BANKING – THE DCU WAY

August 18, 2015

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

Re: 15-EA-16 NCUA – Member Business Loans & Commercial Lending Proposal.

Dear Mr. Poliquin,

As the Senior Vice President of Member Business Lending of Digital Federal Credit Union I am pleased to have the opportunity to provide comments on the proposed MBL rule changes. We appreciate the time and efforts of our regional director to assist us during the years.

I am totally in support of making the changes to the MBL regulations that give the credit unions flexibility and individual autonomy to safely and soundly provide commercial and business loans to our members.

In my opinion the regulations originally were implemented because of the lack of sophistication and knowledge of MBL lending in the credit union industry before 1998. I was in the banking industry in Rhode Island in the 80's and observed the credit union problems that occurred from MBL lending abuses. So I understand the reasoning at the time for the regulations being written on the conservative side. But we are in the year 2015 and as over the years I have met and talked to at least 50 of my counterparts in other credit unions I find many experienced and well-seasoned commercial bankers running MBL programs. I have also notice that many credit unions have taken advantage of the numerous MBL educational opportunities that have be made available through NCUA, CUNA, NFCUA and other organizations.

I do have some specific comments regard the proposal:

723.2 – Definitions

Common Enterprise

"The expected source of repayment for each loan...is the same for each borrower and no individual borrower has another source of income from which the loan…may be fully repaid." I am very unclear as to what this means. If we have two completely unrelated trusts, each having their own loan with us, if their only source of income for each trust is dividends from Microsoft, then would they be a common enterprise under this rule? An example would be very helpful.

Control

"…has the power to vote 25 percent or more…" Someone with only 25% control really can have no control. I have two suggestions for change: Option 1 is to change it to "over 50%". Or option 2 is to delete it entirely and use points 2 and 3 in this section to cover the situations where an individual owning less than 50% really controls the company. Also I think you need to eliminate situations where there has been a receiver assigned or an attorney has Power of Attorney due to death or other situations where the "person in control" is only temporary and/or a non-beneficiary.

Direct benefit "…proceeds are used to acquire property, goods, or services."

I believe that "property" should be replaced with "tangible and intangible assets". The word "property" sounds like real estate. Tangible and intangibles assets would include not only real estate but furniture, fixtures, equipment, portions of ownership (buying out a partner), buying rights to a product or service, contracts, etc.

Loan-to-value

"...lesser of purchase price or market value for collateral held 12 months or less…" I believe that purchase price should be used for the loan-to-value only when the funds of a loan are used to purchase the collateral. The 12 month requirement should be eliminated. If the collateral is already owned, even if only owned for less than 12 months, market value should be used in the denominator. Here is an example when the proposed rule would not fit: I buy a piece of land for $100,000 with cash, do some site preparation, get permits to subdivide, and obtain leases all in the first 6 months. The value of the land is most likely significantly higher than $100,000. The market value in this case would be the appropriate value for lending purposes. I believe the intent of the NCUA is to prevent valuing collateral at an appraisal amount if the business buys it at a discount. Or refinancing the collateral within a year without an improvement to the asset. By requiring business lending expertise in 723.3(b) management will know the risks of this situation and act accordingly. The 12 month limit is being too granular.

Also, as written in the proposal valuing inventory collateral may be challenging. A plastics' molding company buys resin at $1 per pound and adds $2 of labor and $1 of overhead for the total cost of goods of $4 per item. As the proposed regulations now read; the collateral value would be $1 because the resin is less than 12 months old. The added costs will not count. If the item stays in inventory for a year then the value jumps to the market value of $4. Clearly the intent of the NCUA is not to apply the rule to the above situation.

If the proposed rule is held at 12 months at least the collateral value should be changed to "purchase price plus any cost of improvements".

723.3 Board of directors and management responsibilities
(2) Qualified lending personnel

This title should be changed to "**Qualified Head of Member Business Lending**" (the word "staff" in the first sentence should be also changed).

A new section then should follow:
(3) *Lending personnel.* Management should hire staff that, depending on their job function, is experienced in commercial loan development, underwriting, structuring, processing, collection, and loan monitoring.

Then the current section (3) should be renumbered at (4) and titled *"Options to meet the required experience in paragraph (3)"*

723.4 Commercial Loan Policy
(3)Projections. "…a projected balance sheet and income and expense statement…"

This is fine for C&I loans but in normal Real Estate purchase financing projected balance sheets are not required as they add no value. Certainly a projected income and expense statement is mandatory for a real estate deal. The wording could be changed to ''Projected income and expenses and other projections normal with a transaction of this type must be obtained."

723.5 Collateral and security

(a) "A federally insured credit union must require collateral..."

Incongruous with "must" is the statement later in the paragraph that unsecured loans can be made. My suggestion would be to start the paragraph stating that the credit union can make unsecured loans with proper reasoning documentation. Then follow up with "if a borrower does not qualify for an unsecured loan then the credit union must require…"

723.6 Construction and development loans

I am very happy with this section as it mirrors the available construction and development loans in the industry and it will allow us to better serve our members who have construction needs.

723.8 Aggregate member business loan limit

(e) "…**form 5300 reporting…net member business loan balance is determined by…reduced by any portion of the loan that is secured by shares in the credit union, or by shares or deposit in other financial institution, or by a lien on the member's primary residence…"** This reads that if a $100,000 loan has a $20,000 CD as part of the collateral, then only$80,000 is considered an MBL. However in the Credit Union Act, 1757a.(i) and (ii), state only loans "fully" secured by shares or "fully" secured by the member's residence are not MBLs. It implies that partial security should not be deducted. (In reality, NCUA is correct that if a partial amount of a loan is secured by cash; it should be deducted. However the Act appears to override the "accurate" picture.

Furthermore as written (e) goes on to say "…503 reporting…reduced by…a lien on the member's primary residence…" Again this implies that deductions should be made when the loan is partially secured by a member's residence." How would one calculate the amount to be deducted? Should this not read "reduced by loans that are fully secured by a lien on the member's primary residence"?

I also believe that an 18 month lag before introduction is too long. If the examiners now being used are well versed on examining MBLs, these changes make their life easier. If new complicated rules were added a longer period of training would be appropriate.

Finally, I believe the credit unions should be able to review and comment on the new "Guidance Letter to Examiners" that will be issued with this new ruling. I believe this will greatly help in credit unions in their updating of their policies.

In conclusion, based on the MBL experience now in the credit union industry I truly believe that when these new rules become effective the credit unions will use their new powers wisely to make safe and sound loans to their members. Please feel free to contact me should you have any questions.

Thank you for the opportunity to comment.

Best Regards,

Stephen K. Mackowitz
Senior Vice President
Digital Federal Credit Union