SUBMISSION FROM

THE CREDIT UNION DEVELOPMENT ASSOCIATION

IN RESPONSE TO

The Central Bank of Ireland's Review of the Code of Conduct for Business Lending to Small and Medium Enterprises Consultation Paper CP91

13th April 2015

Introduction

CUDA welcomes the opportunity to provide commentary in response to the Central Bank of Ireland's Paper on the Review of the Code of Conduct for Business Lending to Small and Medium Enterprises. Credit unions are at the heart of communities throughout the country. Credit unions know the local businesses and, in particular, those developed and grown by their members. Credit unions strive to prudently support such members, in good and in bad times.

With this in mind, CUDA supports enhancing standards across all industries, including the credit union sector. Where standards are introduced under a regulatory framework, CUDA requests that the regulatory requirements are proportionate and that, within the communities, small and micro businesses are not disadvantaged by unintended consequences.

Our observations are set out in two parts. We provide general commentary in Part 1; in particular our concerns of disproportionality. Part 2 sets out our responses to the questions put forward in the Paper.

Part 1: General Commentary

CUDA welcomes appropriate standards that provide additional protection and transparency for credit union members. Credit unions by their nature are community based and member focused. CUDA is happy to support cultural change that promotes this position.

CP91 is clearly driven by deficiencies in the approach and attitudes of retail banking. Many studies and surveys have been conducted, which are identified in CP91, and, no doubt informed the thinking behind the proposed regulations. The Paper provides no analysis between sector lending. The Paper provides assumptions that *maximum protection* applied across all regulated lending sectors is the best approach. The proposed regulations do not take account of the huge variance in operating models. Where the operating models are not given due consideration the impact of the regulations is disproportionate.

The proposed regulations are disproportionate on two levels:

- unnecessary protections for the consumer vis á vis the credit union lender, and,
- undue obligations on the credit union sector vis á vis other lenders.

To overcome disproportionality, CUDA believes it will be necessary to adopt one of the following solutions:

i. introduce a separate set of sector specific consumer standards for credit unions;

ii. tailor the provisions of the proposed regulations applicable to the credit union sector [i.e similar to the application of the introduction of the European Communities (Consumer Credit Agreements) Regulations 2010 {S.I. No. 281 of 2010}];

iii. reduce the overall reforms and protections available to the consumer - this may not be acceptable as to make the regulations appropriate and proportionate for credit unions could dilute much needed reforms in the wider retail banking sector.

We will expand on the disproportionality of the regulations under Question 4 which we address at the outset of Part 2.

Meanwhile, given the focus in recent years placed on the inability of SME's to access finance, and highlighted by the establishment of many Department of Finance initiatives (i.e. SME Credit Guarantee Scheme, Credit Review Office, etc.) we consider the proposed regulations, as a whole, could have unintended consequences for the consumer, and in particular where the consumer is a credit union member. The unyielding nature of the proposed regulations on the credit union sector will drive some small lenders out of the market.

The unintended consequences of the disproportionate nature may more critically impact the micro or small business, in particular the self-employed person seeking low amount loans. Credit unions currently have limited involvement and often loan amounts are small. In shaping the consumer protection framework it must be fit for purpose and provide the best outcomes for consumers – this is a key element set out in the Central Bank's Consumer Protection Outlook Report (6 February 2015). We are in no doubt that it will prove non-viable for such credit providers to continue providing credit to such borrowers. This would be an unfortunate, unwelcomed and unnecessary outcome for the credit union sector and for its SME members.

Part 2: CP91 Questions

Question 4:
Do you agree that SMEs dealing with credit unions should have the same level of protection as when dealing with other lenders? If you do not agree, please outline the reasons why.

The Paper poses Question 4 in a manner that is hard to argue against and is an unhelpful method of questioning as it appears to be directing a respondent to answer in the way which appears desired by the Central Bank of Ireland. In Part 1 we have highlighted the disproportionately nature of the regulations, the unintended consequences and the impact for the consumer.

