Oregon
Kate Brown, Governor

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August 7, 2015

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

Sent via email: regcomments@ncua.gov

Re: Comments on Proposed Rulemaking for Part 723 (RIN 3133-AE37)

Dear Mr. Poliquin:

Thank you for the opportunity to comment on the amendments to 12 C.F.R. Parts 702, 723 and 741, which propose changes to credit union member business lending. Please accept our written testimony as the National Credit Union Administration Board (Board) fully considers all comments on the matter.

Our comments focus on the Board's invitation for comments on revisions to 12 C.F.R. § 741.203. In the notice published in the Federal Register, the Board requested comments on "how best to approach the issue of state regulation of business lending."[1] The Board discussed three potential options for the final rule's preemptive effect on state law:

- Option 'A' preserves the status quo for states that adopted member business lending rules. The notice does not address whether a state may further amend its rules under this option, of if they remain static. Option 'C' (discussed below) seems to preclude further amendments to existing state rules.

- Option 'B' essentially invalidates current state rules on member business lending, but allows a state to adopt updated rules consistent with the Board's final rule.

- Option 'C' both preserves current state rules and allows for other states to adopt state-specific member business lending rules, consistent with the Board's final rule.

Finally, the Board also requested "alternative approaches to addressing the state regulation of business lending."[2]

We appreciate this opportunity provided by the Board to, as Congress directed, work cooperatively with State credit union chartering authorities on the issue of member business lending.[3] As one of the seven states regulating lending under state-promulgated members business lending rules, Oregon is uniquely situated to address the Board's invitation for comments.

[1] 80 Fed. Reg. 37911.
[2] *Id.*
[3] 12 U.S.C. § 1757a(e).

The statute implemented by this proposed rulemaking states, in relevant part, that:

> [N]o insured credit union may make any member business loan that would result in a total amount of such loans outstanding at that credit union at any one time equal to more than the lesser of—
> (1) 1.75 times the minimum net worth of the credit union; or
> (2) 1.75 times the minimum net worth required under section 1790d(c)(1)(A) of this title for a credit union to be well capitalized.[4]

When enacting the Credit Union Membership Access Act,[5] Congress set restrictions on credit union member business lending applicable to all federally-insured credit unions. But the legislative history behind the Act does not indicate that Congress vested the Board with complete preemptive authority over member business lending. For example, the Senate Committee on Banking, Housing, and Urban Affairs (Committee) noted when it reported out H.R. 1151 that it amended the Act to place "for the first time…significant restrictions on member business loans of federally insured credit unions."[6] The Committee only mentioned how it expected to see the Act interpreted in terms of loan types:

> The Committee intends for the Board to interpret the exceptions under new section 107A(b), to permit worthy projects access to affordable credit union financing. Loans for such purposes as agriculture, self-employment, small business establishment, large upfront investment or maintenance of equipment such as fishing or shrimp boats, taxi cab medallions, tractor trailers, or church construction should not be unduly constricted as a result of the Board's actions.[7]

The Committee's report did not suggest the Board completely preempt states on business lending. In fact, NCUA by statutory directive is to "consult and seek to work cooperatively with State officials having jurisdiction over State-chartered insured credit unions."[8] At a minimum, we believe that state chartering authorities need to play a role in the regulation of business lending within its borders. Clearly, states with no avenue to adopt local regulation cannot properly consult with the Board on member business lending.[9] However, we acknowledge that in passing this legislation, Congress also expressed concern about uniformity in the lending standards applicable to credit unions. Reasonable review and approval of state rules help ensure uniformity with Congressional intent.

Oregon enjoys a robust credit union presence, with over $8 billion outstanding in loans and leases as of December 31, 2014.[10] Oregon did not need to close a state-chartered credit union during the recent financial crisis, and the only credit union that recently entered into a net worth restoration plan emerged in 2013. Oregon's strong system of credit unions is due in part to the traditionally dual nature of credit union chartering in the United States. The co-existence of state and federal charters allows for credit unions to choose a charter that allows them to capitalize on

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[4] 12 U.S.C. § 1757a(a).
[5] Pub. L. 105-219 (1998).
[6] S. Rpt. 105-193 (May 21, 1998).
[7] *Id.,* at 9-10.
[8] 12 U.S.C. § 1757a(e).
[9] *See* 80 Fed. Reg. 37911.
[10] *See* Oregon Dept. of Consumer & Business Svcs., *Consolidated Report of Condition of Oregon State-Chartered Credit Unions* (December 2014), available at http://www.cbs.state.or.us/external/dfcs/cu/quarterly_abstracts/abs4_14.pdf

unique opportunities that may only exist in one or more states. Indeed, two federally-chartered credit unions chose an Oregon charter just in 2015.

For this concept of 'dual-chartering' to reach its full potential, the Board should give the states an opportunity to set locally-tailored member business loan regulations, consistent with Congressional intent. Fundamental principles of federalism should inform the Board's decision on state rules, where it has discretion to do so. Obviously, Congress has set the ceiling by adopting the member business lending statute. But without direction to the contrary, we believe the Board possesses discretion to allow state regulations on member business lending, with an eye toward granting "the States the maximum administrative discretion possible."[11]

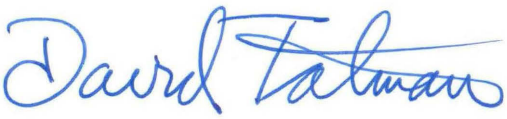
Thus, we propose the Board preserve the *current* rule codified in 12 C.F.R. § 723.20(a):

> The NCUA Board may exempt federally insured state chartered credit unions in a given state from NCUA's member business loan rule if NCUA approves the state's rule for use for state chartered federally insured credit unions. In making this determination, the Board is guided by safety and soundness considerations and reviews whether the state regulation minimizes the risk and accomplishes the overall objectives of NCUA's member business loan rule.

However, preserving the *status quo* for seven states should only be the starting point. In order to grant states the maximum administrative discretion possible, we ask that the Board allow the other forty-three states to adopt their own rules on member business lending, if they so wish. We believe that the Board may review and approve of state rules, as long as the review comports with Congressional intent and the Board reasonably applies transparent review criteria. Finally, the Board will need to make conforming changes to 12 C.F.R. § 741.203 to ensure consistency.

Again, thank you for the opportunity to comment on these proposed rules. We hope our comments help lead to a productive and robust discussion on the role state chartering authorities play in the regulation of credit unions.

PATRICK M. ALLEN, Director
Department of Consumer and Business Services



David Tatman, Administrator
Division of Finance and Corporate Securities

[11] Exec. Order No. 13132, 64 Fed. Reg. 43255 (Aug. 4, 1999).