



OHIO CREDIT  
UNION LEAGUE

August 28, 2015

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

Re: Member Business Loans; Commercial Lending, 12 CFR Parts 701, 723, and 741  
RIN 3133-AE37

Dear Mr. Poliquin:

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposal to amend the Member Business Lending regulations under Parts 701, 723, and 741.

OCUL is a state trade association and advocates on behalf of Ohio's 321 federally- and state-chartered credit unions, serving 2.8 million members. The comments reflected in this letter represent the recommendations and suggestions that we believe would be in the best interest of Ohio credit unions.

OCUL supports NCUA's change from prescriptive, one-size-fits-all regulations that can limit the ability of credit unions to serve the small business owners among their memberships. The "principles-based approach" to Member Business Lending proposed by the agency is a strong step towards the regulatory relief needed to allow credit unions to thrive, while allowing them to be more sophisticated in risk evaluation and lending decisions. OCUL further appreciates NCUA's efforts to place specific parameters around the definition of "Member Business Lending" in the Federal Credit Unions Act recognizing that not all commercial lending should be subject to those restrictions.

Areas of concern remain under the proposed rule. Specifically:

1. Supervisory guidance issued by NCUA should be subject to open public commentary in order to assure it outlines objective standards to be used by examiners reviewing Member Business Lending programs.
2. States must be allowed to impose their own Member Business Lending rules to coordinate and complement NCUA's rules.
3. The "de minimus" exception should cover all credit unions not ordinarily in the business of originating or participating out commercial loans, not just those under a specified asset size.
4. The current exception to the rule for loans made to "other credit unions" [§723.1(c)] should not be narrowed to include only loans made to other federally-insured credit unions.



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### **Positive Changes to Member Business Lending Rules**

NCUA proposes to remove most requirements not included in the Federal Credit Union Act provisions covering Member Business Lending, in favor of allowing individual credit unions to develop their own policies and practices, overseen by the credit union's board and senior management. Among the changes:

1. Removal of most waiver requirements, such as for personal guarantees and unsecured loans;
2. Allowing credit unions to develop commercial lending expertise in-house or to depend upon third parties for expertise rather than requiring specified prior experience;
3. Delineating the differences between specified Member Business Loan regulatory definitions and more general commercial loan definitions which indicate that participation interests in loans made to non-members do not count towards the regulatory Member Business Lending cap.

These changes reflect that well-run business lending programs already have in place underwriting safeguards to protect the credit union. One of the best of these is each credit union's own familiarity with its members and local economic conditions, which allow the credit union to make exceptions to guarantee or collateral requirements. Allowing credit union boards and senior management the flexibility to tailor Member Business Lending and commercial lending programs to unique circumstances recognizes the increasing sophistication of credit unions as they develop services needed by their members.

Formally recognizing that some commercial loans are statutorily not Member Business Loans also adds flexibility, while keeping safety and soundness at the forefront. The Member Business Loan definition is more narrowly defined, and NCUA's proposal tailors the regulations to reflect the differences.

In addition, clarifying that loans secured by a 1- to 4-family residential property are not commercial loans for purposes of the rule potentially lessens the regulatory burden for some. Credit unions making only this type of statutorily-defined Member Business Loan will not be required to develop a commercial lending policy and program.

OCUL strongly supports these positive steps forward in regulatory relief and credit union empowerment.

### **Open Supervisory Guidance for Public Comment**

OCUL cautions NCUA that any Supervisory Guidance on Member Business Lending should be open to comment by the industry prior to implementation. Historically, such guidance has often contained program characteristics or targets that become de facto regulatory requirements during an examination. This is especially of concern since it will

be up to the subjective review of individual examiners. Therefore, it will be important for NCUA to circulate any guidance for public comment prior to implementing it to assure that guidance does not inadvertently re-impose prescriptive requirements or other unnecessary restrictions. NCUA should also take steps to train examiners to recognize that prudential review does not equate to requiring strict adherence to specific guidance or general notions of best practice.

### **Preserve State Supervisory Authority Ability to Implement State Member Business Lending Rules**

OCUL urges NCUA to retain the ability for state supervisory agencies to implement Member Business Lending regulations that are tailored to their individual states under “Option C” of this proposal. A strong dual-chartering system is the hallmark of the credit union industry, and NCUA should be wary of any regulations that prevent the State Supervisory Authorities from supervising state-chartered credit unions as dictated by state-level issues and concerns.