CP91 places the SME consumer at the centre; from there it introduces a one size fits all regulatory framework. This approach fails to take account of risk associated with different lenders, and indeed different borrowers. Due to the volume of SME lending, the average loan amount, the community based and member focused position of credit unions overall risk to the consumer is low. Furthermore, the regulations fail to take account of prudential limitations under which the credit union sector operates - Section 35 Regulatory Requirements introduced in October 2013 limits the volume of lending over 5 years. CP88

(November 2014) purports to introduce concentration limits specific to commercial lending.

Whilst we appreciate prudential requirements are a matter for a separate division within the Central Bank, as a result of the prudential requirements, however, the regulations impose disproportionate requirements on the credit union sector vis á vis other lenders. The regulations will also require regulatory compliance where heretofore the sector was not party to the less onerous SME codes.

However, by far the unfortunate impact, which we highlighted above, is that many credit unions will operationally opt out of the regulations, and SME lending to their members as a result of the proposed reforms. The Consumer Protection Outlook Report speaks of the risks facing consumers and the outcomes that the Central Bank are trying to achieve. We would welcome a more forward thinking approach to access this much needed funding for the SME sector. For credit unions that wish to, and need to, evolve their business model, to excel at being full-service depositor owned financial institutions, to provide a deep range of high quality products and services, the proposed SME Regulations [and no doubt similar forthcoming regulations] pose a real problem. They have a disproportionate impact on credit unions that can, or are developing their business model to, mirror a "tier three" credit union - such credit unions are subject to the proposed SME Regulations yet are non-competitive due to the prudential restrictions imposed on them that far exceeds those placed on other competing financial service providers for this business [Ref: proposed CP88 Regulation 15/Section 35 maturity limits and proposed Regulation 13 concentration limits, as well as, other legislative provisions that are outside RCU control e.g. Section 38 interest rate on loans].

We expect that an increase in financial service targeted obligations, similar to the proposed SME regulations, will have a bearing on the credit union sector; this highlights the huge need for a tiered system that allows credit unions to choose different options of business models – to opt in or out depending on their competencies, financial strength and business model.

It is reasonable to say the proposed regulations raise the standard in many aspects for those credit unions that choose to include SME lending as part of their business model. We would expect a "tier three" type credit union to operate on a similar playing field and in open competition with other financial service providers [i.e. less prudential restrictions].

Question 1:

Do you have comments on the attached draft regulations? In your response, please quote the number of the specific provision(s) which give rise to your concerns and, if possible, suggest alternative drafting or solutions.

General Comment:
CUDA has no difficulty with the scope - including the self-employed person to the medium sized business. The requirements imposed on a lender should be proportionate to the *size of the loan*, and not the enterprise.

CUDA recommends distinction is made between loans for small traders and loans to larger commercial enterprises. For example, we recommend all loans with a ceiling of €5,000 are exempt from such regulations.

Rationale: Some requirements are onerous and excessive where loans are small in value. Loans become non-viable should the lender be obliged to adhere to all of the requirements (for example, Part 4, Section 9). As we have highlighted above, the unintended consequence being to limit access to small commercial loans for borrowers. Whilst credit unions have a limited involvement in SME lending, a significant proportion of such lending is for small amounts. It is not viable implementing the requirements in the proposed regulations, yet, in many instance the self-employed person is not comfortable approaching a retail bank due to, amongst other reasons, the small loan amount involved.

PART 2 OF PROPOSED REGULATIONS

6. Expertise for Business Lending
(1) In each office of the lender which is concerned with lending activity subject to these Regulations, the lender shall appoint at least one individual with responsibility for:
(a) the provision of credit to borrowers,
(b) borrowers in arrears, and
(c) borrowers in financial difficulties

The Credit Union Act 1997 (as amended) makes provision for a Credit Officer and a Credit Control Officer. Clearly, they have separate and distinct responsibilities. Legislative provision also requires the establishment of a Credit Committee and a Credit Control Committee and sets out responsibility on the Officers and on the Committees. Credit unions do not have the same level of staffing resources as main stream banks. We trust the requirements above in SS (1) are consistent with those set out in the Credit Union Act 1997 (as amended).

