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Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Dear Ms. Rupp:

On behalf of the Credit Union National Association, we appreciate the opportunity to comment on the National Credit Union Administration Board's proposal to revise its member business loan regulation. CUNA is the largest trade association representing over 90% of our nation's 9,100 state and federal credit unions that serve more than 87 million members.

This letter was developed under the auspices of CUNA's Federal Credit Union Subcommittee, our Examination and Supervision Subcommittee, and our Business/SEGs Committee. We also received a number of substantive comments from other credit unions and leagues, as well as the Association of Corporate Credit Unions, which were relied upon in the development of CUNA's letter.

Summary of CUNA's Position

- CUNA commends NCUA for its ongoing efforts to improve the member business loan rule but raises issues regarding the implementation of the MBL rule and related matters.

- CUNA supports several changes the agency has proposed, which are:

    - Allowing more guaranteed loan programs to qualify for more flexible regulatory treatment as Small Business Administration loans are permitted;

    - Amending the definition of "net worth" in the MBL rule to make it consistent with the prompt corrective action regulations; and

    - Clarifying the minimum capital requirements corporate credit unions need to meet in order to make certain unsecured MBLs.
- CUNA does not support the proposed revision to the definition of "construction or development loan" at this time, for reasons addressed below.

- CUNA urges NCUA to use the full extent of its authority to facilitate member business lending.

CUNA Commends NCUA's Review of Its MBL Rules But Has Concerns About Implementation Issues

Member business lending is an important product many credit unions offer to their members and communities. Such loans from credit unions are particularly significant in light of the fact that a number of small businesses report difficulty in finding credit on reasonable terms from banks or other financial institutions. Small businesses help drive the American economy and to the extent credit unions provide needed credit to small enterprises, they play an important role in supporting economic growth and business development in this country.

In the last several years, NCUA has made a number of notable changes to its member business loan regulation that improve its implementation and facilitate the ability of credit unions to make member business loans. We applaud these steps, which are not only consistent with the statute, but also reflect the relatively low risk of credit union member business lending, as recognized by the U.S. Department of Treasury study, "Credit Union Member Business Lending."

However, while we believe the NCUA Board deserves high marks for its continual efforts to review MBL requirements and encourage robust, sound MBL programs, we have concerns about several issues relating to the implementation of the agency's MBL rules.

One concern from a credit union is that its examiner has required it, for purposes of determining the 12.25% asset limits on total MBLs, to aggregate loans made through the credit union with loans made through its wholly-owned CUSO. We believe this result is not called for by the Federal Credit Union Act, which states, "no insured credit union may make any member business loan that would result in a total amount of such loans outstanding at the credit union at any one time…." There is no requirement in the statute to aggregate loans made through the CUSO with loans originated by the credit union. We believe such examination practices are contrary to the language of the FCU Act, and the MBL rule should be clarified to avoid such results.

NCUA provides a waiver process regarding several provisions in the MBL rule that are not expressly required by statue. However, we understand from credit unions that the process can be quite cumbersome and inefficient. While the rule

states that if a credit union has not heard from the agency in 45 days it can assume the waiver has been approved, we understand that credit unions may be asked several times to amend their applications and the rule does not establish a time frame for the completion of the agency's review of a waiver application. We request the agency review this matter, although on the last page of this letter, we offer another recommendation to improve the MBL rule that would eliminate the need for waivers altogether. If the waiver process is continued, we believe the agency should undertake steps to improve it.

We also understand that examiners have already been implementing, at least in some areas of the country, the provisions regarding construction and development loans contained in the current proposal. It is clear the agency views the provisions as a policy change, necessitating a notice and comment period as well as the adoption of a final rule before they can be enforced. As such, we believe the agency should instruct examiners to refrain from implementing these provisions, pending the disposition of the final rule.

CUNA Supports Key Aspects of the Proposal

CUNA agrees with the agency regarding capital requirements for corporate credit unions making member business loans. Under the agency's rule, member business loans that a corporate credit union makes to member credit unions and corporate credit union service organizations are not covered. However, such loans a corporate makes to other members would be subject to the MBL rule. For those loans to which the MBL rule applies, the corporate credit unions must maintain capital requirements consistent with the net worth requirements of the MBL rule. The Association of Corporate Credit Unions is supporting this change, and we agree with it as well.

The proposal would revise the definition of "net worth" in the MBL rule to reflect the definition found in the prompt corrective action rules. We support this change as well as the general principle that consistency in terminology within the agency's rules facilitates compliance for credit unions.

