



August 13, 2015

Mr. Gerard Poliquin
Secretary to the NCUA Board
1775 Duke Street
Alexandria, VA 22314

Re: Comment Letter to the Proposed Amendments to NCUA's MBL Rule

Dear Mr. Poliquin:

On behalf of the National Association of Credit Union Service Organization (NACUSO), I would like to thank you for the opportunity to express our views on the recent proposal by the NCUA Board addressing the Member Business Lending (MBL) rules of the National Credit Union Administration in Section 723.

Prior to offering our suggested modifications to the proposed member business lending regulation, NACUSO would like to begin its comment letter by expressing its commendation to NCUA for the positive change in regulatory approach taken by NCUA in this proposed regulation as it relates to member business lending. As business lending to credit union members has been an authorized authority for credit unions and credit union service organizations (CUSOs) for decades, the historical approach of NCUA has been very restrictive in the past with a resulting diminution in both available credit for small businesses and a deterrent to healthy diversification in many credit union lending portfolios.

The replacement of a one-size-fits-all approach by a much more performance based rules regime is appropriate and will give credit unions the flexibility to better serve their members in the very competitive marketplace of business lending – and to do so within both the established law and the bounds of safety and soundness.

Our specific comments regarding the provisions of the proposed amendments to the MBL rule are provided below. We appreciate your consideration of these comments on behalf of our NACUSO membership.

Commercial Loan Policy – Section 723.4

Section 723.4(c) provides that that the limitation of loans to one borrower or group of associated borrowers may not exceed the greater of 15% of the credit union's net worth or \$100,000, plus

an additional 10% of the credit union's net worth if the amount that exceeds the credit union's 15% general limit is fully secured at all times with a perfected security interest by readily marketable collateral. NACUSO commends the NCUA for that well-balanced approach and supports providing this regulatory flexibility as a prudent means to extend, within the bounds of the current statute, the credit union's lending powers to serve its members.

Collateral and Security – Section 723.5

NACUSO supports these proposed changes and is in agreement with the proposed provision that the credit union has both the risk management interest and underwriting ability to effectively analyze whether a personal guarantee is required in the risk mitigation of any particular business loan. This will enable credit unions to more effectively compete for loans where the personal guarantee requirement disqualified credit unions from common sense lending opportunities. We recognize that, as is appropriate, the overwhelming majority of business loans will still require a personal guarantee. Should any credit union become unsafe in its utilization of this authority to waive the personal guarantee, we would expect that NCUA would address those concerns through the supervisory process. NACUSO sees no justifiable reason for a restrictive approach that substitutes a single, inflexible regulatory requirement for the discretion of proven business lenders as a part of a credit union's risk management protocols.

Prohibited Activities – Section 723.7(a)(1) and (2)

NACUSO questions whether an outright prohibition for a management employee or other officer of a credit union to receive a business loan, within established credit union lending policy and sound underwriting standards, is truly necessary. It would seem that if senior management employees and their immediate families are indeed able to obtain a mortgage, car and other consumer loans from the credit union, why should member business loans be treated differently? We certainly agree that there should be safeguards in the lending policies and conflict of interest provisions in place to protect from insider abuse; however, we feel these could best be handled through full disclosure of the insider relationship, lending caps, types of loans and board approval. In our view, an outright prohibition seems to be overkill.

Prohibited Activities – Section 723.7(c) – Conflict of Interest

This section prevents a third party that is providing business loan advice to a credit union from receiving compensation contingent upon closing of a loan. Some financial institutions charge an application fee but whether they do or not, the bulk of their fee is typically earned only if the loan closes. The condition of the loan closing is not improper as long as it does not create a potential conflict of interest. While we understand the concern of NCUA as to some third parties that provide advice to credit unions, we respectfully disagree that CUSOs pose the same conflict risks. To this end, we recommend that the rule be clarified to exempt from the prohibition engagements between credit unions and the CUSOs that are owned by those credit unions for origination support irrespective of the timing or methodology of payment. This improves the understanding that the issue is with borrower paid loan finders, brokers, etc. and not with regularly contracted CUSOs that support their credit unions with more than just the underwriting elements of a loan.

Many credit unions that offer business loans to their members have done so with the use of CUSOs to help them better manage and even to share their risk. CUSOs permit credit unions to aggregate business lending expertise at lower costs than if each credit union provided the services internally. The credit unions are the owner/users of the CUSO's services. The CUSOs are, in effect, the collaborative extension of the respective owner credit unions. We respectfully request that NCUA keep that concept in mind as there is a great distinction between the motivation of an entity that is serving its owner/users as opposed to that of an entity which is either serving the borrower or has no formal affiliation with credit union governance. The conflict of interests situations that may arise in purely client relationship do not exist in an owner/client relationship.

Just as there is a carve out of the conflict of interest issue for CUSOs providing advice when the CUSO is not independent in a transaction if the credit union owns a controlling interest in the CUSO, a corresponding carve out should exist to enable a credit union owner to pay its CUSO contingent on a loan closing. As the CUSO is the collaborative extension of its owner/users, a CUSO is not going to act against the best interests of its owner/users.

Aggregate Member Business Loan Limit; Exclusions and Exceptions – Section 723.8

This proposed section states that in order for a loan participation interest to be excluded from the calculation of the aggregate loan limit it must be without recourse and qualify for true sales accounting treatment under GAAP. NACUSO's concern regarding this approach is that a true sales analysis is a very costly and time consuming item. A valid opinion, either legal or in accordance with GAAP, is very impractical to initiate on a case-by-case basis. It is often very difficult to get a lawyer or accountant to opine on true sales. It involves accounting issues, bankruptcy implications and state specific legal insolvency laws. We do not see why this accounting issue has to be tied to the regulatory issue, especially given it is so problematic and impractical to implement. We recommend keeping the "without recourse" requirement and deleting the "true sale" requirement, or at least clarifying that NCUA is not requiring GAAP Sale Treatment "opinions."

Modification of State MBL Laws

Per Part 723.20 of the current MBL Regulation, NCUA has approved member business lending rules passed in seven states (Connecticut, Illinois, Maryland, Oregon, Texas, Washington and Wisconsin). NCUA has asked for comments on how to deal with those state regulations in light of the proposed changes to the NCUA Regulation. NACUSO believes that these seven states should have the ability to continue to use their approved state regulations if they so choose. Given the positive changes to the NCUA Regulations, NACUSO will encourage the seven states to modify their regulations in order for their state chartered credit unions to become more competitive in business lending services. Thus, NACUSO supports the ability of the seven states to submit revised state business lending regulations for NCUA approval in light of the proposed changes in the NCUA Regulation. NACUSO also supports the ability of other states to submit state business lending regulations for NCUA approval. While there may be some slight

variations in the regulation of business lending as a result of these options, the variations have not been proven to be an issue under current law.

It has been the observation of NACUSO that variations of regulatory approach in a dual chartering system provides a dynamic and robust means to determine which types of regulatory frameworks work best.

NACUSO would like to, once again, thank the NCUA Board for the opportunity to comment on this proposed regulatory change. As can be seen by our comments on the proposal, we are largely in support of the changes and commend the NCUA Board on its balanced approach to business lending through this proposal. Our suggested areas of improvement are designed to help make an already improved regulation even more balanced and appropriate to the risk involved in business lending for credit unions and CUSOs.

We hope that you will give our viewpoint your careful consideration. If we can answer any questions or be a source of further information on this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Jack M. Antonini". The signature is written in a cursive style with a large, looping initial "J".

Jack M. Antonini
President and CEO