

§ 723.19

§ 723.19 What are the recordkeeping requirements?

You must separately identify member business loans in your records and in the aggregate on your financial reports.

§ 723.20 How can a state supervisory authority develop and enforce a member business loan regulation?

(a) The NCUA Board may exempt federally insured state chartered credit unions in a given state from NCUA's member business loan rule if NCUA approves the state's rule for use for state chartered federally insured credit unions. In making this determination, the Board is guided by safety and soundness considerations and reviews whether the state regulation minimizes the risk and accomplishes the overall objectives of NCUA's member business loan rule in this part. Specifically, the Board will focus its review on:

- (1) The definition of a member business loan;
- (2) Loan to one borrower limits;
- (3) Written loan policies;
- (4) Collateral and security requirements;
- (5) Construction and development lending; and
- (6) Loans to senior management.

(b) To receive NCUA's approval of a state's member business loan rule, the state supervisory authority must submit its rule to the NCUA regional office. After reviewing the rule, the region will forward the request to the NCUA Board for a final determination.

(c) A state supervisory authority that administers a state member business loans rule, approved by NCUA under §§ 723.20(a) and (b), may rescind its rule without NCUA approval. A state supervisory authority should notify NCUA if it anticipates rescinding its rule to foster regulatory continuity and cooperation.

[64 FR 28729, May 27, 1999, as amended at 69 FR 27828, May 17, 2004; 70 FR 75722, Dec. 21, 2005]

§ 723.21 Definitions.

For purposes of this part, the following definitions apply:

Associated member is any member with a shared ownership, investment, or other pecuniary interest in a busi-

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ness or commercial endeavor with the borrower.

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income producing property or convert the use of income producing property to a different use from its use before the major renovation or development or is a major expansion of its current use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income producing property that do not change its use. Examples to illustrate when a loan is or is not a construction or development loan follow.

Example 1. If a member borrows money to repair a roof on a barn on an existing farming operation, this is a member business loan but is not a construction or development loan. A construction or development loan does not include a loan for routine maintenance of a borrower's existing business or a loan to enhance or expand a borrower's existing business unless those renovations convert the property to a different use or are so major as to be considered the equivalent of converting the use of the property.

Example 2. A loan to convert a movie theater into a restaurant is a construction or development loan. A loan to convert a large Victorian home used for residential purposes into a six-room inn also would be a construction or development loan. In both instances, the loans are for the purpose of converting the use of the properties. By contrast, a loan to repair the roof or replace the carpet and wallpaper of an operating inn would not be a construction or development loan as it neither converts the use of the property, nor is so major a renovation to be considered the equivalent of converting the use of the property.

Example 3. A loan to expand the parking lot of a small strip shopping center would not be a construction or development loan, but a loan to renovate the small strip shopping center into a mega-mall would be a construction or development loan as it would be viewed as a major renovation that converts the use of the property.