

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

RIN 3133-AD42

Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking and request for comment (ANPR).

SUMMARY: NCUA is considering amending its member business loans (MBL) rule to clarify or revise current provisions including those related to: loan-to-value (LTV) ratio requirements; collateral and security requirements; credit union service organization (CUSO) involvement in the MBL process; MBL loan participation; and waivers. NCUA seeks comment on these issues and any others commenters think NCUA should consider.

DATES: Comments must be received on or before August 25, 2008.

ADDRESSES: You may submit comments by any of the following methods

(Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] – Comments on Advanced Notice of Proposed Rulemaking for Part 723” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background.

In addition to making regulatory changes as the need arises, NCUA’s policy is to review all of its existing regulations every three years. Interpretive Ruling and

Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations, (Sept. 18, 1987), as amended by IRPS 03-2 (May 29, 2003). This review is conducted on a rolling basis so that a third of the regulations are reviewed each year. This helps NCUA update its regulations to address current regulatory concerns. NCUA provides notice to the public of the regulations under review so the public has an opportunity to comment. This ANPR is the result of that process and comments received from the public and NCUA offices.

Under Part 723, an MBL is any loan, line of credit, or letter of credit, where the proceeds will be used for a commercial, corporate, other business investment property or venture, or agricultural purpose. 12 CFR §723.1. There are several exceptions to this general definition. The MBL rule contains statutory and regulatory requirements and limitations, such as collateral and security requirements, equity requirements, and loan limits. The potential amendments discussed below cover a wide variety of MBL issues.

B. Discussion of MBL Issues.

1. Loan-to-Value Ratio Requirements and Unsecured MBLs

Generally, the MBL rule requires all MBLs to be secured by collateral. 12 CFR §723.7(a). The maximum LTV ratio permitted for all liens is 80% unless the amount in excess of 80% is covered by private mortgage insurance or is otherwise insured, guaranteed or subject to an advance commitment to purchase

by certain government agencies. 12 CFR §723.7(a)(1). In any event, the LTV ratio may not exceed 95%.

The MBL rule has various exceptions to the LTV requirement. One exception permits well capitalized natural person credit unions and corporate credit unions that maintain required minimum capital levels to make unsecured MBLs. 12 CFR §723.7(c)(1). Unsecured MBLs to any one member or group of associated members are limited to the lesser of \$100,000 or 2.5% of a credit union's net worth and all unsecured MBLs may not exceed 10% of net worth. 12 CFR §723.7(c)(2) and (3). Another exception available under certain circumstances is that the requirements and limits in §723.7 do not apply to credit card lines of credit offered to nonnatural person members. 12 CFR §723.7(d). Finally, a credit union can make vehicle MBLs, without being subject to LTV requirements, if the vehicle is a car, van, pick-up truck, or SUV and not part of a fleet.

NCUA has received comments on several aspects of the LTV requirements. One commenter suggested lowering the borrower equity requirement for construction and development loans (C&D loans) from the current 25% to 20%. This translates to raising the maximum LTV limit for C&D loans from the current 75% to 80% and making it the same as the general LTV requirement. The commenter suggested this will make credit unions more competitive in this lending area.

NCUA believes C&D loans are the riskiest of all MBLs and, therefore, require greater regulatory restrictions to ensure safe and sound lending. NCUA is willing, however, to consider comments in support of easing restrictions on C&D loans. Commenters should address the greater safety and soundness concerns of C&D loans. NCUA notes that credit unions can seek approval to waive the borrower equity requirement under the MBL rule's waiver provision. 12 CFR 723.10(c). If commenters support easing LTV requirements for C&D loans, they should address the sufficiency of the waiver provision. As noted below, NCUA is inviting comments generally on the sufficiency of the MBL rule's waiver provisions.

Other comments have included a request to modify the LTV requirements for loans on fleet vehicles to make credit unions more competitive and a request for NCUA to narrow the definition of "fleet" from that articulated in OGC Legal Op. 05-1038 (December 8, 2005) so it would capture fewer business vehicles. [See, www.ncua.gov/RegulationsOpinionsLaws/opinion_letters/2005/05-1038.pdf](http://www.ncua.gov/RegulationsOpinionsLaws/opinion_letters/2005/05-1038.pdf).

NCUA would appreciate comments on this suggestion and asks commenters to address relevant safety and soundness ramifications.

NCUA welcomes general comments on any aspect of the MBL LTV requirements and unsecured MBL exception including if there should be a regulatory credit limit placed on business credit cards. One commenter suggested the LTV limits should be raised or eliminated. Although it is unlikely NCUA would entirely

eliminate LTV requirements for MBLs, commenters are encouraged to comment and provide suggestions on improving or clarifying these provisions. This includes comments on whether NCUA has clearly explained how a credit union is to establish the value of a property for purposes of calculating the LTV ratio, defined what costs and fees may properly be included in calculating a borrower's equity in a project, and how the unsecured MBL exception should be applied when a credit union is making an MBL under a Small Business Administration guaranteed loan program. NCUA also is interested in comments on whether the differences between various kinds of collateral would support using a tiered approach to LTV limits so that a loan secured by safer collateral would have a higher LTV limit.

