

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Parts 702 and 723**

**RIN 3133-AE89**

**Commercial Lending**

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

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is amending the definition of member business loan (MBL) in its MBL rule with respect to 1- to 4- family dwellings. This regulatory change conforms to a recent amendment to the Federal Credit Act (FCU Act) by the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act).

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428 or telephone (703) 518-6540.

## **SUPPLEMENTARY INFORMATION**

- I. Background
- II. Good Cause Exception
- III. Regulatory Procedures

### **I. Background**

On May 24, 2018, the President signed the Economic Growth Act,<sup>1</sup> which among other things, amended the definition section of the MBL provisions of the FCU Act.<sup>2</sup> Prior to the Economic Growth Act, the FCU Act defined an MBL, in relevant part, as any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purpose but does not include an extension of credit that is fully secured by a lien on a 1-to 4- family dwelling that is the primary residence of a member.<sup>3</sup>

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<sup>1</sup> Economic Growth, Regulatory Relief, and Consumer Protection Act, S.2155, 115<sup>th</sup> Cong. (2018).

<sup>2</sup> *Id.* at § 105.

<sup>3</sup> 12 U.S.C. §1757a(c)(1)(B)(i).

The Economic Growth Act removed from that definition the words “that is the primary residence of a member.” As a result, the definition of an MBL now excludes all extensions of credit that are fully secured by a lien on a 1- to 4- family dwelling regardless of the borrower’s occupancy status. Because these kinds of loans are no longer considered MBLs, they do not count towards the aggregate MBL cap imposed on each federally insured credit union by the FCU Act.

This statutory amendment became effective upon enactment of the Economic Growth Act. The Board is issuing this final rule to conform the NCUA’s MBL rule to the revised FCU Act.

This final rule also revises the NCUA’s Prompt Corrective Action rule, Part 702,<sup>4</sup> by amending outdated citations to the NCUA’s MBL rule. These changes are technical in nature and will not have any substantive effect.

## **II. Good Cause Exception**

The Board is issuing this rule as final, without having first provided notice and an opportunity for public comment because the NCUA for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(3)(B). This rule implements a mandated statutory change that provides the NCUA with no choice and no

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<sup>4</sup> 12 CFR part 702.

discretion. The Board finds these reasons are good cause to dispense with the APA's notice and comment requirements.

### **III. Regulatory Procedures**

#### *1. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501, *et seq.*) (PRA), the NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements associated with Part 723 are currently approved by OMB and assigned OMB control number 3133-0101. This rule will not impose any new paperwork burdens or amend existing paperwork burdens, as defined by the PRA.

#### *2. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the APA. The NCUA believe this final rule is "major" within the meaning of the relevant sections of SBREFA. The NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

### *3. Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. § 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has therefore determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

### *4. Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

## **List of Subjects in**

### **12 CFR Part 702**

Credit unions, Reporting and recordkeeping requirements.

### **12 CFR Part 723**

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on \_\_\_\_\_.

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Gerard Poliquin  
Secretary of the Board

For the reasons discussed above, the NCUA amends 12 CFR Parts 702 and 723 as follows:

**PART 702 – CAPITAL ADEQUACY**

1. The authority citation for Part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

2. Revise §§ 702.104 (a), (b), and (g) by replacing “12 CFR 723.1” with “12 CFR 723.8(b)” wherever it appears in those sections, and by replacing “12 CFR 723.20” with “12 CFR 723.10” wherever it appears in those sections.

**PART 723 — MEMBER BUSINESS LOANS; COMMERCIAL LENDING**

3. The authority citation for Part 723 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

4. Revise § 723.8(b) by adding subsection (3) to read as follows:

**§723.8 Aggregate member business loan limit; exclusions and exceptions.**

\* \* \* \* \*

(b) \* \* \*

(3) Any loan that is fully secured by a lien on a 1- to 4- family dwelling.

5. Revise 723.8(c) to read as follows:

(c) Exception. Any loan secured by a vehicle manufactured for household use that will be used for a commercial, corporate, or other business investment property or venture, or agricultural purpose, is not a commercial loan but it is a member business loan (if the outstanding aggregate net member business loan balance is \$50,000 or greater) and must be counted toward the aggregate limit on a federally insured credit union's member business loans.

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