

December 18, 2008

Guy A. Messick, Esq.  
Messick & Weber P.C.  
108 Chesley Drive  
Media, PA 19063-1712

Re: Applicability of Certain Regulatory Requirements for SBA loans.

Dear Mr. Messick:

You have asked if the requirements NCUA's member business lending (MBL) rule establishes for maximum loan to value ratios apply to loans guaranteed by the U.S. Small Business Administration (SBA). No, the rule expressly excludes SBA program loans from its loan to value restrictions.

You state your client, a credit union service organization, provides commercial loan underwriting services to credit unions. One of these credit unions, a federally insured state-chartered credit union, has made several loans with SBA guarantees. You indicate the loans meet all applicable SBA lending criteria. The credit union's examination report, prepared jointly by the NCUA and state regulatory authorities, criticizes some of these loans for failing to meet the loan to value requirements in NCUA's MBL rule. 12 C.F.R. §723.7. As a matter of clarification, we note, contrary to a statement in your letter, the loans are not subject to a cease and desist order but addressed in a document of resolution in an examination report, instructing the credit union to ensure the loans are in regulatory compliance.

The MBL rule generally governs commercial lending by federally insured credit unions and sets out several restrictions and limitations, including collateral and equity requirements. 12 C.F.R. Part 723. The rule applies to all federal credit unions and to federally insured, state chartered credit unions except for those in states that have adopted a comparable rule approved by the NCUA Board. 12 C.F.R. §§741.203(a), 723.20.

Although the rule establishes limits governing loan to value ratios, it provides an exception to those requirements for loans made pursuant to an SBA loan program:

The collateral and security requirements of §723.3 and §723.7 do not apply to member business loans made as part of a Small Business Administration guaranteed loan program.

12 C.F.R. §723.4(c). In the preamble to the amendment adding this provision to the rule, the NCUA Board noted the collateral requirements of the SBA's guaranteed loan programs are not consistent with those in the rule. Because the Board wanted to

encourage credit unions to participate in the various programs sponsored by the SBA, the amendment removed the impediments by exempting SBA guaranteed loans from the rule's collateral requirements. 69 Fed.Reg. 62563, 62564 (October 27, 2004).

Accepting your representation that the loans in issue otherwise comply with applicable SBA requirements, there would appear to be no violation of the loan to value provisions in the MBL rule.

Sincerely,

/S/

Sheila A. Albin  
Associate General Counsel

OGC/RPK:bhs  
08-1109