TABLE 2—COLLATERAL HAIRCUTS

SOVEREIGN ENTITIES		
	Residual maturity	Haircut without currency mismatch [1]
OECD Country Risk Classification [2] 0–1	< = 1 year	0.005.
	>1 year, <= 5 years	0.02.
	>5 years	0.04.
OECD Country Risk Classification 2–3	<= 1 year	0.01.
	>1 year, <= 5 years	0.03.
	> 5 years	0.06.
CORPORATE AND MUNICIPAL BONDS THAT ARE BANK-ELIGIBLE INVESTMENTS		
	Residual maturity for debt securities	Haircut without currency mismatch
All	<=1 year	0.02.
All	>1 year, <=5 years	0.06.
All	>5 years	0.12.
OTHER ELIGIBLE COLLATERAL		
Main index [3] equities (including convertible bonds)		0.15.
Other publicly-traded equities (including convertible bonds)		0.25.
Mutual funds		Highest haircut applicable to any security in which the fund can invest.
Cash collateral held		0.

[1] In cases where the currency denomination of the collateral differs from the currency denomination of the credit transaction, an additional 8 percent haircut will apply.
[2] OECD Country Risk Classification means the country risk classification as defined in Article 25 of the OECD's February 2011 Arrangement on Officially Supported Export Credits Arrangement.
[3] Main index means the Standard & Poor's 500 Index, the FTSE All-World Index, and any other index for which the covered company can demonstrate to the satisfaction of the Federal Reserve that the equities represented in the index have comparable liquidity, depth of market, and size of bid-ask spreads as equities in the Standard & Poor's 500 Index and FTSE All-World Index.

(iii) *Basel Collateral Haircut Method.* A national bank or savings association may calculate the credit exposure of a securities financing transaction pursuant to 12 CFR Part 3, Appendix C, Sections 32(b)(2)(i) and (ii); 12 CFR Part 167, Appendix C, Sections 32(b)(2)(i) and (ii); or 12 CFR Part 390, subpart Z, Appendix A, Sections 32(b)(2)(i) and (ii), as appropriate.

(2) *Mandatory or alternative method.* The appropriate Federal banking agency may in its discretion require or permit a national bank or savings association to use a specific method or methods set forth in paragraph (c)(1) of this section to calculate the credit exposure arising from all securities financing transactions or any specific, or category of, securities financing transactions if the appropriate Federal banking agency finds, in its discretion, that such method is consistent with the safety and soundness of the bank or savings association.

PART 159—SUBORDINATE ORGANIZATIONS

■ 6. The authority citation for part 159 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

■ 7. Section 159.3 is amended by revising paragraph (k)(2) to read as follows:

§ 159.3 What are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations?

* * * * *

(k) * * *

(2) The LTOB regulation does not apply to loans from you to your GAAP-consolidated service corporation or from your GAAP-consolidated service corporation to you. However, part 32 imposes restrictions on the amount of loans you may make to non-consolidated service corporations. Loans made by a GAAP-consolidated service corporation are aggregated with your loans for LTOB purposes.

* * * * *

■ 8. Section 159.5 is amended by revising paragraphs (b) and (c) to read as follows:

§ 159.5 How much may a Federal savings association invest in service corporations or lower-tier entities?

* * * * *

(b) In addition to the amounts you may invest under paragraph (a) of this section, and to the extent that you have authority under other provisions of section 5(c) of the HOLA and part 160 of this chapter, and available capacity within any applicable investment limits, you may make loans to any non-consolidated subsidiary, subject to the lending limits in part 32 of this chapter.

(c) For purposes of this section, the term ''obligations'' includes all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

Dated: June 19, 2013.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2013–15174 Filed 6–24–13; 8:45 am]

BILLING CODE 4810–33–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133–AEOO

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

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA amends its loan participation rule, eligible obligations rule, and requirements for insurance rule to clarify how the loan participation rule is to be applied and how it relates to other rules. The amendments reorganize the loan participation rule and focus on the purchase side of loan participation transactions. The amendments make it easier to understand NCUA's regulatory requirements for loan participations. The amendments also expand loan participation requirements to federally insured, state-chartered credit unions (FISCUs).

DATES: This rule is effective July 25, 2013.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, Office of General Counsel at (703) 518–6540; or Matthew J. Biliouris, Director of Supervision, Office of Examination and Insurance at (703) 518–6360.

SUPPLEMENTARY INFORMATION

I. Background
II. Summary of Public Comments
III. Section-by-Section Analysis of the Final Rule
IV. Regulatory Procedures

I. Background

A. Why is NCUA adopting this rule?

Loan participations strengthen the credit union industry by providing a useful way for credit unions to diversify their loan portfolios, improve earnings, generate loan growth, manage their balance sheets, and comply with regulatory requirements. Credit unions also use liquidity obtained through the sale of loan participations to increase the availability of credit to small businesses and consumers.

Nevertheless, the NCUA Board (Board) believes that loan participations also pose an inherent risk to the National Credit Union Share Insurance Fund (NCUSIF) due to the interconnectedness between participants. For example, large volumes of participated loans may be tied to a single originator, borrower, or industry or they may be serviced by a single entity. If any one of those entities experiences a financial or other problem, the effects of such concentration could impact multiple credit unions. Additionally, because both federal credit unions (FCUs) and federally insured, state-chartered credit unions (FISCUs) actively engage in loan participations, there is potential risk to the NCUSIF. Accordingly, it is important to the safety and soundness of the NCUSIF that all federally insured credit unions (FICUs) adhere to appropriate standards when transacting loan participations.

Finally, it has come to NCUA's attention during examinations and other supervisory contacts with FICUs that many credit union officials find the loan participation rule unclear as to whom it applies, and what transactions it covers. This rule is intended to address this concern. For these reasons, the Board is issuing this final rule to amend §§ 701.22, 701.23, and 741.8.

B. What changes were included in the proposed rule?

In December 2011, the Board issued a proposed rule to amend the loan participation rule.[1] The proposal reorganized the rule to make it easier to read and understand. It also changed the rule's focus to address the requirements for a credit union purchasing a loan participation. In addition, to ensure that loan participation transactions are conducted in a safe and sound manner, the proposed rule prescribed certain concentration limits on credit unions and encouraged credit unions to establish others of their own. It also required that a loan participation agreement include specific provisions to assist a purchasing credit union in conducting its due diligence. The Board proposed these changes to better detail NCUA's regulatory expectations regarding key aspects of a loan participation purchase, including: (1) The credit union's loan participation policy; (2) the loan participation agreement; and (3) ongoing monitoring of the loan participation.

II. Summary of Public Comments

The public comment period for the proposed rule ended on February 21, 2012. NCUA received 215 comments on the proposed rule: 48 from FCUs; 53 from state-chartered credit unions; 5 from trade associations (1 representing community development credit unions; 2 representing credit unions; 1 representing state credit union supervisors; and 1 representing credit union service organizations (CUSOs)); 23 from state credit union leagues; 11 from CUSOs or third party vendors; 73 from individuals or credit union volunteers (including 67 identical letters); and 1 from a law firm.

A majority of the comments on the proposal expressed opposition to, or raised concerns about, one or more aspects of the proposal. A number of commenters, however, supported at least one specific aspect of the proposal or expressed general support for its overall intent and key principles.

