

**Committee Name:**

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions  
(SC-PECFI)**

**Appointments**

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**Clearinghouse Rules**

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The Written Testimony of Scott D. Edwards  
AVP/Business Lending Manager  
Community First Credit Union  
Appleton, Wisconsin  
Credit Union Member Business Rule  
Joint Hearing of the Senate and Assembly Financial Institutions Committees  
Madison, Wisconsin  
May 23, 2002

Thank you for the opportunity to provide written testimony at today's hearing. I am in favor of the proposed rule that is being discussed in the Joint Hearing today.

My background consists of 17 years of business lending experience, and 24 years in the financial services industry. In that time, I have worked for 4 banking institutions (the last 2 are based in Wisconsin, where I worked for 10 years) prior to joining Community First Credit Union in May 2000. Since that time, I have seen strong growth in our credit union's business loan portfolio due in part to strong demand in the markets we serve.

The proposed rule would do a couple of things for credit unions as I see it. First, bring the waiver authority from the Federal (NCUA) level, to the State level (something which has been done in 4 or 5 other states already, and has been approved by the NCUA for Wisconsin a few months ago.) This would remove a very long approval process (NCUA can take up to 45 days, after the State office approves something) from consideration. Secondly, the proposed rule would allow credit unions to underwrite business loans (in regards to collateral and guarantee issues) in the same manner that other institutions already have been able to for some time.

The main objections I have heard from the Hearing held on April 12<sup>th</sup>, and since are: 1. Differences between the Federal and proposed State rules regarding loan-to-value ratios, and guarantees, 2. Safety and soundness concerns, 3. The waiver provision is too liberal.

In my experience, the proposed changes pertaining to loan-to-value ratios on collateral, merely give credit unions the tools to compete effectively with other lenders in their markets who have been using similar guidelines all along. The new rule still puts minimum equity interests in that require borrowers to have an interest in their projects we finance. But, the new rule is more in line with borrower expectations in our markets. In reality, this change would only be used in instances when a borrower's application is strong enough to justify doing so. Any business lender will tell you that loans done without guarantees of the principals are rare, or that all loans are not done using the same loan-to-value (based on property location, condition, etc.), but in some cases, the business strength can justify it.

The issue of safety and soundness can be addressed in 3 ways. First, credit union hiring practices of business lending staff have been, are and will continue to be the same as other institutions use (checking previous experience, education, and training.) In fact, many of them that I have met have previous bank experience. Second, credit unions are audited on an annual basis by Federal and State authorities, and outside audit firms as well, who test our lending practices, monitoring procedures, lending policy and financial soundness. Third, as many credit unions mentioned at the last hearing on this topic, business loan portfolios are experiencing the lowest delinquency and loss ratios, compared to other lending categories.

Finally, the WBA categorizes the proposed waiver rule as "too liberal". My question regarding that statement is how many other financial institutions making loans are required to go through a similar process and wait almost 2 months to get back to their borrowers with a final decision on their loans? My guess is, NOT MANY! For example, I have had 3 such experiences since I have been working at Community First Credit Union, that had we not had some special relationship or circumstance, the borrower would have been able to go elsewhere and get their loan much quicker and without certain requirements. The first example I would like to submit as Exhibit A to the committee members, as it is in the borrower's own words. In that case, the borrower was a law firm with very strong financial results, that due to collateral and guaranty issues, and additional project costs, had to wait twice (for

32 days, then another 49 days) for NCUA waivers before we could do the loans and advance funds. When you add in the time it took to gather the application information, get credit union and NCUA approval, then close the loans, this borrower had to wait almost 3 months in each case. Their letter dated May 22<sup>nd</sup> details the inconvenience the present regulations, and waiver approval process caused their firm.

The second case was a catering service in which the owner wanted to refinance their home with their present bank, but it was held as part of the collateral for an SBA/business loan for the same bank too. When the owners couldn't get the bank to help them with the refinance, they approached us (I knew them from doing the original SBA loan to allow them to buy the business 3 years earlier.) This loan was approved September 25<sup>th</sup> by Community First, the NCUA waiver request was sent October 15<sup>th</sup>, and it was approved on November 8<sup>th</sup>. By the time all of the paperwork was done with the SBA and the bank, our credit union was able to refinance their home and business loans. Including the waiver process, it took over 3 months from the time the loans were first approved by Community First.

