State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CREDIT UNIONS

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August 12, 2015

Gerard S. Poliquin, Secretary of the Board
NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street
Alexandria, Virginia 22314-3428
regcomments@ncua.gov

RE: *Comments on Proposed Rulemaking for 12 C.F.R. Parts 701, 723, & 741 (Member Business Loans and Commercial Lending)*

Dear Mr. Polinquin:

The Division of Credit Unions of the Washington State Department of Financial Institutions appreciates the opportunity to offer the following comments and recommendations regarding the Proposed Rulemaking for 12 C.F.R. Parts 701, 723, & 741, 80 FR 37897, dated July 1, 2015 ("Proposed MBL Revisions"), by the National Credit Union Administration ("NCUA").

In the preamble, the NCUA Board solicits comments on how to approach the issue of state regulation of business lending. We advocate retaining our Washington state member business loan (MBL) rule until the NCUA Board approves a new Washington state MBL rule, similar to the proposed NCUA MBL rule, that continues to minimize the risk and accomplishes the overall objective of NCUA's MBL rule. In addition, we request that the NCUA Board permit Washington to update its state rule in the future as needed with a process for NCUA Board to review and approve the amendments, or allow automatic approval if the amendments make the amended state rule more restrictive than the NCUA MBL rule. All State Supervisory Authorities (SSAs) should have the option to submit their proposed state MBL rule to the NCUA Board for approval and, if approved by the NCUA Board, the state MBL rule would preempt the NCUA state MBL rule.

Washington has a history of regulating member business lending for many years prior to our current MBL rule which was enacted in 2001. We have maintained a robust, NCUA-approved member business loan regulation since June 1, 2001 ("Washington MBL Rule"),[1] granting waivers and exceptions in consultation with the NCUA Region 5. In addition, we have

[1] Chapter 208-460 WAC.

a seasoned, well experienced examination team that consists of credit union examiner specialists in MBLs and borrowed bank examiners to verify a credit union with a material amount of MBLs is operating with similar safe and sound commercial lending practices as a bank of similar size and complexity. We have granted approvals and revoked approvals, when warranted.

The Washington rule includes prudent and necessary requirements addressing the most historically problematic[2] of business loans— i.e., construction and development ("C & D") loans.[3] However, under the Proposed MBL Revisions as written, we would be generally preempted from maintaining our own member business lending regulations and restrictions. In our case, this would, for example, be abrogating a C & D Lending Rule with well-tested *quantitative* measures and well-settled credit union expectations in favor of an uncertain set of *qualitative* general principles related to C & D lending. We do not believe that we should have all or most of the regulatory responsibility with little or none of the authority. While NCUA may be proposing preemptive regulations in part to avoid the practice of having to continue to grant waivers of its current rule, we believe that this burden on NCUA is far outweighed by the potential damage to safety and soundness that preemption would unleash. One of the hallmarks of the dual-chartering system is that it encourages innovation by the states and places both authority and responsibility at the state level, thus assuring mutual accountability as between regulator and credit union stakeholders. We anticipate that the amended Washington MBL rule would retain some of the C & D requirements with the option to apply for a state waiver in consultation with NCUA Region 5.

We strongly urge that your proposed policy of preemption of state law be abandoned in favor of a more inclusive rule that respects the role of the states in both the policy ***and*** the practice of assuring institutional safety and soundness. We therefore urge that you adopt a rule that will permit state specific rulemaking going forward.

Respectfully submitted,

WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS

By:
Scott Jarvis
Director, Dept. of Financial Institutions

By:
Linda Jekel
Director of Credit Unions

[2] L. William Seidman, former chairman of both the Federal Deposit Insurance Corporation ("FDIC") and the Resolution Trust Corporation ("RTC"), stated, "The banking problems of the '80s and '90s came primarily, but not exclusively, from unsound real estate lending." [See *Lessons of the Eighties: What Does the Evidence Show?* (PDF). FDIC. September 18, 1996.] During this period, many thrift institutions lent far more money than was prudent, and to ventures which many of them were not qualified to assess, especially regarding commercial real estate. Between 1986 and 1995, one-third (1,043 out of 3,234) thrift institutions in the United States failed (were closed or otherwise resolved by the former Federal Savings & Loan Insurance Corporation or the RTC). [See Curry, T., & Shibut, L. *The Cost of the Savings and Loan Crisis*, FDIC Banking Review (2000), 13(2), pp. 26-35.] Regulatory relaxation permitted lending, directly and through participations, in distant loan markets on the promise of high returns. Lenders, however, were not familiar with these distant markets. It also permitted associations to participate extensively in speculative construction activities with builders and developers who had little or no financial stake in the projects. [See Strunk, Norman; Case, Fred (1988). *Where Deregulation went Wrong: a Look at the Causes behind Savings and Loan Failures in the 1980s*. (Chicago: United States League of Savings Institutions), pp. 15–16.]

[3] WAC 208-460-030.