

Congress Should Exercise Vigorous Oversight of NCUA's Sweeping MBL Proposal

On behalf of the more than 6,000 community banks represented by ICBA, thank you for convening today's hearing on the National Credit Union Administration's Operations and Budget. ICBA is pleased to submit this statement for the record which sets forth our strenuous objections to the NCUA's recently published proposal to comprehensively rewrite the rule governing credit union member business lending.

Member business lending is a highly contentious issue which has been debated in Congress for more than a decade. The NCUA should not be permitted to end-run Congress with a proposal to significantly expand member business lending and other forms of credit union commercial lending and discard or weaken critical prudential safeguards. What's worse, certain provisions of the proposal clearly circumvent the plain language of the Federal Credit Union Act. ICBA's objections to the NCUA proposal include:

- **Flouting the statutory cap on member business loans.** The Federal Credit Union Act's statutory calculation clearly and unambiguously sets the member business lending (MBL) cap at 12.25 percent of assets. However, the NCUA MBL proposal, together with their proposal to apply risk based capital standards under Basel III to credit unions, could be used to circumvent the 12.25 percent MBL cap, raising it to 17.5 percent of assets or even higher for certain credit unions. This proposal simply cannot be squared with the plain language of the Act. According to the legislative history, the current MBL cap effects the will of Congress that credit unions serve persons of modest means "through an emphasis on consumer rather than business loans."¹ The legislative history also states that the MBL cap is intended to limit the risk of taxpayer losses as a result of "large commercial loans" by credit unions.
- **Taking "member" out of member business loans.** Under the current rule, the borrower – a credit union member – must personally guarantee a member business loan. This is what makes a loan a *member* business loan. Nevertheless, the proposal would remove the member guarantee requirement. A member business loan would become an ordinary business loan – a radical departure from the credit union lending model clearly not intended by the Federal Credit Union Act.

¹ According to the Senate Banking Committee Report accompanying 1998 Credit Union Membership Access Act (Senate Report 105-193), "Those restrictions [the 12.25 percent of assets MBL cap] 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.**"

- **Undermining the MBL cap.** The current MBL cap already contains a number of exceptions that undermine its purpose and integrity. For example, whole loans and loan participations purchased from other credit unions do not count toward the cap. The NCUA proposal would greatly expand this loophole by removing the requirement that credit unions seek a waiver for such lending. This would allow large credit unions to engage in hundreds of millions and possibly billions of dollars of business loans outside of the MBL cap.
- **No analysis showing economic need.** The NCUA has failed to show economic need exists to justify its sweeping proposal. A recent survey published by the National Federation of Independent Businesses found that only four percent of small business owners reported not having **all** of their credit needs met, a historically low percentage.² In addition, only two percent of small businesses reported that obtaining credit was their main problem. Under these credit conditions, the NCUA proposal is unlikely to result in net new loans. Rather, it would allow tax exempt credit unions to siphon business loans from taxpaying community banks. This in turn would reduce tax revenues at the federal, state, and local levels.
- **Reckless weakening of prudential protections.** The NCUA proposal would discard or significantly weaken a series of prudential restrictions on member business lending such as loan-to-value caps on collateral used to secure loans and loan-to-a-single-borrower limits, as well as the borrower guarantee requirement noted above. As discussed below, this weakening of lending standards is completely unwarranted by credit unions' dismal record of failed member business loans.

In the background to the proposal, the NCUA itself concedes that: "Poorly managed business lending activities were a contributing factor in the failure of at least five credit unions since 2010. They account for roughly \$141 million, or 25 percent of total share insurance fund losses over the last five years." Elsewhere, the NCUA has stated that MBLs are delinquent at 2.5 times the rate of all loans, and imprudent business lending has led to the weakening or failure of hundreds of credit unions.³

The NCUA should answer the question why, given its frank lack of confidence in credit union business lending, it proposes to weaken critical prudential safeguards. Reckless business lending has already jeopardized the credit union system. Credit unions lack the experience and the expertise to safely conduct business lending, and the NCUA lacks experience in supervising business lending.

Congress should oversee critical policy changes at the boundary between taxable and tax exempt institutions. ICBA hopes that this hearing will give committee members an opportunity to question the NCUA regarding the statutory authority and policy rationale for its proposal. A list of suggested questions is attached to this statement. A sweeping rewrite of MBL powers should not be made by regulatory fiat.

² "Small Business Economic Trends." National Federation of Independent Businesses. May 2015.

³ Testimony of Deborah Matz, Chairman, National Credit Union Administration, before the Senate Banking Committee, December 9, 2010.

Finally, ICBA believes the comment period on the NCUA proposal should be extended to allow additional time for public consideration and comment. As the NCUA concedes, the proposal would make “substantial changes” to credit union business lending procedures. The agency should have the benefit of a comprehensive and thoughtful public examination of its many consequential changes. An extension of 60 days or more would be appropriate and would allow Congress to review the proposal when members are in Washington D.C. Policy making of this significance should be conducted in the light of day, not during an August congressional recess.

Attachment

Questions for Chairman Matz regarding the NCUA MBL proposal

One Mission. Community Banks.®

Questions for NCUA Chairman Matz

- 1) How much do you project credit union business lending will increase over the next 5 years if your proposal becomes a final rule?
- 2) What economic analysis has NCUA conducted to indicate there is a need for a massive increase in credit union business lending?
- 3) What percentage of new loans made under this proposal, if finalized, would be new business loans that would not otherwise have been made versus loans taken off the books of commercial banks?
- 4) How does NCUA monitor the mission of credit unions to ensure that credit union loans are being directed towards borrowers of “modest means” – consistent with the credit union mission? How would loans to borrowers of modest means be monitored under this new rule?
- 5) Could this proposed rule allow credit unions to have a MBL cap significantly higher than 12.25% (i.e., 17.5%)? If so, doesn't this conflict with current law which requires the MBL cap to be based on 1.75 times actual net worth or 1.75 times minimum net worth required for the credit union to be well capitalized? Please explain.
- 6) If participation loans and the purchase of whole loans are exempt from the MBL cap, does this incentivize large credit unions to buy or participate in large volumes of business loans with the nation's largest banks? If so, is this a loophole around the MBL cap?
- 7) The proposal indicates there have been approximately 1,000 waivers granted to credit unions over the past couple of years from business lending constraints. Can you explain the waiver review process and indicate under what circumstances NCUA grants waivers? What percentages of the waiver applications have been approved and what percentage have been denied?
- 8) The NCUA Board has acknowledged that this rule is a “significant change” and plans to allow an 18 month implementation period. Given the significant changes involved, shouldn't the comment period be 90 to 120 days?