50 Years

AMERICA'S CHRISTIAN
CREDIT UNION

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AUG25'08 AM10:20 BOARD

August 22, 2008

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NCUA ASI

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

Dear Ms. Rupp:

America's Christian Credit Union appreciates the opportunity to comment on the concerns that are raised in the review of NCUA's Advanced Notice of Proposed Rulemaking to amend Part 723 of the NCUA Rules and Regulations related to the MBL rule. Part 723 applies to federally insured state chartered credit unions by incorporation through Part 741.203. State regulators are the primary regulators for state credit unions and work in partnership with NCUA as the insurer, to supervise the federally insured state credit union system. This review is timely, it is important, and strikes at the heart of what credit unions were formed for.

From an historical perspective, some of the first credit union loans were made to small business owners who could not obtain their much needed financing from mainstream financial institutions. They often had to go to what we would construe today as "pay day lenders" or other sources to fund the business needs they had. As part of the credit union system, our roots are deeply embedded in making business loans, and this is why this assessment is very important. It's also important that **NCUA take a fair and balanced approach**, and not simply overreact to the current market conditions. I think we would all agree, that the current market conditions are certainly not operating in a normal fashion, but after more than thirty years in the credit union system, I have seen how the market forces bring correction and stabilization to the market and our industry. It is my hope that the NCUA Board will take a long and well thought out view in their assessment, and any changes which they would enact.

I also would like to urge the NCUA Board to carefully consider the fact that **one rule does not fit everyone.** Specifically, we are a lender that engages in faith-based lending and I believe that our record, along with other of my credit union faith-based peers, represent a **stellar return to our members and our respective institutions.** I believe that careful consideration should be given to **carving out provisions that relate specifically to the unique nature of faith-based lending.** A good example would be in the area of construction and development where a faith-based C&D loan is far different than the speculative nature of a developer that is engaging in building strip malls or homes. This rule, as it stands now, clearly does not take into consideration the unique nature of construction and development as it pertains to a faith-based institution. There are other examples that I will cite, but suffice it to say, we would strongly encourage the Board to give reflection to the uniqueness and quite frankly, the success that faith-based lenders have had, and allow certain variances or provisions to occur as they relate to these types of loans.

Your Mission Is Our Business

Context of ACCU's comments

The context of these comments comes out of our 50 years as a credit union that has served primarily the Church of the Nazarene. However, in 1993, we changed from a Federal to a State charter in order to engage in faith-based lending as we felt that it would enable us to better execute our mission and more thoroughly serve our membership. After considerable success, we have broadened our field of membership to serve those ministries that are compatible to our Wesleyan doctrine. As a result, we have loans on churches in 47 states and manage a portfolio of over $350 million. This portfolio is representative of the refinancing that churches do, by using their equity for refurbishing church properties, expanding the churches ministries, and construction and development loans. By volume and dollar amount, ACCU is within the top three of all faith-based lenders within the credit union movement, in terms of the amount of loans that we generate. As of June 30, 2008, our delinquency was minimal as MBLs stood at 0.03%, and the credit union's overall delinquency was 0.12%. I say that to better inform the NCUA Board that even though these are challenging financial times, we are having extraordinary success in having both our consumer loan and member business loans pay and perform on a timely basis.

We have a number of concerns regarding the current and proposed changes of the MBL Regulation, but **our primary concern is the restrictiveness and the clear competitive disadvantage that this regulation creates for ourselves and other faith-based credit unions.** Compared to Banks and Thrifts, Credit Unions are subject to significantly more restrictive aggregate and individual lending limits, more restrictive LTV ratios and far less regulatory flexibility to structure loan requests that truly meet the needs of our members. Well-capitalized credit unions such as ourselves, that have more than 15 years of business loan experience, find ourselves in a frustrating environment by the limits set forth in the regulation. The current regulation provides little flexibility to take into account the high quality of the credit, or the size or sophistication of the credit union.

In our opinion, **Credit Unions must be equipped to fairly compete with Banks, or credit union members will be forced to seek higher-cost business loans at other financial institutions.** A credit union's inability to compete often serves as a blow to both the credit union and the member. Often conditions required by other financial institutions are more onerous and costly than what credit unions generally require. There are a number of instances that I can point to that we as an institution have lost loan business and effectively the credit union member, as a result of the lack of flexibility and restrictiveness that is embedded within the current MBL regulation. Furthermore, the member is hurt as well, as they will likely receive a lesser rate of return on their deposits as many times a full deposit relationship is required from other financial institutions that pay less and charge more than our credit union.