We recommend that, should sector specific standards not be forthcoming, to avoid misunderstanding, credit unions be exempt from Section 6.

(3) A lender shall offer its borrowers an option of an annual meeting which shall, at a minimum, include a review of:
(a) all credit facility agreements,
(b) security held in respect of credit facility agreements, and
(c) alternative arrangements, if applicable.

(5) Where a borrower requests a lender to perform a review of the borrower's credit facility agreements or alternative arrangements, the lender shall, having regard to the borrower's specific circumstances:
(a) advise the borrower of any information that may be required from the borrower,
(b) complete the review within a reasonable timeframe,
(c) inform the borrower of the timeframe for completion of the review, and
(d) complete the requested review within the timeframes notified to the borrower.

Opportunities to arrange meetings with the borrowing member are a positive step. However, we are concerned with the wording of SS (5) above. There is a strong onus on the lender to consider an alternative arrangement. Credit unions are subject to strict and onerous provisioning requirements under Section 35 Regulatory Requirements (October 2013). Where alternative arrangements give rise to rescheduled loans under the definition set out in the S35 Regulatory Requirements, credit unions are obliged to adhere to provisioning requirements.

We recommend that, should sector specific standards not be forthcoming, credit unions be exempt from the regulatory requirements under Section 6 (3-6). We would encourage credit unions to meet with their borrowing members, as best practice, where it is appropriate to do so.

Rationale: Whilst we appreciate the role of the Consumer Protection Directorate is to ensure the best interest of the consumer, a one size fits all requirement will have disproportionate consequence for the credit union sector. "The critical role that credit unions play, at both the community and society level and also in their special place in the Irish financial sector"[1] cannot be overlooked in designing any attempt at strengthening regulations. It is imperative that this unique role is not undermined, and it should be noted that function of the Credit Union Regulator, *The Registrar of Credit Unions*, who prescribes regulations for credit unions, has both consumer and prudential responsibilities as per Section 84 of the Credit Union Act 1997 which states that the "Registrar shall administer the system of regulation and supervision of credit unions provided for by or under this Act with a view to (a) the protection by each credit union of the funds of its members, and (b) the maintenance of the financial stability and well-being of credit unions generally".

PART 3 – ADVERTISING

7(b) an advertisement for fixed-rate credit shall contain the following warning statement:

Warning: You may have to pay charges if you repay early, in full or in part, a fixed-rate credit facility.

[1] Address by Registrar of Credit Unions Anne Marie McKiernan to the CUDA Annual Conference, Saturday 31 January 2015

Credit union members do not pay charges. Legislation provides that interest on a loan shall include all the charges.

CUDA recommends that credit unions should be exempt from Section 7(b).

Rationale: The warning sends out the wrong message to credit union members and is not consistent with Credit Union legislation. It misleads the credit union borrower into thinking that charges *may* apply.

PART 5 – APPLICATIONS FOR CREDIT

11. Applications for Credit
(1) The lender shall publish on its website, and otherwise make available to borrowers in any office of the lender dealing with lending subject to these Regulations, the following information:
(a) that the borrower is entitled to request a meeting with the lender to discuss any proposed application for credit,
(b) the timelines which apply to the assessment of an application for credit as set out in the lender's policies and procedures,
(c) a comprehensive list of the information that may be required from a borrower in support of a borrower's application for credit,
(d) that the lender may require submission of a business plan in support of an application for credit,
(e) a description of the information that may be required in a business plan, including information on the structure and content of the business plan,
(f) information about Government support schemes available from or through the lender, and
(g) a description of the lender's policies on security.

This section, in particular, SS 1(c) to (g), is excessive taking into consideration the volume of lending undertaken by credit unions, and the small value of some credit union loans.

