



February 21, 2012

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

Comments on NCUA Proposed Rulemaking for Loan Participations

Dear Ms. Rupp:

Thank you for the opportunity to comment on the National Credit Union Administration Board's proposal to place additional restrictions on the use of loan participations, particularly by purchasing credit unions. The League of Southeastern Credit Unions (LSCU) is one of the largest credit union advocacy organizations in the country, representing more than 300 state and federal credit unions, which currently serve over 6 million members.

LSCU urges the NCUA Board to withdraw the proposal as issued for comments.

This proposal will surely add to the stifling regulatory burden placed upon credit unions over the last 4 years and its benefit is profoundly disproportionate to the stated "problem" it alleges to address. The stated purpose of the proposal is to address risks and other associated issues related to loan participations. In the long run it may do so but in the short term the price may be the limitation or even the elimination of sound participation programs that have served credit unions, their members and other credit unions well over in previous years. In our view, the Board's proposal would seriously diminish loan programs and possibly even earnings for some credit unions. Moreover, through the application of concentration and underwriting limitations, it would – contrary to the agency's goal of risk management – actually minimize the ability of credit unions to mitigate risk through diversifying sources and types of loan participations.

LSCU cannot support this proposal given the low risks associated with loan participations and the uncertainty among those in the industry that the proposal as presented for comment will actually reduce risks from loan participations.

We have provided our concerns with the proposal below and in response to these concerns we also provided, on page 5, some recommendations we believe will improve loan participations without negatively affecting credit unions.

Confusing the Loan Participation Process and Reducing Credit Union Loans.

For years, loan participations have been a key component to credit union loan generation. The economy, in the early stages of recovery, relies on programs such as this to aid small businesses, consumers, and members in their daily financial activities. As it is written, the NCUA's proposal will reduce credit unions ability to buy and sell loan participations. Specifically, the proposal places new limitations on credit unions. If adopted, these restrictions would:

- Place a cap of 25% of net worth on loan participations from one originator, with no possible waiver;
- Include a 15% limitation of net worth on loan participations from one borrower;
- Include a requirement that state credit unions selling loan participations must retain a 10% interest in the loan originated (FCUs must already meet this requirement);
- Provide that loan participations be required to adhere to the same underwriting standards that a federal credit union employs when originating a loan;

During the past several months, credit unions of all sizes have voiced their displeasure with this proposal. The reason, credit unions are concerned that the proposal will negatively impact current lending efforts and as a result, earnings. They also recognize that it is being done under the pretense of improving the level of safety and soundness. They know better.

Credit unions we have spoken with are not clear as to why 25% cap of net worth is appropriate and how this limitation was chosen or how it will address risks, except through a reduction in lending totals and fewer participations. We researched the proposed requirements on loan participations and found our bank competitors operating without a regulatory limit on loan participations from one originator. We are not aware that credit unions pose a greater risk than banks regarding loan participations; therefore we consider the proposed limitation unnecessary and detrimental to credit unions.

If adopted as issued, small asset sized credit unions will be greatly affected by the 25% of net worth limit on loan participations from one originator. Lacking the vast resources of their larger counterparts, the limitation is viewed as disruptive to their own programs. These small credit unions are unable to implement monitoring programs for large numbers of loan originators. To remain relevant, small credit union loan participation programs have evolved over the years and now often purchase loans from a single originator. This will likely change or be discontinued if these requirements are enacted.

Credit unions are concerned about the limitations on loan participations involving loans to one borrower or group of borrowers. Like the limits on loans from one originator, NCUA seeks to impose limits involving loans to one borrower that are not required by

the statute or needed in the regulation in order to address substantiated safety and soundness concerns.

The risk retention requirements that would apply to all federally insured credit unions are also a concern, even though the Federal Credit Union Act requires that selling federal credit unions retain a 10% interest in the loans that they sell. It is our understanding that bank regulators do permit banks to sell whole loans and that the ability to do that benefits the seller as well as potential purchasers.

Credit unions are likewise very worried about the provision in the proposal that would limit their loan participation purchases to those involving loans the purchasing credit union is authorized to originate. This provision would severely curtail loan participation programs because it would prevent credit unions from investing in participations that involve loans that the credit union does not make -- even if the credit union has the resources to monitor the performance of the loans. This would undermine the ability of purchasing credit unions to diversify their loan participations and limit the pool of credit unions to which originating credit unions could sell participation interests. From a safety and soundness standpoint, therefore, this provision would be counterproductive.

The foundation of the credit union movement has been to serve each member, but this proposal and the limitations addressed we have offered will make continuing more difficult and much more complicated. In these difficult economic times are we strong enough or prepared enough to take steps that will serve to prevent otherwise worthy loan participations from being sold and purchased.

Questionable Systemic Risk Claims

The National Credit Union Administration (NCUA) has often cited the term "systemic risk" as a reason for revising its regulations. Sometimes regulatory revisions are necessary due to the discovery of verifiable systemic risk, as in the case of the new corporate credit union regulations. But in other cases, it appears that agencies have not done the necessary analysis to justify the change -- so it relies on systemic risk as a justification for the regulatory changes.