A. What were the general comments supporting the proposed rule?

A significant number of commenters supported applying the loan participation rule's provisions to FISCUs. These commenters maintained that the data quoted in the proposed rule's preamble demonstrates that applying the rule to FISCUs is appropriate. Some commenters also suggested that subjecting FCUs and FISCUs to the same requirements would promote the loan participation market and increase participation activity.

Commenters expressed general support for the loan originator retention requirement of 10 percent of the loan amount as required by the Federal Credit Union Act (FCU Act) for FCUs, and the single borrower concentration limit of 15 percent of a credit union's net worth.

Additionally, some commenters supported the proposed provision requiring a credit union to use underwriting standards for purchasing loan participations similar to those the credit union uses when it originates a loan. As discussed below, however, the majority of commenters opposed this provision.

B. What were the general comments opposing the proposed rule?

There were two proposed provisions that generated the greatest degree of concern for the majority of commenters. They were: (1) The single originator concentration limit of 25 percent of net worth; and (2) the requirement that a FICU establish underwriting standards for loan participations which, at a minimum, meet the same underwriting standards the FICU uses when it originates its own loan.

More generally, commenters suggested that the proposal would significantly limit a FICU's ability to sell and purchase loan participations, while providing only limited safety and soundness benefits. They argued that the rule should allow greater flexibility, particularly because of the importance of loan participations in helping credit unions to diversify their portfolios, improve earnings, manage and generate liquidity, manage asset growth, maintain an adequate capital ratio, diversify lending risk, and address loan concentration issues.

Commenters also expressed concern that the rule would impose undue regulatory burdens on credit unions, with a disproportionately adverse impact on smaller credit unions. They asserted that the proposal was

[1] 76 FR 79548 (Dec. 22, 2011).

misguided in prescribing a one-size-fits-all approach, without considering the asset size, level of experience, or risk profile of each individual credit union. Instead, commenters suggested that the rule should focus on identified problem areas or on participations where the risk profile for the underlying loans is higher, such as participations in member business loans (MBLs) and commercial real estate loans.

In addition, commenters maintained that loan participations do not represent a systemic risk to the NCUSIF and suggested the proposal may actually increase the overall risk to the NCUSIF. Commenters argued that limiting the ability of credit unions to mitigate risk through diversification could increase, rather than reduce, risk exposures.

Several commenters also expressed concern that the proposal would undermine the dual chartering system. These commenters suggested that state law and regulation should continue to govern loan participations for FISCUs.

NCUA has carefully reviewed and considered all the comments it received in response to the proposal. Acknowledging the substantial concerns raised by commenters, the Board has made adjustments to the final rule. Most notably, the final rule establishes a higher, more flexible single originator concentration limit. It also permits a FICU to purchase a participation in a loan even if it does not originate that kind of loan. A section-by-section analysis of the final rule and a discussion of the pertinent public comments follows.

III. Section-by-Section Analysis of the Final Rule

A. § 701.22—Introductory Text

The introductory text clarifies the scope of the rule and helps distinguish a loan participation under § 701.22 from an eligible obligation under § 701.23. Further, it clarifies that the rule applies to a natural person FICU's purchase of a loan participation where the borrower is *not* a member of that credit union. Generally, an FCU's purchase, in whole or in part, of its member's loan is covered by NCUA's eligible obligations rule at § 701.23.[2] Additionally, by a cross-reference to Part 741 of NCUA's regulations, the rule also is made applicable to natural person FISCUs. The Board notes that corporate credit unions are subject to the loan participation requirements set forth in Part 704 and, therefore, are not subject to § 701.22 of NCUA's regulations.

Some commenters expressed continued confusion regarding the scope of § 701.22 and § 701.23 of NCUA's regulations. The final rule clarifies the interplay between § 701.22 and § 701.23, but the Board acknowledges these regulations are complex so additional modifications have been made to further clarify the introductory text to the final rule.

B. § 701.22(a)—Definitions

The final rule revises 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. It also adds a new definition of ''associated borrower.'' The definitions of ''credit union,'' ''credit union organization,'' ''eligible organization,'' and ''financial organization'' were not part of the proposed amendments and are generally unmodified from the existing rule. For consistency with the formatting conventions recommended by the **Federal Register,** however, the final rule amends the paragraph's format by listing all definitions alphabetically and removing the numeric designations. A brief discussion of each definition, and the public comments pertinent to each, follows.

1. Associated Borrower

The proposed rule added a new definition of the term ''associated borrower.'' Some commenters stated that the proposed definition is too broad. They also expressed concerns that the definition is inconsistent with the MBL rule's definition of ''associated member.''[3] The Board notes the ''associated borrower'' definition is more specific than, but not an expansion of, the definition of ''associated member'' under Part 723. The definition tracks closely with the MBL rule, but it more clearly defines the types of relationships considered to be an associated relationship by providing examples of the types of parties who qualify as an associated borrower. Each of the defined relationships under § 701.22(a) is also captured under the broader language in § 723.21. In addition, use of the word ''borrower'' instead of ''member'' is intentional, as not all participation loans would be made to a member of the purchasing credit union. As such, the Board believes the definition of ''associated borrower'' is appropriate.

2. Credit Union Organization

The loan participation rule defines ''credit union organization'' as ''any credit union service organization meeting the requirements of part 712 of this chapter,'' but excludes ''trade associations or membership organizations principally composed of credit unions.''

While this definition was not included in any proposed amendments, several commenters suggested the definition of ''credit union organization'' could be interpreted to exclude FISCUs' CUSOs because NCUA's CUSO rule (Part 712) does not apply in full to CUSOs formed by state-chartered credit unions. The Board clarifies that the definition includes CUSOs subject to *any* requirement under Part 712, including CUSOs invested in or loaned to by FISCUs.

3. Eligible Organization

Under the current rule, the term ''eligible organization'' means ''a credit union, credit union organization, or financial organization.'' The definition of ''eligible organization'' was not part of the proposed amendments, but several commenters contended that the current definition of ''eligible organization'' is too limited. They argued that the definition should be expanded to include additional types of organizations to allow investors outside the credit union industry to participate in loans. The Board believes the current definition is sufficiently broad because, through the term ''financial organization,'' it includes any federally chartered or federally insured financial institution and a host of state and federal government sponsored and originated programs.

In a 2003 rulemaking[4] that expanded the definition of ''financial organization'' to include state and federal government agencies, the Board noted that the rule derives its definition from the legislative history of the 1977 public law that granted FCUs various authorities, including the authority to engage in loan participations.[5] In granting this authority, Congress expressed its intent to enhance the ability of FCUs to serve their members' loan demands. Congress also expressed, however, that originating FCUs must maintain discipline in the origination process. In accordance with the FCU Act and the legislative history, the Board believes the loan participation authority must not be so broad that loan

[2] Note, however, a limited exception for certain well capitalized federal credit unions to purchase, subject to certain conditions, non-member eligible obligations from a FICU. 12 CFR 701.23(b)(2).

[3] 12 CFR 723.21.

[4] 68 FR 39866, 39867 (July 3, 2003); see also 68 FR 75110 (Dec. 30, 2003).

