

Chapter 208-460 WAC
MEMBER BUSINESS LOANS

NEW SECTION

208-460-005 **General definitions.**

For purposes of this chapter, and unless the context appears otherwise, the following terms mean:

"Acquisition loan" is a member business loan made for the purpose of acquiring raw land or a developed parcel for future commercial development, or new construction.

"A & D loan" is the combination of an acquisition loan and a development loan into a single loan.

"ADC loan" is a combination of an acquisition loan, development loan and construction loan into a single loan.

"Agricultural real estate" is real property in which the primary (fifty-one percent or more) use is for agricultural purposes, including, without limitation, farming, livestock, grazing, or aqua-culture.

"Associated borrower" means any other person or entity with a shared ownership, investment, or other pecuniary interest in a business, commercial, or agricultural endeavor with the borrower, including, without limitation, any person named as a borrower or debtor in a loan or extension of credit, or any other person or entity, such as a drawer, endorser, or guarantor, engaged in a common enterprise with the borrower, or deriving a direct benefit from the loan or extension of credit to the borrower, subject to the special definitions, terms, conditions, and exceptions of the Member Business Loan Loan-To-One-Borrower (LTOB) Rule set forth in WAC 208-460-070.

"Commercial real estate loan" is a member business loan secured by real property.

"Construction loan" is a member business loan made for the purpose of new construction or substantial remodel or renovation on property that has been developed or repurposed to the point where the planned new construction or remodel or renovation is permissible and feasibly ready for construction. A loan to finance maintenance, repairs, or improvements to an existing income producing property that does not change its use or

materially impact the property is not a construction or development loan.

"Credit risk rating system" means a formal process that identifies and assigns a relative credit risk score to each member business loan in a credit union's portfolio, using ordinal ratings to represent the degree of Member Business Loan credit risk. The credit risk score is determined through an evaluation of quantitative factors based on financial performance and qualitative factors based on management, operational, market, and business environmental factors.

"D & C loan" is the combination of a development loan and a construction loan into a single loan.

"Development loan" is a member business loan made for the purpose of improving raw land or repurposing improved property to make it permissible, feasible, and ready for new construction or remodel or renovation.

"Equity interest" has the meaning set forth in WAC 208-460-030.

"GAAP" means generally accepted accounting principles.

"Immediate family member" means a spouse or other family member living in the same household.

"Loan secured by a 1- to 4-family residential property" means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4-family residential property for which the lien is central to the extension of the credit; that is, the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than fifty percent of the principal amount of the loan.

"Loan secured by a vehicle manufactured for household use" means a loan that, at origination, is secured wholly or substantially by a lien on a new and used passenger car and other vehicle such as a minivan, sport-utility vehicle, pickup truck, and similar light truck or heavy-duty truck generally manufactured for personal, family, or household use and not used as a fleet vehicle or to carry fare-paying passengers, for which the lien is central to the extension of credit. A lien is central to the extension of credit if the borrower would not have been extended

credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a vehicle manufactured for household use if the estimated value of the collateral at origination (after deducting any senior liens held by others) is greater than fifty percent of the principal amount of the loan.

"Loan-to-value ratio" means, with respect to any item of collateral, the aggregate amount of all sums borrowed and secured by that collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the federally insured credit union's lien position, divided by the current collateral value. The current collateral value must be established by prudent and accepted commercial lending practices and comply with all regulatory requirements. For a construction and development loan, the collateral value is the lesser of cost to complete or prospective market value, as determined in accordance with NCUA Rules at 12 C.F.R. Sec. 723.6.

"Member Business loan" or **"MBL"** means any loan, line of credit, letter of credit (including any unfunded commitments), or other extension of credit, and any interest a credit union obtains in such an extension of credit made by another lender, for commercial, industrial, agricultural, or professional purposes, but not for personal, family or household purposes. For aggregate limit purposes, see WAC 208-460-135.

"NCUA" means the National Credit Union Administration.

"NCUA Rules" means the official rules promulgated and adopted by the Board of the NCUA and codified in Chapter VII of Title 12, Code of Federal Regulations [12 C.F.R. Parts 700-799, inclusive].

"Net worth" means a federally insured credit union's net worth, as defined in the NCUA Rules at 12 C.F.R. Sec. 702.2(f).

"Non-real estate collateral" includes collateral for member business loans consisting of accounts receivable, business inventory, harvested crops, equipment and machinery, commercial-purpose (fleet) vehicles, or other tangible or intangible personal property having a commercial purpose.

"Prospective market value" means the market value opinion determined by an independent appraiser in compliance with applicable Uniform Standards of Professional Appraisal Practice

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(USPAP) standards or successor appraisal standards as may be authorized by the Federal Financial Institutions Examination Council, subject to applicable requirements set forth in WAC 208-460-030(5). Prospective value opinions are intended to reflect the current expectations and perceptions of the market participants, based on available data.

"Qualifying costs" means the aggregate itemized costs of development, construction, remodel or renovation approved by a credit union, as more particularly described in WAC 208-460-030(5).

"Readily marketable collateral" means a financial instrument or bullion that is salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

"Remodel or renovation" means a capital improvement to an existing real property that substantially changes the use and impact of the property. Excluded from this definition is repair, maintenance, or minor improvements on an income-producing property that does not change the use or materially impact the property.

"Residential property" means a house, condominium unit, cooperative unit, manufactured home (whether completed or under construction), or unimproved land zoned for 1- to 4-family residential use. A boat or motor home, even if used as a primary residence, or timeshare property is not residential property.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-010 REPEALED*

*NOTE: ["What is a member business loan?"] See definition of "member business loan" or "MBL" in the new section, WAC 208-460-005. See also Repealer at end of text.