We strongly urge the NCUA Board to consider our comments and to **carve out specific provisions for faith-based lenders and remove the onerous restrictions that the current MBL regulation has that prevents** us as an institution to serve our members in a competitive way and in the spirit of our credit union history.

1. **Loan to value requirements:** As per the ANPR, the NCUA Board has asked for comments as to whether the current LTV limits should be adjusted and whether basing such limits on collateral types would be appropriate.

We agree that LTV ratios have always been a key component in underwriting MBLs. This is especially important within the current economic environment and important as it relates to faith-based loans. We recognize the fact that LTVs make up a part of the lending decision, but ultimately cash, is what always repays loans and should be the determent in such a credit decision. It is recognized however, that in the lending industry that each loan and collateral type poses different types of risk to lenders.

As an example, we have found that a C&D loan secured by an owner occupied construction project poses significantly less risk than a C&D loan by a non-owner occupied construction project where the property is the primary source of repayment. This is a perfect example where a faith-based loan is significantly different, especially in the area of construction and development than other similar C&D loans. A further example is an owner occupied loan secured not by the construction project, but secured by a different piece of real estate that is already improved and is owned by the member/borrower. This happens quite frequently within faith-based loans where there could be an educational building or a parsonage that is used for housing the pastor, that is already improved and occupied by the ministry and could be used as additional collateral for the construction project.

We submit that using a tiered approach in establishing LTV limits would enable the NCUA to more accurately reflect the risk differences and provide a provision that could be applicable to faith-based loans versus a more common MBL. It is our opinion that such a tiered approach would enable the NCUA to ease LTV requirements for certain loan and collateral types, thereby increasing the flexibility afforded to the credit union without jeopardizing safety and soundness.

For your consideration, we would urge the NCUA Board to consider following the maximum LTV limits as set forth:

Loan Collateral Type	**Maximum LTV**
Loan to finance non-owner occupied C&D project secured by C&D project	80%
Loan to finance owner occupied C&D project secured by C&D property	85%
Loan to finance C&D and secured by improved and occupied collateral other than the C&D project itself.	90%
All other loan types/collateral types	90%
Car, van, truck, sport utility vehicles, buses	100%

It is our opinion that such tiered LTV limits would enable us to better compete for potential borrowers who have excellent credit and repayment ability.

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We would further encourage adopting a position that when a loan is collateralized by two or more properties, the appropriate maximum loan amount is the sum of the value of each property multiplied by the appropriate loan-to-value limit for each property less any other liens on such properties.

2. **Loan to value requirements – Construction and Development loans:** In the ANPR, you have asked for comments regarding the restrictions on making C&D loans and have indicated that there is a willingness to consider some support in easing the restrictions on making C&D loans. Currently, Section 723.3 of the NCUA Rules and Regulations provides in part, "the borrower must have a minimum of 25% equity interest in the project being financed, the value of which is determined by the market value of the project at the time that loan is made…" This stipulation has been a real source of frustration and inequity for experienced C&D credit union lenders since its adoption. We note that the NCUA's use of its own definition of "market value" in calculating the equity requirement appears to be in conflict with the provisions of the appraisal regulations set forth in Part 722. We further note that in many cases, the equity requirements can have the effect of increasing the lender's risk, rather than decreasing such risk. Lastly, the use of an equity requirement in place of an LTV requirement has not been normally accepted in the construction lending industry.

   We have found that loan to value ratios of 80% in the construction lending world have long been the traditional standard for prudent construction underwriting, especially as it relates to faith-based loans where the occupant, our member, is fully engaged and occupying the building. Furthermore, financial institutions that are regulated by the Federal Banking agencies, (FDIC, FRB, OTS, OCC) are permitted to make constructions loans up to 80% LTV and higher under certain circumstances. While increasing the credit union LTV limits to 80% may slightly increase risk, it is our strong opinion that any risk is not material and would be further tempered by the adoption of the "as completed" valuation method.

   We would strongly encourage that NCUA eliminate the equity method of calculating the maximum loan amount and replace it with a more traditional use of LTV limits to calculate the maximum loan amount. This would greatly level the playing field not only among governmental agencies, but within our member's mind, giving us a more competitive advantage within the market place.

