

SUBJECT: Simple Interest Deferral and Extension Agreements

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INTRODUCTION

This release applies to all credit unions, state and federal. It describes compliance and regulatory guidance on the use of deferral and extension agreements on closed-end simple interest loans in Wisconsin.

EXECUTIVE SUMMARY

Loan restructurings are tools that credit unions may consider to provide relief to members on making loan payments, helping ease them through economic disruption and hardship. Such restructurings may include deferral agreements, extension agreements, general loan modifications, and even complete refinancings.

According to the NCUA's IRPS on *Loan Workouts, Nonaccrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans*, found in *NCUA Rules & Regs., Part 741 App. B*:

- *Deferral* means deferring a contractually due payment on a closed-end loan *without affecting the other terms, including maturity, of the loan*. The account is shown current upon granting the deferral.
- *Extension* means extending monthly payments on a closed-end loan and *rolling back the maturity by the number of months extended*. The account is shown current upon granting the extension.

The definitions reveal that the difference between these two types of loan modification is whether the final payment of the loan is pushed back. But both types contractually modify the loan agreement to defer one or more payments.

The League's Simple Interest Deferral Agreement (WCUL #81045, shown in Exhibit A) is, more specifically, an extension agreement. It defers payment but extends the final payment due date (maturity) by the number of months deferred. Why not label it as an extension agreement? The Wisconsin Consumer Act lumps together all deferral arrangements regardless of whether the maturity is extended. An extension agreement is essentially a specific type of deferral agreement. **The League discontinued this form in April 2020.**

The League's Simple Interest Loan Modification Agreement (WCUL #83002, shown in Exhibit C) replaces the above form. It is a loan modification agreement that defers one or more payments. It has multiple repayment options.

- When section 3(a) is used, the form functions as an extension, the functional equivalent of using old form #81045.
- When section 3(b) is used, payments are deferred without extending the maturity, resulting in a balloon payment.
- When section 3(c) is used, the monthly payment amount is increased to recapture the deferred payments without extending the maturity.

The (b) and (c) repayment options avoid extending the maturity of the loan so may be attractive options for mortgage loans. The new form adds new features and protective clauses, so users of the old form are encouraged to shift to the new form #83002.

Credit unions and their members can execute deferral agreements and extension agreements that only delay a number of payments, leaving other terms unchanged. On the other hand, loan modification agreements may make any number of changes to an existing loan agreement, such as changing the interest rate or completely rescheduling payments amounts.

This ii Release pulls together important points for your consideration with deferral arrangements, ranging from safety and soundness to contract considerations and compliance issues. It focuses on deferrals and extensions, but credit unions should keep in mind that if they need more extensive changes, other loan modification agreements can be drafted. Many of the considerations may apply.

When a proper deferral or extension agreement merely modifies the payment schedule and makes no other changes to a loan, it normally is not a “refinancing” under Regulations Z and, if so, would not trigger new Truth in Lending disclosures. Some more extensive loan modifications are classified as “refinancings” under Regulation Z and may require new disclosures.

CAPITALIZATION OF INTEREST

Prior to July 30, 2021, NCUA rules required each federally insured credit union’s (FICU’s) policy to prohibit additional advances to finance unpaid interest and credit union fees. Now, Appendix B to Part 741 of the NCUA Rules *has been amended* to remove the prohibition on the capitalization of interest – the addition of accrued but unpaid interest to the principal balance of a loan – in connection with loan workouts and modifications. The change applies to workouts of all types of member loans, including commercial and business loans. FICUs still may not capitalize credit union fees and commissions; however, they may continue to make advances to cover third party fees to protect loan collateral, such as force-placed insurance or property taxes.

In making the change the NCUA noted:

Modifications of loans that result in capitalization of unpaid interest are appropriate only when the borrower has the ability to repay the debt in accordance with the modification. At a minimum, if a FICU’s loan modification policy permits capitalization of unpaid interest, the policy must require each of the following:

