



August 27, 2015

Mr. Gerard S. Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

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

Dear Mr. Poliquin:

Member Business Financial Services, LLC (MBFS) is pleased to comment on NCUA's Notice of Proposed Rulemaking for 12 CFR Part 723 regarding potential changes to the Member Business Loan regulations. We commend the Board on considering these regulations to assist credit unions in better serving their business members' expanding needs.

MBFS is a credit union owned CUSO assisting credit unions to expand member relationships with regards to business lending. We have twelve credit union owners that are located in Pennsylvania and Delaware. The CUSO services twenty-eight credit unions in total and services more than \$275 million in business loans.

Our comment letter is segmented into three sections, as follows:

- Overall Comments on the Proposed Regulation;
- MBFS Comments on Specific Items in Proposed Regulation;
- Final Comment.
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Overall Comments on the Proposed Regulation

First, let me say that MBFS commends the proposed regulation and NCUA's shift from prescriptive regulation to a principles-based approach. There are a wide variety of credit union MBL programs in the industry, and this approach allows each credit union to tailor the program to fit its strategic goals and risk tolerances. The current regulatory structure has hampered credit unions in two ways. Credit unions have been unable to meaningfully penetrate the top tier credits in their marketplace. The regulatory constraints limit the credit union's ability to negotiate terms and conditions in a practical manner. Credit unions have also been cornered into being primarily real estate lenders in their marketplace and not the lender of choice for operating businesses. For example, equipment and vehicle financing is widely available in short amortization periods at 100% financing. Businesses will seek alternative financing rather than shift valuable capital to the required 20% down payment. These new rules will enhance the credit quality of the industry as well as provide additional financing opportunities to job creating small businesses.

MBFS Comments on Specific Items in Proposed Regulation

Loan-to-value ratio: The NCUA has proposed to calculate loan-to-value with the loan amount as the numerator and denominator will be the lesser of purchase price or market value for collateral held 12 months or less OR market value for collateral held 12 months or more. This puts a "seasoning requirement" on credit union real estate loans that did not exist before. At this time,

costs for improvements into the property are not considered for loan-to-value calculations.

MBFS Opinion: We agree with the general concept and purpose of limiting cash out for real estate investors. However, this will impact members who purchase/rehab residential properties or commercial real estate investors who purchase a property and then improve the property with a new tenant. Credit unions should be able to develop their own policy with a collateral seasoning criteria based on the complexity of the credit union and the fact specific situation of the credit.

Commercial loans: The NCUA has created a definition of “commercial loans” and “MBLs.” Commercial loans are any business purpose loan while MBLs are only those loans that meet the FCU Act definition of an MBL. Loans secured by owner and non-owner occupied 1-4 family residential properties, vehicles manufactured for household purposes, and loan relationships under \$50,000 are excluded from this definition.

MBFS Opinion: MBFS agrees with the concept of not having to manage relationships that consist of 1-4 family unit properties as “commercial relationships.” At some increasing size and complexity these relationships will need to be managed as such regardless but this clause will reduce the operating costs of the credit union with negligible increase in risk.

Credit Risk Rating System: The proposed rule expands the definition and expectations for a risk rating system. The process used by MBFS and our credit union now will satisfy the general criteria as outlined. This proposal makes it clear there will be much more emphasis placed on risk ratings moving forward than there is at the current time.

MBFS Opinion: This proposal could have a disparate impact on smaller credit unions and/or smaller loans. I’d ask NCUA to not treat all portfolios equally and allow for monitoring of risk ratings based on the size and complexity of the credit rather than a one size fits all approach. For example, vehicle loans, equipment loans, and small lines of credit should not have to be individually managed and monitored in the same manner as a commercial real estate loans.

