



# BANK of UTAH

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August 24, 2015

Gerard S. Poliquin  
Secretary to the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428

AUG31'15 AM11:34 BOARD

RE: Comments on Advanced Notice of Proposed Rulemaking for Part 723

Dear Mr. Poliquin,

The Bank of Utah (Bank) appreciates the opportunity to submit the following comments on the proposed amendments to Part 723 governing member business loans. The Bank is a community bank with \$900 million in assets serving customers in Northern Utah with multiple banking products.

The Bank is keenly interested in business lending by credit unions. The Bank supports credit unions organized to provide affordable personal loans to members of discrete, well defined groups. However, it is important to note that Congress granted certain advantages to credit unions to help them fulfill this mission including, most importantly, exemption from taxation. Credit unions were never intended to use these advantages to directly and unfairly compete with banks in the mainstream financial markets.

Nevertheless, a few credit unions in Utah have combined to form some of the largest depository institutions in Utah and have aggressively expanded their field of membership to include the majority of residents in the state. These large credit unions operate like banks and directly compete with banks while offering a full array of consumer financial products and services. As a result, banks like ours are taxed and find it increasingly difficult to offer competitively priced consumer loans and accounts.

There is no question that Congress did not intend to give credit unions a competitive advantage when it exempted credit union from income tax. Instead, it intended to give credit unions the ability to better serve people who are underserved. Since that was their intended mission, credit unions were also exempted from the community reinvestment laws. In that regard, perhaps the most perverse regulatory feature of the current financial services markets is the fact that the large bank-like credit unions have no obligation to serve the underserved parts of the communities within their geographically defined fields of membership while the tax paying banks like us competing in those same areas do have that obligation and now are the primary providers of financial products and services to the underserved in those communities.

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Another feature of the development of large credit unions into direct competitors with banks is their increasing encroachment into the **commercial loan markets**. This is where banks can still compete on level terms and provide vital products and services to the businesses in their communities. For that reason I'm deeply concerned about any expansion of credit unions' ability to expand in these markets and sincerely appreciate NCUA giving its close attention to the proposed amendments to ensure that they do not lead to more unequal and unfair competition with taxable banks.

I have two concerns for your consideration:

1) NCUA's proposal poses serious safety and soundness concerns. NCUA has not established that it is prepared to supervise institutions with expanding business loan portfolios, and the credit union industry has proven ill-equipped to make such loans. At least five credit unions since 2010 have failed at the hands of poorly run business loan programs, accounting for a quarter of all losses to the insurance fund during that period. In 2010, member business loans were the primary or secondary contributing factor for the supervisory concern for nearly half of the credit unions with CAMEL ratings of 3, 4 or 5 that made business loans.

2) NCUA is overstepping its regulatory reach by expanding business lending loopholes. This proposal is contrary to congressional intent to limit business lending by credit unions. In 1998, Congress made it clear that credit unions should be focused on consumer lending, not commercial lending. Congress instituted restrictions on business lending deliberately: "to ensure that credit unions continue to fulfill their specified mission of meeting the credit and savings needs of consumers, especially persons of modest means, through an emphasis on consumer rather than business loans." By proposing this rule, the NCUA Board has blatantly disregarded congressional intent. NCUA should not undermine specific limitations by Congress nor expand the taxpayer liability.

The proposed rulemaking directly conflicts with Congress' intent to limit business loans in credit unions. Nonmember business loans are still business loans except they are effectively made to people and businesses that have no connection to the credit union or its field of membership. Congress enacted limits on business loans in statute in order to ensure that credit unions do not drift from their primary mission to serve the financial needs of their individual members. The proposed rule would allow a credit union to buy unlimited amounts of business loans provided they were not made to a member of the credit union.

Clearly this proposed rulemaking would be a substantial change in current business lending standards that goes way beyond the letter and spirit of the Federal Credit Union Act. I urge NCUA to stay with the current rule's simpler definition of business loan, which does not draw illogical and unjustified distinctions between commercial and business loans, and subject all business loans to the statutory limits.

Sincerely,



Douglas L. DeFries, President  
Bank of Utah