

August 15, 2008

Jacob Cook, Executive Vice President
CASE Credit Union
4316 S. Pennsylvania
Lansing, MI 48910

Re: Member Business Loans (MBL) – Definition of Principal.

Dear Mr. Cook:

You have asked, in the context of making an MBL to a limited liability partnership (LLP), if the natural person owners of a 70% interest in the corporation that is the general partner in the LLP and owns only 30% of the LLP can provide the personal guarantee required by the MBL rule. No, natural persons with a majority interest in the LLP must each guarantee the full amount of the loan unless the credit union qualifies for the exemption from personal guarantees under the Regulatory Flexibility (RegFlex) Program.

NCUA's regulations regarding collateral and security requirements for MBLs impose loan to value ratio limits for MBLs and, with some exceptions, require credit unions to secure MBLs with the personal guarantee of a borrower's principals. 12 C.F.R. §§723.7(a), (b). A federal credit union (FCU) or federally insured state-chartered credit union (FISCU) that meets NCUA's RegFlex¹ standards is exempt from the personal guarantee requirement but may choose to incorporate it into its underwriting criteria. 12 C.F.R. §723.7(b); 12 C.F.R. §742.4(a)(4). FCUs and FISCUs that do not meet the RegFlex standards and are not exempt may still apply for a waiver of the requirements in §§723.7(a) and (b). 12 C.F.R. §§723.7(a), (b); 12 C.F.R. §723.10.

You have indicated a particular interest in the definition of "principal" in the limited liability partnership context. In that regard, OGC Legal Op. 00-0809, which is still valid, provides:

Who is a principal with respect to a limited liability partnership or a limited liability corporation, where the managing partner usually has a minority ownership position but has the authority to borrow and pledge assets? You further ask whether the managing partner must

¹ The RegFlex Program exempts from certain regulatory restrictions and grants additional powers to those credit unions that have demonstrated sustained superior performance as measured by CAMEL ratings and net worth classifications. 12 C.F.R. §742.1. A credit union may qualify for RegFlex treatment automatically or by application to the appropriate regional director. 12 C.F.R. §742.2. Also, a credit union's RegFlex authority can be lost or revoked. 12 C.F.R. §742.3.

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guarantee the entire amount of the loan or just the managing partner's *pro rata* share?

Natural person partners having a majority ownership interest in a partnership must each guarantee the full amount of a loan to a partnership.

OGC Legal Op. 00-0809 (September 21, 2000). Although the referenced RegFlex exemption was not in place at the time OGC Legal Op. 00-0809 was written, the definitions it contains are current.

Please contact Staff Attorney Frank Kressman or me with any questions or if we can be of further assistance.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

OGC/FSK:bhs
08-0548

Attachment