

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701 and 741

RIN 3133-AE00

#### Loan Participations; Purchase, Sale and Pledge of Eligible Obligations; Purchase of Assets and Assumption of Liabilities

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The NCUA Board (Board) requests public comment on its proposal to amend its loan participation regulation and relevant provisions in the eligible obligations rule and the rule governing the purchase of assets and assumption of liabilities. NCUA has received many questions about the loan participation rule, indicating confusion about its application and its relationship to these other rules. The proposed rule reorganizes the current rule and directs its regulatory provisions to the purchase of a loan participation. It aims to improve understanding of the transactions covered under the rule, as well as the requirements for purchase and ongoing monitoring and the applicability of related provisions. The proposed rule also expands loan participation requirements to federally insured, state-chartered credit unions (FISCUs).

**DATES:** Send your comments to reach us on or before February 21, 2012. We may not consider comments received after the above date in making our decision on the proposed rule.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Email:** Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on ‘Proposed Rule on

Loan Participations’” in the email subject line.

- **Fax:** (703) 518-6319. Use the subject line described above for email.

- **Mail:** Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- **Hand Delivery/Courier:** Same as mail address.

- **Public Inspection:** You can view all public comments on NCUA’s Web site at <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### FOR FURTHER INFORMATION CONTACT:

Linda Dent, Staff Attorney, Office of General Counsel, (703) 518-6540; Vincent Vieten, Member Business Loan Program Officer, Office of Examination and Insurance, (703) 518-6618.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. The Rule as Proposed
- III. Section-by-Section Analysis
- IV. Regulatory Procedures

#### I. Background <sup>1</sup>

##### *Why is NCUA proposing this rule?*

The Board believes that involvement in loan participations strengthens the credit union industry. Loan participations are a useful way for federally insured credit unions to diversify their loan portfolios, improve earnings, generate loan growth and manage their balance sheets and comply with regulatory requirements. Credit unions also use excess liquidity through the sale of participations to increase the availability of credit to small businesses and consumers. The Board recognizes,

<sup>1</sup> President Obama signed the Plain Writing Act of 2010 (Pub. L. 111-274) into law on October 13, 2010 “to improve the effectiveness and accountability of federal agencies to the public by promoting clear Government communication that the public can understand and use.” This preamble is written to meet plain writing objectives.

however, that loan participations also create more systemic risk to the share insurance fund (NCUSIF) due to the resulting interconnection between participants. For example, large volumes of participated loans in the system tied to a single originator, borrower, or industry or serviced by a single entity have the potential to impact multiple credit unions if a problem arises. Additionally, as both federal credit unions (FCUs) and federally insured state-chartered credit unions (FISCUs) actively engage in loan participations, it is important to the safety and soundness of the NCUSIF that *all* federally insured credit unions (FICUs) adhere to the same minimum standards for engaging in loan participations. The Board believes such standards are necessary to ensure the NCUSIF consistently recognizes and accounts for the risks associated with the purchase of loan participations. Finally, during examinations and other FICU contacts, the agency has encountered confusion concerning the application of the current loan participation rule regarding the entities and transactions subject to the rule. For these reasons, NCUA proposes to amend § 701.22, as well as relevant provisions in § 701.23 and § 741.8. Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations, 52 FR 35231 (Sept. 18, 1987), as amended by IRPS 03-2, 68 FR 31949 (May 29, 2003).

#### II. The Rule as Proposed

##### *a. How would the proposed rule change the loan participation rule?*

NCUA proposes to change the rule to address only the requirements for a FICU purchasing a loan participation. The proposed rule also would better detail regulatory expectations regarding key aspects of a loan participation purchase: the loan participation policy, the loan participation agreement, and ongoing monitoring of the loan participation.

