

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

3
4 PART 190
5 ILLINOIS CREDIT UNION ACT

6
7 SUBPART A: GENERAL PROVISIONS

8		
9	Section	
10	190.2	Definitions
11	190.5	Credit Union Service Organizations
12	190.10	Field of Membership Procedures
13	190.15	Civil Penalty
14	190.20	Hearings
15	190.25	Regulatory Examination Consistency and Due Process
16	190.30	Cease and Desist Procedures
17	190.40	Removal or Suspension Procedures
18	190.50	Fees
19	190.60	General Accounting Procedures
20	190.70	Loan Loss Accounting Procedures
21	190.80	Use of Electronic Data Processing
22	190.90	Fixed Asset Investments
23	190.100	Classes of Share and Special Purpose Share Accounts
24	190.110	Share Drafts
25	190.120	Bond and Insurance Requirements
26	190.130	Verification of Share and Loan Accounts
27	190.140	Real Estate Lending
28	190.150	Reverse Mortgage (Repealed)
29	190.160	Lending Limits – Consumer Loans
30	190.165	Business Loans
31	190.170	Group Purchasing
32	190.180	Investments
33	190.185	Investment in "Other Financial Institutions"
34	190.190	Liquidation
35	190.200	Conversion of Charter
36	190.210	Reimbursement for Financial Records
37	190.220	Registration of Out of State Credit Unions

38
39 SUBPART B: HIGH RISK HOME LOANS

40		
41	Section	
42	190.500	Definitions
43	190.505	Applicability of Rule

- 44 190.510 Good Faith Requirements
- 45 190.515 Fraudulent or Deceptive Practices
- 46 190.520 Prohibited Refinances
- 47 190.525 Negative Amortization
- 48 190.530 Negative Equity
- 49 190.535 Balloon Payments
- 50 190.540 Financing of Certain Points and Fees
- 51 190.545 Financing of Single Premium Insurance Products
- 52 190.550 Lending Without Due Regard to Ability to Repay
- 53 190.555 Verification of Ability to Repay
- 54 190.560 Payments to Contractors
- 55 190.565 Counseling Prior to Perfecting Foreclosure
- 56 190.570 Mortgage Awareness Program
- 57 190.575 Offer of Mortgage Awareness Program
- 58 190.580 Third Party Review

59

60

SUBPART C: PAYDAY LOANS

61

62 Section

63 190.600 Definitions

64 190.601 Purpose and Scope

65 190.605 Applicability of Rule

66 190.610 Issuance of Payday Loans by Credit Unions

67

68 190.APPENDIX A Estimated Monthly Income and Expenses Worksheet

69 190.APPENDIX B Mortgage Ratio Worksheet

70

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

72

73 SOURCE: Adopted at 4 Ill. Reg. 20, p. 17, effective May 7, 1980; amended at 6 Ill. Reg. 11154,
74 effective September 7, 1982; amended and codified at 7 Ill. Reg. 14973, effective October 26,
75 1983; emergency amendment at 9 Ill. Reg. 14378, effective September 11, 1985, for a maximum
76 of 150 days; amended at 9 Ill. Reg. 16231, effective October 10, 1985; amended at 10 Ill. Reg.
77 14667, effective August 27, 1986; amended at 12 Ill. Reg. 10464, effective June 7, 1988;
78 amended at 12 Ill. Reg. 17383, effective October 24, 1988; amended at 13 Ill. Reg. 3793,
79 effective March 10, 1989; amended at 13 Ill. Reg. 15998, effective October 2, 1989; emergency
80 amendment at 16 Ill. Reg. 12781, effective July 29, 1992, for a maximum of 150 days; amended
81 at 16 Ill. Reg. 17073, effective October 26, 1992; amended at 19 Ill. Reg. 2826, effective
82 February 24, 1995; amended at 20 Ill. Reg. 5803, effective April 8, 1996; emergency amendment
83 at 20 Ill. Reg. 13093, effective September 27, 1996, for a maximum of 150 days; emergency
84 expired February 17, 1997; amended at 22 Ill. Reg. 17317, effective September 15, 1998;
85 emergency amendment at 23 Ill. Reg. 3086, effective February 23, 1999, for a maximum of 150
86 days; emergency expired July 22, 1999; amended at 23 Ill. Reg. 12614, effective October 4,

87 1999; amended at 23 Ill. Reg. 14031, effective November 12, 1999; amended at 25 Ill. Reg.
88 6244, effective May 17, 2001; amended at 25 Ill. Reg. 13278, effective October 19, 2001;
89 amended at 26 Ill. Reg. 17999, effective December 9, 2002; amended at 28 Ill. Reg. 11699,
90 effective July 29, 2004; amended at 29 Ill. Reg. 10579, effective July 8, 2005; amended at 30 Ill.
91 Reg. 18919, effective December 4, 2006; amended at 32 Ill. Reg. 1377, effective January 16,
92 2008; amended at 34 Ill. Reg. 10500, effective July 12, 2010; amended at 37 Ill. Reg. 12450,
93 effective July 16, 2013; amended at 38 Ill. Reg. 19910, effective October 17, 2014; amended at
94 41 Ill. Reg. _____, effective _____.

