

February 8, 2008

Sharon L. Custer, President/CEO  
BMI Federal Credit Union  
P.O. Box 182531  
Columbus, OH 43218-2531

Re: Member Business Loans (MBL) - Two Years Direct Experience Requirement.

Dear Ms. Custer:

You have asked if a credit union must always use the services of a third party underwriter to satisfy the MBL rule's two years of direct experience requirement. No, while the credit union may use the services of an outside party, it also may use the direct experience of its own employees. You also have asked if a credit union that chooses to use the experience of its own employees must hire an individual who has the requisite experience at the time of hiring. No, a credit union may do so, but it also may satisfy the direct experience requirement with an employee who has developed the requisite experience over time, subject to limitations discussed below.

A credit union's board of directors must adopt specific business loan policies and review them annually to implement an MBL program. 12 C.F.R. §723.5(a). The MBL rule further provides:

The board must also use the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in. The experience must provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage. Credit unions do not have to hire staff to meet the requirements of this section but must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization (CUSO), an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.

*Id.* Additionally, a third party used in this context must be free of conflicts of interest. 12 C.F.R. §723.5(b). See OGC Op. 04-0545 (August 9, 2004) on NCUA's website, [www.ncua.gov](http://www.ncua.gov), for a more detailed discussion of this subject.

As noted, §723.5(a) states a credit union is not required to hire staff to fulfill the experience requirement and gives examples of how to accomplish this using third parties. This enables a credit union to make MBLs without creating a costly infrastructure. 68 Fed. Reg. 56537, 56541 (October 1, 2003). In no way does the rule

prohibit a credit union from fulfilling the experience requirement using its own qualified employees. Qualified employees, like qualified third party consultants, will have:

[E]xperience tailored to the credit union's needs. Individuals who meet the requirements of this section must have lending experience directly related to the type of MBLs the credit union intends to offer. These individuals must be familiar with the proper underwriting, analysis, and origination of loans of a particular type in order to understand their complexity and risk exposure. For example, an individual with experience solely in taxi cab loans does not have the requisite experience necessary to underwrite a loan to the taxi company for a gas station, because the individual will be unfamiliar with related issues that may impact the loan, such as environmental laws applicable to underground storage tanks. Likewise, an individual who only has experience with financing residential real estate for homebuilders does not have sufficient lending experience for the land development and construction, or purchase, of a commercial strip center.

*Id.* Additionally, the employee a credit union uses to satisfy the experience requirement need not have had that expertise at the time of hiring. Rather, that expertise could be developed post-hiring. For example, an inexperienced credit union employee that works closely with a qualified, experienced employee or third party consultant in making certain kinds of MBLs can develop the requisite expertise over time. Of course, depending on the extent of the inexperienced employee's involvement, it may take longer than two years to develop the equivalent level of experience required to satisfy the rule.

Please contact Staff Attorney Frank Kressman or me with any questions or if we can be of further assistance.

Sincerely,

/S/

Sheila A. Albin  
Associate General Counsel