

unions and CUSOs are subject to the MBL rule.

The Board also proposes to amend NCUA's corporate credit union rule to conform with the MBL rule regarding loans to corporate CUSOs by removing the requirement that a corporate credit union's loans to corporate CUSOs comply with the MBL rule's aggregate loan limit. 12 CFR 704.11(b)(4).

#### *Construction and Development Lending, Section 723.3*

The Board proposes to lower the MBL rule's mandatory equity requirements for construction and development loans by requiring a borrower to have a minimum of a 25%, rather than a 35%, equity interest in any construction or land development project. Currently, the MBL rule requires a borrower to have a 35% equity interest or receive a waiver from an NCUA regional director. 12 CFR 723.3(b). The Board has permitted three states to lower the minimum equity interest required in land development loans to 30% and four states to lower the equity interest in loans for construction projects and combination land development and construction projects to 25%. It found the lowered equity requirements were consistent with NCUA's safety and soundness considerations. The Board believes an equity interest of 25% should provide sufficient collateral for a credit union and adequate incentive for a borrower to complete a project.

The Board also proposes certain other changes related to financing the construction of single-family residential properties to lessen the regulatory burden for members engaged in this business. First, in the case of a loan to finance the construction of a single-family residence where a contract already exists between the builder, who is a member-borrower, and a prospective homeowner, who will purchase and reside in the property, the Board proposes that such a loan not be subject to the aggregate 15% of net worth limit of § 723.3(a) or the proposed new 25% equity interest requirement. These loans would instead be subject to the normal MBL collateral requirements of § 723.7. Second, the Board proposes that this same relief from the aggregate net worth limit and the equity interest requirement be provided for one construction or development loan per member-borrower or group of associated member-borrowers for a single-family residence, irrespective of the existence of a contract with a prospective homeowner. The Board recognizes that losses in credit unions from construction and development lending have historically resulted from large

development projects, both commercial and residential. The Board believes there is minimal risk in removing the additional regulatory requirements for those loans where a prospective homeowner is contractually obligated to the member-borrower or for one construction or development loan for a single-family residence per member-borrower. These proposed changes will afford added flexibility to insured credit unions in meeting the needs of members who own small businesses engaged in building individual residential properties.

#### *Direct Experience Requirement, Section 723.5*

The Board proposes to make two amendments to § 723.5 that emphasize the need for experienced and impartial individuals to evaluate MBLs. The rule requires credit unions to use the services of an individual, whether the individual is an employee or third-party contractor, with lending experience that is directly related to the type of MBLs the credit union offers. The proposed amendment provides that this individual must understand the complexity and risk exposure of the credit union's MBLs. This requirement is critical to a successful MBL program because of the vast array of businesses, types of collateral, and underwriting procedures associated with MBLs.

The second proposed amendment provides that a credit union may obtain the services of a third-party to meet the direct experience requirements of § 723.5 if the third-party has no interest or involvement in the MBL transaction. The independence of the third-party is fundamental to ensuring that the credit union performs its due diligence before originating an MBL or purchasing an interest in an MBL. The proposal provides, therefore, that the third-party may not have an interest in the transaction other than providing its impartial expertise to the credit union.

#### *Member Business Loan Policy, Section 723.6*

The Board proposes to amend § 723.6 to allow a credit union to adopt analysis and documentation requirements in its MBL policy that are appropriate for the type or types of MBLs the credit union intends to make. Currently, the rule requires the same documentation for every MBL regardless of size, business, or loan type. The Board recognizes that documentation and underwriting criteria for an MBL may vary depending on the type of business requesting the loan and type of loan requested.

#### *Loan-to-Value Ratio, Section 723.7*

The Board proposes to make several amendments to this section. First, the Board proposes a minor technical amendment in the format of § 723.7 by removing the chart used to establish the rule's collateral requirements and providing an explanation in plain English. Second, the Board proposes to exclude MBLs made for the purchase of vehicles from the rule's loan-to-value requirements if the vehicle is a car, van, pick-up truck, or sports utility vehicle that is used for commercial purposes. The Board proposes to exclude these loans because loans a credit union makes to purchase these vehicles for consumer use are not subject to the loan-to-value ratios required under the MBL rule and this standard represents the current business market. The Board believes these MBLs present little or only minimally greater risk than a comparable consumer loan and that credit unions should establish lending terms, including collateral requirements, for these loans that reflect best industry practices. The Board intends that this exclusion will be used to finance combined personal/business use vehicles and not, for example, to finance fleet purchases.

The Board also proposes to remove the principal liability and guarantee requirement from this section. The MBL rule currently requires principals to provide their personal liability or guarantee on MBLs unless the credit union receives a waiver from its regional office. 12 CFR 723.7(b). The Board has approved six state rules that do not require guarantees by principals and NCUA's regional offices have approved numerous waivers allowing credit unions to make MBLs without requiring principal guarantees. The Board also notes that the Office of the Comptroller of the Currency and the Office of Thrift Supervision do not require national banks and savings associations to obtain a principal's guarantee before extending credit to a business. The Board recognizes that some credit unions lend to cooperative entities with hundreds of members, making it impractical to obtain personal guarantees from every principal. Credit unions may still require loan applicants to provide principal guarantees as a risk-reducing business practice.

Finally, the Board proposes to amend this section to permit credit unions to make unsecured MBL loans, in addition to credit card line of credit programs offered to nonnatural person members, subject to certain limits. Under the current rule, all MBLs must be secured by collateral in accordance with the