95

96

SUBPART A: GENERAL PROVISIONS

97

98 **Section 190.2 Definitions**

99

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

102

103

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

104

105

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

108

109

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

111

112

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

117

118

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

120

121

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

124

125

"NCUA" means the National Credit Union Administration.

126

127

"Net worth" means retained earnings, as defined under GAAP, and secondary
128 capital. Net worth does not include the allowance for loan losses account.

129

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

133
134 "Secondary capital" means a secondary capital account or other form of
135 non-share account, including without limitation a debt instrument, subject
136 to the following conditions:

137
138 The maturity or the account shall not be less than three years and
139 the account shall not be redeemable prior to maturity or the
140 expiration of a minimum withdrawal notice period of three years.

141
142 The account shall not be insured by the National Credit Union
143 Share Insurance Fund or any governmental or private entity.

144
145 The account holder's claim against the credit union must be
146 subordinate to all other claims, including shareholders, creditors
147 and the National Credit Union Share Insurance Fund.

148
149 Funds in the account, including interest accrued and paid into the
150 account, must be available to cover operating losses realized by the
151 credit union that exceed its net available reserves and undivided
152 earnings. In lieu of being paid into the account, interest may be
153 paid directly to the account holder or into a separate account from
154 which the account holder may make withdrawals. Losses shall be
155 distributed pro-rata among all secondary capital accounts held by
156 the credit union at the time losses are realized.

157
158 The account may not be pledged or provided by the account
159 holder as security on a loan or obligation with the credit union or
160 any other party.

161
162 In the event of liquidation of the credit union, the accounts will, to
163 the extent they are not needed to cover losses at the time of
164 liquidation, be paid out to the account holder.

165
166 "Paid-in and unimpaired capital" or "unimpaired capital" means shares as defined
167 in Section 1.1 of the Act.

168
169 "Person" or "persons" means individuals and bodies politic and corporate,
170 including without limitation corporations, limited liability companies, general
171 partnerships, limited partnerships and joint ventures; unless, from the context and
172 facts, the intention is plain to apply only to individuals. Persons who reside in or

173 live in a geographical area include non-natural persons located within the
174 geographical area.

175
176 "Secretary" means the Secretary of the Department of Financial and Professional
177 Regulation or a person authorized by the Secretary, the Act or this Part to act in
178 the Secretary's stead. As provided in Section 8(1) of the Act, all references in the
179 Act or this Part to the Secretary shall be deemed to include the Director, as a
180 person authorized by the Secretary or the Act to assume responsibility for the
181 oversight of the functions of the Department relating to the regulatory supervision
182 of credit unions under the Act and this Part.

183
184 "State" means a state of the United States, the District of Columbia, the
185 Commonwealth of Puerto Rico and any of the several territories and possessions
186 of the United States. When capitalized, the term "State" generally means the State
187 of Illinois.

188
189 "Surplus" means undivided earnings.

190
191 "USPAP" means the Uniform Standards of Professional Appraisal Practice
192 promulgated by the Appraisal Standards Board pursuant to Title XI of the Federal
193 Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC
194 3331 et seq.) published biennially by the Appraisal Standards Board of The
195 Appraisal Foundation, 1155 15th Street N.W., Suite 1111, Washington DC 20005
196 (effective January 1, 2016 through December 31, 2017; no later amendments or
197 editions).

198
199 (Source: Amended at 41 Ill. Reg. _____, effective _____)

200

201 **Section 190.90 Fixed Asset Investments**

202

203 a) Definitions

204

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

207

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

211

212 "Furniture, fixtures and equipment" includes all office furnishings, office
213 machines, computer hardware and software, automated terminals, and
214 heating and cooling equipment.

