TITLE 38: FINANCIAL INSTITUTIONS
CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 190
ILLINOIS CREDIT UNION ACT

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AUTHORITY: Implementing and authorized by the Illinois Credit Union Act [205 ILCS 305].


SUBPART A: GENERAL PROVISIONS

Section 190.2 Definitions

For purposes of the Illinois Credit Union Act and this Part, the words and phrases defined in this Section shall have the meanings ascribed to them unless the context requires otherwise.

"Act" means the Illinois Credit Union Act [205 ILCS 305].

"Credit union" means a credit union chartered under the Illinois Credit Union Act, or, as the context permits, under the Federal Credit Union Act or the laws of any state.

"Department" means the Illinois Department of Financial and Professional Regulation.

"Director" means the Director of the Department of Financial and Professional Regulation-Division of Financial Institutions. As provided in Section 8(1) of the Act, the Director shall oversee the functions of the Division and report to the Secretary with respect to the Director's exercise of any of the rights, powers and duties vested by law in the Secretary under the Act or this Part.

"Division" means the Department of Financial and Professional Regulation-Division of Financial Institutions.

"GAAP" or "generally accepted accounting principles" means U.S. Generally Accepted Principles promulgated by the Financial Accounting Standards Board (see http://www.fiasb.org).

"NCUA" means the National Credit Union Administration.

"Net worth" means retained earnings, as defined under GAAP, and secondary capital. Net worth does not include the allowance for loan losses account.
"Retained earnings" includes undivided earnings, regular reserve, other reserves, and any other appropriations designated by management or regulatory authorities.

"Secondary capital" means a secondary capital account or other form of non-share account, including without limitation a debt instrument, subject to the following conditions:

The maturity or the account shall not be less than three years and the account shall not be redeemable prior to maturity or the expiration of a minimum withdrawal notice period of three years.

The account shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

The account holder's claim against the credit union must be subordinate to all other claims, including shareholders, creditors and the National Credit Union Share Insurance Fund.

Funds in the account, including interest accrued and paid into the account, must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings. In lieu of being paid into the account, interest may be paid directly to the account holder or into a separate account from which the account holder may make withdrawals. Losses shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time losses are realized.

The account may not be pledged or provided by the account holder as security on a loan or obligation with the credit union or any other party.

In the event of liquidation of the credit union, the accounts will, to the extent they are not needed to cover losses at the time of liquidation, be paid out to the account holder.

"Paid-in and unimpaired capital" or "unimpaired capital" means shares as defined in Section 1.1 of the Act.

"Person" or "persons" means individuals and bodies politic and corporate, including without limitation corporations, limited liability companies, general partnerships, limited partnerships and joint ventures; unless, from the context and facts, the intention is plain to apply only to individuals. Persons who reside in or
live in a geographical area include non-natural persons located within the
geographical area.

"Secretary" means the Secretary of the Department of Financial and Professional
Regulation or a person authorized by the Secretary, the Act or this Part to act in
the Secretary's stead. As provided in Section 8(l) of the Act, all references in the
Act or this Part to the Secretary shall be deemed to include the Director, as a
person authorized by the Secretary or the Act to assume responsibility for the
oversight of the functions of the Department relating to the regulatory supervision
of credit unions under the Act and this Part.

"State" means a state of the United States, the District of Columbia, the
Commonwealth of Puerto Rico and any of the several territories and possessions
of the United States. When capitalized, the term "State" generally means the State
of Illinois.

"Surplus" means undivided earnings.

"USPAP" means the Uniform Standards of Professional Appraisal Practice
promulgated by the Appraisal Standards Board pursuant to Title XI of the Federal
Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC
3331 et seq.) published biennially by the Appraisal Standards Board of The
Appraisal Foundation, 1155 15th Street N.W., Suite 1111, Washington DC  20005
(effective January 1, 2016 through December 31, 2017; no later amendments or
editions).

(Source:  Amended at 41 Ill. Reg. ______, effective ____________)

Section 190.90  Fixed Asset Investments

a) Definitions

"Fixed assets" means premises and furniture, fixtures and equipment, as those
terms are defined in this Section:

"Premises" includes any office, branch office, suboffice, service center,
parking lot, other facility, or real estate where the credit union transacts or
will transact business.

"Furniture, fixtures and equipment" includes all office furnishings, office
machines, computer hardware and software, automated terminals, and
heating and cooling equipment.
"Investment in fixed assets" means:

any investment in real property (improved or unimproved) that is being used or is intended to be used as premises, excluding premises leased for five years or less;

any leasehold improvement on premises;

the present value of the aggregate of all capital lease payments pursuant to lease agreements for fixed assets, excluding lease payments for premises leased for five years or less;

any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation or limited liability entity, including a credit union service organization, holding any fixed assets used by the credit union and any loans to that partnership or corporation or limited liability entity; and

any investment in furniture, fixtures and equipment.

