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National Association of Federally-Insured Credit Unions

B. Dan Berger
President & Chief Executive Officer

September 15, 2021

The Honorable Todd M. Harper, Chairman
The Honorable Kyle S. Hauptman, Vice Chairman
The Honorable Rodney E. Hood, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Loan Participations

Dear Chairman Harper, Vice Chairman Hauptman, and Board Member Hood:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to you regarding the temporary aggregate amount of loan participations that a credit union may purchase from a single loan originator. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 125 million consumers with personal and small business financial service products. NAFCU appreciates the NCUA's responsiveness during the COVID-19 pandemic in ensuring that credit unions remain operational and liquid by temporarily increasing the aggregate amount of loan participations a credit union may purchase from a single originating lender and subsequently extending this temporary relief through 2021. As the expiration of this temporary relief approaches, NAFCU urges the NCUA to initiate a rulemaking to remove the aggregate cap altogether, or in the alternative, make the temporary threshold permanent upon its expiration at the end of the year.

General Comments

In April 2020, the NCUA published an interim final rule (IFR) that temporarily raised the maximum aggregate amount of loan participations to the greater of \$5 million or 200 percent of the credit union's net worth. The NCUA extended this temporary flexibility which now expires on December 31, 2021. At that time, credit unions must return to compliance with the permanent rule which limits the maximum agreement amount of loan participations to the greater of \$5 million or 100 percent of the credit union's net worth. To remain compliant the credit union must cease purchases of loan participations from the originating lender or seek a waiver from the NCUA. NAFCU members have utilized the temporary relief afforded by the IFR and the NCUA should, at a minimum, consider increasing this threshold.

Nothing in the *Federal Credit Union Act* (FCU Act) limits the NCUA Board's power to amend the regulations regarding loan participations. Section 1757(5)(E) of the FCU Act states that federal

credit unions have the power to participate with other credit unions, credit union organizations, or financial organizations in accordance with written policies of the board of directors. Limitations are imposed on the originating lender in that they must retain an interest of at least 10 percent of the face amount of the loan. The absence of any limitation was clear when the NCUA Board ultimately adopted the 100 percent aggregate cap in the 2013 rule, up from a proposed 25 percent aggregate cap.

The NCUA should adopt the suggestion from the Task Force Report and eliminate the aggregate limit in its entirety

In 2017, the NCUA established the Regulatory Reform Task Force (Task Force) to review the NCUA's regulations for those that may be outdated, ineffective, or excessively burdensome. The Task Force Report identified the regulations in section 701.22 governing loan participations as a Tier 2 priority.¹ As the NCUA has completed most reviews of Tier 1 priorities and will turn their attention soon to Tier 2 priorities, the regulations governing loan participations are ripe for review and credit unions would greatly benefit from action taken prior to the expiration of the temporary aggregate cap afforded in the IFR.

The Task Force Report suggests removal of the aggregate cap of \$5 million or 100 percent of the credit union's net worth and replacing the prescriptive aggregate cap with a limit established by each credit union's individual policy.² NAFCU agrees with this suggested action as it effectively removes the need for credit unions to seek a waiver, which credit unions have described as almost impossible to obtain from the NCUA. Moreover, the removal of the aggregate cap allows for additional flexibility and aligns with the NCUA Board's rationale in setting the initial aggregate cap. In finalizing the aggregate cap in 2013, the NCUA Board sought to strike an appropriate balance between mitigating risk and fostering growth and stability.³ Removing the aggregate cap will allow credit unions to grow, diversify portfolios, improve liquidity, and assist credit unions in providing loans that they might not otherwise offer. However, credit unions will continue to mitigate any concentration risks and adhere to sufficient underwriting and due diligence efforts. The Task Force Report highlighted that this suggestion has a high degree of impact on credit unions with a low degree of effort in adoption.

NAFCU agrees with the Task Force Report in that the degree of effort is low as the FCU Act does not impede the NCUA from eliminating the cap or permanently increasing the threshold. The NCUA has reviewed the regulations and the impacts which provide the basis for an expedited rulemaking.

Conclusion

NAFCU appreciates the opportunity to share our view on this matter. As the COVID-19 pandemic continues we appreciate the NCUA's flexibility and responsiveness to ensuring the credit union

¹ NCUA, Report 2 of the Regulatory Reform Task Force 22 (2018), <https://www.ncua.gov/files/agenda-items/AG20181213Item1b.pdf>.

² *Id.*

³ 78 FR 37946, 37950 (June 25, 2013).

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industry continues to operate. Removing the aggregate loan participation cap from a single originating lender will greatly assist credit unions during this time and in continuing to grow in the future. In addition, the removal of the aggregate cap fulfills the Regulatory Reform Task Force's suggestion in removing a prescriptive part of the regulation. In the alternative, we urge the NCUA to make the 200 percent aggregate cap permanent prior to its expiration on December 31, 2021. Removing or increasing the aggregate cap prior to the expiration at the end of year ensures an easy transition for credit unions that would otherwise have to seek a waiver from the NCUA or cease purchasing loan participations. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger", with a stylized flourish at the end.

B. Dan Berger
President & CEO