1. Compliance with all applicable consumer protection laws and regulations, including, but not limited to, the Equal Credit Opportunity Act, the Fair Housing Act, the Truth In Lending Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, and the prohibitions against the use of unfair, deceptive or abusive acts or practices contained in the Consumer Financial Protection Act of 2010. (The Board notes that FICUs are also expected to comply with applicable State consumer protection laws that, in some instances, may be more stringent than Federal law, prohibiting, for example, the charging of interest on interest, subject to any case-by-case Federal preemption determinations that may be appropriate.)
2. Documentation that reflects a borrower’s ability to repay, a borrower’s source(s) of repayment, and when appropriate, compliance with the FICU’s valuation policies at the time the modification is approved.
3. Providing borrowers with documentation that is accurate, clear, and conspicuous and consistent with Federal and state consumer protection laws.
4. Appropriate reporting of loan status for modified loans in accordance with applicable law and accounting practices. The FICU shall not report a modified loan as past due if the loan was current prior to modification and the borrower is complying with the terms of the modification.
5. Prudent policies and procedures to help borrowers resume affordable and sustainable repayments that are appropriately structured, while at the same time minimizing losses to the credit union. The prudent policies and procedures must consider:
 - i. Whether the loan modifications are well-designed, consistently applied, and provide a favorable outcome for borrowers.
 - ii. The available options for borrowers to repay any missed payments at the end of their modifications to avoid delinquencies or other adverse consequences.

6. Appropriate safety and soundness safeguards to prevent the following:
- i. Masking deteriorations in loan portfolio quality and understating charge-off levels;
 - ii. Delaying loss recognition resulting in an understated allowance for loan and lease losses account or inaccurate loan valuations;
 - iii. Overstating net income and net worth (regulatory capital) levels; and
 - iv. Circumventing internal controls.

WHEN DEFERRAL AND EXTENSION AGREEMENTS MAY BE USED

A deferral agreement may be one of the tools a credit union provides for in its workout policy for working with borrowers in financial difficulty. Any credit union using a deferral agreement should consider the implications, if any, under its loan workout policy, non-accrual policy and the regulatory reporting requirements for troubled debt restructured (TDR) loans. See NCUA Rules & Regs. 12 CFR Part 741 App. B.

A deferral agreement is often used when there is an extraordinary, temporary reason why a borrower cannot make scheduled payments on time. Examples include illness or layoff where the borrower's income is expected to be restored in a short time.

Deferral agreements are not commonly used on open-end credit lines, such as R.E.A.P.[®], Kwik-Cash, or credit cards. In those cases, many lenders follow Reg. Z guidance on notification requirements for “skip payments.” Another approach is a customized modification agreement.

A deferral agreement is not used when any terms of the loan, other than due dates, are changed. Deferral forms would not have the proper language to address the other changes. Another suitable loan modification agreement may meet the credit unions needs if it is carefully drafted to make the desired changes and designed to work with the note being modified in a legally sound manner.

The Federal Financial Institutions Examination Council’s (FFIEC) *“Uniform Retail Credit Classification and Account Management Policy”* (June 12, 2000) is not official policy of the NCUA, but the agency sometimes refers credit unions to it for guidance. The policy says institutions should adopt and adhere to explicit standards that control the use of extensions, deferrals, renewals, and rewrites of closed-end loans. The standards should exhibit the following:

- The borrower should show a renewed willingness and ability to repay the loan.
- The standards should limit the number and frequency of extensions, deferrals, renewals, and rewrites.
- Additional advances to finance unpaid interest and fees should be prohibited.

Management should ensure that comprehensive and effective risk management, reporting, and internal controls are established and maintained to support the collection process and to ensure timely recognition of losses. To be effective, management information systems should track the subsequent principal reductions and charge-off history of loans that have been granted an extension, deferral, renewal, or rewrite.

See *ii Release No. B072* for a description of the NCUA Interpretive Ruling and Policy Statement (IRPS) on Loan Workouts, Nonaccrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans. It’s various requirements may sometimes, but not always, apply to deferrals, extensions, and rewrites. The IRPS requires federally-insured credit unions to maintain written policies that address the management of loan workout arrangements and nonaccrual standards for loans, consistent with industry practice or Federal Financial Institution Examination Council (FFIEC) requirements. The rule includes guidelines that assist credit unions in complying with the rule, including loan workout policies and monitoring requirements; the regulatory reporting of troubled debt restructured loans (TDRs) in Call Reports; and loan nonaccrual policies.

AVAILABILITY OF DEFERRAL AND EXTENSION AGREEMENTS

There are few preprinted deferral or extension agreements available to credit unions for purchase. Financial institutions must often have them drafted to meet their particular needs. That is because they must make precisely the desired

changes. And they must be tailored to work with the loan forms sought to be modified, without conflicting terms. But it is not advisable to make in-house customizations without a close legal review. It is easy to make harmful mistakes.