"Retained earnings" includes undivided earnings, regular reserve, other reserves, and any other appropriations designated by management or regulatory authorities.

b) Investment in Fixed Assets

1) Credit unions with assets of less than $1,000,000 that choose to invest in premises must apply to the Division for approval.

2) Credit unions with assets of $1,000,000 or more may invest in fixed assets, without the prior approval of the Division.

c) Credit unions with assets of less than $1,000,000 seeking to invest in premises must submit to the Division an application for approval. The application for approval must contain the following minimum supporting documentation:

1) why the purchase and/or lease is necessary to serve the credit union's members;

2) details of the proposed transaction including:

A) location and full description of the fixed asset;

B) if a purchase of premises is involved, current valuation by an
independent appraiser;

C) purchase price or lease details;

D) current owners and their relationship to the credit union or to any members of the credit union;

E) how the project will be financed;

F) if a purchase, lease or improvement of premises is involved, a summary of planned due diligence inspections to verify building, building line and use or occupancy restrictions; conditions and covenants on record; zoning laws and ordinances; easements for public utilities; and other matters pertinent to the transaction; and

G) evidence that the increase in operating expenses caused by the project can be supported after accounting for the current level of expenses and dividend commitments;

3) the credit union's latest balance sheet, income statement and loan delinquency report;

4) a certified copy of Board minutes that contain approval for the project.

d) The Division shall respond to applications for approval of fixed asset investments as follows:

1) The Division shall inform the credit union applicant, in writing, of the date the letter of application was received.

2) Approval of applications shall be given in writing once it is determined by the Division that the proposal will not adversely affect the credit union's financial position. The determination will be based on the past history, current financial condition, projections of the credit union, and whether the increase of operating expenses caused by the project can be supported after accounting for the current level of expense, dividend and reserve commitments.

3) An approval will state a dollar amount or percentage of retained earnings that may be invested in fixed assets by the credit union.

4) The Division shall provide to credit union applicants written notification of action taken within 45 calendar days after receipt of the complete
package of supporting documentation from the credit union. If the credit union does not receive written notification of the action taken within 45 calendar days after the date the complete package of supporting documentation was received by the Division, the credit union may proceed with its proposed investment in fixed assets.

e) A credit union that has received approval for a specific fixed asset transaction from the Division prior to the date of promulgation of amendments to this Section shall continue to be eligible to consummate the transaction after the date of promulgation, without further Division approval.

f) In recording all transactions for fixed assets, GAAP shall be followed.

(Source: Amended at 41 Ill. Reg. ______, effective ____________)

Section 190.140 Real Estate Lending

a) A credit union with total assets greater than $1 million may, following a resolution of its board, make loans secured by a lien on real estate, including an assignment of a beneficial interest in a land trust, subject to the following procedures:

<table>
<thead>
<tr>
<th>Total Assets of a Credit Union</th>
<th>Maximum Amount of Loans Secured by Real Estate</th>
<th>Aggregate of All First Mortgage Loans Secured by Real Estate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $1 million</td>
<td>Lending Limits for Consumer Loans</td>
<td>0% of total assets</td>
</tr>
<tr>
<td>$1 - 2.5 million</td>
<td>$165,000*</td>
<td>25% of total assets</td>
</tr>
<tr>
<td>$2.5 - 5 million</td>
<td>$250,000*</td>
<td>30% of total assets</td>
</tr>
<tr>
<td>$5 - 10 million</td>
<td>$330,000</td>
<td>35% of total assets</td>
</tr>
<tr>
<td>$10 - 30 million</td>
<td>$580,000</td>
<td>40% of total assets</td>
</tr>
<tr>
<td>$30 - 100 million</td>
<td>$825,000</td>
<td>45% of total assets</td>
</tr>
<tr>
<td>Over $100 million</td>
<td>$1,000,000</td>
<td>50% of total assets</td>
</tr>
</tbody>
</table>

* The aggregate loans to one member may not exceed the aggregate limit referenced in subsection (e).

b) Credit unions with assets under $1 million may make home equity and second mortgage loans subject to the lending limits for consumer loans set forth in Section 190.160. Credit unions with assets under $1 million shall not make first mortgage real estate loans.

c) Credit unions shall not make first mortgage real estate loans for more than the
estimated market value or appraised value of the real estate securing the loans.  Real estate loans, other than first mortgage loans, shall be limited to the value of the member-borrower's equity in the real estate securing the loan, provided a credit union may consider as equity any outstanding loan amount secured by the real estate if the outstanding loan will be repaid with the proceeds of the credit union's loan.