[5] H.R. Rep. No. 95–23, at 12 (1977), reprinted in 1977 U.S.C.C.A.N. 115.

participations may be originated from any source. As such, the Board believes the current definition of eligible organization already includes all appropriate entities. Further, as discussed below, at a minimum, the seller in a loan participation agreement must be an eligible organization. The purchasing participants, however, may, but are not required to, be eligible organizations.

4. Financial Organization

While the definition of ''financial organization'' was not part of the proposed amendments, several commenters contended the definition should be revised to include non-federally insured or non-federally chartered financial institutions, such as privately insured, state-chartered credit unions (PISCUs). The Board notes the rule's current definition of ''eligible organization'' already includes non-federally insured or non-federally chartered credit unions. Through the term ''credit union,'' an eligible organization includes any federal or state chartered credit union, including those that are privately insured.

5. Loan Participation

The proposed rule revised the definition of ''loan participation'' to clarify that the originating lender must participate in the loan throughout the life of the loan.

During the public comment period for the proposal, a question was raised with respect to the stipulation in the definition that ''one or more eligible organizations participate'' in the loan. This commenter suggested that this language is ambiguous with respect to whether one or all participants must be an eligible organization. As noted above, at a minimum, the originating lender in a loan participation agreement must be an eligible organization. Purchasing participants are not required to be eligible organizations.

In addition, commenters raised concerns that the proposed definition's requirement for ''the originating lender's continuing participation throughout the life of the loan'' would prohibit a FICU from purchasing a loan participation and then selling participation interests in its participated portion of that loan. These comments are addressed in the next section.

6. Originating Lender

The proposed rule amended the definition of ''originating lender'' to clarify the requirement that a FICU may purchase a participation in a loan only from the participant with which the borrower initially or originally contracts for a loan.

Some commenters suggested the term ''originating lender'' should be changed to ''lead lender'' and the definition revised to allow the purchases of loan participation interests from a lender that did not initially originate the loan. In addition, several commenters expressed concern that the proposed definition of ''originating lender,'' read together with the proposed ''loan participation'' definition, would prohibit the resale of participation interests. These commenters suggested that the rule should permit the resale of participation interests and/or that a credit union should be permitted to buy an eligible obligation or whole loan from a CUSO or another credit union and then sell participations in that loan.

The Board notes that the current rule allows for the purchase of a loan participation interest only from the lender that initially originated the loan. A participation agreement must be made ''with the originating lender,'' that is, the ''participant with which the member contracts.'' [6] In other words, under the current rule, only the lender that initially originates a loan may sell participations in that loan to other lenders. The current rule does not permit the resale of a participation interest or the purchase of a participation interest in an eligible obligation. The proposed amendments were intended to retain and clarify this existing requirement. In a resale, a credit union cannot participate its interest in a loan because it is not the originating lender. Similarly, a credit union that purchases a loan as an eligible obligation from a CUSO or another credit union cannot participate that loan to others because the credit union is not the originating lender. The requirement that credit unions only participate with the originating lender derives from the FCU Act's requirement for originating FCUs to retain at least a 10 percent interest in the face amount of all loans they participate out.[7] Moreover, the Board interprets the authority in the FCU Act for credit unions to participate in loans ''with'' other lenders to contemplate a shared, continuing lending arrangement.[8] Simply put, the rule requires an originating lender to remain part of the participation arrangement and to retain a continuing interest in the loan in order to be a true participant. Otherwise, the transaction is not a loan participation but more akin to the sale of an eligible obligation. As the Board noted in 1991, permitting the sale of participation interests in eligible obligations ''will blur the distinction between loan participations and loan purchases and sales,'' arguably circumventing the purpose of the loan participation and eligible obligations rules.[9] Additionally, the Board believes the continued participation of the lender that initially originated the loan is integral to a safe and sound participation arrangement. In 1991, the Board expressed its concern that a lender ''may have a decreased interest in properly underwriting a loan if they know they can later reduce their risk by selling participation interests in it.'' [10] The requirement for the originating lender's continued participation in a loan participation arrangement is intended to address this safety and soundness concern. Accordingly, the definition of ''originating lender'' is adopted substantively as proposed in the final rule.

The Board, however, notes FICUs experiencing liquidity needs have several options for liquidating their participation interests in a manner consistent with the final rule. For example, an FICU may sell its participation interest back to the originating lender or it may sell its interest to another lender within the same participation arrangement. Subject to the requirements in § 701.23, a FICU may also sell its interest as an eligible obligation. A FICU may also enter into an assumption agreement whereby another lender would agree to assume, in whole, the FICU's participation interest in a loan.[11]

Additionally, several commenters suggested the word ''member'' in the definition of originating lender be replaced with ''borrower'' for consistency with the introductory language to § 701.22. The Board agrees, and the final definition has been modified accordingly.

Commenters also expressed concern about the definition of ''originating lender'' and its application to CUSOs. These commenters observed that a CUSO often serves as an originator in name only and, thus, is not the most appropriate party to regard as the originating lender for the purposes of the rule. For example, loans may be underwritten and processed by a CUSO,

[6] 12 CFR 701.22(a).

[7] 12 U.S.C. 1757(5)(E).

[8] 12 U.S.C. 1757(5).

[9] 56 FR 15036 (Apr. 15, 1991).

[10] Id.

[11] An assumption, in whole, of a participation interest is distinguishable from the resale of a participation interest (i.e., a participation of a participated interest) because another lender would fully assume the obligation of a participant in a participation agreement with the originating lender.

but funded by its owner credit union. The Board acknowledges that this CUSO model is not uncommon within the industry and permissible under § 712.5. For purposes of this final rule, it is the Board's intent that the originating lender is the entity with which the borrower initially or originally contracts for the loan.

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

The final rule reorganizes and revises the provisions of §§ 701.22(b), (c), and (d) of the current rule and consolidates them into revised § 701.22(b). The revised section also includes additional details to improve clarity and address safety and soundness concerns. Specifically, revised § 701.22(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 applicable law and its own internal loan policies. Empowered to grant refers to a FICU's authority to make a loan under the FCU Act, applicable state law, NCUA regulations, and its own bylaws and internal policies.[12] Other requirements for purchasing a loan participation include adopting a written loan participation agreement, establishing the borrower's membership in the originating FICU or one of the participating FICUs by the time the loan participation is purchased, and having/evidencing a continuing participation interest by the originating lender for the loan's duration. As further discussed below, such continuing interest by the originating lender must be at least 5 percent of the outstanding balance of the loan through the life of the loan. As mandated by the FCU Act, however, originating FCUs must retain at least 10 percent.[13]

The final rule requires a FICU to adopt a written loan participation policy, and it requires the policy to include certain provisions. Specifically, a FICU's loan participation policy must address various concentration limits and the maximum limit a FICU intends to place on its outstanding loan participations. The Board emphasizes that there may be other factors a FICU should consider in formulating a loan participation policy based on its size, complexity, and lending experience. The Board expects a FICU to consider all of 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. Underwriting Standards—§ 701.22(b)(5)(i)

Section 701.22(b)(5)(i) of the proposal required a FICU to establish underwriting standards for loan participations meeting at least the same underwriting standards the FICU uses when it originates its own loan. Consistent with this, the proposal also eliminated an exception in § 701.22(c)(4) of the current rule, which permits an FCU to purchase a loan participation that was originated with underwriting standards different than its own.

