

August 15, 2015

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

Delivered Electronically

Subject: Member Business Loans; Commercial Lending; RIN 3133-AE37

Dear Mr. Poliquin,

On Thursday, June 18, 2015, the National Credit Union Administration (NCUA) board issued a proposal that would amend the member business loan (MBL) rule (part 723). The proposal was published in the Federal Register on July 1, with a sixty day comment period. The proposed amendments modernize the regulatory requirements that govern credit unions business lending programs.

The Northwest Credit Union Association (Association)¹ is very supportive overall of the MBL proposal and we would like to thank all three NCUA Board Members, Chairman Debbie Matz for championing the MBL reform effort, and Vice Chairman Metsger and Board Member McWatters for offering input that substantially improved the draft proposal. The proposed rule will allow credit unions to more effectively manage business loan originations and portfolios.

The Association is pleased to be able to offer comments on the National Credit Union Administration's (NCUA) MBL proposal. The NCUA should make some minor technical improvements to the rule, and in addition we are strongly encouraging the board to refrain from weakening state regulatory authority related to state specific MBL rules. We ask that the NCUA carefully consider our policy arguments.

General Comments

The NCUA's current prescriptive approach to member-business lending is a big constraint on credit unions' ability to serve their members' needs and the needs of their community. We have sought input from our members through a number of different avenues and are confident that a final rule which takes into account the comments and concerns of responding credit unions will be viewed positively by credit union leaders.

¹ The Northwest Credit Union Association is a regional trade association representing the interests of more than 150 credit unions; institutions that employ and engage more than 10,000 people, hold more than \$65 billion in aggregate assets, and count more nearly 5 million individuals as members. The Association is a nonpartisan advocacy organization representing the interests of its member institutions on a variety of systemically important banking issues.

Credit unions affiliated with the Association are principally domiciled in the Northwest quadrant of the United States, but the Association also has members from the states of Alaska, Idaho, California and Hawaii. Learn more about the Association at www.nwcua.org.

Our members have pointed out numerous positive aspects of the rule including the fact that the rule removes prescriptive non statutory barriers in the proposal including:

- a. The requirement for a personal guarantee;
- b. The 80 percent limit on loan-to-value ratios;
- c. The limit on unsecured MBLs;
- d. The requirement that staff have two years of direct experience;
- e. Detailed limits on construction and development loans;
- f. The restrictive definition of “associated borrower;” and
- g. The 15 percent of net worth limit on loans to one borrower, which will now increase to 25 percent if the additional 10 percent is supported by readily marketable collateral.

In addition, credit union leaders are pleased that the NCUA removed references to 12.25% choosing instead to express the cap as 1.75 times the applicable net worth requirement for a credit union to be categorized as well-capitalized. This minor change allows credit unions that are subject to a minimum Risk Based Net Worth Requirement additional MBL authority. The Association recommends that the NCUA provide additional clarity and specific examples of how this would work in the commentary of the final rule. The NCUA should also make it clear that the expense of implementation and training will be incorporated into the current training budget.

Finally, a number of our members were pleased that the NCUA has chosen to break out commercial loans from MBL loans. The NCUA is statutorily required to consider some low risk loans as MBLs including a 1-4 family residential property that is not a primary residence, and a vehicle that costs over \$50 thousand, even if they are used for household purposes. Under the proposed rule these loans would not be subject to enhanced requirements of higher risk commercial lending. In addition, removing nonmember business participation loans from the MBL bucket allows credit unions to increase commercial lending, while including only statutorily required loans under the MBL definition.

Our colleagues at NASCUS pointed out that in the preamble of the rule in the discussion about the Risk Rating System for commercial loans, the NCUA states that credit unions:

Must incorporate Accounting Bulletin No.06, Attachment 1, Loan Review Systems or any updates to this guidance must be reflected in the credit union’s policy

The Association suggests that you soften the language suggesting credit unions incorporate the bulletin. Our preference would be that the NCUA issue comprehensive guidance on MBL and commercial lending and have that guidance be cohesive and in one or two documents rather than cross referencing multiple documents that are housed in different areas.