d) The maximum individual lending limit and the maximum ratio of first mortgage real estate loans may be increased by obtaining written approval from the Secretary. Approval is to be based upon the need of the members and the credit union's real estate lending record.

e) The maximum limit on an individual loan by credit unions with assets greater than $1 million is in addition to the secured and unsecured lending limits of Section 190.160; provided, however, in no event shall all loans to any member exceed in the aggregate 10% of the credit union's unimpaired capital and surplus as defined in Section 190.2. Loans subject to the requirements for business loans shall be subject to the appraisal requirements set forth in subsection (h), but shall not be subject to the other provisions of this Section.

f) The maximum maturity of a loan secured by a first mortgage shall not exceed 40 years.

g) Procedures

1) All loans secured by a lien on real estate shall be made based upon prudent written lending policies and sound lending practices as documented in each member's loan file. Unless waived by the Secretary, lending policies shall include, without limitation, acceptable debt-to-income and loan-to-value ratios that will be considered the types of real estate security that will be accepted and any other prudent data considered necessary to determine the appropriateness of a loan request. All applicable Illinois and federal statutes shall be observed.

2) All accounting for real estate loan transactions shall be in accordance with GAAP.

h) Documentation

1) Any credit union granting loans secured by a lien in real estate must procure and retain the following documentation in its files:

A) A loan application that specifies the purpose of the loan (equity,
purchase, construction, refinance, etc.). The application must contain sufficient information to support the approval of the loan. The information shall include without limitation: the amount of the loan requested; the purchase price (if applicable); a listing of the borrower's assets and liabilities; a statement of the borrower's income; a specific identification of the property; and an explanation of the source of the borrower's down payment. If the loan proceeds will be used for the purchase of the property, a copy of the real estate sale contract shall be included as an attachment to the application.

B) A legal opinion from the credit union's attorney, or a title insurance policy that identifies the credit union's lien position on the property used to secure the loan. In the case of home equity lines of credit, second mortgages, and non-purchase money first mortgage transactions, a title search prepared by a service provider capable of conducting a search shall be acceptable.

C) For transactions of $250,000 or less, a written estimate of market value of the property securing the loan, performed by an individual having no direct or indirect interest in the property and experienced to perform estimations of value for the type and amount of credit being considered. For transactions over $250,000, an appraisal by a state certified or licensed appraiser that estimates the market value of the property used as security for the loan.

D) A credit report prepared by the credit union or a credit reporting agency. The report, in conjunction with the information contained in subsection (h)(1)(A), must demonstrate the applicant's past history of repayment and ability to repay the loan in question.

E) A duly executed note and mortgage agreement that outline the borrower's agreement to repay the loan on the terms agreed, and the borrower's agreement to provide the credit union with a valid security interest in the subject property. The mortgage agreement must contain an accurate legal description of the subject property and be duly recorded in the office of the appropriate county recorder of deeds.

F) A settlement statement reflecting all costs of closing and all disbursements of funds at closing for real estate loans that require the use of a settlement statement under the federal Real Estate Settlement Procedures Act (RESPA) (12 USC 2601).
G) On any loan for which the lesser of the loan-to-value ratio or loan-to-purchase price ratio exceeds 80%, the credit union may require the borrower to obtain private mortgage insurance insuring the excess of the loan above the 80% factor.

H) In the event the subject loan is to be used for the construction of a residential dwelling that is or will be the principal residence of the member-borrower and the loan will be secured by a perfected first lien or first security interest in favor of the credit union, the credit union must obtain satisfactory evidence of the payment in full of the costs of furnishing labor and material in connection with the construction. The evidence shall include receipt of an owner's statement, under oath, setting forth the names of all parties with whom the owner has contracted for the furnishing of labor and material; a general contractor's sworn statement from each of the parties named in the owner's statement; a subcontractor's sworn statement from each subcontractor named in the general contractor's statement; and partial and final unconditional lien waivers from the general contractor and all subcontractors and materialmen indicating that they have completed their respective portion of the work and been paid in full. The credit union must inspect, or cause to be inspected by a third party, the completion of each phase of the work for which an advance of any portion of the loan proceeds is sought. Any such inspections must be clearly documented in the file as to the date of the inspection and a brief explanation of the work progression. Additionally, the credit union must obtain a borrower payment authorization, in connection with each payment to the general contractor. This subsection (h)(1)(H) shall not apply to a loan to finance the repair, alteration or improvement of a residential dwelling which is the residence of the member-borrower.

