

From: [Kennedy, Thomas](#)
To: [Regulatory Comments](#)
Subject: Thomas W Kennedy Comments on Proposed Rule 742, Regulatory Flexibility Program
Date: Thursday, April 08, 2010 1:19:17 PM

April 8, 2010

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: NCUA's Proposed Rule 742, Regulatory Flexibility Program – MBL personal liability

Dear Ms. Rupp:

I appreciate the opportunity to file comments on the Board's proposed changes to RegFlex and its potential impact on serving credit union members.

I believe the proposal to require personal liability on all MBLs will put credit unions at a competitive disadvantage and will eliminate opportunities to make loans to the highest quality MBL borrowers. Our competitors offer non-recourse loans for the highest credit quality borrowers. This rule will limit the amount of loans originated in the highest credit quality tier. Over time it can have the exact opposite effect of the Board's goal of improving credit quality. The amount of "A+ or minimal credit risk" loans in our MBL portfolio may actually decrease if enacted.

Here is an example of the limited use of non-recourse MBLs at our institution. The credit union's policies require the absence of personal liability to be escalated to the Business Loan Committee level so the issue is properly evaluated. A 120 month loan of \$350,000 was approved to a close-held entity on commercial real estate appraised at \$1.24M. The LTV was 28.3%. All underwriting criteria indicated this was a superior quality loan. This borrower would not have used the credit union if a personal guaranty was required as multiple lenders were offering non-recourse.

A one size fits all rule does not consider the fact that not all principals are equal. There can be owners that offer little to no credit enhancements to a loan. While our typical business practices are to obligate these individuals, it's not always practical. There is additional credit administration expense to underwrite and monitor non-critical guarantors.

Member/Borrowers also have legitimate reasons for requesting non-recourse loans and are willing to offer enhancements like larger equity positions. There can be estate planning reasons to remove contingent liabilities.

Although the Board is proposing to keep the case-by-case waiver, it is not practical to use a waiver request on a regular and continuing basis. For state chartered credit unions, the waiver process is even longer and can be a burden on the member. For example, once all origination documentation needed for final underwriting is obtained on real estate MBLs, a typical closing is held within 5-10 days thereafter. No astute business person is going to wait up to an additional 20-60 days to consummate a loan transaction while a waiver is being obtained. Even if the borrower is willing to wait, there are multiple interested parties in a real estate purchase (seller, realtors, etc.) that time is of the essence. Many, if not the majority, of real estate purchase contacts require a closing of the transaction in a period shorter than the average turn around for a Regional Director waiver. This is not a complaint against any Regional Director's office, but rather a reality that the case-by-case waiver process is time consuming as the state and NCUA conduct their due diligence.

If the NCUA believes there are credit unions not practicing safe lending standards by abusing the current RegFlex exemption, it can put greater restrictions on its use rather than eliminate it entirely. The Board

could limit such transactions to a percentage of capital (e.g. 100%, 50%, or 25%) and require credit unions to monitor and report the totals. The rule, as proposed, would limit our credit union's ability to compete for the highest quality loans in our markets.

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