- *Simple Interest Deferral Agreement (WCUL #81045).* This League form is discontinued, but may still be in use at credit unions that have purchased it. They will be provided with the new Simple Interest Loan Modification Agreement, described below, at no charge for the remainder of the year. The old form #81045 provides that each of the remaining unpaid installments after a specified date will be deferred by a specified number of months. Additional payments are required after original final payment due date, extending maturity of the loan. The new final payment due date gets inserted, based on the number of months payments were deferred. Since it extends the final due date it should be considered an extension agreement. The extension of maturity is a complication for certain loans, such as mortgages. Those complications can be avoided or eased with the new form described below.
- *Simple Interest Loan Modification Agreement (WCUL #83002).* This is a new form. This form provides that each of the remaining unpaid installments after a specified date will be deferred by a specified number of months. Three options are available for the repayment clause; (a) additional monthly payments required after the original final payment due date, *extending maturity of the loan*; (b) a larger “balloon” payment, retaining the original final payment due date; (c) monthly payment amount increased, sufficient to retain the original final payment due date.

Since repayment option (a) extends the maturity of the loan, it may create complications for mortgage loans. Options (b) or (c) may avoid those complications.

- *FNMA/FMAC forms.* It’s commonly known that FNMA and FMAC offer model loan modification forms for making various amendments to their own standard mortgage loan documents. If using FNMA/FMAC loan modification forms on FNMA/FMAC documents, be sure to follow their form instructions and program standards.

But, FNMA/FMAC loan modification forms are not drafted to work with non-FNMA/FMAC loan forms. They could be dangerous to use in connection with loan agreements from other vendors.

- *WCUL forms available.* The League offers a form for sale that defers payments. The Simple Interest Loan Modification Agreement (#83002) is designed for use with WCUL closed-end simple interest loan notes using a monthly payment schedule, but the repayment schedules vary. It replaces the Simple Interest deferral Agreement (#81045), which only offered one repayment option, which extended that maturity of the loan.

We cannot assure that these forms are appropriate for use with other form vendor’s closed-end loan agreements. WCUL #83002 is shown in Exhibits C and D in this ii Release followed by instructions.

- *Open-end credit.* Many credit unions have offered skip-a-payment loan promotions, typically offered as a mass promotion to members who qualify under standards set by credit union policy. See The League’s *ii Release No. B073 - Skip-a-Payment Promotions*. On a case-by-case basis, the credit union and individual borrower(s) can agree to waive several payments and specify when regular payments will resume using the WCUL Wisconsin Open-End Credit Payment Waiver Agreement (#83004). See *ii Release No. B046 - Consumer Kwik-Cash Loans* and *ii Release No. B064 - R.E.A.P. & Home Equity Lines of Credit*.
- *Legal assistance.* Lenders need a legally sound loan modification agreement to meet their needs for their loan forms, whether for deferral, extension, interest rate change, adding a variable rate feature or other purposes. As with any loan modification, it must carefully address the particular changes intended to be made and crafted to modify the particular loan agreements held by the lender.

If your form vendor does not offer a deferral or extension agreement form, consider working with your attorney to develop one, or review another vendor’s form for suitability. You may have many millions of dollars relying on the effectiveness of your documentation.

- *Additional interest will accrue.* Deferral of loan payments will result in more interest accruing on the loan, regardless of whether the final payment due date is pushed back. This should be disclosed in writing to the borrower. Forms #81045 and #83002 do so, but it may be beneficial to reinforce the point for the borrower.
- *No other changes.* A deferral or extension agreement normally only changes the payment schedule. The form should say that all other terms of the loan agreement are unchanged. Keep in mind that sometimes a credit union may want more extensive changes for its restructuring, such as a rate reduction. Then a more general modification agreement may be appropriate. That approach may face additional issues beyond those described here, but there would be some

overlap. The more extensive changes you seek, the more likely that a complete refinancing may be appropriate with all new disclosures.

- *Who must sign?* An authorized party from the credit union and each borrower on the loan normally sign any loan modification agreement, including any deferral or extension agreement. This is to ensure the modification is an enforceable amendment to the loan agreement under contract law. In addition, many loan notes, including The League's WCUL notes, include a provision stating that the agreement cannot be modified *except* in a writing signed by the lender and the borrower(s).

Signatures of existing cosigners and guarantors on the loan may also be appropriate, to ensure that they are not released from liability on the loan or the guarantee agreement. Each signer should be given a copy.

WISCONSIN CONSUMER ACT FORM REQUIREMENTS

The Wisconsin Consumer Act requires the following for deferral agreements, which its Administrator deems to apply to extension agreement's as well.

1. The agreement shall be in writing and signed by the customer.
2. The agreement shall incorporate by reference the transaction to which the deferral applies.
3. The agreement shall state each installment or part thereof in the amount to be deferred, the date or dates originally payable and either the date or dates agreed to become payable for the payment of the amounts deferred or the periods of deferral.
4. The agreement shall clearly set forth the dollar amount of the charge for each installment to be deferred and the total dollar amount to be paid by the customer for the deferral.