CUDA recommends that credit unions are exempt from the need to provide on the website or otherwise display the requirements in Section 11(1) above. Alternatively, the provision applies, only where a volume of lending exceeds an agreed percentage of the loan book.

In some cases, the level of detail required to be displayed, could deter a credit union member from applying for a loan, in particular with reference to business plans. We do not believe that generic information in this manner can reflect the position of micro loans and large commercial loans. Such detail can send out the wrong message to potential borrowers, and is not taking the small trader in to consideration.

The Central Bank of Ireland, in its Feedback Statement to CP76 [June 2014], considered the requirement for credible business plan for loans to small traders, as such requirements were suggested to be unworkable. As a follow on from this, in CP88 [Nov 2014], the Central Bank revised its definition of commercial loans ensuring that there is no regulatory requirement for a credit union to obtain a business plan for commercial loans which do not exceed €25,000.

12. Security
(1) A lender shall ensure that any security which the lender is seeking in support of the application for credit is reasonable and proportionate having due regard to the nature, liquidity and value of the security offered and to the value of the credit offered.
(2) A lender shall ensure that any guarantee which the lender is seeking in support of the application for credit is reasonable and proportionate having due regard to the nature, liquidity and value of the other security offered and to the value of the credit offered.
(4) Where a lender seeks security or a guarantee which exceeds the value of the credit sought, it shall notify the borrower and, where applicable, the guarantor of that fact and provide a detailed explanation of the reasons why that level of security or guarantee is considered reasonable and proportionate to support the application for credit.

We are uncertain if the above subsections are in the best interests of the borrower. The provision of security is often based on what the borrower has. Section 12 suggests that the lender can pick and choose from a variety of assets and securities to select the one best matched to the credit facility. This is not the experience in the credit union sector. The provision is more suited to main stream lending and larger commercial loans. Does the credit union reject the loan application because security in which the borrower is offering in support of the application for credit is not reasonable and proportionate?

CUDA recommends that further research and analysis are carried out with regard to the credit union sector and the experiences of members in this regard to determine the appropriateness of these provisions. Until such time, credit unions should be exempt.

(6) A lender shall promptly return any security held by the lender to the borrower when all credit for which the security is pledged has been repaid, unless the borrower requests the lender to retain the security.

CUDA recommends that, taking into account the different nature of securities, the word “promptly” is changed to *as soon as practicable.*

PART 6 – DECLINING / WITHDRAWING CREDIT

13. Refusing or Withdrawing Credit

(1) If a lender is refusing a credit application, the lender shall provide the borrower with at least the following information:
(a) an explanation of the reason(s) why the application for credit was refused. The explanation provided shall:
(i) be clear and comprehensible,
(ii) identify the application (or part thereof) that was refused, and
(iii) be specific to the borrower's application (or part thereof),
(b) information on the lender's internal appeals procedure established pursuant to Regulation 21 and information on how to appeal a decision by the lender to refuse an application for credit,
(c) where the lender's decisions are subject to review by the Credit Review Office, information about the role of the Credit Review Office and the contact details for the Credit Review Office,
(d) information about any other supports available from or through the lender, which may include relevant Government support schemes, and
(e) information about the borrower's right to make a complaint under the lender's complaints procedure established pursuant to Regulation 22.

CUDA recommends that the above provision should not apply to the credit union sector.

Rationale:

1. CUDA does not agree with the internal appeals procedure established under Regulation 21 as credit unions are already subject to an internal appeal mechanism set up under Section 37 of the Credit Union Act 1997.

2. We do not believe it is the role of the lender to provide the consumer with information about "relevant Government support schemes" and other state bodies. It is somewhat ironic to propose that credit unions must provide information on supports that they are excluded from. The Credit Guarantee Act 2012 excludes credit unions from the scheme as they do not fall within the definition of a "lender" contained in that piece of legislation. When this was queried during drafting stage with the Minister for Jobs Enterprise & Innovation, CUDA was informed this decision was taken following consultation with the Central Bank of Ireland. We suggest such information is provided by the organs of the State. Where the organs of the State have failed to adequately do so, it is reasonable to suggest that State owned banks would take on the duty of providing this information. However, there is no rationale as to why a credit union should do so.

