

**Comparison Handout for 2016-08-18 Rulemaking Meeting**

- 1. Compare 12 CFR 723.7 to WAC 208-460-020 (prohibitions) pages 1-3
- 2. Discuss WAC 208-460-090 and 208-460-100 (state waivers) page 3-5

Federal (2016)	State	Proposed
<p><b>§ 723.7 Prohibited activities.</b></p> <p>(a) <i>Ineligible borrowers.</i> A federally insured credit union may not grant a commercial loan to the following: (1) Any senior management employee directly or indirectly involved in the credit union’s commercial loan underwriting, servicing, and collection process, and any of their immediate family members;</p> <p>(2) Any person meeting the definition of an associated borrower with respect to persons identified in paragraph (a)(1) of this section; or</p> <p>(3) Any compensated director, unless the federally insured credit union’s board of directors approves granting the loan and the compensated director was recused from the board’s decision making process.</p> <p>(b) <i>Equity agreements/joint ventures.</i> A federally insured credit union may not grant a commercial loan if any additional income received by the federally insured credit union or its senior management</p>	<p><b>WAC 208-460-020 What member business loans are prohibited?</b></p> <p>(1) <b>Who is ineligible to receive a member business loan?</b></p> <p>You may not grant a member business loan to the following:</p> <p>(a) Your chief executive officer (typically this individual holds the title of president or treasurer/manager);</p> <p>(b) Any assistant chief executive officers (e.g., assistant president, vice-president, or assistant treasurer/manager);</p> <p>(c) Your chief financial officer (comptroller); (d) Any associated member or immediate family member of anyone listed in (a) through (c) of this subsection.</p> <p>(2) <b>Equity agreements/joint ventures.</b></p> <p>You may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for</p>	<p><b>WAC 208-460-020 What commercial loans are prohibited?</b></p> <p>(1) Who is ineligible to receive a commercial loan?</p> <p>You may not grant a commercial loan to the following:</p> <p>(a) An executive officer, which for purposes of this section is defined as a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the credit union, whether or not, the officer has an official title;</p> <p>(b) Any senior management employee directly or indirectly involved in the credit union’s commercial loan underwriting, servicing, and collection process;</p> <p>(c) A director unless the board of directors approves granting the loan and the director is recused from the</p>

<p style="text-align: center;"><b>Federal (2016)</b></p>	<p style="text-align: center;"><b>State</b></p>	<p style="text-align: center;"><b>Proposed</b></p>
<p>employees is tied to the profit or sale of any business or commercial endeavor that benefits from the proceeds of the loan.</p> <p>(c) <i>Conflicts of interest.</i> Any third party used by a federally insured credit union to meet the requirements of this part must be independent from the commercial loan transaction and may not have a participation interest in a loan or an interest in any collateral securing a loan that the third party is responsible for reviewing, or an expectation of receiving compensation of any sort that is contingent on the closing of the loan, with the following exceptions:</p> <p>(1) A third party may provide a service to the federally insured credit union that is related to the transaction, such as loan servicing.</p> <p>(2) The third party may provide the requisite experience to a federally insured credit union and purchase a loan or a participation interest in a loan originated by the federally insured credit union that the third party reviewed.</p> <p>(3) A federally insured credit union may use the services of a credit union service organization that otherwise meets the requirements of § 723.3(b)(3) of this part even if the credit union service</p>	<p>which the loan is made.</p> <p>(3) <b>Loans to directors.</b> A credit union may not grant a member business loan to a director unless the board of directors approves granting the loan and the director is recused from the decision-making process.</p>	<p>decision-making process; and</p> <p>(d) Any associated member or immediate family member of anyone listed in (a) or (b) of this subsection. Immediate family means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.</p> <p><b>(2) Equity agreements/joint ventures.</b> You may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.</p> <p><b>(3) Conflicts of interest.</b> Any third party used by a credit union to meet the requirements of this chapter must be independent from the commercial loan transaction and may not have a participation interest in a loan or an interest in any collateral securing a loan that the third party is responsible for reviewing, or an expectation of receiving compensation of any sort that is contingent on the closing of the loan, with the following exceptions:</p>

<b>Federal (2016)</b>	<b>State</b>	<b>Proposed</b>
<p>organization is not independent from the transaction, provided the federally insured credit union has a controlling financial interest in the credit union service organization as determined under GAAP.</p>		<p>(a) A third party may provide a service to the credit union that is related to the transaction, such as loan servicing or underwriting;                      (b) If a third party provides consultation in connection with a credit union making or purchasing a commercial loan or participation, such conduct by itself does not preclude the third party from purchasing all or part of the loan or participation that the third party reviewed;                      (c) A credit union may use the services of a credit union service organization that otherwise meets the requirements of this chapter even if the credit union service organization is not independent from the transaction, provided the credit union has a controlling financial interest in the credit union service organization as determined under generally accepted accounting principles.</p>