State-specific rules have provided a blueprint for needed changes to NCUA’s rules, by offering varying interpretations of rules that may be substantially the same. Therefore, it is imperative that states be allowed to submit new rules for the approval of the NCUA board, and maintain or modify those already in existence, in order to allow for adjustments based on the characteristics of each state’s marketplace.

### **Definition of “De Minimus” Exception**

NCUA outlines an exception to its requirements of a fully-developed commercial lending program for those credit unions that are not regularly originating or participating out commercial loans, defined as those having less than \$250 million in assets and holding less than 15% of net worth in commercial loans. OCUL supports allowing such exceptions, but believes that a credit union having more than \$250 million in assets but similarly not in the practice of regularly originating or participating out commercial loans should also be allowed to qualify for the exception to all credit unions.

### **Retain Exception for “Loans to Other Credit Unions” As Is**

Current Member Business Lending rules provide a number of exceptions for loans that are not classified as commercial loans. Among these are loans to “other credit unions.” However, in the proposed revision, this exception is narrowed to include only loans to “other *federally-insured* credit unions.” There is no explanation why loans to privately-insured, state-chartered credit unions are no longer included in this exception, and OCUL urges NCUA to modify its proposal restore the exception.

### **Allow Earlier Implementation Where Feasible**

NCUA proposes an 18-month implementation period for this proposed rule, in order to allow time to train examiners and make changes to how commercial and Member Business Loans are reported. While it is perhaps understandable that these aspects of rule implementation will take time, some portions of the rule can be put into effect immediately, such as the elimination of a required waiver of a personal guarantee. Credit unions which have demonstrated their ability to administer strong lending programs with sound underwriting should be allowed to eliminate many of the prescriptive waiver requirements much sooner than 18 months from the effective date of any final rule.

### **Define Parameters for Business-Lending Charters**

In addition to the elimination of prescriptive requirements not found in the Federal Credit Union Act, OCUL urges NCUA to re-examine the exception to the Member Business Lending cap outlined for credit unions chartered for the purpose of making, or having a history of making, member business loans to their members. NCUA should permit federal credit unions (FCUs) to amend their charters, stating that “member business lending” is one of the purposes of the credit union if it has a sizeable and successful portfolio of member business loans, as clearly that type of lending has developed into a significant purpose of the FCU. Similarly, the agency should recognize state-chartered, federally-insured credit unions whose state supervisory authorities allow such amendments.

Additionally, NCUA should review the exception for credit unions having “a history of primarily making” Member Business Loans. The agency should define a threshold amount of Member Business Loans over a significant period of time that would qualify a credit union for this exemption. OCUL notes that this exception, while added to the Federal Credit Union Act in 1998, does not explicitly limit the credit union’s lending “history” to examination of lending only prior to that date.

### **Conclusion**

NCUA’s proposed changes are a welcome step in the process of securing regulatory relief for credit unions engaged in commercial lending. The proposed rules recognize the increasing sophistication of credit unions that engage in this type of lending, allowing their boards and senior management to decide appropriate risk management measures to protect the credit union while providing a needed service to business members.

OCUL offers the following cautions and observations:

1. Any supervisory guidance in this area must be explicitly non-prescriptive and should only be issued following a period of public comment.

Mr. Gerard Poliquin, Secretary of the Board  
National Credit Union Administration  
August 28, 2015  
Page 5

2. NCUA should preserve the authority of states to issue Member Business Lending regulations to reflect state concerns, while still acting in collaboration with NCUA rules.
3. NCUA should revisit the definition of credit union exceptions to the commercial lending regulations for privately-insured credit unions
4. The exception to the commercial lending program requirements for credit unions that do not regularly grant business loans should extend to all credit unions regardless of size.
5. An accelerated, or even immediate, implementation should be allowed for portions of the rule, such as elimination of required waivers for personal guarantees.
6. NCUA should review and define the Member Business Lending exceptions for credit unions established for the purpose of business lending or having a history of primarily making Member Business Loans to allow additional credit unions to qualify for the exception.

OCUL appreciates the opportunity to provide comments on the NCUA's proposed rule on Member Business Lending, and is available to provide additional comments or information on this proposal if so requested. If you have any questions, please do not hesitate to contact Carole McCallister at (800)486-2917, ext. 262, or via e-mail at [cmccallister@ohiocul.org](mailto:cmccallister@ohiocul.org).

Sincerely,



Paul L. Mercer  
President



Carole McCallister  
Manager, Research & Analysis

cc: Stan Barnes, OCUL Board of Directors Chair  
Barry Shaner, OCUL Government Affairs Committee Chair