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February 6, 2012

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

Re: Proposed Amendments to 12 CFR Parts 701 and 741

Dear Ms. Rupp:

I would to submit this official comment letter on behalf of the management and Board of Directors of Michigan First Credit Union. Thank you for the opportunity to comment on the proposed changes to 12 CFR Parts 701 and 741 as they relate to loan participations, eligible obligations and the purchase/assumption of assets and liabilities.

Michigan First strongly believes that effective risk management is well served by the ability of credit unions to engage in properly structured loan participations with strong credit union partners. The ability to purchase and sell loan participations has enabled many credit unions, including ours, to better manage balance sheets and risk portfolios.

We recognize that NCUA appropriately has some concerns that, if not managed properly and constructed with solid due diligence, some loan participations could create an increased risk to the share insurance fund (NCUSIF). In fact, because of these concerns, we would agree that monitoring of loan participation agreements should be an integral part of the examination process when NCUA and the state regulators (if applicable) come onsite to look in-depth at the balance sheet of any individual credit union engaging in loan participations.

However, we believe that this should be an examination and supervision issue for individual credit unions based upon the specifics of their loan participation agreements and performance – not a matter requiring a re-write of the entire loan participation rules that would punish those involved in solid loan participations because a handful of them are structured improperly.

It is our belief that certain aspects of the proposed changes simply are an over-reach and could very well produce unintended results that will create more, not less, risk to the NCUSIF. We outline some of our concerns in this regard in the following subsections of this comment letter.

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Loan Participation Concentration Maximum

As stated earlier, we recognize that NCUA may legitimately have some questions about potential concentration risk on loan participations and that these should be addressed through the examination and supervisory process. Despite these individual situations, the broader field of loan participations is good business for credit unions and provides enhanced risk sharing from the perspective of the regulator and/or insurer. This rule will, in order to address the handful of troublesome loan participation arrangement, have a chilling effect of well structured and risk managed loan participations.

We are quite concerned that the proposed change that would limit loan participation purchases involving a single originator to a twenty-five percent maximum, when calculated as a percentage of a insured credit union's net worth, is unnecessarily prohibitive and will likely produce results contrary to what NCUA seeks to achieve.

For example, the basis for this twenty-five percent limit is that concentration limits can mitigate against some type of dramatic systemic losses if they can be contained within the limits. While there could conceivably be a situation in which runaway losses would have been contained by a concentration limit of twenty-five percent, the greater likelihood is that a "one size fits all" concentration limit – whether it be twenty-five percent or some other number - would force credit unions away from longstanding partners with which they have effectively managed risk and to new loan participation partners that they do not know as well. There seems to be a greater likelihood of losses, despite the best due diligence efforts, when credit unions are forced to find new participation partners and limit their percentage with their existing proven partners.

Without the right to seek a waiver to this provision, we are convinced that the results will be different than what NCUA intends. This provision truly does not recognize the value of many longstanding participation relationships that have been built upon years of proven performance and due diligence.

If there are relationships that have become too cozy and the risk is not being properly managed, NCUA and/or the state regulator can (and should) address those with a Document of Resolution at the time of the next examination. Indeed they should be dealt with. However, it is truly regulatory over-reach to put a twenty-five percent – or any other set figure applicable to all loan participations – in place that forces credit unions to new loan participation partners when the current relationships are working effectively.

Michigan First knows the importance of being comfortable with our loan participation partners. Over the years we have developed excellent relationships with a number of loan participation partners that have helped us to deal with liquidity, earnings, capital accumulation and produced excellent results for the credit union even as we mitigated balance sheet risk. These relationships have been strengthened by our own due diligence, as well as that of our partners. The performance of the loan products that have been purchased and sold through those participation agreements has been stellar.

It is our view that because loan participations come from one credit union it does not necessarily follow that the purchasing credit union of a loan participation interest is at any more risk than if that same credit union purchased an identical volume of loans from more than one credit union.

There could well be situations in which the purchasing credit union is at considerably more risk as they are now subject to the individual underwriting standards of multiple credit unions, rather than one or a few that they have had longstanding experience with.