208-460-020 What member business loans are prohibited?

(1) **Who is ineligible to receive a member business loan?**
(~~Your credit union may not grant a member business loan to the following:~~

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~~(a) Your credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager);~~

~~(b) Any assistant chief executive officers (e.g., assistant president, vice president, or assistant treasurer/manager);~~

~~(c) Your credit union's chief financial officer (comptroller);~~
~~or~~

~~(d) Any associated member or immediate family member of anyone listed in (a) through (c) of this subsection; or)~~

Any senior management employee directly or indirectly involved in the credit union's commercial underwriting, servicing, and collection processes, and any of their immediate family members and any person meeting the definition of an associated borrower with respect to persons identified in this section.

(2) **Equity agreements/joint ventures.** ~~((You))~~ The credit union 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.

(3) **Loans to directors.** ~~((You))~~ The credit union may not grant a member business loan to a ~~((director))~~ member of the board unless the board of directors approves granting the loan and the ~~((director))~~ member of the board is recused from the decision-making process.

(4) **Conflict of Interest.** Any third party used by a credit union 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 upon the closing of the loan, with the following exceptions:

(a) A third party may provide a service to the credit union that is related to the transaction, such as loan servicing;

(b) The third party may provide the requisite experience to the credit union and purchase a loan or a participation interest in a loan originated by the credit union that the third party reviewed; and

(c) The credit union may use the services of a credit union service organization that otherwise meets the requirements of WAC 208-460-040(2), 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 GAAP.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-030 What are the requirements for MBL acquisition, development and construction lending?

~~((Unless the director grants a waiver, a)) A credit union that makes a member business loans MBL development or construction is subject to the following requirements:~~

~~(1) The aggregate of all such loans may not exceed fifteen percent of net worth. To determine the aggregate, you may exclude any portion of a loan that is:~~

~~(a) Secured by shares or deposits in the credit union making the extension of credit or in other credit unions, and by deposits in other financial institutions; or~~

~~(b) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state);~~

~~(2) The borrower on such loans must have a minimum of:~~

~~(a) Thirty percent equity interest in the project being financed if the loan is for land development; and~~

~~(b) Twenty-five percent equity interest in the project being financed if the loan is for construction or for a combination of development and construction;~~

~~(3) The funds for such loans may be released only after on-site inspections, documented in writing, by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation; and~~

~~(4) The credit union may not make such loans unless it utilizes the services of an individual with at least five years direct experience in development and construction lending.)~~

If the credit union makes acquisition (A) loans, development (D) loans, construction (C) loans, or a combination of such loans, the credit union is subject to the following requirements:

(1) Aggregate credit union limit. The aggregate of loans, including any combination of loans in subsection (1) may not exceed twenty-five percent of the credit union's net worth, the aggregate amount may exclude any portion of a loan:

(a) Secured by shares or deposits in the credit union making the extension of credit;

(b) Secured by deposits in one or more third-party financial institutions which are obligated in writing to deliver to or otherwise make such deposits accessible to the credit union in the event of default of the borrower; or

(c) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state), or a state or federal government sponsored entity (GSE);

(2) Equity interest of the borrower. Except for MBLs excluded from the loan-to-value ratio limits listed in WAC 208-460-060 (3)

(a), (b), and (c), the borrower must have a minimum of:

(a) Thirty percent equity interest in the real property financed by an acquisition loan;

(b) Twenty-five percent equity interest in the project financed by a development loan;

(c) Twenty-five percent equity interest in the project financed by a D & C loan or a ADC loan, if less than fifty percent of the qualifying costs are attributable to construction;

(d) Twenty percent equity interest in the project financed by a D & C loan or an ADC loan, if fifty percent or more of the qualifying costs are attributable to construction;

(e) Twenty percent equity interest in the project financed by a construction loan that is multifamily in nature (e.g., condominiums, planned unit developments, and apartment buildings) or has a nonresidential purpose (e.g., an office building, retail strip-mall, warehouse, or manufacturing facility); or

(f) Fifteen percent equity interest in the project financed by a construction loan that is for one-to-four family speculative residential new construction or for remodel or renovation;

(3) Calculation of "equity interest". "Equity interest" as used in subsection (2) of this section, must be calculated as follows:

(a) The borrower's equity interest is the lesser of the appraised value of the real property or its purchase price, as applicable, minus the principal amount of the loan, in the case of a loan on a commercial- or professional-purpose building, agricultural real estate, or unimproved land (i.e., an acquisition loan); and

(b) When a project involves a construction loan, development loan, D & C loan, or ADC loan, the borrower's equity interest is the collateral valuation (i.e., the prospective market value of the collateral upon completion of the project as approved) minus the cost to complete,, subject to the specific standards for collateral valuation of the project improvements as set forth in subsection (5) of this section.

