August 28, 2015

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

Subject: Comments on Proposal Regarding Member Business Loans and Commercial Lending

Dear Mr. Poliquin:

I am Wally Murray, President/Chief Executive Officer of Greater Nevada Credit Union (GNCU) and current Chair of the Nevada Credit Union League. GNCU is the largest credit union based in northern Nevada and has been in existence since 1949. I have been employed here for over 26 years and have served in my current capacity for the last 15. Our growing, well capitalized credit union serves nearly 50,000 members, has assets in excess of $565 million, is state chartered and federally insured.

By way of background, I was a member of NCUA's Industry Panel that provided input on the agency's second proposal on Risk Based Capital and I also currently serve on CUNA's Subcommittee on Examinations and Supervision. In addition, in February of this year, I was honored to provide testimony to the United States Senate Committee on Banking, Housing and Urban Affairs on the topic of Regulatory Relief for Community Banks and Credit Unions.

The purpose of this letter is to comment on NCUA's proposed amendments to member business loans (MBL) rule. GNCU has been successfully engaged in member business lending since 2003. Since its inception, ours has been a high caliber, compliant program that has successfully withstood both the significant economic pressures of the Great Recession and considerable regulatory scrutiny. We are blessed to have a strong team of professional that have more than 50 years of combined experience in commercial lending. These teammates have consistently worked closely with the agency over the last several years on the interpretation of existing regulations, drafting of appropriate policies and adoption of sound practices in the MBL area.

A Generally Well-Conceived Proposal

The concept of modernizing the current regulatory structure surrounding MBLs is a welcome one. Shifting from a prescriptive laden regulation to one that is based in broad principles represents sound rulemaking theory, as it helps move away from a "one size fits all" approach in this area. Also, allowing credit unions to operate from a well designed set of internal policies that incorporate and address the risks associated with their institutional objectives and practices, rather than continually burdening them with requirements to request waivers and forbearances from the agency, is an equally sound move that is long overdue and much appreciated.

In addition, we strongly agree with the agency's perspective that "Responsible risk management and comprehensive due diligence remain crucial to safe and sound commercial lending, and it is expected that credit unions subscribe to these overarching principles in administering, underwriting, and servicing commercial loans."[1] We also concur with a large majority of the details of the proposed changes.

However, we also believe that there opportunities to improve upon the proposal before the final amendments are adopted. The remainder of this letter will address those areas.

Concern #1: Small Credit Union Exemption from Having a Commercial Loan Policy

The proposal to exempt credit unions with both assets less than $250 million and total commercial loans less than 15% of net worth that are not regularly originating and selling or participating out commercial loans from having an associated policy is problematic. While it may not be necessary for such institutions to have an extensive commercial lending infrastructure, we believe it is important from a safety and soundness perspective for any financial institution to develop and follow appropriate policies for any type of lending they may engage in, regardless of the frequency with which they originate such loans.

Concern #2: Definition of Control

The inclusion of the "25 percent or more" clause in the definition of "Control" is unnecessarily prescriptive and does not align with other banking agencies that do not utilize any type of percentage ownership stake in defining that term. Therefore, §723.2 – Control, subsection (1) should be removed.

Concern #3: Loan to Value Denominator Definition

The definition of market value in part 722.2 (f) should be used in the denominator of the LTV for any real estate transaction regardless of whether the actual purchase price is lower. Such a practice is appropriate because that market value represents the best approximation of what the credit union could expect to yield if it were forced to liquidate the collateral.

As a case in point, a common commercial lending scenario is for improvements to be made to a developmental property soon after its initial purchase that serve to significantly increase its value beyond their cost. Examples would be gaining zoning changes and other entitlements, and making infrastructure enhancements to the property. Limiting the assumed value of such properties for LTV purposes to just their purchase price would needlessly restrict credit unions from being competitive lenders on such projects.

It should also be noted that the proposed definition of collateral market value is not consistent with that used by other federal agencies involved in commercial lending, like the Small Business Administration (SBA) and United States Department of Agriculture (USDA). Those agencies allow the use of "as is," "as completed" and "as stabilized" methodologies to determine the market valuations of income producing properties for loan guarantee purposes.

[1] NCUA, RIN: 3133-AE37, Member Business Loans, page 11

Finally, the proposal indicates that the rationale supporting the clarification of the LTV ratio denominator is to provide protections "…in the event that the appraisal value is inflated or the borrower overpays for the purchased collateral."[2] This prescriptive requirement is directly contrary to the intended principle based approach, and appears to suspiciously assume that some type of improper valuation practices are likely to occur. Any credit union engaged in commercial lending using such inflated valuations could certainly be cited for not following responsible risk management and appropriate due diligence practices within their program. Therefore, this prescriptive definition is excessive and unnecessary.

Concern #4 – Construction and Development Loans – Lack of Differentiation

We believe that the proposed rule for "construction and development loans" contains adequate definition and foundation for commercial construction lending but largely ignores true commercial development lending. Those two areas of commercial lending are not one and the same, and therefore need to be individually defined in the regulation.

While certain projects may combine elements of both construction and development, it is entirely possible for individual projects to solely be construction or development oriented. A typical example of such a development project that the proposal does not adequately address would be a situation where a borrower has the opportunity to acquire multiple adjacent parcels and desires to take necessary measures to have them re-zoned and/or gain other entitlements, with the further intention of adding appropriate infrastructure to make them construction ready.

We would be happy to have a further conversation with NCUA staff regarding this matter to further demonstrate other differences between commercial construction and commercial development lending in the hope of assisting the agency in crafting better language in this area.

Concern #5 – Construction and Development Loans – Additional Condition

Our credit union is currently increasingly experiencing situations on projects we are lending on where suppliers are utilizing blanket liens. Therefore, we believe that §723.6(c)(4) could be enhanced with an additional requirement for such loans to require obtaining an updated title endorsement prior to each disbursement. Such a measure would assure lending credit unions that clear title exists prior to any individual disbursement, thereby appropriately shifting liability to the title company.

Thank you for the opportunity to comment.

Sincerely,

Wallace Murray
President/CEO
Greater Nevada Credit Union

[2] Ibid., page 18