

by eliminating unnecessary documentation and reducing staff time spent on MBL documentation. Many commenters stated it is appropriate for a credit union to adopt documentation requirements in its own policy relative to the types of loans being made. They said that simpler transactions should be subject to fewer documentation requirements than more complex ones, as long as reasonable standards of safety and soundness are met. The final rule adopts the revisions to § 723.6 as proposed.

Loan-to-Value Ratio, Section 723.7

The final rule makes several amendments to this section. First, the final rule uses plain English to describe the LTV requirements instead of a chart. Second, the final rule retains the personal liability and guarantee requirement but no longer requires RegFlex credit unions to obtain these guarantees from principals. Third, the final rule permits credit unions to make unsecured MBLs, in addition to credit card line of credit programs offered to nonnatural person members, if: (1) The credit union is "well-capitalized" as defined in 12 CFR 702.102(a)(1); (2) the aggregate of unsecured MBLs to one borrower does not exceed the lesser of \$100,000 or 2.5% of the credit union's net worth; (3) the aggregate of all of the credit union's unsecured MBLs does not exceed 10% of the credit union's net worth; and (4) the credit union addresses unsecured loans in its written MBL policy. The final rule reorganizes the waiver provisions of § 723.10 and permits credit unions to apply for waivers from the unsecured MBLs to one borrower limitation and the aggregate unsecured loan limitation under this section. Finally, § 723.7 excludes MBLs made for the purchase of consumer-type vehicles from the rule's LTV requirements if the vehicle is a car, van, pick-up truck, or sports utility vehicle (SUV) that is used for commercial purposes.

A few commenters favored removing the LTV chart for a plain English description of the LTV requirements. One commenter stated, however, that credit unions may misunderstand the rule's clarification that government guarantees may not be used in place of the collateral requirements of § 723.7. While the Board recognizes the distinction between the rule's collateral requirements and advance commitments or loan guarantees issued by government agencies, the Board believes it is helpful to maintain this clarification in the final rule. As stated in § 723.7(a)(2), the MBL rule does not permit guarantees as replacements for

collateral requirements. Borrowers must meet the LTV requirements on the total loan amount from the credit union even if a portion of the loan amount is guaranteed by a government agency. This measure provides the credit union the necessary security in the event the borrower fails to meet the terms of the government guarantee or commitment. The Board notes this provision does not introduce a new requirement but merely clarifies the existing rule. The final rule also contains a correction by replacing "minimum" with "maximum" to describe the LTV ratio limits prescribed in § 723.3(a) that are unchanged from the 1999 version of the rule.

Section 723.7(b) requires the personal guarantee of all principals in the case of an MBL to a corporate or other organizational member. The only exception is for certain not-for-profit organizations. The proposed rule would have deleted this requirement and allowed the board of directors of each credit union to determine whether to require personal guarantees through its business loan policies. The proposal noted that states that have received exemptions from the NCUA rule have not required personal guarantees and that there is no indication of increased losses or other safety and soundness problems in those states.

While most commenters supported this proposal, a number of commenters, including some credit unions, objected. The views expressed by these commenters included: (1) That the personal guarantee requirement is one of the key reasons that credit union MBLs have been less risky than those of other lenders; (2) that if the principals are not willing to stand behind an MBL, the credit union should not grant it; (3) that without the guarantee requirement future loss experience will be greater; and (4) increased loss experience will be to the detriment of credit unions generally, not just those comparatively few credit unions that choose to make MBLs. Commenters also noted that the exemptions granted to individual states are relatively new and suggested additional monitoring of those states is warranted before eliminating the requirement altogether.

In response to the comments, and after further consideration of the safety and soundness implications of the proposal, the Board has determined to remove the personal guarantee requirement only for those credit unions having RegFlex status under 12 CFR part 742. The personal guarantee requirement is removed for both federal and federally insured state-chartered credit unions meeting the standards of Part 742. RegFlex credit unions

generally have a net worth ratio of 9% or more and a high supervisory rating. The Board believes there is little additional safety and soundness risk to the credit union system in allowing RegFlex credit unions that have MBL programs to make their own decisions about requiring personal guarantees. This change is reflected by amending § 723.7(b), the personal guarantee requirement, to state that it does not apply to RegFlex credit unions, and by amending NCUA's RegFlex rule, at § 742.4, to add § 723.7(b) to the list of regulatory requirements from which RegFlex are exempt. Credit unions that do not have RegFlex status may apply for a waiver from the personal guarantee requirement, as permitted in § 723.10(e).

The Board notes the Office of the Comptroller of the Currency and the Office of Thrift Supervision do not impose a legal requirement on national banks and savings associations to obtain principals' personal guarantees before extending credit to a business, but that personal guarantees are nonetheless an industry practice. The Board also notes that the SBA requires personal guarantees under its microloan, 7(a), and 504 loan programs. The Board, therefore, encourages RegFlex credit unions to consider personal guarantees as a risk mitigation tool.

Thirty-seven commenters supported the provision on unsecured MBLs as proposed. Some of these commenters thought the proposal would enable credit unions to expand the potential number of MBL borrowers they could serve and allow them to be competitive with other financial institutions. One commenter stressed how valuable the increase in the unsecured lending authority is to credit unions that partner with the SBA because SBA guidelines allow lenders to make an SBA loan to a business with sufficient ability to repay the loan, even when there is not enough collateral to cover the whole request. Accordingly, the commenter stated, SBA lenders could often be faced with a loan amount in excess of the value of the collateral, so credit unions need sufficient unsecured lending limits to fund this uncollateralized gap.

Sixty-nine commenters stated that the provisions on unsecured MBLs are too restrictive. These commenters offered various suggestions to relax the limits placed on unsecured loans to one borrower and the aggregate amount of unsecured loans a credit union is permitted to make. Three commenters opposed allowing credit unions to make unsecured MBLs.

Section 723.7(c) of the final rule adopts the provisions on unsecured lending as proposed. While many credit