WCA Notice to Customer

When a deferral, extension, or other loan modification agreement is used in connection with a closed-end Wisconsin Consumer Act transaction, it must contain immediately above or adjacent to the place for the signature of the customer, a clear, conspicuous, printed or typewritten notice in substantially the following language:

NOTICE TO CUSTOMER

- (a) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.
- (b) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- (c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- (d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

The language shown in line (a) is not required when no terms appear on the reverse side of the writing, as with the WCUL #81045. *See Wis. Stat. § 422.303.*

GENERAL CONSIDERATIONS

Please note that the following considerations cannot cover all possible issues. Review your loan documents and study how they will be affected by any proposed loan modification agreement including deferrals or extensions. Be alert for any additional problems. This list of general considerations is followed by special considerations that arise with modifications of mortgage loans.

- *Deferral charges.* The Department of Financial Institutions, as Administrator of the Wisconsin Consumer Act, takes the position that no charge may be collected for deferring a simple-interest closed-end loan. Deferral charges are permitted on precomputed loans under the Act, but not on simple interest. The rationale is that the lender will be compensated by collecting the additional interest that will accrue due to the deferred repayments.

Be alert to fee restrictions on specific types of loans. For example, creditors, servicers, and assignees cannot charge a fee to modify, defer, renew, extend, or amend a high-cost mortgage, per the HOEPA provisions in Reg. Z §1026.34(a)(7). (For guidance on which mortgage loans are considered “high-cost,” see The League’s *ii Release No. B062*.)

- *Late fees.* Contracted late fees may be assessed on closed-end Wisconsin Consumer Act loans only if the member misses the *deferred* due date, not just the original due date. The Consumer Act provides that a loan agreement may authorize that a late fee may be assessed on any installment not paid in full on or before the 10th day after the deferred due date, in an amount not to exceed \$10 or 5 percent of the unpaid amount of the installment, whichever is less.

The principal that a late fee cannot be charged if the borrower pays by the deferred due date should be observed on all loans, not just Wisconsin Consumer Act loans. The legal effect of the deferral is that the old due date no longer applies.

- *Tattle-tale notice.* A credit union must send a “tattle-tale notice” to a non-obligated spouse when it “extends credit” to a married person under the Wisconsin Consumer Act that is incurred in the interest of the marriage or family, assuming the Marital Property Act applies to the couple. But the tattle tale notice is not required. It is not extending new credit. The law provides:

The term [extends credit] does not include renewals, extensions, modifications or the use of an open-end credit plan. *Wis. Stats. § 766.56(3)(a).*

- *Credit bureau reporting.* A deferral or extension agreement legally resets the schedule of future loan payment due dates. Credit bureau reporting must be accurate in regard to whether the borrower is current in meeting the payment schedule in effect, including deferred payments. Consult the credit bureau for any special guidance or requirements they may have for properly reporting loan deferrals, extensions, or other loan modifications.
- *Credit insurance, payment protection, GAP, etc.* The credit union should analyze the effect of any proposed extension of maturity of the loan for complications on any credit insurance, debt cancellation, debt suspension, GAP, warranties, or other products sold in connection with the loan. Consult the vendors for guidance. Extending the maturity may leave a loan unprotected at the end. The borrower should be advised of any adverse consequences in writing before executing the modification. See *Wis. Stats. § 424.206* for Wisconsin Consumer Act loans.
- *TDRs, and loan workouts, and nonaccrual.* Deferral and extension agreements are often used in hardship situations. But they are not always considered workouts. For purposes of the NCUA IRPS described in *ii Release No. B072*, “Workout Loan” means a loan to a borrower in financial difficulty that has been formally restructured so as to be reasonably assured of repayment (of principal and interest) and of performance according to its restructured terms. A workout loan typically involves a re-aging, extension, deferral, renewal, or rewrite of a loan. For purposes of the NCUA IRPS, workouts do not include loans made to market rates and terms such as refinances, borrower retention actions, or new loans.

There may be instances where a workout loan is not a TDR even though the borrower is experiencing financial hardship. For example, a workout loan would not be a TDR if the fair value of cash or other assets accepted by a credit union from a borrower in full satisfaction of its receivable is at least equal to the credit union’s recorded investment in the loan, e.g., due to charge-offs.

- *Avoid negative amortization.* This occurs when the principal loan balance increases rather than decreases from month to month because the amount of the monthly payment is not enough to pay all the interest due. The risk of negative amortization is greatest on certain loans such as newer or long-term loans that are already amortizing slowly, but it may also arise on interest-only payment loans, delinquent loans, etc.