My third example pertains to a borrower that wanted to construct a mini-storage facility, had 20-25% to put into the project, but we originally had to tell him we could only finance 65% of the project while it was in construction (even though by regulation we could finance up to 80% of the finished project.) Fortunately, the borrower had other assets he could pledge that made up the difference, so we were able to close this loan before the NCUA waiver request was approved. However, it should be noted that Community First approved this loan on May 1, 2001, sent the waiver request on May 21<sup>st</sup>, and did not get NCUA approval until August 6<sup>th</sup> (well after the amount of time that any borrower would have given hope and gone somewhere else.)

In my final example, Community First is in the process of trying to refinance the loan we could not do last year when the owner wanted it because of a slight collateral shortfall. Since the owner had to move her business out of a leased space in a certain time frame, she could not wait for Community First to get waiver approval and ended up getting her original loan to move her business to a new location and do the improvements, at a local bank (even though it was her stated intention to get the loan and move her accounts to Community First, see Exhibits B and C.) The waiver request in this case was submitted October 15<sup>th</sup>, approved on the State level November 8<sup>th</sup>, then finally approved by NCUA on December 3<sup>rd</sup>. This case is still a work in process for Community First, because we were not able to respond to the owner in a timely manner.

In short, while any prudent lender would not exercise the authority to do loans at a higher loan-to-value, or without certain personal guarantees, in every case, there will be isolated, strong applications that justify that type of underwriting. When those occasions arise, why should a business owner have to wait 1-2 months for an answer on their loan, and what business person has that kind of time to wait? Why should a credit union making business loans be subject to a paperwork intensive, drawn out process that other lenders in the competitive marketplace are not subject to?

In this discussion involving government officials, banking representatives, and credit union representatives, I feel it is important to remember who is ultimately effected by the current and proposed rules; business owners who should be free to chose where they do business without lengthy regulatory procedures entering in the decision process.



**MENN  
TEETAERT &  
BEISENSTEIN** LTD.  
LAW FIRM

Exhibit A

David J. Van Lieshout  
122 E. Main Street  
P.O. Box 186  
Little Chute, Wisconsin  
54140-0186  
Phone 920 788 0800  
Fax 920 788 0907  
djvanlie@mennlaw.com

May 22, 2002

**VIA FACSIMILE, ORIGINAL MAIL**

Scott Edwards  
Commercial Loan Officer  
Community First Credit Union  
PO Box 1487  
Appleton, WI 54913

RE: Commercial Loan Issues

Dear Mr. Edwards:

The purpose of this letter is to confirm certain information that you and I discussed regarding the commercial loan application that was granted to me and my law firm in connection with improvements made to my office in Little Chute, Wisconsin. I have been a member of Community First Credit Union for many years. I have a strong working relationship with the credit union and members of its administration in a legal as well as a social capacity. When I made the decision to expand my offices in Little Chute I immediately thought of Community First Credit Union as the lender for the improvements. For various reasons we were not able to provide a mortgage for the improvements that were being constructed in connection with the lease of the property where I am located. My law firm has been in existence for over 75 years and it has a strong financial position in the community. However, because of the rules that are in place with credit unions, it was necessary to obtain waivers from the federal and state agencies which monitor Community First Credit Union. This was complicated by the fact that during the course of the construction the amount of the money that was necessary to complete the work increased. Therefore, it was necessary to amend the application and return to the federal and state agencies for approval of the transaction.

The process that was undertaken here was a time consuming one. I have a strong relationship with the credit union and therefore I was willing to wait until these matters were resolved because I made a commitment to them similar to the one they have made to me over the course of many years. As a result, I was able to obtain the financing after this lengthy process was completed. However, during the course of that time people with whom I am associated made

**Scott Edwards**

May 22, 2002

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note of the fact that the amount of money requested could have been obtained by the firm with a mere signature of one of the shareholders to a local financial institution.

