

Open Board Meeting

February 18, 2016

**Board Member J. Mark McWatters  
Statement on Member Business Lending Final Regulations**

I support most of the final Member Business Lending rule pending before the Board today. For example, from a regulatory relief standpoint, I support changes in the rule to remove or improve provisions that are not required by the Federal Credit Union Act that will facilitate member business lending. Even though I intend to support the final MBL rule, I wish to make two points.

First, it is regrettable that the Board has not received official assurance on the record prior to the Board's vote from the NCUA's Office of General Counsel that the final MBL rule does not contravene the Federal Credit Union Act. The Office of General Counsel has verbally advised the Board that the final MBL rule complies with the Federal Credit Union Act and has assured the Board that they will issue a detailed reasoned legal opinion in support of that conclusion.

This approach where the legal analysis of the Office of General Counsel in support of the final MBL rule will follow the approval of the rule by the Board is the reverse of what normal operating procedure requires and is problematic from a governance and diligence perspective.

The role of the NCUA Board is not to accept blindly the opinion of the Office of General Counsel, but to read and thoughtfully consider their legal analysis in sufficient time to fully consider legal issues prior to the Board's vote. I can neither read nor consider a legal opinion that doesn't exist. This approach is of particular significance, given the large number of comment letters received by the Board asserting that the proposed MBL rule does not follow the Federal Credit Union Act.

My observation is not intended as a criticism of the Office of General Counsel. Although we occasionally disagree, reasonable minds may differ and I respect their legal judgment. It is, however, challenging for the Board to act on the final MBL rule at this time without first considering the legal analysis supporting the final rule. I will reluctantly agree to do so only because of my detailed discussions with them.

Second, the final MBL rule should permit state-chartered credit unions to qualify for an exemption from Part 723 if a state promulgates an MBL rule that sufficiently mitigates risk to the Share Insurance Fund and complies with the Federal Credit Union Act. Under the Federal Credit Union Act, the agency must coordinate with state agencies in implementing the MBL rule: 12 USC 1757a(e) states: "Consultation and cooperation with State credit union supervisors.—In implementing this section, the Board shall consult and seek to work cooperatively with State officials having jurisdiction over State-chartered insured credit unions."

In other words, state-chartered credit unions should have the ability to avoid compliance with two sets of rules, state and federal. And so long as the state MBL rule—even if it differs from the federal MBL rule—appropriately addresses Share Insurance Fund safety and soundness issues and follows the Federal Credit Union Act, it should be allowed to govern state MBL activities.

Regrettably, the final MBL rule operates as a regulatory floor that essentially preempts states from crafting their own safe and sound MBL rules. In order to respect the dual charter system and the ideal of states' rights for state-chartered credit unions, the NCUA should acknowledge that more than one approach to the safe and sound regulation of member business lending exists. The NCUA's rigid language creates yet more uncertainty and may raise the regulatory burden of state-chartered credit unions.

In reality, a rule touted by the NCUA as regulatory relief, may work to the contrary in the day-to-day operations of state-chartered credit unions that engage in member business lending.

Thank you.