February 20, 2012

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

Re: Comments on Proposed Rule on Loan Participations

VIA ELECTRONIC MAIL: regcomments@ncua.gov

Dear Ms. Rupp:

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the NCUA Board's proposed rule to amend its loan participation regulation, the relevant provisions of the eligible obligations rule, as well as the rule governing the purchase of assets and assumptions of liabilities. MCUL is a statewide trade association representing 95% of the credit unions located in Michigan. MCUL respectfully requests that the NCUA Board takes the following letter into serious consideration when deliberating the passage of a final rule.

The proposed rule opened with the following statements regarding loan participations:

> "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. Credit unions also use excess liquidity through the sale of participations to increase the availability of credit to small businesses and consumers."

MCUL agrees with the NCUA Board's sentiment, as such programs assist credit unions with concentration risks, diversification of lending risks, the generation of liquidity and earnings, and with the management of the member business lending caps.

However, MCUL strongly urges the Board to withdraw this proposed rule, as it only serves to do the following:

- Contradict the opening statements to the proposal;
- Conflict with the recent concerns and issuance of the Advanced Notice of Proposed Rulemaking (ANPR) regarding NCUA's increased concerns related to credit union access to adequate liquidity sources (RIN 3133–AD96);
- Substantially increase the regulatory burden on credit unions at a time when the industry is already overwhelmed with regulatory changes;
- Severely decrease a sound avenue for credit union earnings and liquidity;
- Usurp the authority of state-chartered credit union regulators and state laws; and
- Devalue the dual-chartering system.

<u>"Systemic Risk" of CUSOs is Overstated</u>

Similar to the rationale employed in NCUA's CUSO proposal (RIN 3133–AD93), part of the NCUA Board's justification for its proposed rule is NCUA's recognition "that loan participations also create more systemic risk to the share insurance fund (NCUSIF) due to the resulting interconnections between participants."

MCUL does not see the "systemic risk" posed by loan participations, seeing as not all credit unions are participating in the same loans, and no evidence was provided in the proposal to demonstrate a causal relationship between loan participation programs and the NCUSIF. If the Call Report data from September 2011 is correct, credit union participation loans account for only 2.3% of total credit union loans (0.2% of depository institution loans) and just 1.3% of total credit union assets (0.08% of depository institution assets). Additionally, participation loan charge-offs were 1.29% of total participation loans.

MCUL believes the NCUA Board is widely overstating its case that loan participation programs present a "systemic risk" in the credit union industry that necessitates this proposed rule. MCUL does not subscribe to the philosophy that a "potential" impact to the National Credit Union Share Insurance Fund (NCUSIF) justifies the provisions proposed; nor the fact that the "potential" impact to the NCUSIF is a systemic one.

<u>Concentration Limits on Loan Participations</u>

The proposed rule would limit loan participation purchases involving a single originator to a maximum of 25% of a federally insured credit union's (FICU's) net worth. No waiver provision was proposed for this limitation.

MCUL strongly believes this proposed provision would have severely negative impact on the loan participation market and hamper the ability of credit union members to obtain credit. MCUL also believes that it should be enough that each credit union performs adequate due diligence prior to purchasing a participation, as well as adequate monitoring throughout the life of each loan. It is not clear to MCUL how the "systemic risk" to the NCUSIF is addressed through this proposed provision, or why it would be necessary to take punitive actions against credit unions employing a properly managed loan participation program by limiting their ability to continue serving members in this capacity.

There is no guarantee that a limited source of originators will pose less of a risk to the NCUSIF than sound due diligence without an arbitrary cap. In fact, such restrictions could even be shown to present an *increased* level of risk, as the level of liquidity would be significantly reduced. MCUL notes that such a result would place credit unions completely at odds with NCUA's recent ANPR regarding the maintenance of access to emergency liquidity (RIN 3133–AD96).

NCUA has expressed an unwillingness to pose arbitrary caps on interest rate and concentration risks. Rather, NCUA has emphasized the need for credit unions to have appropriate risk management processes in place that are commensurate with the size and complexity of each credit union. Specifically, NCUA's most recent Interest Rate Risk (IRR) final rule states as follows:

> “Appendix B acknowledges that it is not possible to establish a ‘‘one-size-fits-all’’ template of IRR management standards and metrics that would be appropriate for all FICUs. Rather, it recognizes that IRR management requires specialized judgments based on each credit union’s business objectives and ability to withstand risk. Appendix B leaves to each affected credit union’s board of directors the obligation and responsibility to make those judgments.”

MCUL believes NCUA should, in the alternative, stress the importance of its Letter to Credit Unions 08-CU-26, which provided an extensive amount of guidance to ensure proper management of a loan participation program by stressing the importance of sound due diligence and monitoring “in a manner commensurate with asset size, complexity, and risk profile” of each credit union.

MCUL strongly urges the NCUA Board to view credit and loan concentration risk with the same perspective as its other risk mitigation strategy guidance and regulations, and leave it up to each individual credit union to determine the levels of acceptable risk based on their respective business objectives. MCUL believes the current regulatory scheme overwhelmingly outweighs the unintended negative consequences of such a limitation. MCUL does not support this 25% cap and urges the NCUA Board to withdraw it along with the rest of the proposed rule.

Application of Rule to All Federally Insured Credit Unions

The proposed rule would extend coverage of the loan participation rules to all FICUs. As the proposed rule states:

> “The proposed rule may supersede provisions of state law, regulation, or approvals, which could lead to conflicts between the NCUA and state financial institution regulators.”

MCUL is becoming increasingly concerned with the NCUA’s approach to regulatory changes. Extending coverage to all federally insured credit unions, as well as tying regulatory requirements to share insurance coverage devalues the benefits of the dual-chartering system. MCUL believes this loan participation proposal would further erode the relationship between the state and federal regulators, as well as between the state regulators and the credit unions they oversee, due to the fact that state regulators would no longer maintain the authority to determine the adequacy of a credit union’s loan portfolio, due diligence process, or whether their respective institutions would be entitled to any waiver opportunities provided under the proposal.

Conclusion

MCUL strongly supports the dual-chartering system and believes its integrity would be seriously impacted with the passage of such a rule. State-chartered credit union regulators play a vital role in ensuring the safety and soundness of the credit union industry and the stability of the NCUSIF. Such a rule would be equivalent to a “no confidence” vote against state chartered regulators and the viability of the state charter option.

NCUA Board Chairman Debbie Matz stated at joint Town Hall Meeting with the Consumer Financial Protection Board on February 8, 2012 that the NCUA supports the dual-chartering system. With all due respect, MCUL believes that this proposal only serves to undermine this sentiment.

MCUL strongly urges the NCUA Board to withdraw its loan participation proposal, as each individual credit union should determine its level of acceptable risk based on its size and complexity, rather than be subject to a "one size fits all" amount of restrictions and limitations.

MCUL appreciates the opportunity to comment on this proposed rule.

Sincerely,

Dave Adams
Chief Executive Officer