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August 2, 2004

Ms. Becky Baker
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: National Credit Union Administration; 12 CFR Part 723
Member Business Loans; 69 Federal Register 39873, July 1, 2004

Dear Ms. Baker:

The American Bankers Association (“ABA”) is responding to the proposed rule published by the National Credit Union Administration (“NCUA”) concerning the amendments to its Member Business Loan regulations. ***ABA strongly opposes the proposed changes in NCUA’s Member Business Loan (“MBL”) rule and believes these proposed amendments are contrary to Congressional intent to limit business lending by credit unions.***

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks—makes ABA the largest banking trade association in the country.

Background

NCUA adopted its first MBL rule in April 1987 and has subsequently amended the rule, including substantive amendments, purportedly to conform to the limitations imposed by the Credit Union Membership Access Act (“CUMAA”), 12 U.S.C. 1757a, Pub. L. 105-219, 112 Stat. 913 (1998). In 2003, NCUA significantly revised its MBL rule to permit greater involvement of credit unions in funding commercial enterprises.

Now, NCUA proposes to revise the collateral and security requirements of its MBL rule to enable credit unions to dramatically expand participation in Small Business Administration (“SBA”) guaranteed loan programs. The current MBL rule has more stringent collateral requirements than the standards required by the SBA for its guaranteed loan programs. Therefore, credit unions can only make SBA guaranteed loans under the tighter NCUA MBL standards, not the more lax collateral standards

of the Small Business Administration. The proposed amendments will effectively ease the collateral requirements by exempting SBA guaranteed loans from the more rigorous MBL rule's collateral requirements.

ABA's Position

The NCUA proposal further diverts credit union resources away from consumer lending in direct contradiction to Congressional intent.

Congress in 1998 sought to assure that credit unions remain focused on lending to consumers – particularly persons of modest means – by establishing a limit on the amount of business lending by credit unions.

The report of the Senate Committee on Banking, Housing & Urban Affairs clearly supports the position that this aggregate limit should be viewed as a limitation on credit union business lending:

In new section 107(a), the Committee imposed substantial new restrictions on business lending by insured credit unions. Those restrictions are intended to ensure that credit unions continue to fulfill their specified mission of meeting the credit and savings needs of consumers, especially persons of modest means, through an emphasis on consumer rather than business loans. The Committee action will prevent significant amounts of credit union resources from being allocated in the future to large commercial loans that may present additional safety and soundness concerns for credit unions and that potentially increase the risk of taxpayer losses through the National Credit Union Share Insurance Fund....¹

Additionally, Senator Phil Gramm (R-TX), in his floor statement on July 24, 1998, during the Senate debate on CUMAA, said:

...the bill, for the first time, begins to put appropriate limits on the amount of business loans that credit unions can make. There are those who believe, and I happen to be one of them, that credit unions were chartered to provide consumer credit to their members as part of a cooperative effort. A dramatic movement of credit unions into commercial lending would circumvent the whole intent of the credit union movement, and in my opinion, it would be negative factor on the progress of the credit union movement. In this bill, we for the first time set limits on the amount of credit union assets that can go into commercial loans. That is a very positive step.²

This proposal would expand credit unions' business lending options, which will lead to a decline in credit union assets devoted to consumer lending. More troubling, however, is the fact that the guaranteed portion of SBA loans would not count towards the aggregate business loan limitation set by Congress.³ The easing of the collateral requirements will dramatically expand the number of SBA loans being

¹ *Senate Report* 105-193, pp. 9 - 10.

² *Congressional Record*, July 24, 1998, p. S8966.

³ The aggregate business loan cap is 12.25 percent of assets.

made by credit unions – thus enabling insured credit unions to circumvent the aggregate business loan cap.

Evidence suggests that some credit unions view SBA lending as a way to dramatically expand their business services operations. For example, Mountain America (UT), which became an SBA lender in February 2003, has made 213 SBA guaranteed loans through May of Fiscal Year 2004 – making the credit union the 28th largest SBA lender in the country by number of loans. Both Norstate CU (ME) and Self-Help CU would exceed the aggregate business loan cap, if not for the presence of SBA guaranteed loans.

The proposal will only exacerbate this problem and clearly shows that NCUA does not respect the wishes of Congress that a firm limit be set.

Moreover, there were some in the Senate that thought CUMAA went too far in allowing credit unions to engage in business lending. Senator Hagel (R-NE), in expressing his views on CUMAA, stated:

I believe the language does not adequately ensure that credit unions remain focused on their primary mission – consumer lending.... The legislation is risky for credit union members who rely on their credit union for small, consumer loans because it would allow credit unions to shift their focus from consumer service to large-scale commercial lending. **Congress should place limits on commercial lending by credit unions – and those limits should be real**⁴ [emphasis added]

It is clear from the statutory language and the legislative history that Congress intended for credit union business lending activity to be limited.

Conclusion

NCUA's proposed MBL rule is counter to Congressional intent and evades the purpose of the statute. In 1998, Congress made it perfectly clear that credit unions should be focused on consumer lending, not commercial lending. However, this proposed rule would further divert credit union resources to financing commercial enterprises.

Therefore, ABA urges the NCUA to retract this proposed MBL rule. If you have any questions, please contact the undersigned or John Rasmus at 202-663-5333.

Sincerely,

Keith Leggett
Senior Economist

⁴ *Senate Report 105-193*, p. 24.