August 31, 2015

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

Re: Comments on Notice of Proposed Rulemaking for Part 723, Member Business Loans - RIN 3133–AE37

Dear Mr. Poliquin:

On behalf of the 1.453 million credit union members we represent, the Missouri Credit Union Association (MCUA) appreciates the opportunity to comment regarding the National Credit Union Administration (NCUA) Board's proposed changes to its member business lending (MBL) rule.

Lending to small business members is an important, growing, and fundamental aspect of credit unions' service to their members and communities. We support the aspects of this proposal that remove barriers to such lending, and we request that NCUA also take into consideration the suggested improvements and concerns that follow.

The proposed MBL rule removes many detailed requirements in Part 723, replacing them with principles that give credit unions more flexibility in creating and running an MBL program that fits their members' needs. We support this approach.

Absence of Supervisory Guidance
MCUA has two major concerns with the proposed rule. First, NCUA will issue guidance that details the definition of a safe and sound commercial lending program, and examiners will use said guidance in reviews of those programs. We request that NCUA open the guidance to public comment and believe this could be accomplished without delay to implementation of the final rule. Second, we request that NCUA specify minimum acceptable requirements of a safe and sound commercial lending program. Smaller credit unions with less-extensive commercial lending programs could avail themselves of such a "safe harbor" policy, and larger credit unions could add to or deviate from the requirements to accommodate more sophisticated needs. We ask that NCUA address this concern as the proposal is finalized.

Relax the MBL Cap
MCUA also believes that the proposed MBL rule could be used to relax the MBL cap established under the Credit Union Membership Access Act of 1998 (CUMAA). There are two exceptions to the CUMAA MBL cap. The exceptions are for an insured credit union chartered for the purpose of making, or that has a history of primarily making, member business loans to its members, or an insured credit union that has a history of primarily making MBLs to its members. We believe NCUA could develop a process allowing a credit union to amend its charter to provide, as one of its purposes, "member business lending" and thus qualify for the exception. It is a reasonable interpretation to allow a credit union that makes business loans as its purpose to exceed the cap. Additionally, NCUA could provide that a credit union that has originated or granted a threshold amount of MBLs over a significant period could qualify for the exemption. This would qualify as having a history of primarily making member business loans.

Waiver Elimination
Under the current MBL rule, waivers are available for restrictions that are greater than warranted for safety and soundness concerns. The waiver process can be time consuming and burdensome, however, and inhibits credit union competitiveness in the marketplace. MCUA supports the elimination of all prescriptive requirements necessitating waivers. The limitation that the aggregate dollar amount of commercial loans to any one borrower or group of associated borrowers may not exceed 15 % net worth or $100,000, whichever is greater remains, and credit unions can currently receive a waiver from this requirement. The waiver would not be available under the proposed rule. Because this requirement has an outsized impact on small credit unions as well as larger credit unions that have an associated borrower on several loans, NCUA should eliminate this provision, as it is prescriptive, or continue to allow credit unions to apply for waivers from the requirement.

MBL Cap Calculation
MCUA supports the proposed change to the MBL cap calculation. The proposal would replace the current expression of the MBL cap as 12.25% of assets with a cap expressed as 1.75 times the amount of net worth up to the amount of net worth required to be well capitalized, as required by the Federal Credit Union Act (FCUA). However, if the current version of NCUA's proposed Risk-Based Capital (RBC) rule is adopted, the amount of capital required to be well capitalized will be the greater of 7% of total assets or 10% of risk assets. For the vast majority of credit unions, under the RBC proposal risk assets would amount to less than 70% of total assets, so that the 7% of total assets requirement would exceed 10% of risk assets. For all of these credit unions, the calculated cap would remain 12.25% of assets.

Definitions
The proposed rule would amend and add the following definitions to § 723.2:
Associated Borrower, Common Enterprise, Control, and *Direct Benefit:*
MCUA supports bringing the "Associated Member" concept in line with federal bank regulation, but we note the special treatment rules for partnerships, joint ventures, and associations were not included in the definition. NCUA should consider incorporating the special rule for partnerships, joint ventures, and associations as this would bring greater clarification to certain relationships that may or may not fall under the rule.
Loan-to-Value Ratio:
This definition clarifies that junior debt from other lenders does not need to be included in calculating loan-to-value (LTV) ratios, and further clarifies the valuation basis for collateral. This change brings LTV calculations in line with customary commercial loan calculations. MCUA supports this much-needed change.

