

Comparison Handout for 2016-06-30 Rulemaking Meeting

Compare 12 CFR 723.8 to WAC 208-460-130 (aggregate limit) to 208-460-140 and 208-460-150 (exceptions)

Federal (2016)	State	Proposed
<p>§ 723.8 Aggregate member business loan limit; exclusions and exceptions.</p> <p>This section incorporates the statutory limits on the aggregate amount of member business loans that may be held by a federally insured credit union and establishes the method for calculating a federally insured credit union's net member business loan balance for purposes of the statutory limits and NCUA form 5300 reporting.</p> <p>(a) <i>Statutory limits.</i> The aggregate limit on a federally insured credit union's net member business loan balances is the lesser of 1.75 times the actual net worth of the credit union, or 1.75 times the minimum net worth required under section 1790d(c)(1)(A) of the Federal Credit Union Act.</p> <p>(b) <i>Definition.</i> For the purposes of this section, member business loan means any commercial loan as defined in 723.2 of this part, except that the following commercial loans are not member business loans and</p>	<p>WAC 208-460-130 What is the aggregate member business loan limit?</p> <p>The aggregate limit on the amount of a credit union's member business loans is the lesser of:</p> <p>(1) One and three quarters times the credit union's net worth; or (2) Twelve and one quarter percent of the credit union's total assets.</p> <p>WAC 208-460-140 Are there any exceptions to the aggregate MBL limit?</p> <p>(1) Credit unions that meet any one of the following four criteria qualify for an exception from the aggregate member business loan limit in WAC 208-460-130:</p> <p>(a) Credit unions that have a low-income designation;</p> <p>(b) Credit unions that participate in the Community Development Financial Institutions program;</p> <p>(c) Credit unions that are chartered for the purpose of making member business loans, as supported by documentary evidence, such as the credit union's charter, bylaws,</p>	<p>WAC 208-460-130 What is the aggregate member business loan limit?</p> <p>The aggregate limit on the amount of a credit union's net member business loans is the lesser of:</p> <p>(1) One and three quarters times the credit union's net worth; or (2) One and three quarters times the minimum net worth required under section 1790d(c)(1)(A) of the Federal Credit Union Act.</p> <p>WAC 208-460-140 Are there any exceptions to the aggregate MBL limit?</p> <p>(1) Credit unions that meet any one of the following four criteria qualify for an exception from the aggregate member business loan limit in WAC 208-460-130:</p> <p>(a) Credit unions that have a low-income designation;</p> <p>(b) Credit unions that participate in the Community Development Financial Institutions program;</p> <p>(c) Credit unions that are chartered for the purpose of making member business</p>

