OHIO CREDIT UNION LEAGUE

February 24, 2023

Melane Conyers-Ausbrooks
Secretary of the Board National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Comment to the Proposed Financial Innovation: Loan Participations, Eligible Obligations, and Notes of Liquidating Credit Unions Regulation
Document Number: 2022-27607; RIN 3133–AF49, 3133–AE96

Dear Ms. Conyers-Ausbrooks,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 227 credit unions and their more than three million members. Of those 227 credit unions, 123 are federally chartered; 59 state-chartered, federally insured; and 45 state-chartered, privately insured, with an average asset size of $195 million. OCUL appreciates the opportunity to comment on the National Credit Union Administration (NCUA) proposed rule that would amend sections 701.21, 701.22, 701.23, and part 714 of the NCUA's regulations pertaining to loan participations, eligible obligations, and notes of liquidating credit unions.

The proposed amendments to Part 701.21, 701.22 and 701.23 of the NCUA Rules and Regulations will help the credit union industry better serve its members and get access to more member loans. Lending has changed significantly over the last few years and will likely continue to change. Over the last decade, financial technologies (FinTechs) have disrupted the traditional lending marketplace with new technology making it faster and easier for consumers to get a loan using their smart phones. The proposed amendments to Parts 701.21, 701.22 and 701.23 are a great first step towards making credit unions just as nimble.

Section 701.21(c) General Rules

The NCUA's proposed rule would add new provisions to § 701.21 regarding indirect lending arrangements and indirect leasing arrangements; these new provisions would replace a provision in § 701.23. Specifically, § 701.23(b)(4)(iv) currently provides that an indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the federal credit union (FCU) makes the final underwriting decision, and the sales or lease contract is assigned to the FCU very soon after it is signed by the member and the dealer or leasing company, is excluded in calculating the 5% limit on eligible obligations. The NCUA believes splitting the provision in paragraph (b)(4)(iv) into two definitions will help clarify the existing requirements, which we agree. Accordingly, newly proposed new § 701.21(c)(9)(i) would define:

- "Indirect leasing arrangement" as a written agreement to purchase leases from the leasing company where the purchaser makes the final underwriting decision, and the lease agreement is assigned to the purchaser very soon after it is signed by the member and the leasing company.
- "Indirect lending arrangement" as a written agreement to purchase loans from the loan originator where the purchaser makes the final underwriting decision regarding making the loan, and the loan is assigned to the purchaser very soon after the inception of the obligation to extend credit.

Both proposed definitions would use language that, while generally similar to the language in current § 701.23(b)(4)(iv), provides much needed, common-sense clarification to both terms. OCUL appreciates the NCUA's continued commitment to updating rules to address industry needs.

Section 701.22 Loan Participations

The proposal would make several clarifying amendments to this section. These changes are primarily intended to clarify FCUs' authority to purchase loan participations and the requirements applicable to the purchase of loan participations by federally insured state-chartered credit unions (FISCU).

Section 701.22 Introductory Paragraph

The introductory paragraph to current § 701.22 sets forth the scope and limitations of the section. Since adopting the introductory language in both § 701.22 and § 701.23 in 2013, the NCUA has received inquiries from NCUA examiners, federally insured credit unions (FICUs), FinTech companies, and others regarding confusion on how to interpret many of these provisions. The confusion has led to inconsistent reporting of loan interests by FICUs and uncertainty about whether § 701.22 or § 701.23 applies to certain transactions.

One significant issue with the current introductory paragraph is when a FICU's partial loan purchase is subject to this section. In particular, the fourth sentence in the current introductory paragraph provides that the section applies only to a FICU's purchase of a loan participation where the borrower is not a member of that credit union and where a continuing contractual obligation between the seller and purchaser is contemplated. The fifth sentence in the paragraph provides further that, generally, an FCU's purchase of all, or part of a loan made to one of its own members, subject to a limited exception for certain well-capitalized FCUs in § 701.23(b)(2), where no continuing contractual obligation between the seller and purchaser is contemplated, is governed by § 701.23. Similarly, the introductory paragraph to § 701.23 provides that § 701.23 governs an FCU's purchase, sale, or pledge of all or part of a loan to one of its own members, subject to a limited exception for certain well-capitalized FCUs, where no continuing contractual obligation between the seller and purchaser is contemplated.

OCUL agrees with deleting the continuing contractual obligation clauses as streamlining this section will help clarify when the section applies to certain transactions.

Section 701.22(a)

The application of the definition of "originating lender" to CUSOs or other entities in the context of indirect lending arrangements was left unaddressed in the 2013 Final Rule on loan participations.[1] Thus, the proposed rule would amend the current definition of "originating lender" in § 701.22(a) to codify and further clarify a 2015 NCUA Legal Opinion (15–0813) regarding loan participations in indirect loans. Through the codification of the legal opinion, the proposed rule would clarify that a FICU engaged in an indirect lending relationship can meet the definition of "eligible organization" under § 701.22 if certain conditions are met.

