ARIZONA CREDIT UNION LEAGUE, INC.
A Part of the Arizona Credit Union System

February 17, 2006

VIA E-Mail

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

Re: Request for Comments- Third Party Servicing of Indirect Vehicle Loans

Dear Ms. Rupp:

The Arizona Credit Union League, with 61 member credit unions throughout the State of Arizona, appreciates the opportunity to comment on the Board's request for comments regarding the Notice of Proposed Rulemaking, Third Party Servicing of Indirect Vehicle Loans.

The League would like to commend the NCUA on its efforts to protect federally insured credit unions, and agrees that credit unions need to understand the nature and risks of the activities in which they engage.

As a preliminary matter, the League's subsidiary, ACUL Services, Inc., has and continues to maintain a contractual marketing relationship with Centrix Financial, one of the larger vendors providing the services covered by the regulation. Our primary concern, as always, is for the safe and sound operation of our member credit unions and we encourage the Agency to utilize its full enforcement powers to eliminate improper activities in specific vendor-credit union relationships. Having said that, the League is committed to allowing credit unions to exercise their autonomy to serve their members to the fullest extent allowed by law.

Utilizing a Regulatory Approach to the Issue

The Agency has issued the Risk Alert on the topic, as well as prior guidance on entering into and maintaining third party vendor relationships. The issuance of this proposal in regulatory form seems overreaching. In the NCUA's general

enforcement powers to maintain the safety of the insurance fund, enough of an arsenal exists to prevent a credit union from engaging in activities that are not safe and sound. The regulation simply manages credit unions to the lowest common denominator.

The effect of the regulation seem to be to encumber one tool in the credit unions' "tool box" to manage their ALM process. The mix of various types of lending in each credit union's portfolio, as well as its investments, represent a specific strategic decision of the credit union to manage its balance sheet. To begin to set concentration limits on one asset could be viewed as the first step to micromanage the entire ALM process.

Outside data processors maintain a significant impact on many of the same risk issues described in the Proposal. It would be a slippery slope for the Agency to regulate each element of credit union operations to the level contained in the proposal, relating to the non-regulatory due diligence requirements and the regulatory concentration limits.

As the Agency begins to dictate the contents of the contractual relationships among insured credit unions and their vendors, there is a concern that the Agency is practicing law on behalf of the credit unions. A credit union's own counsel should advise his or her client about the legal effect of contractual terms and the credit union should have the right to make the business decision on acceptance of those terms, consistent with its risk management policies.

To some degree, it would appear that the impetus of the regulatory approach to the issue is to make enforcement processes more convenient to the NCUA, instead of requiring proof of a safety and soundness issue in a specific credit union. We would submit that such a rationale is not the proper use of the regulatory process.

Specific Provisions in the Proposed Regulation

As the Agency continues with the regulatory approach to the issue, there are a few areas of concern for which we would like to provide comments.

Exempt Relationships

The exclusion of federally insured institutions and their wholly owned subsidiaries from the definition of "third party servicer" could be expanded to include those subsidiaries that are not wholly owned. For example, current CUSO regulations

permit the same regulatory oversight for partially owned CUSOs as they do for wholly owned ones. It would appear that broadening the definition would not increase any safety and soundness concerns of the NCUA.

The phrase “pursuant to the terms of a loan” should be clarified to ensure that lock box relationships are not inadvertently covered by the regulation. Many loan agreements contain the ability of the lender to direct where (and to whom) payments are sent. The act of receiving payments and distributing them to the lender could constitute the basis of the lock box relationship as well as the type of relationship that is at the core of the proposed regulation.

Additionally, a servicing institution in a Participation arrangement could be covered, if such an institution were not federally insured. It would appear that an insured credit union acquiring a participation interest in a loan made and serviced by a non-federally insured credit union would be better regulated under Part 701.22.

Concentration Limits

The analogy of loans acquired in the third party serviced indirect lending relationship to Asset Backed Securities (ABS) for the purpose of concentration limits would seem to be misplaced. A better analogy would be to participation interests acquired by the credit union. In both instances, the credit union reviews and de facto adopts the underwriting standards of the originating lender, and allows a third party to service the participated loan. In fact, in the indirect lending relationship, the entire loan is in the credit union’s portfolio, not just a percentage of the loan. An additional analogy exists in the Member Business Loan regulations, under which a third party consultant may be utilized to assist in the underwriting standards for specific types of loans.

It would appear to be appropriate to utilize RegFlex authority to ease the regulatory burden for credit unions to request waivers to the concentration limits set forth in the proposal. Allowing a RegFlex credit union to increase the concentration limits or shorten the initial timeframe for the lower concentration limit without the burden of going through the waiver process would be consistent with allowing well managed credit unions to better manage their credit union with less regulator involvement. The time and expense in seeking a waiver could be better spent in serving the credit union’s members.

In that participation loans are as analogous to the indirect third party serviced loans subject to the proposed regulation as are ABS, it may be appropriate to look to NCUA's Participation regulation for concentration limits. Under applicable NCUA regulations, Part 701.22, concentration limits are related to loans to a single borrower, not to a percentage of net worth. We would recommend a similar, consistent approach for indirect third party serviced loans.

As a final point, it would appear that the proposed regulation is somewhat inconsistent with other messages from the Agency on serving the underserved. A majority of the covered third party indirect loans relate to subprime borrowers. The proposal restricts the use of this product to increase the service to the underserved in a community.

The League appreciates the Board's efforts in maintaining the safety and soundness of insured credit unions. We would encourage the Board, in conjunction with such efforts, to continue to strive to increase the ability of credit unions to serve their members effectively.

Please feel free to contact the undersigned for any further information or questions.

Sincerely,

/s/

Paul D. Cruikshank
General Counsel