Banker Assault

The Association is well aware that community bankers have filed numerous form letters at the behest of the Independent Community Bankers Association (ICBA) challenging the NCUA on a wide range of issues including statutory authority, safety and soundness, and general philosophy.

The Association points out that of the federal financial regulators, the NCUA stands out amongst its peers, demonstrating that the regulatory system in place for natural person credit unions was sufficient to weather a historic crisis. Bankers argue that credit unions are not equipped to offer business loans. Our response is that 98% of credit unions that offer MBLs are well capitalized, with 76% of MBLs aggregated in credit unions with assets over \$500 M.

Oregon and Washington credit unions alone have nearly \$4B in member business loans on their books, equivalent to the amount the entire credit union system held in 2000. Business loans have helped credit unions diversify their balance sheets and lower overall risk. In addition, credit unions hold more capital relative to their balance sheets, take less overall risks than other types of financial institutions, and have personal relationships with their members. These are reasons why credit unions are well positioned to grow their business lending portfolios and help main street communities return to prosperity.

In contrast, the losses and failures suffered by FDIC insured banks were staggering. Losses from just one mid size bank failure, PFF Bank and Trust, nearly equals the \$750 million in losses suffered by all natural person credit unions since 2008. Instead of encouraging the NCUA to maintain anti-competitive rules, ICBA should be focusing on the inadequacies of their own regulatory system which led to an economic collapse of historic proportions.

Technical Changes & General Recommendations

Our membership has expressed some concerns that the proposed rule will result in examiners inconsistently interpreting and applying the new MBL regulations. Additionally, there are concerns that the NCUA will issue guidance that could be as restrictive or more restrictive than the current regulation. To address these concerns the Association is supportive of the 18 month lead time to ensure proper training for examiners. We are also strongly encouraging that the NCUA consult with industry and state supervisory authorities on guidance, which should be released with the final rule in draft form.

As the NCUA pointed out in their proposal, 76% of MBLs are concentrated in credit unions over \$500 million in assets. Therefore, the Association is encouraging the NCUA to increase the exemption from 723.3 and 723.4 from credit unions with \$250 M in assets to credit unions with \$500 M in assets as long as commercial loans are less than 15% of net worth. The 15% of net worth provision provides the necessary protection to the share insurance fund, while not adding unnecessary burdens to mid size credit unions in the early stages of developing a commercial lending program.

The Association would like the NCUA to leave the current 723.1 (c) intact which exempts loans to other credit unions from the MBL cap. However, the proposed §723.1(b)(2) only applies to federally insured credit unions, leaving loans to privately insured credit unions as subject to MBL rules which the Association opposes.

Comments on Preemption

The Association and our membership's primary concern with this rule is that the NCUA is considering eliminating state MBL rules as well as the ability of states to apply to have their own MBL regulation. Preemption is an important issue to all credit unions—state chartered,

federally chartered, and credit unions in states that do not have their own MBL rules, because all credit unions benefit from a regulatory environment that promotes innovation.

The NCUA regularly and routinely disregards President Obama's May 20, 2009 [memorandum on preemption](#) that was issued to Heads of Executive Departments and Agencies. Recent examples of NCUA preempting states include the CUSO rule, taking away states' ability to issue the primary CAMEL rating with the troubled condition rule, and creating a derivatives rule that overrules state supervisory authorities ability to grant derivative powers beyond the scope of the NCUA rule. These are just some of the preemptive rules that the NCUA has issued over the last three years. The Presidents memo on preemption reaffirms [Executive Order 13132](#) on Federalism, and also states:

the citizens of the several states have distinctive circumstances and values, and that in many instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values. As Justice Brandeis explained more than 70 years ago, “[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

Both Washington and Oregon have superb State Supervisory Authorities (SSA). These state regulators are leaders with a tradition and commitment to updating their charters and improving the regulatory framework on an annual basis. Working closely with the NCUA, this commitment has allowed state chartered credit unions to achieve economies of scale and to thrive. State chartered credit unions in Washington have six times the assets of the average federal charter, and Oregon state chartered credit unions hold three times the average assets of a federal charter. This is in large part due to the unique advantages of the statutory and regulatory frameworks that Oregon and Washington state chartered credit unions enjoy.

