CREDIT UNION ASSOCIATION OF THE DAKOTAS

February 17, 2012

Mary Rupp,
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314–3428

RE: Comments on Proposed Rule on Loan Participations

Dear Ms. Rupp,

The Credit Union Association of the Dakotas appreciates the opportunity to provide comment to the National Credit Union Administration Board (Board) regarding the proposed rule for Parts 701 and 741 relating to Loan Participations. The Credit Union Association of the Dakotas represents seventy-two state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over $4.5 billion and who have more than 450,000 members.

The Credit Union Association of the Dakotas strongly opposes the proposed rule amendments and changes to Parts 701 and 741 on Loan Participations and urges the Board to withdraw them in their entirety. In the preamble to the proposed rule, the Board states that it "believes that involvement in loan participation strengthens the credit union industry." *Federal Register, Vol. 76, No. 246, page 79548.* However, the effect of these proposed rules will do little more than discouraging and/or preventing credit unions' involvement in loan participations. This one-size-fits-all approach to mitigating the Board's perceived risk to the share insurance fund is a classic example of over-regulating, and comes at time when credit unions are still dealing with the over burdensome rules and regulations that have recently been promulgated upon them. Any real or perceived risk can be mitigated by less burdensome methods that will ensure safety and soundness while at the same time strengthen the credit union industry and help the communities they serve.

While the Credit Union Association of the Dakotas believes that the entire proposal should be withdrawn, it points to several specific provisions of the proposal to support its position. The new limitations that the proposed rule imposes are arbitrary and not supported by sound data. Section 701.22(b)(ii) would "establish a limit on the aggregate amount of loan participations that may be purchased from any one originating lender, not to exceed 25 percent of the credit union's net worth," *Federal Register, Vol. 76, No. 246, page 79552.* There is nothing within the proposed rule that would allow this cap to be waived. The Board provides no support or reasoning behind setting the cap at 25 percent. In reality, the 25 percent cap may create more risk for the credit union. By requiring credit unions to forego relationships that were built through on-going due diligence and time-tested performance and requiring them to take on risk through unnecessary diversification seems at odds to goal of creating safety and soundness. Furthermore, the 25 percent cap may prevent smaller credit unions from participating in additional loans as they may not have the resources to dedicate to performing the proper due diligence and monitoring these new relationships. Ultimately, it increases the cost of due diligence for all credit unions, large, medium and small.

The Board validates the purpose for the proposed rules by alleging that loan participations create more "systemic risk" to the share insurance fund, a term that has become over-used in the justification for new and/or amended rules. The Board fails to provide valid data that would support its claim of a "systemic risk" or explain their reasoning behind the required concentration limits. Furthermore, the Board fails to provide any data that participation loans are riskier than non-participated loans.

An example that the Board gives of this "systemic risk" are "large volumes of participated loans in the system tied to a single originator, borrower, or industry or serviced by a single entity have the potential to impact multiple credit unions if a problem arises." *Federal Register, Vol. 76, No. 246, page 79548* This is not an issue if the credit union has done its due diligence. The risk associated with an unsafe originator will not be avoided with the adoption of this rule and its blanket concentration limits. The proper mitigation comes from the due diligence of the credit union. Guidance (not a regulation) in achieving proper due diligence would serve the credit union industry far better than this proposed rule. Additionally, problems with individual credit unions or situations can be better addressed and resolved by the NCUA and state regulators through the examination and supervision process.

Among the general reasons, not data, the Board gives for the proposed rules is confusion in the application of the current loan participation rule. It would seem the more logical approach to resolving confusion in an existing rule is to provide commentary, explanatory guidance or even training for the rule that is already in place, not to issue more rules that impose additional limitations and regulatory burden on credit unions. It is time that common sense comes into play when addressing issues.

The rule as proposed would also have an adverse effect on lending CUSOs and the credit unions involved in them. Credit unions are significantly benefited by mortgage and business lending CUSOs in that they can share the expense in hiring experienced lending professionals and then share loan yields with each other. The effective date of this rule, if adopted, may see many credit unions that use lending CUSOs automatically out of compliance, even though they had done their due diligence to be in compliance and were doing the "right thing" all along.

In the NCUA's media release dated November 14, 2011, Chairman Debbie Matz, is quoted as saying, "NCUA's policies are designed to impose minimal burdens on credit unions, consumers, and the public." Additionally, in her November 7, 2011, letter to Mr. Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Chairman Matz states that "in the spirit of Executive Order 13579, NCUA strongly supports a balanced regulatory approach. We will continue to protect the safety and soundness of credit unions as new risks emerge. At the same time, we will encourage the industry to remain dynamic and competitive by providing relief from unnecessary burdens." The Credit Union Association of the Dakotas respectively disagrees that this proposed rule is illustrative of a balanced regulatory approach or relief from unnecessary burdens. This proposed rule will not allow credit unions to remain "dynamic and competitive."

The credit union's management and board of directors are in the best position to determine and establish the specific limits for concentrations identified within its own loan participation policy. Appropriate due diligence

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by the participant is the best tool in managing and mitigating risk in loan participation; not arbitrary concentration caps and unnecessary regulatory requirements.

As Mike Reisnour, President/CEO of Dakota Plains Credit Union in Edgeley, ND puts it, "This new proposed rule goes beyond any logical reasoning or any understanding on NCUA's part of how we do business in the Dakota's. This proposed Participation Loan rule "creates" a "systemic risk" to the way we do Participation Loans at Dakota Plains Credit Union, by creating an arbitrary 25% aggregate rule, which is going to limit those that I want to participate with. It is a baseless number dictating, and restricting those credit unions, which I feel confident to do business with and have done business with for many years, without any documented "systemic risk". It would make greater sense on NCUA's part to provide "guidance" to State Chartered Credit Unions and/or to our State Regulators than mandating a limitation on my credit union."

As the Board has already acknowledged in the preamble of this proposed rule, "loan participations are a useful way for federally insured credit unions to diversify their loan portfolios, improve earnings, generate loan growth and manage their balance sheets and comply with regulatory requirements." *Federal Register, Vol. 76, No. 246, page 79548*

The Credit Union Association of the Dakota respectfully requests that the Board weigh the benefits that loan participations provide to the credit union industry and the members served when imposing new restrictions and limitations. Furthermore, while the Credit Union Association of the Dakotas appreciates the responsibility that the Board has in ensuring the safety and soundness of the industry and the share insurance fund, we request that the Board articulate the data and provide valid argument as to why these or any other rules should be adopted. The Association reiterates that a balance between the objectives of the Board and credit unions might better be achieved through guidance and use of the NCUA and state regulator examination and supervision process to address issues with individual credit unions or situations.

Thank you for this opportunity to share our comments.

Respectfully,

Robbie Thompson

Robbie Thompson
CEO/President

Amy Kleinschmit

Amy Kleinschmit
Director of Compliance