Negative amortization puts the borrower at risk, and it is frowned on by the regulators. It may raise additional compliance complications. For example, see the following:

- *ii Release No. B062 - Reg. Z: Home Ownership & Equity Protection Act (HOEPA) Rule*, and
- *Wis. Stats. §138.056 (5)*, regarding variable rate loans with negative amortization in conjunction with a rate adjustment.

That said, if a credit union should defer or extend loan payments resulting in negative amortization, it is advisable to clearly disclose that fact to the borrowers in writing.

EXTRA CONSIDERATIONS FOR MORTGAGE LOANS

If payments on a mortgage loan are to be deferred, extended, or otherwise modified, please keep additional concerns in mind, besides those mentioned earlier. Some lenders do not offer deferrals or, especially, extensions on real estate mortgage loans due to these complications.

An alternative may be to refinance from scratch, with a new note, disclosures, and mortgage.

Although negative amortization was addressed above as a General Consideration, please keep in mind that it is probably a bigger issue in regard to mortgage loans.

- *“Dragnet clause.”* Verify that your recorded mortgage includes a “dragnet clause” saying that the mortgage secures not only the original loan amount, but also any extensions, renewals, modifications or refinancings thereof signed by any borrower. Your mortgage form is very likely to have a dragnet clause but check to be sure. Without it, your extension or renewal may be unsecured. Here’s an example from a WCUL mortgage form:

Mortgage as Security. This Mortgage is given to secure prompt payment to the Credit Union of the following (together, the “Obligations”): (a) the sum stated in the first paragraph of this Mortgage, plus interest and charges according to the terms of the Promissory Note(s) of Borrower to Credit Union identified in the first paragraph of this Mortgage, and any *extensions, renewals, modifications* or refinancings thereof signed by any Borrower (all called the “Note”).

But that is not always adequate protection. Please read on.

- *Lien priority issues.* The modification of a mortgage loan may jeopardize the lien priority of the credit union’s recorded mortgage if the changes are deemed to prejudice, or adversely affect, the protection of a junior lienholder. This is a risk-based concern that will vary from one situation to another. A Wisconsin law firm advises:

A loan modification may put your mortgage lien priority over junior lienholders at risk. In some cases, the risk may be significant and in others, minimal. As a general matter, the more changes you make in a modification, the greater chance of it affecting the lien priority. On the other hand, just lowering the interest rate without increasing the loan balance is more harmless. Your attorney can help you evaluate the risk, which may vary from loan to loan, and how to address it. Sometimes the risk will require the recorded mortgage to be modified, or replaced by a newly recorded mortgage. A subordination agreement from a junior lienholder may also be required to protect mortgage lien priority.

As the law firm points out, negotiating a subordination agreement with a junior lienholder may protect the credit union. If the credit union is already benefiting from a subordination agreement on a loan, review that document to see if that benefit is lost if the credit union modifies or extends its loan.

- *The recorded mortgage may require modification or replacement.* If the terms of a deferral or any type of loan modification agreement will conflict with those of a recorded mortgage, extend the maturity, or put a junior lienholder at greater risk, the mortgage itself may require modification or replacement. Consult your attorney for guidance.
- *Title insurance.* Contact the credit union's title insurer for guidance on whether your mortgage loan modification may affect your title insurance protection. Consider whether to procure an endorsement to the policy, if available, to cover the extension or other modification.
- *Use caution if the loan term will exceed 30 years as a result of a modification.* Fortunately, the Office of Credit Unions’ 30-year limit on the terms of a mortgage loan by a state-chartered credit union is reset by the date of any properly executed loan modification agreement. See *Wis. Admin. Code DFI-CU 54.03(3)*. (Note that The OCU’s Director may waive the 30-year limitation for good cause shown.)

But Wisconsin law limits the effectiveness of mortgages recorded more than 30 years prior. If the credit union will need to rely upon a mortgage for more than 30 years, a remedy may be available. Consult your attorney about drafting and recording a special notice which may renew the enforceability of a potentially stale mortgage for another 30 years from the date the notice is recorded. See *Wis. Stats § 893.33 and § 706.09*.

- *Escrow payments.* Monthly escrow payments for taxes and insurance are not normally deferred when a deferral or extension agreement is executed. Section 6 of The League’s Simple Interest Loan Modification Agreement (#83002) addresses this point, but be sure that affected borrowers are aware of the effect.

