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August 31, 2015

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

Cooperative Credit Union Association, Inc. Comments on Proposed Rulemaking on Member Business Loans
RIN 3133–AE37

BY EMAIL ONLY

Dear Secretary Poliquin:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc., please accept this letter of comment relative to the National Credit Union Administration's ("NCUA") proposed rulemaking on Part 723, Member Business Loans ("MBL"). The Association is the tri-state trade association representing credit unions located in the states of Massachusetts, New Hampshire and Rhode Island, serving over 200 credit unions which further serve approximately 3.5 million consumer members, and operating as part of the Credit Union National Association.

The Association commends the NCUA for its commitment to providing regulatory relief to credit unions by revisiting some of the most demanding regulatory issues in terms of time consumption and compliance concerns and making changes where possible under statutory constraints. As you are aware, credit unions are subject to hundreds of regulations from a multitude of agencies. This level of regulation limits credit unions' ability to serve their members. Regulatory compliance invites costs, in the form of staff time, data processing systems, administrative costs, and training. The funds that are allocated to regulatory compliance are diverted from the member service side, resulting in a reduction of the services offered to members. Specifically as to member business lending, many credit unions are approaching the cap while others choose not to engage in business lending because of the cap, further affecting the availability of member services.

Our local credit union community understands that America's small businesses are the engine of growth in our states and our nation's economy. The effects of the subprime mortgage crisis have spread to all types of lending resulting in a decrease in the availability of business credit. Credit union small business members are turning to their credit unions for loans because they cannot find credit elsewhere. Member business lending ("MBL") activity has grown by 20%

last year; while not the largest portion of credit union lending, it is one of the fastest growing segments of credit union loan portfolios.

Specifically as to lending regulations, credit unions have been responsibly lending to their business-owning members, beginning in New England, for a century. As noted by the General Accounting Office, net charge-off rates for credit union business loans possess amongst the lowest charge-off rates as compared for those made by other financial service providers. On average since 1997, net charge off rates for credit unions has been at 0.29% while those of banks have been at 0.81%, according to federal credit union and bank regulators. In order for the economy to fully recover, small businesses need access to credit. Credit unions are in a particularly opportune position as mission-driven financial cooperatives to provide this credit to their local small businesses safely.

In preparation for the development of the present comment letter and to foster a local consensus, the Association formed a Working Group consisting of local members from each state, many of whom are directly responsible for business lending within their credit unions. The Working Group has met via teleconference on multiple occasions, most recently to discuss the proposal at hand. The result of these meetings and the consensus from local input is that, generally, the regulatory change from a prescriptive approach to a more flexible, principle-driven approach is commended. The simplification of the regulation and the removal of regulatory restrictions allows credit unions to have more ownership over their business lending programs, thereby allowing such credit unions to serve their members' needs in the best way possible.

The Association generally supports the proposed rule. In particular, we express strong support for the NCUA's flexible approach in removing the requirement of a personal loan guaranty. This allows credit unions to be more competitive, while maintaining safe and sound policies. Additionally, the agency is to be praised for its approach to participation loans. Defining commercial loans as the proposal does allows credit union to purchase participation loans without affecting their MBL cap. This is a positive change for credit unions and allows for greater flexibility.

However, our members remain concerned as to the application of the new regulation, specifically in terms of examinations. Based on input from the Working Group and solicitations to all of our local members, we are pleased to offer the following comments.

I. Comment Period on Supervisory Guidance is Necessary

As noted during the NCUA Board meeting at which the proposed regulation was approved for publication, and in the regulation itself, many of the current regulatory restrictions will be removed. The rules requiring waivers have been removed. A small credit union exemption has been created. Definitions have been changed which promote a distinction between "commercial loans" for purposes of safety and soundness, and "MBLs" for purposes of the MBL cap. This attempt to simplify the regulation and adopt a more principles-based approach is commendable.

However, the NCUA has noted that it plans to issue supervisory guidance that will detail the parameters of a safe and sound commercial lending program and other requirements that will no longer be part of the rule. This guidance will be detailed, information-heavy, and set standards that examiners will use when reviewing a credit union's lending program. Notably, this guidance will not be released until well after the comment period for this regulation has ended.

