018

Proposed Risk-Based Capital Rule Adds One-Year Delay,
Exempts More Credit Unions

Board Action Bulletin

[...]

18 Percent Loan Interest Rate Ceiling Extended to March 2020

After reviewing trends in money-market rates and current conditions among federal credit unions, the Board extended the current interest rate ceiling of 18 percent on most federal credit union loans through March 10, 2020.

The Federal Credit Union Act caps the interest rate on federal credit union loans at 15 percent; however, the NCUA Board has discretion to raise that limit for 18-month periods if interest-rate levels could threaten the safety and soundness of credit unions. The 18 percent cap applies to all federal credit union lending except originations made under NCUA's consumer-friendly payday alternative loan program, which are capped at 28 percent.

FCU



The Usury Ceiling

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Legal Opinion Letters from NCUA's Office of General Counsel look to Regulation Z's definition of a "finance charge" for the purposes of determining what to include in the usury rate calculation.

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The Usury Ceiling: PALs

Payday Alternative Loans (PALs) are excepted from the usury ceiling limit – FCUs can charge up to 1,000 basis points above the ceiling.

- 1,000 basis points x (100th of a %) = 10 %
- 18 + 10 = 28%

PALs loans have a usury rate of 28%, inclusive of all finance charges.

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Preemption

- Covered in FCU Powers & Limitations/FOM
- Preempted areas found at Section 701.21(b)

Preempted

Rates

Finance Charges

Terms of Repayment

Conditions of the Loan

Not Preempted

Insurance Laws

Transfer of and Security

Interest in Collateral

Default and Collections

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Preemption

After the recession, the great state of Binnesota passes a new mortgage law that contains the following provisions:

- Three months' notice prior to any rate adjustment.
- Cap of \$15 on late charges.
- Both notes and mortgages must be notarized.
- Prohibition on charging borrowers for any attorney's fees connected with a foreclosure.

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Preemption

Which of these provisions will be preempted?

- A. Just the late charges provision.
- B. The rate change notice & late charges provisions.
- C. The notice, late charges and attorney fees provisions, but not the notary provisions.
- D. All the provisions!

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Written Policies and Procedures

- Yes, have some.
- The board should establish them.
- If the credit union violates its own policies and procedures, it may be in violation of section 701.21 as well.
- Procedures and documentation around policy exceptions might be important.

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Ten Percent Limitation

This is a limit to protect the credit union from concentration risk.

Prohibits making any loan to a member if the loan would cause the member to owe the FCU an aggregate amount that is more than 10% of the credit union's "total unimpaired capital and surplus."

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Prepayment Penalties

“A member may repay a loan, or outstanding balance on a line of credit, prior to maturity in whole or in part on any business day without penalty.”

NCUA has stated that closing fees and costs can be recouped if they are disclosed as conditionally waived at closing.

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Loan-Related Compensation

Generally No credit union official or employee or their immediate family members can receive compensation in connection with a loan made by the credit union.

Official —

- Member of the board of directors
- Any volunteer committee

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Loan-Related Compensation

Generally No credit union official or employee or their immediate family members can receive compensation in connection with a loan made by the credit union.

Immediate Family Members —

- Spouse
- Other family living in the same household

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Loan-Related Compensation

Does Not Prohibit paying employees...

- their salary.
- bonuses or incentive pay tied to the overall financial performance of the credit union.
- bonuses or incentive pay tied to loans under a valid loan compensation plan:
 - No senior management employees.
 - Board approved written policy and internal controls.
 - Board monitors compliance at least annually.

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Loan-Related Compensation

Senior Management Employees —

- CEO
- CFO
- Assistant Executive Chief Officers and VPs

Does Not Prohibit

- Receiving third party compensation for services and activities performed outside the CU by volunteers, non-senior management employees and their families.

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Loans and Lines of Credit to Officials

- If a member of the board, supervisory committee or credit committee applies for a loan, and
- The loan would cause that person to owe (as borrower or cosigner) more than \$20,000 to the credit union, then
- The board must review and approve the loan.