2) A loan secured by a lien on real estate is exempt from the requirements of subsections (h)(1)(B), (C) and (G) of this Section if the loan complies with the following criteria:

A) The loan is not used for the purchase or refinancing of the real estate securing the loan.

B) The lien on real estate is taken as collateral solely through an abundance of caution.
C) The terms of the transaction are not more favorable than they would have been in the absence of the lien on real estate.

D) The transaction complies with the lending limits and other requirements for consumer loans set forth in Section 190.160.

i) Sale of Real Estate Loans

1) A credit union may sell, in whole or in part, any loan secured by real estate to:

A) Federal National Mortgage Association (FNMA).


C) Federal Home Loan Mortgage Corporation.

D) The Federal Home Loan Bank of the Federal Home Loan Bank System district in which the credit union is located.

E) Federal, Illinois and Local Housing Authorities.

F) Credit Unions, Banks, Savings Banks and Savings and Loan Associations chartered under the laws of the United States, the State of Illinois or any other state.

G) Residential mortgage licensees properly registered with and licensed by the Department of Financial and Professional Regulation-Division of Banking.

H) Other institutions approved by the Secretary.

2) All such sales shall not be subject to recourse or repurchase that enables the credit union to retain control over the transferred assets. The credit union shall have surrendered control over the transferred assets if:

A) The transferred assets have been put presumptively beyond the reach of the credit union transferring the assets and its creditors;

B) The purchaser has the right to pledge or exchange the assets; and

C) The credit union does not maintain effective control over the transferred assets through an agreement that both entitles and
obligates the credit union to repurchase the assets before their maturity.

3) A limited recourse provision in a sale agreement that obligates the credit union transferring assets to purchase the assets because of breach of warranty or misrepresentation shall be considered a sale.

(Source: Amended at 41 Ill. Reg. _____, effective ____________)

Section 190.150 Reverse Mortgage (Repealed)

(Source: Repealed at 41 Ill. Reg. _____, effective ____________)

Section 190.165 Business Loans

a) Purpose and Scope

1) This Section is intended to accomplish two broad objectives. First, it sets out policy and program responsibilities that an Illinois chartered credit union must adopt and implement as part of a safe and sound commercial lending program. Second, it incorporates the statutory limit on the aggregate amount of member business loans that a federally insured credit union may make pursuant to Section 107A of the Federal Credit Union Act (12 USC 1757a). This Section distinguishes between these two distinct objectives.

2) Credit Unions and Loans Covered by this Section

A) This Section applies to Illinois chartered natural person credit unions. However, an Illinois chartered natural person credit union is not subject to subsections (c) and (d) if it meets all of the following conditions:

i) The credit union's total assets are less than $250 million.

ii) The credit union's aggregate amount of outstanding commercial loan balances and unfunded commitments, plus any outstanding commercial loan balances and unfunded commitments of participations sold, plus any outstanding commercial loan balances and unfunded commitments sold and serviced by the credit union total less than 15% of the credit union's net worth.
iii) In a given calendar year the amount of originated and sold
commercial loans the credit union does not continue to
service total less than 15% of the credit union's net worth.

B) This Section does not apply to loans:

i) Made by a corporate credit union, as defined in Section 1.1
   of the Act;

ii) Made by a federally insured credit union to another
   federally insured credit union;

iii) Made by a credit union to a credit union service
   organization, as defined in Section 190.5; or

iv) Fully secured by a lien on a 1 to 4 family residential
   property that is a member's primary residence.

3) Other Regulations that Apply

A) As required by section 741.203 of the NCUA regulations (12 CFR
   741.203), a federally insured, State chartered credit union must
   comply with sections 701.21(c)(8) (prohibited fees) and (d)(5)
   (non-preferential loans) (12 CFR 701.21(c)(8) and (d)(5)).

B) When a credit union makes a commercial loan as part of a loan
   program in which a federal or state agency (or its political
   subdivision) insures repayment, guarantees repayment, or provides
   an advance commitment to purchase the loan in full and that
   program has requirements that are less restrictive than those
   required by this Section, the credit union may follow the loan
   requirements of the relevant guaranteed loan program.

C) The requirements of section 701.22 of the NCUA regulations (12
   CFR 701.22) apply to a federally insured credit union's purchase of
   a participation interest in a commercial loan.

b) Definitions – For purposes of this Section, the following definitions apply:

1) "Associated borrower" means any other person or entity with a shared
   ownership, investment or other pecuniary interest in a business or
   commercial endeavor with the borrower. This means any person or entity
   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 to the borrower. Exceptions to this definition for partnerships,
joint ventures and associations are as follows:

A) If the borrower is a partnership, joint venture or association, and
the other person with a shared ownership, investment or other
pecuniary interest in a business or commercial endeavor with the
borrower is a member or partner of the borrower, and neither a
direct benefit nor a common enterprise exists, this other person is
not an associated borrower.