Regarding use of the "lesser of purchase price or market value for collateral held 12 months or less," MCUA suggests NCUA provide flexibility; there are situations where this standard is either unreasonable or unworkable, particularly where there have been non-purchase transactions which require a thorough understanding of the credit's dynamics and a "one size fits all" rule can have undesired consequences. Examples include property acquired as a gift or inheritance, or as a result of a variety of other non-market transactions. While the 12-month standard is considered out of concern over the reliability of appraisals, we suggest a better approach is that credit unions use robust appraisal review and underwriting processes to manage risk. We agree that a borrower's "skin in the game" is an important part of evaluating a credit transaction, but the blanket LTV rule for non-purchase transactions is not necessarily the best approach.

Commercial Loan:
The FCUA's statutory business lending restrictions are not safety and soundness restrictions. The proposed rule would create a new definition of commercial loan in § 723.2. With this definition, the MBL regulation would separate loans meeting the proposed § 723.2 commercial loan definition from loans meeting the 12 U.S.C. 1757a statutory MBL definition, therefore more appropriately applying business lending safety and soundness requirements only to business loans.

Although many commercial loans in the proposed § 723.2 would overlap with statutorily defined MBLs, separating the two types of loans is important, because the proposed regulation decouples safety and soundness from statutory restrictions. We support this proposed change as it shifts NCUA's focus to safety and soundness for commercial loans instead of relying on statutory restrictions for safety and soundness.

MCUA also supports the seven categories of loans excluded from the commercial loan definition, but believes loans that present zero or only a remote risk of loss should also be exempted. For example, loans fully guaranteed by a federal or state agency should also be excluded from the commercial loan definition because they are risk-free and present no safety and soundness concerns.

Also, NCUA should clarify the treatment of partially cash-secured loans; the definition as written suggests the loan must be "fully" secured by shares or deposits. The portion that is partially secured should fall within the exception for purposes of the cap.

Credit Risk Rating System:
Credit Risk Rating System is defined in the proposed rule as a formal process that identifies and assigns a relative credit risk score to each commercial loan in a portfolio. It is to be determined through an evaluation of quantitative factors based on financial performance and qualitative factors based on management, operational, market, and business environmental circumstances. MCUA agrees the use of a Credit Risk Rating System is useful and does not object to the requirement, and notes that NCUA acknowledges over 90 percent of credit unions already have systems for their commercial loans. We request, however, that NCUA allow some flexibility to credit unions in determining where such a system should reside in their policies. We believe many credit unions may choose to include it in other policies, such as an enterprise risk management process, or otherwise include it as part of the overall holistic management of the portfolio risk.

MCUA also notes the definition requires use of an "ordinal number" to represent the degree of risk. Credit unions may wish to use "Low/Medium/High" designations, loan grades of "A, B, C, D", or "Red/Yellow/Green Lights" for purposes of rating the risk, all of which serve the same purpose. NCUA should provide flexibility in this regard.

***Loan Secured By a 1- to 4- Family Residential Property*:**
MCUA supports the change clarifying that loans secured by a 1- to 4- family residential property are not commercial loans for purposes of the rule. Excluding these loans from the definition of commercial loan is important because credit unions that would otherwise not make commercial loans would be required to have a commercial lending policy and additional board responsibilities if these were considered commercial loans.

Residential Property:
This definition clarifies that loans secured by a 1- to 4- family residential property are excluded from the definition of a commercial loan. MCUA supports this change.

Board of Directors and Management Responsibilities
Proposed § 723.3 would place the ultimate responsibility for a safe and sound commercial lending program on a credit union's board of directors. The proposed board requirements would require boards to be much more involved in the details of a credit union's commercial lending program and will likely make developing and running a commercial lending program more burdensome on the volunteer boards.

MCUA supports this proposed rule, but we note the proposed § 723.3 could require too much ongoing supervision from volunteer credit union boards, especially in the absence of guidance to review with this section. Credit unions will not know the true burden a board would face in the supervision of a commercial lending program, and additional board responsibilities may also cause credit union boards to become overly involved in operations instead of setting policies for management to execute.

MCUA also supports the elimination of the specific two-year staff experience requirement. This requirement is replaced with requirements for different levels of staff to have experience in the areas of managing commercial lending staff, underwriting and processing loans, overseeing and evaluating performance, and conducting collection and loss mitigation activities. Management should have experience in all three areas, but staff will not necessarily have this particular experience. The final rule and guidance should clarify this point. The experience requirements can be met by a third party or third parties. Credit unions often rely on third parties to outsource experience and other needs that might not be necessary or cost effective to have in-house. Again, the final rule and guidance should clarify this point.

Commercial Loan Policy
The proposed § 723.4 requirements are more detailed than NCUA's current MBL policy requirement in § 723.6. Even though the proposal eliminates most of the current rule's specific limits, these limits could still be imposed by examiners as policy limitations. In the absence of statutory limits, a credit union board will now have to develop and defend to examiners their credit union's policy on LTV ratios, minimum equity investments, portfolio concentration limits for types of loans, and personal guarantees.

