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https://www.ecfr.gov/cgi-bin/text-idx?SID=fad185956cce13c5e4dba56219df28e6&mc=true&tpl=/ecfrbrowse/Title12/12cfr701_main_02.tpl

ELECTRONIC CODE OF FEDERAL REGULATIONS**e-CFR data is current as of August 29, 2018**

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Title 12: Banks and Banking

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

§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 other person or entity with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower. This means any person or entity named as a borrower or debtor in a loan or extension of credit, or any other person or entity, such as a drawer, endorser, or guarantor, engaged in a common enterprise with the borrower, or deriving a direct benefit from the loan to the borrower. Exceptions to this definition for partnerships, joint ventures and associations are as follows:

(1) If the borrower is a partnership, joint venture or association, and the other person with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is a member or partner of the borrower, and neither a direct benefit nor a common enterprise exists, such other person is not an associated borrower.

(2) If the borrower is a member or partner of a partnership, joint venture, or association, and the other entity with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is the partnership, joint venture, or association and the borrower is a limited partner of that other entity, and by the terms of a partnership or membership agreement valid under applicable law, the borrower is not held generally liable for the debts or actions of that other entity, such other entity is not an associated borrower.

(3) If the borrower is a member or partner of a partnership, joint venture, or association, and the other person with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is another member or partner of the partnership, joint venture, or association, and neither a direct benefit nor a common enterprise exists, such other person is not an associated borrower.

Common enterprise means:

(1) The expected source of repayment for each loan or extension of credit is the same for each borrower and no individual borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment because of wages and salaries paid to an employee, unless the standards described in paragraph (2) are met;

(2) Loans or extensions of credit are made:

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence means 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with another borrower. Gross receipts and expenditures include gross revenues or expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments; or

(3) Separate borrowers obtain loans or extensions of credit to acquire a business enterprise of which those borrowers will own more than 50 percent of the voting securities or voting interests.

Control means a person or entity directly or indirectly, or acting through or together with one or more persons or entities:

(1) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another person or entity;

(2) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person or entity; or

(3) Has the power to exercise a controlling influence over the management or policies of another person or entity.

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.

Direct benefit means the proceeds of a loan or extension of credit to a borrower, or assets purchased with those proceeds, that are transferred to another person or entity, other than in a bona fide arm's-length transaction where the proceeds are used to acquire property, goods, or services.

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 calendar 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 request the regional director to reconsider a denied waiver request and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

(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.

[78 FR 37956, June 25, 2013, as amended at 81 FR 13553, Mar. 14, 2016; 82 FR 50291, Oct. 30, 2017]

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Title 12 → Chapter VII → Subchapter A → Part 701 → §701.23

Title 12: Banks and Banking
PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS**§701.23 Purchase, sale, and pledge of eligible obligations.**[Link to an amendment published at 80 FR 66706, Oct. 29, 2015.](#)

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.

(a) For purposes of this section:

(1) *Eligible obligation* means a loan or group of loans.

(2) *Student loan* means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, of a State government, or any agency of either.

(b) *Purchase.* (1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(i) Eligible obligations of its members, from any source, if either: (A) They are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate-secured loans, from any source, if the purchaser is granting real estate-secured loans pursuant to §701.21 on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. A pool must include a substantial portion of the credit union's members' loans and must be sold promptly.

(2) *Purchase of obligations from a FICU.* A federal credit union that received a composite CAMEL rating of "1" or "2" for the last two (2) full examinations and maintained a net worth classification of "well capitalized" under part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained "well capitalized" for the six (6) immediately preceding quarters after applying the applicable RBNW requirement may purchase and hold the following obligations, provided that it would be empowered to grant them:

(i) *Eligible obligations.* Eligible obligations without regard to whether they are obligations of its members, provided they are purchased from a federally-insured credit union and the obligations are either:

(A) Loans the purchasing credit union is empowered to grant; or

(B) Loans refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans the purchasing credit union is empowered to grant;

(ii) *Eligible obligations of a liquidating credit union.* Eligible obligations of a liquidating credit union without regard to whether they are obligations of the liquidating credit union's members.

(iii) *Student loans.* Student loans provided they are purchased from a federally-insured credit union only;

(iv) *Real estate-secured loans.* Real estate-secured loans provided they are purchased from a federally-insured credit union only;

(3) A Federal credit union may make purchases in accordance with this paragraph (b), provided:

(i) The board of directors or investment committee approves the purchase;

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office; and

(iii) For purchases under paragraph (b)(1)(ii) of this section, any advance written approval required by §741.8 of this chapter is obtained before consummation of such purchase.