B) If the borrower is a member or partner of a partnership, joint
venture or association, the other entity is not an associated
borrower if:

i) the other entity with a shared ownership, investment or
other pecuniary interest in a business or commercial
endeavor with the borrower is the partnership, joint venture
or association;

ii) the borrower is a limited partner of that other entity; and

iii) by the terms of a partnership or membership agreement
valid under applicable law, the borrower is not held
generally liable for the debts or actions of that other entity.

C) If the borrower is a member or partner of a partnership, joint
venture or association, the other person is not an associated
borrower if:

i) the other person with a shared ownership, investment or
other pecuniary interest in a business or commercial
endeavor with the borrower is another member or partner
of the partnership, joint venture or association; and

ii) neither a direct benefit nor a common enterprise exists.

2) "Commercial loan" means any loan, line of credit or letter of credit
(including any unfunded commitments), and any interest a credit union
obtains in loans made by another lender, to individuals, sole
proprietorships, partnerships, corporations or other business enterprises for
commercial, industrial, agricultural or professional purposes, but not for personal expenditure purposes. Excluded from this definition are loans:

A) made by a corporate credit union;
B) made by a federally insured credit union to another federally insured credit union;
C) made by a credit union to a credit union service organization;
D) made by a credit union not subject to section 107A of the Federal Credit Union Act (12 USC 1757a) to another credit union;
E) secured by a 1 to 4 family residential property (whether or not it is the borrower's primary residence);
F) fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions;
G) secured by a vehicle manufactured for household use; and
H) that would otherwise meet the definition of commercial loan, when the aggregate outstanding balances plus unfunded commitments less any portion secured by shares in the credit union to a borrower or an associated borrower are less than $50,000.

3) "Common enterprise" means:

A) The expected source of repayment for each loan or extension of credit is the same for each borrower and no individual borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment because of wages and salaries paid to an employee, unless the standards described in subsection (b)(3)(B) are met;
B) Loans or extensions of credit are made:
   i) To borrowers who are related directly or indirectly through common control, including when one borrower is directly or indirectly controlled by another borrower; and
ii) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence means 50% or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with another borrower. Gross receipts and expenditures include gross revenues or expenses, intercompany loans, dividends, capital contributions and similar receipts or payments; or

C) Separate borrowers obtain loans or extensions of credit to acquire a business enterprise of which those borrowers will own more than 50% of the voting securities or voting interests.

4) "Control" means a person or entity directly or indirectly, or acting through or together with one or more persons or entities:

A) Owns, controls or has the power to vote 25% or more of any class of voting securities of another person or entity;

B) Controls, in any manner, the election of a majority of the directors, trustees or other persons exercising similar functions of another person or entity; or

C) Has the power to exercise a controlling influence over the management or policies of another person or entity.

5) "Credit risk rating system" means a formal process that identifies and assigns a relative credit risk score to each commercial loan in a credit union's portfolio, using ordinal ratings to represent the degree of 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.

6) "Direct benefit" means the proceeds of a loan or extension of credit to a borrower, or assets purchased with those proceeds, that are transferred to another person or entity, other than in a bona fide arm's-length transaction, when the proceeds are used to acquire property, goods or services.

7) "Financial statement quality" is determined by:

A) The level of assurance provided by the preparer and the required professional standards supporting the preparer's opinion. In many cases, tax returns and/or financial statements professionally
prepared in accordance with generally accepted accounting principles (GAAP) will be sufficient for less complex borrowing relationships, such as those that are limited to a single operation of the borrower and principal with relatively low debt. For more complex and larger borrowing relationships, such as those involving borrowers or principals with significant loans outstanding or multiple or interrelated operations, the credit union should require borrowers and principals to provide either:

i) An auditor's review of the financial statements prepared consistent with GAAP to obtain limited assurance (i.e., a "review quality" financial statement); or

ii) an independent financial statement audit under generally accepted auditing standards (GAAS) for the expression of an opinion on the financial statements prepared in accordance with GAAP (i.e., an "audit quality" financial statement).

B) Credit unions should address the criteria and thresholds for the required financial reporting in their policies. Credit unions should allow exceptions in their credit policies if they determine the relationship does not require the same level of assurance and they are satisfied that the lesser quality still provides them with accurate reporting of the borrower's financial performance. Credit unions will be expected to address the issue of exceptions in their loan policies. Any exception should be documented by credit union staff and approved by the appropriate designated internal authority.

