

NCUA Final Rule for Loan Participations

On June 20, 2013, the NCUA Board approved the Loan Participation final rule (“final rule”). The final rule amends NCUA rules and regulations, parts 701 and 741 and is applicable to both federal credit unions (FCUs) and federally insured state chartered credit unions (FISCUs). The final rule was originally effective on July 25, 2013 however the **NCUA extended the effective date to September 23, 2013**. The final rule can be found [here](#).

Please Note: Michigan Credit Union League & Affiliates services are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. For specific legal advice, please consult with your credit union’s attorney.

Q. 1. What are the differences between the final rule and the proposed rule?

A. Generally, there were changes made to the definitions, conditions for loan participation purchases, loan participation policy requirements, loan participation agreement requirements, eligible obligations and requirements for insurance. The NCUA created a chart to highlight the differences between the proposed and final rules, which can be located [here](#).

Q. 2. For credit union’s purchasing participations, is there a limit on the amount that can be purchased from one originator?

A. Purchasing credit unions are now subject to a single-originator concentration limit of \$5 million or 100% of net worth, whichever is greater. There is a waiver process for credit unions wanting to exceed this limit.

Q.3. The originating lender of a participation loan needs to retain a certain percentage interest of the outstanding balance through the life of the loan, what is that requirement?

A. FCUs must retain at least a 10% interest as required by the Federal Credit Union Act. Other originating organizations including FISCUs and CUSOs must retain at least a 5% interest.

Q. 4. As part of the loan agreement, does my credit union need to make sure the originating lender is retaining a percentage?

A. Yes, FCUs and FISCUs can only purchase participations from originators who retain at least a 5% interest in the loan through the life of the loan. FCUs must require the originating lender, if it is an FCU to retain 10%, however FCUs may purchase loan participations from non-FCU originating lenders that retain 5%.

Q.5. What are the borrower concentration limits set forth in the final rule?

A. Similar to the limits to one borrower in the MBL rule, participations are subject to a 15% single borrower limit. Therefore, loan participations that may be purchased with respect to a single borrower, or group of associated borrowers, is not to exceed 15% of the federally insured credit union's net worth (unless approved by a waiver).

Q. 6. What if our credit union has loan participations that exceed the limits set forth in the new final rule?

A. Any federally insured credit union that exceeds the single originator or single borrower limits as of September 23, 2013 will be grandfathered and not required to divest any loan participations. However, no new participations will be permitted to be purchased until the excess participations have been paid off or sold in the normal course of business.

Q. 7. What underwriting standards are required for loan participations?

A. A federally insured credit union is permitted to establish different underwriting standards for underwriting their own loans and purchasing participations in those loans. The NCUA does emphasize in the final rule that prudent underwriting standards should be established, along with appropriate due diligence before purchasing a participation. However, the underwriting standards do not have to be the same as originally proposed.

Q. 8. Are credit unions permitted to participate in loan types they do not originate?

A. Yes. To allow for greater portfolio diversification, the final rule provides that a federally insured credit union can participate in loan types that they do not originate. This was a revision from the proposed rule.

Q.9. Our credit union would like to apply for a waiver. What information should be included in our application?

A. NCUA's expectations for federally insured credit unions requesting a waiver are detailed in 701.22(c). The following information should be included with the waiver application:

1. A copy of all pertinent lending policies and underwriting standards;
2. The requested higher limit;
3. Documentation supporting the credit union's ability to manage and monitor the activity, including existing risk mitigation measures;
4. Analysis of the credit union's prior experience with this type of loan;
5. The loan participation master agreement;
6. Servicing agreements/contracts, if applicable; and
7. Documentation supporting the resolution of any material problems identified in the most recent exam report's Document of Resolution or any outstanding administrative actions.

Q.10. What is required to be included in the credit unions loan participation policy?

A. According to the final rule, a credit union's loan participation policy, must include at a minimum:

1. Established underwriting standards for loan participations;
2. Established limits on the aggregate amount of loan participations that may be purchased from one originating lender (not to exceed limits);
3. Established limits on the amount of loan participations that may be purchased by each loan type, not to exceed a specified percentage of the federally insured credit union's net worth;
4. Established limits 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 limits).