##### *b. Does this rule create greater restrictions than the current rule?*

Yes, the proposed rule prescribes certain concentration limits and encourages a FICU to establish others. The proposed rule also requires that a loan participation agreement include certain provisions to assist the purchasing FICU in conducting its due

diligence. The Board is proposing these actions to ensure that loan participation activity is conducted in a safe and sound manner.

### III. Section-by-Section Analysis

#### a. § 701.22—Introductory Text

The Board believes the addition of introductory text to the rule clarifies the scope of the rule and helps distinguish a participation loan from an eligible obligation under § 701.23. As proposed, the introductory text clarifies that the rule applies to a natural person federal credit union's purchase of a loan participation where the borrower is *not* a member of that credit union. An FCU's purchase of its member's loan, in whole or in part, is covered by NCUA's eligible obligations rule at § 701.23.

Additionally, by a cross-reference to Part 741, the Board proposes to apply the rule to natural person FISCUs. Corporate credit unions are subject to the loan participation requirements set forth in Part 704 and, therefore, are not subject to § 701.22.

#### b. § 701.22(a)—Definitions

The Board proposes to revise the definitions for "originating lender" and "participation loan" to clarify that the originating lender must participate in the loan throughout the life of the loan. The Board also proposes to add a definition of associated borrower. The proposed definition is self-explanatory and is used in the provision on concentration limits in § 701.22(b) below. Additionally, the Board proposes to change the paragraph's format by listing the definitions in alphabetical order and removing the numeric designations. These changes are consistent with the format recommended by the Federal Register.

#### c. § 701.22(b)—Requirements for Loan Participation Purchases

The Board proposes to revise this paragraph by reorganizing and revising the requirements for a loan participation included in paragraphs (b), (c) and (d) of the current rule. In the proposed rule, information from these paragraphs is organized into a revised paragraph (b), with specific details added to improve clarity and to address safety and soundness concerns.

Revised paragraph (b) provides that a FICU may only purchase a loan participation if the seller is an eligible organization and if the loan is one the FICU is empowered to grant under regulation and its loan policies. Empowered to grant means a FICU's authority to make the type of loan permitted by the Federal Credit Union

Act or applicable state law, NCUA regulations, and its bylaws and own internal policies. Accordingly, the Board proposes to remove the current exception in § 701.22(c)(4), which permits an FCU to purchase a loan participation that was originated with different underwriting standards than its own. Removing this provision prevents a FICU from purchasing a loan participation originated with less stringent underwriting standards than the FICU uses in making its own loans. The proposed rule, however, does not prevent a FICU from purchasing a loan participation with more stringent underwriting standards than it uses in originating its own loans.

Other requirements for purchasing a loan participation include a written loan participation agreement, a continuing participation interest by the originating lender of at least 10 percent for the loan's duration, and the borrower's membership in a participating FICU before the purchase occurs. While the proposed rule continues to require a written loan participation policy, the Board proposes to require specific provisions to include in such policy. For example, provisions would be added to the rule addressing the maximum limit on loan participations outstanding and various concentration limits. The Board recognizes there may be other factors based on a credit union's size, complexity of operations, and lending experience that should be considered in formulating a loan participation policy. The Board expects a FICU to consider these factors in establishing its policy. For example, a FICU purchasing a loan participation pool might perform statistical sampling in evaluating the underwriting standards of the pool. Conversely, a large purchase representing a significant portion of the FICU's net worth should require a full review of the loan documentation before approval. The Board expects a FICU to establish the parameters for review, including a periodic review for appropriateness, and adhere to such parameters.

#### 1. Concentration Limits on Loan Participations

In establishing appropriate concentration limits for loan participations, the Board is seeking to mitigate risk without discouraging continued growth. The Board proposes to use net worth, rather than unimpaired capital and surplus, as the means for striking this balance. Net worth cushions fluctuations in earnings, supports growth, and provides protection against insolvency. As such,

the Board believes establishing limits tied to this measure is appropriate.

