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February 9, 2012

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

Sent by Fax: (703) 518-6319

Re: Proposed Amendments to 12 CFR Parts 701 and 741

Dear Ms. Rupp:

Please allow this to serve as my comments on the proposed amendments to 12 CFR Parts 701 and 71 promulgated by the National Credit Union Administration and published in the Federal Register on December 22, 2011. My comments regarding the proposed changes are limited to the proposed "25% of net worth" cap on loan participation purchases from a single loan originator. Based on the Section-by-Section Analysis, NCUA has promulgated the proposed 25% cap based on concerns regarding (a) concentration risks associated with a single loan originator and (b) a credit union's inability to "directly manage the risks associated with the loan relationship, including borrower contact and collection control." I submit that the 25% cap would be both ineffective and overly burdensome.

As to concentration risks associated with a single loan originator, it is clear based on recent economic conditions that borrower and loan type concentration risks demand the attention of credit unions, regardless of whether such risks arise in direct loans or loan participation purchases. However, if a credit union purchasing loan participations is (a) following internal concentration risk guidelines (which demand consideration of both direct loans and loan participation interests), (b) conducting good loan due diligence on each participation loan to ensure compliance with the purchasing credit union's underwriting standards (as required by the proposed changes to Part 701) and (c) conducting both initial and ongoing due diligence on the loan participation seller/originating lender, concentration of loan participation purchases with a limited group of originating lenders poses little risk. As so aptly stated by commenter Guy Messick, "good loan participations are built on good due diligence." A 25% per originator cap would be a poor substitute for strong due diligence and appropriate borrower/loan type concentration risk policies.

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As to a purchasing credit union's lack of direct control of loan-specific risks, a higher concentration of loan participation interests from a single loan originator substantially increases such control. An ongoing relationship with a loan originator allows a purchasing credit union to develop a clear understanding of the loan originator's application, closing, servicing and collection practices and to quickly recognize any deviation from sound practices that requires correction. Although a purchasing credit union may not have direct control of the loan originator's practices, an ongoing relationship with the loan originator provides the purchasing credit union with a level of influence over the originator to help ensure good lending and servicing practices. Moreover, if the purchasing credit union has been guided by the principle of due diligence in (a) choosing the loan originator, (b) negotiating an originator-purchase contract with strong warranties, reporting requirements and remedies in the event of originator breach and (c) maintaining ongoing monitoring of the originator's compliance with the originator-purchase contract as well as the loan agreements, there is little to fear from concentration risk arising from a limited pool of loan originators. If a purchasing credit union is forced to do business with numerous loan originators as a result of the artificial 25% cap, a purchasing credit union's influence over the loan originators as well as the purchasing credit union's ability to properly focus on the ongoing purchaser-originator relationship will be diluted, thus increasing the purchasing credit union's risks.

As an example of a "focused" purchaser-originator relationship, I offer United Member Business Services, LLC ("UMBS"), a credit union service organization owned by TMH Federal Credit Union and two other credit unions. Through UMBS, the three credit union members of UMBS have the ability to reduce concentration risks by selectively selling and purchasing member business loan participation interests to and from one another with the added benefit of a CUSO to control and manage the application, closing, servicing and collection processes while increasing economies of scale. The ongoing relationship of each credit union to the other credit unions through the mutual purchase and sale of loan participation interests and the shared ownership of the CUSO helps ensure that all of the loans covered by this relationship are being properly managed for the benefit of all parties. This loan participation relation, which has worked seamlessly for a number of years, would be needlessly limited by a 25% cap. While the case of three credit unions with a CUSO should not be the basis for any regulatory change, it is my hope that this specific example might shed some light on the unintended negative consequences of the proposed cap. I suspect that you will discover a number of existing stable and sound mutual loan participation relationships that would suffer under the proposed limits.

In any event, if NCUA decides that a 25% of net worth cap on loan participation purchases from a single loan originator is necessary, I strongly encourage NCUA to permit the Regional Director to waive the cap if circumstances warrant.

Thank you for the opportunity to comment on this proposal. I hope my comments are received in the constructive spirit in which they have been given.

Sincerely,

Marion J. McCaskey
President

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