August 1, 2008

Via e-mail regcomments@ncua.gov

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

Dear Ms. Rupp:

CU Business Group, LLC is pleased to comment on NCUA's Notice of Proposed Rulemaking for 12 CFR Part 723 regarding potential changes to the Member Business Loan regulations. We commend the Board on considering these regulations in order for credit unions to better serve their business members' expanding needs.

CU Business Group is a CUSO owned by eight corporate credit unions: Southwest Corporate, Members United, FirstCorp, First Carolina, VACORP, Louisiana Corporate, VolCorp and Kansas Corporate. CU Business Group was formed in 2002 for the specific purpose of assisting credit unions in developing a business services program and providing expertise in business loan underwriting and portfolio risk management. CU Business Group also facilitates loan participations between credit unions. We are currently working with over 280 credit unions in 34 states to support their business programs. Our staff of 20 business services professionals have a wealth of banking and commercial lending expertise.

This wide reach makes CU Business Group uniquely qualified to 'speak for the industry' as we represent such a wide variety of credit unions – large and small, beginner and advanced, coast to coast.

We have grouped our comments into two major categories. The first category consists of regulations we feel are highly important to consider, where revision will have the most positive impact on quality, cost-effective business lending practices. The second category has other issues which warrant comment but are not the most pressing ones faced by credit unions.

The Most Important Regulatory Issues To Address

Prepayment Penalties. This is not included in NCUA's Request for Comments but we believe it warrants the highest consideration by NCUA for regulatory revision.

Federally chartered credit unions are prohibited by regulation from having a prepayment penalty on any type of loan. CU Business Group understands the rationale for prepayment penalties to exist in consumer lending, and we agree wholeheartedly with this prohibition. However, business lending is very different than consumer lending. Business lending is a longer, more costly process requiring specialized expertise and systems. The investment made in a commercial real estate loan, for example, can be thousands of dollars in staff time or third party fees.

If a business member takes out a commercial real estate loan with no prepayment penalty, then refinances or pays off that loan a few months later, the credit union has not had sufficient time to earn

interest and recoup the high costs of making the loan. This results in an economic hardship for the credit union strictly due to regulations.

We do not believe that prohibiting prepayment penalties was ever intended to apply to business lending, yet it does for a large number of credit unions.

We believe that an easy solution to rectify this unintended regulatory burden is to allow loans defined as Member Business Loans under Regulation 723 to be exempt from the prepayment penalty prohibition. We respectfully request that NCUA consider this important revision to the regulations.

Independent Underwriting Clarifications. In a loan participation transaction, current regulations prohibit one underwriter or third party entity from performing underwriting services for both the buying and selling credit union. CUBG certainly understands the rationale for this regulatory change implemented in 2004. However, this requirement can put an undue burden on credit unions in certain situations. Also, we have found that there are inconsistencies as to how this regulation is actually applied in the industry.

The most obvious hardship is when credit union buyer and a different credit union seller have contracted with the same third party for underwriting expertise. Our understanding is that the third party underwriter may only underwrite for one of these two credit unions. This requires one of the credit unions to seek an alternate service provider, go through appropriate vendor due diligence, and enter into formal contracts with a second underwriting source. It is obvious that this situation causes excessive cost and burden for one of the credit unions.

A contrasting situation that exists but seems to be treated differently involves credit union owners of a CUSO formed to support MBL underwriting for those credit unions. When one of the credit union owners has a large MBL that they want to 'share' (participate) with the one or more of the other credit union owners, this loan is allowed to be underwritten by the CUSO for both the buying and selling credit union owners. While CUBG has no issue with this practice, it seems to contradict the independence rule that applies in other CUSO or third party underwriting situations as described earlier.

When underwriting MBL participations at CUBG, we always underwrite the entire loan to the borrower to ensure it is a quality credit. Under the current regulations, we can underwrite for multiple buyers (participants) but not the buyer and seller, even though the fundamentals of the credit remain the same.

We believe that exceptional situations exist where a CUSO can underwrite for both the buying and selling credit unions and provide an independent, unbiased recommendation to both. We aren't advocating change of the entire independence regulation, but we do see an opportunity for NCUA to grant a waiver to this independence rule. NCUA could perform the proper due diligence before granting the waiver to ensure the request is valid and necessary.

