

**FIRST MARK-UP DRAFT (AS OF 06-13-2017)  
NOT OFFICIAL DFI POLICY – FOR DISCUSSION PURPOSES ONLY**

**Chapter 208-460 WAC  
MEMBER BUSINESS LOANS**

**NEW SECTION**

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

(1) 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, new construction, or remodel or renovation by means other than the acquisition loan.

**"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 (51% or more) use is for agricultural purposes, including, without limitation, farming, livestock, grazing, or aquaculture.

**"Associated,"** in reference to a person, means any other person with a shared ownership, investment, or other pecuniary interest in a commercial, industrial, agricultural, or professional endeavor with another person or entity.

**"Borrower"** is a person who is named as a borrower or debtor in a loan or extension of credit, or any other person, including, without limitation, a drawer, endorser, or guarantor, who is deemed to be a borrower under the MBL 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 renovation and remodel 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.

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**"Cost to complete"** means the sum of all qualifying costs necessary to complete a development or construction loan, or the combination of a development and construction loan, as documented in an approved budget.

**"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 MBL 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.

**"Division of Credit Unions"** means the Division of Credit Unions of the Washington Department of Financial Institutions.

**"Equity"** means, the lesser of the appraised value of a completed project or the sales price of the subject property, as applicable, minus the principal amount of the loan.

**"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

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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. The following are exclusions from the MBL definition:

- (a) Loans made by a corporate credit union;
- (b) Loans made by a credit union to another credit union;
- (c) Loans made to a credit union service organization to which the credit union is affiliated;
- (d) Loans secured by a one-to-four family residential property (if it is the borrower's primary residence);
- (e) Loans fully secured by shares or deposits in the credit union making the extension of credit; and
- (f) Loans in which the aggregate outstanding balances plus unfunded commitments less any portion secured by shares in the credit union to a borrower or an associated borrower, equal an amount less than fifty thousand dollars.

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**"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.

**"Person"** includes a corporation, partnership, limited partnership, unincorporated association, limited liability company, trust, other organization or entity, or a natural person, including, but not limited to, a sole proprietorship.

**"Prospective market value"** means the market value opinion determined by an independent appraiser in compliance with applicable USPAP standards. Prospective value opinions are intended to reflect the current expectations and perceptions of the market participants, based on available data.

**"Qualified costs"** means the aggregate itemized costs of development, construction, remodel or renovation approved by a credit union.

**"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

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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.

"USPAP" means the Uniform Standards of Professional Appraisal Practice, or successor appraisal standards as may be authorized by the Federal Financial Institutions Examination Council.

(2) Certain other terms applicable to this chapter and specific to a single section are defined and used, as follows:

"Common enterprise" is defined and used in WAC 208-460-070;  
"Corporate group" is defined and used in WAC 208-460-070;  
"Direct benefit" is defined and used in WAC 208-460-070; and  
"Substantial financial interdependence" is defined and used in WAC 208-460-070.

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

**208-460-010 REPEALED\***

\*NOTE: See Repealer.

**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:

(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);

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

(e) Any senior management employee directly or indirectly involved in your 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.** Your credit union may not grant a member business loan if any additional income received by your credit union or senior management employees is

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tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(3) **Loans to directors.** Your 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.

**Comment [LJ1]:** Should we add the conflict of interest in 723.7(c)? If yes, would it go here?

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.)~~

**(1) Acquisition, development and construction loan requirements.**

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

(a) **Aggregate credit union limit.** The aggregate of all acquisition loans, development loans, construction loans, A & D loans, D & C loans, and ADC loans may not exceed twenty-five

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percent of the net worth of your credit union, the aggregate amount of which may exclude any portion of a loan that is:

- (i) Secured by shares or deposits in the credit union making the extension of credit;
- (ii) 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 your credit union in the event of default of the borrower; or
- (iii) 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);

(b) **Equity interest of the borrower.** The borrower on such loans must have a minimum of:

