SAFE CREDIT UNION

February 21, 2012

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

To Whom It May Concern:

This letter is to provide comment related to the key proposed changes surrounding loan participations; 12 CFR Parts 701 and 741 (Loan Participations; Purchase Sale and Pledge of Eligible Obligations; Purchase of Assets and Assumptions of Liabilities).

1. Underwriting standards in purchasing a loan participation may not be less stringent than the underwriting standards in originating the same loan.

SAFE believes credit unions should be allowed to have discretion in deciding its underwriting criteria when purchasing participation interests. We believe it is important to allow flexibility in underwriting critieria; the proposed legislation appears to be too restrictive. Accordingly, the purchasing credit union bears the underwriting risk.

There are circumstances where SAFE might choose to accept the seller's underwriting criteria. For instance, on church participations, SAFE accepts a DCSR of 1:1. SAFE does not underwrite any of its own loans with a DSCR of <1.25:1. This exception is due to the nature of the church property and its status as a non-profit organization.

2. The originating credit union must retain at least 10% interest in the loan throughout the life of the loan.

SAFE agrees that the originating credit union should retain at least a 10% interest in all loans it originates and sells. While our internal policy only allows us to purchase up to 90% interest in a participation loan, with the intent the seller/servicer will hold the remaining 10%, there are times when the seller has sold 9% of the 10% subsequently only retaining 1% interest in the loan. We have found that 1% ownership by the seller/servicer of these transactions has led to comments like, "Well you can always buy us out," when a loan defaults and we push to have actions taken that are contrary to what the seller/servicer wants to do. Since the seller/servicer only owns 1% of the loan they do not want to apply the necessary resources and costs to effectively collect on the debt.

Additionally, we believe that retaining less than 10% of the loan constitutes an agency relationship with the buying credit union, rather than a principal relationship with the buying credit union. An agency relationship can create a conflict of interest between the buyer and the seller because an agent is compensated for a transaction (origination fees), whereas a buyer is compensated for the long-term performance of the loan. There is a mismatch between the payoffs: the agent's payoff is immediate, whereas the buyer's payoff is over a longer time horizon. As stated before, SAFE has experienced a correlation between our problem participation loans and the seller not retaining a significant amount of the loan (less than 10%)

3. A credit union may not buy loan participations from a single originator that in the aggregate exceeds 25% of the purchasing credit union's net worth. There is no ability to seek a waiver from this restriction.

SAFE supports having an aggregate limit related to net worth for purchasing loans from one originator in some cases however, we strongly believe any cap, or waiver of a cap, should be tied to experience in this area. Those credit unions entering into participation loan purchases should have lower aggregate limits related to net worth while those with experience and proven results should likely not be capped. This type of strategy would ensure the cap is not arbitrary but based more on results than unsubstantiated fear. The Small Business Administration (SBA) doesn't just turn financial institutions lose when they approve them to originate SBA loans. Instead, they provide oversight and final approval for all loans submitted for a period of time. If the financial institution demonstrates the ability to manage these loans the SBA will approve them as a Preferred Lender with the ability to approve SBA loans on their own. The NCUA needs to move away from setting arbitrary caps and instead provide more oversight, testing, and a review of results to establish a framework for credit unions to improve performance. It is prudent that each credit union includes a maximum exposure to one originator in its board approved concentration limit policy.

In addition, there is value in purchasing loans from a limited number of sellers as the due diligence process to manage the seller relationships is very tedious and time consuming. The servicing aspect is cumbersome as well with multiple seller relationships. Limiting the number of sellers allows better oversight, lower costs, and increased efficiency. However, sellers of participation loans should be required to either have the liquidity or other outlets to allow participants to exit loan participations at maturity. Too often the seller does not have the capacity or outlets to repurchase a participation loan at maturity. As a purchaser of participation loans we would like a five year term to truly be a five year term unless we ***choose*** to participate again at maturity. Foreclosure should not be the exit strategy

4. A credit union may not buy loan participations interests in loans to a single borrower or group of associated borrowers where the aggregate amount exceeds 15% of the purchasing credit union's net worth. This provision can be waived.

Again, setting an arbitrary cap for loans to a single borrower or group of associated borrowers without facts to back it up does not make sense. As noted in number 4 above, credit unions with proven performance should be allowed to make decisions in line with the strategic direction of their credit union and meets the needs of the members they serve. This type of restriction limits the credit union's ability to serve the most qualified and growing businesses. Again, the NCUA should leave it up to each credit union to include a maximum exposure to one borrower in its board approved concentration limit policy.

5. Clarification of comments regarding pools of loans.

SAFE is unable to respond to this section as we are unclear as to the definition of a "pool of loans." Is "pool of loans" referring to a securitized pool of loans or a collection of loans sold in a pool format that are not securitized?

6. Recommended new term: Regarding the ability of a purchaser of a loan participation interest in buying a loan where the originator obtained a regulatory waiver.

SAFE has experienced issues with the waiver requirements related to loans reaching maturity whereby the collateral value is insufficient to cover the outstanding loan balance. In these cases it seems ridiculous to require participants to acquire waivers to the loan-to-value (LTV) requirements, which delays the refinance for several months, when for months (maybe years) this loan has been carried on their books in the same collateral position. In addition, if a selling credit union has received a waiver on a loan, higher LTV, no guarantor, etc., and then chooses to participate the loan to other credit unions the waiver should transfer to the purchasing credit union for that one loan. The purchasing credit union may not want the same waiver for its institution and/or spend the time going through the process to acquire a waiver that it may not use again. The loan being purchased will likely have mitigating factors that make the purchase and waiver make sense in this one scenario but not as an ongoing waiver for the purchasers own business policy.

7. Recommended new term: Regarding organizations eligible to buy a loan participation interest.

SAFE believes credit unions should have the ability to sell participation loans to non-financial institutions. These entities do not have the restrictions or caps that credit unions are subject to, and if publically traded have the ability to grow capital through the sale of stock. The ability to acquire capital makes them an ongoing funding source for credit unions, which in turn allows credit unions to continue to make business loans to better meet the needs of their members.

I thank you in advance for your consideration of the items noted above.

Sincerely,

Sharon Whiteley
Senior Vice President
SAFE Credit Union
3720 Madison Avenue
North Highlands, CA 95660

Cc: Mr. Henry Wirz, President/CEO
Mr. Ronald Seaman, Chairman of the Board
Mr. Colin Paterson, AVP/Commercial Lending