I believe it is in the best interest of all of the consumers and businesses in the state of Wisconsin that the process by which people obtain financing is streamlined and the playing field is level. I believe the legislation that you are reviewing at this time would accomplish that goal.

Very truly yours,

MENN, TEETAERT & BEISENSTEIN, LTD.

A handwritten signature in black ink, appearing to read "D. J. Van Lieshout", written over the printed name.

David J. Van Lieshout

DJV:sew

# Samsarah

SALON

Exhibit B

Rec'd 10/10/01  
JH

714 Appleton Road • Menasha, WI 54952  
(920) 725-6892  
ph. 908-4545

Dear Scott,

Thank you for taking the time to send the article from "The Flag"!

The response of that article as well as the Post Crescent article has been overwhelming!

Please keep me posted as to the new developments as they occur at Community First.

I would be very interested in changing my business as well as personal banking over to you.

I do think if all works out, it would be more beneficial -

Thank you once again for being excited with me about the growth of Samsarah!  
Sincerely, Sarah O

Exhibit C

October 1, 2001

Samsarah Salon  
2100 Kensington Drive  
Appleton, WI 54915  
Attn: Sarah Ott

Dear Sarah,

I wanted to congratulate you on this very positive article in the Flag newspaper the other day. It was great to see your business get some positive press, in light of all the hard work you had to put in recently to find, then set up a new location in a limited timeframe. As the customer who was quoted in the article states, you are to be commended for successfully making that move, recognizing the hard work it takes to be successful in business, and for having the knowledge of how customers want to be treated. Sorry I missed your grand opening, but I'd like to stop out and see the place when you have time.

I also wanted to let you know that Community First is in the process of asking for regulatory approval, which will greatly assist us in the business lending area. With requests like yours, that may be short on collateral (using standard lending factors on assets), this approval would allow us the freedom to do these loans when other underwriting factors justify that action. My hope is that we will have a positive response to this request in November. We have already had approval of 2 prior requests earlier this year, and this particular request is one that regulators are already aware of.

It is my hope that we can do business together again in the not too distant future. I will call you when I've heard more on my end and try to arrange time when you could show me around there. In addition, rates keep dropping so I hope we could save money for your business too. I will look forward to talking with you soon. Congratulations again on your successful move!

Sincerely,

Scott D. Edwards  
AVP/Commercial Loan Manager

Testimony of Robin Marohn  
Vice President of Marketing  
Heartland Credit Union  
Madison, Wisconsin  
Credit Union Member Business Loan Rule  
Joint Hearing of the Senate and Assembly Financial Institutions Committees  
Madison, Wisconsin  
May 23, 2002

Heartland Credit Union is a financial cooperative owned by its 15,000 member-owners in Southwest Wisconsin. We're a community-based credit union serving Dane, Grant, Lafayette, Iowa and Crawford counties in Wisconsin. Heartland was granted an exemption to the NCUA's Member Business Loan rule based on its history of providing agriculture loans to its members.

One of our Ag officers did a business loan for a member looking to refinance an existing farm loan and also add some new money to fix their house. They went to the local branch of a regional bank and discovered that the fees were so high it would have cost too much to do the refinance. Heartland stepped in and did the loan with no fees other than the cost to file the new mortgage and increase the title insurance policy.

Heartland is the only credit union in the southwest part of the state that's allowed to do MBLs. If Heartland were not an option to this member -- and hundreds of other members in the southwest part of the state -- their choices of where to obtain low-cost ag/business loans would be restricted. Unfortunately, this is currently the situation for business people throughout Wisconsin -- they can't turn to their credit union for a member business loan.

The other thing the committee should know is the effect competition has had on the business loan market in those areas Heartland serves. Our presence as an option of choice has made the for-profit financial institution business loans more competitive. Opposing that option for consumers is simply a restriction of consumer choice.



Testimony of Randy Beck  
Executive Vice President  
Royal Credit Union  
Eau Claire, Wisconsin  
Credit Union Member Business Loan Rule  
Joint Hearing of the Senate and Assembly Financial Institutions Committees  
Madison, Wisconsin  
May 23, 2002

I am Randy Beck, Executive Vice President of Royal Credit Union located in Eau Claire, Wisconsin. I am also the current Chairman of the Board of our credit union trade association, the Wisconsin Credit Union League. I am testifying today representing Royal Credit Union. We are a community credit union serving Eau Claire and surrounding counties.

