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August 25, 2008

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

Sent via email

Re: *PCUA Comments on Advanced Notice of Proposed Rulemaking for Part 723*

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) and its member credit unions appreciate this opportunity to provide comments to the National Credit Union Administration (NCUA) regarding proposed amendments to the member business loans (MBL) rule.

The PCUA is a statewide trade association that represents over eighty percent (80%) of the approximate 589 credit unions located within the Commonwealth of Pennsylvania. To respond to this request for comments, the PCUA consulted with its Regulatory Review Committee (the Committee) and its Member Business Services Professionals Group (MBSPG or Member Business Group).

The Committee consists of 12 credit union CEOs who lead the management teams of Pennsylvania federal and state-chartered credit unions. Members of the Committee represent credit unions of all asset sizes. Many of our Committee members currently offer member business loans. Most of the members purchase or intend to purchase participations in member business loans extended by other credit unions.

The Association also has on staff a member business services professional who offers training and develops training programs exclusively related to the offering of member business services. She also performs third party credit analysis for credit unions on member business loan packages. The MBSPG was developed through the Association's member business services advisory office and is a group of credit union professionals who manage the member business services offered by their respective credit unions. The MBSPG call participants included professionals from credit unions and CUSOs in Pennsylvania and New Jersey.

PCUA staff and the members of our Committee and MBSPG commend NCUA for initiating a review of the member business loans rule. We request that that NCUA use this opportunity to provide credit unions the flexibility they need to be competitive and the ability to effectively serve the business lending needs of their members.

Under the Pennsylvania Credit Union Code, state-chartered credit unions (SCUs) are granted parity with federally-chartered credit unions in the area of activities and investments. *See*, 17 Pa. C.S.A. § 501(e)(3). Accordingly, this proposal is of interest to all of our member credit unions.

1. Loan to value Ratios (LTV):

a. Definition of Fleet:

NCUA inquired whether the LTV requirements for loans on fleet vehicles should be modified so credit unions are more competitive in this area; and whether the term “fleet” should be defined more narrowly so that it captures fewer vehicles.

Our Committee and the MBSPG members unanimously answered “yes” to this question.

The regulations provide that credit unions may make vehicle loans without complying with the LTV ratios provided that the vehicle is a car, van, pick-up truck, or sports utility vehicle and not part of a fleet of vehicles. 12 C.F.R. § 723.7(e). In a letter dated December 8, 2005, NCUA counsel stated that “[a] fleet will cover two or more vehicles used in a business if the business, itself, is transportation, but the meaning of “fleet” may also include two or more vehicles used to support the operations of a business.” *See* Legal Opinion Letter 05-1038.

Members of the Committee and the MBSPG indicated that they have lost business because of the above noted restrictions and broad definitions included in the regulation and legal opinion. We request that NCUA either: 1) eliminate cars, vans, trucks, and SUVs from the definition of “fleet” and/or 2) remove the reference to “fleet” in the regulation at 12 C.F.R. § 723.7(e). We also request that that the number – more than two- be removed from the definition of “fleet” and that NCUA refrain from using a specific number of vehicles to define a “fleet.”

We recommend that the financing of automobiles be covered under the credit union’s risk management guidelines, which is subject to the NCUA examiner’s review. NCUA could reference standard depreciation schedules for determining the reasonableness of the credit union’s risk policy, which would allow the credit union to finance a vehicle over the reasonable life of the collateral.

If collateral is sold due to a delinquent loan, the credit union typically earns the same whether the vehicle was part of a fleet or not. Credit unions should use a different risk management approach in financing vehicles that are used specifically for a transportation business, such as a limousine service, than the financing of a few trucks or cars that are used as part of a business that does not sell transportation as its primary product or service.