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Loans and Lines of Credit to Officials: Math

Eleanor Shellstrop is on the Supervisory Committee for The Good Place Credit Union.

She wants a \$10,000 loan to buy Rihanna's used couch online.

Five years ago, she opened a credit card at TGPCU to get a free beer coozie. The account has a \$2,476.77 balance and a \$2,500 limit. She is willing to pledge her shares for the loan. Her share account currently has \$14.32 in it.



\$ _____

\$ _____

\$ _____

FCU



Loans and Lines of Credit to Officials: Math

Eleanor's request for the money to purchase Rihanna's used couch _____ need to be reviewed by the board and approved before the loan can be made.



\$ _____

FCU



Non-preferential Treatment

Cannot offer rates and terms to officials or their family that are preferential to what you are offering to membership generally.

Can offer preferential rates and terms to staff and employees – i.e. employee discounts.

- Not employees who serve on the board of directors or volunteer committees.

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Servicing Indirect Vehicle Loans

This is another limit to protect the credit union from a specific kind concentration risk -- auto loans:

1. Not originated by the credit union (i.e. acquired through indirect lending) and
2. Serviced by a third-party servicer.

First 30 Months of Servicing Relationship —

Cannot exceed 50% of the CU's net worth.

Thereafter —

Cannot exceed 100% of the CU's net worth.

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Loan Participations

Multiple lenders enter into a written agreement to participate in the loan throughout its life.

Why?

- To manage risk.
- To borrow another lender's demand.
- To diversify the lender's portfolio.
- To continue to lend in compliance with concentration or regulatory limitations.

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Loan Participations

For a credit union to do loan participations, it must meet three requirements:

- Credit union has a written loan participation policy.
- The loan participation being purchased meets the requirements of the regulation.
- The written Loan Participation Agreement between the lenders meets requirements.

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Commercial Loans

- Determined by the purpose of the loan.
 - Several exemptions from the definition
 - Small credit union exemption
- If a loan is a “commercial loan,” several requirements are triggered:
 - Board involvement and staff experience
 - Commercial loan policies
 - Collateral and security requirements
 - Insider lending prohibitions

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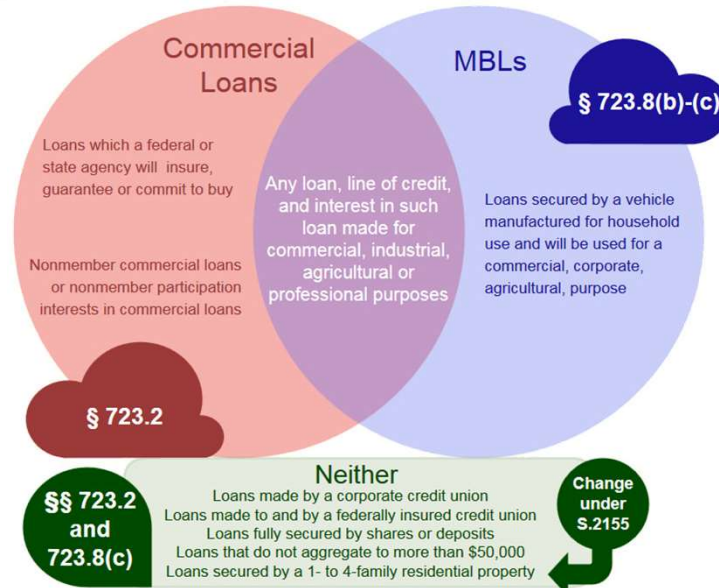
Member Business Loans

- Statutory cap set by the FCU Act
 - Builds on commercial loan definition
 - Several exemptions from the definition
- If a loan is a “member business loan,” it is included in the MBL cap calculation.
- Cannot make more MBL loans than 1.75 the actual net worth (or minimum net worth if its lesser) of the credit union.

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MBLs and Commercial Lending



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Questions?

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