- *Flood insurance regulations.* Modifications that extend the maturity of real estate or mobile home loans can trigger: (1) the need for a new flood hazard determination, or (2) the need to establish an escrow account for any required flood insurance if the maturity of the loan is extended.
 - A credit union that is increasing, extending, renewing or purchasing an existing loan may rely on a previous determination of whether the property is located in a flood hazard, only if the previous determination is less than seven years old, the previous determination was recorded on a special flood hazard determination form, and the credit union verifies that no FIRM or FHBM map revision has been issued. If a new map has been issued, the credit union must complete a new special hazard determination form using the new map.
 - NCUA flood insurance regulations require lenders/servicers to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, *extended*, or renewed on or after January 1, 2016 – unless either 1) the credit union qualifies for a “small lender” exemption or 2) a particular loan is exempt.

Use of repayment options 3(b) or 3(c) on The League’s Simple Interest Loan Modification Agreement (#83002), retaining the original final payment due date, can avoid this complication.

For more information on flood insurance requirements, see *ii Release No. B003*.

- *Requirements of other entities.* Be sure that use of any deferral, extension or other modification agreement is consistent with any requirements of the secondary market, mortgage insurers, loan guarantee programs, loan participations, etc., as applicable. Those parties or programs may have their own standards or forms for deferrals, extensions, and other modifications.

TRUTH IN LENDING DISCLOSURES

When a proper deferral or extension agreement merely modifies the payment schedule and makes no other changes to a loan, it normally is not a refinancing and does not trigger new Truth in Lending disclosures. Some more extensive loan modifications are refinancings and may require new disclosures. Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.

Reg. Z says that a refinancing occurs when an existing closed-end is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new Truth in Lending disclosures to the consumer. The new finance charge must include any unearned portion of the old finance charge that is not credited to the existing obligation.

However, the following five events are not be treated as a refinancing, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

1. A renewal of a single payment obligation with no change in the original terms.
2. A reduction in the annual percentage rate with a corresponding change in the payment schedule.
3. An agreement involving a court proceeding.
4. A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in §1026.4(d).
5. The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

The Reg. Z Commentary elaborates:

- Changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a refinancing unless accomplished by the cancellation of that obligation and the substitution of a new obligation.
- A substitution of agreements that meets the refinancing definition will require new disclosures, even if the substitution does not substantially alter the prior credit terms.

Addition of a variable rate feature

Even if it is not accomplished by the cancellation of the old obligation and substitution of a new one, a new transaction subject to new disclosures results if the creditor either:

- Increases the rate based on a variable-rate feature that was not previously disclosed, or
- Adds a variable-rate feature to the obligation.

If either of the above occurs in a transaction secured by a principal dwelling with a term longer than one year, the Reg. Z ARM application disclosures required under §1026.19(b) also must be given at that time.

See *Reg. Z § 1026.20(a)* and related Commentary for full details.

* * * * *

League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

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EXHIBIT A - SIMPLE INTEREST DEFERRAL AGREEMENT - WCUL #81045 (DISCONTINUED)

The copyrighted text of the WCUL #81045 is provided here for educational purposes, to illustrate some of the concepts described in this ii Release. Exhibit B indicates how key provisions of this particular form are completed. The .pdf of the form may be purchased online at www.theleague.coop > Solutions > Credit Union Forms > Consumer Loan Forms.

SIMPLE INTEREST DEFERRAL AGREEMENT	
Date 1	Account Number 2
It is hereby agreed by and between the undersigned credit union ("Credit Union") and the undersigned borrower(s) ("Borrower," whether one or more) that the due date(s) of certain installment(s) due or to become due under the terms of the Borrower's 3 executed by Borrower on 4 in the original principal amount of \$ 5 (the "Obligation") be deferred as hereinafter provided. For the purpose of this Agreement, "Borrower" shall include any guarantor of the Obligation and each guarantor signing below hereby acknowledges that his/her liability under the Obligation is not affected by this Agreement. Borrower and Credit Union agree to defer the original maturity dates of 6 installments remaining unpaid under the Obligation for 7 month(s) each. The first installment to be deferred under this Agreement was originally scheduled to be due on 8 and will now be due on 9. The entire indebtedness evidenced by such Obligation shall be due and payable on or before 10 rather than on or before 11 as originally provided. All terms and provisions of said Obligation not expressly altered by this Agreement shall remain in full force and effect. Because interest and credit insurance charges accrue for the actual number of days the principal balance of the Obligation remains unpaid, the total finance charge, credit insurance charges, if any total of payments and the amount of final payment will be greater than the amounts originally disclosed to Borrower. Each of the undersigned hereby acknowledges receipt of an exact copy of this Agreement.	
NOTICE TO BORROWER	
(a) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES. (b) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN. (c) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THE OBLIGATION AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF FINANCE CHARGE.	
12 Credit Union By: _____ Title: 13 _____ Borrower _____ Borrower _____ Borrower	
FOR CREDIT UNION USE ONLY (This section for reference purposes only, completion is optional.) Reason for the deferral: 14	

WCUL (Rev. 4/98) 81045
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Credit Union – Original

EXHIBIT B - SIMPLE INTEREST DEFERRAL AGREEMENT (WCUL #81045) – INSTRUCTIONS (DISCONTINUED)

The form is designed for use with WCUL closed-end loan forms with a monthly payment schedule. Consult your attorney before using with other vendor's forms.

