

accounting under generally accepted accounting principles.

The NMBLB definition reflects NCUA's interpretation of various provisions in the MBL rule since the 1999 MBL rule was issued and incorporates several exclusions derived from CUMAA. This definition is key to determining: whether a loan qualifies as an MBL; which portion of an MBL is included in the calculation of the loans to one borrower limit; and which portion of an MBL is included in the calculation of a credit union's total aggregate MBL limit. The Board notes that, because the NMBLB definition excludes participation interests sold without recourse from the selling credit union's MBL limits, neither the originating credit union nor a participating credit union count participations against their MBL aggregate cap provided, as discussed above, the loan participation is not in a loan made to a member of the participating credit union and the participating credit union has obtained a waiver, if required under the circumstances. The Board also notes the final rule includes language clarifying that participations sold without recourse must qualify for true sales accounting under GAAP so that the rule accurately reflects the agency's interpretation over the last several years.

The proposed rule contained a substantially similar definition using a different term, "outstanding member business loan balance." Several commenters found the definition confusing because the term's use of the word "outstanding" did not accurately reflect the calculations required as part of the definition. In effect, the proposed definition required a netting of the various exclusions in the definition. The Board has changed the term to "net member business loan balance" and simplified the definition to make it easier to understand.

Seventy-four commenters approved of the proposed definition. Most of these commenters stated it will enable credit unions to easily ascertain the factors involved in calculating the MBL threshold and various limit calculations, as well as providing more flexibility in making MBLs. Three stated the new term recognizes the balances that represent true risk to a credit union. Two bank commenters opposed the new term.

One commenter asked the Board to provide examples to assist credit unions in calculating multiple business purpose loans to one borrower. This commenter asked how much a credit union reports as an MBL when it has

\$35,000 in business purpose loans to a member and makes a \$40,000 business purpose loan to the same member—\$40,000, \$25,000 or \$75,000? The credit union would count the \$40,000 loan as an MBL and would comply with all of the requirements of Part 723 in making this loan because the loan caused the aggregate amount of business purpose loans to the member to exceed the \$50,000 threshold in § 723.1(b)(3). The credit union, therefore, must comply, for example, with the rule's direct experience requirements and the LTV standards when making the loan, as well as count the MBL against the credit union's aggregate MBL limit in § 723.16. When the member pays down the amount of the total business purpose loans owed to the credit union so that the aggregate amount falls below the \$50,000 threshold, the credit union is no longer required to report the \$40,000 loan as an MBL.

For purposes of the loans-to-one borrower limitation under § 723.8, the same calculation applies. The \$40,000 MBL applies towards the member's one borrower limit of the greater of 15% of the credit union's net worth or \$100,000, until the aggregate amount of business purpose loans held by the member is less than \$50,000. The member, however, is still subject to the Federal Credit Union Act's limitation on the total amount of loans made to one borrower of no more than 10% of the credit union's unimpaired capital and surplus. 12 U.S.C. 1757(5)(A)(x).

Another commenter asked for clarification on the manner in which a loan that has a partial guarantee from the SBA is analyzed with the NMBLB definition. As discussed in the 1999 final rule's preamble, a credit union only counts the amount of the loan that is not guaranteed by the SBA towards the \$50,000 threshold in § 723.1(b)(3) to determine if a business purpose loan is an MBL. 64 FR 28721, 28722, May 27, 1999. Consistent with this interpretation, a credit union that makes a \$100,000 business purpose loan, of which 75% of the loan amount is guaranteed by a government agency, counts only \$25,000 towards the MBL threshold. 12 CFR 723.1(b)(3). Because this amount of \$25,000 is less than \$50,000, the loan is not an MBL and is not subject to Part 723.

This example demonstrates loan analysis for purposes of Part 723:

Loan 1 to Company in January 2003: \$40,000.

Loan 2 to Company in February 2003: \$80,000 with a 75% government guarantee.

- Loan 1 is not an MBL because it is under the \$50,000 threshold.

- Loan 2 has an NMBLB of \$20,000 (25% of \$80,000) but when added to Loan 1, the amount of business purpose loans to the member exceeds \$50,000, so Loan 2 is an MBL and must comply with all of the requirements of Part 723.

- FCU must obtain a lien on Company's collateral valued at \$100,000 in order to make Loan 2.

- FCU counts \$20,000 against its aggregate MBL limit and \$20,000 towards Company's limit on loans to one borrower.

- FCU must factor the entire loan amount of Loan 2, \$80,000, as an MBL into the standard RBNW calculation of the PCA rule until the loan is fully paid.

Loan 1 is paid down to \$15,000 in April 2003.

- Loan 2 is no longer an MBL for purposes of Part 723 because the total amount of business purpose loans to Company is \$35,000.

Loan 3 is a participation purchased in a loan made to Company on May 2003: \$25,000

- Loan 3 is an MBL because combined with the NMBLBs of Loans 1 and 2, Company's aggregate NMBLBs is \$60,000.

Loan 4 Unsecured Line of Credit to Company in June 2003: \$15,000.

- Loan 4 is an MBL because Company's aggregate NMBLBs for all four loans totals \$75,000, which exceeds the \$50,000 threshold.

- As of June 2003, FCU counts Loan 3's NMBLB of \$25,000 and Loan 4's NMBLB of \$15,000 against its aggregate MBL cap and against Company's loans-to-one borrower limit.

- For PCA purposes, FCU calculates the standard RBNW based on the outstanding balances on Loans 2, 3, and 4 in accordance with § 702.106(b).

One commenter asked that NCUA amend its Form 5300 call report instructions to reflect the changes in the final rule. NCUA will amend the call report after the agency gives the public notice and an opportunity to comment on any proposed changes in accordance with the Administrative Procedure Act and the Paperwork Reduction Act of 1995. The Board anticipates that this process will take several months.

The final rule deletes and reserves § 723.9, which addressed calculation of the limit on loans to one borrower, because the NMBLB definition contains all of the rule's exclusions from this calculation, making § 723.9 unnecessary.

Effect of Final Rule on Approved State Rules

State supervisory authorities may continue to seek exemptions for their FISCUs from NCUA's MBL rule as set