2. Experience Requirement and CUSO Activities

The MBL rule requires a credit union making MBLs to use the services of an individual with at least two years direct experience with the type of lending in which the credit union will engage. 12 CFR §723.5(a). The experience must provide the credit union with sufficient expertise given the complexity and risk exposure of the contemplated MBLs. Id.

NCUA solicits comment on the adequacy of the two-year experience requirement. Also, there appears to be some confusion among credit unions regarding how this requirement can be met or is to be calculated using both in-house employees and third party contractors. Also, there appears to be

confusion as to what role CUSOs may play in providing that expertise to non-owner credit unions and credit unions that wholly or partially own the CUSO. Additionally, credit unions appear uncertain on the application of the conflict of interest provision in the MBL rule to circumstances where a CUSO or other third party is used to meet the two-year experience requirement. 12 CFR §723.5(b).

NCUA solicits comment on the need to clarify §723.5 and, if commenters believe it needs clarification, NCUA welcomes specific suggestions for amending the regulation. For instance, it would be helpful to know if commenters think §723.5 needs substantive revision or if adding specific examples in the regulatory text would be sufficient to clarify the standards. NCUA is also interested if commenters believe other aspects of CUSO involvement in the MBL process could be improved.

3. Loan Participations

Credit unions are authorized to sell participation interests in their MBLs to the same extent as non-business loans. In noting many of the benefits of engaging in loan participations, NCUA stated:

Specifically, engaging in loan participations is an effective tool for FCUs to manage liquidity and concentration risk. Loan participation is also a way for FCUs to comply with NCUA or self-imposed lending limits. Small FCUs are able

to improve the diversification of their loan portfolios by participating in loans originated by larger FCUs that have the resources to underwrite a wider variety of loan types.

68 FR 75110 (December 30, 2003). NCUA's loan participation rule provides the basic regulatory requirements for all loan participations, including participations of MBL loans, and credit unions that purchase or sell MBL participations must comply with the loan participation rule requirements as well as the MBL rule. 12 CFR §701.22.

The MBL rule specifically addresses MBL loan participations by instructing credit unions how they must account for MBL participations in member and non-member loans and how the participations will affect the credit union's aggregate limit on net member business loan balances. 12 CFR §723.1(d) and (e); §723.16(b).

NCUA believes some credit unions overlook the link between the MBL and loan participation rules and have had difficulty in accurately accounting for MBL participations. In addition, it appears some credit unions may not understand or be aware of the waiver process available where nonmember MBL participations may otherwise cause a credit union to exceed the aggregate limit on MBLs.

Accordingly, NCUA would like comments to help it assess the degree to which credit unions need additional guidance in this respect and solicits suggestions for how best to address this. For example, NCUA would appreciate comments on the utility of including cross-references in §701.22 and part 723 and revising existing regulatory provisions to enhance clarity. Specific suggestions and supporting rationales for those suggestions would be appreciated.

4. Waivers

Section 723.10 enables credit unions to seek waivers from a variety of limitations and requirements in the MBL rule. While NCUA may not grant waivers from statutory provisions carried over into the MBL rule, the menu of available waivers is extensive. Despite this, it appears credit unions may not be taking full advantage of waiver opportunities. NCUA solicits comments on whether this is the case and, if so, why. Also, it would be helpful to know if this perceived issue is the result of a procedural problem and what NCUA can do to resolve it.

5. Degree of Regulatory Limits

Some observers believe credit unions that are experienced business lenders are well equipped to manage the risks associated with making MBLs and should be given more flexibility with fewer regulatory restrictions. Others believe the increasing amount of MBL risk on credit union balance sheets is cause for concern and NCUA should impose greater regulatory restrictions to protect against the increased risk. One commenter suggested greater restrictions

should include increasing the list of underwriting factors required by §723.6(g).
12 CFR §723.6(g). NCUA would appreciate comments on whether part 723
would be a more effective regulation with more, less, or the current degree of
regulatory limits. Commenters are reminded that some limitations in part 723 are
required by statute and should take that into account when providing comments.

C. Request for Comments.

The NCUA Board invites comment on any of the issues discussed above
including if, and how, NCUA's regulations should be amended to address the
issues discussed in this ANPR. Commenters should not feel constrained to limit
their comments to the above issues. Rather, commenters are encouraged to
discuss any other relevant MBL issues they believe NCUA should consider.

By the National Credit Union Administration Board on June 19, 2008.

Mary F. Rupp
Secretary of the Board