PENNSYLVANIA
CREDIT UNION
ASSOCIATION
4309 North Front Street Harrisburg, PA 17110 Phone: 800-932-0661 Fax: 717-234-2695

February 21, 2012

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

Re: Notice of Proposed Rulemaking, Loan Participations

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) is a state-wide advocacy organization that represents a majority of the 524 credit unions located within the Commonwealth of Pennsylvania. PCUA appreciates this opportunity to comment on the National Credit Union Administration's (NCUA) Notice of Proposed Rulemaking that addresses Loan Participations.

PCUA enlisted the assistance of its Regulatory Review Committee and State Credit Union Advisory Committee (the Committees) to review the Notice of Proposed Rulemaking. The Committee members are the chief executive officers or senior management staff of credit unions representing all peer groups based on asset size. The comments contained in this letter reflect the input of the Committees and PCUA staff.

Overall, we do not support the proposed rule and urge NCUA to withdraw it. First, we do not agree that loan participations pose systemic risk to the National Credit Union Share Insurance Fund (NCUSIF). NCUA makes a broad statement regarding systemic risk in the background and summary to the proposal. However, the agency offered no additional support requiring a conclusion that such transactions expose the NCUSIF to systemic risk. On the contrary, we perceive loan participations as a vital risk management tool, particularly in an environment where investment yields and loan margins are minimal.

Secondly, we do not support extending the rule to federally insured, state-chartered credit unions in the manner outlined in the proposal. NCUA cites delinquency data as justification for imposing additional regulations on state-chartered credit unions. The statistics that NCUA relies upon reveal only a modest difference in delinquency between federal and state-chartered credit unions. NCUA could resolve any safety and soundness concerns over loan participations within state-chartered credit unions by working in concert with state regulators. Consequently, we see no justification for extending a restraint and impeding the exercise of powers conferred on credit unions by state law.

25% Limit on One Originator

We do not support the proposed twenty-five percent (25%) limit on the purchase of loan participations from one originator. In our view, this limit squelches lending activity and the risk mitigation effects of loan participations. If finalized, the limit can defeat the purpose of CUSO arrangements. It places an undue burden on smaller-asset sized credit unions. And, it treats all types of loan participations in the same manner, ignoring risk mitigation factors such as insurance or government guarantees.

The proposed 25% limitation on purchases of loan participations defines the outside limit on the extent to which a federally insured credit union can engage in such transactions. We can appreciate the NCUA's desire to enhance safety and soundness. However, we maintain that such a limitation takes too great a toll on lending activities and balance sheet management. Once a federally insured credit union reaches the limit from one originator, it will be compelled to explore offerings from other originators. Where one originator has a proven track record of quality underwriting and lending standards, the rule forces participants away from that originator. Consequently, eventually, those credit unions seeking to buy participations are going to encounter products of lower quality or greater risk as they explore the market place. At the same time, realizing that such caps are in place, originating credit unions will shrink the amount of available credit to the extent that they cannot retain the full amount of a given loan on their balance sheet. In the context of member business loans, which tend to be larger than consumer loans, it is reasonable to anticipate that buyers will reach the cap quite quickly. Such ceilings on the activity diminish the amount of available credit, as well as, opportunities to mitigate risk through the purchase or sale of loan participations.

Pennsylvania's market for member business lending is greatly enhanced by the presence of two CUSOs in addition to some strong proprietary programs. In the context of the CUSOs, the participants rely on the standardized or universal underwriting performed by the CUSO. As a result of the operation of the service agreements between the CUSO and participating credit unions, participants are fully aware of the standards and credit quality that can be expected of a loan that has been vetted by the CUSO. These attributes can enhance safety and soundness as well as the desirability of engaging in loan participations for credit facilities underwritten by the CUSO. The proposed cap on purchases from one originator diminishes the value and safety and soundness benefits of these CUSO arrangements. Likewise, those credit unions with in-house or proprietary member business lending programs sell participations. They work hard to establish their credibility and the credit quality of their offerings. The cap shrinks the pool of available, purchasing credit unions as such participants reach the limit contained in the proposed rule.

Smaller asset-sized credit unions will experience a disproportionate impact from the limits on purchases from one originator. This peer group will reach the limit relatively more readily than larger credit unions. As a consequence, they will be forced away from relationships where they can expect a sound investment and may be forced to stop purchasing loan participations if additional and suitable originators are not available.

While we do not support a cap, we anticipate that NCUA will establish some type of limitation in the final rule. If NCUA adopts that approach, we urge NCUA to consider the type of credit underlying the participation arrangement. Loans do not present the same risk profile. For example, many of the student loan products offered by credit unions are insured. Small business loans might be guaranteed by the Small Business Administration or other agencies or subdivisions of the federal or local government entities. Accordingly, to the extent a guaranty or similar risk mitigating factor is present in a loan that is participated, the cap should be reduced or eliminated. For example, those loans that are fully insured or fully guaranteed should be exempt from a percentage-limitation on one originator.

Terms of the Loan Participation Agreement

The proposed rule establishes requirements for the terms of loan participation agreements. The terms require the originating entity to retain a ten-percent (10%) stake in the participation for the life of the loan. It sets other requirements related to underwriting, access to documentation, collections, and identification of the loan documents. We have no objection to NCUA outlining such criteria as general guidance. The Committees explained that they include such terms in their loan participation documentation. A Letter to Credit Unions or a similar policy statement would suffice. We are alarmed by the trend of federal government agencies dictating the terms of agreements by and between private parties. The terms of a contract do not translate into matters of safety and soundness. Any agency of the government should avoid interfering with freedom of contract at all costs.

Sincerely,

PENNSYLVANIA CREDIT UNION ASSOCIATION

James J. McCormack
President/CEO

JJM:RTW:llb

cc: Association Board
Governmental Affairs Committee
R. Wargo
M. Wishnow
C. Mihalik
M. Dunn