

May 25, 2005

Thomas J. Brown, President/CEO
High Desert Federal Credit Union
15099 Kamana Road
Apple Valley, California 92307-1388

Re: Market Value in Construction Member Business Loans (MBLs).

Dear Mr. Brown:

You have asked if a credit union may include closing costs as part of the market value when it calculates the amount of equity the borrower has in a construction project. No, under NCUA's MBL rule a credit union may not because closing costs do not contribute to the market value of the project.

The MBL rule requires a borrower to have a 25% equity interest in the market value of a construction or development project, unless the credit union obtains a waiver from the NCUA or the loan is otherwise exempt. 12 C.F.R. §723.3(b). Therefore, to determine the amount of required equity, a credit union must ascertain the market value of the project at the time the loan is made. Id. The NCUA Board clarified that the equity requirement is based on the cost amount of the project when it incorporated a previous legal opinion issued by the Office of General Counsel into the preamble of the final MBL rule issued in 2003. 68 Fed. Reg. 56,537, 56,540 (Oct. 1, 2003); OGC Legal Opinion 01-0422, dated June 7, 2001. The preamble states that a project's market value at loan closing includes the appraised value of the land on which the project is to be built, less any liens, plus the cost to build the project. 68 Fed. Reg. 56,540.

We believe that a credit union cannot add closing fees, such as points, mortgage fees and finance charges, related to the financing of an MBL to the market value of a construction project. While these costs are incidental to the financing of a construction MBL and may be part of the acquisition cost for the borrower, they do not increase the project's value.

Sincerely,

/s/

Sheila A. Albin
Associate General Counsel

OGC/CJL:bhs
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