The Association expresses concern at the apparent transition of burden from regulatory compliance to burden during the examination process. For this reason, we request that the NCUA issue supervisory guidance for comment. While the agency has repeatedly stated that it is not required to open for public comment any guidance, the agency is similarly not precluded from doing so. Allowing comment on supervisory guidance would show a good-faith effort on the part of the agency that it is indeed in favor of a more flexible business lending atmosphere for credit unions. It would also allow an opportunity for both credit unions and examiners to face head on the issue of subjectivity within the guidance in a constructive and impartial setting, as opposed to raising the issue during an exam.

A comment period will also be beneficial for the NCUA as it will address the particular issues that cause concern for both the industry and examiners prior to an actual examination, thereby limiting complications during the exam process and lessening the potential for conflict. Having examined institutions be involved in the process of formulating the standards under which they will be examined is good common sense and fosters faith in the system.

II. NCUA Should Establish a Transition Resource Group

The Association suggests that the NCUA establish a transition resource group in order to assist with the process of such a large change. As opposed to a working group which helps establish standards prior to implementation, it is suggested that the transition group be unveiled at the same time as the regulations are implemented. With the regulations finalized, there will be no added delay in implementation of the rule.

The purpose of the transition group would be both to monitor the impact of the new rule and forthcoming supervisory guidance for the benefit of the agency, as well as provide a resource and formalized, centralized body for the industry to communicate with. This group will inform the NCUA about potential implementation issues that could arise when credit unions implement the new changes. It will also provide stakeholders with an opportunity to learn about the new changes from others involved with implementation. Additionally, it will promote consistency amongst the regions and effective examiner implementation.

The existence of such a resource group is not unprecedented within the financial services industry. The Financial Accounting Standards Board in conjunction with the International

Accounting Standards Board have established such a group on a variety of issues, including, most recently, the transition group for its Revenue Recognition Standard.

Formal structure and procedure of the transition group should be determined by the agency; however, it is suggested that the group be comprised of those individuals within the credit union system that are primarily responsible for their credit union's commercial lending. Actual users of the rule are in the best position to monitor incoming concerns, evaluate their severity, and report clearly back to the NCUA. It is suggested that periodic meetings be public to discuss implementation issues, to be submitted based on certain guidelines, with joint agreement on how to address any such issues. Composition size of the group, nomination procedures, and meeting and reporting schedule should be at the Board's convenience. Members of the transition resource group could include MBL lender representatives from each region, state and federal examiners, and any other NCUA representatives, all of whom represent a wide spectrum of geographical locations and organizations.

III. Member Business Lending Could be Expanded under the FCUA

The Association is of the position that the NCUA could go further in its attempts to expand commercial lending capabilities of credit unions. One such area opportunity exists clearly in the Federal Credit Union Act.

12 U.S.C. §1757a(b), the section of the legislation which provides for exceptions to the aggregate limit on a federally insured credit union's MBLs to 1.75 times the credit union's net worth, states that the limit does not apply in the case of "an insured credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members."

The NCUA has not provided standards as to what constitutes a credit union that is either chartered for the purpose of making or that has a history of primarily making business loans, and the Association urges the agency to do so. A credit union's charter could be amended to include as one of its purposes "member business lending." Additionally, the NCUA could provide standards for credit unions which have originated or granted a particular number of MBLs over a particular period of time, to meet the "history of primarily making" requirement. We urge that the NCUA consider applying the exemption for those credit unions which historically make member business loans prospectively rather than retroactively.

The creation of such standards is not contrary to the language of the statute, nor does it conflict with the intent behind the law. It is suggested that these standards could be included in the forthcoming supervisory guidance. It is important that such standards and criteria be clear and well-written so as to maintain safety and soundness.

IV. Small Credit Union Exemption Should be Expanded

The Association supports a small credit union exemption within the proposed regulation. The proposed rule includes a new requirement on requiring a written commercial loan policy, as well as imposes new requirements on management and the Board of Directors of a credit union. The proposal will exempt credit unions with $250 million or less in assets, and commercial loans less than 15% net worth, that are not regularly originating and selling or participating out commercial loans, from these requirements.

However, while the Association believes that an exemption for small credit unions is warranted, it is our position that the parameters do not provide adequate relief.

As you are aware, small and mid-size credit unions face a disproportionate burden due to regulations. Supervisory and regulatory requirements must reflect the complexity and risk of individual credit unions. Small and mid-size credit unions have business models, corporate structures, and risk profiles that are very different from other larger institutions supervised by the agency. A flexible approach that considers both size and risk profiles allows the agency to adjust the rigor and intensity of its supervision and supervisory expectations to each institution.