(4) Draw inspections and release of funds. The funds for such loans will be released only after on-site inspections, documented in writing by qualified personnel and according to a pre-approved draw schedule and any other conditions as set forth in the loan documentation, with due regard for maintaining the credit union's agreed-upon lien priority position according to

the mechanic's lien laws of the state where the subject project is situated;

(5) Determination of the collateral valuation of the project improvements. For a development or construction loan, or the "development" or "construction" portions of an A & D loan or an ADC loan, the collateral valuation of the project improvements is the lesser of the project's cost to complete or its prospective market value. In making this calculation, the credit union must apply the following standards:

(a) The collateral valuation of the project improvements depends on satisfactory completion of the proposed construction or renovation where the loan proceeds are disbursed in increments as the work is completed;

(b) For purposes of subsection (5) of this section, "cost to complete" means the sum of all qualifying costs necessary to complete a construction project and documented in an approved construction budget;

(c) For purposes of subsection (5)(b) of this section, "qualifying costs" include:

(i) On- or off-site improvements, building construction, other reasonable and customary costs paid to construct or improve a project, including general contractor's fees, and other expenses normally included in a construction contract such as bonding and contractor insurance;

(iv) The value of the land, determined as the lesser of appraised market value or purchase price plus the cost of any improvements;

(v) Interest, a contingency account to fund unanticipated overruns, and other development costs such as fees and related pre-development expenses;

(vi) Interest expense, but only to the extent it is included in the construction budget and is calculated based on the projected changes in the loan balance up to the expected "as-complete" date for owner-occupied non-income producing commercial real estate or the "as-stabilized" date for income producing real estate; and

(vii) Project costs for related parties, such as developer fees, leasing expenses, brokerage commissions, and management fees, but only if reasonable in comparison to the cost of similar services from a third party;

(c) For purposes of subsection (5) (b) of this section, "qualifying costs" excludes interest or preferred returns payable to equity partners or subordinated debt holders, the developer's general corporate overhead, and selling costs to be funded out of sales proceeds such as brokerage commissions and other closing costs; and

(d) A prospective market value opinion is intended to reflect the current expectations and perceptions of market participants, based on available data, and is subject to the following additional considerations:

(i) Two prospective value opinions may be required to reflect the time frame during which development, construction, and occupancy occur;

(ii) The prospective market value "as-completed" reflects the property's market value as of the time that development is to be completed;

(iii) The prospective market value "as-stabilized" reflects the property's market value as of the time the property is projected to achieve stabilized occupancy; and

(iv) In the case of an income-producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-040 How do you implement a member business loan program?

(1) **Board policies.** Prior to engaging in member business lending:

(a) The board of directors must (~~adopt~~) approve specific member business loan policies and (~~review them at least annually~~) establish procedures consistent with such policies. The member business loan policies must be reviewed at least annually and prior to any material change in the credit union's commercial lending program as described in WAC 208-460-050;

(b) The board policies must ensure that the MBL program is performed in a safe and sound manner by providing ongoing control, measurement, and management of the MBL activities;

(c) (~~The credit union must utilize the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in, except as required by WAC 208-460-030(4).~~) The board policies must assure

that the credit union has appropriate staff for its MBL program in compliance with subsection (2) of this section; and

(d) The board of directors must understand and remain informed, through periodic briefings from responsible staff and other methods, about the nature and level of risk in the MBL portfolio, including the potential impact on the credit union's earnings and net worth.

~~((Credit unions do not have to hire staff to meet the requirements of this section; however, credit unions must ensure that the expertise is available. A credit union can meet the experience requirement through various approaches. For example, a credit union can use the services of a credit union service organization, an employee of another credit union, an independent contractor, or other third parties. However, the actual decision to grant a loan must reside with the credit union.))~~

(2) **Credit union experience and competencies.** A credit union making, purchasing, or holding any member business loan must internally possess the following experience and competencies:

(a) **Senior executive officers.** The senior executive officers overseeing the MBL program must understand the credit union's MBL activities, and at a minimum, the senior executive officers must have a comprehensive understanding of the role member business loans have in the credit union's overall business model and establish risk management processes and controls necessary to safely conduct commercial lending; and

(b) **Qualified lending personnel.** A credit union must employ qualified staff with experience in the following areas:

(i) Underwriting and processing for the type(s) of commercial lending in which the credit union is engaged;

(ii) Overseeing and evaluating the performance of a member business loan portfolio, including rating and quantifying risk through a credit risk rating system; and

(iii) Conducting collection and loss mitigation activities for the type(s) of member business loans in which the credit union is engaged.

(3) **Options to meet the required experience.** A credit union may meet the experience requirements in subsection (2) (a) and (b) of this section by conducting internal training and development, hiring qualified individuals, or using a third party, such as an independent contractor or a credit union service organization. However, with respect to the qualified lending personnel requirements in paragraph (2) (b) of this section, use of a third-party is permissible only if the following conditions are met:

(a) The third-party has no affiliation or contractual relationship with the borrower or any associated borrowers;

(b) The actual decision to grant a loan must reside with the credit union;

(c) Qualified credit union staff exercises ongoing oversight over the third party by regularly evaluating the quality of any work the third party performs for the credit union; and

(d) The third-party arrangement must be consistent with the requirements of this chapter.

(4) Conditions for Waiving Portions of This Section. If the credit union's aggregate member business loan balances, including unfunded commitments and participations, are less than fifteen percent of net worth and the credit union's total assets are less than \$250 million, the director may waive portions of this section.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-050 What must your member business loan policy address?

