

August 31, 2015

National Credit Union Administration  
1775 Duke St.  
Board Secretary  
Alexandria, VA 22314

RE: Comments on Proposed Rulemaking for Part 723; RIN 3133–AE37

Dear Gerard Poliquin,

Thank you for the opportunity to comment on the proposed member business loan rule. Our Association serves 68 out of 71 credit unions based in Utah, and three others not based in the state. We often hear their feedback on the agency, its rules, and how it affects their operations.

We appreciate NCUA's effort to re-write the MBL rule in such a way that adds flexibility to how credit unions conduct their member business lending programs. The principle-based approach of the proposed rule is, generally, superior to the prescriptive approach of the current rule.

Improvements include: removing provisions not required by law, eliminating waivers for many aspects of business lending, cutting out the personal guarantee, and exemptions for institutions that do a low volume of member business loans.

#### **Single borrower limit**

We generally support the removal of the waiver system currently in place, with one exception. Currently, a credit union can obtain a waiver that would allow it to exceed the normal single-borrower limit. With the removal of the waivers, credit unions can no longer make an exception to that requirement. Rather than completely remove that option for credit unions (and small businesses), the waiver option should be left in place for this particular item.

#### **MBLs and commercial loans**

A notable aspect of the proposal is the distinction between commercial loans and MBLs. This is also a good step. It demonstrates the fact that the MBL cap is an arbitrary number not related to safety and soundness. In fact, small businesses could be better off if credit unions could make more member business loans; they may get loans at credit unions that they might not be able to get elsewhere. In addition, many credit unions could be better off—and no less safe or sound—due to the increased income from the additional business loans.

Given this—that an increase or removal of the cap would improve the safety and soundness of some credit unions and serve small businesses—it would make sense for NCUA to seek changes to the law that establish the cap, just as NCUA has sought changes in laws that would allow them increased ability to regulate third party vendors. We encourage NCUA to seek such changes in the law, in order to improve the safety and soundness of the credit union system.

#### **Examiner training**

Since the rule allows credit unions greater flexibility in building a lending program, it's good that NCUA plans to train examiners thoroughly on the issue. Dissatisfaction and conflict in exams often arise from examiners who are not well-versed in a topic making recommendations and decisions on that topic. As this proposed rule goes into effect, examiners will need more and better skills related to business lending. Likewise, it is fair to note that boards and credit unions will need similarly improved skills and practices in business lending.

#### **Guidance is functionally equivalent to rules**

Since examiners seek to follow the guidance provided to them by the NCUA, that guidance becomes functionally equivalent to a rule. Therefore, since NCUA is interested in understanding how proposed rules will

affect credit union operations, it would probably be useful for NCUA to understand how the guidance would affect credit unions business lending program.

Therefore, we suggest that, to fully understand the impact of the rule and its guidance, the NUCA also gather information from credit unions on how the guidance would affect them, so that if there are unintended negative consequences to the guidance, it can be corrected before being implemented.

#### **Implementation timeframe**

Finally, since the rule would allow credit unions greater flexibility in creating their business lending programs, it seems unnecessary from a credit union perspective, to wait 18-months before implementation. In fact, it's not unheard of for more flexible rules to be effective immediately, with compliance optional for about 18 months. This may be a good option for this rule.

Of course, while credit unions may be able to follow the rule immediately or very quickly, NCUA needs time to provide examiners the necessary training for the new rule. Even so, 18 months feels excessively long.

#### **Conclusion**

In general, we commend the NCUA for the proposed rule. It demonstrates a desire to allow credit unions greater flexibility in establishing a safe and sound business lending program, and will certainly result in more credit unions serving more small businesses more thoroughly.

Thank you for the opportunity to comment.

Sincerely,

Stephen Nelson  
VP-Credit Union Support  
Utah Credit Union Association

cc: CUNA, CCUL