3. **Federal banking agency's approach to loan to value requirements:** In recent years, NCUA has adopted to some extent, a philosophy and a position to align themselves more closely with other federal banking agencies in relationship to some of the foundational issues that credit unions face within the financial market place. However, there are some glaring areas that NCUA has been resistant and this is certainly one. We would strongly recommend that the NCUA consider the regulatory framework used by the FDIC, OTC, and OCC as set forth in the FFIEC Interagency Guidelines for real estate lending policies (Title 12, Part 365, Sub-Part D, Appendix A). **We believe the higher LTV limits described in the Interagency Guidelines continues to reflect prudent lending guidelines.** We believe that the Interagency Guidelines would afford more flexibility that would enable our credit union and the entire system to better meet the needs of our members, while at the same time balancing risk by providing a mechanism by which a financial institution may exceed the maximum LTV limits on a

limited amount of loans based upon the size of the institution, without having to obtain a very lengthy and costly waiver from a dysfunctional system.

We would endorse the following guidelines and limits as set forth in the Interagency Guidelines:

Loan Category	**Loan to value Limit - %**
Raw Land	65%
Land development	75%
Construction: Commercial, multi-family, and other residential	80%
1 to 4 family, residential	85%
Improved property	85%

We would encourage that each financial institution's board of directors be given the authority to set their own internal loan to value limits, based upon prudent lending standards and safety and soundness as its board of directors and senior management see fit.

In adopting its final rule, the Federal Banking Agencies, expressly affirms the argument that LTV is only one of several components in determining the overall credit worthiness of a real estate project, and is often not the most important. In implementing its final rule, the Federal Banking Agency stated, "The Agencies recognize that simply satisfying an LTV ratio requirement does not necessarily ensure a prudent and collectable loan. The Agencies have concluded that a rule that emphasizes only one element of the underwriting process may not ensure sound real estate lending, or contribute to the safety and soundness of the financial system. The approach adopted in the final rule and the guidelines is intended to provide ensured depository institutions and borrowers additional flexibility while promoting prudent real estate lending."

It comes as no shock that ACCU strongly concurs with the Interagency Guidance that excessive reliance on LTV limits could and does unnecessarily impede further economic growth of both the credit union and our members.

4. **Further regulatory relief for owner occupied construction and development loans:** This is a very important topic for ACCU as **it reflects a definite distinction between normal C&D loans and those that are owner occupied by a church or ministry.** This is such an important topic that **we believe it deserves consideration by the NCUA Board to separate those C&D loans that are otherwise not associated with faith-based lenders and related loans.** Clearly a church that is occupying the property that the loan is being secured by is a greater strength and asset to the credit, than a speculative member who is obtaining financing for a project that is non-owner occupied. ACCU would strongly urge the NCUA to consider this and recommends that the NCUA (a) significantly increase the current aggregate C&D limit of 15% of net worth and (b)

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recognize additional exceptions to the list of construction loans that may be excluded from the aggregate C&D lending limit due to their lower risk profile.

At the present time, the NCUA considers C&D loans to be the riskiest of all MBLs. On the surface, that is more than likely true, although **we believe this is not the case for ministries that are owner occupied.** We concur with the NCUA that C&D loans for speculative purposes are the highest risk loans, but **clearly believe that all loans for purposes of construction and development do not pose the same level of risk for our credit union, and should not be treated the same.**

As late as December 2005, when the NCUA revised the definition of a C&D loan, the NCUA repeatedly explained that the regulation was meant to target “speculative lending” mainly “lending that is generally characterized by projects which rely on anticipated future sale of the project or future cash flow of an uncompleted project in order to repay the debt.” Despite the effort to have the regulation address loans that cause the most speculative risk, C&D loans have been so broadly defined, that they can be construed to cover any loan where some of the loan proceeds could be used for construction purposes, regardless if the repayment source is speculative in nature. Over the course of time there has been an attempt by the NCUA to soften the impact of this very broad definition by exempting certain loan types from application of NCUA Rules and Regulations Section 723.3 where the NCUA identified the risk of loss as low, such as (1) where a prospective homeowner is contractually obligated to purchase the completed home, (2) where a member/borrower is building only one single family residence, and (3) where the construction or development is for maintenance repairs or improvements that do not change the use of the income producing property. We strongly believe that there should be further consideration as it pertains to this specific part of the rule.

We encourage the NCUA to consider two specific amendments that would exclude two additional loan types. Those loan types would be (a) owner occupied construction loans and (b) loans for the purpose of financing construction on real property but are not secured by that same property (if such security interest is not required by prudent underwriting practice) from the applicability of the C&D regulation due to the non speculative risk profiles. This is an area that draws distinct separation from faith-based loans where they are often owner occupied during the construction phase, and clearly are not being built for speculative reasons.