The agency is seeking comments on whether to expand the MBL rule to permit credit unions to make government guaranteed loans on more favorable terms and conditions that have been adopted by the agency implementing the guarantee program. NCUA currently permits such treatment for SBA-guaranteed loans.

We strongly support the adoption of the agency's position toward SBA loans and when it was adopted, encouraged broader use of this approach in implementing the MBL rule. We urge the agency to amend the rule, which we believe it is fully authorized to do, consistent with its rule changes regarding SBA loans, to permit any loan the payment of which is guaranteed by a duly authorized local, state or

federal agency, to qualify for the same regulatory treatment under NCUA's MBL rule that is afforded to SBA loans.

We also think that NCUA should permit loans guaranteed by government sponsored enterprises to qualify for more favorable regulatory treatment. Financial markets recognize that the obligations of such enterprises are implicitly guaranteed by the federal government. We see nothing in the Federal Credit Union Act that requires these loans to be denied more favorable treatment, and would welcome the opportunity to pursue this further with the agency.

CUNA Opposes the Proposed Definition of "Construction and Development Loans"

While CUNA supports several significant provisions of the proposal, we urge the agency to reconsider the language regarding construction and development loans. Under the proposal, NCUA would define "construction or development loan" to include a financing arrangement for acquiring property or rights to property, including land or structure, with the intent to convert it to or improve it as income producing property such as residential housing for rental or sale; commercial use; industrial use or similar uses.

This language is problematic for several reasons. First, credit unions are concerned about having to know what the "intent" of the borrower is. In addition, the proposal does not clarify what is meant by the term, "improve." For example, the question has arisen, if a business loan borrower obtains a loan for the purchase of property that will be resold following improvements, is the entire loan to be counted as a construction and development borrowing? Further, credit unions are concerned that it would be difficult to distinguish between improvements that are for the purpose of normal maintenance as opposed to alterations, etc., designed to "spruce up" the property to make it more appealing to a potential renter or buyer.

Yet other concerns have been raised about the phrase, "income producing property" within the context of the proposed new definition. Does the definition apply only if the building itself directly produces income, such as a self-storage facility or apartment building, or does it include structures that contain income-producing businesses, such as shops? The proposal does not provide sufficient clarity to credit unions for them to know how to answer these questions and categorize such loans.

There are other concerns regarding how credit unions would use the proposed definition to categorize loans on the Call Report. Under the proposed definition, a C&D loan could be unsecured yet on the Call Report a loan could be categorized as an MBL; a C&D loan; or unsecured business loan. It is possible that with the new definition, an MBL could be fall within any of those categories.

As mentioned previously, examiners in some areas are already implementing the proposed definition, which we believe is inappropriate. As a result, some credit unions are having to reclassify loans and are exceeding their MBL limits. Some are even turning away sizeable loans because they have been forced to reclassify existing loans. Such an outcome is wholly unwarranted and arbitrary.

If this category is necessary for safety and soundness or other statutory reasons, rather than implement this definition as proposed, we encourage the agency to revise it to address these various issues and seek comments again from credit unions on a new approach.

NCUA Should Revisit the MBL Rule

As we have several times in the past, we urge the agency to revisit the MBL rule and remove elements that are not expressly required by the statute. These include loan to value ratios, aggregate construction and development loan limits, minimum borrower equity requirements for such loans and other limits in the rule that are not directed by the statue. Rather than including these provisions in the rule, we believe credit unions should address them in their required written policies, which are subject to review by their examiner. To assist with this process, the agency could develop guidelines to ensure safety and soundness concerns are satisfactorily addressed.

The single largest impediment to a successful MBL program is the statutory cap on total MBLs, which can only be changed by Congress as the Credit Union Regulatory Improvements Act seeks to do. However, allowing credit unions some additional flexibility, within reasonable safety and soundness limitations, to engage in MBL programs could benefit their members, the community and the nation's economy.

In closing, the proposal addresses several possible changes that would be useful to credit unions, without jeopardizing safety or soundness. We welcome these amendments. At the same time, we strongly encourage NCUA to address problematic areas with the current rule and its implementation as well as with the proposal, as addressed above.

Thank you again for the opportunity to express our views on the MBL proposal.

Sincerely,

Mary Mitchell Dunn
CUNA Senior Vice President
and Associate General Counsel