The Board also recognizes the need for FICUs to identify and manage various concentrations on their balance sheet. Key among these are concentrations involving the same originator, one borrower or a group of associated borrowers, and types of loans, for example, by industry or loan product. The Board proposes to limit loan participation purchases involving a single originator to a maximum of 25 percent of a FICU's net worth. No waiver provision is proposed for the 25 percent limitation. It also proposes to limit loan participation purchases involving one borrower or a group of associated borrowers to 15 percent of a FICU's net worth, unless the appropriate regional director grants a waiver. These limits consider that a FICU purchasing a loan participation generally does not directly manage the risks associated with the loan relationship, including borrower contact and collection control. The 15 percent limitation is consistent with the 15 percent limitation on member business loans to one member or group of associated members set forth in § 723.8 of the member business loan rule. Part 723 allows members to apply for a waiver from the 15 percent limitation (as well as other regulatory limitations). Waiver procedures are set forth in § 723.11. It has come to NCUA's attention that many credit unions believe the waiver process in Part 723 is not working efficiently and is often not a viable, practical option. NCUA seeks comment as to how the waiver process in this regulation can be structured to satisfy credit unions' practical concerns while ensuring prudent loan participation practices.

The Board expects to grandfather credit unions that exceed the 25 percent and 15 percent concentration limits at the percentage rates of concentration on the effective date of a final rule. The grandfathered rates will diminish down to the approved regulatory rates set as participations are paid off or sold. The Board is not establishing specific limits for other concentrations identified within a FICU's loan participation policy. It is important, however, for a FICU to identify such concentrations and apply a reasonable, supportable concentration limit. Consistent with agency guidance on the evaluation of concentration risk, concentration limits must be established commensurate with net worth levels.<sup>2</sup>

The Board is particularly interested in receiving comments on how these caps should be structured, the

<sup>2</sup> Letter to Credit Unions 10-CU-03 (Mar. 2010).

appropriateness of these caps, and suggested alternative approaches to mitigating the inherent risks of loan participations.

*d. § 701.22(c)—Minimum Requirements for a Loan Participation Agreement*

The proposed rule revises current § 701.22(b)(2), which requires loan participation agreements to be in writing, and moves requirements for the agreement to revised paragraph § 701.22(c). The Board recognizes that a successful participated loan relationship depends, in large part, on the quality and completeness of the participation agreement. A well-written agreement can minimize inter-creditor conflicts during the life of the loan, especially if the loan becomes delinquent and needs to be worked out. The Board also believes that any participation agreement must clearly delineate the roles, duties, and obligations of the originating lender, servicer, and participants.

As proposed, revised paragraph (c) establishes minimum provisions that any loan participation agreement must address. For example, the loan participation agreement must include a provision requiring the originating lender to retain at least a ten percent interest in the loan throughout its duration. This requirement mirrors the current statutory requirement for FCUs. Other provisions require the agreement to identify each participated loan, enumerate servicing responsibilities for the loan, and include notice and disclosure requirements regarding the ongoing financial condition of the loan, the borrower, and the servicer.

The Board is proposing these minimum provisions to emphasize the need for adequate documentation and due diligence from the time of purchase throughout the life of the participation. Additionally, under proposed § 701.22(c)(1), a loan participation agreement must specify the loan or loans in which a credit union is purchasing an interest. Where a participation agreement involves multiple loans, the documentation, for example, can be as simple as an addendum or schedule for identifying each loan and a participant's interest in that loan. This provision clarifies the existing prohibition against an FCU purchasing a participation certificate in a pool of loans.

*e. § 701.22(d)—Remove and Reserve*

The Board proposes to address the contents of this paragraph in other portions of the rule.

*f. Related Regulatory Provisions*

1. § 701.23—Purchase, Sale, and Pledge of Eligible Obligations

The Board proposes to add introductory text to this section to clarify the rule's scope and to distinguish it from transactions covered by § 701.22.

