

National Credit Union Administration

§ 723.21

§ 723.19 What are the recordkeeping requirements?

You must separately identify member business loans in your records and in the aggregate on your financial reports.

§ 723.20 How can a state supervisory authority develop and enforce a member business loan regulation?

(a) The NCUA Board may exempt federally insured state chartered credit unions in a given state from NCUA's member business loan rule if NCUA approves the state's rule for use for state chartered federally insured credit unions. In making this determination, the Board is guided by safety and soundness considerations and reviews whether the state regulation minimizes the risk and accomplishes the overall objectives of NCUA's member business loan rule in this part. Specifically, the Board will focus its review on:

- (1) The definition of a member business loan;
- (2) Loan to one borrower limits;
- (3) Written loan policies;
- (4) Collateral and security requirements;
- (5) Construction and development lending; and
- (6) Loans to senior management.

(b) To receive NCUA's approval of a state's member business loan rule, the state supervisory authority must submit its rule to the NCUA regional office. After reviewing the rule, the region will forward the request to the NCUA Board for a final determination.

[64 FR 28729, May 27, 1999, as amended at 69 FR 27828, May 17, 2004]

EFFECTIVE DATE NOTE: At 70 FR 75722, Dec. 21, 2005, §723.20 was amended by adding paragraph (c), effective Jan. 20, 2006. For the convenience of the user, the added text is set forth as follows:

§ 723.20 How can a state supervisory authority develop and enforce a member business loan regulation?

* * * * *

(c) A state supervisory authority that administers a state member business loans rule, approved by NCUA under §§ 723.20(a) and (b), may rescind its rule without NCUA approval. A state supervisory authority should notify NCUA if it anticipates rescinding its

rule to foster regulatory continuity and cooperation.

§ 723.21 Definitions.

For purposes of this part, the following definitions apply:

Associated member is any member with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower.

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses.

Immediate family member is a spouse or other family member living in the same household.

Loan-to-value ratio is the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

Net member business loan balance means the outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien on the member's primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

Net worth is retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities.

[64 FR 28729, May 27, 1999, as amended at 68 FR 56552, Oct. 1, 2003; 69 FR 27828, May 17, 2004]

§ 723.21, Nt.

EFFECTIVE DATE NOTE: At 70 FR 75722, Dec. 21, 2005, § 723.21 was amended by revising the definitions of "Construction or development loan" and "Net worth", effective Jan. 20, 2006. For the convenience of the user, the revised text is set forth as follows:

§ 723.21 Definitions.

* * * * *

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income producing property or convert the use of income producing property to a different use from its use before the major renovation or development or is a major expansion of its current use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income producing property that do not change its use. Examples to illustrate when a loan is or is not a construction or development loan follow.

Example 1. If a member borrows money to repair a roof on a barn on an existing farming operation, this is a member business loan but is not a construction or development loan. A construction or development loan does not include a loan for routine maintenance of a borrower's existing business or a loan to enhance or expand a borrower's existing business unless those renovations convert the property to a different use or are so major as to be considered the equivalent of converting the use of the property.

Example 2. A loan to convert a movie theater into a restaurant is a construction or development loan. A loan to convert a large Victorian home used for residential purposes into a six-room inn also would be a construction or development loan. In both instances, the loans are for the purpose of converting the use of the properties. By contrast, a loan to repair the roof or replace the carpet and wallpaper of an operating inn would not be a construction or development loan as it neither converts the use of the property, nor is so major a renovation to be considered the equivalent of converting the use of the property.

Example 3. A loan to expand the parking lot of a small strip shopping center would not be a construction or development loan, but a loan to renovate the small strip shopping center into a mega-mall would be a construction or development loan as it would be

viewed as a major renovation that converts the use of the property.

Example 4. A hotel with a fair market value of \$10 million borrows \$1 million to build an exercise facility in the hotel to enhance the property. The loan amount is 10% of the fair market value of the property. This is not a construction or development loan. It is a member business loan to improve or renovate an existing incoming producing property, but it is not so major a renovation as to be considered the equivalent of converting the use of the property. In another scenario, a hotel with a fair market value of \$10 million borrows \$5 million to build a luxury health spa on the hotel grounds. The loan amount is 50% of the fair market value of the property. This is a construction or development loan, even if the use of the property has not been converted, as the renovation is so major as to be considered the equivalent of converting the use of the property.

* * * * *

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders and the NCUSIF. For any credit union, net worth does not include the allowance for loan and lease losses account.

PART 724—TRUSTEES AND CUSTODIANS OF CERTAIN TAX-ADVANTAGED SAVINGS PLANS

Sec.

724.1 Federal credit unions acting as trustees and custodians of certain tax-advantaged savings plans.

724.2 Self-directed plans.

724.3 Appointment of successor trustee or custodian.

AUTHORITY: 12 U.S.C. 1757, 1765, 1766 and 1787.

SOURCE: 55 FR 30211, July 25, 1990, unless otherwise noted.

§ 724.1 Federal credit unions acting as trustees and custodians of certain tax-advantaged savings plans.

A federal credit union is authorized to act as trustee or custodian, and may