We believe this proposal is the most recent example of the NCUA justifying its loan participation proposal by stating that "loan participations ... create more systemic risk to the share insurance fund (NCUSIF) due to the resulting interconnection between participants." While it is true that some credit unions have gotten into trouble through their management of their particular loan participation programs, at this time we reject the notion that loan participation programs pose a systemic threat to the NCUSIF.

Executive Orders Directing Regulatory Relief Considerations

In 2011, President Obama issued Executive Orders directing federal agencies to address and improve their regulatory processes. With the issuance of Executive Order 13579, the President's directed that independent agencies, such as NCUA be in full compliance, consistent with other legal requirements and practical considerations. President Obama's orders supplement Executive Order 12866 issued in September 1993 by President Bill Clinton. That order provides that each agency must, among other things:

- propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs;
- tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives;
- select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits;
- to the extent feasible, specify performance objectives, rather than specifying the compliance behavior or manner that entities must adopt; and
- identify and evaluate all available alternatives to direct regulation.

The directives have been clearly communicated through the President's Executive Orders, and in our view, the NCUA failed to meet the specified terms with this proposal. The proposal fails to determine that the costs will not outweigh the benefits; it does not indicate that the proposal is the least costly alternative; it fails to demonstrate that the agency has considered alternatives or has settled on one that provides the greatest benefits. Finally, the agency has failed to show that if considered compliance alternatives that do not involve yet another in a long line of new rules.

We urge the agency to withdraw the proposal and work to ensure future proposals adhere to the President's Executive Orders regarding regulatory relief.

Weakness in the Waiver Process

In the future, if credit unions are subjected to new loan participation requirements that include concentration limitations and the requirement that loan participations conform to specific underwriting standards, we strongly encourage the NCUA to consider standards through which credit unions can obtain waivers from these provisions.

Recently, the agency asked for comments concerning its waiver approval process. We support the efforts of the agency to determine the effectiveness of its waiver program. We believe that credit union feedback is essential to improved agency performance. At this particular time credit union feedback indicates the consistent presence of issues

such as delayed agency responses to requests for waivers, limited communication related to denied waiver applications, and an overall lack of examiner feedback concerning waiver applications. We are aware that others are working to determine how the agency's waiver process can be improved and we are encouraged by these efforts and those of the agency to seek measurable improvement.

We are very concerned however, that the proposal would not provide a credit union the ability to obtain a waiver from the 25% of net worth limitation on loan participations from one originator. We again voice our opposition to this rule, however, if the agency enacts the rule we urge the agency to ensure that it is not contrary to the safety and soundness standards established to protect credit unions from high risk activities.

LSCU Recommendations

The agency is sure to receive comments indicating that portions of the proposal have merit. We agree; however there is room for improvement in the proposal and we are especially encouraged by the alternative of issuing an updated supervisory letter rather than imposing yet another new regulation. Loan Participation issues involving concentration limits and underwriting standards are better addressed by credit unions with evaluation from examiners during the course of their regular process. Additional regulatory requirements are unwarranted and unnecessary.

In our view, rather than proceeding with new regulatory restrictions, NCUA could take the following steps to achieve the agency's goals of improved management of credit union loan participation programs. As we stated before, The NCUA should update its 2008 Supervisory Letter regarding loan participations and distribute the material to all credit unions and examiners. In that letter, expectations aimed at credit unions involved in the sale and purchase of loan participations should be detailed with emphasis on recent agency concerns. It should be made abundantly clear that board policies addressing salient points of the proposal are necessary for participation as is the authority of the board to set limits that coincide with the credit unions operations, resources, and ability to manage the risk associated the participations. Standards for internal due diligence is critical for both initial and ongoing monitoring are a necessity for credit union programs.

Additional training for agency examiners on the complexity of loan participations should be initiated and credit union leagues and credit unions should be compelled to make use of webinars and other communications, to credit unions' attention on the internal responsibilities present when engaging in loan participations.

Given the fact that loan participations are not a systemic risk to the credit union system, we believe these steps, which provide a reasonable alternative to a new regulation, would sufficiently address concerns and facilitate the ability of credit union boards, management and examiners to fulfill their proper duties when it comes to loan participations.

Conclusion

We urge the NCUA to withdraw this proposal rather than continue forward with efforts to enact its provisions. LSCU and credit unions that comprise our membership are concerned that the proposal, if adopted will serve to reduce the number of sound loan participation programs available to institutions at a time when lending activities are critical to a national economic recovery. We strongly recommend that the agency consider all alternatives available to address safety and soundness issues and do so with an eye toward using the least disruptive way possible to accomplish the stated goal, reducing loan participation risks among credit unions. We welcome the opportunity to comment on the proposal and discuss our concerns and recommendations.

Thank you for the opportunity to comment on this proposal. The comments received by the agency in response to published proposals are invaluable to the process of securing a mutually beneficial outcome. If you have any questions concerning our position on the issue, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick La Pine', with a stylized flourish.

Patrick La Pine
President and CEO