While several commenters supported this proposed provision, a majority expressed concern that this aspect would effectively limit a credit union's loan participation purchases to those involving the types of loans that the purchasing credit union originates. Commenters suggested this could significantly inhibit loan participation programs. Commenters argued this would undermine safety and soundness by limiting diversification of credit unions' loan portfolios. They also stated this would limit the pool of credit unions to which originating credit unions could sell participation interests.

After careful consideration of these comments, the Board has determined to modify the rule to permit a purchasing credit union to participate in types of loans it does not originate. The Board recognizes that one of the principal benefits of loan participation is greater loan portfolio diversification. Accordingly, the final rule permits a FICU to purchase a participation in a loan it is empowered to grant, even if it does not originate that type of loan or if the loan is underwritten using standards other than those it uses when originating loans. It does not prevent a FICU from establishing different, or, where appropriate, even less stringent, underwriting standards for loan participations than it uses when originating its own loans. Moreover, where a FICU both originates and purchases participations in the same types of loans, the FICU is permitted to establish different underwriting standards for originating such loans and for purchasing participations in those loans. For example, if a FICU is empowered to grant MBLs, it may establish in its loan policy two distinct sets of underwriting standards, one for purchasing participations in MBLs and one for originating MBLs.

The Board emphasizes, however, that a FICU must establish prudent underwriting standards for loan participations and conduct appropriate due diligence before purchasing a loan participation. Such due diligence should be independently conducted by the purchasing FICU or outsourced to a qualified third party that is not otherwise affiliated with the loan. A purchasing FICU may not rely on an originating lender's due diligence.

2. Concentration Limits on Loan Participations

As discussed in the preamble to the proposal, in establishing concentration limits on loan participations, the Board sought to mitigate risk to the NCUSIF without discouraging continued growth.[14] By instituting concentration limits for loan participations that are tied to net worth, the proposal aimed to strike this balance by tying the concentration limits to net worth. The proposal also recognized the need for FICUs to identify and manage concentration risk on their balance sheets. Key among these risks are concentrations related to purchasing from a single or too few originators, loans to one or too few borrowers or a group of associated borrowers, and too many loans of a particular type.

The Board proposed to limit a FICU's loan participation purchases from any one originator to a maximum of 25 percent of the FICU's net worth, with no provision for waiver. The Board also proposed to limit a FICU's loan participation purchases involving any one borrower or group of associated borrowers to 15 percent of the FICU's net worth, unless the appropriate regional director grants a waiver. The Board requested public comment on the appropriateness of these caps, how they should be structured, and any alternative approaches to them.

a. Single Originator Concentration Limit

A majority of commenters opposed the proposed 25 percent net worth limitation on loan participation purchases from any one originator. Some commenters supported the reason for this limitation, but most indicated that a 25 percent cap is too low. Commenters stated that the proposed 25 percent limit would be cumbersome to manage and immaterial to overall risk mitigation. They also argued that the limit could actually increase, rather

[12] *See* OGC Op. 04–0713 (Oct. 25, 2004).

[13] 12 U.S.C. 1757(5)(E).

[14] 76 FR 79548, 79549 (Dec. 22, 2011).

than decrease, risk exposures, as credit unions would be required to manage and monitor multiple originators.

Some commenters disagreed that purchasing participations from one originator will necessarily increase risks. These commenters argued that it is more prudent to focus on diversification of risk in a participation portfolio than to limit purchases from a single originator. Other commenters observed that the quality of the underlying loans determines the level of potential risk more than the originating lender. Commenters also raised concerns that the proposed limit failed to consider the differences in the types of loans being participated. For example, large pools of auto loans represent multiple streams of repayment, whereas an equal dollar amount of mortgage or commercial loans may rely on a far less diverse stream of repayment. These commenters contended it is unreasonable for the proposal to limit all of a FICU's participation purchases from any one originator, which are spread out over many loans and borrowers, to 25 percent of net worth, when under the MBL rule, a FICU could make one loan to one borrower in the amount of up to15 percent of net worth.[15]

Several commenters also stated that there is no similar concentration limit in banking regulations. These commenters believed that the proposed limitation would arbitrarily disadvantage credit union loan participation programs in comparison to banks.

Commenters also expressed concern that the requirement would disrupt established, effective relationships with originators. Many noted that a purchasing credit union may have years of experience dealing with only one or a few originators. These credit unions would be forced to seek out new relationships. Commenters indicated that it takes a significant amount of time and resources to establish strong relationships with originators and the proposal would mitigate the value of those existing relationships. In addition, commenters argued that the proposed limitation would have a disproportionately negative impact on smaller credit unions by increasing due diligence costs. Also, many smaller credit unions may not have the capacity or expertise to monitor multiple originators.

Similarly, several commenters suggested that the proposal would have a disproportionately negative impact on certain originators. For example, there are only a limited number of originators of taxi medallion loans. Moreover, commenters stated that originators on the whole would be negatively impacted because the proposed restriction would limit the pool of available participant purchasers.

Commenters also raised concerns that the proposed limitation would impact a particular CUSO model. Under this model, in order to aggregate resources for lending expertise, credit unions form a CUSO to originate mortgage or business loans in either the CUSO's name or in an owner credit union's name. The originating lender then sells loan participation interests to the CUSO's other owner credit unions. Commenters indicated that, if the proposed 25 percent single originator limit were adopted, many credit unions involved in these types of CUSOs would be immediately out of compliance with the new rule due to the interconnectedness that is inherent in this business model.

The Board is sensitive to these concerns. As noted above, in prescribing concentration limits on loan participations, the Board seeks to strike an appropriate balance between mitigating risk and fostering the industry's growth and stability. Upon consideration of commenters' feedback, the Board believes that a higher, more flexible cap for loan participations involving a single originator is appropriate.

Some commenters suggested the cap should be removed entirely, or that certain exemptions from the single originator limitation should be provided. Most commenters, however, favored keeping the single originator cap, but advocated a higher limit. A number of commenters suggested that a higher concentration limit should be permitted for loans originated by CAMEL 1 or 2 FICUs. One commenter argued that the limit should be 400 percent of net worth. Another commenter suggested that the limit be 100 percent of capital. Commenters also suggested that if the loan-to-value ratio of the underlying loans is under 75 percent, a higher limit should be permitted. A significant number of commenters also requested that the rule permit waivers from the single originator concentration limit.

Based on the comments, the Board has determined to substantially raise the single originator cap. The final rule includes a single originator cap not to exceed the greater of $5 million or 100 percent of net worth. The Board continues to believe that net worth is the appropriate measure for this cap. Net worth cushions fluctuations in earnings, supports growth, and provides protection against insolvency. As the reserve of funds available to absorb losses, it is the best measure to gauge a credit union's risk exposure. The Board believes a limit of 100 percent of net worth provides sufficient concentration risk mitigation, yet is not too restrictive as to adversely impact a significant number of credit unions.

NCUA does not currently collect the amount of loan participations purchased from a particular originator on the quarterly 5300 Call Report. Using reasonable assumptions, however, the agency is able to gauge some of the impact this limit may have on the industry. For example, assuming all loan participations were purchased from one originator, only 79 of the 1,316 FICUs reporting purchased loan participations outstanding were over the 100 percent net worth limit as of December 31, 2012. In fact, this is a conservative analysis and likely overstates the number of FICUs over the aggregate limit, as many credit unions purchase participations from multiple originators. Therefore, the following table illustrates the difference in the number of affected credit unions, depending on the number of originators[16] and the single originator limit in effect:

[15] 12 CFR 723.8.