<b>State</b>	<b>Proposed</b>
<p><b>WAC 208-460-090 What waivers are available?</b></p> <p>You may seek a waiver for a type of member business loan in the following areas:</p>	<p><b>WAC 208-460-090 What waivers are permissible?</b></p> <p>A credit union may seek a waiver in relation to its member business loan program in the following areas:</p>

State	Proposed
<p>(1) Development and construction loan requirements under WAC 208-460-030;</p> <p>(2) Loan-to-value ratios under WAC 208-460-060;</p> <p>(3) Maximum loan amount to a member or associated members under WAC 208-460-070; and</p> <p>(4) Appraisal requirements under Section 722.3 of NCUA rules.</p>	<p>(1) Acquisition, development and construction loan requirements under WAC 208-460-030;</p> <p>(2) Loan-to-value ratios under WAC 208-460-060;</p> <p>(3) Maximum loan amount to a member or associated members under WAC 208-460-070;</p> <p>(4) Unsecured lending under WAC 208-460-060; and</p> <p>(5) Appraisal requirements under Title 12, section 722.3 of the Code of Federal Regulations.</p>

State	Proposed
<p><b>WAC 208-460-100</b></p> <p><b>How do you obtain a waiver?</b></p> <p>(1) To obtain a waiver under WAC <a href="#">208-460-090</a>, a credit union must submit its request to the director. The waiver request must contain the following:</p> <ul style="list-style-type: none"> <li>(a) A copy of your member business loan policy;</li> <li>(b) The higher limit sought (if applicable);</li> <li>(c) An explanation of the need to raise the limit (if applicable);</li> <li>(d) Documentation supporting your ability to manage this activity; and</li> </ul>	<p><b>WAC 208-460-100</b></p> <p><b>What are the standards for a waiver?</b></p> <ul style="list-style-type: none"> <li>(1) The director, in his or her discretion, may grant a waiver in one or more of the areas enumerated in WAC 208-460-090 based on the standards set forth in this section.</li> <li>(2) A credit union must submit its request to the director in writing, which must contain the following: <ul style="list-style-type: none"> <li>(a) A copy of the credit union's member business loan policy;</li> <li>(b) A description of the proposed waiver;</li> <li>(c) An explanation of the perceived need and benefits to the</li> </ul> </li> </ul>

