



August 26, 2015

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

Re: Comments on Proposed Rulemaking for Part 723  
Member Business Loans; Commercial Lending

Dear Mr. Poliquin:

Thank you for the opportunity to comment on NCUA's proposed amendment to the member business loans ("MBL") rule. Elevations Credit Union is located in Boulder, Colorado, and has over 100,000 members and \$1.5 billion in assets. We engage in MBL and commercial lending, and have a proven track record of understanding and actively managing the associated risks. **We greatly appreciate NCUA's efforts to modernize regulation in this area, and are particularly supportive of steps to more closely align it with the approach utilized by commercial banking regulators.** We support the vast majority of the proposal and will limit our comments to areas of concern or suggestions for enhancement.

#### **Exclusion of Non-member Loans & Participations from Statutory Cap**

The proposal clarifies that non-member commercial loans or participation interests in non-member commercial loans made by another lender are excluded from the statutory cap. **We advocate elimination of the language that provides a disparate treatment for those situations in which credit unions share interests in their commercial loan exposures.** Specifically, we're referring to the language that indicates that credit unions that exchange commercial loan exposures should not be allowed to exclude their related non-member exposures from the statutory cap. **There is no logical or economic justification for penalizing those credit unions that are simply exercising sound risk management practices.**

It is common practice for like-minded financial institutions to share commercial lending exposures, by exchanging ownership pieces. Doing so diversifies each institution's portfolio, strengthens the sustainability of their capital position and protects the

insurance fund. **If it's appropriate to exclude non-member commercial exposures from the statutory limit, the NCUA should do in all instances.**

### **Upcoming Guidance re: Risk Management Practices**

Simultaneous with the final rule, the proposal indicates the NCUA will issue guidance on risk management practices such as loan to value ratios and portfolio concentration limits. We are pleased that detailed guidance will be forthcoming, as we consider it necessary to ensure consistent interpretation and utilization of prudent lending practices across the industry.

- **We strongly advocate that the NCUA commercial lending guidance be consistent with that utilized by the commercial banking regulators, as detailed in FDIC Regulation 365.**
- Clearly, credit unions have different missions and ownership structures than commercial banks. **That said, there should be no differences in the manner in which prudent commercial lending practices are defined and executed within the two industries.**
- The presence of material differences in commercial lending restrictions between credit union and commercial banking results in unintended consequences, as witnessed in the current situation. **The existing NCUA MBL regulations and their interpretation are significantly more onerous than commercial lending regulations from the banking industry.** This may have initially been intentional on the NCUA's part, in the interest of conservatism. **But in actuality, these differences result in the credit union industry being exposed to adverse selection. This disparate regulatory treatment strongly incents the strongest borrowing entities to borrow from community banks rather than credit unions.**
- The guidance should be issued in draft form, subject to a comment period. Both the quality and the effectiveness of the guidance will benefit from a thorough review before its final issuance.

### **Definition of Single Family Residence**

**We recommend the definition of single family residence be clarified to include any residential structure – such as a condo, townhome or other attached residential structure.**

- Presently, Rule 723.3 allows exclusions for loans made to finance the construction of a single family residence if a prospective homeowner has contracted to purchase the property. However, there is no definition found for single family residence.
- The closest definition is found for Dwelling found in 701.31, which carries the meaning of that term as defined in 42 U.S.C. 3602(b) (Fair Housing Act), which is as



follows: "Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof".

- The definition utilized by the Federal Financial Institutions Examinations Council provides a more detailed definition, which we would recommend be incorporated into the NCUA definition to provide clarity. This definition for Dwelling is as follows: "Dwelling means any residential structure, whether or not attached to real property. It includes vacation or second homes and rental properties; multifamily as well as one-to-four-family structures; individual condominium and cooperative units; and manufactured and mobile homes. It excludes recreational vehicles such as boats and campers, and transitory residences such as hotels, hospitals, and college dormitories."

### **Proposed Exemptions from Commercial Lending Requirements**

We disagree with the proposed exemptions from sections 723.3 and 723.4 for credit unions with total assets under \$250 million and commercial loans less than fifteen percent of net worth. We certainly appreciate the intent of providing credit unions with the ability to meet member needs. However, MBL and commercial lending pose unique risks that differ materially from those inherent in either consumer or mortgage lending. Financial institutions should possess an appropriate level of internal controls for each of their lending activities, and we believe it's prudent to require detailed loan policies and appropriate infrastructure.

Sincerely

A handwritten signature in blue ink that reads "Michael Calcote".

Michael Calcote

Chief Financial Officer

Cc: Mark Valente, Division of Financial Services, Colorado  
Mark Robey, SVP Regulatory Affairs, Mountain West Credit Union Association  
Gerry Agnes, Chief Executive Officer, Elevations Credit Union