- (i) Thirty percent equity interest in the real property being financed by an acquisition loan;
- (ii) Twenty-five percent equity interest in the project being financed by a development loan;
- (iii) Twenty-five percent equity in the project being financed by a D & C loan or a ADC loan if less than fifty percent of the qualifying costs are attributable to construction;
- (iv) Twenty percent equity in the project being financed by a D & C loan or a ADC loan if fifty percent or more of the qualifying costs are attributable to construction;
- (v) Twenty percent equity interest in the project being 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
- (vi) Fifteen percent equity interest in the project being financed by a construction loan that is for one-to-four family speculative residential new construction or for remodel or renovation;

(c) **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 your agreed-upon lien priority according to the mechanic's lien laws of the state where the subject project is situated;

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(d) Credit union experience. Your credit union may not make such loans unless you utilize the services of qualified staff or qualified independent contractors with direct experience in acquisition, development or construction lending; and

(e) Determination of the collateral value of the improvements. For a development or construction loan, or the portions of a “development loan” or a “construction loan” (as applicable for an A & D loan or an ADC loan), the collateral value is the lesser of the project’s cost to complete or its prospective market value.

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 and assurances. Prior to engaging in making member business loans, ((~~the~~)) the following must occur:

(a) The board of directors must approve ~~adopt~~ specific member business loan policies and provide for them to be reviewed by them at least annually 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 of directors must assure that your credit union has appropriate staff for its MBL program in compliance with subsection (2) of this section; and

(d) The board of directors must provide assurance for their understanding of and remaining informed, through periodic briefings from responsible staff and other methods, about the nature and level of risk in the MBL portfolio, including its potential impact on its 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~~

**Comment [LJ2]:** Should we add “prior to any material change to the MBL program or related organization structure? See 723.3(a)(1)



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

(b) **Qualified lending personnel.** Your 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 your 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 your credit union is engaged.

(2) **Options to meet the required experience.** Your 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 your 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 your credit union; and

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

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

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

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

~~((1))~~ (a) The **categories or types** of MBLs your **credit union** will make, including the maximum amount **given** in any category or type of MBL to any one borrower or associated borrowers in compliance with WAC 208-460-070;

~~((2))~~ (b) Your **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 **your** net worth ~~((, that will invest in MBL));~~

~~((4))~~ (d) The maximum amount of **your types 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))~~ your credit union will loan to a member or associated 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 the loans;

~~(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, 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;~~

**Comment [LD(3):** What about 1 – 4 SFR and commercial vehicles?

**Comment [JL(4):** Add definition or example

**Comment [LD(5):** We should state what we mean by types.

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~~(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 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 other than 1-4 family residential mortgages and vehicles;

(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 your 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 your credit union's MBL policy;

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

(vi) Requirements for purchase and sale of commercial loans and loan participations, if your credit union engages in that activity.

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

(a) Loan approval amounts, including establishing levels of loan approval authority commensurate with the individual's or committee's proficiency in evaluation and underwriting member

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business loan risk, when considered in terms of the level of risk the borrowing relationship poses to your 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 your 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, including documentation that:

(A) The methods employed are appropriate for the particular type of collateral;

(B) Your credit union has the means to secure various types of collateral; and

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

(vi) Other appropriate risk assessment including 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.

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?~~**

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~~((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.)~~

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(1) **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 your credit union does not require a full and unconditional personal guarantee in connection with the loan, your credit union must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk.

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

(a) **Collateral standards in general.** All secured member business loans must be secured by 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 balance protection along with appropriate risk sharing with the borrower and the principal or principals.

(b) **Real estate as collateral - loan-to-value limits generally.** Your 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 your credit union makes. The internal loan-to-value ratio limit 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</u>
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	<u>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 &amp; C loan or ADC loan (which has less than 50% of its qualifying costs attributable to construction)</u>	<u>75%*</u>
<u>D &amp; 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).

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

**(d) Non-real estate collateral loan-to-value limits.** Your 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 your 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 non-real estate

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collateral for a loan not exceeding \$250,000 and not more than one hundred percent loan-to-value.

