

February 3, 2006

Cary C. Boyden, Esquire
Boyden, Cooluris, Livingston, & Saxe, P.C.
400 Capitol Mall, Ste 1625
Sacramento, CA 95814

Re: Application of Member Business Loan (MBL) Rule to Commercial
Vehicle Leases.

Dear Mr. Boyden:

You have asked if the MBL rule applies to a credit union loan to finance a commercial vehicle lease. The MBL rule, subject to certain exceptions, applies to any loan, line of credit, or letter of credit where the borrower uses the proceeds for a commercial, corporate, or business purpose. 12 C.F.R. §723.1(a)-(b). If the MBL rule applies, you contend a loan to finance a commercial vehicle lease cannot meet the loan-to-value ratio (LTV) requirements of the rule. 12 C.F.R. §723.7(a). In these circumstances, we suggest a credit union can request a waiver for a loan or group of loans that cannot or does not meet the LTV requirements of the MBL rule. 12 C.F.R. §723.10(d).

The information you provided indicates your credit union client wants to finance leases for fleets of vehicles used for commercial purposes. You have considered the application of the requirements of both NCUA's leasing and MBL regulations and contend that, given the nature of loans to finance leases, borrowers cannot meet the LTV requirements of the MBL rule. 12 C.F.R. Part 714 and §723.7(a). You note that the "full payout requirement" in the leasing rule serves a function similar to the LTV requirement in the MBL rule. 12 C.F.R. §714.4(b). Your inquiry does not state if your client is a federal credit union (FCU) or a federally insured state-chartered credit union (FISCU), so we note that, while Part 723, the MBL rule, applies to both FCUs and FISCUs, Part 714 applies to FCUs but not FISCUs. 12 C.F.R. Parts 714, 723.

The NCUA has long recognized the authority of FCUs to finance leasing as long as the leasing arrangement is the functional equivalent of a secured loan. 65 Fed. Reg. 34581, 34582-83 (May 31, 2000). NCUA's leasing rule, 12 C.F.R. Part 714, authorizes FCUs to engage in direct and indirect leasing and closed and open end leasing subject to the requirements of the leasing regulation.

For both FCUs and FISCUS, if the purpose of a loan makes it subject to the MBL rule, for example, a loan to finance the lease of a vehicle for commercial use, the loan must comply with all the terms of the MBL rule. Generally, the LTV

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requirement for MBLs is 80%, meaning that the borrower will have a 20% equity interest in the collateral. 12 C.F.R. §723.7(a). We appreciate that the LTV requirements in the MBL rule do not appear to fit in a leasing transaction because the borrower, as a lessee, will not likely have a 20% equity interest in the leased property, the collateral. Nevertheless, the LTV requirements are specifically identified as a requirement that a regional director may waive for a loan or a category of loans. 12 C.F.R. §723.10. A regional director may find it appropriate to consider if the net, full payout, and residual value requirements of the leasing regulation would adequately address safety and soundness considerations. 12 C.F.R. §714.4. These requirements, as noted above, already apply to FCUs.

Please contact Staff Attorney Tonya Green or me if you have any questions.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MIG/SAA:bhs
05-1232