215

216 "Investment in fixed assets" means:
217
218 any investment in real property (improved or unimproved) that is being
219 used or is intended to be used as premises, excluding premises leased for
220 five years or less;
221
222 any leasehold improvement on premises;
223
224 the present value of the aggregate of all capital lease payments pursuant to
225 lease agreements for fixed assets, excluding lease payments for premises
226 leased for five years or less;
227
228 any investment in the bonds, stock, debentures, or other obligations of a
229 partnership or corporation or limited liability entity, including a credit
230 union service organization, holding any fixed assets used by the credit
231 union and any loans to that partnership or corporation or limited liability
232 entity; and
233
234 any investment in furniture, fixtures and equipment.
235

236 "Retained earnings" includes undivided earnings, regular reserve, other reserves,
237 and any other appropriations designated by management or regulatory authorities.
238

239 b) Investment in Fixed Assets

240
241 1) Credit unions with assets of less than \$1,000,000 that choose to invest in
242 premises must apply to the Division for approval.
243

244 2) Credit unions with assets of \$1,000,000 or more may invest in fixed
245 assets, without the prior approval of the Division.
246

247 c) Credit unions with assets of less than \$1,000,000 seeking to invest in premises
248 must submit to the Division an application for approval. The application for
249 approval must contain the following minimum supporting documentation:
250

251 1) why the purchase and/or lease is necessary to serve the credit union's
252 members;
253

254 2) details of the proposed transaction including:
255

256 A) location and full description of the fixed asset;

257 B) if a purchase of premises is involved, current valuation by an
258

- 259 independent appraiser;
260
261 C) purchase price or lease details;
262
263 D) current owners and their relationship to the credit union or to any
264 members of the credit union;
265
266 E) how the project will be financed;
267
268 F) if a purchase, lease or improvement of premises is involved, a
269 summary of planned due diligence inspections to verify building,
270 building line and use or occupancy restrictions; conditions and
271 covenants on record; zoning laws and ordinances; easements for
272 public utilities; and other matters pertinent to the transaction; and
273
274 G) evidence that the increase in operating expenses caused by the
275 project can be supported after accounting for the current level of
276 expenses and dividend commitments;
277
278 3) the credit union's latest balance sheet, income statement and loan
279 delinquency report;
280
281 4) a certified copy of Board minutes that contain approval for the project.
282
283 d) The Division shall respond to applications for approval of fixed asset investments
284 as follows:
285
286 1) The Division shall inform the credit union applicant, in writing, of the date
287 the letter of application was received.
288
289 2) Approval of applications shall be given in writing once it is determined by
290 the Division that the proposal will not adversely affect the credit union's
291 financial position. The determination will be based on the past history,
292 current financial condition, projections of the credit union, and whether
293 the increase of operating expenses caused by the project can be supported
294 after accounting for the current level of expense, dividend and reserve
295 commitments.
296
297 3) An approval will state a dollar amount or percentage of retained earnings
298 that may be invested in fixed assets by the credit union.
299
300 4) The Division shall provide to credit union applicants written notification
301 of action taken within 45 calendar days after receipt of the complete

302 package of supporting documentation from the credit union. If the credit
 303 union does not receive written notification of the action taken within 45
 304 calendar days after the date the complete package of supporting
 305 documentation was received by the Division, the credit union may proceed
 306 with its proposed investment in fixed assets.

307
 308 e) A credit union that has received approval for a specific fixed asset transaction
 309 from the Division prior to the date of promulgation of amendments to this Section
 310 shall continue to be eligible to consummate the transaction after the date of
 311 promulgation, without further Division approval.

312
 313 f) In recording all transactions for fixed assets, GAAP shall be followed.

314
 315 (Source: Amended at 41 Ill. Reg. _____, effective _____)

316
 317 **Section 190.140 Real Estate Lending**

318
 319 a) A credit union with total assets greater than \$1 million may, following a
 320 resolution of its board, make loans secured by a lien on real estate, including an
 321 assignment of a beneficial interest in a land trust, subject to the following
 322 procedures:

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

324
 325 * The aggregate loans to one member may not exceed the aggregate limit
 326 referenced in subsection (e).

327
 328 b) Credit unions with assets under \$1 million may make home equity and second
 329 mortgage loans subject to the lending limits for consumer loans set forth in
 330 Section 190.160. Credit unions with assets under \$1 million shall not make first
 331 mortgage real estate loans.

