

August 28, 2015

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

Sent via electronic mail to:  
*regcomments@ncua.gov*

RE: RIN 3133-AE37; Comments on Proposed Rulemaking for Part 723 - Member Business Loans; Commercial Lending

Dear Mr. Poliquin,

I, the President/CEO on behalf of Sioux Falls Federal Credit Union (SFFCU), appreciate the opportunity to provide comments to the National Credit Union Administration (NCUA) with regard to the proposed amendments to Part 723 – Member Business Loans; Commercial Lending.

SFFCU has five branch locations in Sioux Falls, South Dakota and is currently serving approximately 27,000 members. We offer financial services to anyone who lives, works, worships, or attends school in the following South Dakota counties: Minnehaha, Lincoln, McCook or Turner. Memberships with Sioux Falls Federal Credit Union can be retained for life; even if a member moves, changes employment or retires. With that being said, member business loans are a significant piece of our membership's loan portfolio, which is why I feel comments on the proposed amendments to Part 723 – Member Business Loans; Commercial Lending is necessary.

SFFCU has been making MBL's since 2005. We currently have a portfolio of approximately \$10MM in MBL's. We have 2 lenders with over 2 decades of commercial lending/MBL experience on staff to ensure that we continue our growth in the MBL area in a safe and conservative manner. In addition, SFFCU has a very experienced executive level management team that takes an active role in the MBL process.

We have a successful track record with low losses, proving that our policy has been tested over the past 10 years, and working to our advantage. Our MBL policy is reviewed and approved by management and our Board of Directors on an annual basis, with changes only as necessary.

SFFCU supports a proposed rule that will provide more flexibility and reduce the regulatory burden so we can more effectively and efficiently serve our community and membership.

In the past few years, SFFCU has experienced regulatory restrictions with the personal guaranty requirements and a request for a waiver with our MBL relationships. One relationship was lost due to the regulatory restriction and the other was approved for waiver with lending relationship

being strengthened. This waiver request however took time and required our members to await approval.

### **Specific Items Where SFFCU Recommends Changes and Immediate Implementation**

The Proposed Regulation states that an 18 month implementation timeline will be required before the regulation goes into effect. We understand the need for credit unions and examiners to understand and implement regulatory changes. However, we believe that this extended timeline is unwarranted for certain items that are relatively simple. These changes will have a positive, material impact on credit union MBL programs and put credit unions on a level playing field with banks and other financial institutions. These can be easily implemented by updating credit union business lending policy and making appropriate changes in procedures. Examples of practices that can be enacted more expeditiously include:

Credit Risk Rating System – Most credit unions already have a credit risk rating system in place and simply need to shore up measurement and reporting. Those that do not have a robust system can establish and implement one as an integral part of their MBL policy update. [Reference Proposed Regulation 723.4(g)(3)]

Construction Loan Soft Costs – The regulatory definition that specifically identifies which costs may be included in construction soft costs is now clear, and this change can be implemented in a credit union's policy and practices right away. [723.6(b)(1)]

Loan to Value Definitions for Construction Loans – The new definitions that require using 1) the lower of the cost to build, or 2) the projected “as-stabilized” or “as completed” values, are now clear and can be implemented in a credit union's policy and practices immediately. [723.6(b)(2)]

Unsecured Lending – Credit unions can relatively easily define circumstances where appropriate and well-supported unsecured lending limits can be utilized. Credit unions can also set unsecured loan limits for loans to one borrower and portfolio limits that tie to net worth. These can be established in a credit union's policy and practices in a relatively short time period. [723.5(a)]

Loans to One Borrower Limit – The new regulatory definition will allow a credit union to exceed the current 15% of net worth limit by an additional 10%, as long as the higher advance is fully secured by marketable securities or cash accounts. This is clear and can be quickly implemented in a credit union's policy and practices. [723.4(c)] For this item – since a waiver is available under current regulations and not the proposed rule, I request that waivers still be allowed or that the credit union can internally allow for supported/approved exceptions from this policy requirement.

Personal Guaranties – SFFCU agrees with the Preamble to the Proposed Rule in that credit unions should always obtain full personal guaranties whenever possible. While eliminating the requirement for guaranties does pose additional risk, we believe this change can be implemented sooner in various ways. Credit unions could revise their policies to require a graduated scale for guaranties, where they would use other limited guaranty options before waiving a personal guaranty altogether. For example, credit unions are often asked to allow proportional guaranties when a business or property is owned by several individuals. Permitting this limited guaranty is a better alternative than declining a well-supported loan request with acceptable LTV when the

owners are not willing to provide joint and several guaranties. Another graduated scale option would be to allow "carve-out" guaranties that would give the credit union the ability to pursue these limited guaranties for certain acts of default, such as the borrower filing bankruptcy. A third option is to require a guaranty only from the guarantor that is key to the success of the business, e.g. a managing partner, even though that guaranty percentage is below the 51% required today. [723.5(b)]

In SFFCU's opinion, the guaranty issue is clearly the most important timing change that should be made in the new regulation. Credit unions today are forced to turn away many excellent lending opportunities because of the regulation-mandated guaranties, and 18 months is far too long to wait for this change.

### **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. The industry will have no input on how this guidance is put together and may not understand or interpret the guidance in the same way examiners do. It is imperative for credit unions to fully understand the areas of emphasis and expectations examiners will be focusing on in their work. [Reference: Page 36 of Preamble to Proposed Regulation]

Our final 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.

Thank you for this opportunity to share our comments and concerns.

Sincerely,

Fran Sommerfeld  
President/CEO  
Sioux Falls Federal Credit Union