



August 31, 2015

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

Re: Proposed Rule – Member Business Loans; Commercial Lending | NCUA-2015-0031-0001; RIN 3133-AE37

Dear Mr. Poliquin:

I am writing on behalf of Suncoast Credit Union (Suncoast), a not-for-profit, cooperative financial institution that serves over 650,000 members along the west coast of Florida. We are a federally insured state-chartered credit union with 58 branches and \$6.6 billion in assets. We appreciate the opportunity to comment on the National Credit Union Administration (NCUA) Board's Proposed Rule – Member Business Loans; Commercial Lending.

We are pleased the board is considering adjusting the Member Business Loans (MBL) regulations to assist credit unions in better serving their business members' unique and expanding needs. While we currently are not approaching the statutory cap, coupled with the fact that we are a low-income designated credit union and thus exempt from the cap, the proposed changes will certainly help us to be more creative and more competitive in serving the needs of our business members. We believe that these changes will add value to the overall credit union industry.

#### **Commendations on the Proposed Regulation**

We support the proposal to shift from a prescriptive regulation to a principles-based approach. There are a wide variety of credit union MBL programs in the industry, and this approach allows each credit union to tailor the program to fit its strategic goals, risk tolerances, and increasingly diverse membership base. The principles-based approach recognizes the fact that managing risk from business lending activities needs to be developed within the lending institutions by its capable and qualified staff and cannot be merely prescribed. Business lending is unique and loan structuring varies based on the size, type, collateral, industry, and strength of the borrowers.

We also commend the elimination of the minimum two-year experience requirement for underwriting MBLs. The variation in complexity makes one standard difficult, if not impossible, to identify and use for all circumstances.

#### **Specific Items Where Suncoast Recommends Earlier Implementation Timing**

The Proposed Regulation states that an 18 month implementation timeline will be required before the regulation goes into effect. We understand the need for credit unions and examiners to understand and implement regulatory changes. However, we believe that this extended timeline is unwarranted for certain items that are relatively simple. These changes will have a positive, material impact on credit union MBL programs and put credit unions on a level playing field with banks and other financial institutions who are not

currently meeting the needs of the “true” small business owner or entrepreneur. These can be easily implemented by updating the business lending policy and making appropriate changes in procedures. Examples of practices that can be enacted more expeditiously include:

Credit Risk Rating System – Most credit unions, Suncoast included, already have a credit risk rating system in place sufficient to comply with the proposed rule and others simply need to shore up measurement and reporting. Those that do not have a robust system can establish and implement one as an integral part of their MBL policy update within a reasonable timeframe of less than 18 months.

Construction Loan Costs – The regulatory definition that specifically identifies which costs may be included in construction “soft” costs is now clear, and this change can be implemented in a credit union’s policy and practices immediately based on internal approval of policies and procedures.

Loan to Value Definitions for Construction Loans – The new definitions that require using 1) the lower of the cost to build, or 2) either the projected “as-stabilized” or “as completed” values, are now clear and can be implemented in a credit union’s policy and practices immediately.

Unsecured Lending – Credit unions can relatively easily define circumstances where appropriate and well-supported unsecured lending limits can be utilized based on the strength of the borrower and viability of the business. These can be established in a credit union’s policy and practices in a relatively short time period.

Loans to One Borrower Limit – The new regulatory definition will allow a credit union to exceed the current 15% of net worth limit by an additional 10%, as long as the higher advance is fully secured by marketable securities or cash accounts. This is clear and can be quickly implemented in a credit union’s policy and practices.

Personal Guaranties – Suncoast agrees with the Preamble to the Proposed Rule in that credit unions should always obtain full personal guaranties whenever possible. While eliminating guaranties does pose some additional risk, we believe this change can be implemented sooner in various ways such as revising policies to require a graduated scale for guaranties, where limited guaranty options may be utilized before waiving a personal guaranty altogether. For example, credit unions are often asked to allow proportional guaranties when a business or property is owned by several individuals. Permitting this limited guaranty is a better alternative than declining a well-supported loan request when the owners are not willing to provide joint and several guaranties. Another option is to require a guaranty only from the guarantor that is key to the success of the business, e.g. a managing partner, even though that guaranty percentage is below the 51% required today.