(1) Minimum MBL policy requirements. At a minimum, ~~((your))~~ the credit union's MBL policy must address the following:

~~((1))~~ (a) The types of MBLs ((you)) the credit union will make;

~~((2))~~ (b) ((Your)) The credit union's trade area for member business lending;

~~((3))~~ (c) The maximum amount of ((your)) ((assets,)) secured, unsecured, and unguaranteed MBLs in relation to net worth ((that you will invest in a given type of MBL));

~~((4))~~ (d) The maximum amount of MBL types ((assets,)) in relation to net worth ((, that you will invest in a given type of MBL));

~~((5))~~ (e) The maximum amount ((of your assets, in relation to net worth, that)) the credit union will loan to a **borrower ((member))** or associated **borrowers ((members))** in relation to net worth, subject to WAC 208-460-070;

~~((6))~~ (f) The qualifications and experience of personnel (minimum of two years) involved in ((making and)) underwriting, processing, approving, administering, and collecting on member business loans; and

~~(7)~~ A requirement for analysis and documentation of the ability of the borrower to repay the loan;

~~(8)~~ Receipt and periodic updating of financial statements and other documentation, including tax returns;

~~(9)~~ Documentation sufficient to support each request to extend credit, or increase an existing loan or line of credit,

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~~except where the board of directors finds that the required documentation is not generally available for a particular type of loan and states the reasons for those findings in the credit union's written policy. At a minimum, the documentation must include the following:~~

- ~~(a) Balance sheet;~~
- ~~(b) Cash flow analysis;~~
- ~~(c) Income statement;~~
- ~~(d) Tax data;~~
- ~~(e) Analysis of leveraging; and~~
- ~~(f) Comparison with industry average or similar analysis;~~
- ~~(10) Collateral requirements, including:~~
 - ~~(a) Loan-to-value ratios;~~
 - ~~(b) Determination of value;~~
 - ~~(c) Determination of ownership;~~
 - ~~(d) Steps to secure various types of collateral; and~~
 - ~~(e) How often the credit union will reevaluate the value and marketability of collateral;~~
- ~~(11) The interest rates and maturities of the loans;~~
- ~~(12) General MBL procedures which include:~~
 - ~~(a) Loan monitoring;~~
 - ~~(b) Servicing and follow-up; and~~
 - ~~(c) Collection;~~
- ~~(13) Identification of those individuals prohibited from receiving member business loans; and~~
- ~~(14) Guidelines for purchase and sale of member business loans and loan participations, if the credit union engages in that activity.~~
- (g) Risk management processes commensurate with the size, scope and complexity of the MBL lending activities and borrowing relationships, including, at a minimum:
 - (i) Use of loan covenants, if appropriate, including the frequency of borrower and guarantor financial reporting;
 - (ii) Periodic loan review, consistent with loan covenants and sufficient to conduct portfolio risk management, including a periodic reevaluation of the value and marketability of any collateral, for member business loans **except for member business loans collateralized by 1-4 family residential mortgages and vehicles manufactured for household use;**
 - (iii) A credit risk rating system, in which credit risk ratings must be assigned to MBL at inception and reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies, and to ensure adequate reserves as required by GAAP;
 - (iv) A process to identify, report, and monitor loans approved as exceptions to the credit union's MBL policy;

(v) Identification of those individuals prohibited from receiving member business loans at time of underwriting, at a minimum in compliance with WAC 208-460-020; and

(vi) Requirements for the purchase and sale of member business loans, including loan participations, if the credit union engages in that activity.

(2) **Additional MBL policy requirements.** The following may be contained in the credit union's MBL policy or, in the alternative, must be reflected in the credit union's written procedures:

(a) Loan approval amounts, including establishing the levels of loan approval authority commensurate with an individual's or member business loan committee's proficiency in the evaluation and underwriting of member business loan risk, when considering the level of risk the borrowing relationship poses to the credit union;

(b) The underwriting standards commensurate with the size, scope, and complexity of the member business loan activities and borrowing relationship contemplated, which, at a minimum, address the following:

(i) The level and depth of financial analysis necessary to evaluate the financial trends and condition of the borrower to meet the debt service coverage requirements;

(ii) Thorough due diligence of the principal(s) to determine whether any related interests of the principal(s) might have a negative impact or place an undue burden on the borrower and related interests with regard to meeting the debt obligations with the credit union;

(iii) Requirements for using borrower-prepared financial projections when historic performance does not support projected debt payments, which must be supported by reasonable rationale and, at a minimum, must include a projected balance sheet and income and expense statement;

(iv) The financial statement quality and the degree of verification sufficient to support an accurate financial analysis and risk assessment;

(v) The methods to be used in collateral evaluation, for all types of collateral authorized, including loan-to value ratio limits;

(vi) The measures, if applicable, for exercising environmental due diligence that are appropriate for all authorized collateral; and

(vi) Other appropriate risk assessment practices, including the analysis of the impact of current market conditions on the borrower and associated borrowers.

(3) The division of credit unions recognizes that all of the provisions of the policy may not apply to every MBL. For example, non-owner occupied 1-4 family residential real estate loans that are not dependent upon rental income for purpose of qualifying a borrower for a loan may be underwritten outside the MBL underwriting processes required under this section.

(4) If the credit union's aggregate member business loan balances, including unfunded commitments and participations, are less than fifteen percent of net worth and the credit union's total assets are less than \$250 million, the director may waive portions of this section.

(5) A credit union must separately identify member business loans in its records and in the aggregate on its financial reports.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-060 What are the ((collateral and security requirements) standards for secured and unsecured lending?

(1) A credit union must require collateral commensurate with the level of risk associated with the size and type of any member business loan. Collateral must be sufficient to ensure adequate loan protection along with appropriate risk sharing with the borrower and principal(s). A credit union making an unsecured loan must document the mitigating factors which sufficiently offset the relevant risk.