It has been our experience for over the past fifteen years, that owner occupied construction loans expose a lender to less risk than “speculative” construction loans. This fact is supported by the following reasons (a) the owner occupant is responsible for repayment from the existing cash flow of the ongoing operations of the owner occupant, (b) repayment is not dependent on the state of the real estate market on completion of the project, (c) the source of repayment is not a speculative source, as our experience has shown that the repayment risk profile of an owner occupied construction loan is equal to that of a loan to purchase an existing facility intended for occupation by the owner, and (d) the timely completion risk is less of a concern because existing operations are the basis of servicing debt. In other words, a borrower would be less likely to default on a mortgage loan and jeopardize losing their existing property which they rely on to avoid completing the project or finding a way to fund some unforeseen

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construction expenses. It simply is not just a speculative investment made for a greater or lesser return, especially in the case of a faith-based loan.

The bottom line is, that owner occupied construction loans, in our experience, pose no more speculative risk than a regular member business loan extended to purchase and move in ready facility. By subjecting such loans to the C&D regulations, credit unions are inappropriately limited in the amount of owner occupied construction loans they may offer and make available to their membership. It is our opinion that incorporating such changes will better align the regulation with the NCUA stated purpose for the regulation and will provide increased flexibility to credit unions without providing additional risk to the share insurance fund. An additional byproduct of this change will enable credit unions to become more competitive within the market place and pass those savings on to their members in the credit union cooperative spirit.

5. **Waiver system:** While we respect the intent of the waiver system, we who are California state chartered credit unions, find the current system grossly dysfunctional in order to meet the market and member needs in a timely fashion that credit unions have as a result of the dynamics that are a part of our environment. Without a doubt, the waiver system is neither effective nor rational, as it is intended to be and often creates unbelievable wait times for a request to be looked at much less acted on.

   The above assertions are made that within the State of California, stated chartered credit unions are required to first submit any waiver request to their state regulator for approval before the request can be forwarded to the NCUA for their review. It has been our experience that it takes several months before the credit union receives a response and usually the response is filled with follow up questions and what if scenarios that are asked to be opined on. I would like to remind the NCUA that not all state regulators have effective state laws or regulation in place similar to 723.12 (d). Without laws in place that mandate a dated response, the state regulators will consume themselves with other priorities and have little incentive to provide a timely response. We would hope that definitive direction would be given to streamline the waiver process by giving the authority to the state and simply advising the NCUA of such a decision.

   The further problem that exists is that there is no incentive for either the DFI or NCUA to act in a reasonable time period. This poses a competitive challenge and a member service challenge, as often by the time we receive two or three responses which may or may not end with a final conclusion, the member has had no choice but to go to a competing financial institution that has already obtained the power or by regulation does not have to submit to a waiver for a specific question. To be absolutely blunt, we have known of peers and we ourselves have experienced wait times of between six to nine months before an answer is received on such a waiver request. This type of delay is simply not acceptable within the 21st century and within the dynamic business environment in which we all live.

   We further note that our assessment under Regulation B of the Equal Credit Opportunit Act requires that credit unions give small businesses with revenues under $1 million, notice of such action taken within 30 days of receipt of the applicants completed application. We believe there is no exception to this 30 day notice requirement.

I also know there are many states that treat state chartered credit unions with much more respect and equality in terms of their communication lines. I'm also aware that many states have embedded within their rules and regulations a more streamline waiver system that enables credit unions to obtain and act on waivers in such an expeditious way. **We strongly urge the NCUA to (a) delegate more waiver authority to the specific state agency for state chartered credit unions, and simply "loop" the NCUA in on their actions, and/or (b) create the necessary structure to allow credit union board of directors to have the authority to modify their lending policies to meet these specific needs their members have within an environment of safety and soundness.** An example of empowering the board of directors can be seen in many states where the board of directors has authority to set their own field of membership. This is 21st century thinking and should be extended to modifications within the lending policy that now require a waiver that takes and consumes a large amount of precious time.

. Participation loans: Participation loans provide a much needed and strategic source of funds that enable us to respond to members needs for MBLs. With changes in the credit markets, participation loans are a key component of our ability to make MBLs. Participation loans reflect the credit union cooperative spirit of people helping people from a corporate sense. I believe there's no better investment that credit unions can make with their excess shares than to invest in other credit union members' loans that I believe are safe, sound and provide a good strong yield. If participation loans were ever minimized or taken from us, this would severely impair and curtail credit unions' authority to further fund MBLs.

The slight adjustment we would support is a more streamlined waiver process for those credit union's seeking to raise the current 12.25% cap. We hold out hope that this will be corrected when CURIA is passed, but until then, there needs to be a more efficient remedy to facilitate liquidity and meet investor demand for such high quality credit.