(4) The aggregate of the unpaid balance of eligible obligations purchased under paragraphs (b)(1) and (b)(2)(ii) of this section shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. The following can be excluded in calculating this 5 percent limitation:

(i) Student loans purchased in accordance with paragraph (b)(1)(iii) of this section;

(ii) Real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section;

(iii) Eligible obligations purchased in accordance with paragraph (b)(1)(i) of this section that are refinanced by the purchaser so that it is a loan it is empowered to grant;

(iv) An indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the Federal credit union makes the final underwriting decision and the sales or lease contract is assigned to the Federal credit union very soon after it is signed by the member and the dealer or leasing company.

(5) *Grandfathered purchases.* Subject to safety and soundness considerations, a federal credit union may hold any of the loans described in paragraph (b)(2) of this section provided it was authorized to purchase the loan and purchased the loan before July 2, 2012.

(c) *Sale.* A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the limitations of the board of directors' written sale policies, *Provided:*

(1) The board of directors or investment committee approves the sale; and

(2) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(d) *Pledge.* (1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the limitations of the board of directors' written pledge policies, *Provided:*

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall identify the eligible obligations covered by the agreement.

(e) *Servicing.* A Federal credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) *10 Percent limitation.* The total indebtedness owing to any Federal credit union by any person, inclusive of retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.

(g)(1) *Conflicts of interest.* No federal credit union official, employee, or their immediate family member may receive, directly or indirectly, any compensation in connection with that credit union's purchase, sale, or pledge of an eligible obligation under the provisions of §701.23.

(2) *Permissible payments.* This section does not prohibit:

(i) A federal credit union's payment of salary to employees;

(ii) A federal credit union's payment of an incentive or bonus to an employee based on the credit union's overall financial performance;

(iii) A federal credit union's payment of an incentive or bonus to an employee, other than a senior management employee, in connection with that credit union's purchase, sale or pledge of an eligible obligation. This payment is permissible if the board of directors establishes a written policy and internal controls for the incentive or bonus program and monitors compliance with the policy and controls at least annually; and

(iv) Payment by a person other than the federal credit union of compensation to a volunteer official, non-senior management employee, or their immediate family member, for a service or activity performed outside the credit union provided that the federal credit union, the official, employee, or their immediate family member has not made a referral.

(3) *Business associates and family members.* All transactions under this section with business associates or family members not specifically prohibited by paragraph (g)(1) of this section must be conducted at arm's length and in the interest of the federal credit union.

(4) *Definitions.* The definitions in §701.21(c)(8)(ii) of this part apply to this section.

(h) *Additional authority.* (1) A federal credit union may submit a written request to its regional director seeking expanded authority to purchase loans described in paragraph (b)(2) of this section, if it is not otherwise authorized by this section. The written request must include the following:

(i) A copy of the credit union's purchase policy;

(ii) The types of eligible obligations under paragraph (b)(2) of this section that the credit union seeks to purchase;

(iii) An explanation of the need for additional authority; and

(iv) An analysis of the credit union's prior experience with the purchase of eligible obligations.

(2) *Approval process.* A regional director will provide a written determination on a request for expanded authority within 60 calendar days after receipt of the request; however, the 60-day period will not begin until the requesting credit union has submitted all necessary information to the regional director. The regional director will inform the requesting credit union, in writing, of the date the request was received and of any additional documentation that the regional director requires in support of the request. If the regional director approves the request, the regional director will establish a limit on loan purchases as appropriate and subject to the limitations in this section. If the regional director does not notify the credit union of the action taken on its request within 60 calendar days of the receipt of the request or the receipt of additional requested supporting information, whichever occurs later, the credit union may purchase loans it requested under paragraph (b)(2) of this section.

(3) *Appeal to NCUA Board.* A Federal credit union may request the regional director to reconsider a denied request for expanded authority and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

[44 FR 27071, May 9, 1979, as amended at 46 FR 38680, July 29, 1981. Redesignated at 49 FR 30688, Aug. 1, 1984, and amended at 53 FR 4844, Feb. 18, 1988; 56 FR 15036, Apr. 15, 1991; 56 FR 35811, July 29, 1991; 60 FR 58504, Nov. 28, 1995; 63 FR 70998, Dec. 23, 1998; 72 FR 65442, Nov. 21, 2007; 77 FR 31990, May 31, 2012; 78 FR 37958, June 25, 2013; 82 FR 50291, Oct. 30, 2017]

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