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Credit Union National Association

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August 25, 2014

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

Re: Comments on Proposed Rule—Asset Securitization (RIN 3133–AE29);
Comments on Proposed Rule—Safe Harbor (RIN 3133–AE41)

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments regarding the National Credit Union Administration (NCUA) Board's proposed rules on asset securitization and safe harbors in connection with such securitizations. By way of background, CUNA is the country's largest credit union advocacy organization, representing our nation's state and federal credit unions, which serve over 100 million members.

CUNA encourages the agency to use the full extent of its incidental power authority to provide evolving opportunities for credit unions to grow and to operate efficiently, so that they remain competitive in the financial services marketplace.

In that connection, CUNA strongly supports the objectives and most provisions of both proposed rules and commends NCUA for proceeding with these rulemakings. We also address several recommendations we urge the agency to include in the final rule on securitizations that will improve its usefulness to credit unions without posing additional risks to the National Credit Union Share Insurance Fund (NCUSIF).

CUNA is submitting a single comment letter addressing the proposed rules because of their interconnection.

I. Asset Securitization Proposed Rule

<u>FCU Act Provides Authority for Private Securitization</u>

The Federal Credit Union (FCU) Act authorizes credit unions to make and sell loans but does not specifically authorize securitizations. Nonetheless, the authority for credit unions to securitize their own loans is consistent with powers provided by Congress to originate 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 and sound risk mitigation. For the following reasons, we agree with NCUA's legal analysis that securitization of credit union loans meets all three parts of the agency's test for a permissible incidental power.

First, under NCUA's approach to incidental powers, an activity must be convenient or useful in carrying out the mission of credit unions. Loan securitization would facilitate credit union lending, a core function of credit unions, by providing credit unions with access to liquidity to fund additional loans and lending products. Securitization could also enhance the financial strength of a credit union by increasing fee income that could be used to build net worth and risk-based capital.

Second, an activity must be a logical outgrowth of other products and services that are part of the mission of credit unions. Selling loans repackaged as securities is closely related to making and selling individual loans.

Third, an activity may not involve risks that are materially different from those the credit union has already undertaken. The risks involved with loan securitizations are very similar to the range of risks credit unions must already manage in making and selling loans.

Further, not only is loan securitization authority consistent with NCUA's incidental powers rule, it is wholly consistent with sound financial management, as loan securitizations could help participating credit unions mitigate risks, including balance sheet risk. Such authority could also help reduce the exposure of the NCUSIF and increase system liquidity.

For these reasons, we support NCUA's legal conclusion that the power to securitize assets is permissible under the FCU Act.

In addition to authorizing loan securitizations, the proposal would empower credit unions to create special purpose vehicles (SPV) to hold the assets collateralizing the securities. CUNA supports this approach, which is also based on the agency's incidental powers, and parallels authority for banks in this country. Such authority would allow credit unions to create issuing entities, which are necessary to insure investors that the underlying assets are not reachable by creditors 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 those it originates. 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 securitize loans they have not originated would be important for several reasons. The ability to purchase loans for securitization will give credit unions without enough originations of a particular loan type increased opportunities to package their own loans.

In addition, credit unions may 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.

If NCUA's fear is that credit unions will purchase loans that carry undue credit risks, then rather than prohibiting the purchase of loans for securitization, the agency should emphasize credit unions' obligations to perform proper due diligence in the purchase of loans.

Even if NCUA does not allow other loans to be purchased for securitization generally, it should permit a credit union to purchase loans that it re-underwrites to be part of a securitization pool. The proposal does not expressly provide for that, and the final rule should, at a minimum, clarify that such action is permissible. Loans that are not originated but are purchased and then underwritten according to the credit union's policies and standards should present no more risk to the credit union than the loans it originates.

We also recommend the agency provide a clear definition of "originator." For example, loans originated by a credit union service organization (CUSO) should be addressed in the definition. We think that NCUA did not intend to limit loans originated by CUSOs specifically, but the lack of an "originator" definition leads to confusion regarding their use. (We discuss CUSO issues further below.) Such a definition should also clarify that loans originated through indirect lending are permissible for securitizations. Likewise, NCUA's definition should address loans acquired through a merger. For the purpose of securitization, these loans should be treated as if originated by the continuing, securitizing credit union.