[16] Assuming an equal amount of loan participations would be purchased from each originator.

Number of originators	Number of FICUs exceeding the single originator limit of 25 percent of net worth	Number of FICUs exceeding the single originator limit of 100 percent of net worth	Number of FICUs exceeding the single originator limit of the greater of $5 million or 100 percent of net worth
1	483	79	39
2	251	17	5
3	144	9	1
4	79	7	0

In light of these considerations, the Board believes the 100 percent of net worth concentration limit in the final rule addresses commenters' major concerns regarding the single originator concentration limit.

The Board also recognizes that a flat percentage threshold, even if significantly raised, may not address commenters' concerns that the proposed concentration limit would unfairly disadvantage smaller credit unions. The final rule also includes a dollar threshold of $5 million to address these specific concerns. The dollar limit was added to reduce the potential adverse impact on small credit unions with lower net worth in terms of dollar amount. Indeed, as illustrated in the table above, when the threshold of ''the greater of $5 million or 100 percent of net worth'' was applied, the number of credit unions exceeding the limit fell from 79 to 39. Of these 39 credit unions, only 8 exceeded the limit based on the $5 million threshold, which was higher than their total net worth. The Board notes the $5 million limit poses a relatively small risk to the NCUSIF and generally correlates with NCUA's recently amended definition of small entity for purposes of the Regulatory Flexibility Act.[17] For example, with aggregate industry net worth at over 10 percent, a $50 million credit union would have approximately $5 million in net worth.[18] As total assets and net worth increase, however, the percentage of net worth threshold would become the prevailing limit.

Additionally, the final rule allows a FICU to apply for a waiver from the single originator concentration limit. Waivers are discussed in more detail below. The Board believes that with these substantial adjustments, the final rule achieves the agency's key objective of mitigating risk to the NCUSIF while providing FICUs with sufficient flexibility to meet their operational needs.

Several commenters requested clarification on whether a credit union that purchases loan participation interests from both a CUSO and the CUSO's owner credit union has purchased from one or two originators. The Board notes that a CUSO is an individual business that is a distinct and separate entity from any credit union that lends to it or invests in it. NCUA's CUSO regulation requires that a CUSO and a credit union that owns all or part of it must be operated in a manner that demonstrates to the public the separate corporate existence of each entity.[19] For example, each separate entity must operate so that ''its respective business transactions, accounts, and records are not intermingled.''[20] As such, purchases of participation interests in loans originated by a CUSO will not be aggregated with participation interests in loans originated by the CUSO's owner credit union for purposes of the single originator limit. They will be treated as two separate originators. The Board emphasizes, however, that CUSO arrangements must not be used to circumvent the requirements of the final rule. For example, FICUs may not circumvent the rule by establishing ''round-robin'' participation arrangements in which participants take turns as the originating lender in order to effectively distribute the single originator concentration limit among multiple parties.

b. Single Borrower Concentration Limit

A number of commenters expressed support for the proposed 15 percent of net worth concentration limit on the purchase of participations of loans made to any one borrower or group of borrowers. Some commenters supported the reason for this limitation, but maintained that each credit union should be permitted to establish its own individual limit by internal policy. In general, however, most commenters believed the 15 percent limit was reasonable, with many noting its consistency with the loan to one borrower limit in the MBL rule.

Other commenters disagreed with the proposed requirement, asserting that the limitation is duplicative because the MBL rule already imposes a similar limit. These commenters also argued that adequate underwriting and due diligence are sufficient safeguards, thereby obviating the need for a regulatory limitation.

The Board believes the 15 percent limitation appropriately balances the need to mitigate borrower concentration risk with the need for FICUs' flexibility in making credit decisions. As such, the limit is adopted in the final rule as proposed. While this limit is similar to the loan to one borrower limit in the MBL rule, they are not duplicative because not all loan participations are business-related loans subject to the MBL rule. The limit in this final rule applies to both MBL and non-MBL participations. Further, including the limit in the loan participation rule clarifies that MBL originations and MBL participations are both subject to the 15 percent single borrower limit. Thus, the Board believes that the limitation in the loan participation rule is warranted. The provision allowing FICUs to apply for waivers from this limit also is adopted in the final rule as proposed.

c. Self-Imposed Concentration Limits

The proposal required a FICU's loan participation policy to establish self-imposed limits on the amount of loan participations that a FICU may purchase by loan type, not to exceed a specified percentage of the credit union's net worth. Most commenters either supported, or did not comment on, this aspect of the proposal.

As such, the provision is adopted as proposed. The Board reiterates that it is important for a FICU to clearly identify and set reasonable limits. Consistent with NCUA guidance on the evaluation of concentration risk, concentration limits should be established commensurate with a FICU's net worth.[21]

d. Grandfathering

A FICU that exceeds the single originator or single borrower concentration limits as of the effective date of this final rule will be grandfathered and will not be required to divest of any loan participations it holds at that time. The FICU will not be

[17] 78 FR 4032 (Jan. 18, 2013).

[18] The non-dollar weighted average net worth ratio for FICUs under $50 million was 14.30% as of December 31, 2012, while the aggregate net worth ratio for the under $50 million group was 12.44%.

[19] 12 CFR 712.4.

[20] 12 CFR 712.4(a)(1).

[21] Letter to Credit Unions 10–CU–03, *Concentration Risk* (Mar. 2010).

permitted to purchase any additional participations after that time, however, and its participation portfolio must decrease as participations are paid off or sold until its portfolio complies with regulatory concentration limits. A FICU may purchase additional participations if its portfolio is below regulatory concentration limits, but only in an amount up to the regulatory concentration limits, not up to its previously grandfathered amount.

D. § 701.22(c)—Waivers

In the proposed rule, the Board sought public comment on the agency's waiver process. Commenters identified a number of general concerns, including: (1) The perception that examiners discourage credit unions from seeking a waiver; (2) delayed or slow responses from NCUA regarding waiver applications; (3) lack of adequate explanations for NCUA denials of waiver requests; and (4) poor examiner feedback concerning waiver applications.

The Board finds the discussion on waivers helpful. Since the loan participation rule was originally proposed in December 2011, NCUA has taken, and continues to take, significant steps to improve and clarify NCUA's overall waiver process. For example, NCUA's National Supervision Policy Manual (NSPM) contains a chapter on waivers to enhance consistency in waiver processing procedures and timeframes. Additionally, NCUA recently issued a Supervisory Letter on evaluating credit union requests for waivers of provisions in the MBL rule.[22]

With respect to waiver requests to be made pursuant to this final rule, FICUs are encouraged to contact NCUA examiners for guidance and assistance prior to submitting a waiver application. A FICU's examiner may offer guidance on how the regional office may evaluate a waiver request because the regional office typically asks for the examiner's input before making a final decision. The Board emphasizes that regardless of the examiner's feedback, it remains a FICU's right to request a waiver. Further, it remains the regional director's decision to approve or disapprove a waiver request irrespective of any input the examiner may have shared with a FICU. Regional offices will process complete waiver applications as expeditiously as possible on a first-in, first-out basis. The NSPM outlines specific timeframes for a regional office to respond to a waiver request. The NSPM requires a response within 45 days unless otherwise mandated by regulation. The NSPM also contains standard templates for various types of waiver response letters and provides guidance on the information that would typically be addressed in the response, including specific reasons for denying a waiver.[23]

Several commenters asserted that the authority to grant waivers for FISCUs should reside with the state regulators, with notice to NCUA. Alternatively, commenters suggested waivers for FISCUs should require the concurrence of the state regulators. The Board continues to believe that it is appropriate for NCUA, as administrator of the NCUSIF, to approve or disapprove waiver requests but it agrees that waivers for FISCUs should require the concurrence of the appropriate state supervisory authority. The final rule has been revised accordingly.

