

August 15, 2008

Via FedEx

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Advanced Notice of Proposed Rulemaking (ANPR) Addressing Flexibility for
Credit Unions that are Active in Member Business Lending

Dear Ms. Rupp:

On behalf of the Board and Management of Corning Federal Credit Union, I would like to take this opportunity to comment on the Advanced Notice of Proposed Rulemaking that addresses the flexibility that the National Credit Union Administration extends to credit unions that are active in member business lending.

We appreciate NCUA's willingness to consider amending its member business loan (MBL) rule. As a multiple common bond federal credit union that is active in member business lending, Corning Federal Credit Union is concerned with the current regulatory environment that limits us from playing on a level ball field with our closest business competitors in the business services arena, in particular commercial banks and community banks.

Loan to Value Requirements

Regarding the existing loan to value ratio requirements as stipulated under NCUA regulations Part 723, Corning Federal Credit Union recommends that the ratios be relaxed. In order to remain competitive with the banking industry in the area of commercial lending, credit unions should be allowed the flexibility to determine the appropriate level of collateralization based on the relative strength of the borrower and the overall structuring of the loan request. Although we have a very strong program that includes lenders with an average of 30 years of commercial lending experience, we find that the current legislation binds our hands and forces the occasional strong borrower to go to a bank to seek the solution to their specific financing needs.

The maximum loan to value limits (80% for commercial mortgages, 75% for construction and development loans) is unduly restrictive and places credit unions in a non-competitive position as compared with banks, that enjoy greater flexibility in catering the

required ownership equity to the specifics of the loan request and strength of the borrowing business. Corning Federal Credit Union recently lost one member business loan to a local bank competitor due to the fact that we were not able to exceed this regulatory lending limitation. The request was otherwise very strong, and we lost the opportunity to gain a solid business deposit relationship along with the commercial mortgage.

Our preference is for NCUA to consider relaxing the loan to value requirements for credit unions. One alternative to this approach would be to allow those credit unions that have had an active MBL program for more than two years to be automatically waived from the loan to value requirement. Another is to allow credit unions that meet the RegFlex standards to automatically be waived from this requirement without having to go through the formal waiver request process.

MBL Experience Requirement

In regard to the existing regulatory requirement that “the Board must also use the services of an individual with at least two years direct experience with the type of lending the credit union will be engaged in,” Corning Federal Credit Union is of the opinion that the existing regulation is highly prudent and should not be relaxed. We see the MBL experience requirement as the foundation of a successful MBL program. Prior to launching our MBL program, we recruited an individual who far exceeded the experience requirement, with the express purpose of providing us with a level of knowledge and expertise to ensure that our program reflected the high levels of safety and soundness that our organization and membership demands.

We are of the opinion that NCUA should consider expanding on the current two year experience requirement, perhaps to five years, to ensure that credit unions are fully prepared to take on the challenges of this unique market segment. With this in place, NCUA could then reasonably relax some of the other restrictions to allow the credit union industry to compete on a level playing field with banks. In particular, NCUA should eliminate the loan to value ratio requirements for credit unions meeting the experience requirement.

At a minimum, all credit unions should be required to continue to meet the level of MBL experience that is currently required prior to launching their program.

Awareness of MBL Regulatory Waivers

In our opinion, the waivers that are currently available to credit unions under the MBL regulations are explicit and easily understood. Also the process to apply for such waivers, (for example, federally-chartered credit unions must submit a waiver request to their Regional Director) is direct and well-documented. The information that NCUA requires for the credit union to submit to the Regional Director in order to be considered for a waiver (including an explanation of the need for a higher limit, a history of loan losses or delinquency, and underwriting standards and practices) are prudent and

sensible. All aspects of this process are covered fully and simply in Part 723 of the NCUA Rules and Regulations.

We would recommend that the process of applying for a waiver be streamlined for those credit unions that meet the RegFlex standards. Under current guidelines (per 723.11), a waiver request must include an abundance of documentation including: “a copy of the credit union’s business lending policy,” “an explanation of the need to raise the limit (if applicable),” “documentation supporting your ability to manage the activity,” and “a [comprehensive] analysis of the credit union’s prior experience making member business loans.” In addition, once submitted, the NCUA Regional Director has up to 45 days to respond to a waiver request. A rapid approval and quick application process for RegFlex credit unions would benefit the individual member and credit unions’ ability to serve their members, without adding undue risk to the MBL portfolio of the credit union industry as a whole.