<p>(e) An analysis of the credit union's prior experience making member business loans, including, as a minimum:</p> <ul style="list-style-type: none"> <li>(i) The history of loan losses and loan delinquency;</li> <li>(ii) Volume and cyclical or seasonal patterns;</li> <li>(iii) Diversification;</li> <li>(iv) Concentrations of credit to a member and associated members in excess of fifteen percent of net worth;</li> <li>(v) Underwriting standards and practices;</li> <li>(vi) Types of loans grouped by purpose and collateral; and</li> <li>(vii) The qualifications of personnel responsible for underwriting and administering member business loans.</li> </ul> <p>(2) The director will:</p> <ul style="list-style-type: none"> <li>(a) Review the information you provided in your request;</li> <li>(b) Evaluate the level of risk to your credit union;</li> <li>(c) Consider your credit union's historical CAMEL composite and component ratings;</li> <li>(d) Notify you whenever your waiver request is deemed complete; and</li> <li>(e) Notify you of the action taken within forty-five calendar days of receiving a complete request.</li> </ul> <p>(3) In connection with a waiver request under <a href="#">WAC 208-460-090</a> (1) through (3):</p> <ul style="list-style-type: none"> <li>(a) The director will provide a copy of the waiver request to Region VI of the NCUA and will consult and seek to work cooperatively with Region VI in making his or her decision on the request;</li> <li>(b) The waiver is not effective until the director approves it;</li> <li>(c) If you do not receive notification within forty-five calendar days after the date the complete request was received by the director, the waiver request is deemed approved by the director; and</li> <li>(d) The director will promptly notify Region VI of the NCUA of his or her decision on the request.</li> </ul>	<p>credit union in the event the waiver is granted;</p> <ul style="list-style-type: none"> <li>(d) An explanation of the perceived adverse consequences (if any) of not being granted a waiver;</li> <li>(e) Documentation supporting the credit union's ability to effectively manage the proposed waiver, including, without limitation, the following: <ul style="list-style-type: none"> <li>(i) A description of what additional internal controls and audits the credit union intends to implement to administer its member business loan program in the event the waiver is granted;</li> <li>(ii) Descriptions of what additional credit underwriting standards and procedures and what additional loan documentation the credit union will implement to support its member business loan program in the event the waiver is granted;</li> <li>(iii) Descriptions of what additional policies and procedures the credit union intends to implement if the waiver is granted; and</li> <li>(iv) A description of the management and staffing the credit union intends to implement (if any) if the waiver is granted;</li> <li>(f) Documentation showing concentrations of credit to a member and associated members in excess of fifteen percent of net worth, if a waiver has been previously granted; and</li> <li>(g) An analysis of the credit union's prior experience making member business loans, including, at a minimum: <ul style="list-style-type: none"> <li>(i) The history of loan losses and loan delinquency;</li> <li>(ii) Volume and cyclical or seasonal patterns;</li> <li>(iii) Diversification;</li> <li>(iv) Underwriting standards and practices;</li> <li>(v) Types of loans grouped by purpose and collateral type;</li> <li>(vi) The qualifications of personnel responsible for underwriting and administering member business loans; and</li> <li>(vii) Other information as required by the director.</li> </ul> </li> </ul> </li> </ul> <p>(3) In exercising his or her discretion under this section, the director may grant or deny the proposed waiver, or otherwise condition his or her grant of a waiver, based on a consideration of</p>
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<p>(4) In connection with a waiver request under WAC <u>208-460-090</u>(4):</p> <p>(a) If the director approves the request, the director will promptly forward the request to Region VI of the NCUA for decision under NCUA rules at 12 C.F.R. 723.12;</p> <p>(b) The waiver is not effective until the regional director of the NCUA approves it in accordance with NCUA rules at 12 C.F.R. 723.12; and</p> <p>(c) The credit union may appeal the regional director's decision in accordance with NCUA rules at 12 C.F.R. 723.13.</p>	<p>the following factors:</p> <p>(a) The credit union’s ability to effectively manage the increased authority requested based upon the credit union’s experience in administering its member business loan program;</p> <p>(b) The credit union’s CAMELS composite and component ratings;</p> <p>(c) The degree to which the waiver request addresses the necessary additional or modified loan policies and procedures, internal controls, audit function, credit underwriting, loan documentation , credit administration, and the management and staffing necessary to implement the requested waiver in a safe and sound manner;</p> <p>(d) The level of risk to the credit union in granting the proposed waiver;</p> <p>(e) The degree to which the credit union’s request warrants a waiver in light of its purpose and the limitations on member business lending set forth in this chapter; and</p> <p>(f) The degree to which granting the proposed waiver, with or without conditions, would:</p> <p>(i) Protect the financial interests of members of the credit union, the integrity of Washington State credit unions as cooperative institutions, and the interests of the general public; and</p> <p>(ii) Ensure that credit unions remain viable and competitive in this state.</p> <p>(4) A grant or denial by the director of a credit union’s waiver request must be in writing. A denial or a conditional grant of waiver must set forth in writing the director’s reasons for the denial or the conditions to be imposed.</p> <p>(5) A grant of waiver subject to the imposition of conditions is void unless the credit union fulfills or implements the conditions specified.</p> <p>(6) In connection with a waiver request under WAC <u>208-460-</u></p>
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	<p><u>090</u> (1) through (4):</p> <p>(a) The director will provide a copy of the waiver request to the appropriate office of the NCUA and will consult and seek to work cooperatively with that office in making his or her decision on the request;</p> <p>(b) The waiver is not effective until the director approves it; and</p> <p>(c) The director will notify the appropriate NCUA office and the credit union of his or her decision on the request.</p> <p>(7) If the director grants a waiver in connection with a request under WAC 208-460-090(5), the director will forward the request to the appropriate NCUA office for decision under Title 12, section 723.12 of the Code of Federal Regulations. Such waiver is not effective until the appropriate NCUA office approves it in accordance with Title 12, section 723.12 of the Code of Federal Regulations. The credit union may appeal the NCUA's decision in accordance with Title 12, section 723.13 of the Code of Federal Regulations.</p> <p>(8) The director may undertake an onsite examination of the credit union in the course of her or his evaluation of the waiver request.</p> <p>(9) Within ten days of the director giving notice of having received a completed request for waiver, the director will furnish the credit union with notice of when the director intends to issue written notice of his or her determination, which, except in the case of further notice for cause, shall be not later than the date the next safety and soundness examination report is issued.</p> <p>(10) The waiver does not expire unless revoked in writing by the director for safety and soundness reasons.</p>
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