**(e) Transactions excluded from the loan-to-value ratio limits listed in subsections (2) (b), (c) and (d) 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 (2) (b), (c) and (d):

(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 (2) (b), (c) and (d) 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 your 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 (2) (b), (c) and (d) above, and provided that your 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 your 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



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closing costs), or a member business loan that is renewed, refinanced, or restructured in connection with a workout situation, which is part of a clearly defined and well-documented program to achieve orderly liquidation of a member business loan debt, reduce risk of loss, or maximize the recovery on a member business loan;

(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 (2)(b), (c) and (d) of this section has been granted pursuant to WAC 208-460-090.

(3) **Unsecured lending standards.** When making an unsecured member business loan, your 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 your credit union may not exceed ten percent of the your credit union's net worth; and

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

(4) **Prohibition against "structuring" unsecured loans to avoid other limits.** Your 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 or associated members borrow?**

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(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 and not fully secured by collateral in a manner set forth in WAC 208-460-075 may not exceed the greater of:

- (a) Fifteen percent of your credit union's net worth; or
- (b) One hundred thousand dollars.

(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 WAC 208-460-005, 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

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(b) Separate persons borrow from your 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,

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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) In no event may the total amount of loans or extensions of credit by your credit union to a corporate group exceed the

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greater of fifteen percent of your credit union's net worth or one hundred thousand dollars

(e) 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.

**NEW SECTION**

**208-460-075 Is there an exception to the aggregate member business loan limit for readily marketable collateral?**

1) A loan or extension of credit by a credit union to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, shall not be subject to any limitations based on capital and surplus.

(2) Notwithstanding subsection (1) of this section, if the total of such loans and extensions of credit, together with loans made under general limitation pursuant to WAC 208-460-070(2) exceed twenty-five percent of net worth, the Division of Credit Unions will review the credits as a possible concentration, with regard to both risk diversification within the credit union's asset structure and diversification or other risk in the marketable collateral securing the loan. This limitation shall be separate and in addition to the general twenty percent limitation set forth in WAC 208-460-070(2).

(3) Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collateral having a current market value of at least one hundred fifteen percent of the amount of the loan or extension of credit at all times.

(4) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the credit union's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

**Comment [LJ6]:** Should we add 10% as in 723.4 (c) for fully secured by perfected security interest in readily marketable collateral?

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(5) A credit union must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times. If collateral values fall below one hundred fifteen percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general limitation in WAC 208-460-070(2), the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

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. Exclude from your credit union's calculation any member business loan identified in WAC 208-460-135.

~~((1))~~ (2) Step 2. Calculate the numerator by adding together the amount of the member business loans to the member and associated members (if any). 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))~~ (3) Step 3. Divide the numerator by 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) Your 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 or associated members 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.

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(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~~) your credit union must submit its request to the director. The waiver request must contain the following:

- (a) A copy of your 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 credit union's ability to manage this activity; and

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

- (i) The history of loan losses and loan delinquency;
- (ii) Volume and cyclical or seasonal patterns;
- (iii) Diversification;
- (iv) Concentrations of credit to a member and associated members in excess of fifteen percent of net worth;
- (v) Underwriting standards and practices;
- (vi) Types of loans grouped by purpose and collateral; and
- (vii) The qualifications of personnel responsible for underwriting and administering member business loans.

(2) The director will:

(a) Review the information ~~you~~ provided in your credit union's request;

(b) Evaluate the level of risk to your credit union;

(c) Consider your credit union's historical CAMELS composite and component ratings;

(d) Notify your credit union whenever the waiver request is deemed complete; and

(e) Notify your credit union of the action taken within forty-five 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

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cooperatively with Region V in making his or her decision on the request;

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

(c) If your credit union does 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) 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):

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

(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. Sec. 722.3; and

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

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

~~Nondelinquent member business loans may be classified based on factors such as the adequacy of analysis and supporting documentation. You must classify potential loss loans as either substandard, doubtful, or loss. The criteria for determining the classification of loans are:~~

