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February 21, 2012

Via Email: regcomments@ncua.gov

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

Re: Proposed Amendments to the NCUA Loan Participation Rules
(12 CFR Parts 701 and 741)

Dear Ms. Rupp:

The Mountain West Credit Union Association, which serves the needs of over 150 state and federally chartered credit unions throughout Arizona, Colorado, and Wyoming, appreciates the opportunity to comment on NCUA's proposal to amend its loan participation rules. NCUA's proposal raises several significant concerns for both state and federally chartered credit unions that we think should be addressed in the final version of the proposed rule.

I. <u>The Benefits of Loan Participations to the Credit Union Industry</u>

Loan participations provide distinct advantages to credit unions that sell and purchase loans. Participations provide credit unions that are nearing the member business lending cap a path to sell loans in order to stay under the current cap, provide credit unions of all sizes with geographic and loan type diversification, and often result in a favorable loan yield that is higher than other forms of credit union investment. In a 2008 Letter to Credit Unions, NCUA acknowledged the beneficial nature of loan participations to credit unions, citing participations as a method to manage interest rate, liquidity, and credit risks, a method to achieve balance sheet diversity, and a method to increase a credit union's ability to serve its member-owners. (*NCUA Letter to Credit Unions, 08-CU-26, November 2008).* It is in the best interests of the credit union industry to retain the ability to purchase loan participations and retain a system of reasonable regulation that does not inhibit the ability of credit unions to take part in the process. We believe that some of the proposed revisions would adversely affect the volume of loan participations and unduly punish credit unions that are successfully purchasing loan participations due to the failures of a few in the industry.

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II. Loan Participation Requirements: The Meaning of Underwriting Standards

The proposed rule would require that a credit union only participate in loans that they are "empowered to make" under state/federal regulation and its internal loan policies. The proposal further imposes a requirement that a credit union only participate in loans that were originated with underwriting standards that are at least as stringent as the standards the credit union would utilize to make its own loans. This proposed standard is vague and leaves credit unions to interpret the meaning of "underwriting standards". Does this proposed definition apply to categories and types of loans or is the scope much narrower? One could reasonably interpret this requirement to mean that if a credit union does not have experience in underwriting the type of loan it wishes to participate in; the credit union would be prohibited from participating in the loan.

As an example, small credit unions that are unable to make member business loans as defined by NCUA Rule 723 often participate with other credit unions in order to make business loans. If a small credit union does not have the experience or expertise on staff to make member business loans and as a result, is unable to participate in business lending, this would adversely impact that credit union's lending portfolio as well as its ability to engage in business lending. Additionally, a credit union that has not engaged in a particular type of lending, condominium loans, for example, may still have the institutional knowledge and ability to underwrite this type of loan. A reading of the proposal suggests that a credit union lacking in condominium lending experience would be prohibited from participating in this type of lending. If this is not the intent of NCUA's proposed rule, we urge the Agency to develop a reasonable and clearly stated definition of underwriting standards that is not overly burdensome and exclusionary.

III. Loan Participation Requirements: Concentration Limits

NCUA seeks to establish two separate concentration limits: twenty-five percent (25%) of net worth for single originator loans and fifteen percent (15%) of net worth for one borrower or a group of associated borrowers. Although the later limit seems consistent with established limitations on making member business loans to one member or a group of associated members, the twenty-five percent (25%) concentration limit seems arbitrary and unduly restrictive to credit unions. If NCUA's rule is enacted as proposed, a credit union's ability to develop and maintain close, trusted relationships with the same seller would be impacted. This could potentially result in increased risk to credit unions and the share insurance fund if credit unions are required to form multiple relationships with sellers that are not well known to them.

In lieu of concentration limits, NCUA should consider allowing credit union management to exert control, exercise due diligence, and set reasonable concentration limits based upon the individual needs and financial standing of their credit union. Concentration limits will negatively impact the operation of existing CUSO(s) and hinder CUSO formation in the future. This only serves to undermine the collaborative spirit of

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credit unions and forces credit unions to seek relationships with partners outside of the credit union industry.

IV. Loan Participation Requirements: Agreements

Clearly, it is in the best interests of credit union industry to have a clear agreement that outlines the responsibilities and duties of the selling and purchasing parties, the location and custodian of the loan documents, and other relevant provisions. However, a provision that requires the originating lender to retain at least a ten percent (10%) interest in the loan during the entire life of the loan is burdensome to credit unions. It limits credit union flexibility to move loans off of their books, could stall the development of CUSO(s), and could lead to future liquidity concerns for credit unions. An alternate and less onerous option would be to create a less stringent standard. Credit unions could be required to retain an interest for a lesser period of time, perhaps the first five to seven (5-7) years of a loan.

V. Impact to Credit Unions

For those credit unions that have demonstrated the ability to participate in loan participations without risking the health of the credit union and the stability of the share insurance fund, concentration limits and the uncertainty of the underwriting standards requirement could lead to less loan participations in the industry. Credit unions that have developed trustworthy and profitable relationships with a limited set of sellers would be forced to seek potentially risky relationships with sellers that are foreign to them. The concentration limits, particularly the twenty-five percent (25%) limit, could lead to less CUSO formation and operation and treats all credit unions the same, no matter their expertise, financial status, and experience with loan participations. We urge NCUA to clarify the meaning of “underwriting standards” rather than leaving it to the interpretation of field examiners and credit union management. A theme that resonates throughout our member credit unions, no matter the size, is the adverse impact that increased regulation has had on the overall operation and well-being of the credit union industry. We encourage NCUA to strike a balance between safety and soundness and the benefits of loan participations to the credit union industry. Once again, we appreciate the opportunity to comment.

Sincerely,

/s/ Nicole M. Soto

Nicole Soto
General Counsel