Some credit unions may be reluctant to apply for waivers due to the fear of additional scrutiny from their examiners. In addition, the excessive burden of the current waiver request process is a deterrent for many credit unions. One alternative that should be considered is to allow credit unions to apply for a waiver through their regular examination process. The NCUA exam team is in the best position to understand the strength and soundness of a particular credit union and to judge the reasonableness and/or risk involved in a specific waiver request as it relates to that particular institution. This would eliminate the need to create and provide, for each separate waiver request, an intensive and detailed package of information to a Regional Director who has much less contact and familiarity with the particular institution. Another option is to allow credit unions to apply for the waiver through a streamlined online application, similar to the current Field of Membership Internet Application (FOMIA).

Prepayment Penalties

We noticed some comments from other credit unions pertaining to the prohibition against charging prepayment penalties on MBLs (701.21). We share our colleagues’ opinion that NCUA should allow credit unions to charge prepayment penalties if deemed necessary, as it is a typical contractual stipulation in the commercial lending industry. Although we have gained some new MBL relationships from our banking competitors by not placing the clause in our loan agreements, we see this as a negotiating tool that would be useful in certain situations. Even if we were allowed to charge prepayment penalties, we may choose not to enforce the penalty in all circumstances, but it would give the credit union greater flexibility with current borrowers that opt to rate shop their loan with other financial institutions. As an example, certain local banking competitors were able to keep their business loan on their books because they were allowed to charge a prepayment penalty, where the member wished to move the loan to us but with the prepayment penalty it did not make economic sense to do so.

Additionally, prepayment penalties are an important tool from a risk management standpoint. Because credit unions are not currently allowed to charge a prepayment

penalty on member business loans, it may conceivably subject those lending institutions with larger portfolios to the risk of significant payoffs in a declining rate environment. Prepayment penalties can be used as an Asset-Liability Management (ALM) tool in such an environment to help credit unions mitigate this risk exposure.

Attorney Client Trust Accounts

We would like to comment on one more area of regulation that although it is not specifically tied to NCUA’s MBL rule, it does impact credit unions’ ability to grow their business member relationships. This area is Attorney Client Trust Accounts, and specifically Interest on Lawyers’ Trust Accounts.

The current prohibition on offering IOLA/IOLTAs is derived from a combination of membership eligibility and share insurance concerns. Attorneys are required under their fiduciary duty to ensure that their clients’ funds receive the full benefit of \$100,000 deposit/share insurance for their funds held in client trust accounts. Under current regulations, since it is impossible to determine if all of the attorney’s clients are members of the credit union or within the field of membership, the share insurance covers the attorney but not the individual clients.

The IOLA/IOLTAs are a key part of the overall attorney relationship with their financial institution, and credit unions including Corning Federal Credit Union have found it impossible to establish member business relationships with attorneys due to the current restrictions against opening these accounts. Currently, low-income designated credit unions are allowed to open IOLA/IOLTAs, putting them on a level playing field with banks. We urge NCUA to consider amending this rule to allow all credit unions to open these accounts and thus be able to serve the full needs of attorneys within our fields of membership.

Conclusion

We wish to thank NCUA for the opportunity to comment on the proposed rulemaking that addresses the flexibility that the agency extends to credit unions that are active in member business lending. We are encouraged that NCUA is taking a step in the right direction of expanding the opportunities for credit unions that have been active in member business lending to be able to better serve their members in this market. We believe there is still a lot of work to be done to ensure that credit unions are allowed the flexibility needed to grow market share and compete effectively with banks.

To illustrate the position that the credit union industry is in as compared with banks, consider that credit unions have only a 0.9% share of depository institution commercial loans as of year-end 2007. Additionally, only one in five credit unions offer member business lending, and business loans account for just 5% of total credit union loans (“Commercial Banks and Credit Unions: Facts, Fallacies, and Recent Trends, Year-End 2007,” Mike Schenk, Economics & Statistics Department, Credit Union National Association). We urge you to review the onerous level of regulatory oversight of MBL

programs and to consider relaxing some of this burden, particularly in the areas of loan to value limitations, aggregate limits on net MBL balances, and personal guarantee requirements. Above all, the MBL cap of 12.25% of assets that credit unions are currently subject to is draconian and will have the effect of stunting the growth of credit union MBL programs in the long-term.

We urge NCUA to consider taking a risk-based approach to member business lending, similar to how you evaluate other areas of credit union performance. As individual programs develop and prove themselves over time, it makes sense to allow for additional flexibility. A judicious review of the current regulatory framework would have the positive effect of enabling the credit union industry on the whole to be more competitive in reaching the growing small business market and of allowing the industry to better serve the needs of its membership.

Sincerely,



Gary A. Grinnell
President and Chief Executive Officer
Corning Federal Credit Union

cc: Chairman Michael Fryzel
Vice Chairman Rodney Hood
Board Member Gigi Hyland