



Final Rule: Loan Participations; Eligible Obligations; Purchase of Assets and Assumptions of Liabilities



	PROPOSED RULE	FINAL RULE
Introduction, Scope, and Definitions, §701.22	<p>Add introductory text to the rule to explain scope of §701.22.</p> <p>Revise the definitions section to:</p> <ul style="list-style-type: none"> Place definitions in alphabetical order; Add a definition of <i>Associated Borrower</i>; Revise the definitions for <i>Loan Participation</i> and <i>Originating Lender</i>. 	<ul style="list-style-type: none"> Additional modifications to introductory text to further clarify the rule’s scope. Conforming amendments to 2012 rule eliminating RegFlex. Definition of <i>Associated Borrower</i> same as proposed. Definition of <i>Loan Participation</i> same as proposed. Definition of <i>Originating Lender</i> same as proposed, with minor modification for consistency with introductory text to §701.22. Preamble language to address commenters’ questions regarding other definitions.
	<p>Focus the rule on the purchase side only.</p>	<p>Same as proposed.</p>
	<p>Establish some consistency in the loan participations that a Federally Insured Credit Union (FICU) can buy, regardless of the eligible organizations involved.</p>	<p>Same as proposed.</p>
Conditions for Loan Participation Purchase, §701.22	<p>Revise the definition for <i>Loan Participation</i> to reflect the requirement for the originating lender’s continued participation in the transaction throughout the life of the loan.</p>	<p>Same as proposed.</p>
	<p>Require a FICU, as a condition for purchase, to execute a written loan participation agreement with the originating lender.</p>	<p>Same as proposed.</p>

	PROPOSED RULE	FINAL RULE
<p><i>Conditions for Loan Participation Purchase, §701.22 (continued)</i></p>	<p>Restrict a FICU, as a condition for purchase, to loan participations where the originating lender retains at least a 10 percent interest in the outstanding balance of the loan through the life of the loan.</p> <p>Restrict a FICU, as a condition for purchase, to loan participations where the borrower is a member of a participating credit union <u>before</u> the purchase is made.</p>	<p>Federally Insured Credit Unions and Federally Insured State-Chartered Credit Unions (FISCU) may only purchase loan participations from originators who retain at least a 5 percent interest:</p> <ul style="list-style-type: none"> • Originating FCUs must retain at least a 10 percent interest, as required by the Federal Credit Union Act. • Other originating eligible organizations (including FISCU, Credit Union Service Organizations, privately insured credit unions, and banks) must retain at least a 5 percent interest, unless higher under state law, before selling to FICUs, consistent with other risk retention standards, such as Dodd-Frank requirement for securitizers. <p>Same as proposed.</p>

Loan Participation Policy, §701.22

Add minimum requirements for a FICU’s written loan participation policy including underwriting standards which, at a minimum, meet the same underwriting standards the FICU uses when it originates a loan.

FICU’s written loan participation policy must establish underwriting standards for loan participations.

- Purchasing FICU may participate in types of loans it does not originate.
- FICU may establish different, or, where appropriate, even less stringent, underwriting standards for loan participations than it uses when originating its own loans.
- If FICU both originates and purchases participations in the same types of loans, it may establish different underwriting standards for originating such loans and for purchasing participations in those loans.

Loan Participation Agreement, §701.22

A loan participation agreement must:

- Be properly executed;
- Be acted on by the FICU’s board of directors or designated committee.

Minimal provisions a FICU must require be included in a loan participation agreement:

- Identification of specific loan participation(s) purchased;
- Amount of loan retained by originating lender (at least 10 percent);
- Originating lender’s participation for the loan’s duration documented;
- Access to periodic financial and other performance information regarding the loan, borrower, and the servicer;
- Enumerated duties and responsibilities of the originating lender, servicer, and participants regarding the servicing, default, foreclosure, collection, and ongoing administration of the loan;
- Circumstances and conditions for replacing the servicer.

Same as proposed.

Same as proposed, except amount of loan retained by originating lender must be at least:

- 10 percent for originating FCUs, as required by the Federal Credit Union Act;
- 5 percent for originating FISCUs and other eligible organizations, unless higher under state law, consistent with other risk retention standards, such as Dodd-Frank requirement for securitizers.

Eligible Obligations, §701.23

Add an introductory paragraph to §701.23 explaining this section covers the purchase, sale or pledge of all or part of a loan to an FCU’s member and does not involve any continuing contractual obligation between the seller and the purchaser.

The introductory text also explains the borrower must be a member of the purchasing FCU before the purchase is made and expressly states an FCU may not purchase a nonmember loan to hold in its portfolio.

Substantially as proposed, but with some amendments to conform introductory paragraph to 2012 rule eliminating RegFlex.

2012 rule eliminating RegFlex provides limited exception to permit 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.

Purchase and Assumption, §741.8

Currently, we do not require an FCU to obtain Regional Director approval for the purchase of a loan participation from a non-NCUSIF entity provided the purchase conforms to §701.22. FISCUs are not subject to §701.22 and must request RD approval to purchase a loan participation from a non-NCUSIF entity. As the proposed rule covers FISCUs, similarly exclude FISCUs from this requirement provided the purchase conforms to §701.22.

Same as proposed.

**Requirements for Insurance,
§741.225**

Extend the requirements of §701.22 to FISCUs.

Substantially as proposed, with minor change to clarify that FISCUs, but not FCUs, are exempt from membership requirement in §701.22(b)(4).