 <b>Office of Credit Unions</b> <b>Policies and Procedures</b>	<b>POLICY NUMBER</b>
	<b>10335</b>
<b>LENDING</b>	<b>EFFECTIVE DATE</b>
	<b>11/01/2018</b>
<b>SUBJECT</b>	<b>REVISION DATE</b>
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## I. PURPOSE

Michigan chartered credit unions may participate in loans to credit union members jointly with other credit unions, CUSOs or other financial institutions as designated by law. Participation loans must be made according to the requirements of the Michigan Credit Union and NCUA Rules and Regulations. Examiners will review participation loan documents, policies, agreements and related contracts to ensure compliance.

## II. PRIMARY REFERENCES / RELATED REGULATIONS


1. Michigan Credit Union Act
  - a. [Section 423\(6\)&\(7\)](#) – Participation Authority
  - b. [Section 102\(u\)](#) – Definition of “Financial Institution”
2. [NCUA Rules & Regulations, Part 701.22](#)

## III. MINIMUM PROCEDURES

### 1. Review the Participation Agreement

A loan participation agreement must:

- a. Be properly executed by authorized representatives of all parties under applicable law;
- b. Be properly authorized by the Board of Directors or, if the Board has so delegated in its policy, a designated committee or senior management official;
- c. Be retained in the credit union's office (original or copies); and
- d. 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;

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- 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;
- vi. Circumstances and conditions under which participants may replace the servicer.


## 2. Review Controls:

### a. Internal Functions/Controls:

- i. Verify the Board has established a policy pertaining specifically to participation loans, the procedures related to such, including individual and aggregate loan limitations, to control risk.
- ii. Verify there are controls in place to ensure that only loan interests are acquired which meet the credit union's underwriting standards, comply with all pertinent regulations, and comply with the Participation Agreement. The responsibility to ensure safe and sound lending practices, including sound underwriting standards, cannot be outsourced.
- iii. Determine if management had legal counsel review material contracts, including Participation Agreements to ascertain legality/compliance and ensure risks to the credit union have been identified & mitigated/minimized.

### b. External Functions/Controls:

- i. There should be initial and ongoing evaluation of the entity responsible for administering the Participation Agreement (particularly those providing collections and/or servicing functions). Should such an entity fail to meet their obligation, the credit union should have a contingency plan for ensuring those functions will continue.
- ii. Procedures should be in place to ensure proper verifications/reports are received on the participation loans/portfolio, and that any outsourced servicing/collection responsibilities are being performed.

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iii. Clear responsibility must be assigned for reviewing initial documentation and subsequent reporting. Accordingly, for errors or irregularities identified, there should be procedures and persons responsible for researching and seeking resolution.

### 3. Participation Policy

The loan participation policy must, at minimum:

- a. Establish underwriting standards for loan participations;
- b. 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 credit union's net worth, unless this amount is waived by the appropriate NCUA 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. Establish limits on the amount of loan participations, by loan type, that may be purchased, not to exceed a specified percentage of the credit union's net worth; and
- d. 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 credit union's net worth, unless waived by the appropriate NCUA regional director, and, in the case of a federally insured, state-chartered credit union, with prior written concurrence of the appropriate state supervisory authority.