

March 22, 2018

Mr. Eric Richard
Ms. Mary Dunn
CU Counsel, PLLC
1629 K Street, NW, Suite 300
Washington, DC 20006

Dear Mr. Richard and Ms. Dunn:

You have asked if a loan participation transaction must meet the requirements of the NCUA's loan participation regulation¹ throughout the life of the transaction. Yes, certain provisions of the loan participation regulation must be met throughout the life of the transaction. For example, §701.22(d) contains minimum requirements for a loan participation agreement.² This provision emphasizes the need for adequate documentation and due diligence from before the time of purchase throughout the life of the loan.³

You also have asked if a participated loan must be identified and treated independently of all other participated loans, even when many participated loans are sold to the same purchasing credit union at the same time. Yes, each participated loan must be identified and treated independently. Specifically, §701.22(d)(4) requires that the loan participation agreement identify each participated loan, enumerate servicing responsibilities for that loan, and include disclosure requirements regarding the ongoing financial condition of that loan, the borrower, and the servicer. Where, for example, a participation agreement involves multiple loans, the documentation can be as simple as an addendum or schedule for identifying each loan and a participant's interest in that loan.

These requirements support the underlying principle that the purchase or sale of a loan participation represents an interest in a single loan. This principle must be maintained throughout the life of a participated loan, including servicing. Therefore, a servicer generally cannot deduct a servicing fee related to a nonperforming loan participation from the principal and interest received from a performing loan participation, even when many loan participations are sold to the same purchasing credit union. However, the NCUA's loan participation regulation does not prohibit servicing practices that may make administering multiple loan participations more efficient. For example, netting payments across multiple performing loans generally is considered permissible if there is proper accounting of each loan's individual status and the netting is in accordance with the loan participation agreement.

¹ 12 C.F.R. § 701.22.

² The other provision that must be met throughout the life of the loan is §701.22(b)(3) requiring that the originating lender retain an interest in each participated loan.

³ 78 Fed. Reg. 37946, 37954 (June 25, 2013).

CU Counsel, PLLC

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Thank you for your inquiry. Please contact us again if you identify other areas of concern.

Sincerely,

/S/

Michael J. McKenna
General Counsel