

**Supplement I to Part 203—Staff
Commentary**

* * * * *

Section 203.3—Exempt Institutions

3(a) *Exemption based on location, asset size, or number of home-purchase loans.*

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 1999, the asset-size exemption threshold is \$29 million. Depository institutions with assets at or below \$29 million are exempt from collecting data for 1999.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 17, 1998.

Jennifer J. Johnson,*Secretary of the Board.*

[FR Doc. 98-34021 Filed 12-22-98; 8:45 am]

BILLING CODE 6210-01-P

**NATIONAL CREDIT UNION
ADMINISTRATION****12 CFR Part 701****Organization and Operations of
Federal Credit Unions**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The final rule clarifies certain provisions in NCUA's regulation that sets forth the requirements for the purchase, sale and pledge of eligible obligations. Currently, the regulation provides that a federal credit union (FCU) may purchase real estate loans from any source if it is granting real estate loans on an ongoing basis and the purchase will facilitate the packaging of a pool of loans for sale on the secondary market. The final rule clarifies that a pool must include a substantial portion of the FCU's members' loans and must be sold promptly. Further, the final rule explains when the purchase of a member's loan is not the purchase of an eligible obligation, but rather the making of a direct loan.

DATES: The rule is effective January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6553.

SUPPLEMENTARY INFORMATION:**Background**

On July 30, 1998, the NCUA Board requested comments on proposed changes to § 701.23 of its regulations. 63 FR 41976 (August 6, 1998). Section 701.23 sets forth the requirements for FCUs' purchase, sale and pledge of eligible obligations.

Section 701.23(b)(1)(iv) allows an FCU to purchase real estate loans from any source if it is granting them on an ongoing basis and the purchase will facilitate the packaging of a pool of loans to be sold on the secondary market. The proposal clarified that a pool of loans, as used in that subsection, must include a substantial portion of the FCU's own loans and must be sold promptly. This clarification is taken from the Accounting Manual. Accounting Manual for Federal Credit Unions, § 6030.4.

Section 701.23(b)(3) sets forth the exceptions to the 5% limit on the purchase of eligible obligations. The proposal adds to the list of exceptions, an indirect lending or leasing arrangement if it is classified as a loan. The conditions for classifying it as a loan are that the FCU must make the final underwriting decision and that the sale or lease contract must be assigned to the FCU very soon after it is signed by the member and the dealer or leasing company.

Summary of Comments

The NCUA Board received ten comments on the proposal: two from credit union trade groups; one from a state league; five from credit unions; one from a bank trade group; and one from a private insurer. Of the six commenters that addressed the proposed changes, five generally supported them.

Section 701.23(b)(1)(iv)

The five commenters that supported the proposed changes to this provision noted that the amendments give sufficient guidance while allowing flexibility. One commenter noted that the amendment has the beneficial effect of preserving credit unions' focus on making loans to members while avoiding the imposition of a barrier if certain timeframes and amounts were required.

The negative commenter was concerned that the language in the proposal requiring "a substantial portion of its own loans" would preclude it from having a pool composed substantially of member loans it had purchased from its CUSO. An FCU has the express authority to purchase its member loans from any source without any pooling

requirements. 12 U.S.C. 1757(13); 12 CFR 701.23(b)(i). Since the intent of the limitation in § 701.23(b)(iv) is to limit the purchase of nonmember loans, the final rule has been clarified to indicate that a substantial portion of the pool must be composed of "member loans."

The Board asked for comment on whether specific numbers should be used instead of the terms "substantial" and "promptly." Six of the seven commenters that responded opposed using specific numbers. The reasons cited in opposition were that: setting a fixed ceiling and specific time may make it difficult for an FCU in certain circumstances; placing specific limitations, which remove all flexibility for dealing with unforeseen circumstances, is unnecessary; setting a specific ceiling and using specific dates may make it difficult for large credit unions to assist small credit unions with access to the secondary market; and using specific numbers and dates does not recognize the realities of the secondary marketplace. The Board agrees that it is important for FCUs to have flexibility in this area and so, it will not define "substantial" and "promptly" with specific numbers.