For these reasons, the Association suggests that the asset size threshold for meeting the small credit union exemption be raised to having assets of $500 million or less, or whose total commercial loans are less than 15% of net worth. This approach would protect small and mid-size credit unions, while also providing flexibility to those larger credit unions who have de minimis engagement with business lending.

The Association notes that the NCUA recently raised the threshold to $100 million in assets in other rulemakings. This change is consistent with agency policy.[1] The Association encourages the agency to continue this focus on smaller and mid-size credit unions whose resources are more limited to adapt to the volume of regulatory changes, and raise the "small" credit union exemption to $500 million.

V. Elimination of the Waiver Process is Supported

The Association strongly supports the removal of the entire waiver process, with one limited exception.

The existing regulation contains many restrictions that are more severe than what is required by either safety and soundness or the FCUA. The agency, therefore, created a waiver process for institutions to apply to be exempt from such particular restrictions.

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[1] The Board recently approved a proposed rule and policy statement to update the definition of a "small entity" under RFA to include credit unions with assets of up to $100 million from $50 million. It also changed the asset size threshold in the second RBC proposal from $50 million to $100 million. The same approach was taken regarding emergency liquidity, after an increase to a higher threshold was rejected in 2012.

The process, however, is time-consuming, burdensome, and leads to credit unions being uncompetitive on the marketplace.

The NCUA's principles-based approach in the proposed regulation removes the entire waiver process, and instead maintains only such restrictions as required by the FCUA. This approach is applauded, as it will allow credit unions more control over their business lending portfolio and gives credit unions more assurance and clarity in what they will and will not be able to offer. This reduces costs, provides relief, and coincides with the intent of the FCUA.

However, one requirement will remain under the FCUA which will not be allowed to be waived if the entire waiver process is removed. The limitation on the aggregate dollar amount of commercial loans remains, and states that the amount to any one borrower or group of associated borrowers may not exceed 15% of net worth or $100,000, whichever is greater. It has been NCUA's rule to allow this provision to be waived. The proposed rule, however, does not allow for a waiver. It is the position of the Association that the NCUA should remove this restriction entirely. In the alternative, it is recommended that a waiver process exist for this particular requirement.

VI. Additionally Definitional Changes are Necessary

A. Commercial loans versus MBLs

The Association again supports the change in definitions regarding "commercial loans" and "MBLs." The FCUA's lending restrictions are not safety and soundness restrictions; however, the current MBL regulation bases many of the agency's safety and soundness policies unnecessarily on loans defined as MBLs for purposes of the cap. The proposed rule redefines "commercial loan", which separates those commercials loans for safety and soundness purposes from MBLs, for cap purposes. This approach is appropriate considering that the agency's role is to maintain safety and soundness.

Specifically, the Association supports the change which categorizes loan participations as commercial loans for safety and soundness purposes, rather than as MBLs. This change allows credit unions to purchase loan participations without impacting their cap.

B. "Loan-to-value"

The new definition of "loan-to-value" states that the denominator of the new loan-to-value ratio is the market value for collateral held longer than 12 months, and the lesser of the purchase price and the market value for collateral held 12 months or less. It is stated that this definition ensures that credit unions have appropriate collateral protection in the event that appraisal value is inflated or the borrower overpays for the purchased collateral.

The Association suggests that "purchase price" should be used for the loan-to-value ratio only when the funds of a loan are used to purchase the collateral. If the collateral is already owned, even for less than 12 months, market value should be used in the denominator. The 12-month rule as written does not include improvements made to the collateral, and is too inflexible. While the intent behind the definition to prevent lending against market value when real estate is bought at a discount, the definition does not consider other non-real estate collateral. Normal business lending practice is to value collateral at the lower of cost or market at the purchase date. The business lending expertise which will be required by the proposed rule will ensure that management will know the risks of such a situation, and will lending wisely and appropriately. A 12-month time limit is unnecessary in order to determine when market value is considered.

If, however, the 12-month time period is retained in the final rule, it is suggested that the "collateral value" should be changed to "the purchase price plus any cost of improvements." At a minimum, this will account for the situation where collateral is improved prior to the 12-month standard.

VII. Conclusion

I urge that the NCUA consider the concerns voiced by Massachusetts, New Hampshire, and Rhode Island credit unions, and make the changes detailed above.

Thank you for your consideration of these views. The Association appreciates the opportunity to provide input and I remain available to address any questions or concerns at 508.229.5623 that you or your staff may have at your convenience.

Sincerely,

Paul Gentile

Paul C. Gentile
President/CEO

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