~~((Unless the director grants a waiver:~~

~~(1) All member business loans must be secured by collateral in accordance with this section, except the following:~~

~~(a) A credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit; and~~

~~(b) A loan made by a credit union where the loan and the credit union meet each of the following criteria:~~

~~(i) The amount of the loan does not exceed one hundred thousand dollars;~~

~~(ii) The aggregate of unsecured MBL under (b) of this subsection does not exceed ten percent of the credit union's net worth;~~

~~(iii) The credit union has a net worth of at least seven percent; and~~

~~(iv) The credit union submits reports to the division of credit unions with its NCUA 5300 reports, providing figures and other detail as may be requested by the director to demonstrate compliance with (b) of this subsection;~~

~~(2) In the case of a member business loan secured by collateral on which the credit union will have a first lien, you may grant the loan with a LTV ratio in excess of eighty percent only where the value in excess of eighty percent is:~~

~~(a) Covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union; or~~

~~(b) Insured or guaranteed, or subject to advance commitment to purchase, by any federal or state agency (or any political subdivision of a state).~~

~~In no case may the LTV ratio exceed ninety-five percent;~~

~~(3) In the case of a member business loan secured by collateral on which the credit union will have a second or lesser priority lien, you may not grant the loan with a LTV ratio in excess of eighty percent; and~~

~~(4) In the case of member business loans secured by the same collateral:~~

~~(a) On which the credit union will have a first lien as well as other lesser priority liens, you may grant the loans with a LTV ratio in excess of eighty percent only if subsection (2) (a) or (b) of this section is satisfied. In no case may the LTV ratio exceed ninety-five percent; and~~

~~(b) On which the credit union will have lesser priority liens but no first lien, you may not grant the loans with a LTV ratio in excess of eighty percent.)~~

(2) **Personal guarantees.** If your credit union requires personal guarantee(s) in connection with a member business loan where the borrower is an entity other than an individual, the personal guarantee(s) must be from individual(s) who are controlling persons of the borrower-entity, and may be from individual(s) who are not controlling person(s) if deemed commercially reasonable under the circumstances and not otherwise impermissible under applicable law. If the credit union does not require a full and unconditional personal guarantee in connection with the loan, the credit union must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk.

(3) Secured lending. In relation to member business loans secured by collateral of any kind, the following standards are applicable:

(a) Real estate as collateral - loan-to-value limits generally.
The credit union's lending policies must contain internal loan-to-value ratio limits for the making of member business loans having real estate as collateral, and these internal loan-to-value ratio limits must be applied to the underlying real estate that collateralizes the commercial real estate loans the credit union makes. The internal loan-to-value ratio limits for a commercial real estate loan in excess of two hundred fifty thousand dollars must not exceed the following limits:

<u>Loan Category</u>	<u>Loan-to-Value Limit</u>
<u>Acquisition loan</u>	<u>70%*</u>
<u>Development loan</u>	<u>75%*</u>
<u>Construction loan:</u>	
<u>Commercial, multifamily (including condominiums, planned unit developments, and cooperatives) and other nonresidential projects</u>	<u>80%*</u>
<u>One-to-four family residential (speculative) construction</u>	<u>85%*</u>
<u>D & C loan or ADC loan (which has less than 50% of its qualifying costs attributable to construction)</u>	<u>75%*</u>
<u>D & C loan or ADC loan (which has 50% or more of its qualifying costs attributable to construction)</u>	<u>80%*</u>
<u>Existing commercial-purpose buildings</u>	<u>85%</u>
<u>Agricultural real estate (excluding crops)</u>	<u>80%*</u>

* See WAC 208-460-030(2).

(b) Exception - Commercial real estate loan not exceeding \$250,000. For real estate member business loans not exceeding two hundred fifty thousand dollars, the credit union may make such a loan up to a loan-to-value ratio of one hundred percent, provided that personal guarantees are **obtained.**

(c) Non-real estate collateral loan-to-value limits. The credit union's lending policies must contain internal loan-to-value ratio limits, and these internal loan-to-value ratio limits must be applied to the underlying personal property that collateralizes the commercial non-real estate loan the credit union makes. The loan-to-value ratio limit for member business loans with non-real estate collateral must not exceed eighty percent, except for loans not exceeding \$250,000, which have a loan-to-value ratio limit not to exceed more than one hundred.

(d) Transactions excluded from the loan-to-value ratio limits listed in subsections (3) (a), (b) and (c) above. There are a number of commercial lending situations in which other factors significantly outweigh the need to apply the loan-to-value ratio limits. The following member business loans are excluded from the loan-to-value limits in (3) (a), (b) and (c):

(i) A member business loan guaranteed or insured by the U.S. government or its agencies (e.g., the Small Business Administration), provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the loan-to-value limits listed in sections (3) (a), (b) and (c) above;

(ii) A member business loan backed by the full faith and credit of a state government, provided that the amount of the assurance is at least equal to the portion of the loan that exceeds the credit union's loan-to-value ratio limit;

(iii) A member business loan guaranteed or insured by a state, municipal or local government, an agency thereof, or a federal or state government sponsored entity (GSE), provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the loan-to-value ratio limits listed in subsections (3) (a), (b) and (c) above, and provided that the credit union has determined that the guarantor or insurer has the financial capacity to perform under the terms of the guaranty or insurance agreement;

(iv) A member business loan adequately insured by private mortgage insurance or equivalent type of insurance, and provided that the credit union has reasonably determined that the private mortgage insurer has the capacity to perform under the terms of the insurance policy and that the terms and conditions of the policy are commercially reasonable within the industry for the type of member business loan in question;

(v) A member business loan that is to be sold promptly after origination, without recourse, to a financially responsible third party who has made a commitment to purchase the loan prior to or contemporaneously with the loan's origination;

(vi) A member business loan that is renewed, refinanced, or restructured without the advancement of new funds, or an increase in the line of credit (except for reasonable closing costs);

(vii) A member business loan that facilitates the sale of real estate or personal property acquired by a credit union in the ordinary course of collecting a debt; and

(viii) A member business loan for which a waiver of an applicable loan-to-value ratio limit set forth in subsections (3) (a), (b) and (c) of this section has been granted pursuant to WAC 208-460-090.