Commenters also suggested that approvals should be deemed granted if NCUA fails to act within a prescribed time period. The Board believes waiver determinations must be rendered timely. Consistent with the NSPM, the final rule provides that the regional director will notify the FICU of the waiver decision within 45 calendar days of receiving a fully completed waiver request. Waiver determinations are appealable to the Board within 60 days.

Finally, a number of commenters suggested that if an originator obtains a waiver for a loan, then a participating credit union should not have to also obtain a waiver for that loan. Commenters also suggested that waivers should be made available to FICUs in advance to permit them to complete transactions consistent with pre-approved guidelines, with subsequent notice to its regional office.

The Board agrees that if an originating lender obtains a waiver for a loan, the participating credit unions do not also have to obtain a waiver. If, however, the originating lender does not obtain a waiver for a loan, each participant is required to obtain its own waiver for its interest in the participated loan. In other words, a participating credit union's waiver does not pass to other participants.

A waiver from the single originator limit is somewhat less time-sensitive for a loan participation purchase than it is for granting an MBL. For example, a waiver to exceed 100 percent of net worth to any one originator does not affect purchases of loan participations from originators that are not near the credit union's cap. Thus, a credit union may purchase participations from other originators while awaiting approval of its waiver request. Nevertheless, a purchasing credit union should anticipate the need for a waiver and submit a waiver application as early in the transaction process as possible. Blanket waivers may be granted under appropriate circumstances.

The final rule allows NCUA to grant waivers from both the single originator and single borrower concentration limitations. To further clarify the waiver process, the final regulatory text articulates NCUA's expectations for FICUs requesting waivers and NCUA's obligations in reviewing such in § 701.22(c).[24] In order for the regional director to review and process waiver applications as expeditiously as possible, a FICU should include in its waiver application the following information:

- A copy of all pertinent lending policies and underwriting standards;
- The requested higher limit;
- An explanation of the need for increasing the limit;
- Documentation supporting the credit union's ability to manage and monitor this activity, including existing risk mitigation measures;
- Analysis of the credit union's prior experience with this type of loan;
- The loan participation master agreement;
- Servicing agreements/contracts, if applicable; and
- Documentation supporting the resolution of any material problems identified in the most recent exam report's Document of Resolution or any outstanding administrative actions. Stronger support would be expected if a problem relates to loan participations, the type of loan the credit union wants to purchase, or existing waivers.

Prior to the effective date of this final rule, NCUA intends to issue supervisory guidance on evaluating credit union requests for waivers of provisions in the loan participation rule.

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

The final rule revises current § 701.22(b)(2), which requires loan participation agreements to be in writing. It moves agreement-related requirements to revised paragraph § 701.22(d). The Board recognizes that a successful loan participation relationship depends, in large part, on the quality and completeness of the participation agreement. A well-written

[22] Letter to Credit Unions 13–CU–02, *Member Business Loan Waivers* (Feb. 22, 2013).

[23] See e.g., NSPM, Appendix 6–V.

[24] Proposed § 701.22(c) addressed the minimum requirements for a loan participation agreement. The agreement-related requirements have been moved to § 701.22(d) in the final rule.

agreement can minimize intercreditor conflicts during the life of the loan, especially if the loan becomes delinquent. Accordingly, the Board believes that any participation agreement must clearly delineate the roles, duties, and obligations of the originating lender, servicer, and participants. In the final rule, revised § 701.22(d) enumerates the issues a loan participation agreement must, at a minimum, address in order for a FICU to purchase the loan participation. For example, a loan participation agreement must include a provision requiring an originating lender to retain a certain percentage interest in the loan throughout its duration. As discussed in more detail below, as mandated by the FCU Act, the final rule requires originating FCUs to retain at least 10 percent of the outstanding balance of the loan through the life of the loan.[25] The loan participation agreement must require originating FISCUs, PISCUs, CUSOs, and other eligible organizations to retain at least 5 percent, or higher, depending on applicable state law. Other provisions require the agreement to identify each participated loan, enumerate servicing responsibilities for the loan, and include disclosure requirements regarding the ongoing financial condition of the loan, the borrower, and the servicer.

These provisions emphasize the need for adequate documentation and due diligence from before the time of purchase throughout the life of the loan. Under § 701.22(d)(4)(i), a loan participation agreement must specify the loan or loans in which a credit union is purchasing an interest. Where, for example, a participation agreement involves multiple loans, the documentation can be as simple as an addendum or schedule for identifying each loan and a participant's interest in that loan. This provision also clarifies the existing prohibition against purchasing a participation certificate in a pool of loans.

1. Risk Retention Requirement on Originating Lender

As noted above, the FCU Act mandates the 10 percent originating lender retention requirement for FCUs.[26] While some commenters disagreed, most generally supported extending a similar risk retention requirement to FISCUs. Of the supporters, most agreed that 10 percent is reasonable, although many suggested 10 percent is too high. A number of commenters recommended 5 percent as more appropriate. Other commenters suggested various alternative thresholds. In addition, several commenters contended that state law should control the risk retention requirement for FISCUs. Commenters also suggested that any originator in which a participating credit union has a direct or indirect ownership interest (i.e., a CUSO) should be exempt from any risk retention requirement.

The Board believes that, to minimize risk to the NCUSIF, a meaningful risk retention requirement should apply to all originators, without exception. Loan participation activities pose risks to the NCUSIF irrespective of the originating lender's charter type. Requiring the originating lender to retain an economic interest in the participated loan incentivizes the originator to lend more responsibly because it will have ''skin in the game.'' As some commenters noted, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[27] imposed new risk retention requirements to address problems in the securitization markets by requiring that securitizers retain an economic interest in the credit risk of the assets they securitize. Specifically, section 15G of the Securities Exchange Act of 1934, added by section 941(b) of the Dodd-Frank Act, generally requires the securitizer of asset-backed securities (ABS) to retain not less than 5 percent of the credit risk of the assets collateralizing the ABS.[28] By requiring securitizers to retain an economic interest in a material portion of the credit risk for assets being securitized, Congress intended the retention requirement to encourage sound lending practices by creating strong incentives for securitizers to monitor the quality of the assets underlying a securitization transaction.[29] As noted in the legislative history, ''[w]hen securitizers retain a material amount of risk, they have 'skin in the game,' aligning their economic interest with those of investors in asset-backed securities.''[30]

