



# NCUA Lending Regulations

**Presented by**

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3:15 – 4:15PM



# Lending Regulations on Day One?

**Why would  
you do this  
to me?**





# 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
- Maturity Limits
- Ten Percent Limitation
- Prepayment Penalties
- Loan-Related Compensation
- Non-preferential Treatment
- Indirect Vehicle Loan Servicing

## ▶ Section 701.22 Usury, Loan Participation

- Policies and Procedures

## ▶ Part 723 Member Business Loans and Commercial Lending

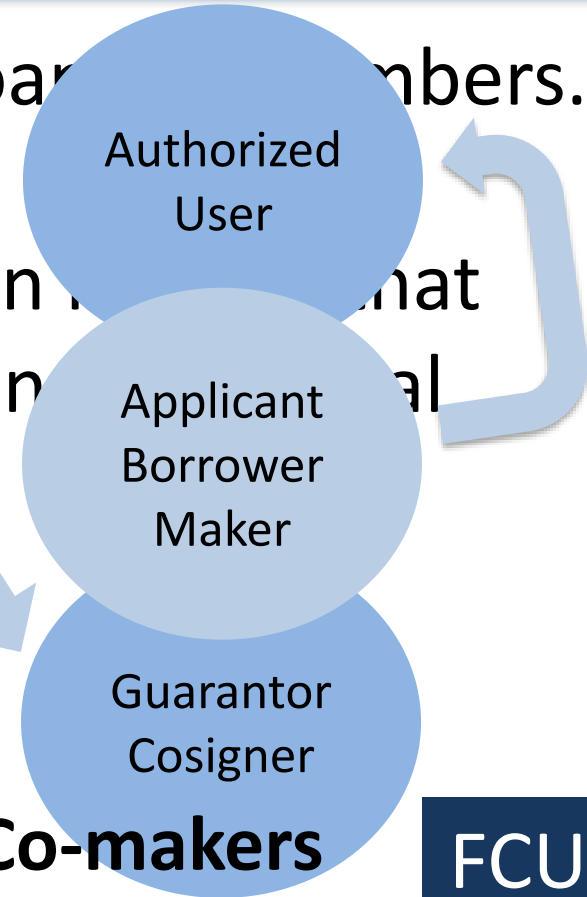
# Membership Nexus

FCUs only have the power to make loans to members.

Nonmembers can participate in a loan, but they don't have the relationship between the Lender and the member.

- Co-applicants or Guarantors
- Authorized Users

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





# 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.



# 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.





# Maturity Limits

Applies to closed-end loans only.

15  
years

20  
years

40  
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.



# 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

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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.




# 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.

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.

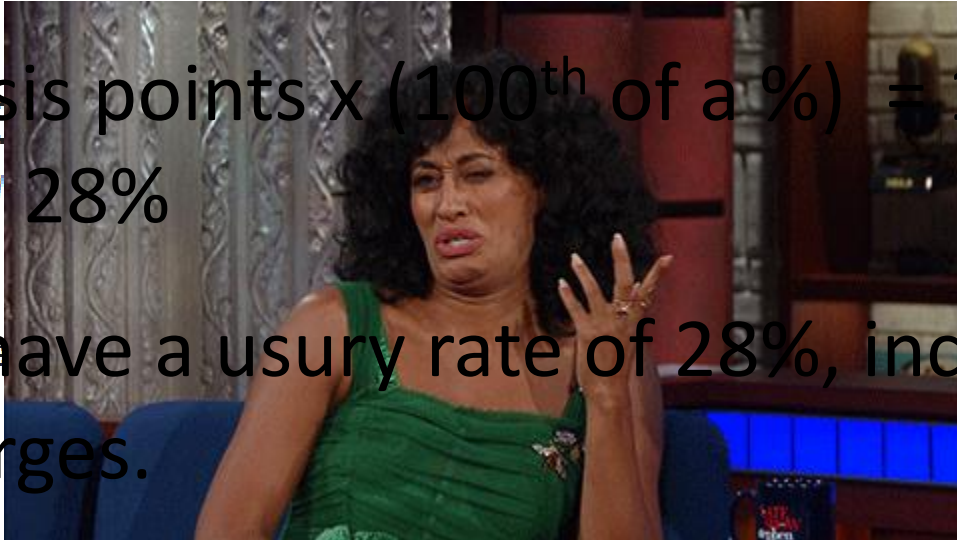
# The Usury Ceiling: PALs

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 (100<sup>th</sup> of a %) = 10 %
- 18 + 10 = 28%

*NOUN* FINANCE

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



# 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

# Preemption

After the recession, the great state of Minnesota 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.



# 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!

Which of these provisions will be preempted?

Just the late charges provision.

The rate change notice & late charges provisions.

The notice, late charges and







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# Written Policies and Procedures

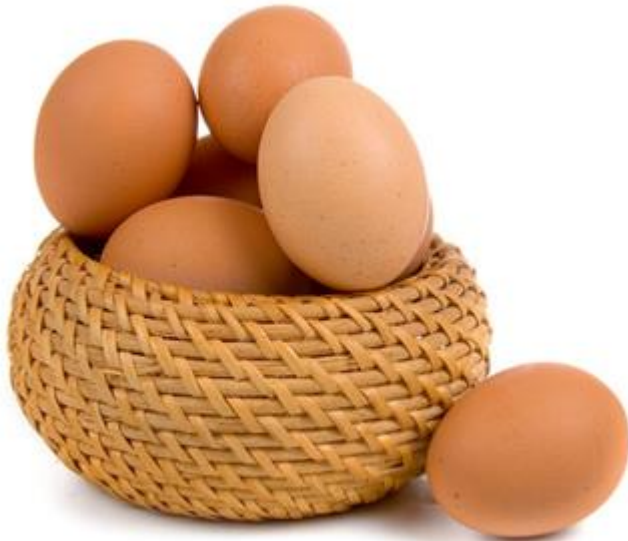
- Yes, have some.
- The board should establish them



- Procedures and documentation around policy exceptions might be important.

