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August 15, 2008

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

AUG20'08 AM 7:51 BOAR

RE: Member Business Loans

Dear Ms. Rupp:

On behalf of the Lafayette Federal Credit Union (LFCU), I am responding to National Credit Union Administration's (NCUA) request for comments regarding the proposed rule to amend NCUA's member business loan (MBL) regulations. LFCU commends the NCUA for proposing a rule that generally would enhance credit unions' ability to offer MBL services through their CUSOs. Such action on the part of NCUA is especially important in today's economy, where other lenders, such as commercial banks, are significantly restricting credit to businesses. In this climate credit unions can move in to help provide this vital service to businesses, especially small businesses. This has the potential for significantly helping the economy.

We submit the following comments that highlight our support for most aspects of the proposed rule together with other comments regarding our concerns and suggestions.

**Proposed change to the loan-to-value (LTV) limit for C&D loans**

We agree that construction and development (C&D) lending represents a greater degree of credit risk than does some other forms of real estate lending. However, we also believe credit unions that possess staffing with the requisite skills and experience, market contacts and market knowledge to safely conduct C&D lending activities can safely accomplish such lending at an LTV of 80% rather than the 75% LTV presently prescribed by the proposed regulations. The adoption of an 80% LTV rule would remove any competitive disadvantage that the proposed 75% LTV poses for credit unions, since other depository lenders are allowed by their regulators to use up to an 80% LTV or higher.



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We realize NCUA may be concerned that not all credit unions possess the necessary expertise and experienced staffing to make and service commercial loans and this has led to the current 75% LTV proposal. If that is the concern, we would not be adverse to a regulation that provides enhanced staffing and experience requirements for such loan making, allowing an 80% LTV. Such an approach would not be unprecedented. For example, the Small Business Act provides requirements as to experienced staffing and liquidation experience before its Community Development (504) lenders can undertake the liquidation of defaulted 504 loans. See, 15 U.S.C. 697g.

We have additional concerns as to the present 75% LTV proposal instead of the preferred 80% LTV:

(1) The 75% LTV may in fact cause Credit Unions to undertake greater risk if they can only market to real estate developers whose financial condition is weak enough to require such a large amount of equity in the project. This is because the borrower in these cases is more likely to have either less desirable property, lower quality leases, or some other well defined weakness that warrants this level of equity.

(2) Without a competitive environment in which to offer this product, how will CUs attract and retain the requisite talent? Skilled and seasoned C&D loan officers are less inclined to work in an environment that is not competitive that would be caused by the proposed regulations.

Finally, whatever the decision is with regard to the LTV, it is very important that NCUA provide credit unions with a reasonable and consistent interpretation of this provision, whether the LTV is established at 75% or 80%. Field examiners have tended to interpret this regulatory provision as being a loan-to-cost rather than a loan-to-value requirement. This harsh interpretation prohibitively increases the cash equity needed to complete a project.

### **Experience Requirement and CUSO activities**

Under the MBL rule, credit unions are required to use the services of an individual with at least two years of experience in the type of lending in which the credit union will engage. We believe that clarification is needed regarding the ways that a credit union can meet this requirement. On one hand the regulations state credit unions can use a CUSO to satisfy this requirement. On the other hand, some field examiners have ignored this provision and are requiring credit unions themselves to retain staffing with this type of direct experience. This would render the use of the CUSO valueless with respect to MBL activity. Therefore, credit unions need NCUA to clarify what role CUSOs play in providing MBL services. Thus, credit unions that own their MBL CUSO in whole or in part should be allowed to satisfy this requirement through their CUSO since the management of these CUSOs is directly accountable to its credit union members.

## Degree of Regulatory Limits

NCUA appears to be reviewing the 12.25% MBL lending limit which is too restrictive for CUs with \$400 million in assets or less. This limit does not allow for a sufficiently robust lending function that would enable CUs to attract the necessary talent to properly administer a well diversified loan portfolio. It would also inhibit CU's from filling the void left in today's economy for needed financing by other lenders, especially to small businesses.

A prohibition against prepayment penalties is another area that NCUA should address in this regulatory effort. This prohibition does not allow CUs to recover considerable up-front costs related to loan originations in extremely early prepayment situations.

Also a CU's best credits over time will tend to refinance and turn over more quickly than weaker loans, leaving a portfolio with proportionally weaker credits. For example, in a declining interest rate environment the stronger credits may refinance while the weaker credits may not. This inability to charge prepayment penalties also prohibits CUs from "rate matching" using FHLB loans, since prepaying an FHLB loan requires payment of considerable prepayment penalty by the CU or bank. Rate matching is a standard tool for stabilizing a lender's cost of funds over time, thus assuring it of a stable spread for its longer term loan assets. But this option is economically unfeasible if CU lenders have no means of passing the FHLB's prepayment penalty along to its borrowers.

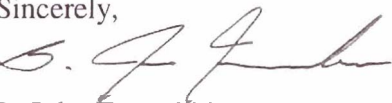
While we see the value of personal guarantees in general, the current requirement for blanket guarantees for non-Regflex CUs is too rigid. In certain circumstances it is not desirable to require guarantees. For example, investment grade assets are not structured with this form of credit enhancement. A lender that imposes a guarantee effectively eliminates itself from consideration by an investment grade borrower. Not requiring guarantees in such situations will allow CUs to attract and finance investment grade assets. Furthermore, it is not always practical or desirable to obtain a guarantee in instances where an owner holds an extremely small part of a business to be financed. This is especially true where there may be multiple minority interest holders who have neither the means nor the motivation to provide personal guarantees. Non-Regflex CUs are at a competitive disadvantage to other depository institutions which have greater flexibility in this area.

## General Comments

NCUA needs to enforce a generic definition of equity so that it is calculated as an asset's current market value less liabilities. This is a simple definition of equity that is easy to apply. It is necessary since field examiners at times have chosen to subordinate this clear definition for a harsher definition which may discount equity gains accrued through natural appreciation, change in property status (which could include an advantageous rezoning of the property), or equity gained through acquisition of an under valued asset, or "discount equity".

Lafayette Federal Credit Union appreciates this opportunity to address these MBL issues. Should you have any questions or require additional information please call me at (301) 929-7990 ext. 3100.

Sincerely,



B. John Farmakides  
President/CEO