In Suncoast’s opinion, the guaranty issue is clearly the most important timing change that should be made in the new regulation. Credit unions today are forced to turn away many excellent lending opportunities because of the regulation-mandated guaranties, and 18 months is far too long to wait for this change.

**Items Where Suncoast Recommends Further Clarification or Modification by NCUA**

From our view, other provisions of the Proposed Regulation still need further clarification or definition, as follows:

Common Enterprise and Control – The Proposed Regulation is quite specific on the definitions and stated percentages for determining borrower associational relationships. We question why this section of the new regulation seems to be more prescriptive rather than less so, as this portion of the new rule seems to run counter to the Control definition that should drive the Associated Borrower rules. In particular, the 50% Common Enterprise Rule and the 25% Control Rules are quite specific. We believe credit unions should be allowed to take a conservative approach and count any borrower who has a joint interest with another

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borrower or entity as an Associate Borrower. In addition, credit unions should be able to use prudent judgment to determine who has Control, as was suggested in Exhibit 3 of the *2013 Supervisory Letter on Evaluating Credit Union Requests for Waivers of Provisions in NCUA Rules and Regulations Part 723, Member Business Loans*.

Calculation of the MBL Cap – The Proposed Regulation eliminates the 12.25% of assets cap, with the sole definition of the MBL Cap changed to “the lesser of 1.75 times a credit union’s net worth or 1.75 times the minimum net worth requirement to be considered well-capitalized.” We would request a clarification of what is intended by this change. Will the 7.0% definition of well-capitalized (under §1790d(c)(1)(A)(i) of the Federal Credit Union Act remain in place, or will the paragraph that follows [§1790d(c)(1)(A)(ii)] leave room to redefine “well-capitalized” at a higher level once the pending Risk Based Capital rules go into effect? The former interpretation would seem to leave most credit unions’ current Portfolio Caps in place. However, if there is a higher threshold for well-capitalized under RBC, it may allow for more space under the MBL Cap. Naturally, most credit unions would prefer the second option to take effect.

Classification of an MBL vs. Commercial Loan – In reading the Proposed Regulation, loans that are included and excluded in these two definitions seems too complex, to the point where it appears NCUA is creating exceptions to the exceptions. If the new definitions need to remain as shown in the Proposed Regulation for call reporting purposes, we would recommend the table found on page 56 of the Proposed Regulation Preamble be included in the finalized version of Section 723. This would provide the needed guidance to both credit unions and regulators when determining underwriting standards and call report classification of a loan.

Non-Member Business Loan Participations – The proposal excludes these from the MBL Cap and each credit union can set its own portfolio limit on the amount of non-member participations that can be purchased. Therefore, a credit union could potentially buy as many non-member participations as desired. This is good for geographic diversification and balance sheet management. However, these participations are most often far outside a credit union’s geographic field of membership or home state. From a safety and soundness perspective, it would seem to carry more risk for a credit union to hold a large amount of its portfolio in non-member participations, while they are constrained by the MBL Cap on loans within their core market area.

### Final Comments

We are concerned that the principles-based approach will rely in large part on subsequent “Supervisory Guidance” that will be used by examiners to interpret the Final Rule and carry out MBL exams. The industry will have no input on how this guidance is put together and may not understand or interpret the guidance in the same way examiners do. It is imperative for credit unions to fully understand the areas of emphasis and expectations examiners will be focusing on in their work. NCUA will also have to develop true commercial lending expertise to ensure examiner consistency. [Reference: Page 36 of Preamble to Proposed Regulation]

**Again, we support the proposed changes with minor clarifications requested above. We sincerely appreciate the opportunity to provide input on NCUA’s proposed rulemaking amending the Member Business Loan regulations. Feel free to contact me for clarification or further discussion on any of these important items.**

Sincerely,



Melva McKay-Bass  
Senior Vice President of Business Development