We have been making business loans for over twenty-two years. We have three business loan officers who were all former Bank Presidents. Collectively they have over 80 years of experience in making business loans. They are continually frustrated with the rules credit unions are subjected to and of which they did not face in their past lives as Bankers.

For the twenty-two years we have been making business loans, we have been examined by the Office of Credit Unions. They have thoroughly examined our business practices each and every year. The federal insurer, NCUA, who is responsible for insuring our compliance with the current Member Business Rule has looked at our business loan portfolio no more than five times over that period. Each of the other years they have relied upon the Office of Credit Unions for examination of our practices. Implementing a state Member Business Rule will simply place the authority with our state regulator, as it should be.

The minor changes to the state rule will do little more than make the process of oversight easier for credit unions of Wisconsin and for the Office of Credit Unions.

The banking trade groups have testified, at the hearing conducted by the DFI, that they are in opposition to the state Member Business Rule because they are worried that the rule will raise safety and soundness concerns for credit unions. Their membership does not seem to share their concerns. We have very good working relationships with most other financials in our community. As a matter of fact, in the Eau Claire/ Chippewa Falls area, we have participated in loans (buying and selling portions of loans) with as many as five banks. They don't seem to share the concerns we are hearing from their trade association.

I would ask that you vote in favor this State of Wisconsin Member Business Rule as presented to you.

Testimony of Anthony T. Busch  
Vice President Business Lending  
Community First Credit Union  
Appleton, Wisconsin  
Credit Union Member Business Loan Rule  
Joint Hearing of the Senate and Assembly Financial Institutions Committees  
Madison, Wisconsin  
May 23, 2002

Thank you for the opportunity for me to present my testimony.

I am in favor of the proposed rule to allow the Department of Financial Institutions to oversee the Member Business Loan activities of the credit unions in the State of Wisconsin.

As a former banker with over 25 years experience in commercial and business lending with several regional and local banks in the Fox River Valley, I am pleased to be able to continue my work through Community First Credit Union. It is my firm belief that the marketplace in the Valley continues to demand responsive, relationship oriented business loan services tailored to meeting the needs of the small business community.

It is because of the demand of the marketplace that our business loan portfolio has seen significant growth in the last 12 months. And our efforts to build our portfolio for Community First Credit Union continues to be well received in the communities we serve as evidenced by the new business members who bring their business to us.

With my years of experience in the banking industry, I have witnessed first hand the changes in their delivery of business loans to the business community. Decentralized decision-making, loan profiling, and business loan thresholds established by many banks have left many business owners wondering who their loan officer really is. Many times I hear that there no longer is that sense of relationship from the business owner.

In my experience at Community First Credit Union in the last 12 months alone, we have had the opportunity to participate in multi-million dollar loans on three occasions with Anchor Bank and Wisconsin Business Bank. In fact, Community First Credit Union is the lead lender in Appleton for a community non-profit entity with two banks as participants – Wells Fargo Bank and American National Bank, both in Appleton. I believe that the business lending expertise and knowledge of our staff is comparable to any bank in the Valley. Information from the Department of Financial Institutions and other regulators will attest to the quality of our business loan portfolio.

In summary, I find no reason to support the arguments of the banking industry representatives as they oppose this rule other than they are concerned about quality competition. I can assure this committee that our business members welcome a fresh, relationship oriented alternative to the traditional and evolving services of banks as they focus more on earnings for shareholders than on the relationships with their business customers.

Thank you for your time and the opportunity to present my testimony.

Testimony of Todd M. Miller  
Senior Business Lending Officer  
Community First Credit Union  
Oshkosh, Wisconsin  
Credit Union Member Business Loan Rule  
Joint Hearing of the Senate and Assembly Financial Institutions Committees  
Madison, Wisconsin  
May 23, 2002

Thank you for allowing me here today to present my testimony. I am in favor of the proposed rule that is before us today.

