June 20, 2005

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

RE: Michigan Credit Union League's Comments on Part 723 Member Business Loans

Dear Ms. Rupp,

The Michigan Credit Union League (MCUL) appreciates the opportunity to provide comments to the National Credit Union Administration (NCUA) concerning the proposed changes to member business loans. The MCUL is a trade association representing over 90% of state and federally chartered credit unions in the state of Michigan. This comment letter was drafted in consultation with the MCUL Government Affairs Committee, which is comprised of Michigan credit union staff and officials.

MCUL supports most of the proposed changes to the member business lending regulations. We believe that the changes proposed by the NCUA increase consistency with other regulations and add to the safety and soundness of the credit union industry. The exception to our support is the amendment to the definition of "construction and development loan." We believe that this change may negatively affect credit unions' ability to compete and offer loans that may fall under this category to many of their members.

Summary of Comments

- MCUL supports the clarification regarding the minimum capital requirements a federally insured corporate credit union must meet in order to make unsecured MBLs to its members other than member credit unions and corporate credit union service organizations (corporate CUSOs).
- MCUL opposes an amendment to the definition of "construction or development loan" to include loans for renovating or developing property owned by a borrower for income-producing purposes.
- MCUL supports amending the phrase "net worth" used in the MBL rule to be consistent with the definition of that phrase found in the Act and in NCUA's PCA regulations.
- MCUL supports the NCUA broadening the MBL rule to enable credit unions to participate more fully in additional government guaranteed loan programs.

Discussion

Minimum Capital Standards for Unsecured MBLs. The NCUA proposes to clarify the minimum capital requirements a federally insured corporate credit union must meet in order to make unsecured

MBLs to its members other than member credit unions and corporate credit union service organizations (corporate CUSOs). MBLs made by corporate credit unions to member credit unions and corporate CUSOs are exempt from the MBL rule, however MBLs made by corporate credit unions to other members are subject to the MBL rule. In those instances where the MBL rule applies, a corporate credit union must comply with the rule's collateral and security requirements. One of the conditions a credit union must meet to make unsecured MBLs is to be ‘‘well capitalized as defined under the PCA rule. The PCA rule, however, does not apply to corporate credit unions. Accordingly, NCUA proposes to amend the MBL rule's capital requirements for unsecured MBLs to accommodate the differences between the more general capital requirements for natural person credit unions and those for corporate credit unions.

MCUL supports this proposed change and believes that it represents a reasonable standard for corporate credit unions to follow. We do not believe that a capital ratio of four percent is an unreasonable standard for making unsecured loans. In addition, since this is a standard that has already been set by the NCUA's Corporate CU Rules, we do not believe it will be a burden to most corporate credit unions. We believe that this will clarify similarities and differences between natural person and corporate credit unions.

"Construction and Development Loan" Definition. The MBL rule's current definition of "construction or development (C&D) loans" is limited to financing arrangements for acquiring property or the rights to property to convert it to an income producing purpose. This definition excludes a loan to a borrower who already owns or has rights to a property, to convert it to or improve it as income producing property. NCUA believes an appropriate test for determining if a loan is a construction or development loan is whether the loan will be used to renovate or otherwise develop a property for an income producing purpose. Since the nature of these loans is construction or development, the NCUA does not believe loans for these purposes should be excluded from the definition of "construction or development loan" just because the borrower has already acquired the property or rights to it.

MCUL opposes this change because we believe the proposal, along with the NCUA Legal Opinion - 03-0430 on Construction and Development Member Business Loans, could potentially have a negative impact on credit union lending. The problem resides in the change in definition of a C&D loan to a loan used to renovate or develop property "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."

There is some confusion over what the term "income-producing property" encompasses. Since many properties undergo constant improvement, will loans on these projects be considered C&D loans? Where does the income have to be generated for the loan to be considered a C&D loan… from the building or the business housed in the building? If any part of a loan is used to redevelop a piece of property, does the entire loan have to be classified as a "construction and development loan?" If credit unions were forced to reclassify their MBLs under the new definition, it might push some of them over their MBL lending cap.

If the NCUA is concerned with the safety of C&D loans, it could focus more energy on analyzing the underwriting instead of applying greater restrictions. These changes to C&D lending impact a credit union's ability to loan to those entities who wish to rehabilitate inner city areas with high property values, some of the best commercial values in the real estate market.

Change to the MBL Definition of "Net Worth." The MBL rule defines the phrase ''net worth'' slightly differently than it is defined in the Act and PCA. To avoid confusion, NCUA proposes to revise the definition of ''net worth'' in the MBL rule to be the same as in PCA. The PCA rule's definition of ''net worth'' is an expanded version of the Act's. The PCA and Federal Credit Union Act (FCUA) definitions both state that secondary capital accounts are counted in the net worth of low income credit unions.

MCUL supports making the MBL's definition of "net worth" consistent with both PCA and FCUA's definition of "net worth" to include secondary capital of low income credit unions. First, we believe that this creates consistency across different credit union operations and throughout the regulations and Act, which is usually desirable. Secondly, we believe that this may give low income credit unions with secondary capital that currently offer MBLs the ability to offer an increased number of small business loans to their members without infringing on their cap.

Broadening the MBL rule to Include Additional Government Guaranteed Loan Programs. In October 2004, NCUA amended the MBL rule to permit credit unions to make SBA guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule. Before issuing the amendment, the NCUA determined the SBA guidelines provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness. They also felt they are ideally suited to the mission of many credit unions to satisfy their members' business loans needs. A number of credit unions suggested NCUA expand the scope of the amendment to include other government guaranteed loan programs, such as the Farm Service Agency and United States Department of Agriculture loan programs. NCUA is determining whether to broaden the MBL rule in this regard, and, if so, if it is better to expand it to permit only specifically identified programs or to permit all such programs.

MCUL supports the NCUA adding additional government guaranteed loan programs to MBL guidelines, the same way the NCUA incorporated SBA loans under the guidance. We believe that most government backed loan programs are safe and sound, and following their criteria should meet the safety and soundness concerns of the NCUA. We do not know of any programs that should be excluded from being incorporated from this rule. In addition, this change will help provide consistency with the previously issued lending rule change that was effective March 28 of this year, which stated loans with a full or partial government guarantee are included within the provisions of the rule that provide relief from the limits on maturities, interest rates, and penalties.

We appreciate the opportunity to comment.

Sincerely,

Matthew Beard
Regulatory Specialist
Michigan Credit Union League

cc: Credit Union National Association, Inc.