

under generally accepted accounting principles may exclude the consolidated ABCP program assets from risk-weighted assets, provided that the savings association is the sponsor of the ABCP.

(ii) If a savings association excludes such consolidated ABCP program assets from risk-weighted assets, the savings association must assess the appropriate risk-based capital requirement against any risk exposures of the institution arising in connection with such ABCP programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with paragraphs (a)(1) and (2) and (b) of this section.

(iii) If a savings association either elects not to exclude consolidated ABCP program assets from its risk-weighted assets in accordance with paragraph (a)(3)(i) of this section, or otherwise is not permitted to exclude consolidated ABCP program assets, the savings association must assess a risk-based capital charge based on the appropriate risk weight of the consolidated ABCP program assets in accordance with paragraph (a)(1) of this section. Direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring savings associations provide to ABCP programs are not subject to any capital charge under paragraphs (a)(2) and (b) of this section.

(iv) This capital treatment for consolidated assets of certain ABCP programs will be effective from July 1, 2003 to April 1, 2004.

(4) *Other variable interest entities subject to consolidation.* (i) A savings association that is required to consolidate the assets of a variable interest entity under generally accepted accounting principles must assess a risk-based capital charge based on the appropriate risk weight of the consolidated assets in accordance with paragraph (a)(1) of this section. Direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring savings associations provide to ABCP programs are not subject to any capital charge under paragraphs (a)(2) and (b) of this section.

(ii) This capital treatment for other variable interest entities subject to consolidation will be effective from July 1, 2003 to April 1, 2004.

\* \* \* \* \*

Dated: September 9, 2003.

By the Office of Thrift Supervision.

**James E. Gilleran,**  
*Director.*

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## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Parts 702, 704, 712, 723, 742**

#### **Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans; Regulatory Flexibility Program**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending its member business loan (MBL) regulations to provide greater flexibility to credit unions to meet the business loan needs of their members within statutory limits and appropriate safety and soundness parameters. Major changes include: (1) Reducing construction and development loan equity requirements; (2) allowing RegFlex credit unions to make their own decisions whether to require personal guarantees by principals; (3) allowing well-capitalized credit unions to make unsecured MBLs within certain limits; (4) providing that purchases of nonmember loans and nonmember participation interests do not count against a credit union's aggregate MBL limit, subject to an application and approval process; (5) allowing 100% financing on certain business purpose loans secured by vehicles; (6) providing that loans to credit unions and credit union service organizations (CUSOs) are not MBLs for purposes of the rule; and (7) simplifying MBL documentation requirements. Other provisions in the MBL regulation are simplified and unnecessary provisions are removed. In addition, NCUA is amending the prompt corrective action (PCA) rule regarding the risk weighting of MBLs and the CUSO rule to permit CUSOs to originate business loans.

**DATES:** This rule is effective October 31, 2003.

**ADDRESSES:** National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

#### **FOR FURTHER INFORMATION CONTACT:**

David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone (703) 518-6360; Robert M. Fenner, General Counsel, or Chrisanthy J. Loizos, Staff Attorney,

Office of General Counsel, at the above address or telephone (703) 518-6540.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

On March 27, 2003, the NCUA Board issued a Notice of Proposed Rulemaking to amend the MBL rule and other rules as they relate to business lending. 68 FR 16450, Apr. 4, 2003. In the proposed rule, the Board provided some parity for federal credit unions (FCUs) with federally insured, state-chartered credit unions (FISCUs) that are exempt from NCUA's MBL rule because the Board had determined that their chartering states had developed MBL rules that minimize risk and accomplish the overall objectives of NCUA's rule. The parity provisions in the proposed rule addressed construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs. The proposed rule also revised certain provisions that have created unnecessary regulatory burden and clarified certain provisions that have caused confusion. These proposed amendments related to: the dollar amount that triggers compliance with the rule, the loans to one borrower limit, the aggregate MBL limit, loan-to-value (LTV) requirements, MBL documentation requirements, and the loan loss reserve requirements. The Board also proposed that credit unions that purchase participation interests in MBLs made to credit union members need not count the purchase against the credit union's own limit. Finally, the proposed rule expanded the current standard risk-based net worth (RBNW) component for MBLs in the PCA rule and authorized CUSOs to originate business loans.

In the preamble to the proposed rule, the Board noted that the proposed amendments to the MBL rule would allow credit unions greater opportunities to meet the small business loan needs of their members without creating undue risk to the National Credit Union Share Insurance Fund. The Board cautions, however, that MBLs are not suitable for all credit unions. Credit union management must demonstrate a higher standard in planning, policies, procedures, controls, monitoring, credit risk, and diversification to safely establish a long-term strategy in member business lending.

##### **B. Comments**

###### *General*

NCUA received three hundred and ninety timely comment letters on the proposed rule. NCUA staff, however,