National Association
of Federal Credit Unions
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February 21, 2012

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

RE: Proposed rule on Loan Participations

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions (FCUs), I am writing to you regarding the National Credit Union Administration's (NCUA) proposed rule on loan participations. For reasons discussed in more detail below, NAFCU strongly opposes the proposed rule.

General Comments

The proposed rule would institute certain arbitrary concentration limits on loan participations, including: (1) a limit on the aggregate amount of loan participations that may be purchased from one originating lender to 25 percent of the credit union's net worth; and (2) a limit on loan participation purchases involving one borrower or a group of associated borrowers to 15 percent of the credit union's net worth. Credit unions would not be able to seek a waiver from the proposed limit on purchases from one originating lender. A credit union could, however, seek a waiver on the proposed limit on purchases involving one borrower or a group of associated borrowers. Additionally, the proposed rule would expand the application of the loan participation rule to federally-insured state-chartered credit unions (FISCUs).

As the NCUA fully acknowledges in the preamble of the proposed rule, loan participations enable credit unions to accomplish numerous important goals. For example, a credit union may be involved in loan participations to diversify its loan portfolio, improve earnings, generate loan growth, manage its balance sheet and/or comply with regulatory requirements. The sale of loan participations also allows a credit union to generate liquidity. Unfortunately, the agency has failed to assign adequate weight to the significant benefits loan participations afford to credit unions.

NAFCU also does not believe the NCUA has provided satisfactory justification for having proposed such arbitrary and draconian limits on loan participation. NCUA's stated basis for issuing the proposal is risk to the National Credit Union Share Insurance Fund (NCUSIF) stemming from the delinquency rate of loan participations.

While loan participation delinquency rates are higher than delinquency rates of other loans credit unions make, we believe that the NCUA has clearly overstated the risk participations pose as:

(1) Credit union loan participation delinquency rates are lower than the delinquency rates of all loans issued by banks regulated by the Federal Deposit Insurance Corporation (FDIC).[1]

(2) The failure rate of credit unions with large loan participation portfolios is very low. In fact, since 2009, not one credit union out of the top 100 with the largest loan participation portfolios has failed.

While we strongly oppose NCUA's proposed changes to the rule, we do believe NCUA should extend existing rules regarding loan participations to FISCUs. In this regard, and in stark contrast to other aspects of the proposal, the agency does provide data that clearly reflects that loan participation delinquency rates are higher among FISCUs, which are also insured by the NCUSIF.

One-Size-Fits-All

The proposed rule exemplifies the too-frequent and too-often misguided regulatory approach that the NCUA has ever-increasingly undertaken recently – "one-size-fits-all," as opposed to that of proper regulatory oversight. Just recently, in testifying in front of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit on proposed legislation that would grant credit unions additional avenues to appeal examination determinations, NCUA's Executive Director David Marquis argued that NCUA should not be constricted to a one-size-fits-all approach to examinations. NAFCU finds it ironic that while making such an assertion, the NCUA is doing the exact opposite with respect to its regulations.

A one-size-fits-all regulation does not take into consideration either the asset size or the experience level of individual credit unions. For example, a credit union may have years of experience in dealing with one (or few) originating lenders and have not experienced a single delinquency. Such relationships often result from the cooperative nature of credit unions. Should the proposal be finalized, however, the buyer-credit union would, in many cases, be forced to restrict or extinguish such relationships and in searching for new loans increase its risk exposure.

[1] NCUA's Call Reports for the reporting period ending on September 30, 2011 shows FICU's participation delinquency rate was at 4.01 percent. FDIC Call Reports show that the delinquency rate on loans made by banks was 5.59 percent.

Similarly, a credit union may have special and extensive experience with one or a few types of loan products, such as mortgage loans, fully understanding all the components thereof, including the risks associated with the loans. In most cases, such experience has served credit unions and their members very well. Unfortunately, however, NCUA's proposed regulation would completely nullify the credit union's experience and the benefits that it garners for the credit union members.

NAFCU believes that a better approach to the proposed regulations is to provide appropriate regulatory oversight, while providing credit unions clear and helpful guidance on risk mitigation measures.

President Obama's Executive Orders

NAFCU believes the proposed rule also runs squarely afoul of President Obama's two executive orders, both issued in 2011, establishing reasonable, but firm, standards that both executive and independent agencies should meet before issuing regulations. Executive Orders 13563 and 13579 specifically direct the NCUA and other agencies to conduct careful analysis of the likely consequences of regulation, including the cost and benefits. The proposed rule offers no data, and very little analysis, on the effect of the proposed regulation on federal credit unions. Even a cursory analysis would have revealed that the proposed rule would have a devastating effect on many credit unions, potentially resulting in their closure.

The Executive Orders also direct agencies to ensure regulations promote economic growth, innovation, competitiveness and job creation. The proposed rule would achieve none of these goals. Further, in stark contrast to the Executive Orders' call for using the least burdensome approach to achieving regulatory ends, the proposed rule imposes a significant burden on credit unions, especially with respect to the arbitrary and draconian participation limits.

In conclusion, NAFCU strongly urges the NCUA to withdraw the proposed rule given that the possible ramifications have not been adequately examined and that the proposed rule would have significant negative consequences on many credit unions.

NAFCU appreciates the opportunity to provide comments to the NCUA on the proposed rule. Should you have any questions or would like to discuss these issues further, please contact me at fbecker@nafcu.org or (703) 842-2215 or Tessema Tefferi, NAFCU's Regulatory Affairs Counsel, at ttefferi@nafcu.org or (703) 842-2268.

Sincerely,

Fred Becker, Jr.
President and CEO