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

9) "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 50% of the principal amount of the loan.
10) “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 or used passenger car or other vehicle such as a minivan, sport-utility vehicle, pickup truck or 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 50% of the principal amount of the loan.

11) "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 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 subsection (f).

12) "Net worth" means a credit union's net worth, as defined in Section 190.2.

13) "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.

14) "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.

c) Board of Directors and Management Responsibilities
Prior to engaging in commercial lending, a credit union must address the following board responsibilities and operational requirements:
1) Board of Directors. A credit union's board of directors, at a minimum, must:

A) Approve a commercial loan policy that complies with subsection (d). The board must review its policy on an annual basis, prior to any material change in the credit union's commercial lending program or related organizational structure, and in response to any material change in portfolio performance or economic conditions, and update it when warranted.

B) Ensure the credit union appropriately staffs its commercial lending program in compliance with subsection (c)(2).

C) Understand and remain informed, through periodic briefings from responsible staff and other methods, about the nature and level of risk in the credit union's commercial loan portfolio, including its potential impact on the credit union's earnings and net worth.

2) Required Expertise and Experience. A credit union making, purchasing or holding any commercial loan must internally possess the following experience and competencies:

A) Senior Executive Officers. A credit union's senior executive officers overseeing the commercial lending function must understand the credit union's commercial lending activities. At a minimum, senior executive officers must have a comprehensive understanding of the role of commercial lending in the credit union's overall business model and establish risk management processes and controls necessary to safely conduct commercial lending.

B) Qualified Lending Personnel. A credit union must employ qualified staff with experience in the following areas:

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

ii) Overseeing and evaluating the performance of a commercial loan portfolio, including rating and quantifying risk through a credit risk rating system; and
iii) Conducting collection and loss mitigation activities for the type of commercial lending in which the credit union is engaged.

C) Options to Meet the Required Experience. A credit union may meet the experience requirements in subsections (c)(2)(A) and (c)(2)(B) 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 subsection (c)(2)(B), use of a third-party is permissible only if the following conditions are met:

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

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

iii) 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

iv) The third-party arrangement must otherwise comply with subsection (g).

d) Commercial Loan Policy

Prior to engaging in commercial lending, a credit union must adopt and implement a comprehensive written commercial loan policy and establish procedures for commercial lending. The board-approved policy must ensure the credit union's commercial lending activities are performed in a safe and sound manner by providing for ongoing control, measurement and management of the credit union's commercial lending activities. At a minimum, a credit union's commercial loan policy must address each of the following:

1) Type of commercial loans permitted.

2) Trade area.

3) Maximum amount of assets, in relation to net worth, allowed:

A) in secured, unsecured and unguaranteed commercial loans;
B) in any given category or type of commercial loan; and

C) to any one borrower or group of associated borrowers, provided:

i) the policy must specify that the aggregate dollar amount of commercial loans to any one borrower or group of associated borrowers may not exceed the greater of 15% of the credit union's net worth or $100,000, plus an additional 10% of the credit union's net worth if the amount that exceeds the credit union's 15% general limit is fully secured at all times with a perfected security interest by readily marketable collateral, as defined in subsection (b);

ii) any insured or guaranteed portion of a commercial loan made through a program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment or provides an advance commitment to purchase the loan in full, is excluded from this limit; and

iii) the maximum limit on commercial loans is in addition to the secured and unsecured limits established in Sections 190.140 and 190.160; provided, however, in no event shall all loans to any borrower or group of associated borrowers exceed in the aggregate 10% of the credit union's unimpaired capital and surplus.

4) Qualifications and experience requirements for personnel involved in underwriting, processing, approving, administering and collecting commercial loans.

5) Loan approval processes, including establishing levels of loan approval authority commensurate with the individual's or committee's proficiency in evaluating and understanding commercial loan risk, when considered in terms of the level of risk the borrowing relationship poses to the credit union.

6) Underwriting standards commensurate with the size, scope and complexity of the commercial lending activities and borrowing relationships contemplated. The standards must, at a minimum, address the following:
A) The level and depth of financial analysis necessary to evaluate the financial trends and condition of the borrower and the ability of the borrower to meet debt service requirements;

B) Thorough due diligence of the principals to determine whether any related interests of the principals 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;

C) Requirements of a borrower-prepared projection when historic performance does not support projected debt payments. The projection must be supported by reasonable rationale and, at a minimum, must include a projected balance sheet and income and expense statement;

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

E) The methods to be used in collateral evaluation, for all types of collateral authorized, including loan-to-value ratio limits. These methods must be appropriate for the particular type of collateral. The means to secure various types of collateral, and the measures taken for environmental due diligence, must also be appropriate for all authorized collateral; and