While the FCU Act does not impose a retention requirement on originating FISCUs, PISCUs, CUSOs, or other eligible organizations, NCUA has long interpreted the FCU Act to require an originating lender to retain a meaningful ownership interest in the loan to be considered a participant and for the transaction to qualify as a loan participation. Further, as noted above, the Board has long expressed concerns that an originating lender may be disinclined to properly underwrite a loan if it can later mitigate its risk by selling participation interests in the loan.[31]

Nevertheless, the Board supports and encourages the dual chartering system. Upon review of the comments, the Board believes NCUA can achieve the above-stated safety and soundness objectives with a retention requirement that is less stringent than the proposed 10 percent threshold. Consistent with the Dodd-Frank Act's risk retention standard, the Board believes a 5 percent minimum retention requirement provides a significant economic stake for originators without being overly restrictive. Accordingly, the final rule provides that, in order for a FICU to purchase a loan participation from an eligible organization, the loan participation agreement must require the originating lender to retain at least 5 percent of the outstanding balance of the loan through the life of the loan, unless applicable state law establishes a higher retention threshold. This minimum 5 percent retention requirement applies to all originating eligible organizations, including FISCUs, PISCUs, CUSOs, banks and other financial organizations. If the originating lender is an FCU, consistent with the FCU Act, the agreement must require the originating FCU to retain at least 10 percent of the loan. The Board emphasizes that, under the final rule, FCUs may purchase loan participations from non-FCU originating lenders that retain at least 5 percent of the face amount of the loan for the loan's duration. The 10 percent retention requirement for FCUs applies only where the FCU is the originating lender in a participation arrangement.

F. Related Regulatory Provisions

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

The proposal added introductory text to § 701.23 to clarify the scope of § 701.23 and to distinguish transactions under § 701.23 from transactions covered by § 701.22. The final rule adopts the additional language substantially as proposed, but with some amendments to conform it to a 2012 final rule promulgated by NCUA eliminating the Regulatory Flexibility Program (RegFlex).[32] The final rule regarding RegFlex provides a limited exception to the general requirement that an FCU's purchase, sale, or pledge of all or part of a loan must be to one

[25] 12 U.S.C. 1757(5)(E).

[26] Id.

[27] Public Law 111–203 (2010).

[28] 15 U.S.C. 78o–11.

[29] *See* S. Rept. 176, 111th Cong., at 212 (2010).

[30] S. Rept. 176, 111th Cong., at 129 (2010).

[31] *See* 56 FR 15036 (Apr. 15, 1991).

[32] 77 FR 31981 (May 31, 2012).

of its own members.[33] Specifically, the exception permits FCUs that meet the well capitalized standard to buy loans from other FICUs without regard to whether the loans are eligible obligations of the purchasing FCU's members or the members of a liquidating credit union. The final rule also makes a parallel conforming amendment to the introductory text to § 701.22 in this regard.

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

Section 741.8 is a safety and soundness provision that requires, with limited exceptions, all FICUs to receive approval from NCUA before purchasing loans or assuming an assignment of deposits, shares, or liabilities from any entity that is not insured by the NCUSIF. Currently, there are no exceptions under § 741.8 for loan participation purchases but in practice an FCU is not required to obtain separate regional director approval for loan participation purchases that comply with the requirements of the loan participation rule. The proposed rule amended § 741.8 for consistency with this current agency practice. The final rule inserts language in § 741.8 specifying that regional director approval is not required under § 741.8 for a FICU's loan participation purchase that complies with the requirements in § 701.22. The exclusion applies to both FCUs and FISCUs. The finalized language is unmodified from the proposal.

3. Sec. 741.225—Loan Participations

The proposed rule amended Part 741 by adding a new § 741.225 to extend the requirements of § 701.22 to FISCUs, noting there are strong indications of potential risk to the NCUSIF from FISCUs' loan participation activity. A number of commenters expressed concern that the proposal would significantly undermine the dual chartering system, contending that state law should govern loan participations for FISCUs. Several commenters also questioned whether the data presented in the proposal was sufficient to justify extending the loan participation rule's coverage to FISCUs.

While the Board supports and encourages the dual chartering system, FISCUs' increasing loan participation activity presents significant potential risk to the NCUSIF, as discussed in the preamble to the proposed rule.[34] Since year-end 2007, FISCUs have been responsible for approximately 54 percent of participation loans purchased and 61 percent of participation loans sold. FISCUs have also consistently accounted for the majority of loan participations outstanding. Over that same five-year period, FISCU-participated loan balances have increased 31.4 percent, from $5.7 billion in December 2007 to $7.5 billion in December 2012. As of December 30, 2012, although FISCUs represented only 37.4 percent of all federally insured credit unions, FISCUs held 54.4 percent of loan participations outstanding. Among the 20 FICUs with the highest amount of participation loans outstanding, 12 (or 60 percent) were FISCUs.

Since 2007, FISCUs overall experienced a higher delinquency rate in their loan participation portfolios. At year-end 2012, for example, the delinquency rate for the FISCU-participated portfolio was 2.18 percent, compared to 1.27 percent for FCUs. Of the 78 federally insured credit unions reporting over 10 percent delinquency on participation loans, 52 (or 66.7 percent) were FISCUs. With regard to actual losses, charge-off data for the last few years indicates FISCUs have experienced higher losses on participation loans than FCUs. Indeed, the average net charge-off rate for FISCUs for 2010–2012 was 1.48 percent, compared with 0.77 percent for FCUs. Even though net charge-offs on participation loans fell for both FISCUs and FCUs in 2012 with the improving economy, the year-end net charge-off rate for FISCUs was more than double the net charge-off rate for FCUs (1.46 percent vs. 0.62 percent).

Furthermore, the Board believes some safety and soundness requirements should be applied to all FICUs to minimize risk to the NCUSIF. FISCU involvement in loan participations currently is subject only to state law, which may vary from NCUA's regulations and from state to state. Section 201 of the FCU 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 Title II. Section 741.225 is being added to Part 741 pursuant to this authority for the reasons discussed above. The final rule adopts § 741.225 substantively as proposed, with one minor change to clarify that FISCUs, but not FCUs, are exempt from § 701.22(b)(4).

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.[35] For purposes of this analysis, NCUA considers credit unions having under $50 million in assets small entities.[36] There were 4,604 credit unions under $50 million as of December 31, 2012. 398 small FICUs reported participations outstanding at year-end 2012. In addition, 177 reported purchasing participations, and 50 reported selling participations in 2012.[37]

NCUA does not believe the final rule will 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. The $5 million threshold and the waiver process will further limit the impact on small credit unions.

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.[38] 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 final rule contains an information collection in the form of a written policy requirement and a transaction documentation requirement. All FICUs purchasing loan participations must have a written loan participation policy. In addition, before purchasing a loan participation, a FICU must enter into a written loan participation agreement that specifically identifies the subject loans and other material information. As required by the PRA, NCUA has submitted a copy of this final 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.

[33] 12 CFR 701.23(b)(2).

[34] 76 FR 79548, 79550 (Dec. 22, 2011).

[35] 5 U.S.C. 603(a).

[36] Interpretive Ruling and Policy Statement 87–2. 52 FR 35231. (Sept. 18, 1987), as amended by IRPS 03–2, 68 FR 31949 (May 29, 2003) and IRPS 13–1 78 FR 4032 (Jan. 18, 2013).