(4) **Unsecured lending standards.** When making an unsecured member business loan, the credit union must determine and document in the loan file that mitigating factors sufficiently offset the relevant risks. All unsecured member business loans, including but not limited to a credit card line of credit, must meet the following conditions:

(a) The amount of an unsecured member business loan may not exceed two hundred fifty thousand dollars;

(b) The aggregate of all unsecured member business loans of the credit union may not exceed ten percent of the credit union's net worth; and

(c) The credit union must have a net worth ratio of at least eight percent.

(5) **Prohibition against "structuring" unsecured loans to avoid other limits.** The credit union may not make a series of unsecured loans to a person for the same or related purpose so as to "structure" or avoid any lending limit or loan-to-value ratio requirement set forth in this section.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-070 How much may a ((member)) borrower or associated ((members)) borrowers borrow?

(1) Short Section Title - MBL-LTOB Rule. This section may be commonly referred to as the "MBL loans-to-one-borrower rule" or "MBL-LTOB rule."

(2) Aggregate MBL-LTOB Limit. ((Unless the director grants a waiver for a higher amount,)) ((†)) The aggregate amount of member business loans to a ((member)) borrower or associated ((members)) borrowers outstanding at one time in a manner set forth in WAC 208-460-080 may not exceed the greater of:

((a)) Fifteen percent of the credit union's net worth; or
((b)) (a) ((One)) Two hundred fifty thousand dollars; or
(b) Fifteen percent of the credit union's net worth, provided that this aggregate amount may be increased by up to an additional ten percent of the credit union's net worth if the amount that exceeds the credit union's fifteen percent general limit is fully secured at all times with a perfected security interest in readily marketable collateral as defined in WAC 208-460-005.

(3) Determination of "amount". The "amount of a "member business loan" includes:

- (a) Any unfunded commitment to make the loan;
- (b) The outstanding balance of the loan; and
- (c) Any undisbursed proceeds of the loan.

(4) "Associated" defined; use of "person". The term "associated," in relation to its use in the term "associated person" in this section, has the same meaning as set forth in WAC 208-460-005. The use of "person" in this section refers, as applicable, to a category of person included in the definition of "person" in RCW 31.12.005, who is a permissible member of a credit union.

(5) General rule of attribution. Loans or extensions of credit to a borrower will be attributed to an associated borrower or borrowers for purposes of calculating the aggregate limit set forth in subsection (2) of this section when:

- (a) The proceeds of the loans or extensions of credit are intended for or are used for the "direct benefit," as defined in this section, of the associated borrower or borrowers; or
- (b) A "common enterprise," as defined in this section," exists between the borrower and associated borrower or borrowers.

(6) "Direct benefit" defined. The proceeds of a loan or extension of credit to a person will be deemed to be used for the "direct benefit" of an associated borrower and will be attributed to the associated borrower when the proceeds, or assets purchased with the proceeds, are transferred to the

associated borrower, other than in a bona fide arm's length transaction, where the proceeds are used to acquire property, goods, or services.

(7) "Common enterprise" defined. Whether a "common enterprise" exists depends upon a realistic evaluation of the facts and circumstances of applicable transactions. A "common enterprise" exists when:

(a) The expected source of repayment for each of the multiple loans or extensions of credit is the same for both the borrower and associated borrower or borrowers; or

(b) Separate persons borrow from a credit union for the purpose of acquiring a business enterprise of which those borrowers will in combination own or control more than fifty percent of the voting securities; or

(c) The loans or extensions of credit are made to borrowers who are related by common control and-

(i) are engaged in interdependent business or

(ii) there is "substantial financial interdependence" among them; or

(d) The Division of Credit Unions determines, based upon a reasonable evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(8) "Substantial financial interdependence" defined. As used in this section, "substantial financial interdependence" occurs when fifty percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments).

(9) "Control" defined. As used in this section, "control" is presumed to exist when one or more persons acting in concert, directly or indirectly:

(a) Own, control, or have power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Exercise a controlling influence over the management or policies of another person; or

(c) Control in any manner the election of a majority of the directors, trustees or other persons exercising similar functions of another person.

(10) "Common control" defined. For purposes of this section, "common control" means control of one person by another person.

(11) Loans involving partnerships, joint ventures, or unincorporated associations. The following shall apply to loans or extensions of credit involving partnerships, joint ventures, or unincorporated associations:

(a) **Loans to the entity.** Loans or extensions of credit to a partnership, joint venture, or unincorporated association shall, for purposes of this chapter, be considered loans or extensions of credit to each member of such partnership, joint venture, or unincorporated association.

(b) **Loans to members of the entity.** The following considerations must be made when considering loans to members of a partnership, joint venture, or unincorporated association:

(i) Loans or extensions of credit to members of a partnership, joint venture, or unincorporated association are considered loans or extensions of credit to the partnership, joint venture, or unincorporated association if the "direct benefit" test or "common enterprise" test is satisfied with respect to one or more of the members. However, loans to members of a partnership, joint venture, or unincorporated association will not be attributed to other members of the partnership, joint venture, or unincorporated association unless the "direct benefit" test or "common enterprise" test is satisfied with respect to such other members.