~~(1) **Substandard.** A substandard loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. The loan must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. It is characterized by the distinct possibility that the credit union will sustain some loss if the deficiency is not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.~~

~~(2) **Doubtful.** A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work~~



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~~to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: Proposed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans; and~~

~~(3) **Loss.** A loan classified loss is considered uncollectible and of such little value that its continuance as a loan is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.~~

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

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

~~The following schedule sets the minimum amount you must reserve for classified member business loans:~~

<b>Classification</b>	<b>Amount Required</b>
Substandard	<del>10% of outstanding balance unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.</del>
Doubtful	<del>50% of the outstanding balance.</del>
Loss	<del>100% of the outstanding balance.</del>

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

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

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

- (1) One and three quarters times the ~~((credit union's))~~ your credit union's net worth; 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. 1790(c)(1)(A).

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 208-460-080:

- (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 your 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 or any associated member 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?**

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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 your credit union, or by shares or deposits in other financial institutions;
- (2) The amount of a first lien on a member'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 your 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 your credit union's loans; or
  - (ii) The largest portion of the outstanding balance of your credit union's loans.

(2) 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, your credit union qualifies for the exception under

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(d)(ii) of this subsection if, based on the outstanding balance of your credit union's loans, your 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))~~ (3) 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:

- (a) Twelve and one quarter percent of your credit union's total assets; or
- (b) Three times your 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), your 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 your 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      What are the recordkeeping requirements?**

Your credit union must separately identify member business loans in your credit union records and in the aggregate on your credit union's financial reports.

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

**NEW SECTION**

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

(1) A member business loan or portfolio members business loans, which were in compliance with governing law when made and which subsequently cease to be in compliance with this chapter or other governing law, will be treated as "nonconforming" if:

(a) Your credit union has previously exercised federal parity under RCW 31.12.404 when making the loan or loans in question and now elects, instead, to comply wholly with this chapter and not exercise such federal parity, thereby causing such loan or loans to be out of compliance with the requirements of this chapter;

(b) Your credit union's net worth has declined, borrowers have subsequently merged or formed a common enterprise as defined under WAC 208-460-070, or the limit on loans or net worth has changed, thereby causing such loan or loans to be out of compliance with the requirements of this chapter; or

(c) Collateral securing the loan or loans, in order to satisfy the requirements of an exception to the limit authorized by this chapter, has declined in value, thereby causing such loan or loans to be out of compliance with the requirements of this chapter.

(2) Your credit union must use reasonable efforts, supported by written documentation, to bring a loan or loans that are nonconforming as a result of subsection (1)(a) or (c) of this section into conformity with this chapter unless to do so would be inconsistent with safe and sound credit union practices.

(3) Your credit union must bring a loan or extension of credit that is nonconforming as a result of circumstances described in subsection (1)(b) of this section into conformity with this chapter within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond your credit union's control prevent the credit union from taking action.

(4) Your credit union's prior election to exercise federal parity under RCW 31.12.404 means that, pursuant to the terms of RCW 31.12.404(3), the credit union is subject to all of the restrictions, limitations, and requirements of any federal law or statute it invokes and seeks to be governed by in derogation of this chapter. However, if, after subsequently electing, pursuant to subsection (1)(a) of this section, to be governed by this chapter, the credit union must, but for the allowance for treatment of nonconforming loans under this section, be subject

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to all restrictions, limitations, and requirements of this chapter and not the contrary federal statute of rule.

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

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**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 your credit union has, prior to [the effective date of this rulemaking], obtained approval 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 your credit union being otherwise out of compliance with this chapter, as amended, then your credit union is nonetheless entitled and authorized by the director and this chapter to operate according to the terms and conditions of such approval or waiver, but only to the extent of member business loans or loan commitments made and still outstanding prior to [the effective date of this rulemaking].

(2) For purposes of this section, satisfactory evidence of approval 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.

208-460-170      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-