3. The provision is encouraging a culture of complaints, where in many instances the complaint may not be justified. To consistently encourage the customer to complain is signalling the wrong message. It is a shame that the proposed regulations and the various surveys and reports found that the lenders' hands must constantly be forced. We do not believe this is consistent with the experiences in the credit union sector.

PART 7 – ARREARS

14. Arrears
(1) Where a borrower notifies a lender that the borrower may be at risk of going into arrears or a borrower in arrears is concerned about going into financial difficulties, the lender shall:
(a) offer the borrower the option of an immediate review of the borrower's credit facility agreements, alternative arrangements and security, as appropriate,
(b) where the borrower agrees to the review referred to in sub-paragraph (a), the lender shall perform the review and identify what options are available to the borrower to address the borrower's anticipated arrears, having regard to the particular circumstances of the borrower,
(c) assess if the borrower's circumstances are such that Part 8 of these Regulations should be applied to the borrower's case, and
(d) where a review referred to in sub-paragraph (a) is performed, the lender shall inform the borrower of the outcome of the review and any recommended course of action which the borrower should take on foot of the review.

Credit unions welcome provisions that encourage dialogue with members in loan distress. Prior to October 2013 credit unions were not permitted to approach or contact members who were identified by the credit union as clearly in loan distress and had to wait for the member to contact them to propose a reschedule. Any vehicle that leads to good communication is supported. However, we are not certain that Section 14 above is consistent with the credit union operating model.

CUDA recommends that, should sector specific standards not be forthcoming, credit unions be exempt from this section. Alternatively, for clarity and transparency for the borrower, the section should highlight that credit unions are also bound by Section 35 Regulatory Requirements:

1. When rescheduling a loan, a credit union must comply with the requirements set out in Section 35 Regulatory Requirements. Aside from the provisioning requirements in Section 3, requirements with regard to lending practices are set out in Section 2 for rescheduled loans. For example, Section 2.5 and Section 2.6 provide that a credit union is prevented from approving further agreements for additional credit where an existing loan has been rescheduled. However, where a member's ability to repay all credit owed and the proposed additional credit has been clearly established, the credit union may determine it prudent to grant additional credit to a member with a rescheduled loan where that rescheduled loan has performed in accordance with the new terms for an appropriate period, in most cases for not less than one year. Of the total number of cases where a credit union has granted additional credit following the rescheduling of a loan, at least 90% of the rescheduled loans should have performed for a period of at least one year before the additional credit was granted. Where additional credit is being granted to a member with a rescheduled loan that has performed for less than

one year, the rescheduled loan should have performed for a period of at least 9 months before the credit union considers granting additional credit.

2. On a further note, a credit union may not be in a position to offer "an immediate review" in circumstances where such reviews are conducted by the Credit Committee of the Credit Union as provided for under legislation.

(2) Where a borrower's account remains in arrears for ten working days after the arrears first arose the lender shall, within five working days:
(a) inform the borrower that it is in arrears,
(b) contact the borrower to identify the reason why the arrears have arisen, and
(c) perform an assessment to establish whether the borrower's circumstances are such that Part 8 of these Regulations should be applied to the borrower's case.

The timeframes in the above subsection are very definitive and whilst, in general, credit unions follow strict timeframes when handling arrears, **CUDA recommends** that where the lender is obliged to contact the borrower in arrears "within five working days" the words *where possible or where practical* are included. In particular, SS (2)(c) is very absolute. It takes no account of locating the borrower and a not co-operating borrower.

We would also make the observation that:
1. many credit unions close on a weekday and open on a Saturday
2. some credit union branches open part-time i.e. less than 5 days per week.