2. § 741.8—Purchase of Assets and Assumption of Liabilities

Section 741.8 is a safety and soundness provision requiring supervisory approval before a federally insured credit union may purchase a loan from an entity that is not insured by the NCUSIF. No approval is necessary, however, for the following transactions:

- An FCU's purchase of student loans or real estate secured loans pursuant to § 701.23(b)(iii) or (iv);
- An FCU's purchase of its member loans pursuant to § 701.23(b)(i); or
- A FISCU's purchase of its member loans under state law comparable to the provisions in § 701.23.

Currently, there are no exclusions under § 741.8 for loan participation purchases. In practice, however, as long as an FCU's purchase complies with § 701.22 requirements the FCU is not required to obtain separate regional director approval for the transaction. The Board proposes to add language to § 741.8 to specifically state that Regional Director approval is not required for a loan participation purchase that complies with § 701.22 requirements. The exclusion would apply to both FCUs and FISCUs.

3. § 741.225—Loan Participations

Section 201 of the Federal Credit Union Act states the Board is authorized to insure the member accounts of state-chartered credit unions that have applied to, and been approved by, NCUA for federal insurance coverage. Credit unions receiving federal insurance must agree to comply with the requirements of Title II and any regulations prescribed by the Board pursuant to this title. Pursuant to this authority, the Board proposes to amend Part 741 by adding a new § 741.225 to extend the participation rule's coverage to federally insured, state-chartered credit unions. Since 2007, FISCU-participated loan balances have increased 27 percent, from \$5.7 billion in 2007 to \$7.2 billion in 2010 and have consistently accounted for the majority of outstanding loan participations. Similarly, since 2007, FISCUs overall experienced a higher delinquency rate in their loan participation portfolios. At year-end 2010, the delinquency rate for

the FISCU-participated portfolio was 4.11 percent, compared to 3.74 percent for all FICUs.

Based on June 30, 2011, Call Report data, FISCUs hold 56 percent of outstanding loan participations and are responsible for approximately 55 percent of participation loans purchased and 68 percent of participation loans sold. Among the 20 FICUs with the highest amount of outstanding participation loans, 16 are FISCUs. The June 30 data also indicates that FISCUs continue to have a higher delinquency rate in their loan participation portfolios, 3.97 percent compared to 3.59 percent for all FICUs and 3.09 percent for FCUs. Of the 123 credit unions reporting over 10 percent delinquency on participation loans, 68, or 56 percent, are FISCUs.

With regard to actual losses, charge-off data for the last few years indicates FISCUs have experienced a higher level of losses in participation loans than FCUs, with the FISCU charge-off ratio steadily increasing from year to year. For example, the 2008 FISCU net charge-off ratio increased 71 percent from 2007 with an average increase of 31 percent in both 2009 and 2010. As of June 30, 2011, the year-to-year average remained 31 percent. Over these same periods, FCUs experienced an average increase of 2 percent, with a 28 percent spike in 2009 and decreases in net charge-offs for all other years. As of June 30, 2011, annualized net charge offs for FCUs show an annualized decrease of 10 percent.

The Board notes that, despite the indications of risk to the NCUSIF from FISCUs' loan participation activity, FISCU involvement in loan participations currently is subject only to state law. State regulatory requirements for loan participation transactions may vary from NCUA regulation and from state to state. The Board believes certain requirements should be consistent among all FICUs to minimize systemic risk. Increasing numbers and balances in loan participation portfolios, among both federal credit unions and FISCUs, indicate such a regulatory approach is warranted.

**IV. Regulatory Procedures**

*a. Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. 5 U.S.C. 603(a). For purposes of this analysis, NCUA considers credit unions having under \$10 million in assets small

entities. Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003). As of June 30, 2011, of approximately 7,200 federally insured credit unions, approximately 2,700 had less than \$10 million in assets.

