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National Association of Federal Credit Unions | www.nafcu.org

March 5, 2014

The Honorable Debbie Matz, Chairman
The Honorable Michael Fryzel, Board Member
The Honorable Rick Metsger, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Chairman Matz, Board Member Fryzel and Board Member Metsger:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the National Credit Union Administration (NCUA) member business loans (MBLs) requirements and NAFCU's February 18, 2014, letter to NCUA Board detailing improvements that can be made that would benefit credit unions as well as their small business members. NAFCU appreciates the support expressed by Board Member Fryzel on amendments and improvements to the MBL regulation.

As NAFCU outlined in both its February 18, 2014, letter to NCUA Board and its "Dirty Dozen" list of regulations to eliminate or amend, there are several aspects of the MBL requirements which should be improved, including: changes to the waiver requirements and waiver process to make it more efficient and easier to obtain individual and blanket waivers; expanding opportunities to obtain waivers; and removing the five year relationship requirement to obtain a personal guarantee waiver. Additionally, NCUA should use its authority granted in the Federal Credit Union Act (FCU Act) to provide an exception to the limitations on member business loans (the MBL cap) for those credit unions that have a history of making MBLs to their members for a period of time.

MBL cap – exception authority

The FCU Act 12 U.S.C. § 1757a contains the limitations on MBLs. As you know, under NCUA regulation 12 CFR § 723.16, the aggregate MBL limit for a credit union is limited to the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. However, FCU Act § 1757a also contains exceptions to the MBL cap. In particular, FCU Act § 1757a(b)(1) provides exception authority from the MBL cap for "an insured credit union chartered for the purpose of making, **or that has a history of primarily making, member business loans to its members**, as determined by the Board." (Emphasis added.)

Traditionally, this provision in § 1757a has been construed narrowly by NCUA. NAFCU urges NCUA to take a broader interpretation of this statutory provision and utilize its authority to

create an exception from the MBL cap for all credit unions that have a history of making MBLs for an extended period of time. A credit union that has had a successful MBL program in place for a period of five years or greater would be a reasonable basis to satisfy this statutory authority. NCUA should set this standard and make the exception available to all credit unions. In addition, NCUA could issue appropriate guidance for compliance with these exceptions. NAFCU believes that by adopting this change, NCUA will be able to increase the availability of safe and sound MBLs in the market, which will benefit both credit unions' members as well as the industry as a whole.

Waivers

In February 2013, the NCUA issued supervisory letter 13-01 to credit unions attempting to shed light on the criteria and processes for obtaining MBL waivers. While this guidance was useful to credit unions, NAFCU continues to hear from its members that the waiver process is complicated, slow moving, and inefficient. As a result of this, many credit unions have been unable to extend sound loans to their small business members, loans which may have been lost to competitors, or worse, never extended at all.

While waivers should not be used so frequently that they are the norm, the process to obtain one should not be so excessively difficult as to prevent credit unions from serving their membership effectively. Healthy, well-run credit unions with risk focused MBL programs that maintain appropriate policies and procedures and that perform adequate due diligence on their member borrowers should be able to apply for and obtain blanket waivers which would help their membership.

Furthermore, the MBL regulations should be amended to expand a credit union's ability to obtain an individual or blanket waiver. Credit unions, because of their fundamental nature, are in a great position to extend credit to small businesses which will help fuel our nation's economic recovery. Expansion of the waiver capabilities would enable well run credit unions to extend loans to their small business members.

As noted above, the FCU Act 12 U.S.C. § 1757a contains the limitations on and exceptions to member business loans. However, 12 U.S.C. § 1757a does not prescribe limitations on the waivers that NCUA can put in place with regard to the regulations it imposes for MBLs that are not statutory requirements.

NCUA regulation § 723.10 contains an enumerated list of MBL related requirements for which a credit union can apply for a waiver. NAFCU believes that this enumerated list of available waivers should be replaced with a more flexible waiver provision that would allow a credit union to apply for, and obtain, a waiver from a non-statutorily required MBL regulatory requirement. The use of an enumerated list necessarily restricts a credit union from obtaining a waiver of a requirement which is not listed, even where such a waiver would not pose a safety and soundness concern to the credit union. NAFCU encourages NCUA to amend § 723.10 to provide a more flexible waiver provision.

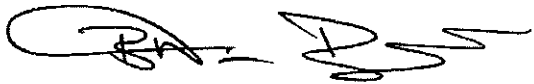
NCUA Board
March 5, 2014
Page 3 of 3

NCUA could issue appropriate guidance for the types of waivers that a credit union could obtain using a more flexible standard, which could include enumerated lists and appropriate examples. NCUA regulation § 723.11 contains the procedural requirements for a credit union to obtain a waiver, and it requires a credit union to submit a waiver request accompanied by a great deal of information related to the credit union's member business loan program. Under a more flexible provision, and taking into account safety and soundness considerations, NCUA should be able to determine from the information required to be provided pursuant to § 723.11 whether a waiver is appropriate for a credit union. This approach would enhance a credit union's ability to provide MBLs to its members without compromising the safety and soundness of the credit union.

Additionally, NAFCU understands NCUA expects credit unions to practice appropriate risk assessment and monitoring. However, the waiver requirement that credit unions have a five year relationship with the borrower and current principals eliminates a great number of creditworthy small businesses. The five year relationship requirement also seems to be arbitrary and unnecessary to ensure good underwriting or risk assessment. We urge NCUA to reconsider the five year relationship requirement for obtaining a waiver of the personal guarantee requirement.

Thank you for your attention to this matter. Should you have any questions or require additional information, please call me, or Michael Coleman, Director of Regulatory Affairs, at mcoleman@nafcu.org or at (703) 842-2244.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger". The signature is stylized with a large initial "B" and a long, sweeping underline.

B. Dan Berger
President and CEO