723.3 Board of Directors & Management Responsibilities:

- The “two years” experience rule is being eliminated and being replaced with a broader, more flexible approach based on size and complexity of credits.
- The NCUA is providing greater flexibility to meet experience requirements. The preamble language reads as follows:

“Under the proposed rule, for greater flexibility, credit unions have multiple options to meet the experience requirements. For example, a credit union may meet the requirements by training and developing existing staff, hiring experienced professionals, or the use of a third party such as a CUSO or an independent contractor. The Board notes, however, that it is not prudent for credit unions newly adopting a commercial loan program to initially rely solely on training and developing existing staff, unless existing staff already possess the skills, competencies, and experience required.”

*Before employing the use of a third party, however, a credit union must ensure the third party meets the experience requirements outlined above. **It is vital for the credit union to possess sufficient in-house expertise to fully evaluate the reasonableness and accuracy of risk assessments and recommendations provided by any third party and to effectively oversee the third party relationship.** Final responsibility for services provided by the third party, especially risk assessments, remains with the credit union because the risks associated with the transaction are borne by the credit union. The third party may be utilized for underwriting and assessing the credit risk but the credit union must ultimately make the credit decision.”*

MBFS Opinion: The NCUA is issuing contradicting language in the guidance regarding the use of third parties. The proposal indicates the NCUA wants to allow credit unions to utilize third parties but also wants equivalent in-house expertise. If

credit unions have to hire in-house commercial lending personnel and pay for a CUSO services, business lending will be an unprofitable service. MBFS agrees that credit unions needs to understand the risks they are taking but the NCUA should clarify there is not a need for credit unions to have duplicative systems and personnel as the CUSOs.

Credit Union Exemption: The NCUA Board is proposing to exempt credit unions under \$250 million in assets and with commercial loans less than 15% of net worth from the rules of 723.3 and 723.4.

MBFS Opinion: This exemption allows a \$200 million credit union with an 8% net worth to make up to \$2.4 million in business loans with little to no policy or risk management practices in place. After a credit union passes the 15% of net worth threshold in place for they would have to set up the appropriate infrastructure/risk management practices. I think this exemption has the potential for trouble and essentially new business lending credit unions would be able to make a few million in commercial loans before the appropriate checks and balances are applicable to them. If the credit union has a bad experience with these initial loans it will hurt the credit union and the program in the future. MBFS also thinks this will be a disincentive for credit unions to surpass the 15% of net worth threshold since they know increased regulatory scrutiny will result.

723.5 Collateral and Security Requirements: The 80% ltv rule is being eliminated and credit unions can develop their own policies based on sound risk practices. The Personal Guarantee requirement is proposed to be eliminated.

MBFS Opinion: The new rules will allow credit unions to develop policies designed to serve operating business much more effectively. These new rules will also allow credit unions to serve the highest quality credits in the marketplace.

723.6 Construction & Development Loans: The 15% of net worth limitation is eliminated and this section clarifies construction practices.

MBFS Opinion: This change will provide credit unions with much more flexibility to serve their members and is supported as proposed.

Loan Participation Rule: The proposed rules exempt non-member loan participations from the MBL cap. For credit unions with an MBL cap this will provide a great deal of flexibility and increased funding capability going forward.

MBFS Opinion: This change will provide credit unions with much more flexibility to serve their members and is supported as proposed.

Final Comments

We are concerned that the principles-based approach will rely in large part on subsequent “Supervisory Guidance” that will be used by examiners to interpret the Final Rule and carry out MBL exams. It is imperative for credit unions to fully understand the areas of emphasis and expectations examiners will be focusing on in their work. Another area of concern is that the principles-based approach will require a tremendous amount of judgment by field examiners. NCUA has improved expertise and exam consistency over the past decade, but it will be essential to continue to develop true commercial lending expertise in examiners, as well as ensuring consistency in all credit union examinations.

We sincerely appreciate the opportunity to provide input on NCUA’s proposed rulemaking amending the Member Business Loan regulations. Feel free to contact me for clarification or

further discussion on any of these important items.

Sincerely,

A handwritten signature in black ink that reads "Mark Ritter". The signature is written in a cursive style with a large, stylized initial "M".

Mark Ritter
Chief Executive Officer