We trust timeframes which are determined by *working days* applies to the lender's *working day* and not the calendar working week.

PART 8 – FINANCIAL DIFFICULTIES

No cost analysis in included in meeting the requirements in Part 8, in particular the Standard Information for Borrowers which includes the requirement for detailed information booklet and a dedicated webpage.

Part 8 is too excessive for credit unions and does not take into account the nature, scale and complexity of the business model. For example, the obligations set out in Section 15, Section 16 and Section 17(2) take no account of the value of the loan. The assumption is that these sections are drafted with the type of business lending provided by banks in mind. Many progressive credit unions would welcome a level playing field with banks but until prudential requirements permit them to operate at that level, generic regulations imposing the same strict requirements on credit unions as on banks are not fit for purpose.

Section 15(2) provides that the policies and procedures set out in SS (1) must apply to all borrowers in financial difficulty. Section 15(1) provides:-

15. Policy for Financial Difficulties cases

(1) A lender shall establish, maintain and adhere to policies and procedures for dealing with borrowers in financial difficulties. The policies and procedures shall have the core objective of assisting the borrower to resolve the financial difficulties. These policies and procedures shall be in writing and shall at a minimum provide for the following matters:

(a) the procedure that the lender will apply when dealing with borrowers in financial difficulties and how it will implement the procedure,

(b) the information to be sought from borrowers in financial difficulties,

(c) that the information sought from borrowers be relevant to assessing the financial situation of borrowers,

(d) that an alternative arrangement may be agreed with borrowers, where appropriate,

(e) a description of the types of alternative arrangements that may be offered to those borrowers in financial difficulties by the lender,

(f) the criteria which the lender will apply when considering which (if any) alternative arrangement is appropriate to the borrower in financial difficulties. The criteria shall at a minimum include the following:

(i) the viability of the business,

(ii) any links with personal debt of the principals of the firm that impacts on the business,

(iii) any business debt related to property and other investments;

(iv) the information provided by the borrower,

(v) the borrower's current and future repayment capacity,

(vi) the borrower's previous repayment history, and

(vii) whether the borrower has any business debt other than the credit facility in financial difficulties, and if so the overall business indebtedness of the borrower,

(g) identify the dedicated contact points to which the lender has assigned responsibility for dealing with borrowers in financial difficulties,

(h) facilitate separate consideration of debt related to the business, debt related to property and other investments or personal debt of the principals of the firm that impact on the business,

(i) provide for consideration of a financial difficulties case on the specific facts of that case,

(j) set out that the lender shall consider all reasonable options available before suggesting that a borrower dispose of assets essential to the running of the business, trade or profession of the borrower,

(k) include the following statement:

A key objective of this policy is to assist borrowers to resolve the financial difficulties, and

(l) if a lender cannot make a decision on whether it will facilitate an alternative arrangement within 15 working days from receipt of the information needed in order to allow it to consider the application, specify that the borrower shall be informed promptly about how long it will take to complete its consideration of whether to facilitate the alternative arrangement and the reasons why it will take longer than 15 working days.

The above Section is not justifiable or practical for low value loans.

Section 16, set out below, is onerous on credit union resources and disproportionate in light of the volume of loans and low value loans. Furthermore, SS (1)(f) is misleading for credit union members due to the limitations in which a credit union can apply fees and charges.

16. Standard Information for Borrowers

(1) A lender shall prepare and make available to borrowers an information booklet containing the following information:

(a) a description of the lender's policies and procedures required under Regulation 15 for dealing with borrowers in financial difficulties,

(b) an explanation that the lender may offer the borrower an alternative arrangement to assist the borrower to resolve the financial difficulties, subject to the borrower meeting the lender's alternative arrangement assessment criteria and to an individual assessment of the borrower's situation,

(c) the criteria which shall be applied to the borrower's financial difficulties case to determine whether an alternative arrangement is suitable to resolve those financial difficulties,

(d) a statement emphasising that it is in the borrower's interest to engage with the lender about arrears or financial difficulties,

