

1301:9-2-24

Member business loans.

(A) A "member business loan" is defined as any loan, line of credit or letter of credit which will be used for commercial, corporate, business, investment property or venture, or agricultural purpose. Exceptions to this definition are:

- (1) Loans fully secured by a lien on an owner occupied one-to-four-family dwelling;
- (2) Loans fully secured by shares in the credit union or deposits in other financial institutions;
- (3) Aggregated member business loans to a member or an associated member for less than fifty thousand dollars;
- (4) Loans fully insured or guaranteed by the federal, state, or local government, including its political subdivisions or by an agency of the federal, state, or local government; and
- (5) Loans granted by a corporate credit union to another credit union, a credit union to another credit union, or a credit union to a credit union service organization(s).

(B) Definitions.

- (1) "Associated member" means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.
- (2) Specific to this rule, " immediate family member" means a spouse or other family member living in the same household.
- (3) "Loan-to-value" (LTV) ratio means the quotient of the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.
- (4) "Construction or development loan" means a financing arrangement for the purpose of acquisition of property or rights to property, including land or structures, with the intent of conversion into income-producing property including residential housing for rental or sale, commercial, industrial use, or similar use.

- (C) For member business loans made other than to an individual, the credit union's records shall indicate the intended source of repayment and the borrower's capacity to service the debt. As a minimum, the credit union shall obtain financial statements of the business and tax returns for the three years immediately preceding the application for credit. Where there is security other than real estate, the file shall contain documentation indicating that a security interest has been created and perfected in favor of the lender. Financing statements are evidence of perfection for most types of collateral used in commercial financing. Credit unions may make working capital or seasonal loans which provide temporary capital in excess of normal needs and are repaid at the end of the cycle or season, by converting inventory and accounts receivable into cash. If a credit union engages in this type of lending, sufficient accounts receivable and/or inventory shall be pledged as collateral.
- (D) Term member business loans granted for the purpose of acquiring capital assets such as plant and equipment shall be secured, and require amortization because of the time involved and the greater amount of risk inherent in such loans. Loan agreements on such credit shall contain certain restrictive covenants during the life of the loan.
- (E) The board of directors shall adopt specific written member business loan policies, which shall be reviewed by the board at least annually. The policies shall take into consideration, and address the following:
- (1) Particular types of member business loans which the credit union may make;
 - (2) The credit union's trade area for member business loans;
 - (3) Maximum amount of credit union assets, in relation to net worth, that may be invested in member business loans, and maximum amount to be invested in given categories or type of member business loans;
 - (4) Maximum amount of credit union assets in relation to reserves that may be lent to any individual member or group of associated members;
 - (5) An objective appraisal of the ability of the borrower to repay the loan;
 - (6) Qualifications and experience of personnel involved in making and administering business loans with a minimum of two years direct experience in business loans;
 - (7) Balance sheet data; trend and structure analysis; ratio analysis of cash flow income and expenses; leveraging; comparison with industry averages; receipt of and periodic updating of financial statements; and other documentation including tax returns;

(8) Collateral requirements, including loan to value ratios which shall not exceed the lesser amount of eighty per cent of the appraised value or eighty per cent of the sale price; appraisals; title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is re-evaluated;

(9) Identification by position of those individuals prohibited from receiving member business loans;

No credit union shall make member business loans to the following non-volunteer senior management employees or to any associated member or immediate family member of such employees:

(a) The credit union's chief executive officer;

(b) Any assistant chief executive officer;

(c) The chief financial officer; or

(d) The chief lending officer.

(10) Provision for periodic disclosure to the credit union's members, of the aggregate dollar amount of business loans made by the credit unions;

(11) Loan monitoring, servicing and follow-up procedures, including collection practices;

(12) Loans shall be granted on a fully secured basis by collateral as follows:

(a) Second lien for LTV ratios of up to eighty per cent;

(b) First lien for LTV ratios of up to eighty per cent;

(c) First lien with an LTV ratio in excess of eighty per cent shall be granted only where the value in excess of eighty per cent is covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union and the superintendent or insurance or guarantees by or subject to advance commitment to purchase by an agency of the federal, state or local government, and in no event shall the LTV ratio exceed ninety-five per cent.

(13) Guidelines for purchase and sale of business loans and business loan participations, if the credit union engages in that activity.

- (F) Unless prior written approval is granted by the superintendent, allowing a greater amount to be lent to an individual member or a group of associated members, the aggregate business loans to such member or group shall not exceed fifteen per cent of the credit union's reserves (less allowance for loan losses account) net worth or one hundred thousand dollars, whichever is greater. If any portion of a member business loan is secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by the federal, state or local government including its political subdivisions, or by any agency of the federal, state or local government, such portion shall not be calculated in determining the fifteen per cent limit.
- (G) Maturities on member business loans shall be consistent with the purpose, security, creditworthiness of the borrower, and sound lending policies.
- (H) Construction and development loans granted under this rule to finance the construction or development of commercial or residential property shall be subject to the following additional provisions:
- (1) The aggregate of all such loans, excluding any portion of a loan secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by the federal, state or local government, its political subdivision or by any agency of the federal, state, or local government, shall not exceed fifteen per cent of net worth;
 - (2) The borrower shall have a minimum of:
 - (a) Thirty per cent equity interest in the project being financed if the loan is for land development; or
 - (b) Twenty-five per cent equity interest in the project being financed if the loan is for construction or a combination of construction and development;
 - (3) Funds for such projects shall be released following on-site inspections by independent, qualified personnel in accordance with a preapproved draw schedule and any other conditions as set forth in the loan documentation.
- (I) No credit union shall grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with the loans is tied to the profit of the business or commercial endeavor for which the loan is made. A credit union shall not take an equity interest in the commercial endeavor in lieu of payment.
- (J) All loans, lines of credit, or letters of credit, the proceeds of which may be used for a commercial, corporate, business, investment property or venture, or agricultural

purpose, shall be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the superintendent.

(K) All member business loans shall be secured by collateral in accordance with this section, except the following:

(1) A credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit;

(2) A loan made by a credit union if:

(a) The amount of the loan does not exceed one hundred thousand dollars; the aggregate of all unsecured member business loans does not exceed ten percent of the credit union's net worth; and

(b) The credit union has a net worth of at least seven percent.

(L) Unless otherwise determined by the national credit union administration or the superintendent, a credit union whose accounts are insured pursuant to 12 USC 1783, as amended in 2009 are subject to the provisions of 12 USC 1757a, as amended in 1998 and 12 CFR Part 723, effective as of 2012.

(M) If requested by a credit union, the superintendent may approve a less restrictive member business loan policy than provided by this rule. The request shall be made in writing and filed with the superintendent. It shall include a copy of the proposed member business loan policy and a certified copy of the resolution of the board of directors adopting the policy. The credit union shall also substantiate that it has the expertise, capital, management, and experience to implement the proposed policy. The superintendent shall notify the credit union not more than twenty business days after the filing of the request or policy whether it is denied, approved, or needs modification. If the superintendent does not respond within twenty business days after the filing of the request or policy, it shall be deemed approved; unless, the superintendent notifies the credit union in writing within twenty business days of the credit union's request being filed that additional documentation is required. If additional documentation is required, the credit union shall have thirty days to file the additional documentation with the superintendent. If the superintendent does not respond within twenty business days of receipt of the additional information, the request shall be deemed approved.

Five Year Review (FYR) Dates:

Certification

Date

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