We suggest that NCUA provide flexibility in this area by exempting RegFlex (12 C.F.R. Part 742) credit unions from the LTV limitation when financing vehicles that are used as part of a member’s business where transportation is not the primary service. Credit union members who seek member business loans are not interested in the credit union’s regulatory restraints. Focusing on the resale value of the collateral in the secondary market makes more sense from a risk management perspective. Credit unions that have experience in vehicle financing are handcuffed by the limitations of the current regulation and legal opinion.

b. Construction and Development Loans:

NCUA inquired whether credit unions support easing restrictions on construction and development (C&D) loans. If so, the agency inquired how the restrictions can be revised in a manner that addresses the regulator's concerns that this may adversely affect safety and soundness. NCUA further inquired whether the waiver provisions are sufficient to address the need to ease C&D loan restrictions.

Many of our Committee and group members indicated that they have set their internal controls at a LTV ratio of 75% for C&D loans and that the current restrictions are generally appropriate given the risky nature of C&D loans. However, from a competition perspective, credit unions are less competitive in this area in comparison to other lenders.

Our members request that NCUA adopt a procedure that would allow credit unions to have flexibility in this area if the credit union has shown experience in this type of lending and if the circumstances related to the loan warrant relaxation of the restrictions.

While the waiver process on its face currently provides flexibility with regard to C&D loans, the waiver process is rarely used by our member credit unions due to the slow response to waiver requests from NCUA. In many cases, the deal is lost before the credit union receives an answer from the regulator.

Again, it may be appropriate for NCUA to include an exception in the MBL regulations for RegFlex credit unions that have shown a track record and experience in C&D lending.

2. Experience:

NCUA noted in its proposal that there appears to be confusion regarding how to comply with the two-year experience requirement or how the requirement is to be calculated using both in-house employees and third-party contractors.

As an overall comment, our group would like more clarification regarding NCUA's application of the two-year experience requirement included in the current regulations.

More specifically, several of our members indicated that it is unclear when an employee of the credit union meets the two-year requirement and is, therefore, eligible to make member business loans without oversight or review of another individual. Our members have not received consistent instruction and guidance from NCUA examiners as to when staff satisfy the two-year experience requirement.

Some of our members believe that the objectives of the experience requirement would be better achieved if NCUA conducted a holistic review of the credit union personnel and refrained from tying the experience requirement to any one particular individual. Again, given the objective of the experience requirement, an approach that considers the overall risk management of the credit union, including a review of relevant policies and procedures makes more sense. In addition, a credit union's member business lending program does not stop – the credit union has a MBL portfolio- should the person with the requisite two-year experience leave the credit union.

It would also be helpful if NCUA identified particular training programs that it finds effective in developing the requisite expertise in member business lending.

3. Loan Participations:

The proposal notes that the current MBL rule instructs credit unions how to account for MBL participations for member and non-member loans and how they affect the credit unions' aggregate limit on net MBL balances.

Our members overwhelmingly stated that MBL participations should be viewed as investments, particularly MBLs to non-members.

Some of our members commented that most banks do not buy 90% loan participations and that 30%, 40% and 50% participations are more common. Credit unions, on the other hand, often purchase larger loan participations and are not as experienced in diversifying their business loan risks. Some members suggested that NCUA establish a separate cap for loan participations based upon a percentage of assets or net worth.

While some members recognized that the risks associated with making a loan and purchasing a loan participation are equivalent, they believe that by limiting loan participations in a single loan and diversifying their MBL loan participation portfolio, the risk can be managed through sound policies and procedures. In addition, credit unions should be encouraged to include provisions in their loan participation agreements that address loan collection policies, procedures, and responsibilities on behalf of both the buyers and the sellers.

Some of our members recognized that NCUA may have concerns that credit unions could have informal agreements pursuant to which they would sell loans back and forth to one another to alleviate the problem of exceeding the aggregate loan caps and limitations. However, we believe that NCUA could address this problem in examinations of the credit unions and place limitations on any specific credit unions that choose to engage in this "round robin" type of activity.

