



## Maryland Bankers Association

August 31, 2015

*Submitted via Email: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)*

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

### **Re: [Maryland Bankers Association]—Comments on Proposed Rulemaking for Part 723**

On behalf of our members, the Maryland Bankers Association (MBA) respectfully submits this letter commenting on the National Credit Union Administration's (NCUA) proposed rule to dramatically expand credit unions' authorities for Member Business Loans and Commercial Lending. Founded in 1896, MBA is the only Maryland-based trade group representing banks in the state. The 116 banks operating in Maryland hold in excess of \$120 billion in FDIC-insured deposits in nearly 1,700 branches across the state. The banking industry employs more than 40,000 banking professionals in Maryland. MBA's members include banks of all sizes and charter types including: Maryland state-chartered banks, national banks and thrifts, and state banks chartered outside of Maryland. We appreciate your consideration of our concerns and the opportunity to comment on this very important rule change.

MBA strongly recommends reconsideration of NCUA's recent regulatory proposal which would expand credit unions' business and commercial lending authority while allowing these institutions to maintain their tax exempt status at a time when our country is managing massive budget deficits. The proposed changes would largely benefit only select few credit unions—over half of the credit union industry does no member business lending at all—while harming tax-paying community banks. Increasing the business lending authority for these select credit unions would allow large, growth-focused credit unions to unfairly compete directly with tax paying financial institutions, and finance increasingly large commercial loans for projects that are simply not deserving of a taxpayer subsidy. We also have strong concerns about safety and soundness concerns the proposed expansions cause. Credit unions already have ample flexibility to lend to small businesses and should not be able to use their tax subsidies to cherry-pick loans that tax-paying community banks would gladly make

Maryland community bank members provide valued and important financial services to their communities, business customers, and various clients. However, with the ever expanding products offered by tax-exempt credit unions, Maryland community bank members are finding it increasingly difficult to compete against aggressive, large non-profit credit unions which are exempt from income taxes and compliance with the Community Reinvestment Act. During the original conception of credit unions, these institutions were granted a non-profit status in exchange for limitations on their activities. MBA firmly believes those limitations should continue so long as credit unions continue their non-profit status. If any credit union wishes to make more business loans than allowed by the lending cap, they can do so by converting to a mutual savings bank charter and competing on a level playing field with community banks.

## **Proposed Changes**

In brief, NCUA's proposal would do several things, including:

- **Widen loopholes to the member business lending cap** by "clarifying" that non-member business loan participations do not count towards the statutory cap and by eliminating regulatory oversight of the concentrations of these loans. This will not only allow, but also encourage, credit unions to enter into more multimillion-dollar commercial lending deals.
- **Make the statutory cap meaningless** by allowing certain credit unions to exceed the member business loan statutory authority. If both the proposed business lending and pending capital rules are adopted as proposed, the statutory cap could nearly double without Congressional approval.
- **Remove important safety-and-soundness checks and balances** by eliminating the requirement for personal guarantees, loan-to-value limitations and collateral requirements. This encourages credit unions to divert resources to financing large commercial enterprises while relaxing the safety and soundness regulations associated with such loans.

## **MBA's Concerns**

MBA has strong concerns about the proposed changes which are further discussed below including: (1) the safety and soundness risks posed by further expanding the credit union industry's authorities into commercial lending while their regulator relaxes safety and soundness measures for this type of lending, (2) the proposed changes should be taken up in Congress rather than presented as a regulatory proposal, and (3) the proposed rule change are not needed.

### **• 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. The level of delinquent member business loans dramatically rose from 0.53 percent in 2006 to 4.29 percent in 2010; compared to a total loan delinquency of 1.74 percent, this is a clear indication that credit unions, and NCUA itself, were ill-prepared for the additional responsibilities and risks associated with commercial lending. Losses could quickly multiply under this proposed rule.

In addition, relaxing the regulatory standards is contrary to NCUA's charge of protecting the industry's insurance fund, and effectively places the taxpayer at risk. NCUA is willfully ignoring lessons from their history and encouraging credit unions to divert funds from consumer lending to commercial lending. Consider expanding on the impact of allowing an ill-prepared lender into a new market and

what could occur in an economic downturn if these loans are not properly underwritten, especially given the rule's liberal allowance of loan participations could cause bad loans to be syndicated broadly.

• **Proposed Rule Changes are Outside the Scope of NCUA and should be instead addressed by Congress**

MBA strongly believes NCUA is overstepping its regulatory reach by expanding business lending loopholes. The regulatory 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." This rule disregards congressional intent. MBA strongly recommends that NCUA withdraw or reconsider the proposal. Congress placed specific limitations on credit union lending that should not be expanded without Congressional approval nor should taxpayer liability be expanded without Congressional approval.

• **Proposed Rule Changes are Not Needed**

The proposed regulatory changes are unnecessary and MBA does not believe there is a compelling need for the proposed extensive changes. Below are some facts on Maryland credit unions, banks, and taxes. This provides compelling evidence that an increase in the business lending limits for credit unions is neither needed nor merited, given the congressionally-authorized mission of credit unions.

**Facts on Maryland Credit Unions, Maryland Banks and Taxes**

• ***Tax-Paying Maryland banks compete head to head with tax-exempt credit unions.***

- o Although they portray themselves as mom and pop shops for people of modest means, today credit unions are a \$1 trillion industry, with many indistinguishable from banks.
- o The BIG difference – they don't pay federal income taxes, depriving the U.S. Treasurer of nearly \$2 billion every year.
- o Nor do credit unions have Community Reinvestment Act responsibilities, as banks do.

• ***Who Pays the Taxes? Taxes Paid in 2014:***

- o Maryland Credit Unions: \$0
- o Maryland Banks: \$111,541,000 (*Includes all applicable federal, state & local, and foreign income taxes*)
- o State Employees Credit Union of Maryland alone would have paid **\$4.2 million in taxes during 2014**, if it had paid its fair share.

• ***Larger than Most Maryland Banks:***

- o State Employees Credit Union of Maryland with \$2.8 billion in assets is the largest credit union in Maryland, larger than 97% of all Maryland-headquartered banks.

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• ***It is a myth that the lending cap is hampering credit union business lending. Maryland credit unions have plenty of room to grow business lending under the existing 12.25% cap.***

o Maryland's largest credit union - the State Employees Credit Union billion in assets only has 3.5% of its assets in business loans, well below the current commercial lending cap.

• ***This is not an issue for most credit unions in Maryland:***

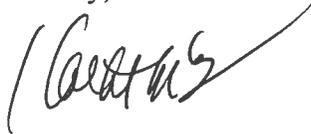
o As of 1Q2015 (the most recent quarterly data released), there were 96 credit unions in Maryland. Sixty of these credit unions (71%) DO NOT have member business loans on their books.

o ***Credit unions can already make business loans far beyond the lending cap restrictions.*** Any credit union business loan of less than \$50,000 to a member is exempt from the lending cap calculation. Likewise, Small Business Administration (SBA) loans are not counted toward the cap. Furthermore, credit unions that are classified as a "Limited Income Credit Union" are exempt from business lending caps – **156% of credit unions in Maryland fall into this category.**

### **Conclusion**

MBA respectfully urges NCUA to reconsider this proposed rule, withdraw it, and if it determines that some changes of this nature are needed, then ask for further comment through public hearings, as well as consult with Congress and engage a more appropriate legislative process. Please contact me if you have questions or would like to discuss MBA's concerns in greater detail. Thank you for the opportunity to comment on this proposal.

Sincerely,



Kathleen M. Murphy  
President and CEO, Maryland Bankers Association