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

7) Risk management processes commensurate with the size, scope and complexity of the credit union’s commercial lending activities and borrowing relationships. These processes must, at a minimum, address the following:

A) Use of loan covenants, if appropriate, including frequency of borrower and guarantor financial reporting;

B) Periodic loan review, consistent with loan covenants, sufficient to conduct portfolio risk management. This review must include a periodic reevaluation of the value and marketability of any collateral;
C) A credit risk rating system. Credit risk ratings must be assigned to commercial loans 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; and

D) A process to identify, report and monitor loans approved as exceptions to the credit union's loan policy.

e) Collateral and Security

1) A credit union must require collateral commensurate with the level of risk associated with the size and type of any commercial loan. Collateral must be sufficient to ensure adequate loan balance protection, along with appropriate risk sharing with the borrower and principals. A credit union making an unsecured loan must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk.

2) A credit union that does not require the full and unconditional personal guarantee from the principals of the borrower who has a controlling interest in the borrower must determine and document in the loan file that mitigating factors sufficiently offset the relevant risk.

f) Construction and Development Loans

In addition to the requirements of subsections (a) through (e), the following requirements apply to a construction and development loan made by any credit union.

1) For the purposes of this subsection (f), a construction or development loan means any financing arrangement enabling the borrower to acquire property or rights to property, including land or structures, with the intent to construct or renovate an income producing property, such as residential housing for rental or sale, or a commercial building, such as may be used for commercial, agricultural, industrial or other similar purposes. It also means a financing arrangement for the construction, major expansion or renovation of the property types referenced in this subsection (f). The collateral valuation for securing a construction or development loan depends on the satisfactory completion of the proposed construction or renovation when the loan proceeds are disbursed in increments as the work is completed. 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.
2) A credit union that elects to make a construction or development loan must ensure that its commercial loan policy includes adequate provisions by which the collateral value associated with the project is properly determined and established. For a construction or development loan, collateral value is the lesser of the project's cost to complete or its prospective market value.

A) For the purposes of this subsection (f), "cost to complete" means the sum of all qualifying costs necessary to complete a construction project and documented in an approved construction budget. Qualifying costs generally include on-site 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. Qualifying costs include the value of the land, determined as the lesser of appraised market value or purchase price plus the cost of any improvements. Qualifying costs also include interest, a contingency account to fund unanticipated overruns, and other development costs such as fees and related pre-development expenses. Interest expense is a qualifying cost 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. Project costs for related parties, such as developer fees, leasing expenses, brokerage commissions and management fees, are included in qualifying costs only if reasonable in comparison to the cost of similar services from a third party. Qualifying costs exclude 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.

B) For the purposes of this subsection (f), "prospective market value" means the market value opinion determined by an independent appraiser in compliance with the relevant standards set forth in the USPAP. Prospective value opinions are intended to reflect the current expectations and perceptions of market participants, based on available data. Two prospective value opinions may be required to reflect the time frame during which development, construction and occupancy occur. The prospective market value "as-
completed" reflects the property's market value as of the time that development is to be completed. The prospective market value "as-stabilized" reflects the property's market value as of the time the property is projected to achieve stabilized occupancy. For 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.

3) A credit union that elects to make a construction and development loan must also assure its commercial loan policy meets the following conditions:

A) Qualified personnel representing the interests of the credit union must conduct a review and approval of any line item construction budget prior to closing the loan;

B) A credit union approved requisition and loan disbursement process is established;

C) Release or disbursement of loan funds occurs only after on-site inspections, documented in a written report by qualified personnel representing the interests of the credit union, certifying that the work requisitioned for payment has been satisfactorily completed, and the remaining funds available to be disbursed from the construction and development loan are sufficient to complete the project; and

D) Each loan disbursement is subject to confirmation that no intervening liens have been filed.

g) Prohibited Activities

1) Ineligible Borrowers. A credit union shall not grant a commercial loan to the following:

A) Any senior management employee directly or indirectly involved in the credit union's commercial loan underwriting, servicing and collection process, and any of their immediate family members;

B) Any person meeting the definition of an associated borrower with respect to persons identified in subsection (g)(1)(A); or
C) Any compensated director, unless the credit union's board of
directors approves granting the loan and the compensated director
was recused from the board's decision making process.

2) Equity Agreements/Joint Ventures. A credit union shall not grant a
commercial loan if any additional income received by the credit union or
its senior management employees is tied to the profit or sale of any
business or commercial endeavor that benefits from the proceeds of the
loan.