Please note that the second paragraph of the forms is designed to be completed to show that each of the remaining unpaid installments after the specified date will be deferred by a specified number of months. Additional payments are required after original final payment due date, extending the maturity of the loan. The new final payment due date gets inserted, based on the number of months payments were deferred.

Since this repayment structure extends the maturity of the loan, it may create complications for mortgage loans. The League's Simple Interest Loan Modification Agreement (WCUL #83002) offers deferred payments with two other repayment structures that do not extend the maturity date. See Exhibit C of this ii Release for that form, and note repayment options (b) and (c).

All fillable blanks in the form must be completed or marked n/a. Each borrower and a credit union authorized person must sign. Deferral fees are prohibited on Wisconsin Consumer Act loans.

1. Insert date of signing by the parties.
2. Insert loan account number.
3. Insert title of the note or loan agreement.
4. Insert date borrower signed note or loan agreement.
5. Insert original loan amount.
6. Insert number of remaining installments.
7. Insert number of months each installment will be deferred.
8. Insert original due date of first payment that will be deferred.
9. Insert new due date of first payment that will be deferred.
10. Insert new final payment due date as a result of the deferral.
11. Insert original final payment due date provided under the note.
12. Insert name of credit union.
13. Title of credit union official who signs in the line marked "By:".
14. Reason for the deferral (optional).

EXHIBIT C - SIMPLE INTEREST LOAN MODIFICATION AGREEMENT - WCUL #83002

The copyrighted text of the WCUL #83002 is provided here for educational purposes, to illustrate some of the concepts described in this ii Release. Exhibit D indicates how provisions of this particular form are completed. The .pdf of the form may be purchased online at www.theleague.coop > Solutions > Credit Union Forms > Consumer Loan Forms.

WISCONSIN SIMPLE INTEREST LOAN MODIFICATION AGREEMENT

(Providing for deferred payments on a closed-end loan)

1 Credit Union Loan Account Number: 2

1. In consideration of the mutual promises and agreements exchanged, and notwithstanding anything to the contrary in the Note, it is hereby agreed by and between the undersigned credit union ("the Credit Union") and borrower(s) ("the Borrower," whether one or more) that the due date(s) of certain installment(s) due or to become due under the terms of the 3 (the "Note") executed by the Borrower on 4 in the original principal amount of \$ 5 be deferred as hereinafter provided.

2. All terms and provisions of said Note not expressly altered by this Agreement shall remain in full force and effect. Nothing in this Agreement shall be understood or construed to satisfy, cancel, or release in whole or in part the Note or any security agreement or mortgage that may secure the Note.

Deferral

3. The borrower and the Credit Union agree to defer the original payment due dates of the 6 installments remaining unpaid under the Note for 7 month(s) each. The first installment to be deferred under this Agreement was originally scheduled to be due on 8 and will now be due on 9. Subsequent installments shall be paid on the same date each month until the loan is paid, except that (check one below):

☐ (a) Additional payment(s) required after original final payment due date, extending maturity

The entire indebtedness evidenced by such Note shall be due and payable on or before 10 rather than on or before 11 as originally provided.

☐ (b) Larger "balloon" payment required, retaining original final payment due date

The entire indebtedness evidenced by such Note shall be due and payable on or before 12, as originally provided. The final payment will be larger than previous installments: \$ 13 if all monthly payments are made on their deferred due dates.

☐ (c) Monthly payment amount increased, retaining original final payment due date

The amount of each deferred monthly payment shall be increased to \$ 14. The entire indebtedness evidenced by such Note shall be due and payable on or before 15, as originally provided.

4. If on the final payment due date specified above the Borrower still owes amounts under the Note, as amended by this Agreement, the Borrower will pay those amounts in full on the final payment due date.

5. Because interest and credit insurance charges accrue for the actual number of days that the principal balance of the Note remains unpaid, the total finance charge, credit insurance charges, if any, the total of payments, and the amount of the final payment may be greater than the amounts originally disclosed to the Borrower.

