August 25, 2008

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

Re: Comment on Member Business Lending Regulation and Loan Participation Regulation

Dear Ms. Rupp:

This is a comment letter by the National Association of Credit Union Services Organizations ("NACUSO").

Loan Participations. The loan participation rule is outdated. Loans are being originated by CUSOs which was not contemplated by NCUA when the loan participation regulation was last revised. In order to survive, the credit union industry is aggregating operational services to obtain economies of scale, including lending. CUSOs are used to originate business loans, consumer mortgage loans, student loans and, soon, credit card loans. CUSOs are used to originate and/or hold business loans as a means to manage the aggregate regulatory cap.

Originator Retention of a Minimal Face Amount of the Loan. Under Section 701.22(c)(2), a federal credit union must retain ten (10%) percent of the face amount of the loan it originates. We have been told by NCUA that this requirement is to insure that the credit union has sufficient “skin in the game” as incentive to underwrite and service a loan in a manner that will serve both its own interest as well as the interest of the other credit union loan participants.

The first request is to lower the minimum holdback for originating credit unions to five (5%) percent. Would a credit union not tend to act in its own self-interest if it retains 5% and not 10% of the face value of a loan? It is contrary to the self-interest of the originating credit union to originate and sell sub-standard loans and thereby burn its bridges with other credit union loan participants, especially when the amount earned by the originator on the sale of the loan participations is usually less than 5% of the face value of the loans. If the regulation’s purpose is to insure that the originator will be serving its own self-interest by originating quality loans, that purpose can be accomplished by a 5% holdback requirement.

The second request is to consider the CUSO in compliance with the minimum holdback percentage if either the CUSO or its controlling credit unions have the minimum holdback

amount. While the CUSO can be used to originate loans, the CUSO investment limitation is a significant restriction on a CUSO's ability to lend. If the CUSO has a minimum holdback amount in loan participations it has with credit unions, that would be a further restricting factor on the CUSO. Referring back to the policy goals of the regulation, the CUSO would have sufficient self-interest in the loan if either the CUSO or its controlling credit unions had the minimum holdback. In other situations, the NCUA has recognized that a CUSO will act in the best interest of its controlling credit unions. That principal can be applied here to best leverage the limited resources of the CUSO. If the CUSO loan originator remained in a loan participation, it would not need to meet the minimum holdback percentage as long as its controlling credit unions did so. If the originator was not a CUSO, the minimum holdback percentage would apply to the originator.

The third request is concerned with a situation where the loan was originated by another lender (e.g. a CUSO) and a loan participation interest is sold to a credit union that has the borrower in its field of membership (a "qualifying credit union"). Section 701.22(d)(2) requires that credit unions can only participate in loans where the borrower is a member of a participating credit union. The regulation should confirm that the minimum holdback percentage should not apply to the qualifying credit union, as it was not the originator of the loan. Any portion of the loan can be held by a qualifying credit union in order for the loan to qualify for other credit union participants.

Credit unions should be able to participate loans it buys as eligible obligations. Section 701.22 requires that the originator of a loan has to be in a loan participation. Credit unions that buy whole loans as eligible obligations cannot participate the loans as the originator is no longer involved with the loans. That situation locks up liquidity options for the credit union. We propose that the credit union buying an eligible obligation be treated as the originator of the loan with the power to sell loan participations in the loan with the minimum holdback percentage for as an originator.

Permit loan participations in lines of credit. In the recent proposed changes to the CUSO Regulation that would permit credit unions to make credit card loans, the staff commented that loan participations in open line of credit loans are not permitted. If credit unions cannot participate in credit card loans, the ability for credit unions to provide an effective credit union industry alternative to banks acquiring credit union portfolios will be severely hampered. This issue needs to be resolved both for credit card loans and business revolving line of credit loans.

Lowering the Minimum Equity in Construction Loans from 25% to 20%. Our members tell us that the current LTV of 75% renders credit unions non-competitive in many markets.