# Ten Percent Limitation

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



... loan to a member if the loan  
... member to owe the FCU an  
... that is more than 10% of the credit  
... paired capital





# 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.



# 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~~ Immediate Family Members —

- ~~Member~~ Member of the board of directors
- ~~Only a family~~ Only a family living in the same household

# Loan-Related Compensation

## Does Not Prohibit paying employees...

- their salary.
- bonuses or incentive pay tied to the overall financial performance.
- bonuses or incentive pay tied to the overall financial performance of a valid loan.
- compensation of employees.
- No senior management employees.
- Board members.
- Board members.





# 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.



# Loans and Lines of Credit to Officials

- If a member of the board or supervisory committee or credit committee approves a loan, and
- The loan will be used that person to owe (as borrower or cosigner) more than \$20,000 to the credit union, **Regulation O**
- The board must review and approve the loan.



# 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 \$12,476.77 balance and a \$12,500 limit. She is willing to pledge her shares for the loan. Her share account currently has \$14.32 in it.



\$10,000

+

\$12,500

-

\$14.32



# Loans and Lines of Credit to Officials: Math

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



**\$22,485.68**



# Non-preferential Treatment

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

Officials

Employees

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.



# 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 third-party servicer.

**Servicing Relationship**  
of the credit union  
of the credit union



# Loan Participations

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

Why?

- To manage
- To borrow a
- To diversify
- To continue concentration or regulatory limitations.





# 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.



# Commercial Loans

- Determined by the purpose of the loan
  - Several exemptions from the definition
  - Small Credit Union Exemptions
- 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



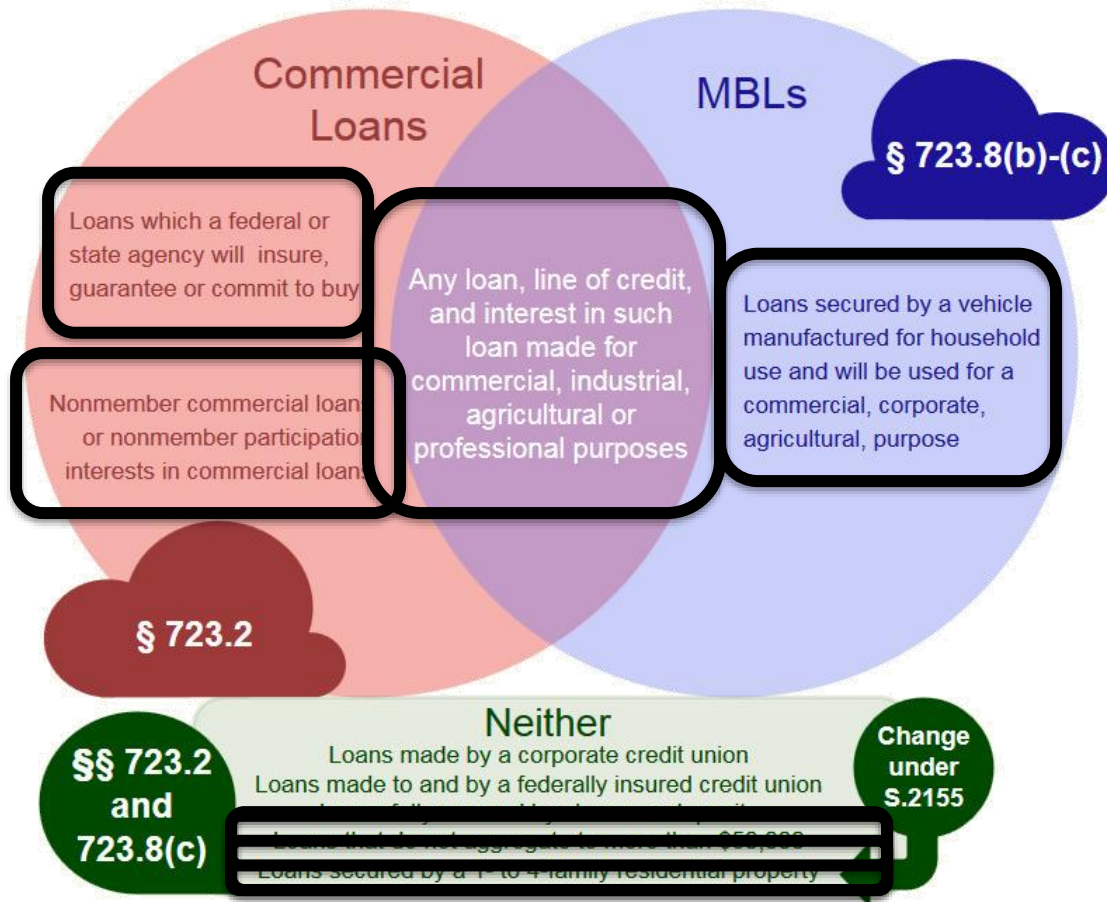


# Member Business Loans

- 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)



# MBLs and Commercial Lending





# Questions?

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