One commenter, a bank trade group, does not address the proposal, but rather takes exception to § 701.23(b)(1)(iv) since its promulgation in 1979. The bank trade group "believes that the purchasing of nonmember loans even for the purpose of pooling these loans to be sold on the secondary market is an attempt by federal credit unions to circumvent the restrictions on loans to nonmembers." The proposed rule explained in detail the statutory authority for this provision. 63 FR at 41976.

Section 701.23(b)(3).

The two commenters that addressed the issue of clarifying in the rule that indirect lending is considered a loan rather than the purchase of an eligible obligation supported the proposed changes. Three commenters suggested that the preamble to the final rule clarify that credit or electronic scoring by a third party vendor using the credit union's criteria is consistent with the FCU making the final underwriting decision. The NCUA Board agrees with this interpretation which follows General Counsel opinion letters.

Two commenters asked for clarification that assignment of the loan means acceptance of the loan and not necessarily, physical receipt of the loan documentation. The NCUA Board concurs. In today's marketplace, acceptance and payment are often done electronically. However, physical

receipt of the loan documents by the credit union should occur within a reasonable time following acceptance of the loan.

The two commenters that responded to the question of whether a specific number of days should be substituted for the language requiring assignment of the contract "very soon" after it is signed by the member, opposed specific numbers. The commenters noted that using specific numbers could reduce flexibility and is not necessary. The NCUA Board agrees and will not use specific numbers.

Finally, the NCUA Board asked for comment on whether the types of loans that can be purchased from any source for purposes of creating pools for sale should be expanded to include auto and credit card loans. Five of the six commenters that responded supported the Board pursuing this option for FCUs. Those commenters noted that it would provide credit unions with an important asset and liability management tool for use as an alternative means of creating liquidity.

The one negative commenter did not see the need for a regulation permitting this practice, because there is no major secondary market for auto and credit card loans.

The NCUA Board is aware that there is a growing secondary market for auto and credit card loans and intends to look at whether this is appropriate for FCUs. Currently, the Financial Accounting Standards Board (FASB) is reviewing the accounting standards governing these transactions. Once FASB states its position and there is stability in this area, the NCUA Board will make a decision on whether to expand its regulations to permit FCUs to purchase nonmember auto and credit card loans for sale on the secondary market.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under \$1 million in assets. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that it is highly unlikely that small credit unions would be engaged in pooling real estate loans for sale on the secondary market. Accordingly, the NCUA Board has determined that a

Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule will only apply to federal credit unions. Section 741.8(b)(1) specifically exempts state chartered federally insured credit unions from § 701.23(b)(1)(iv). Section 701.23(b)(v) only applies to FCUs.

Paperwork Reduction Act

The final rule does not impose any additional paperwork requirements on FCUs.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) 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 Procedures Act, 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Act Fairness Act of 1996, this is not a major rule.

List of Subjects in 12 CFR Part 701

Credit unions; Eligible obligations.

By the National Credit Union Administration Board on December 17, 1998.
Becky Baker,
Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERALLY-INSURED CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Amend § 701.23 by adding a sentence to the end of paragraph (b)(1)(iv) and by revising paragraph (b)(3) to read as follows:

§ 701.23 Purchase, sale and pledge of eligible obligations.

* * * * *

(b) * * *

(1) * * *

(iv) * * * A pool must include a substantial portion of the credit union's

members' loans and must be sold promptly.

* * * * *

(3) The aggregate of the unpaid balance of eligible obligations purchased under paragraph (b) of this section cannot exceed 5% of the unimpaired capital and surplus of the purchaser. The following can be excluded in calculating this 5% 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; and

(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.

* * * * *

[FR Doc. 98-33946 Filed 12-22-98; 8:45 am]

BILLING CODE 7535-01-U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550-AA01

Releasing Information

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final rule which sets forth the basic policies of OFHEO regarding disclosure of information it maintains and the procedures for obtaining access to such information by the public. The rule implements the Freedom of Information Act (FOIA) and establishes a schedule of fees, which will be charged for the processing of record requests under the FOIA. In addition, the rule sets forth procedures to be followed to request testimony or the production of documents in legal proceedings in which OFHEO is not a named party as