

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,

August 31, 2015

Mr. Gerard Poliquin

Secretary to the NCUA Board

1775 Duke Street

Alexandria, VA 22314

Re: Comment Letter on the Proposed Amendments to NCUA's MBL Rule

Dear Mr. Poliquin:

Patelco Credit Union is in support of the NCUA's Notice of Proposed Rulemaking for 12 CFR Part 723 regarding potential changes to the Member Business Loan regulations. We commend the Board on considering these regulations to assist credit unions in better serving their business members' expanding needs. We are thankful for the opportunity to comment on the proposed changes and look forward to the proposed regulations and the NCUA's shift from a prescriptive regulation to a principles-based approach. These changes will allow credit union's MBL programs to meet their specific members' needs and serve the underserved.

Small businesses are core to America's economic competitiveness. According to the SBA Office of Advocacy small businesses:

- Employ half of the nation's private sector workforce

- Pay 43 percent of total U.S private payroll
- Have generated 65 percent of net new jobs over the past 17 years
- Create more than half of the nonfarm private GDP

Though small businesses are vital to America's economy we are seeing bank lending to small businesses decline, while large businesses lending rises with banks. According to an independent Harvard Business School working paper entitled "the State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game" states:

"The banking industry in the aggregate appears increasingly less focused on small business lending. The share of small business loans of total bank loans was about 50 percent in 1995, but only about 30 percent in 2012. Moreover, small business owners report that competition among banks for their business peaked in the 2001 to 2006 period, and has sharply declined from 2006 to the present."

We point this out to show the importance of business lending and the need for Credit Unions to be competitive in this lending area. Credit Unions were chartered to serve the underserved and small businesses are definitely underserved.

Patelco Credit Union has been investing in Small Business Loans for over 20 years. We have over \$200MM in Small Business Loan Participations. We have an experienced staff that understands the uniqueness of small business lending and the risks associated as well as the importance of our mission in investing in small businesses. We fully support the new language specifically regarding the definition of MBL Participations no longer being counted towards the MBL cap limits.

As a credit union with an experienced team in underwriting and managing member business loans and a Senior Executive team that has a comprehensive understanding of the risks of a commercial lending program we agree with the elimination of the minimum two-year experience requirement. This prescriptive regulation should be replaced internally within the Credit Union's management of their team and hiring the specifically experienced team members for the Credit Union's MBL portfolio. This is the responsibility of Credit Union's Management Team and should be held accountable by the Credit Union's Board members.

The Proposed Regulation states that an 18 month implementation timeline will be required before the regulation goes into effect. We understand the need for credit unions and examiners to understand and implement regulatory changes. However,

we believe that this extended timeline is unwarranted for certain items that are relatively simple. These changes will have a positive, material impact on credit union MBL programs and put credit unions on a level playing field with banks and other financial institutions. These can be easily implemented by updating the business lending policy and making appropriate changes in procedures. Examples of practices that can be enacted more expeditiously include:

Credit Risk Rating System – Most credit unions including Patelco Credit Union already have a credit risk rating system in place. Those Credit Unions that do not have a robust system can establish and implement one as an integral part of their MBL policy update. [Reference Proposed Regulation 723.4(g)(3)]

Construction Loan Soft Costs – The regulatory definition that specifically identifies which costs may be included in construction soft costs is now clear, and this change can be implemented in a credit union's policy and practices right away. [723.6(b)(1)]

Loan to Value Definitions for Construction Loans – The new definitions that require using 1) the lower of the cost to build, or 2) either the projected "as-stabilized" or "as completed" values, are now clear and can be implemented in a credit union's policy and practices immediately. [723.6(b)(2)]

Unsecured Lending – Credit unions can relatively easily define circumstances where appropriate and well-supported unsecured lending limits can be utilized. Credit unions can also set unsecured loan limits for loans to one borrower and portfolio limits that tie to net worth. These can be established in a credit union's policy and practices in a relatively short time period. [723.5(a)]

Loans to One Borrower Limit – The new regulatory definition will allow a credit union to exceed the current 15% of net worth limit by an additional 10%, as long as the higher advance is fully secured by marketable securities or cash accounts. This is clear and can be quickly implemented in a credit union's policy and practices. [723.4(c)]

## Items Where Patelco Credit Union Recommends Further Clarification or Modification by NCUA

From our view, other provisions of the Proposed Regulation still need further clarification or definition, as follows:

Common Enterprise and Control – The Proposed Regulation is quite specific on the definitions and stated percentages for determining borrower associational relationships. We question why this section of the new regulation seems to be more prescriptive rather than less so, as this portion of the new rule seems to run counter to the Control definition that should drive the Associated Borrower rules. In particular, the 50% Common Enterprise Rule and the 25% Control Rules are quite specific. We believe credit unions should be allowed to take a conservative approach and count any borrower who has a joint interest with another borrower or entity as an Associate Borrower. In addition, credit unions should be able to use prudent judgment to determine who has Control, as was suggested in Exhibit 3 of the *2013 Supervisory Letter on Evaluating Credit Union Requests for Waivers of Provisions in NCUA Rules and Regulations Part 723, Member Business Loans*. [723.2 and 701.22(a)]

At Patelco Credit Union we are passionate about serving our Members. We see an opportunity for Credit Unions to step in where banks are not serving our communities. This is an opportunity for Credit Unions to serve Small Businesses even more which they are vital to the success of America. We sincerely appreciate the opportunity to provide input on NCUA's proposed rulemaking amending the Member Business Loan regulations that will help Credit Unions better serve our members. Feel free to contact me for clarification or further discussion on any of these important items.

Sincerely,

Mike Poirier

VP of Member Business Loans,

Chairman of the Member Business Loan Committee

Patelco Credit Union

Sincerely,

Mike Poirier  
VP-Member Business Loans  
Patelco CU

cc: CUNA, CCUL