(e) an explanation of the meaning of not co-operating under these Regulations and the implications for the borrower of not co-operating, including that a lender may take action to enforce security immediately after classifying a borrower as not co-operating,

(f) an explanation that the lender may be entitled to impose additional fees or charges on borrowers in financial difficulties in accordance with the terms and conditions of the credit facility agreement,

(g) a list of the information which the lender may request from the borrower when assessing the borrower's case,

(h) a statement that the financial difficulties may impact on the borrower's credit rating,

(i) a link to these Regulations and a brief summary of the purpose of these Regulations,

(j) an explanation that the data relating to the borrower's arrears may be shared with relevant credit reference agency or credit register, where permitted by contract or required by law,

(k) confirmation that each office of the lender dealing with lending subject to these Regulations has a designated contact point for borrowers in financial difficulties,

(l) a statement advising borrowers of their right to employ third party advisors who may accompany the borrower during discussions with the lender whether these discussions are face to face or not,

(m) an explanation of the lender's internal appeals process in respect of a lender's decision on whether to grant an alternative arrangement and the timeframes involved, and

(n) information regarding the borrower's right to make a complaint in accordance with Regulation

(2) A lender shall have a dedicated webpage on its website for borrowers in, or concerned about, financial difficulties which shall contain or directly link to the information booklet referred to in paragraph (1).

CUDA recommends that credit unions are exempt from the need to provide on the website or otherwise display the requirements in Section 16. Alternatively, the provisions apply, only where a volume of lending exceeds an agreed percentage of the loan book.

At Section 19 (Alternative Arrangements), we reiterate the point again of disproportionality. We would also seek guidance on the criteria expected in SS (1)(e) and (2)(a).

PART 9 – APPEALS AND COMPLAINTS

21. Appeals
(1) A lender shall establish and implement an internal appeals procedure allowing a borrower to appeal…decisions….
(3) The procedure referred to in paragraph (1) shall provide that the appeal be conducted by an Appeals Panel as soon as is reasonably practicable after the borrower makes the appeal.
(4) The Appeals Panel shall be comprised of at least two decision makers who have not been involved in the borrower's case previously. These decision makers shall have sufficient knowledge and experience to conduct the appeal.
(5) Without prejudice to the generality of paragraph (3), the procedure referred to in paragraph (1) shall provide that if the lender cannot made a decision on the appeal within 15 working days, the lender shall promptly inform the borrower how long it will take to reach its decision and the reasons why it will take longer than 15 working days.

CUDA recommends that the credit union sector is exempt from the Appeals provisions as set out in the proposed Regulations. Section 37 of the Credit Union Act requires a credit union to make provisions for an appellate body which has the power to override the decisions of the Credit Officer or Credit Committee. The appellate body consists of member of the Board of Directors.

Alternatively, to avoid confusion and the concern of duplicate appeals processes, please confirm in the Regulations that the appeal process as provided for in the Credit Union Act 1997 (as amended) is sufficient to meet the requirements of the Appeals Panel necessitated under the proposed Regulations.

22. Handling Complaints
(6) A lender shall undertake an analysis of the complaints register required under paragraph (4) on a regular basis including investigating whether complaints indicate an isolated issue or a more widespread issue for borrowers. This analysis of complaints shall be reported to the lender's risk or audit committee and to the lender's management body.

Observation: Please note there is no legislative or regulatory requirement for credit unions to have a risk or audit committee, and many credit unions do not have such committees in place. Please also clarify what is understood by "the lender's management body" in order that we can determine if it is consistent with the credit union operating model and legislatively defined governance model.

Question 2

Are there specific areas that you feel should be expanded on? If so, please provide details and, if possible, drafting suggestions or proposed solutions.

Question 3

Do you have any suggestions for further reform, e.g., are there any gaps or areas omitted from the protections proposed? If so, please set out your proposals.

Please see answers to Question 1 and 4 and General Commentary above.