My background consists of 14 years in the commercial and business lending area. I have worked for three bank holding companies prior to joining Community First Credit Union in February 2001. Since coming to Community First Credit Union, I have seen strong growth in our business loan portfolio because of the demand in the marketplace.

I want to state a few a few distinctions about credit unions. Most of our market is small to medium size businesses. Some banks have centralized underwriting of small business loans. Essentially this takes away the decision making away from the local lender. By contrast, our credit union approves their business loans either through the officer, loan committee or Board of Directors. I find that in our market, businesses like to deal with the lenders making the decisions. Businesses like to have their lenders be part of the success of their business. Businesses are looking for relationship and not transactional lending.

Another point I want to make is the concern about the safety and soundness issue raised. Our credit union is audited not only by an outside-certified public accounting firm, but is examined from a regulatory standpoint by the State of Wisconsin and the NCUA. This is not much different from how the banks are audited and examined.

Another important factor is the experience of the lending staff. At Community First, our three business lenders have over 60 years of experience in business lending. This experience ranges from 14 to 27 years in the business lending.

Another point, I want to make is at even though we are a credit union, we have participated in Bank led and financed deals in the past. In the past year alone, we have been approached by 2 different banks about participating in loans originated by the banks. This tells me that some banks must think credit unions do have the ability to do business loans.

The final point I would like to make is that the credit unions are not the only players in the business-lending world. Competitors today include insurance companies (such as MetLife Bank, State Farm Bank, etc.), automobile manufacturers, conglomerates (such as GE Capital) and financial services (such as American Express) that lend money to businesses. They are competing also with the banks. I believe that if a business wants to borrow money from a bank, credit union, insurance company, etc. and finds that a credit union is the best bet for them, that should be their choice do business with a credit union.

In summary, I find no reason to support the arguments of the banking industry opposing the rule. Thank you for your time.

Testimony of Brett A. Thompson  
President/CEO  
Wisconsin Credit Union League & Affiliates  
Pewaukee, Wisconsin  
Credit Union Member Business Loan Rule  
Joint Hearing of the Senate and Assembly Financial Institutions Committees  
Madison, Wisconsin  
May 23, 2002

Good morning. I am Brett Thompson, President and CEO of the Wisconsin Credit Union League. The League is the state trade association representing 319 Wisconsin state and federal credit unions and their 1.9 million members. I am here today to testify in support of proposed DFI-CU 72 which creates a state member business loan rule for state-chartered credit unions.

Let me give you a brief overview of the proposed rule and the events that have brought us here today. As of December 31 of last year, there were 326 credit unions in the state of Wisconsin---323 of which were state-chartered institutions. Only the state of Illinois(429) has more state-chartered credit unions than Wisconsin. Our 323 state-chartered credit unions are heavily regulated---they are subject to both state laws and regulations (Chapter 186 of the Wisconsin Statutes and the credit union chapter of the Wisconsin Administrative Code) and, because state -chartered credit unions are federally-insured, to federal laws and regulations administered by the National Credit Union Administration(the "NCUA").

It is a federal rule applicable to member business lending with which our 323 state-chartered credit unions must currently comply. That federal rule allows states to develop their own rule (regarding member business lending) for their state-chartered credit unions, if the NCUA Board determines that the state rule accomplishes the overall objectives of the federal rule and does not jeopardize the safety and soundness of that state's credit unions. Finding no safety and soundness problems, the proposed rule before you today was unanimously approved by the NCUA Board on February 7 of this year. Wisconsin is one of only 5 states that have been approved by the NCUA to have its own member business rule. Wisconsin's credit unions firmly believe in the right of this state to regulate the activities of its state-chartered credit unions.

The proposed rule differs slightly from the federal rule---in some cases it is more burdensome for Wisconsin credit unions and in other cases it is less burdensome. On the more burdensome side, our credit unions are required to utilize an individual with at least five years experience in construction and development lending if it is to offer construction and development loans. The federal rule requires only two years experience. The proposed rule also requires a credit union to meet specific requirements if it is to enter into an unsecured member business loan (the federal rule has no specific guidelines and simply requires that a credit union get approval from the NCUA if it is to

enter into such a loan.). Wisconsin's credit unions are not particularly thrilled with the more burdensome aspects of the proposed rule, but we acknowledge the right of the Office of Credit Unions to do so and respect its judgment in this case.