We further note that the ability to purchase loan participations was identified as an important asset liability management tool and is helpful to smaller credit unions that do not have MBL programs. It offers an opportunity for them to become involved and experienced in member business services and provides a reliable and creditable avenue for investment.

4. Credit Cards:

With respect to member business credit cards, our members suggest that NCUA analyze business credit cards on a company level and determine the limit for the total company, as oppose to applying individual limits. Business credit cards have not caused significant losses to credit unions and are working well.

5. Waivers:

Under the current regulations, credit unions may request waivers in any of the following areas: i) appraisal requirements, ii) aggregate C&D loan limits, iii) minimum borrower equity requirements for C&D loans, iv) LTV ratio requirements for business loans, v) requirements for personal liability and guarantee; vi) maximum unsecured business loans to one member or group of associated members; vii)

maximum aggregate unsecured member business loan limit, viii) maximum aggregate net member business loan balance to any one member or group of associated members. *See*, 12 C.F.R. § 723.10.

NCUA raised a concern in the proposal that credit unions may not be taking full advantage of the above waiver opportunities.

Some of our members commented that NCUA can be conservative in granting waivers and cited examples that they could not get waivers until they were within 98% of their caps. This approach to granting waivers creates an operational problem due to the uncertainty created as to whether a waiver will be granted when the extension of a pending member business loan would cause the credit union to exceed caps or other limitations in the regulation.

Some members found the waiver process to be adversarial because the first step taken by NCUA in response to waiver requests was to overly criticize the credit unions' business loan portfolios. Our members also found the regional offices to be inconsistent in their evaluation of waiver requests. We believe that it would be helpful if NCUA developed standards to apply in evaluating waiver requests to address these concerns and to create a more uniform approach to granting waivers.

As a general matter, some members questioned the necessity of the limitations and restrictions that are not statutorily required and that can be waived under the regulations. We encourage NCUA to perform a fresh review of the current regulations that were developed when credit union member business lending was new and determine whether some of the safety and soundness concerns addressed by the restrictions and limitations that are not statutorily required can be better addressed in credit unions' policies and procedures.

Overall, our members would like to see NCUA evaluate credit unions individually by examining the experience and ability of management in making and monitoring MBLs, managing the risk and developing appropriate and effective policies and procedures related to the credit unions' specific programs.

It is also the sense of our members that NCUA examiners are not as comfortable with member business lending as they are with other consumer lending programs offered by credit unions. Accordingly, the NCUA examiners often err on the side of being conservative when examining member business services offered by credit unions. We encourage NCUA to explore commercial lending training programs for examiners so that the examiners are more confident when reviewing credit union member business loan portfolios and lending programs.

In summary, we believe that the NCUA regulations should facilitate, not hinder, credit unions in serving the business needs of their members. The delinquency ratios of MBLs in Pennsylvania have historically been low and continue to be under 1%. *See* CUNA's 2007 *Operating Ratios and Spreads*, Year-End Edition, State Supplement, Pennsylvania. This supports the notion that there is room for greater flexibility in the MBL regulations.

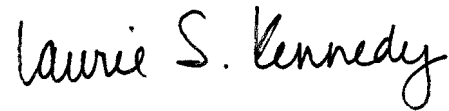
Ms. Mary F. Rupp
Secretary of the Board

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August 25, 2008

Thank you again for this opportunity to comment on behalf of Pennsylvania credit unions and the members of our Member Business Services Professionals Group. Please feel free to contact me or any of the PCUA staff at 1-800-932-0661 if you have any questions or if you would like to discuss our comments.

Sincerely,

A handwritten signature in black ink that reads "Laurie S. Kennedy". The signature is written in a cursive, flowing style.

Laurie S. Kennedy
Associate Counsel

LSK:llb

cc: Association Board
Regulatory Review Committee
Member Business Services Professionals Group
J. McCormack
R. Wargo
M. Snody
M. Dunn, CUNA