It is our assessment that the current participation loan rule is very well thought out and needs little or no modification. Where we do concur with NCUA is the ability to better educate buyers of MBLs as to the specifics that are contained within the rule and the expectations of them as a credit union, their board, staff and lending policies. We do not feel that further regulation needs to be created, but simply further education should be the effort that is put forth.

Degree of regulatory limits: Without a doubt, ACCU does not believe that additional regulatory restrictions are needed to protect against additional risk to the share insurance fund. As noted by the GAO study, MBLs are some of the finest loans with minimal risk that the industry has. If anything, we continue to say that MBL regulations are overly restrictive, burdensome and onerous and that often they impede the credit union's growth and mission. Furthermore, such restrictive thinking does impede our flexibility to meet our members' needs and drives members to alternative sources of financing.

I'm often amused by the over stated risk that MBLs have and the amount of capital we are assessed for business loans. I'm amused in light of the thinking that indirect car loans are substantially less risky than MBLs. I believe the data shows that delinquency, risk and losses are higher within the indirect lending, yet capital requirements are substantially higher for MBLs that have far reduced numbers in the aforementioned categories and overall risk to the credit union system.

As I stated in my opening remarks, MBLs are at the very core of what credit unions were formed for. We continue to have members access us as a resource not only for their consumer needs, but for their business needs as well. By offering the American people a competitive alternative to traditional banking institutions, we have been able to bring down the cost of financial services and stay true to our industry mission of . . . people helping people. Our history at ACCU has been documented not only by comments contained herein, but by the numerous 5300 reports which we have filed over our 15 years of MBL experience. We continue to see a strong appetite within our members for our services, but we also continue to run up against restrictive and sometimes illogical regulatory expectations based more out of fear and lack of knowledge by examiners than out of being informed by fact and market place.

Although it is easier to often form and institute new levels of oversight, I would submit that greater good would come by leveraging the resources that NCUA and our credit union system have by turning to experienced MBL lenders that could provide guidance and benchmarks for others to learn from. What a unique opportunity that would be for a consortium of experienced MBL lenders to annually hold a forum to speak of best practices within the industry. **This could be a joint effort with state and federal regulators wherein we collaborate on the best practices within the MBL environment. I've always been one that has held that education and knowledge is much more rewarding and better for the consumer than the trip wires that are often embedded within regulation.**

Summary of Key Points

- Recognize that faith-based MBLs are distinctly different than other MBLs and work toward a special waiver or regulatory relief in certain areas that are applicable to faith-based MBLs.
- We believe the current waiver process is woefully dysfunctional, especially for state chartered credit unions and would urge NCUA to delegate this authority to the board of directors.
- Leave the participation loan rule intact and leverage the resources of experienced lenders and examiners to better educate participating credit unions.
- We recommend that the NCUA modify the LTV requirements and lower the equity requirements for owner occupied construction and development loans from 75%/25% to 85%/15% respectively.
- We recommend that NCUA seek a more level playing field and compatibility with other governmental agencies and provide the flexibility to exceed the LTV requirements when appropriate for credit worthy borrowers in a structure similar to that available to banks and thrifts.
- We strongly support listing the LTV requirements in tiers by loan type as different types of loans and different types of collateral pose differing levels of risk.

Finally, the board and management of America's Christian Credit Union appreciate the opportunity to opine on this very important regulation that strikes at the heart of our mission and of our service to our members. We join with NCUA in wanting to protect the safety and

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soundness of insured credit unions and the members which we serve. We would strongly urge that NCUA strive to seek a fair and balanced approach in recasting this very important regulation that represents a competitive stance with other federal and state banking agencies and the needs that our members have. Regulating to the lowest common denominator does not meet the NCUA's publicly stated objective for consistent and fair oversight. We strongly believe that the adoption of our recommendations contained herein will not only improve the competitive stance that credit unions have, but will do nothing to erode or impair the safety and soundness that credit unions and the share insurance fund strives to maintain. If anything, these recommendations, if adopted, will have a positive impact upon the credit union system and the thousands of members we serve.

trust these comments will be read, heard and reflected on in a serious manner and that any agendas that may have been pre-established will be modified in light of the comments contained herein. As always, I would welcome any questions or thoughts you might have and may be reached directly at 800-343-6328, extension 5500, or via email at mthompson@americasccu.com.

Sincerely,

Mendell L. Thompson

MLT/khb

Cc: ACCU Board of Directors
ACCU Supervisory Committee
ACCU Senior Management
Mr. Bill Cheney, President/CEO, CA/NV Credit Union Leagues