NCUA does not believe the proposed rule, if adopted, would have a significant impact on a substantial number of small credit unions. Loan participations are a means for institutions to diversify risk and to employ excess lending capacity. Generally, smaller credit unions are not actively involved in loan participation transactions.

#### *b. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections.

The proposed rule contains an information collection in the form of a written policy requirement and a transaction documentation requirement. Any federally insured credit union purchasing loan participations must have a written loan participation policy. In addition, before purchasing a loan participation, it must enter into a written loan participation agreement that specifically identifies the subject loan(s) and other material information. As required by the PRA, NCUA is submitting a copy of this proposed rule to OMB for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed IRPS should submit them to OMB at the address noted below.

Based on NCUA's experience, credit unions generally maintain written loan participation policies and enter into written agreements when purchasing loan participations. As such, they will only need to modify their practices to comply with the proposed rule. It is, therefore, NCUA's view that maintaining a written loan participation policy and executing written participation purchase agreements are not burdens created by this regulation. Rather, they are usual and customary operating practices of a prudent financial institution. Based on the current volume of federally insured credit unions reporting loan participation activity, NCUA estimates approximately 2,000 federally insured credit unions will need to modify a

written loan participation policy. NCUA further estimates it should take a credit union an average of 4 hours to modify its loan participation policy. The total annual burden imposed is approximately 8,000 hours. With regard to executing a written loan participation agreement, NCUA estimates the regulation will cause no additional burden.

NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are required to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to NCUA on the proposed regulation.

Comments on the proposed information collection requirements should be sent to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: NCUA Desk Officer, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

#### *c. Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive

Order. The proposed rule, if adopted, will also apply to federally insured, state-chartered credit unions. By law, these institutions are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. The proposed rule may have an occasional direct effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed rule may supersede provisions of state law, regulation, or approvals. The proposed rule could lead to conflicts between the NCUA and state financial institution regulators on occasion, so NCUA requests comments on ways to eliminate, or at least minimize, potential conflicts in this area. Commenters may wish to provide recommendations on the potential use of delegated authority, cooperative decision-making responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Executive Order.

#### *d. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this proposed rule would 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).

#### **List of Subjects**

##### *12 CFR Part 701*

Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

##### *12 CFR Part 741*

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

By the National Credit Union Administration Board, on December 15, 2011.

**Mary F. Rupp,**

*Secretary of the Board.*

For the reasons stated above, NCUA proposes to amend 12 CFR parts 701 and 741 as follows:

**PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

1. The authority for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Revise § 701.22 to read as follows:

**§ 701.22 Loan participations.**

This section applies only to loan participations as defined in paragraph (a). It does not include the purchase of an investment interest in a pool of loans. This section establishes the requirements a federally insured credit union must satisfy in order to purchase a participation in a loan. This section applies only to a federally insured credit union's purchase of a loan participation where the borrower is not a member of that credit union. Generally, a federally insured credit union's purchase of all or part of a loan made to one of its own members, where no continuing contractual obligation between the seller and purchaser is contemplated, is governed by section § 701.23 of this chapter. Federally insured, state-chartered credit unions must comply with these loan participation requirements as provided in § 741.225 of this chapter. This section does not apply to corporate credit unions.

(a) For purposes of this section, the following definitions apply:

*Associated borrower* means any borrower with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower. This includes guarantors, co-signors, major stakeholders, owners, investors, affiliates and other parties who have influence on the management, control, or operations of the borrower.

*Credit union* means any Federal or State-chartered credit union.

*Credit union organization* means any credit union service organization meeting the requirements of part 712 of this chapter. This term does not include trade associations or membership

organizations principally composed of credit unions.

*Eligible organizations* means a credit union, credit union organization, or financial organization.

*Financial organization* means any federally-chartered or federally insured financial institution; and any state or federal government agency and its subdivisions.

*Loan participation* means a loan where one or more eligible organizations participate pursuant to a written agreement with the originating lender, and the written agreement requires the originating lender's continuing participation throughout the life of the loan.