[37] There is overlap between these three groups of small credit unions involved with participations.

[38] 44 U.S.C. 3507(d); 5 CFR part 1320.

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 final rule. It is, therefore, NCUA's view that maintaining a written loan participation policy and executing written participation purchase agreements are not new burdens created by this regulation. 1,482 FICUs reported participations outstanding at year-end 2012. Based on the current volume of reported loan participation activity, NCUA estimates approximately 1,482 FICUs 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 5,928 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 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.

Comments on the 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,[39] voluntarily complies with the Executive Order. Among others, the final rule applies 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 final 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. This final rule may supersede provisions of state law, regulation, or approvals. The final rule could lead to conflicts between the NCUA and state financial institution regulators on occasion; however, based on comments received on the proposed rule, NCUA has made modifications in this final rule to minimize conflicts in this area. For example, as discussed above, the final rule provides that for originating lenders that are FISCUs, the minimum risk retention requirement is 5 percent, unless applicable state law establishes a higher retention threshold. In addition, waivers for FISCUs from any provision of the final rule will require the concurrence of the appropriate state supervisory authority.

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

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[40]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996[41] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[42] NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

[39] 44 U.S.C. 3502(5).

[40] Public Law 105–277, 112 Stat. 2681 (1998).

[41] Public Law 104–121, 110 Stat. 857 (1996).

[42] 5 U.S.C. 551.

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.

12 CFR Part 742

Credit unions.

By the National Credit Union Administration Board, on June 20, 2013.

Mary F. Rupp,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351, 120 Stat. 1966.

■ 2. Revise § 701.22 to read as follows:

§ 701.22 Loan participations.

This section applies only to loan participations as defined in paragraph (a) of this section. It does not apply to the purchase of an investment interest in a pool of loans. This section establishes the requirements a federally insured credit union must satisfy 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 and where a continuing contractual obligation between the seller and purchaser is contemplated. Generally, a federal credit union's purchase of all or part of a loan made to one of its own members, subject to a limited exception for certain well capitalized federal credit unions in § 701.23(b)(2), where no continuing contractual obligation between the seller and purchaser is contemplated, is governed by § 701.23 of this part. Federally insured, state-chartered credit unions are required by § 741.225 of this chapter to comply with

the loan participation requirements of this section. This section does not apply to corporate credit unions, as that term is defined in § 704.2 of this chapter.

(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 organization 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 borrower 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 federally insured credit union may purchase a participation interest in a loan from an eligible organization only if the loan is one the purchasing credit union is empowered to grant and the following additional conditions are satisfied:

(1) The purchase complies with all regulatory requirements to the same extent as if the purchasing federally insured credit union had originated the loan, including, for example, the loans-to-one-borrower provisions in § 701.21(c)(5) of this part for federal credit unions and § 723.8 of the member business loans rule in part 723 of this chapter for all federally insured credit unions;

(2) The purchasing federally insured 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 paragraph (d) of this section;

(3) The originating lender retains an interest in each participated loan. If the originating lender is a federal credit union, the retained interest must be at least 10 percent of the outstanding balance of the loan through the life of the loan. If the originating lender is any other type of eligible organization, the retained interest must be at least 5 percent of the outstanding balance of the loan through the life of the loan, unless a higher percentage is required under applicable state law;

(4) The borrower becomes a member of one of the participating credit unions before the purchasing federally insured credit union purchases a participation interest in the loan; and

(5) The purchase complies with the purchasing federally insured credit union's internal written loan participation policy, which, at a minimum, must:

(i) Establish underwriting standards for loan participations;

(ii) Establish a limit on the aggregate amount of loan participations that may be purchased from any one originating lender, not to exceed the greater of $5,000,000 or 100 percent of the federally insured credit union's net worth, unless this amount is waived by the appropriate regional director, and, in the case of a federally insured, state-chartered credit union, with prior written concurrence of the appropriate state supervisory authority;

(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 federally insured 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 federally insured credit union's net worth, unless waived by the appropriate regional director, and, in the case of a federally insured, state-chartered credit union, with prior written concurrence of the appropriate state supervisory authority.

(c) To seek a waiver from any of the limitations in paragraph (b) of this section, a federally insured credit union must submit a written request to its regional director with a full and detailed explanation of why it is requesting the waiver. Within 45 days of receipt of a completed waiver request, including all necessary supporting documentation and, if appropriate, any written concurrence, the regional director will provide the federally insured credit union a written response. The regional director's decision will be based on safety and soundness and other considerations; however, the regional director will not grant a waiver to a federally insured, state-chartered credit union without the prior written concurrence of the appropriate state supervisory authority. A federally insured credit union may appeal any part of the waiver determination to the NCUA Board. Appeals must be submitted through the regional director within 60 days of the date of the determination.

(d) A loan participation agreement must:

(1) Be properly executed by authorized representatives of all parties under applicable law;

(2) Be properly authorized by the federally insured credit union's board of directors or, if the board has so delegated in its policy, a designated committee or senior management official, under the federally insured credit union's bylaws and all applicable law;

(3) Be retained in the federally insured credit union's office (original or copies); and

(4) Include provisions which, at a minimum, address the following:

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

(ii) The interest that the originating lender will retain in the loan to be participated. If the originating lender is a federal credit union, the retained interest must be at least 10 percent of the outstanding balance of the loan through the life of the loan. If the originating lender is any other type of eligible organization, the retained interest must be at least 5 percent of the outstanding balance of the loan through the life of the loan, unless a higher percentage is required under state law;

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

(iv) An explanation of the conditions under which parties to the agreement can gain access to financial and other performance information about a loan, the borrower, and the servicer so the parties can monitor the loan;

(v) An explanation of the duties and responsibilities of the originating lender, servicer, and participants with respect to all aspects of the participation, including 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 by adding introductory text to read 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, subject to a limited exception for certain well capitalized federal credit unions, where no continuing contractual obligation between the seller and purchaser is contemplated. For purchases of eligible obligations, except as described in paragraph (b)(2) of this section, 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

■ 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.

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

■ 5. Amend § 741.8 by:

■ a. Removing the word ''or'' appearing at the end of paragraph (b)(2);

■ b. Adding the word ''or'' after the semicolon appearing at the end of paragraph (b)(3); and

■ c. Adding paragraph (b)(4).

The addition reads 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 § 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, except that federally insured, state-chartered credit unions are exempt from the requirement in § 701.22(b)(4).

[FR Doc. 2013–15178 Filed 6–24–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2013–0493; Special Conditions No. 23–260–SC]

Special Conditions: Cessna Aircraft Company, Model J182T; Electronic Engine Control System Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company (Cessna) Model J182T airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of an electronic engine control. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 25, 2013.

We must receive your comments by July 25, 2013.

ADDRESSES: Send comments identified by docket number [FAA–2013–0493] using any of the following methods:

▪ *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

▪ *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

▪ *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

▪ *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Rouse, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4135; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On April 2, 2012, Cessna Aircraft Company applied for an amendment to Type Certificate No. 3A13 to include the new model J182T which will incorporate the installation of the Societe de Motorisation Aeronautiques (SMA) Engines, Inc. SR305–230E–C1 which is a four-stroke, air cooled, diesel cycle engine that uses turbine (jet) fuel. The J182T incorporates an engine controlled by an electronic engine