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November 15, 2018

Division of Credit Unions Revised Interpretive Letter I-18-04

TO: All Washington State-Chartered Credit Unions

FROM: Linda Jekel, Director of Division of Credit Unions

SUBJECT: Loans secured by a 1- to 4-family dwelling and member business lending

Question & Short Answer

Is a loan secured by a 1- to 4-family dwelling exempt from the Washington state definition of member business loan ("MBL") and excluded from the calculation of the aggregate MBL limit?

Answer: Yes.

Analysis

U.S. Senate Bill 2155, entitled the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "S. 2155") has amended the definition of a member business loan, effective as of June 4, 2018. Section 105 of S. 2155 deletes from Section 107A of the Federal Credit Union Act[1] the requirement that a loan secured by a 1- to 4-family dwelling must be the primary residence of the member in order to be excluded from the definition of "member business loan" and the calculation of the aggregate MBL limit.

The relevant portions of the state MBL rule, as presently written, are: (1) The definition of a MBL in WAC 208-460-010; and (2) the calculation of the aggregate limit of MBLs set forth in WAC 208-460-130 (collectively, "Existing State MBL Provisions"). While every other aspect of the State MBL Rule, Chapter 208-460 WAC, remains in full force and effect, the Existing State MBL Provisions enumerated above are no longer valid to the extent of any conflict with the above-

[1] Specifically, the Federal Credit Union Act, at 12 U.S.C. §1757a(c)(1)(B)(i).

referenced *federal* MBL definition as amended by S. 2155, which excludes any loan secured by a 1-to 4-family dwelling. Section 107A of the Federal Credit Union Act, as amended by S. 2155, specifically preempts state law to the extent of any conflict with the latter. Therefore, on account of federal preemption of the above-enumerated Existing State MBL Provisions, a Washington state-chartered credit union may look to Section 107A of the Federal Credit Union Act, as amended by S. 2155, and exempt a loan secured by a 1- to 4-family dwelling from the definition of a MBL and the calculation of the aggregate limit of MBLs as stated in the Existing State MBL Provisions.

Conclusion

Due to the enactment of S. 2155, a Washington state-chartered credit union is authorized to exclude a loan secured by a 1- to 4-family dwelling from consideration as a MBL and may therefore exclude a loan secured by a 1- to 4-family dwelling in its calculation of its aggregate MBL limit. All Washington state-chartered credit unions may act in reliance upon this Interpretive Letter even though Chapter 208-460 WAC is not being amended to update the state MBL definition and aggregate MBL limit to conform to federal law.[2]

This Interpretive Letter is applicable to all Washington state-chartered credit unions. If you have any questions, please do not hesitate to contact Linda Jekel, Director of Credit Unions, at linda.jekel@dfi.wa.gov, or (360) 902-8778.

Disclaimer: The Division of Credit Unions does not provide legal advice. This interpretation is based on the facts as presented to Division of Credit Union, provided as general guidance only, and is not a substitute for legal advice to the credit union.

[2] Even though Section 107A of the Federal Credit Union Act, as amended by S. 2155, is self-executing and effective as of June 4, 2018, the National Credit Union Administration ("NCUA") has not yet implemented a rule reiterating Congress' mandate. While Washington state-chartered credit unions may rely upon this Interpretive Statement and follow S.2155 as of June 4, 2018, the Department has elected not to amend Chapter 408-460 RCW to conform to S., 2155 until such time as the NCUA amends its MBL Rule, at 12 C.F.R. Part 723, to in turn conform to the newly amended Section 107A of the Federal Credit Union Act.