



P.O. Box 1999, Salem, VA 24153  
Local: (540) 389-0244  
Toll Free: (866) 389-0244  
Fax: (540) 378-8952

[www.freedomfirst.com](http://www.freedomfirst.com)

AUG31 '15 PM 2:04 BOARD

8/28/15

Mr. Gerard S Poliquin  
Secretary of the Board, NCUA  
1775 Duke Street  
Alexandria, VA 22314-3428

RE: Comment Letter on the NCUA's Proposed Member Business Loan (MBL) Rule

Dear Mr. Poliquin:

Small business lending is the fastest growing segment in our Credit Union. Many aspects of this proposal would remove barriers to credit union small business lending and enable credit unions to better meet the lending needs of their small business members. We applaud the approach this proposal takes and encourage NCUA to finalize it after taking into consideration the improvements and concerns suggested in this letter.

We commend the proposed regulation and NCUA's shift from prescriptive regulation to a principles-based approach. While there are a wide variety of Credit Union MBL programs in the industry, this new approach allows each Credit Union to tailor their policies and procedures to fit its strategic goals, business needs, and its risk profile while meeting safety and soundness requirements. This will greatly help Credit Unions like ours serve our local business community with lessened regulatory burden and greater flexibility. We would like to see minimum guidelines in the new MBL rule for what is expected to be included in an MBL policy.

Freedom First Federal Credit Union is a full-service Community Development Financial Institution (CDFI) and low-income credit union (LICU). Owned and controlled by its members, Freedom First is operated for the purpose of providing access to affordable, equitable financial and development services to our members and communities. Freedom First serves Virginia's Roanoke and New River Valleys with 10 branches, 47,000 members, and \$385 million in assets. Since its inception in 1956, Freedom First has been committed to financial inclusion by providing members with the products, services, and education they need to achieve financial independence. We fulfill our mission by enacting our core values of social responsibility, integrity, respect, accountability, collaboration, and innovation.

In recent years, Freedom First has hired several experienced Business and Commercial Lending employees that have come from the top ten banking companies or other large regional banks. Our Commercial Lenders dedicated to serving this line of business have over 50 years of combined business lending experience. Almost all of the community banks and one of the top 10 banking companies have left the Roanoke area or been bought by larger banking institutions consolidating decision authority out of the local area. It is critical businesses can obtain necessary capital from a local lender who understands the market and is available to assist as needed. Increasingly, Credit Unions are the only locally owned and operated financial institutions.

We are in agreement with the proposal to exclude 1-4 family residential owner occupied loans from the definition of commercial and MBL loans, and to separate out 1-4 family non-owner occupied

residential properties, and manufactured housing from commercial loans and classify them as member business loans. Since these loan types will no longer be considered for safety and soundness purposes, it will allow us to serve our local member business community more efficiently and effectively. We also support the seven categories of loans excluded from the commercial loan definition; however, more types of loans should be exempt from the definition, including loans that present zero or only a remote risk of loss to a credit union. NCUA should clarify the treatment for those loans that are partial cash secured loans, since 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. The 5300 forms will need to be amended for the reporting of Commercial versus MBL loans as well.

We greatly support the removal of the waivers currently in place and can give our local borrowers a decision quicker without having to wait for an approval. However, 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 still remains. Credit unions can currently receive a waiver from this requirement; however, this waiver would not be available under the proposed rule. This requirement has an undue impact and competitive disadvantage for small Credit Unions such as ours that have an associated borrower on several loans. NCUA should eliminate this provision or allow Credit Unions to apply for waivers from the requirement.

We support the removal of the loan participation waiver and the loosening of the MBL CAP as it relates to Participations Purchased. This will allow us to expand our ability to sell them if the need arises.

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 would like to implement some of these changes immediately, as soon as the rule becomes final. 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. This can be easily implemented by updating the business lending policy and making appropriate changes in procedures. The personal guaranty waiver would help us the most in lending to our local market and to keep up with our bank competitors. We hope you will allow us to move forward with any changes as soon as they are finalized instead of waiting for 18 months for this rule to go into effect.

We would like to be able to charge a prepayment penalty due to the increases in costs to originate and maintain member business loans, operate our systems, and the specialized expertise needed by lending staff. Currently if a business member takes out a commercial real estate loan and then refinances or pays off the loan a few months later, we cannot charge a prepayment penalty fee to recoup the interest and other costs in making the loan. We could be left holding a hedge instrument that was purchased to offset the interest rate risk when the loan is moved to another financial institution which would greatly impact us and cause unnecessary costs we cannot recoup. Banks can charge this fee but Credit Unions cannot which puts us at a disadvantage in today's competitive market.

There was a section in the commentary with requiring CPA Prepared/Audited Statements. This would be an increased burden on our members especially for our real estate investors and small shops. A provision requiring them will put credit unions at a serious competitive disadvantage in the market place because other lenders in our area do not require them. We recommend that this not be included in the underwriting expectations guidance that is developed, and credit unions be allowed the discretion to

determine if financial statements are reasonable and reliable and ask for additional documentation or explanations when warranted.

There is no question that disruptions in a borrower's global cash flows can have a severe detrimental effect on loans that are dependent on those cash flows. A global Debt Service Coverage Ratio (DSCR) analysis can help a lender understand the risks that might result from disruptions in a borrower's global cash flows. In certain instances, it does always mitigate the risks. On most larger Commercial loans secured by a single asset entity, we think that there are other ways to mitigate the risk such as requiring the collateral property to be held in a single asset or special purpose entity. This offers added protection no matter what happens to other assets the owner may have. There are also bankruptcy-remote, single asset, special purpose entity (SPE) which may add additional protection however we feel that they have not yet been tested for effectiveness by the courts. We recommend we have the ability to require either a global DSCR or that the subject collateral and its cash flow be housed in a single asset special purpose entity or a bankruptcy remote SPE.

We are concerned that the principles-based approach will rely in large part on subsequent "Supervisory Guidance" that will be used by examiners to interpret the Final Rule and carry out MBL exams. The Credit Union industry will have no input on how this guidance is put together and may not understand or interpret the guidance in the same way some Examiners do. Examiners can have differing viewpoints and conflicts can arise as a result. It is imperative for Credit Unions to fully understand the areas of emphasis and expectations Examiners will be focusing on in their examinations. The principles-based approach will require a tremendous amount of judgment by field examiners. NCUA has improved expertise and exam consistency over the past decade, but it will be essential to continue to develop true commercial lending expertise in examiners, as well as ensuring consistency in all Credit Union examinations.

The proposed Board of Director/Volunteer requirements would require Boards to be much more involved in the details of a Credit Union's commercial lending program. These additional Board duties could make developing and running a commercial lending program more burdensome because of the increased reliance on Volunteers for approval and monitoring of all aspects of a loan program. We are concerned that this could require too much ongoing supervision from Volunteer Credit Union Boards. Furthermore, without guidance to review, we will not know the true burden a Board would face in the supervision of a commercial lending program. These additional board responsibilities may also cause Credit Union Boards to become overly involved in operations instead of setting policies for management to execute. Therefore, further supervisory guidance outlining the Board's responsibilities is needed in the final rule.

We sincerely appreciate the opportunity to provide input on NCUA's proposed rulemaking amending the Member Business Loan regulations. Feel free to contact me for clarification or further discussion on any of these important items.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Phillips", written in a cursive style.

Paul Phillips  
President/CEO