By requiring credit unions to incorporate their own limitations in a commercial lending policy, credit union staff and their boards could have more stringent limitations than what is required by the current statute if NCUA examiners elect to hold credit unions to a higher standard. Furthermore, some credit unions may adopt more stringent standards than what are required now out of fear of excessive scrutiny from NCUA examination staff.

The proposed requirements of § 723.4(f)(3) that require a projected balance sheet and income and expense statements may be appropriate for construction and improvement loans, but in many real estate purchase loans, projected balance sheets are not necessary. We recommend amending the language to read: "Projected income and expense or other projections commensurate with the particular transaction type should be obtained."

Small Credit Union Exemption
MCUA supports an exemption for credit unions that hold a de minimis number and amount of commercial loans. We think the asset size threshold is unnecessary and not a good proxy for

determining the risk of a credit union with a de minimis number in amount and size of commercial loans. We recommend making this exemption open to all credit unions through a de minimis commercial loan exemption. This could be accomplished by removing the $250 million asset requirement from § 723.1(b) and coupling it with the 15% hard cap on the net worth limitation. By removing the asset requirement for the exemption, larger credit unions that meet the other requirements of the exception, but only have a minimal engagement in commercial lending relative to their net worth and assets, would also receive regulatory relief.

Collateral and Security
MCUA supports the proposed § 723.5 which would eliminate the personal guarantee requirement.
Again, our concern is the lack of the issuance of contemporaneous guidance from the NCUA. In which situations would a credit union be permitted to make a loan without a personal guarantee? A credit union could now be subject to potential examiner criticism when making a loan without a personal guarantee. MCUA also requests detail from NCUA regarding actions the agency will take if a loan made without a personal guarantee is deemed by an examiner to be imprudent.

Construction and Development Loans
MCUA supports the NCUA's amendments to the C&D requirements. These changes should make these requirements more consistent with the expectations of commercial borrowers and thus help credit unions effectively provide loans to their members.

State Chartered Credit Unions
The NCUA requested comments on three options to transition existing regulatory schemes maintained by seven states that currently have NCUA Board-approved MBL rules. MCUA strongly supports the autonomy of state regulators as part of a vibrant dual chartering system, and NCUA should allow this authority to continue. Option C is the best option to provide maximum flexibility for states in this regard. It allows states to continue with their existing schemes and will ease the transition while maintaining federally insured state chartered credit unions (FISCUS) in compliance with existing law. It would also allow a mechanism for states to update their scheme if they deem it appropriate and for new states to adopt their own schemes if they so choose. MCUA also encourages NCUA to maintain the existing § 723.20(c) which allows for a transition back to the NCUA's rule in the event a state rescinds its existing rule.

Examination
Credit unions have expressed concern to MCUA regarding the future commercial loan examination process. These concerns are based on the potential for inexperienced examiners second-guessing loan decisions, credit union policies and other business decisions.

Examination consistency is an additional concern. As many aspects of a commercial lending program are subjectively reviewed, credit unions fear they may be subjected to the application of differing "rules" from one examination to another based on individual examiner opinion.   The NCUA will need to train and hire additional staff to examine credit unions making commercial loans. MCUA strongly encourages consistent training and guidance for these examiners given their significant role in the process. In addition, especially during the first few years after implementation, there must be ample supervision by senior NCUA staff of examiners' reviews of credit union commercial lending policies. Credit unions should be able to elevate policy disagreements up the chain without initiating a formal procedure.

Our state-chartered members have also expressed concern with examiner training for state supervisory authorities. State examiners will also need to have specialized training to be able to fully understand the MBL regulation and commercial lending. Without the proper training of state examiners, the principles-based approach could result in less flexibility for state-chartered credit unions.

Implementation
MCUA appreciates that NCUA plans an 18-month delayed implementation period for the requirements in the proposed MBL rule. However, a more effective approach would be to allow credit unions to comply with the new provisions earlier than 18 months if the credit union has satisfied the new requirements. This would allow for credit unions that wish to meet the new requirements to do so earlier, and would give the NCUA a head start on approving policies and examining based on the new regulatory requirements.

Cost
NCUA has indicated the implementation of the proposed MBL rule would cost the agency approximately $1.9 million. This would be primarily a one-time cost for examiner training before implementing the rule. We urge NCUA to find these funds by increasing efficiencies in other areas, most importantly in the examination process, through modernizing examination procedures and reducing the examination burden on well-performing credit unions. This would allow NCUA to deploy these resources to modernize its examination procedures for the proposed MBL regulation.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Don Cohenour

Don Cohenour
President