*Originating lender* means the participant with which the member initially or originally contracts for a loan and who, thereafter or concurrently with the funding of the loan, sells participations to other lenders.

(b) A credit union may purchase a loan participation from an eligible organization only if the loan is one the credit union is empowered to grant and the following conditions are satisfied:

(1) The purchase complies with all regulations to the same extent as if the credit union had originated the loan, including, for example, the loans-to-one-borrower rule in § 701.21(c)(5) of this chapter for federal credit unions and the member business loan rule in part 723 of this chapter for all federally insured credit unions;

(2) The credit union has executed a written loan participation agreement with the originating lender and the agreement meets the minimum requirements for a loan participation agreement as described in this section;

(3) The originating lender retains at least a 10 percent interest in the outstanding balance of the loan through the life of the loan;

(4) The borrower is a member of a participating credit union before the credit union purchases a loan participation; and,

(5) The purchase complies with the credit union's written loan participation policy, which, among its provisions, must:

(i) Establish underwriting standards for loan participations which, at a minimum, meet the same underwriting standards the credit union uses when it originates a loan;

(ii) Establish a limit on the aggregate amount of loan participations that may be purchased from any one originating lender, not to exceed 25 percent of the credit union's net worth;

(iii) Establish limits on the amount of loan participations that may be purchased by each loan type, not to

exceed a specified percentage of the credit union's net worth; and

(iv) Establish a limit on the aggregate amount of loan participations that may be purchased with respect to a single borrower, or group of associated borrowers, not to exceed 15 percent of the credit union's net worth, unless granted a waiver by its Regional Director.

(c) A loan participation agreement must:

(1) Be properly executed;

(2) Be acted on by the credit union's board of directors or, if the board has so delegated in its policy, a designated committee or senior management official(s);

(3) Be retained in the credit union's office; and

(4) Include provisions addressing the following:

(i) Prior to purchase, the identification, either directly in the agreement or through a document which is incorporated by reference into the agreement, of the specific loan participation(s) being purchased;

(ii) The percent of the loan participation retained by the originating lender throughout the life of the loan, which must be at least 10 percent;

(iii) The location and custodian for original loan documents;

(iv) Access to periodic financial and other performance information about the loan, the borrower, and the servicer so participants can monitor the loan;

(v) Enumerated duties and responsibilities of the originating lender, servicer, and participants in respect of servicing, default, foreclosure, collection, and other matters involving the ongoing administration of the loan; and

(vi) Circumstances and conditions under which participants may replace the servicer.

3. Amend § 701.23 to add introductory text before paragraph (a) as follows:

**§ 701.23 Purchase, sale, and pledge of eligible obligations.**

This section governs a federal credit union's purchase, sale, or pledge of all or part of a loan to one of its own members, where no continuing contractual obligation between the seller and purchaser is contemplated. For purchases of eligible obligations, the borrower must be a member of the purchasing federal credit union before the purchase is made. A federal credit union may not purchase a non-member loan to hold in its portfolio.

\* \* \* \* \*

## PART 741—REQUIREMENTS FOR INSURANCE

### Subpart A—Regulations That Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations

4. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

5. Add paragraph (b)(4) to § 741.8 to read as follows:

#### § 741.8 Purchase of assets and assumption of liabilities.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(4) Purchases of loan participations as defined in and meeting the requirements of § 701.22 of this chapter.

\* \* \* \* \*

6. Add new § 741.225 to read as follows:

#### § 741.225 Loan participations.

Any credit union that is insured pursuant to Title II of the Act must adhere to the requirements stated in § 701.22 of this chapter with the exception of § 701.22(b)(4).

[FR Doc. 2011–32719 Filed 12–21–11; 8:45 am]

BILLING CODE 7535–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 741

RIN 3133–AD96

### Maintaining Access to Emergency Liquidity

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Advance notice of proposed rulemaking with request for comment (ANPR).

