

**From:** [Patricia Smith](#)  
**To:** [Regulatory Comments](#)  
**Subject:** Comments on Proposed Rulemaking for Part 723  
**Date:** Monday, August 31, 2015 9:20:06 AM

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Dear Secretary of the Board Poliquin,

Thank you for the opportunity to comment on the proposed rules related to NCUA's Member Business Rule. I am writing to you as President/CEO of Unitus Community Credit Union, headquartered in Portland, Oregon. Unitus has approximately \$975 million in assets and serves nearly 90,000 members. We have been providing member business loans to our members for a number of years now, primarily because our members asked for our help at some point.

I would like to briefly comment on the letters that have been filed from the community bankers and their associations challenging the NCUA on a wide range of issues, including statutory authority, safety and soundness, and general philosophy. We must not forget what caused this past recession nor who consumers' looked to for help during this time. With a number of examples from members, I will only briefly describe one in which Unitus was 'there' for its members. Our business loan for a member helped him keep his business and also continue to employ family members during the recession. Our member was desperate when his bank refused to help him strategically position his company for the downturn even though he had more than sufficient collateral. The recession would have been much worse had credit unions not been there to serve the business needs of many who were turned away by their banks. Bankers continue to misconstrue the facts, primarily led by their trade association tactics to minimize any competition to its own business model. Credit unions maintain personal relationships with their members. Credit unions are well-positioned to grow their business lending portfolios and help consumers and our business communities grow their businesses and maintain prosperity. In contrast, the losses and failures suffered by FDIC-insured banks have been staggering. Credit unions are a healthy alternative to other financial institutions and our ability to offer competitive terms and conditions is healthy for all consumers.

We are pleased with a number of the proposed amendments and support the following items:

- Section 723.4, Commercial Loan Policy, which increases from 15% of net worth limit on loans to one borrower to 25% of net worth, if the additional 10% is supported by readily marketable collateral. We commend the NCUA for this well-balanced approach and providing regulatory flexibility as prudent means to extend, within the bounds of the current statute, the credit union's lending powers to serve its members.
- Section 723.5, Collateral and Security, which proposes that the credit union has both the risk management interest and underwriting ability to effectively analyze whether a personal guarantee is required in the risk mitigation of any particular business loan. While a personal guarantee is often warranted, removing this requirement will allow the credit union to more effectively meet the needs of its members and positions the credit union to more fairly compete for the member's business.
- The removal of references to the 12.25% cap, instead defining the cap as 1.75 times the applicable net worth requirement for a credit union to be categorized as well-capitalized.
- The detailed limits on construction and development loans.
- The classification of an MBL vs. commercial loan. 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 or a vehicle that costs over \$50,000, even if they are used for household purposes. Under the proposed rule change, these loans would not be subject to enhanced requirements of higher risk commercial lending.

As noted above, we support a number of NCUA's proposed amendments, however, there are a few items that cause concern and are specifically called out below for your consideration and review:

1. The proposed regulation states that an 18-month implementation timeline will be required before the regulation goes into effect. While the longer timeframe could help alleviate some concerns around examiner inconsistency in interpretation and application of the new MBL regulations, it is unwarranted for some of the items that are relatively simple. These changes have a positive and material impact on credit union MBL programs and many can be implemented by updated existing business lending policies and procedures. Examples include the

credit risk rating system, unsecured lending, personal guaranties, and the loans to one borrower limit. In all cases, many credit unions have the infrastructure in place to implement these changes quickly.

2. The NCUA's consideration of 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. Oregon has a superb State Supervisory Authority (SSA); we view our State regulatory body as a strong leader committed to updating its charter and improving the regulatory framework on an annual basis. Working closely with the NCUA, this commitment has allowed state-chartered credit unions like Unitus to thrive in serving the needs of its members.. State-chartered credit unions in Oregon 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 framework that Oregon 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 the 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. We are specifically asking that the NCUA not make any adverse changes to Part 741.

3. One issue that is not specifically addressed in the Proposed Rule warrants mentioning for consideration by the NCUA for regulatory revision – Prepayment Penalties. Federally chartered credit unions are prohibited by regulation from having a prepayment penalty on any type of loan. In business lending, a higher investment by the lender is required due to specialized expertise and systems. The investment made in originating and managing a commercial real estate loan, for example, will typically be thousands of dollars in staff time, systems, and third party costs. If a business member takes out a commercial real estate loan with no prepayment penalty, then refinances or pays off that loan a few months later, the credit union which by regulation, could not charge a prepayment penalty, has not had sufficient time to earn interest and recoup the high costs of making the loan. This results in an economic hardship for the credit union that was strictly caused by regulations. Making this change will bring the federal regulation in step with many states that allow this.

We believe in the talents, capabilities, and track record of our state regulators and again, we ask that you 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.

Thank you for the opportunity to comment on the proposed changes to the MBL rule. We support the leadership of Chair Matz, Vice Chair Metsger, and Board Member McWatters and their willingness to address valid concerns that have been expressed by a number of experienced credit union leaders. We appreciate the NCUA's commitment to improving the regulatory landscape for credit unions.

Sincerely,

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