To help credit unions reduce unnecessary regulatory burden and costs of vendor due diligence, we respectfully request NCUA to consider implementing a new waiver of the independence rule with regard to CUSO underwriting on MBL participations.

Two Year Experience Requirement. NCUA is also requesting comment on whether the two year experience requirement is adequate for proper due diligence and underwriting on MBLs. We do not believe that an underwriter with only two years experience has adequate skills and knowledge to underwrite the variety of MBLs a credit union will see with their program. In our opinion, two years is

enough to warrant certain underwriting authority on very basic MBL transactions, but overall it is very light for a credit union to rely on to run their business lending program. Business lending involves very complex ownership structures, industry risks, environmental issues and a variety of financial assumptions. Two years experience is clearly not enough preparation for all the lending opportunities that will be realized in a successful credit union business lending program.

CU Business Group believes a standard of five years experience in the type of lending in which the credit union is engaging is a minimum standard that will protect credit unions. After five years of experience, an underwriter will have seen the good loans but also will likely have had some experience in problem loans and workouts. Two years experience is barely enough time for a loan to go bad, and seeing the 'worst case scenario' on problem loans is invaluable experience that can only be achieved in at least five years time.

Increasing the Maximum Loan to Value on Construction and Development Loans. NCUA is requesting comment on raising the maximum loan to value on C&D loans from the current 75% LTV to 80%. We do not advocate an across-the-board increase in this maximum LTV. We concur with NCUA that C&D lending represents one of the highest risk types of MBLs, and in our experience the vast majority of credit unions do not possess the expertise to manage these credits at a higher LTV position.

A waiver that allows 80% LTV is available to credit unions that do have proper C&D expertise. We believe that this waiver should be granted when appropriate and the NCUA mandated 75% LTV be maintained as the industry standard.

Removing or Revising Loan To Value Limits. We believe that the current general threshold of 80% loan to value is appropriate and should be maintained. The exceptions for a lower 75% LTV on construction loans and a higher 100% LTV on non-fleet business vehicles are also appropriate. These LTVs are competitive in the marketplace. More importantly, these LTVs require a prudent level of borrower equity and down payment, creating a true shared interest in the loan rather than a highly leveraged loan with minimal borrower money at stake. CU Business Group's vast banking experience has proven that the less the borrower has invested in the loan, the more likely they are to just walk away in a problem situation.

In practice, CU Business Group recommends lower LTVs on more volatile loans, such as 50% on inventory and accounts receivable lines. If anything, we would advocate lower maximum LTVs on certain types of loans.

Other Areas Where Comments Are Requested

Applying For Waivers. NCUA is asking whether MBL waivers are understood and pursued by credit unions. We believe that the list of waivers is clearly spelled out and readily available to credit unions, and there are no changes needed from our point of view. One observation we have with credit unions applying for waivers is the rigorous and sometimes adversarial role that examiners portray during the waiver review process. Credit unions have communicated to us that they will think twice before applying for other waivers due to the extreme scrutiny that goes along with the waiver process.

Unsecured business loans. With the recent increase from $50,000 to a maximum of $100,000 in unsecured loans to one member, CUBG feels this is an adequate cap for the industry. NCUA could add a waiver for credit unions that clearly prove they have the expertise and capabilities of monitoring unsecured loans in excess of $100,000.

Business credit cards. We do not feel that any changes are needed to current regulations. CU Business Group is not aware of any major issues with business credit cards at credit unions and we do not believe that additional regulatory restrictions are needed.

Accounting for MBL participations. We find no problem in how to properly account for MBL participations. Credit union systems are not always the most user-friendly for participation accounting, but that is not a regulatory issue. We see no need for NCUA action here.

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This completes our comments. We sincerely appreciate the opportunity to provide input on NCUA's proposed rulemaking amending the Member Business Loan regulations. If you have any questions, please contact me at (971) 244-6394 or larry.middleman@cubg.org.

Sincerely,

Larry Middleman
President/CEO

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