The NCUA believes that codifying the 2015 Legal Opinion will clarify the loan participation rule and facilitate further growth in credit unions' purchase and sale of indirect loan participations. As such, the proposal would codify into the NCUA's regulations the interpretation from the 2015 Legal Opinion that

[1] 78 Fed. Reg. 37,946 (June 25, 2013).

an eligible organization may be considered an "originating lender" where the eligible organization generates a loan through an indirect lending arrangement. Further, the proposal would clarify in the regulation that any "eligible organization" that acquires a loan through an indirect lending arrangement acts as the originating lender for purposes of this section, provided the eligible organization made the final underwriting decision regarding making the loan and was assigned the loan or sales contract very soon after the inception of the obligation to extend credit.

OCUL agrees with codifying the legal opinion into the regulation, as doing so should provide greater clarity in terms of compliance with the loan participation rule. Regarding making the final underwriting decision, it would be logistically challenging if the rule were to specify that a credit union in an indirect lending arrangement must be involved or consulted at the time of the extension of credit. Given the timeliness of loans for automobile purchases, for example, such a requirement would likely result in fewer loans through indirect lending arrangements described above.

Section 701.22(e) Temporary Regulatory Relief in Response to COVID–19

Currently, § 701.22(e) provides that notwithstanding paragraph (b)(5)(ii) of § 701.22, between April 21, 2020, and December 31, 2022, the aggregate amount of loan participations that may be purchased from any one originating lender shall not exceed the greater of $5,000,000 or 200% of the FICU's net worth. This temporary increase from "the greater of $5,000,000 or 100%" was intended to help ensure that FICUs remained operational and had sufficient liquidity during the pandemic. Since this increase was temporary, the proposal would remove this paragraph.

OCUL requests the NCUA consider eliminating the limit on the aggregate amount of loan participations that may be purchased from any one originating lender, not to exceed the greater of $5,000,000 or 100% of the credit union's net worth, absent a waiver by the regional director. In addition to the benefit of increased flexibility, it is evident as shown by § 701.22(e) that the NCUA understands the potential benefit of increasing, if not eliminating, the existing limitation. If the NCUA is unable to eliminate the existing limitation entirely, OCUL would ask the NCUA to permanently change the limit to "the greater of $5,000,000 or 200%," as was provided during the pandemic. The pandemic shed light on several logistic, programmatic, and regulatory areas that needed flexibility. When those areas were given the latitude to succeed, they did just that; and as such, some of the flexibility created as a response to a temporary circumstance, should be permanently implemented.

Section 701.23 Purchase, Sale, and Pledge of Loans

Section 701.23(b)(2) Purchase of Obligations From a FICU

First, the amendments to the 5% limitation on purchasing eligible obligations under Part 701.23(b)(4) are critical in allowing credit unions to build strong relationships directly with FinTech companies. This section limits the aggregate unpaid balance of certain eligible obligations purchased by an FCU to a maximum of 5% of the FCU's unimpaired capital and surplus. More specifically, the current 5% limit applies to eligible obligations purchased by an FCU under § 701.23(b)(1) and (b)(2)(ii). In general, paragraph (b)(1) authorizes an FCU to purchase (1) eligible obligations of its members; (2) eligible obligations of a liquidating credit union's members from the liquidating credit union; and (3) student loans and real estate-secured loans from any source to facilitate the purchasing FCU's packaging of a pool of such loans to be sold or pledged on the secondary market. Paragraph (b)(2)(ii), which is on purchases from FICUs, authorizes an FCU to purchase the "eligible obligations of a liquidating credit

union without regard to whether they are obligations of the liquidating credit union's members." Under the proposal, the 5% limit would apply solely to the purchase by an FCU of the notes made by a liquidating credit union to the liquidating credit union's members; the limit would apply only to notes purchased under paragraphs (b)(1)(ii) and (b)(2)(ii) of § 701.23.

This is an important update as credit unions need more opportunities to be a part of the lending system as it continues to evolve with the use of technology. The changes to the 5% limitation will enable more robust relationships with non-credit union originators because credit unions can purchase more member loans from third-party originators.

In addition, the amendments to the purchasing exception for credit union to credit union transactions under Part 701.23(b)(2) will help to make sure small to midsized credit unions can also gain access to these loans, ultimately creating a healthier credit union system. This amendment will give credit unions the ability to diversify their risk and provide much needed interest income to those that need it. While it is likely larger credit unions or CUSOs will be in a better position to develop lasting relationships with non-credit union originators, this amendment to Part 701.23(b)(2) will allow smaller credit unions to purchase loans from those same larger credit unions or CUSOs and obtain earnings they require. This amendment will allow credit unions additional flexibility to manage balance sheet risk by buying or selling some of these loans to other credit unions without jeopardizing their relationship with a non-credit union originator.

OCUL appreciates the opportunity to engage with the NCUA on changes to existing rules. This proposed rule is a welcomed update of the lending regulations which will allow credit unions to remain innovative and give them the ability to adapt to constantly changing lending markets. With these amendments, the NCUA is providing the industry more tools to survive and thrive in the financial marketplace without undue risk on the share insurance fund. Most importantly, it will allow credit unions to serve more of their members by connecting to them directly where they are doing business instead of waiting for them to come to the branch.

Respectfully,

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President

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