<u>Derivatives</u>

CUNA supports the use of interest rate swaps when necessary to align interest rate risks between the assets held in SPVs and the securities issued to investors, and we urge the agency to provide for this in the final rule. NCUA would also likely need to amend Part 703 to allow derivatives to be used in securitization transactions.

<u>Risk-Based Capital</u>

The final risk-based capital (RBC) rule should address related issues that could result from sponsoring securitizations. In our view, securitized mortgages should not be included in concentration risk thresholds. Also, NCUA should provide regulatory capital relief for pass-through securitizations.

Residual and Retained Interests

The proposed rule would grant authority to hold residual interests that are the outcome of sponsoring a securitization transaction. Part 703 does not authorize investments in these securities, and it would be useful for NCUA to clarify that credit unions do have authority to sell these assets.

The proposed rule limits the amount of residual interests and retained interests that a credit union may carry to 25% of its net worth. The agency has not provided sufficient analysis for stakeholders to assess whether this is an appropriate level. In any event, however, this issue may be more effectively addressed in the final RBC rule.

Implicit Recourse

The proposed rule prohibits credit unions 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 bank regulators. NCUA should detail agreements that are not prohibited by the implicit recourse restrictions.

Credit Union Service Organizations (CUSO)

As mentioned above, the final rule should specifically address the role of CUSOs in asset securitization. In our view, loans originated by a credit union's CUSO should be allowed to be included with loans the credit union securitizes through a SPV that is not the CUSO. Also, NCUA should allow CUSOs to act as sponsors. Footnote 7 stated that securitization is not a pre-approved CUSO activity but we think it should be, both in originated loans that could be securitized by a credit union or allowing CUSOs to act as sponsors. NCUA should also address whether multiple credit unions could utilize a CUSO to securitize loans and whether credit unions can participate with banks to facilitate 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.

NCUA's rules allow for the purchase of clean-up call obligations and they should be addressed in the final rule to ensure that credit unions can facilitate securitizations that meet market expectations.

Also, we encourage NCUA to amend Section 701.21(i) to permit forward hedging. This would allow credit unions to enter into hedging transactions for loans they plan to include in a securitization.

II. Safe Harbor Proposed Rule

NCUA is proposing a "safe harbor" under a separate rulemaking to encourage investors to purchase credit unions' 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 such a safe harbor.

In 2009, the Financial Accounting Standards Board amended provisions of U.S. generally accepted accounting principles (GAAP) that affected whether an entity must be consolidated for financial reporting purposes, thereby subjecting many entities to GAAP consolidation requirements. A conservator or liquidating agent generally makes a determination of what constitutes the property of a FICU based on its books and records. Given the 2009 GAAP modifications, there may be circumstances in which a sale transaction would continue to be reflected on the books and records of the FICU because the FICU or a CUSO continues to exercise control over the assets.

Thus, for securitizations that are consolidated on the books of a FICU, the proposed rule would provide a meaningful safe harbor irrespective of the legal characterization of the transfer. As the Federal Deposit Insurance Corporation's rule provides, NCUA's proposal would requires that the sponsor retain an economic interest in at least five percent of the credit risk of the financial assets. When the final "qualified residential mortgage" (QRM) rule required by the Dodd-Frank Act takes effect, it would exclusively govern credit risk retention for credit union assets securitized.

Conclusion

Thank you for the opportunity to express our views on NCUA's asset securitization and safe harbor proposals. We support both rules. We also urge NCUA to adopt the changes we are recommending to ensure that the final rule is as useful to credit unions as possible, without jeopardizing the safety or soundness of them or the NCUSIF. If you have any questions about our comments, please do not hesitate to contact me.

Sincerely,

Mary Mitchell Dunn

Mary Mitchel Dunn
CUNA SVP & Deputy General Counsel