(ii) The "direct benefit" test or "common enterprise" test is satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or unincorporated association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(12) **Exception regarding limited partners and certain joint venture partners.** The rule of attribution set forth in subsection (5) of this section is not applicable to limited partners in limited partnerships or to members of joint ventures if such partners or members, by the terms of the limited partnership agreement or joint venture agreement, are not to be held liable for the debts or actions of limited partnership or joint venture.

(13) **Treatment of limited liability companies as corporations.** For purposes of this section, loans or extensions of credit to a limited liability company shall be considered loans or extensions of credit to a corporation, and shall not be subject to the provisions of subsections (11) and (12) of this section.

(14) **Loans involving subsidiaries - corporate group.** The following considerations apply to loans or extensions of credit involving subsidiaries, or loans or extensions of credit to a person and all of its subsidiaries, which for purposes of this section shall be known as a "corporate group":

(a) Loans or extensions of credit to a person and its subsidiaries or to the subsidiaries of one person will not be combined where the person and its subsidiaries are not engaged in a "common enterprise."

(b) If members of a "corporate group" are either "substantially financially interdependent" or engaged in a "common enterprise," then the total amount of loans or extensions of credit to these persons must be attributed to each of the other persons in the corporate group.

(c) If members of a corporate group are neither "substantially financially interdependent" nor engaged in "common enterprise," then the loans to different members are separately subject to the aggregate limit set forth in subsection (2) of this section.

(d) For purposes of this section, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns, directly or indirectly, more than fifty percent of the voting securities or voting interests of the corporation or limited liability company.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-080 How do you calculate the aggregate fifteen percent limit for loans to one borrower?

(1) **Step 1.** Calculate the numerator by adding together the amount of the member business loans to the ~~((member))~~ borrower and associated ~~((members))~~ borrowers (if any). Excluded from the credit union's calculation are any member business loans identified in WAC 208-460-135.

~~((From this amount, subtract any portion:~~

~~(a) Secured by shares or deposits in your credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions; or~~

~~(b) Insured or guaranteed, or subject to an advance commitment to purchase, by any federal or state agency (or any political subdivision of a state).~~

(2) **Step 2.** Divide the numerator by the credit union's net worth.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-090 What waivers are ~~((available))~~ permissible?

(1) ~~((You))~~ A credit union may seek a waiver for a type of member business loan in the following areas:

~~((1))~~ (a) Development and construction loan requirements under WAC 208-460-030;

~~((2))~~ (b) Unsecured loan limits and loan-to-value ratios under WAC 208-460-060;

~~((3))~~ (c) Maximum loan amount to a ~~((member))~~ borrower or associated ~~((members))~~ borrowers under WAC 208-460-070; and

~~((4))~~ (d) Appraisal requirements under ~~((Section 722.3 of))~~ the NCUA ~~((#))~~ Rules at 12 C.F.R. Sec. 722.3.

(2) While the types of waivers set forth in subsection (1) of this section are permissible, the granting of any such waiver is discretionary with the director and subject to the requirements of WAC 208-460-100.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-100 How do you obtain a waiver?

(1) To obtain a waiver under WAC 208-460-090, a credit union must submit its request to the director. The waiver request must contain the following:

(a) A copy of ~~((your))~~ the credit union's member business loan policy;

(b) The higher limit sought (if applicable);

(c) An explanation of the need to raise the limit (if applicable);

(d) Documentation supporting ~~((your))~~ the credit union's ability to manage this activity; and

(e) An analysis of the credit union's prior experience making member business loans, including, at a minimum:

~~((i) The history of loan losses and loan delinquency;~~

~~((ii) Volume and cyclical or seasonal patterns;))~~

~~((iii))~~ (i) Diversification;

~~((iv))~~ (ii) Concentrations of credit to a ~~((member))~~ borrower and associated ~~((members))~~ borrowers in excess of fifteen percent of net worth (if applicable);

~~((v))~~ (iii) Underwriting standards and practices;

~~((vi))~~ (iv) Types of loans grouped by purpose and collateral; and

~~((vii))~~ (v) The qualifications of personnel responsible for the underwriting and administering of member business loans.

(2) Upon receiving an application, the director may promptly request such additional information as he or she deems necessary for the informed decision on the application. If supplementary application information is requested by the director, the application is not considered complete until the supplementary information is supplied. Upon receipt of a complete

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application, ((The)) the director will: (a) Review the information ~~you~~ provided in ~~((your))~~ the credit union's request;
(b) Evaluate the level of risk to the credit union;
(c) Consider ~~((your))~~ the credit union's historical CAMELS composite and component ratings;
(d) Notify ~~((you))~~ the credit union when~~((ever))~~ the waiver request is deemed complete; and
(e) Notify the credit union of the action taken within ~~((forty-five))~~ sixty calendar days of receiving a complete request.

(3) In connection with a waiver request under WAC 208-460-090 (1) through (3):

(a) The director will provide a copy of the waiver request to ~~Region V of the~~ NCUA and will consult and seek to work cooperatively with ~~((Region V))~~ the NCUA in making his or her decision on the request;

(b) The waiver is not effective until the director approves it;

~~((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

~~((d))~~ (c) The director will promptly notify ~~((Region VI of))~~ the NCUA of his or her decision on the request.