6. Any obligation of the Borrower to pay taxes, insurance, or other charges directly or through escrow payments, relating to any property securing the Note shall continue without deferral.

7. If all or any part of the property securing the Note is sold or transferred (or if the Borrower is not a natural person and a beneficial interest in the Borrower is sold or transferred) without the Credit Union's prior written consent, the Credit Union may require immediate payment in full of all sums secured by the any security agreement or mortgage.

8. For the purpose of this Agreement, "the Borrower" shall include any cosigner or guarantor of the Note. Each cosigner or guarantor signing below hereby acknowledges that his/her liability under the Note is not affected by this Agreement.

Payment of Arrears

9. The Credit Union has accepted or will hereby accept from the Borrower the sum of \$ 16, which is to be applied to the unpaid principal balance (including advances, if any), and the sum of \$ 17, which is to be applied to the delinquent interest due on the principal balance (including advances, if any), each of which amounts shall be applied as of the date of this Agreement.

(Continued on reverse)

**EXHIBIT C - SIMPLE INTEREST LOAN MODIFICATION AGREEMENT - WCUL #83002
(Cont.)**

Additional Terms

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Each of the undersigned hereby acknowledges receipt of an exact copy of this Agreement.

NOTICE TO BORROWER

- (A) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE FRONT SIDE, EVEN IF OTHERWISE ADVISED.
- (B) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.
- (C) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
- (D) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THE NOTE AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF FINANCE CHARGE.

Dated: 21

22 Credit Union

Borrower 25

By: 23

Borrower 26

Title: 24

Borrower 27

EXHIBIT D - SIMPLE INTEREST LOAN MODIFICATION AGREEMENT (WCUL #83002) - INSTRUCTIONS

The form is designed for use with WCUL closed-end loan forms with a monthly payment schedule. Consult your attorney before using with other vendor's forms.

Please note that the second paragraph of the forms is designed to be completed to show that each of the identified series of remaining unpaid installments after the specified date will be deferred by a specified number of months. Three options are available for the repayment clause; (a) additional monthly payments required after the original final payment due date, extending the maturity of the loan; (b) a larger "balloon" payment required, retaining the original final payment due date; (c) the monthly payment amount increased, sufficient to retain the original final payment due date. Since repayment option (a) extends the maturity of the loan, it may create complications for mortgage loans. Options (b) or (c) may avoid those complications.

All fillable blanks in the form must be completed or marked n/a. Each borrower and a credit union authorized person must sign. Deferral fees are prohibited on Wisconsin Consumer Act loans.

1. Insert name of credit union.
2. Insert loan account number.
3. Insert title of the note or loan agreement.
4. Insert date borrower signed original note agreement.
5. Insert original loan amount.

Deferral

6. Insert number of remaining installments.
7. Insert number of months each installment will be deferred.
8. Insert original due date of first payment that will be deferred.
9. Insert new due date of first payment that will be deferred.

Check box (a), (b), or (c) – one only – for the chosen repayment option. Complete the blanks in that section only. Then continue with #16.

- ☐ (a) *Additional payment(s) required after original final payment due date, extending maturity*

10. Insert new final payment due date as a result of the deferral.
11. Insert original final payment due date provided under the note.

- ☐ (b) *Larger "balloon" payment required, retaining original final (b) payment due date*

12. Insert original final payment due date provided under the note, which will remain in effect.
13. Insert calculated amount of balloon payment required.

- ☐ (c) *Monthly payment amount increased, retaining original final payment due date*

14. Insert new monthly payment amount, calculated to pay off loan on original final payment due date.
15. Insert original final payment due date provided under the note, which will remain in effect.

Payment of Arrears (optional)

16. If borrower must pay arrears up front as a condition of the deferral, insert the amount that will be applied to principal, including advances, if any.
17. If borrower must pay arrears up front as a condition of the deferral, insert the amount that will be applied to interest on the principal balance, or advances, if any.
18. Insert copy labels, i.e., borrower, credit union (optional).
19. Complete footer field with any desired non-contractual language (optional).

Additional Terms

20. Insert any desired additional contract clauses (optional). Examples may include a deferral charge (prohibited by the Wisconsin Consumer Act), or a clause authorizing capitalization of interest (generally frowned upon by regulators). For any language added, consult your attorney for its legality, compatibility with the original note, and legally sound phrasing.
21. Insert date of the loan modification agreement.
22. Insert the name of the credit union.
23. Insert the name of the credit union official who will sign above the line.
24. Insert the title of credit union official who signs above.
- 25 – 27. Insert the names of borrowers, cosigners, and guarantors who will sign above the lines.