Midwest Business Solutions
Commercial and Agricultural Lending
2700 N. Plaza Dr. / Rapid City, SD 57702 / Phone: 605-718-5455 / Fax: 605-716-0655
E-Mail: phil.love@mwb-s.com / Web: www.mwb-s.com

August 24, 2015

AUG28'15 PM12:35 BOARD

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

RE: Comment Letter to the Proposed Amendment to NCUA's MBL Rule

Dear Mr. Poliquin:

The current Member Business Lending (MBL) Regulations are long overdue to be revised. The current regulations are quite prescriptive and often allow for a Credit Union (CU) to make lending decisions not upon sound credit principles, but upon how to satisfy the regulatory requirements. The current regulation also have allowed credit unions to function in some cases with policies that are not sufficient to identify sound credit practices and procedures.

We welcome the changes as this is time for credit unions to "grow up" in their business lending. Part of this involves more freedom from the regulations. We also agree that with more freedom comes more responsibility on the part of the Board and credit administration of the CU.

Changing away from a one-size-fits-all approach to business lending to one that is based upon sound credit principals will give credit unions the flexibility to better serve their members and the communities in which they operate. This can be done with managing the portfolio in a safe and sound manner.

Our specific comments providing the new proposed regulation are stated below. We appreciate your time and consideration of these ideas as you move toward compiling the final rule.

Limits on Loans to One Borrower or Group

Section 723.4 provides 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. An additional 10% is granted if it is secured with a security in readily marketed collateral. This approach begins to bring credit union limits into closer harmony with the regulations of other financial institutions.

Our concern is with the "associated borrower" definition. We believe that the proposed definitions of associated borrower, common enterprise, and control need to be clarified further in the regulations. Also, consideration should be given for how loan limits to one borrower are calculated when dealing with minority owners of businesses when the business is financially sound and operates without any guarantor support.

Exception Reporting

Section 724.3.7.iv states that all loan exceptions to a credit union's loan policy must be tracked and reported to senior management and the board. Now the regulation will require CUs to have a strong, comprehensive, loan policy. Tracking all exceptions can result in an overload of information and true risks can become lost

2700 N. Plaza Dr. / Rapid City, SD 57702 / Phone: 605-718-5455 / Fax: 605-716-0655
E-Mail: phil.love@mwb-s.com / Web: www.mwb-s.com

in the masses of data. We suggest each CU's policy outline which exceptions are tracked. Suggested exceptions to be tracked may be: DSCR below minimum threshold, LTV exceeds maximum for policy, no personal guarantee obtained, or quality of financial statements are below policy standard for the loan amount. Managing the categories will make tracking exceptions more relevant to managing the portfolio risk. It also can identify issues in broader categories that may help see areas where policy should be changed or practices should be modified.

Other Credit Risk Management Processes

Section 723.4.7 outlines using loan covenants, periodic review, and a credit risk rating system to gauge credit risk. We believe these are all sound options and should all be used regularly in business credit management.

Collateral and Security

Section 723.5 explains the new method of viewing collateral. We believe this will provide more flexibility to manage individual credits effectively. Also, on unsecured loans, we suggest that the CU's loan policy have qualifications of what commercial borrower would qualify for unsecured lending. Some methods of measuring qualification may be setting minimum thresholds for DSCRs, current ratios, and/or debt to worth limits.

Prohibited Activities, Conflicts of Interest

Section 723.7 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 the majority of their fee is typically earned at closing. The condition of the loan closing is not improper as long as it does not create a potential conflict of interest. We do understand the concern of the NCUA as some third parties would provide advice to only get the deal done, we respectfully disagree that credit union owned credit union service organizations (CUSO) pose the same conflict risks. We recommend that the rule be clarified to exempt from the prohibition engagements between CUs and CUSOs owned by those CUs for underwriting support irrespective of the timing of methodology of payment. This identifies the issue with loan brokers and not with a regularly contracted CUSO that supports their credit unions with more than just outlining the elements of the credit request.

The CUSO should be viewed as avoiding the client relationship that can be found in third parties since it is owned by CUs. Conflicts of interest that may arise in a non-owner/client relationship do not exist in an owner/client relationship. Thus the CUSO exists as a collaborative effort of managing and underwriting credits of multiple CUs. It is an extension of its owners and is not going to act against the best interests of its owners/users.

Aggregate Member Business Loan Limit: Exclusions and Exceptions

Section 723.8 outlines requirements for a loan participation to be excluded from the calculation of the aggregate loan limit. The regulation states this must be without recourse and qualify for true sales accounting treatment under GAAP. A concern here is if the NCUA would require the opinion of a CPA or attorney on each participated loan. This can become costly in money and time resources. A suggestion in implementing this would be to have a CPA and legal counsel review and craft any changes that would be necessary in the legal participation agreement.

Modification of State MBL Laws

The proposed regulation of the proposal outlines three options for how to work with the State regulation of business lending for SSAs. It is our opinion that Option C is most preferable and fair. This allows all seven existing states with MBL rules to be grandfathered in and also allows new states to submit their own MBL rules for NCUA Board Approval.

Implementation of the Regulation

We believe these regulatory changes represent a positive step for proper management and underwriting of commercial and agricultural loans. But these changes will require more time and effort than what is estimated in the regulation. It may be wise to split certain factors of the regulation up into various timelines and then address these one at a time. For example, strive to have all policy updated within a year, risk rating models created within 18 months, changes to the Call Report done within two years, etc.

This will require a partnership between the examiners, credit unions, and CUSOs. We suggest offering joint training among all these groups to ensure that the new regulation can be implemented properly and better credit management practices and procedures are instilled through the industry.

Regards,

Phillip Love, CEO