(4) In connection with a waiver request under WAC 208-460-090 ~~((4))~~ (1) (d):

(a) If the director approves the request, the director will promptly forward the request to ~~((Region V of))~~ the NCUA for its decision under NCUA ~~((#))~~ Rules at 12 C.F.R. ~~((723.12))~~ Sec. 722.3(a)(9);

(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))~~ Sec. 722.3(a)(9); and

(c) The credit union may appeal the regional director's decision in accordance with applicable NCUA rules ~~((at 12 C.F.R. 723.13))~~.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-110 REPEALED*

*NOTE: ["How do I classify member business loans so as to reserve for potential losses?"] See also Repealer at end of text.

208-460-120 REPEALED*

*NOTE: ["How much must I reserve for potential losses?"]
See also Repealer at end of text.

208-460-130 What is the aggregate member business loan limit?

The aggregate limit on the amount of a credit union's member business loans is the lesser of:

- (1) One and three quarters times the actual ((credit union's)) net worth of the credit union; or
- (2) ~~((Twelve and one quarter percent of the credit union's total assets))~~ One and three quarters times the minimum net worth required under the Federal Credit Union Act, at 12 U.S.C. Sec. 1790d(c)(1)(A), for a credit union to be well-capitalized.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

NEW SECTION

WAC 208-460-135 What member business loans are excluded from the calculation of the aggregate member business loan limit?

The following member business loans are excluded from the calculation of the aggregate MBL limit in WAC 208-460-130:

- (1) A member business loan fully secured by a lien on a one to four residential property that is the member's primary residence;
- (2) A member business loan fully secured by shares or deposits in a credit union making the extension of credit or in other credit unions, or by shares or deposits in other financial institutions;
- (3) One or more member business loans to a ((member)) borrower or any associated ((member)) borrower in which the outstanding aggregate net member business loan balance is less than \$50,000;
- (4) A member business 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;
- (5) A loan granted by a corporate credit union;
- (6) Loans made by a credit union to another credit union; and
- (7) Loans made to a credit union service organization to which the credit union is affiliated.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

NEW SECTION

WAC 208-460-137 What is the method of calculating the net MBL balance?

The net member business loan balance is determined by calculating the outstanding loan balance, plus any unfunded commitments, and then subtracting an amount for any of the following:

- (1) Any portion of the loan that is secured by shares or deposits in the credit union, or by shares or deposits in other financial institutions;
- (2) The amount of a first lien on a **((member's)) borrower's** primary residence, not to exceed the MBL balance;
- (3) The amount insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state;
- (4) 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
- (5) The amount sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-140 Are there any exceptions to the aggregate MBL limit?

(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:

- (a) Credit unions that have a low-income designation;
- (b) Credit unions that participate in the Community Development Financial Institutions program;
- (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, business plan, field of membership, board minutes and loan portfolio; and
- (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:

(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 a 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 subsection (1)(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.

~~(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)~~ The director may not approve an exception from the aggregate MBL limit greater than

~~((a) Twelve and one quarter percent of the credit union's total assets; or (b) Three))~~ three times the credit union's net worth.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-150 How do I obtain an exception to the aggregate MBL limit?

(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.

(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 ~~Region V~~ of the NCUA of his or her decision on the request.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

208-460-160 REPEALED*

*NOTE: ["What are the recordkeeping requirements?"] Similar language has been added to RCW 208-460-050, eliminating the need for a separate section on this subject. See also Repealer at end of text.

208-460-170 REPEALED*

*NOTE: The former definitions section at WAC 208-460-170 has been repealed and replaced with the new section, WAC 208-460-005, which retains some of the former definitions in the repealed section but includes in the new WAC 208-460-005 several newly defined terms. See also Repealer at end of text.

NEW SECTION

WAC 208-460-200 When will a member business loan or loans be treated as "non-conforming"?

If a credit union has made a member business loan or portfolio of member business loans, which was in compliance with governing law when made and which subsequently ceases to be in compliance, and the director upon his or her request receives from the credit union a mitigation plan which the director reasonably finds to be acceptable, the applicable member business loan or portfolio of member business loans will be treated as "nonconforming" rather than in violation of this chapter, provided that the credit union adheres to the mitigation plan as approved by the director.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

NEW SECTION

WAC 208-460-210 What about approvals or waivers from the Division of Credit Unions prior to [the effective date of this rulemaking]?

(1) If a credit union has, prior to the effective date of this rulemaking, obtained a written exception or waiver from the director under authority of this chapter, as it existed prior to the effective date of this rulemaking, under terms and conditions that would result in the credit union being otherwise out of compliance with this chapter, then the credit union is entitled and authorized by the director and this chapter to operate according to the terms and conditions of such exception or waiver.

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(2) For purposes of this section, satisfactory evidence of exception or waiver from the director may be established only by written evidence that the director gave his or her approval prior to the effective date of this rulemaking.

Statutory Authority: RCW 31.12.426(1), 31.12.516(2), 43.320.040.

REPEALER

The following sections of the Washington Administrative Code are repealed:

208-460-010 What is a member business loan?*

*NOTE: See definition of "member business loan" or "MBL" in the new section, WAC 208-460-005.

208-460-110 How do I classify member business loans so as to reserve for potential losses?

208-460-120 How much must I reserve for potential losses?

208-460-160 What are the recordkeeping requirements?***

**NOTE: Similar language has been added to RCW 208-460-050, eliminating the need for a separate section on this subject.

208-460-170 Definitions.***

***NOTE: The former definitions section at WAC 208-460-170 has been repealed and replaced with the new section, WAC 208-460-005, which retains some of the former definitions in the repealed section but includes in the new WAC 208-460-005 several newly defined terms.

-THE END-