

## **DCU Opinion Number 01-3**

**Date:** February 22, 2001

**From:** Parker Cann, Director of Credit Unions

**Subject:** Summary of Major Differences Between Washington's MBL Rule (As Approved by NCUA Board) and NCUA's MBL Rule

### **1. Definition of MBL clarified**

#### **Section 208-460-010(1)**

One of the key components of an MBL has been slightly changed here - from how the borrower "uses" the proceeds for specified purposes to how the borrower "intends to use" the proceeds for such purposes. I expect that this more closely reflects reality - that most credit unions actually look at what the borrower says he/she/it intends to do with the proceeds rather than monitoring the use of proceeds to determine after the fact whether they were actually used for business purposes.

### **2. Exemption from MBL definition clarified**

#### **Section 208-460-010(2)**

The exemptions here should apply only to loans for commercial, corporate, etc. purposes (what the rule refers to as "business purpose" loans). Otherwise the loans would not need an exemption. Wording has been added to (2) to clarify this issue. "Business purpose" is defined in the definitional section at the end.

In addition, the changes make it clearer that a credit union must aggregate all business purpose loans to member A with any individual business purpose loans to other members who are associated with member A in order to determine if the business purpose loans exceed the \$49,999 threshold.

In some places, the NCUA MBL rule refers to the "outstanding balance" of an MBL and in some places it refers to the "outstanding balance including unfunded commitments." In order to clarify this issue, the rule identifies the outstanding balance and unfunded commitments as the "amount" of an MBL, to distinguish it from the "outstanding balance" of an MBL. A definition has been added in the definitional section for the "amount" of an MBL. In the context of this section - exemptions from the definition of MBL - it is appropriate to use the "amount" concept, and the changes so provide.

The sentence added at the end of paragraph (2)(c) incorporates an NCUA interpretation.

### **3. Restrictions on MBL to directors expanded**

#### **Section 208-460-020(3)**

The NCUA rule prohibits a credit union from making an MBL to a compensated director unless the board approves the loan, with the interested director recused from

participating. It is more appropriate for these requirements to apply to MBL to all directors, not just MBL to compensated directors, and the changes reflect this. Consequently, the Washington rule is more restrictive in this respect than the NCUA rule.

#### **4. Regulatory decision-maker on waivers changed**

##### **Section 208-460-030(1)**

DFI's Director is named in the rule as the decision-making regulator on MBL waivers, instead of NCUA's Regional Director. (As you know, the DFI Director has delegated such authority to the Director of Credit Unions.) The one exception here is on waivers of the NCUA's appraisal requirements in 722.3 – the decision-maker remains NCUA's Regional Director. Consequently, except for an appraisal waiver request, all requests will be approved/disapproved by the Division after consulting with NCUA's Region VI on the request. See also 208-460-090 and -100.

In regard to existing waivers, the Division has determined to grandfather MBL waivers previously granted by the NCUA, to the extent that they are still operative. Some may not be operative, in whole or in part, because the Division's MBL rule is less restrictive in certain respects than the NCUA's MBL rule.

#### **5. Required equity on development/construction loans decreased; required experience increased**

##### **Section 208-460-030(2), (4)**

The rule reduces the minimum required equity from 35% to 30% for land development loans and from 35% to 25% for construction or combination development/construction loans. We view these equity requirements as LTV requirements.

As an offset to these changes, the rule increases the experience requirement from 2 to 5 years of direct experience with development/construction lending, for credit unions that do this type of lending. Consequently, the Washington rule is more restrictive in this respect than the NCUA rule.

#### **6. Requirement for individual with direct experience on MBL clarified**

##### **Section 208-460-040**

The rule has been changed to reflect that the MBL-experienced person is working for the credit union, not necessarily the Board of Directors.

The exception added at the end of the second sentence refers to the requirement in the prior section that if the credit union does development and construction lending, it must utilize a person with more than 5 years direct experience in this type of lending.

#### **7. Reference to “category or type” of MBL clarified**

##### **Section 208-460-050**

In some places the NCUA rule uses “category or type” and in some places it uses one word, either “category” or “type.” To avoid confusion, the rule uses “type” in these situations throughout the rule.

## **8. Requirement for MBL policies clarified**

### **Section 208-460-050(14)**

This subsection was added to require credit unions to adopt policies on MBL participations if they engage in that activity. In addition, a sentence was added at the end of the section as a regulatory recognition that every provision of the policy may not apply to every MBL.

## **9. New type of unsecured MBL allowed**

### **Section 208-460-060(1)(b)**

A new exception was added in paragraph (1)(b) to allow unsecured loans that individually do not exceed \$100,000 and that in the aggregate do not exceed 10% of net worth. The credit union cannot make such loans if its net worth is below 7%. Credit unions making this type of MBL (referred to below as (1)(b) loans) must file supplemental reports with their 5300s to demonstrate compliance with the requirements of (1)(b).

The supplemental reports should include relevant figures for (1)(b) loans, including, as of the end of the reporting period:

- A. The number of these loans outstanding
- B. The aggregate commitment amount for these loans
- C. B/A
- D. PCA net worth
- E. B/D expressed as a percentage
- F. Delinquency on these loans
- G. Charge-offs YTD on these loans

The reports will be due with 5300s, starting with the 5300 for the second quarter of 2001. Credit unions do not need to file the reports if they do not have any (1)(b) loans outstanding. The reports may be in a letter format.

The first exception in 208-460-060(1)(a) is merely a restatement of the existing exception for credit card LOCs in the NCUA rule.

## **10. Minimum LTV ratios clarified**

### **Section 208-460-060(2), (3), (4)**

The NCUA rule uses a matrix to set forth loan-to-value requirements. I felt that the matrix was confusing and have restated the LTV requirements of the matrix in the narrative in subsections (2), (3) and (4). I did not intend to change the effect of these LTV requirements – only to restate them in more understandable form.

Subsection (2) deals with a first lien only situation; (3) deals with a second (or lesser) priority lien only situation; (4) deals with multiple priority liens on the same collateral.

## **11. Personal guarantee requirement eliminated**

### **Section 208-460-060**

The personal guarantee requirement has been deleted in its entirety.

## **12. The term “associated members” clarified**

### **Section 208-460-070**

Use of the term “group of associated members” was somewhat confusing in the NCUA’s MBL rule. It appears that the purpose of the NCUA provision is to apply the MBL-to-one-borrower limit to the aggregate of a member’s MBL and any MBL to individuals who are associated with the member. I believe it is clearer to refer to MBL to “associated members” rather than MBL to a “group of associated members” in this respect and the rule has been so changed. The latter wording implies that only MBL to the group or entity of associated members would be aggregated with the member’s MBL.

## **13. Aggregate state MBL limit added**

### **Section 208-460-140(2)**

Wording was added to establish a state MBL limit - 3 times net worth - for those credit unions excepted from CUMAA’s aggregate MBL limits. Such a restriction does not exist in the NCUA’s MBL rule. Consequently, the Washington MBL rule is more restrictive in this respect than the NCUA rule.

## **14. Aggregate limit exception for LICUs and CDCUs made automatic**

### **Section 208-460-150(1)**

The exception for LICUs and Community Development Credit Unions is automatic with notice to DFI’s Director.

## **15. Definitions added, clarified**

### **Section 208-460-170**

New definitions were added to:

- Clarify the “amount” of an MBL
- Define “business purpose”
- Clarify “development or construction loan”
- Clarify “loan-to-value ratio”
- Clarify when one person is “associated” with another

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