**SUMMARY:** The NCUA Board (Board) requests public comment on the scope and requirements of a regulation to require federally insured credit unions (FICUs) to have access to backup federal liquidity sources for use in times of financial emergency and distressed economic circumstances. The Board also seeks comment on how such a regulation could be implemented to maximize economic benefit while minimizing regulatory burden on credit unions.

**DATES:** Send your comments to reach us on or before February 21, 2012. We may

not consider comments received after the above date in making our decision on the ANPR.

**ADDRESSES:** You may submit comments by any one of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Advance Notice of Proposed Rulemaking for Part 741, Maintaining Access to Emergency Liquidity” in the email subject line.

- *Fax:* (703) 518–6319. Use the subject line described above for email.

- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier:* Same as mail address.

**Public Inspection:** You can view all public comments on NCUA's Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Lisa Henderson, Staff Attorney, Office of General Counsel, at the address above or telephone (703) 518–6540; or J. Owen Cole, Jr., Director, Division of Capital Markets, Office of Examination and Insurance, at the address above or telephone (703) 518–6620.

#### SUPPLEMENTARY INFORMATION:

- I. Background
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#### I. Background

##### a. Why may a rule be necessary?

The recent financial crisis and lingering economic uncertainties require NCUA and credit unions to closely examine the adequacy of risk management programs and practices in FICUs, including liquidity. One of the vital lessons learned from recent events is that institutions, both financial and otherwise, need to have an inviolable liquidity backstop that is over and above

primary sources of funding such as tapping market sources of credit or selling highly liquid assets. Absent a reliable backstop, institutions can suddenly be affected by unforeseen systemic liquidity events that render them incapable of funding normal daily operations and facing a rapidly accelerating risk of operational disruption and even failure. With the advent of corporate credit union (corporate) system reforms resulting from the crisis, the Board sees the changing role of corporates as a major impetus to revisit the manner in which emergency liquidity for the credit union system is maintained and accessed.

Currently, virtually all FICUs have access to the Central Liquidity Facility (CLF or facility) by belonging to a corporate credit union that is in turn part of the agent group headed by U.S. Central Bridge Corporate Federal Credit Union (USC Bridge).<sup>1</sup> USC Bridge temporarily holds CLF stock on behalf of the whole agent group, but USC Bridge will soon be winding down and closing.<sup>2</sup> In the absence of an alternative arrangement, when USC Bridge redeems the CLF stock as part of its closure process, the majority of credit unions that enjoyed access to CLF through this agent relationship will no longer have the CLF as a source of backup liquidity. The corresponding reduction in the CLF's borrowing capacity would also reduce the credit union system's capacity to address a systemic liquidity event.

Based on June 30, 2011, Call Report data, most FICUs have no emergency liquidity source beyond indirect CLF membership by virtue of being a member of a corporate and USC Bridge holding the CLF capital stock. Only 1.3 percent of FICUs have direct membership in CLF, and only 4.5 percent of FICUs are set up to access the Federal Reserve Discount Window (Discount Window). While 14.6 percent of FICUs report being members of a Federal Home Loan Bank (FHLB), 27 percent do not hold any mortgage assets and would be unlikely to be able to rely upon the FHLB for wholesale funding or liquidity needs. More troubling, over 90 percent of FICUs do not currently hold any U.S. Treasury obligations. Shorter

<sup>1</sup> NCUA established USC Bridge to provide an orderly transition in resolving the failure of U.S. Central Corporate Federal Credit Union, which had historically held the CLF capital stock on behalf of the majority of the credit union system.

<sup>2</sup> The closure of USC Bridge and corresponding redemption of CLF stock is expected to occur sometime in 2012. Though member institutions did contemplate creating a successor to USC Bridge, the plans for a potential successor never included holding the CLF stock and these plans are no longer being pursued.