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<p>are not counted toward the aggregate limit on a federally insured credit union’s member business loans:</p> <p>(1) Any loan in which a federal or state agency (or its political subdivision) fully insures repayment, fully guarantees repayment, or provides an advance commitment to purchase the loan in full; and</p> <p>(2) Any non-member commercial loan or non-member participation interest in a commercial loan made by another lender, provided the federally insured credit union acquired the non-member loans and participation interests in compliance with all relevant laws and regulations and it is not, in conjunction with one or more other credit unions, trading member business loans to circumvent the aggregate limit.</p> <p>(c) <i>Exceptions.</i> Any loan secured by a lien on a 1- to 4-family residential property that is not a member’s primary residence, and any loan secured by a vehicle manufactured for household use that will be used for a commercial, corporate, or other business investment property or venture, or agricultural purpose, is not a</p>	<p>business plan, field of membership, board minutes and loan portfolio; and</p> <p>(d) Credit unions that have a recent history of primarily making member business loans, established by the fact that the outstanding balance of member business loans comprises:</p> <p>(i) At least twenty-five percent of the outstanding balance of the credit union's loans; or (ii) The largest portion of the outstanding balance of the credit union's loans. Such facts must be evidenced in an NCUA call report or any equivalent documentation, such as financial statements, for a period within two years before the date of application. For example, a credit union qualifies for the exception under (d)(ii) of this subsection if, based on the outstanding balance of a credit union's loans, the credit union's loan portfolio is comprised of twenty-three percent member business loans, twenty-two percent first mortgage loans, twenty-two percent new automobile loans, twenty percent credit card loans, and thirteen percent total other real estate loans.</p> <p>(2) Unless the director gives his or her prior consent, a credit union granted an exception from the aggregate MBL limit may not make MBL in excess of the</p>	<p>loans, as supported by documentary evidence, such as the credit union's charter, bylaws, business plan, field of membership, board minutes and loan portfolio; and</p> <p>(d) Credit unions that have a recent history of primarily making member business loans, established by the fact that the outstanding balance of member business loans comprises:</p> <p>(i) At least twenty-five percent of the outstanding balance of the credit union's loans; or</p> <p>(ii) The largest portion of the outstanding balance of the credit union's loans. Such facts must be evidenced in an NCUA call report or any equivalent documentation, such as financial statements, for a period within two years before the date of application. For example, a credit union qualifies for the exception under (d)(ii) of this subsection if, based on the outstanding balance of a credit union's loans, the credit union's loan portfolio is comprised of twenty-three percent member business loans, twenty-two percent first mortgage loans, twenty-two</p>

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<p>commercial loan but it is a member business loan (if the outstanding aggregate net member business loan balance is \$50,000 or greater) and must be counted toward the aggregate limit on a federally insured credit union's member business loans.</p> <p>(d) <i>Statutory exemptions.</i> A federally insured credit union that has a low income designation, or participates in the Community Development Financial Institutions program, or was chartered for the purpose of making member business loans, or which as of the date of enactment of the Credit Union Membership Access Act of 1998 had a history of primarily making commercial loans, is exempt from compliance with the aggregate member business loan limits in this section.</p> <p>(e) <i>Method of calculation for net member business loan balance.</i> For the purposes of NCUA form 5300 reporting, a federally insured credit union's net member business loan balance is determined by calculating the outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is secured by shares in the credit union, or by shares or deposits</p>	<p>greater of:</p> <p>(a) Twelve and one quarter percent of the credit union's total assets; or</p> <p>(b) Three times the credit union's net worth.</p> <p>WAC 208-460-150 How do I obtain an exception?</p> <p>(1) The exception under WAC 208-460-140 (1)(a) and (b) is effective upon written notice to the director of such designation or participation.</p> <p>(2) To obtain an exception under WAC 208-460-140 (1)(c) or (d), a credit union must submit its request to the director. An exception is not effective until it is approved by the director. The exception request must include documentation demonstrating that the credit union meets the criteria for one of the exceptions. The exception does not expire unless revoked for safety and soundness reasons by the director.</p> <p>(3) The director will promptly notify Region VI of the NCUA of his or her decision on the request.</p>	<p>percent new automobile loans, twenty percent credit card loans, and thirteen percent total other real estate loans.</p> <p>(2) Unless the director gives his or her prior consent, a credit union granted an exception from the aggregate MBL limit may not make MBL in excess of the greater of:</p> <p>(a) Twelve and one quarter percent of the credit union's total assets; or</p> <p>(b) Three times the credit union's net worth.</p> <p>(2) Unless the director gives his or her prior consent, a credit union granted an exception from the aggregate MBL limit may not make MBL in excess of the greater of:</p> <p>(a) Twelve and one quarter percent of the credit union's total assets; or</p> <p>(b) Three times the credit union's net worth.</p> <p>WAC 208-460-150 How do I obtain an exception?</p> <p>(1) The exception under WAC 208-460-140 (1)(a) and (b) is effective upon written notice to the director of such designation or participation.</p>

