



State of Washington

**DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CREDIT UNIONS**

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December 07, 2010

Sent by email

“A”

**DCU Interpretive Letter I-10-05**

Subject: NCUA Regulation Flex in 12 C.F.R. 742.4 and personal guarantees for MBLs

Dear “A”:

Thank you for your email dated November 30, 2010. You asked if the recent changes to NCUA’s Regulatory Flexibility Program that eliminated the waiver of obtaining a personal liability and guarantee from principals for a member business loan (MBL) apply to Washington state chartered credit unions because “when I went into the NCUA website to review the guidance the verbiage stated all credit unions with no reference to the type of charter.” [12 C.F.R. 742.4 (a) (4)]

I first checked the applicability of NCUA Regulatory Flexibility Program to Washington state chartered credit unions and then I reviewed the Washington member business loan rule.

**NCUA Reg Flex Rule**

The 12 C.F.R. 742 Regulatory Flexibility Program (Reg Flex) applies to federal chartered credit unions, not state credit unions. You are correct that it may be misleading when reading 12 C.F.R. 742 as a stand-alone section with the usage of “all credit unions”. To determine if NCUA Part 742 applies to state chartered federally insured credit unions, I checked to see if it is a requirement for federal deposit insurance. My search of 12 C.F.R. 741 Requirements for [Deposit] Insurance shows NCUA Part 742 is not referenced and therefore does not apply to state chartered federally insured credit unions. As an additional reference, the NCUA Examiner’s Guide, Chapter 18 Regulatory Compliance, Appendix 18B, Reg Flex states the exam objective as follows:

“Determine whether *federal* credit unions qualify for exemptions or additional authorities provided by the Regulatory Flexibility Program (RegFlex). (Italics added)

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## **Federal Parity**

I also checked to determine if a Washington state chartered federally insured credit union could invoke federal parity for the Reg Flex powers authorized for a federally chartered credit union. For your information, RCW 31.12.404 allows a state chartered credit union to exercise the same powers and authorities as of July 22, 2001 for a federal chartered credit union, or the Washington Director of Credit Union must adopt a state rule regarding which federal powers and authorities (if any) granted after July 22, 2001 for a federal chartered credit union are allowed for a state chartered credit union. I have not enacted a rule similar to 12 C.F.R. 742.

## **Washington MBL Rule**

Next, I reviewed if a personal liability and guarantee from principals for a MBL is required in the Washington MBL rule.

First, Washington state chartered credit unions are required to comply the Washington MBL rules in Chapter 208-460 WAC, not the federal rules for MBLs. For a copy of the Washington state MBL rule, see <http://apps.leg.wa.gov/wac/default.aspx?cite=208-460&full=true> . As FYI, 12 C.F.R. 723.20 (a) exempts federally insured state chartered credit unions in a given state from NCUA's MBL rule if NCUA approves the state's rule for use for its state chartered federally insured credit unions. Washington received a non-objection letter from NCUA on August 7, 2000 regarding a state specific MBL rule, followed by the NCUA Board approval on January 18, 2001. Washington's state MBL rule, as written and approved by NCUA Board, was subsequently effective on May 1, 2001.

Second, Washington's MBL rule does not require a personal guarantee as part of the collateral and security requirements in WAC 208-460-060. However, I agree with NCUA's recent analysis of the importance of obtaining a personal guarantee on MBLs. NCUA's analysis states<sup>1</sup>:

The [federal] MBL rule requires a credit union making a business loan to obtain the personal liability and guarantee of the borrower's principals as part of the rule's collateral and security requirements. 12 CFR 723.7(b).

*(con't next page)*

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<sup>1</sup> 12 CFR Parts 701, et. al.; NCUA Final Rule on Fixed Assets, Member Business Loans, and Regulatory Flexibility Program, a copy is available at [http://www.ncua.gov/Resources/RegulationsOpinionsLaws/final/75fr66295\[2010-27149\].pdf](http://www.ncua.gov/Resources/RegulationsOpinionsLaws/final/75fr66295[2010-27149].pdf) .

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...NCUA stated that it believed obtaining the principals' personal guarantee is a prudent underwriting practice that greatly enhances the likelihood of loan repayment and should be required of all credit unions. NCUA also stated that a credit union that fails to do so subjects itself to increased risk, particularly in economic times when MBL delinquencies and MBL charge-offs are increasing. NCUA noted that credit unions would continue to have the option of seeking a waiver of the guarantee requirement under 723.10(e).

Further, while a Washington state chartered credit union is not required to obtain a personal guarantee on every MBL, my opinion is that obtaining a personal guarantee is a “safe and sound practice” for MBLs.

### **Conclusion**

The NCUA Reg Flex rule does not apply to a Washington state chartered credit union.

Although the Washington MBL rule does not require a Washington state chartered credit union to obtain a personal liability and guarantee from principals (personal guarantee) for a MBL in WAC 208-460-060, I believe it a “safe and sound practice” to obtain a personal guarantee. In general, I expect a credit union to obtain a personal guarantee on a MBL and its policy should provide under what circumstances (rare) when a personal guarantee would be waived.

Please do not hesitate to contact me if you have additional questions. I can be reached by phone at (360) 902-8778 or by email at [Linda.Jekel@dfi.wa.gov](mailto:Linda.Jekel@dfi.wa.gov) .

Sincerely,

/S/

Linda K. Jekel  
Director of Credit Unions