Question 5:

Do you agree that the 'Smaller Enterprises' provisions in the current SME Code should be extended to all SMEs? If not, please set out the reasons why.

We have highlighted above examples of where Regulations and level of detail displayed can be off putting for a potential borrower, especially loans sought by small traders seeking small value loans.

We have also highlighted above the requirement for the level of protection to be proportionate to the size of the loan. Credit union loans to sole traders could often have a value of under €5,000. These types of loans should be able to be assessed quickly and efficiently based primarily on ability to repay. The return on such loans and the turn-around for such loans does not require the level of information and detail as set out in the proposed regulations, and in default the lender could be tied up in excessive administrative requirements with such loans in order to ensure compliance. The level of protection proposed could stifle the availability of credit.

Certainly, the removal of smaller enterprises would alleviate the above two issues.

The Registry of Credit Unions in the proposed regulations in CP88 sets a limit of €25,000 whereby commercial loans below that amount are not subject to specific commercial lending requirements, including the regulatory requirement to obtain a business plan.

Alternatively, in our submission we have set out the rationale for a loan ceiling in which the regulations would not apply below that amount. However, this in itself would not alleviate the disproportionate impact on credit unions due to the low volume of such lending.

Question 6:

Do you agree that business credit cards should be included in the scope of the regulations that are proposed to replace the SME Code for all SMEs? Please explain.

We are not proficient on the business model undertaken in this area or the current legislative or regulatory requirements imposed on the credit service. The

providers of such credit services are best placed to comment on whether the regulations are fit and proper for business credit cards.

Furthermore, in considering the scope, we would expect that CP91 and the proposed regulations are guided by the complaints made to such bodies as the Financial Service Ombudsman, the Central Bank's Consumer Protection Division and the Credit Review Office with regard to the level and scope of protection required.

Question 7:

Do you agree that multi-lender credit, including syndicated, club or other multi-lender transactions, and special purpose vehicles should continue to be excluded from the scope of the regulations? If so, please provide the reasons for your view.

No one area of borrower should be excluded from standards. To suggest that the regulation should not apply could very much be the right answer but the gap must be addressed by standards that are fit for purpose and product specific. There are many advantages in multi-lender credit and syndicated approach. Whilst credit unions do not currently provide credit in this manner, credit union boards are, by and large, risk conservative and the provision of multi lender credit reduces the credit risk for any one lender.

The providers of such credit services are best placed to comment on whether the proposed regulations are fit and proper for multi-lender credit.

Question 8:

Do you agree that the introduction of a concept of 'not co-operating' is useful in an SME context? If so, do you have any comments on the proposed provisions?

It is useful as it may give rise to communication from the borrower, where none was otherwise forthcoming.

We would also make the following comments:

1. The provision should clarify that it does not interfere with the lenders contractual rights under the credit agreement, or under any contractual arrangements with respect to security. We also trust that the requirements under SS (3) and (4) are consistent with, and do not dilute, a credit union's entitlements under Section 20 (Remedy for debts from members) in the Credit Union Act 1997.

2. Under SS (3) the lender is obliged to write to the borrower and inform the borrower that he is not co-operating. **CUDA recommends** that the wording is changed so that the lenders obligations are to write to the borrowers *last known place of residence or place of business.*

Again thank you for the opportunity to correspond with the Central Bank of Ireland in response to CP91. Section 6(2) of the Credit Union Act 1997 sets as one of the objects of a credit union:

> "the creation of sources of credit for the mutual benefit of its members at a fair and reasonable rate of interest"

Credit unions will strive to meet this objective taking into account the needs of the individual borrower and the protection of the wider credit union members. Standards which enhance the borrowers experience as a credit union member is welcome, however, we would caution against generic regulations primarily targeted at the banking sector as it could impede on the borrower's relationship with the credit union due to the strict requirements that credit union would be obliged to meet.

As always, we are happy to assist with any additional queries you may have in relation any of the points raised in the submission.

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