

January 16, 2008

Joseph S. Melchione, Esq.  
Styskal, Wiese & Melchione, LLP  
550 North Brand Boulevard, Suite 550  
Glendale, CA 91203-1988

Re: Line of Credit as Open-end Credit for Maturity Limit Purposes.

Dear Mr. Melchione:

You have asked if an extension of consumer credit by a federal credit union (FCU) meeting the definition of "open-end credit" under Regulation Z is a "line of credit" under NCUA's regulations, meaning it will not be subject to a maturity limit. Yes, that is correct. You also have asked specifically about a prior legal opinion, OGC Op. 92-0232, and its discussion of a particular loan product as a "hybrid or bifurcated loan." We are aware that older opinion has created some confusion and this opinion supersedes OGC Op. 92-0232.

The Federal Credit Union Act authorizes an FCU to make loans, which are subject to certain maturity limits, and "extend lines of credit to its members," which are not subject to maturity limits. 12 U.S.C. §1757(5). NCUA regulations use the same terms, loans and lines of credit, in addressing maturity limits. 12 C.F.R. §701.21(c)(4). Section 701.21(c)(4) specifies that lines of credit are not subject to any maturity limits.

As noted in OGC Op. 99-0926, NCUA historically looks to Regulation Z's definition of open-end credit to determine if a loan is a line of credit and, therefore, not subject to a maturity limit. The Board of Governors of the Federal Reserve System (Fed) is responsible for implementing the provisions of the Truth in Lending Act and has done so in Regulation Z, 12 C.F.R. Part 226; the provisions of Regulation Z apply to all federally-insured credit unions.

Regulation Z defines open-end credit as consumer credit extended by a creditor under a plan in which:

- (i) The creditor reasonably contemplates repeated transactions;
- (ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

12 C.F.R. §226.2(a)(20). Regulation Z defines “closed-end credit” as any consumer credit other than open-end credit. 12 C.F.R. §226.2(a)(10).

In OGC Op. 92-0232, we concluded a particular loan product was “neither a line of credit nor a closed-end loan” but described it as a “hybrid or bifurcated loan,” where the first part of the product would be considered a line of credit, without a maturity limit, and the second part provided “a closed-end loan or ‘refinancing’ of the line of credit,” to which the 20-year maturity limit for second mortgages would apply.

Upon reconsideration, we believe OGC Op. 92-0232 is incorrect in concluding that a loan could be neither open-end credit nor closed-end credit; in the 15 years since it was issued, the opinion has created some confusion. Accordingly, we will remove OGC Op. 92-0232 from NCUA’s website; this letter supersedes that opinion letter and clarifies our interpretation regarding application of the Regulation Z definition of open-end credit in determining if a loan product is a line of credit for purposes of NCUA regulations.

NCUA’s interpretation of Regulation Z, confirmed as correct by legal staff at the Fed, is that any extension of consumer credit is either open-end credit or closed-end credit. Accordingly, an extension of consumer credit by an FCU meeting the Regulation Z definition of open-end credit is, for NCUA’s purposes, a line of credit and not subject to maturity limits. An extension of consumer credit by an FCU that does not meet the Regulation Z definition of open-end credit is, therefore, closed-end credit and subject to applicable maturity limits under the FCU Act and NCUA’s regulations.

Credit unions should note, however, that, where an open-end credit account is converted to a closed-end transaction under a written agreement, a closed-end transaction is converted to an open-end credit account under a written agreement, or payment terms are subsequently added to the initial agreement of a home equity plan, the credit union must comply with all Regulation Z disclosure requirements related to these circumstances. Supplement I to 12 C.F.R. Part 226 - Official Staff Interpretations, Subpart B – Open-End Credit, §226.5(b)(1), Comment 4 and §226.5b, Comment 5, and Subpart C – Closed-End Credit, §226.17(b), Comment 2.

This opinion provides a general explanation of how NCUA views the relationship between Regulation Z and Part 701 of NCUA’s regulations. It does not analyze

Joseph S. Melchione, Esq.

Page 3

or draw conclusions regarding any particular loan product or plan. Please contact Staff Attorney Frank Kressman or me with any additional questions.

Sincerely,

Michael J. McKenna  
Deputy General Counsel

GC/FSK:bhs  
07-1024