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<p>in other financial institutions, or by a lien on a member’s primary residence, or insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the Federal Government, a state or any political subdivision of such state, or sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.</p>	<p style="text-align: center;">WAC 208-460-010 What is a member business loan?</p> <p>(1) Definition of MBL. "Member business loan" or "MBL" includes any loan, line of credit, letter of credit, or any unfunded commitment to make a loan, where the borrower intends to use the proceeds for any of the following purposes: (a) Commercial; (b) Corporate; (c) Investment property; (d) Business venture; or (e) Agricultural. (2) Exemptions. The following are not</p>	<p>(2) To obtain an exception under WAC 208-460-140 (1)(c) or (d), a credit union must submit its request to the director. An exception is not effective until it is approved by the director. The exception request must include documentation demonstrating that the credit union meets the criteria for one of the exceptions. The exception does not expire unless revoked for safety and soundness reasons by the director. (3) The director will promptly notify the NCUA of his or her decision on the request.</p> <p style="text-align: center;">WAC 208-460-010 Definitions</p> <p>(1) Definition of MBL. "Member business loan" or "MBL" means any commercial loan, except a commercial loan that meets one or more of the exemptions below are not MBLs and are not counted toward the aggregate MBL limit. (2) Exemptions. The following are not member business loans: (a) A commercial loan fully secured by a lien on a one to four residential property that is the member's primary residence; (b) A commercial loan fully secured by</p>

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	<p>member business loans:</p> <p>(a) A business purpose loan fully secured by a lien on a one to four family dwelling that is the member's primary residence;</p> <p>(b) A business purpose loan fully secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions;</p> <p>(c) One or more business purpose loans to a member or any associated member which in the aggregate do not exceed the amount of 49,999 dollars. The entire amount of such a loan that exceeds this figure, or that causes the aggregate to exceed this figure, is a MBL;</p> <p>(d) A business purpose loan where a federal or state agency (or any political subdivision of a state) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or</p> <p>(e) A loan granted by a corporate credit union to another credit union.</p> <p>The net member business loan is determined by calculating the outstanding loan balance plus any unfunded commitments, and may be reduced by any of the following:</p> <p>a) the portion of the loan that is secured by</p>	<p>shares or deposits in the credit union making the extension of credit or in other credit unions, or by shares or deposits in other financial institutions;</p> <p>(c) One or more commercial loans to a member or any associated member in which the outstanding aggregate net member business loan balance is less than \$50,000;</p> <p>(d) A commercial loan where a federal or state agency (or any political subdivision of a state) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or</p> <p>(e) A loan granted by a corporate credit union to another credit union.</p> <p>(3) Method of Calculation for the net MBL balance. The net member business loan balance is determined by calculating the outstanding loan balance plus any unfunded commitments, and reduced by any of the following:</p> <p>a) any portion of the loan that is secured by shares or deposits in the credit union, or</p>

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	<p>shares in the credit union, or by shares or deposits in other financial institutions,</p> <p>b) the amount of a lien on a member’s primary residence,</p> <p>c) the amount insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state,</p> <p>d) the amount subject to an advance commitment to purchase by any agency of the Federal Government, a state or any political subdivision of such state, or</p> <p>e) the amount sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.</p>	<p>by shares or deposits in other financial institutions,</p> <p>b) the amount of a first lien on a member’s primary residence, not to exceed the MBL balance,</p> <p>c) the amount insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state,</p> <p>d) the amount subject to an advance commitment to purchase by any agency of the Federal Government, a state or any political subdivision of such state, or</p> <p>e) the amount sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.</p>

<p>§ 723.7 Prohibited activities.</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; (2) Any person meeting the definition of an associated borrower with respect to persons identified in paragraph (a)(1) of this section; or (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 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</p>	<p>WAC 208-460-020 What member business loans are prohibited? (1) Who is ineligible to receive a member business loan?</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) Equity agreements/joint ventures. 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>(3) Loans to directors. 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>	
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<p>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 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>		
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