State-specific MBL rules allow state supervisory authorities to interpret a rule differently from the way that the NCUA interprets a section of a rule, even if the rule is substantially the same as the NCUA rule.

We ask that the NCUA remove from the commentary on State Regulation of Business Lending that indicates state supervisory authorities do not have the ability to interpret their own MBL rules granted by the NCUA board, in relation to the Federal Credit Union Act. While the commentary has no regulatory impact it demonstrates a lack of respect for SSA's and provides a basis for challenging a state rule not just by the NCUA but by outside interests as well. Existing state-specific rules allowed for proof of concept and provided the NCUA a road map for improving their MBL regulation.

Therefore, it is imperative that States be allowed to maintain previously adopted state rules and to retain the ability to update or submit new state rules to the NCUA Board for approval. **We are specifically asking that the NCUA not make any adverse changes to part 741.** The current proposal includes a change to part 741.203 that would eliminate an important state carve out that must be maintained.

Current part 741.203

a) Adhere to the requirements stated in part 723 of this chapter concerning member business loans, §701.21(c)(8) of this chapter concerning prohibited fees, and §701.21(d)(5) of this chapter concerning non-preferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state supervisory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board or, in the case of the member business loan requirements, if the state supervisory authority adopts member business loan regulations that are approved by the NCUA Board pursuant to §723.20. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

Proposed part 741.203

(a) Adhere to the requirements stated in part 723 of this chapter concerning commercial lending and member business loans, §701.21(c)(8) of this chapter concerning prohibited fees, and §701.21(d)(5) of this chapter concerning non-preferential loans; and

The NCUA should focus on fostering healthy state regulatory regimes rather than preempting state regulatory authorities. We would encourage the NCUA to draft language that allows SSAs to keep previously approved rules and retains all states' ability to apply for a new rule. Furthermore, we would encourage the NCUA to specifically state in the commentary that states with their own rules retain the flexibility to interpret their rules.

Conclusion

The NCUA board has demonstrated a willingness to address valid concerns. The Association and the majority of our members support an MBL regulation that is less restrictive. Since 2000 credit unions have grown aggregate business lending from \$4 B to \$56 B. Credit unions have demonstrated that they not only understand business lending, they excel in it. The impacts of credit union business lending are felt in main street communities across America. By diversifying their balance sheets, credit unions have actually reduced risk to the share insurance fund. To the NCUA's credit they recognized the benefits of restructuring their MBL regulation to meet the statutory requirements and eliminate regulatory provisions that were not prescribed.

In conclusion we ask that the NCUA review the Association's general recommendations and technical changes.

Most importantly we ask that the NCUA recognize that state supervisory authorities play an important role, and that as Justice Brandeis pointed out:

“[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

Please respect the talents and capabilities of our state regulators and finalize an MBL rule which grandfathers existing state rules, allows all states to have their own MBL rules along with

the ability to update their MBL rules without taking away rights that were previously granted, and finally to clearly articulate in the preamble that states retain their ability to interpret their rules with respect to the Federal Credit Union Act.

Once again, we believe in the leadership of Chair Matz, Vice Chair Metsger, Board Member McWatters and their willingness to address valid concerns. The Association appreciates the opportunity to submit comments on the proposed member business loan commercial lending rule. We appreciate the NCUA's commitment to improving the regulatory landscape for credit unions. Thank you. We would be pleased to answer any questions you may have.

Respectfully,

A handwritten signature in black ink that reads "John Trull". The signature is written in a cursive, flowing style.

John Trull
Director of Regulatory Advocacy
Northwest Credit Union Association