Should NCUA be intent upon proceeding with this ill-advised concentration limit proposal, we would recommend that the percentage be increased to fifty percent and that an automatic waiver provision be included for those credit unions interested in exceeding fifty percent if the purchasing and selling credit unions have net worth in excess of seven percent (well-capitalized under the Prompt Corrective Action rules) and a CAMEL rating of 1 or 2

The proposed fifteen percent limitation on a purchase from one borrower or a group of associated borrowers has a waiver provision that can be granted by the NCUA regional director. We believe that this waiver should also be automatic if the purchasing and selling credit unions meet the aforementioned seven percent net worth ratio and a CAMEL rating of 1 or 2. These credit unions have proven their ability to manage risk and should be empowered to do so – subject, of course, to the examination and supervision process.

Ten Percent Retention Requirement

For a number of years it has been required that the originating credit union lender in a loan participation must retain at least ten percent interest for the duration of the loan. We have no issue with this longstanding requirement of required participation retention from the originating credit union and believe that it has served the industry well.

In addition, the proposed rule would extend that requirement beyond credit union originators and to all originating lenders. We basically support such a requirement that an originating lender should retain a continuing interest in a loan sold to a credit union; however, we are not convinced that the amount should be set at ten percent in every case.

We fail to see that a ten percent retention requirement provides any more of an incentive to avoid writing bad loan paper than would any other percentage retention requirement. It is simply another example of applying a "one size fits all" approach through regulation that should be dealt with individually through the examination and supervisory process of each participating credit unions.

There are cases, as there have always been, where a ten percent retention interest may be right on the mark. Yet, as is the flaw with the existing requirement, there could well be cases where – based upon the type of loan and security involved – that another percentage might better be required. In some cases, it could be higher. In many cases, it would be lower. But we remain concerned about a regulatory prescription from which there is no recourse based upon individual circumstances.

As has been the case since loan participations were first authorized, the purchaser of a loan has a primary and non-assignable interest in the performance of the loan purchased. Through the use of contractual provisions in the participation agreement, the purchaser can help define terms that ensure effective risk sharing. For example, even a provision that required the retention of a lesser interest in the loan and an increased percentage of any subsequent losses could accomplish the same purpose in providing an incentive to underwrite quality loans.

We would like to see this provision amended to allow such flexibility in structuring retention agreements when entered into by credit unions with both parties having a minimum of seven percent net worth and a CAMEL rating of 1 or 2 – again, a criteria which, within itself, provides evidence of the participating credit unions' ability to effectively manage risk. And, of course, the examination and supervision process can be used to monitor and contain these agreements if necessary.

Therefore, we repeat that, while we support the concept that an originator in loan participations should be required to retain some interest in the lifetime performance of the loans, our position is that greater flexibility in this requirement can certainly be accomplished without sacrificing the principles of safety and soundness.

Conclusion

Based upon our comments and the reasons cited, above, we respectfully encourage NCUA to either withdraw or significantly revise this proposal as recommended within this comment letter. We continue to be convinced that all of the issues addressed in this proposed regulation could be dealt with through the credit union examination and supervisory process. From that perspective, the specific instances of loan participation risk that are not being managed effectively can be addressed without seriously hampering the ability of credit unions who are already effectively managing their loan participation partnerships.

As we have great respect for your role as a regulator and your dual role as insurer, we do not at all challenge your intentions with this regulation. We believe your efforts are certainly very well-intentioned in these challenging times and encourage you to apply those good intentions diligently through the examination and supervision process.

However, we feel that we must again emphasize our belief that the aforementioned troublesome aspects of this proposal will actually result in greater, not fewer, safety and soundness concerns long term. They will significantly restrain the ability of credit unions to diversify their loan portfolios, improve their earnings and manage their risks through shared relationships with long established and proven loan participation partners.

Therefore, we urge NCUA to seriously consider our thoughts on this matter and very much appreciate the opportunity to comment on this proposal on behalf of Michigan First Credit Union. Please do not hesitate to contact us if we can be a source of additional information about the matters discussed in this comment letter.

Sincerely,

Michael D Poulos

Michael D. Poulos
President/CEO

cc: Chairman Debbie Matz
Board Member Michael Fryzel
Board Member Gigi Hyland