Removing the 80% LTV Requirement for Business Vehicle Financing Except in True Fleet Situations. Our members also tell us that this also renders credit unions non-competitive in the routine financing of business vehicles. The 80% LTV requirement is not applicable if the business vehicles financed are not in a fleet. The problem is that GCO Number 05-1038 dated December 8, 2005 would define almost every service business that has more than one vehicle as having a fleet of vehicles. We believe that this was not the intent of the use of the word "fleet" in the regulation. We ask that the term "fleet" be clarified to exclude the typical service business that has more than one vehicle. The term "fleet" should be restricted to businesses whose primary function is to transport people or products such as taxicabs, limousines and truck haulers. If a business uses vehicles to deliver its products or services, such as a florist, and the business has more than one vehicle, those vehicles should not be considered a fleet.

Amending the Conflict of Interest Rules in Part 723.5(b) Regarding a CUSO Providing Underwriting Services. Credit unions have formed scores of business lending CUSOs to provide underwriting services. Many of these credit unions cannot afford to hire an equivalent level of expertise on their own. The services are often provided to both credit union owner clients and credit union non-owner clients. The rule seems to be designed to protect a non-controlling credit union from a designing CUSO that may be out to deceive the credit union in the underwriting process if the CUSO has an interest in the loan (either because the CUSO owns and interest in the loan or is paid only if the CUSO approves the loan). This logic assumes that the CUSO will act in the best interests of its controlling credit union clients but not the best interests of the non-controlling credit unions. Frankly, the premise is flawed. A CUSO is owned by credit unions to serve credit unions. A CUSO often provides underwriting services in the same loan to owner and non-owner credit unions when the loan is participated among the client credit unions. Even if we accept the absurdity that a CUSO might intend to mislead one credit union but not the other, how can it do so if it gives the same opinion to both credit unions? How can a CUSO stay in business if it purposely provides misleading services to some of its clients? We recommend that the rule not apply to CUSOs that are controlled by credit unions regardless of whether the client credit unions are controlling owners.

Revise the True Sale Requirement Regarding Net Member Loan Balance. We recommend removing the requirement that a participation interest that is sold by a credit union to a CUSO has to qualify for true sales treatment under GAAP in order to reduce the Net Member Loan Balance per the definition in part 723.21. This has been problematic as the true sales

opinion partially relies upon the interpretation of state law and some states are easier to qualify for true sales treatment than others. The cost of these opinions can be prohibitive. We do not see a reason why an accounting concept has to be used for a regulatory issue. CUSOs are valuable tools to manage the artificial business loan cap. If a credit union forms a CUSO and the CUSO purchases loan participations or whole loans from the credit union to reduce the credit union's Net Member Loan Balance that should be permitted regardless of the accounting treatment.

Increasing or Eliminating the $100,000 Limit on Unsecured Loans. This provision often limits the credit union's ability to compete for the very best credit. We understand there are waiver opportunities but the time that the waiver process takes and the uncertainty of the result often causes a member to go elsewhere for a loan.

Personal Guarantees. It would be very helpful if the decision as to whether to require personal guarantees would be determined by the quality of the credit rather than the quality of the credit unions' financial status. Credit unions have lost excellent lending opportunities due to the uncertainty whether personal guarantee waivers could be obtained. The better the borrower's credit, the less likely that the borrower will be willing to wait to wait and see if the personal guarantees are waived when non-credit union lenders can tell him or her with certainty that personal guarantees will not be required.

Consider Greater Lending in Underwriting Rules Based Upon Performance. The business lending regulations are written as a one size fits all approach. They do not account for the ability of experienced business lenders to responsibly tailor underwriting criteria and risk management to meet the market. As credit unions demonstrate greater competence in business lending there needs to be greater latitude in the ability of credit unions to respond to their marketplace. As with the Reg Flex Model, a greater demonstration of business lending competence should lead to greater freedom to set underwriting standards. The waiver process is just not competitive with banks. It is cumbersome and uncertain when credit unions are competing for the best credit opportunities. Some of our members suggest that NCUA look to the FDIC rules for guidance on how to regulate business lending. In the end NCUA will have to determine if it will trust credit unions to make credit decisions without handcuffing them with procedures and rules their competitor do not have. Credit unions can earn that trust if they have demonstrated competence. Perhaps the minimum experience requirement for business lenders serving credit union with greater lending authority would be significantly greater than the general two year requirement. Credit unions need the opportunity to grow in their ability to successfully compete in the business lending marketplace.

We thank NCUA for the opportunity to comment on this proposed regulation change

Respectfully submitted,

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