The proposed rule gives a credit union the right to seek a waiver of some of the rule's requirements from the Office of Credit Unions. At the Department of Financial Institutions hearing, the bankers objected to the waiver provisions of the new rule as being bad public policy because it gave the Office of Credit Unions the right to waive statutory requirements. The proposed rule does not give the Office of Credit Unions the right to waive any statutory requirements (such as the lending limit found in Section 186.098(5) of the Wisconsin Statutes--no loan may be made to a member in excess of 10% of the credit union's assets). It does not even create a new waiver right as this waiver right is found in the federal rule. It does, however, put state-chartered credit unions on par with federal credit unions who need to seek the approval of only one regulator if they desire a waiver under the federal rule.

The concern that the bankers have expressed is even more perplexing when you realize that a study completed by the United States Department of the Treasury in 2001 found that credit union member business lending is more strictly regulated than bank commercial lending. Why would the bankers object to a credit union's ability to seek a waiver from rules that subject credit unions to more regulatory scrutiny than the bank's are subject to in their commercial lending?

The bankers also objected to the proposed rule because it raised significant questions of safety and soundness. They did so without raising any specific concerns regarding the Office of Credit Union's competency in regulating credit unions; without reference to any instances of credit unions recklessly entering into imprudent member business loans; apparently without knowing that Wisconsin credit unions have just 4% of their assets in member business loans; and they did so in the face of findings by both the NCUA and the Office of Credit Unions, the regulators of the credit unions in this state, that the proposed rule does not create safety and soundness concerns. And as you have heard this morning, safety and soundness does not appear to be a real concern of at least some banks that regularly work with credit unions in making business loans. Furthermore, that same Treasury study that I referred to earlier, concluded that credit union member business lending does not pose any material threat to the National Credit Union Share Insurance Fund.

So, if all of this is true, why are we here this morning? Isn't this proposed rule all about the state's right to regulate its state-chartered credit unions? I think it is. The banks will say that if that's so, then let's require the Office of Credit Unions to adopt the federal rule word for word. But in making this argument they miss the point behind any states' rights issue—the state should have the right to determine what the rule should be for state-chartered credit unions and should not be forced to apply federal rules.

The jaded part of me says this is all about competition, that the banks don't like credit unions providing member business loans because we're so successful at it and have developed a competitive edge. We have heard testimony today that as to smaller businesses seeking smaller loans, Wisconsin's credit unions are doing a good job of filling a void that currently exists. Unfortunately, the facts reveal that Wisconsin's credit unions are not really competition for Wisconsin banks:

- (1) The same Treasury study I cited earlier found in 2001 that even though credit unions were not subject to federal and state income tax, they did not have a competitive edge in business lending.
- (2) Although I am proud of the competitive spirit of the credit union movement in Wisconsin, we are not keeping pace with the Wisconsin banking industry. From 1985 to 2001, the banking industry's share of total assets in the state rose to 72.2%, while credit unions' share rose to only 9.4%. Looking at dollar figures, bank assets grew by \$44.7 billion over the period while credit union assets grew by only \$7.8 billion—or 1/6 the amount of the banks.
- (3) The average bank in Wisconsin has \$293 million in assets, while the average credit union is about 1/9 that size at \$33 million.
- (4) As of the end of 2001, Wisconsin credit unions had only a 3% share of total bank and credit union business loans. Wisconsin banks had \$15.3 billion in commercial loans outstanding while Wisconsin credit unions had only \$450 million in member business loans outstanding.
- (5) As of the end of 2001, less than 1 in 3 Wisconsin credit unions(94) had any member business loans on the books.

Needless to say, I look forward to the day that I can look you all in the eye and tell you that we are a competitive force to reckon with, but today is not that day.

So not even the jaded part of me can come up with a reason why there should be any objections to the proposed rule. We strongly support the proposed rule and know of no reason why it should not be enacted as proposed by the Office of Credit Unions. Thank you for giving us the opportunity to testify this morning.