Missouri Credit Union Association

August 25, 2014

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314–3428

RE: Don Cohenour – Asset Securitization (RIN 3133–AE29) and
Proposed Rule—Safe Harbor (RIN 3133–AE41)

Dear Mr. Poliquin:

On behalf of the 1.3 million credit union members, the Missouri Credit Union Association (MCUA) would like to take this opportunity to express our views on possible amendments to the proposed rule of the National Credit Union Administration (NCUA) Board's Asset securitization and safe harbor proposed rules.

MCUA is submitting a single comment letter addressing the asset securitization and safe harbor proposed rules because of their interconnection.

I. Asset Securitization Proposed Rule

FCU Act Provides Authority for Private Securitization

The Federal Credit Union (FCU) Act authorizes credit unions to sell loans but does not specifically authorize securitization. Nonetheless, the authority for federal credit unions to securitize their own loans is consistent with powers provided by Congress for credit unions to make and sell loans. Admittedly, securitization, which involves the packaging of loans or interests in loans and selling them to investors as asset-backed securities, is more complex than making or selling individual loans but the nature of the activity is wholly consistent with current credit union activities.

In addition to authorizing loan securitizations, the proposal would empower federal credit unions to create special purpose vehicles (SPV) to hold the assets collateralizing the securities. MCUA supports this approach, which parallels authority for banks in this country and would allow credit unions to create issuing entities, which are necessary to insure investors that the underlying assets are not reachable by the creditors of the credit union should the credit union become insolvent.

Securitizations Should Not be Limited to Loans an FCU Has Originated

The proposal would limit credit unions' authority to securitize loans to loans originated by a sponsoring FCU. This restriction would limit the benefit of the rule needlessly and we urge the agency to remove it from the final rule. As far as we can determine, community banks (and larger ones) are not under this limitation, and we do not believe the agency has provided sufficient rationale as to why credit unions should be treated differently in this regard.

Allowing credit unions to securitized loans not originated is important for several reasons. First, this authority increases FCU access to the market by expanding opportunities to securitize loans. The flexibility to purchase loans to facilitate a securitization, will give credit unions without enough originations to facilitate a securitization, when economically viable. This would increase opportunity to securitize loans for FCUs that do not have enough originations of a particular loan type to sponsor securitization transaction. Second, the restriction would apply even if loans that are purchased are re-underwritten based on the credit union's loan policies and creditworthiness standards. Loans not originated but underwritten by an FCU represent no more risk than loans originated by a credit union. Further, credit unions may also hold loans that they have purchased for other reasons prior to contemplating sponsoring a securitization. Credit unions should be able to include these loans in a securitization transaction for risk management.

The proposal needs to provide a clear definition of originator. Loans originated by an FCU's CUSO and indirect lending programs should be addressed in an originator definition. We think that NCUA did not intend to specifically limit loans originated by CUSOs but the lack of an originator definition leads to confusion. NCUA should take this opportunity to provide a definition of originator that does not capture entities that merely serve as a conduit to the lending process and have no economic interest in a loan.

Derivatives

NCUA should authorize the use of interest rate swaps when necessary to align interest rate risk between the assets held in SPVs and the securities issued to investors. This is usually necessary when issuing a fixed rate security when the underlying assets have adjustable rates. NCUA would likely need to amend Part 703 to allow derivatives to be used in securitization transactions.

Risk-Based Capital

A final rule needs to detail risk-based capital (RBC) issues that could result from the sponsoring securitizations. Securitized mortgages should not be included in concentration risk thresholds. NCUA should also provide regulatory capital relief for pass-through securitizations.

Residual and Retained Interests

The proposed rule would grant FCUs authority to hold residual interests that are the outcome of sponsoring a securitization transaction. Part 703 does not authorize FCUs to invest in these securities; however, the proposed rule would grant FCUs authority to hold these assets. NCUA needs to clarify if FCUs have authority sell these assets.

The proposed rule limits the amount of residual interests and retained interests that an FCU may carry to 25% of the FCU's net worth. We support this limitation for now. We do, however, think that this may be more effectively address in an RBC rule. This limitation should not present an issue for credit unions in the near term.

Implicit Recourse

The proposed rule prohibits FCUs from providing implicit recourse to a securitization. A final rule should clarify if NCUA intends this prohibition to comply with Interagency Guidance On Implicit Recourse In Asset Securitizations from the banking regulatory agencies. NCUA should detail agreements that are not prohibited by the implicit recourse restrictions.

Credit Union Service Organizations (CUSO)

As mentioned above, the rule needs to specifically address the role of CUSOs in asset securitization. Footnote 7 stated that securitization is not a pre-approved CUSO activity. NCUA should reconsider whether CUSO can act as sponsors. Furthermore, the extent to which this rule would affect CUSO authority to securitize should be addressed so that credit unions can determine the role that an FCU's CUSO could play to facilitate securitization transactions. NCUA should address also address whether multiple FCUs could utilize a CUSO to securitize loans from multiple credit unions or whether credit unions can participate with other credit unions are banks multi-sponsor securitizations.

Other issues

Our members have expressed concern that this rule could affect government sponsored enterprise (GSE) securitizations. NCUA should clarify that this rule does not apply to GSE securitizations and only applies to private securitizations.

Clean-up calls are customary in private-label securitizations. They typically give the sponsor the right to purchase all of the remains assets in certain instances. NCUA's rules allow for purchase of these obligations and thus they should be address in a final rule to ensure that credit unions can facilitate securitizations that meet market expectations.

II. Safe Harbor Proposed Rule

In conjunction with the proposed rule on securitization, NCUA issued a proposal that would create a safe harbor for assets transferred by a credit union in connection with a securitization or participation. The safe harbor is being proposed to encourage investors to purchase credit union securitized loans. We support the safe harbor as proposed. We believe there would likely be little if any investor appetite for credit union securitized assets absent a safe harbor.

Section 709.10 of NCUA's rules governs the authority of the NCUA Board, when acting as conservator or liquidating agent of a federally insured credit union (FICU), to disaffirm or repudiate transfers of assets by the FICU in connection with a securitization or participation. Section 709.10 was issued to provide a safe harbor by confirming "legal isolation" if all other standards for off balance sheet accounting treatment have been met.

We agree with NCUA's characterization of the potential harm that could be caused to an investor of a credit union securitization if no safe harbor is in place. Thus, in light of 2009 GAAP modifications, we believe the proposed safe harbor is necessary.

Also identical to the FDIC safe harbor, NCUA's proposal requires that, for all securitizations, the sponsor must retain an economic interest in at least five percent of the credit risk of the financial assets. The proposed rule provides that upon the effective date of a final QRM rule as required by section 941(b) of the Dodd-Frank Act, the QRM rule would exclusively govern the requirement to retain an economic interest in a portion of the credit risk of the financial assets under NCUA's proposed rule.

We support the proposed risk retention requirement of the safe harbor, which as stated by NCUA is consistent with the Dodd-Frank Act. In addition, we appreciate NCUA's willingness to adopt a rule on securitization and a safe harbor prior to issuance of a QRM rule by other agencies. We believe it is appropriate to move forward with the NCUA's proposal and, as noted above, provide flexibility for a regulation that is yet to be promulgated.

As always, we appreciate the opportunity to respond to this proposed rule. We will be happy to respond to any questions regarding these comments.

Sincerely,

Don Cohenour

Don Cohenour
President