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National Credit Union Administration
Attn: Gerald Poliquin
1775 Duke St.
Alexandra, VA 22314-3428

Dear Mr. Poliquin:

Thank you for the opportunity to comment on the proposed Member Business Loan; Commercial Lending rule. The current Member Business Loan rule has been a source of great frustration for both this Department and the credit unions we regulate. Your effort to resolve the weaknesses in the current rule is appreciated.

On a whole, the rule appears to be reasonably well written, and adopts many principles and concepts the old rule was missing. These concepts include an explicit requirement to risk rate loans and, we hope that with this requirement will come adoption of FFIEC Uniform Classification guidance. The rule also adopts a much more sound loan aggregation rule similar to that of the Office of the Comptroller of the Currency. These and other revisions are significant improvements when compared to the existing rule.

There are however two significant concerns we would like to highlight. These relate to the timeline for implementation of the rule, and the impact on the dual charting system. While a number of other regulatory and philosophical questions may exist with these changes, our comments will focus on these critical safety and soundness and public policy concerns.

The Department is concerned with the short time frame for implementation. In the proposal, an 18 month delayed implantation period was established with the stated purpose of allowing time to adjust to the new requirements. It also states that guidance would be published after the final rule is published to outline the expectations of the rule. These are very lofty goals, and it is unlikely that sufficient guidance governing all expectations for commercial loan underwriting requirements, loan types, classifications, and program monitoring requirements could be drafted in that timeframe. Certainly, training all examination staff and credit union officials on the content of this guidance, hopefully to include both how to effectively review and classify commercial loans, within that short time line is overly optimistic. We would encourage NCUA to consider a more measured roll out process over a longer period of time.

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We are also concerned about the preemption of state authority to draft a state specific regulation. North Dakota is a state that drafted its own regulation; however, NCUA did not approve our regulation, thus NCUA's rule preempted much of our state specific rule. According to NCUA, our rule was not approved because it had a higher individual loan limit, a limit which would now be in line with NCUA's proposed rule. The fact is North Dakota Department of Financial Institutions has experience in both administering its own member business loan rule, as well as trying to interpret and enforce NCUA's rule. It is because of this experience that preemption of state authority is a concern.

Interpreting, applying, and amending the state rule to address current issues and local risks has been very effective. Some of the new concepts in the proposed NCUA rule such as the higher individual loan limit have been part of the state rule, and the requirement for a risk rating system was added to our rules several years ago as the need for such change became apparent. We have utilized our legal staff and State Credit Union Board to timely interpret the rule or issue waivers and guidance as needed. The end result has been a relatively efficient state regulatory process which addresses emerging risks in a timely manner.

The application of the federal regulation has been a greater challenge, with a great deal of frustration on the part of the Department and the credit unions we regulate. Situations will inevitably arise which require legal interpretation. NCUA has issued surprisingly few legal opinions to interpret the current member business rule, and at times the interpretations that have been issued do not fit within local circumstances, making the application of the constraints very difficult. Additionally, there is frustration on the difficulty in obtaining federal legal opinions to clarify issues. Application of the federal rule has been far more burdensome than that of the state rule, and the federal rule has been slower to react to local emerging risks.

We recognize that nothing in the proposed rule would prevent states from adopting additional more restrictive rules for state institutions; however, a system where both a state and federal rule exist governing the same area of operations is simply not a functional option. Since our rule was not approved by NCUA to supersede the federal rule, state institutions have had to first review federal law for compliance, then review state law for compliance. This adds a level of unnecessary regulatory burden and expense. It is difficult enough to differentiate between chartering and insurance laws within NCUA rules even for experienced legal professionals. Preventing States from drafting a specific rule to replace the federal rule will only serve to exacerbate the problem.

Preemption of state rule making authority is contrary to the congressional intent of the dual chartering system. It will unnecessarily create additional regulatory burdens and inefficiencies within government, directly impacting state chartered institutions. It will stifle innovation, both eliminating the state system as laboratory for industry innovation, and eliminating state regulators as a laboratory for innovation within regulation. For these reasons, the ability of a state regulatory agency to develop its own state specific regulation to replace federal regulation must be added to the proposed NCUA regulation.

Once again thank you for your effort to resolve weaknesses within the current regulation and the opportunity to comment on the proposed Member Business Loans; Commercial Lending regulation.

Sincerely,



Robert J. Entringer
Commissioner
North Dakota Department of Financial Institutions

RJE: cjk
ecc: NASCUS