CREDIT UNION DEPARTMENT

Harold E. Feeney
Commissioner

Robert N. Baxter II
Deputy Commissioner

August 31, 2015

Sent electronically to: regcomments@ncua.gov

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

Re: Comments for Notice of Proposed Rulemaking on 12 CFR Part 723 Member Business Lending

Dear Mr. Poliquin:

The Credit Union Department, State of Texas ("Department") appreciates the opportunity to express our views on the National Credit Union Administration's ("NCUA") proposed modifications to NCUA Rules and Regulations Parts 701, 723, and 741 dated July 1, 2015 ("Proposed MBL Revisions") regarding member business loans ("MBLs") and commercial lending. In general, the proposed modifications would replace the existing rule's prescriptive requirements with a broad principles-based regulatory approach.

The Department applauds NCUA's Modernization Initiative in their efforts to reduce regulatory burdens. The replacement of a one-size-fits-all rule regime is appropriate and will provide credit unions greater flexibility and individual autonomy in safely and soundly providing member business loans to their members. The Department understands it is incumbent on regulators to reduce unnecessary regulatory burdens on their supervised entities to the extent compatible with public policy and principles of safety and soundness. The Department has a few concerns, however, with respect to certain aspects of the Proposed MBL Revisions and offers the following recommendations and observations for NCUA's consideration.

Proposed §723.1 – Purpose and Scope

The Department objects to the substance of the Proposed MBL Revisions that would treat non-federally insured credit union loans differently than loans to federally insured credit unions. Under current §723.1(c), loans to other "credit unions" are exempted. However, under proposed §723.1(b)(2), the exception applies only to loans to "federally

insured credit unions." There was no language in the preamble as to the rationale for this distinction. Loans to credit unions should not be considered MBLs based simply on the provider of the share insurance. All state chartered credit unions, regardless of their share insurance provider, are, and should be, required to meet and maintain the same standards of financial performance by their state regulators. It is irrelevant to the examination of a state chartered credit union whether it is insured by NCUA or by an alternative share insurance provider. Non-federally insured credit unions follow similar laws and regulations as federally insured credit unions and are rated in a consistent fashion using the same standards. There is no historical data to support a conclusion that loans to non-federally insured credit unions presents a greater risk. Accordingly, the Department strongly urges that there be no disparity of treatment between non-federally insured and federally insured credit unions.

Proposed §723.3 and §723.4 – Requirements for Safe and Sound Commercial Lending

The Department has serious concerns with the Proposed MBL Revisions that create an exemption from the policy and program requirements in §723.3 and §723.4 for credit unions that both (1) are less than $250 million in assets and (2) total commercial loans less than 15% of net worth that are not regularly originating and selling or participating out commercial loans.

Commercial lending presents an elevated level of risk compared with the more traditional credit union consumer lending and it requires more specialized underwriting, monitoring, and collection proficiencies. Any credit union engaging in commercial lending must understand the nature of the inherent differences between these two types of lending and that understanding must be reflected in its policies, processes, and staffing used by the credit union to govern and manage its commercial lending portfolio. Thus, all credit unions engaged in commercial lending should have specific policies, procedures and expertise beyond those that might be found in their consumer loan policies and programs. We fear that the exemption as proposed, minimizes the importance of those differences in a manner that could adversely impact the safety and soundness of individual credit unions and the system as a whole. Accordingly, the Department encourages NCUA to amend proposed §§723.3 and 723.4 to eliminate the "blanket" exemption, and simply require written policies, procedures, expertise, and other program infrastructure commensurate with the nature and volume of a credit union's commercial lending activity.

State Regulation of Business Lending

The Department advocates for retaining the ability of states to offer varying, and sound, regulatory approaches to supervising business lending. Pursuant to existing §723.20, a

state may seek an exemption from NCUA's existing MBL rule for its federally insured state chartered credit unions ("FISCUs") if the state promulgates a state specific MBL rule that NCUA determines it to minimize the risk and accomplish the overall objectives of NCUA's MBL rule.

Devolving limited power to the states for supervising business lending should not be inherently objectionable, especially if the state rule addresses relevant safety and soundness considerations, minimizes credit union risk, and accomplishes the overall objectives of the Proposed MBL Revisions. Populations vary in important ways across the different states and preemption imposes burdens by treating all credit unions, their members, and the various markets as if they were in need of the exact same supervision. As primary regulators of FISCUs, state regulators are more familiar with their institutions and local conditions, allowing state regulators to accurately evaluate the condition of credit unions and determine if alternative business lending rules are warranted. Where feasible and consistent with regulatory objectives, NCUA should remain amenable to other regulatory approaches that reduce burdens while maintaining the flexibility and freedom of choice for credit unions, and fostering regulatory innovation between credit unions and regulators. Incorporating provisions similar to existing § 723.20 into the final rule would allow the states with existing state specific rules to maintain, repeal, or amend those rules while also allowing any state to come forward in the future with a new state specific rule.

Should it be the ultimate decision to include a provision in the final rule for state specific rules, NCUA will need to also make a corresponding change to proposed §741.203. Under existing regulations, §741.203 acknowledges the existence of state specific MBL rules and provides the exemption for FISCUs in those states from §723. The proposed §741.203 has deleted the reference to state specific rules as well as the reference to the exemptions for those FISCUs.

Supervisory Guidance

NCUA has also made note that finalizations of the Proposed MBL Revisions would be accompanied by supervisory guidance to assist credit unions and examiners with implementation of the final rule. We fully support the notion that issuing guidance will be essential to facilitate a successful transition from prescriptive to principle-based rules. While the NCUA has indicated that an extended phase-in period for the Proposed MBL Revisions may be possible, the Department has concerns that the benefits of such a period will be minimized if the draft guidance is not issued at the same time and in conjunction with the publication of the final MBL Revisions. An extended phase-in period should not be considered sufficient to help credit unions adjust to the final rule without having the content of the corresponding guidance at the same time. Credit unions deserve to know the content of the guidance, and publishing the draft guidance

with the final MBL Revisions should enable credit unions to evaluate the full meaning of the final MBL Revisions and make plans accordingly. If guidance is issued at the same time and in conjunction with the final MBL Revisions, credit unions also will be able to provide feedback to state and federal regulators on the proposed guidance to ensure a thoroughly vetted supervisory framework is in place when the Proposed MBL Revisions take effect. Finally, it is incumbent on a regulator to make required compliance obligations as unambiguous as possible to its regulated industry. Compliance details cannot be adequately known, tweaked and implemented unless the guidance is published at the same time the as the publication of the final MBL Revisions.

Thank you for considering our views on this important matter.

Sincerely,

Harold E. Feeney
Commissioner

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