3) Conflicts of Interest. Any third party used by a credit union to meet the
requirements of this Section must be independent from the commercial
loan transaction and shall not have a participation interest in a loan or an
interest in any collateral securing a loan that the third party is responsible
for reviewing, or an expectation of receiving compensation of any sort that
is contingent on the closing of the loan, with the following exceptions:

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 a credit
union and purchase a loan or a participation interest in a loan
originated by the credit union that the third party reviewed.

C) A credit union may use the services of a credit union service
organization that otherwise meets the requirements of subsection
(c)(2)(C) 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.

h) Aggregate Member Business Loan Limit; Exclusions and Exceptions
This subsection (h) incorporates the statutory limits on the aggregate amount of
member business loans that may be held by a federally insured credit union and
establishes the method for calculating a federally insured credit union's net
member business loan balance for purposes of the statutory limits and NCUA
form 5300 reporting.

1) Statutory Limits. The aggregate limit on a federally insured credit union's
net member business loan balances is the lesser of 1.75 times the actual
net worth of the credit union, or 1.75 times the minimum net worth
required under section 1790d(c)(1)(A) of the Federal Credit Union Act (12
USC 1790d(c)(1)(A)).
2) Definition. For the purposes of this subsection (h), "member business loan" means any commercial loan as defined in subsection (b), except that the following commercial loans are not member business loans and are not counted toward the aggregate limit on a federally insured credit union's member business loans:

A) Any loan in which a federal or state agency (or its political subdivision) fully insures repayment, fully guarantees repayment, or provides an advance commitment to purchase the loan in full; and

B) Any non-member commercial loan or non-member participation interest in a commercial loan made by another lender, provided the federally insured credit union acquired the non-member loans and participation interests in compliance with all relevant laws and regulations and is not, in conjunction with one or more other credit unions, trading member business loans to circumvent the aggregate limit.

3) Exceptions. Any loan secured by a lien on a 1 to 4 family residential property that is not a member's primary residence, and any loan secured by a vehicle manufactured for household use that will be used for a commercial, corporate or other business investment property or venture, or agricultural purpose, is not a commercial loan but is a member business loan (if the outstanding aggregate net member business loan balance is equal to or greater than $50,000) and must be counted toward the aggregate limit on a federally insured credit union's member business loans.

4) Statutory Exemptions. A federally insured credit union that has a low-income designation, or participates in the U.S. Department of the Treasury's Community Development Financial Institutions Program, or was chartered for the purpose of making member business loans, or that as of the date of enactment of the Credit Union Membership Access Act of 1998 (P.L. 105-219), had a history of primarily making commercial loans, is exempt from compliance with the aggregate member business loan limits in this subsection (h).

5) Method of Calculation for Net Member Business Loan Balance. For the purposes of NCUA form 5300 reporting, a federally insured credit union's net member business loan balance is determined by calculating the
outstanding loan balance plus any unfunded commitments, reduced by any portion of the loan that is:

A) secured by shares in the credit union;
B) secured by shares or deposits in other financial institutions;
C) secured by a lien on a member's primary residence;
D) insured or guaranteed by any agency of the federal government, a state or any political subdivision of that state;
E) subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of that state; or
F) sold as a participation interest without recourse and qualifying for true sales accounting under GAAP.

i) Transitional Provisions
This subsection (i) governs circumstances in which, as of January 1, 2017, a credit union is operating in accordance with an approved waiver from the Division or NCUA or is subject to any enforcement constraint relative to its commercial lending activities.

1) Waivers. As of January 1, 2017, any waiver approved by the Division or NCUA concerning a credit union's commercial lending activity is rendered moot, except that waivers granted prior to January 1, 2017, for borrowing relationships (loans made to one borrower or group of associated borrowers), will be grandfathered. However, the debt associated with those relationships may not be increased.

2) Enforcement Constraints. Limitations or other conditions imposed on a credit union in any written directive from the Division or NCUA, including, but not limited to, items specified in any Document of Resolution, any published or unpublished Letter of Understanding and Agreement, Regional Director Letter, Preliminary Warning Letter, or formal enforcement action, are unaffected by the adoption of this Section. Included within this subsection (i)(2) are any constraints or conditions embedded within any waiver issued by the Division or NCUA. As of January 1, 2017, all these limitations or other conditions remain in place until they are modified by the Division or NCUA.
j) Allowance for Loan Losses for Business Loans

Allowance for loan losses for business loans will be determined in accordance with GAAP. The external auditor conducting the credit union's financial statement audit shall analyze the methodology employed by the credit union and conclude that the financial statements, including the allowance for loan losses, are fairly stated in all material respects in accordance with GAAP.

(Source: Amended at 41 Ill. Reg. _____, effective ____________)