332
 333 c) Credit unions shall not make first mortgage real estate loans for more than the

- 334 estimated market value or appraised value of the real estate securing the loans.
335 Real estate loans, other than first mortgage loans, shall be limited to the value of
336 the member-borrower's equity in the real estate securing the loan, provided a
337 credit union may consider as equity any outstanding loan amount secured by the
338 real estate if the outstanding loan will be repaid with the proceeds of the credit
339 union's loan.
340
- 341 d) The maximum individual lending limit and the maximum ratio of first mortgage
342 real estate loans may be increased by obtaining written approval from the
343 Secretary. Approval is to be based upon the need of the members and the credit
344 union's real estate lending record.
345
- 346 e) The maximum limit on an individual loan by credit unions with assets greater
347 than \$1 million is in addition to the secured and unsecured lending limits of
348 Section 190.160; provided, however, in no event shall all loans to any member
349 exceed in the aggregate 10% of the credit union's unimpaired capital and surplus
350 as defined in Section 190.2. Loans subject to the requirements for business loans
351 shall be subject to the appraisal requirements set forth in subsection (h), but shall
352 not be subject to the other provisions of this Section.
353
- 354 f) The maximum maturity of a loan secured by a first mortgage shall not exceed 40
355 years.
356
- 357 g) Procedures
358
- 359 1) All loans secured by a lien on real estate shall be made based upon prudent
360 written lending policies and sound lending practices as documented in
361 each member's loan file. Unless waived by the Secretary, lending policies
362 shall include, without limitation, acceptable debt-to-income and loan-to-
363 value ratios that will be considered the types of real estate security that
364 will be accepted and any other prudent data considered necessary to
365 determine the appropriateness of a loan request. All applicable Illinois
366 and federal statutes shall be observed.
367
- 368 2) All accounting for real estate loan transactions shall be in accordance with
369 GAAP.
370
- 371 h) Documentation
372
- 373 1) Any credit union granting loans secured by a lien in real estate must
374 procure and retain the following documentation in its files:
375
- 376 A) A loan application that specifies the purpose of the loan (equity,

- 377 purchase, construction, refinance, etc.). The application must
378 contain sufficient information to support the approval of the loan.
379 The information shall include without limitation: the amount of
380 the loan requested; the purchase price (if applicable); a listing of
381 the borrower's assets and liabilities; a statement of the borrower's
382 income; a specific identification of the property; and an
383 explanation of the source of the borrower's down payment. If the
384 loan proceeds will be used for the purchase of the property, a copy
385 of the real estate sale contract shall be included as an attachment to
386 the application.
387
- 388 B) A legal opinion from the credit union's attorney, or a title insurance
389 policy that identifies the credit union's lien position on the property
390 used to secure the loan. In the case of home equity lines of credit,
391 second mortgages, and non-purchase money first mortgage
392 transactions, a title search prepared by a service provider capable
393 of conducting a search shall be acceptable.
394
- 395 C) For transactions of \$250,000 or less, a written estimate of market
396 value of the property securing the loan, performed by an individual
397 having no direct or indirect interest in the property and experienced
398 to perform estimations of value for the type and amount of credit
399 being considered. For transactions over \$250,000, an appraisal by
400 a state certified or licensed appraiser that estimates the market
401 value of the property used as security for the loan.
402
- 403 D) A credit report prepared by the credit union or a credit reporting
404 agency. The report, in conjunction with the information contained
405 in subsection (h)(1)(A), must demonstrate the applicant's past
406 history of repayment and ability to repay the loan in question.
407
- 408 E) A duly executed note and mortgage agreement that outline the
409 borrower's agreement to repay the loan on the terms agreed, and
410 the borrower's agreement to provide the credit union with a valid
411 security interest in the subject property. The mortgage agreement
412 must contain an accurate legal description of the subject property
413 and be duly recorded in the office of the appropriate county
414 recorder of deeds.
415
- 416 F) A settlement statement reflecting all costs of closing and all
417 disbursements of funds at closing for real estate loans that require
418 the use of a settlement statement under the federal Real Estate
419 Settlement Procedures Act (RESPA) (12 USC 2601).

- 420
- 421 G) On any loan for which the lesser of the loan-to-value ratio or loan-
- 422 to-purchase price ratio exceeds 80%, the credit union may require
- 423 the borrower to obtain private mortgage insurance insuring the
- 424 excess of the loan above the 80% factor.
- 425
- 426 H) In the event the subject loan is to be used for the construction of a
- 427 residential dwelling that is or will be the principal residence of the
- 428 member-borrower and the loan will be secured by a perfected first
- 429 lien or first security interest in favor of the credit union, the credit
- 430 union must obtain satisfactory evidence of the payment in full of
- 431 the costs of furnishing labor and material in connection with the
- 432 construction. The evidence shall include receipt of an owner's
- 433 statement, under oath, setting forth the names of all parties with
- 434 whom the owner has contracted for the furnishing of labor and
- 435 material; a general contractor's sworn statement from each of the
- 436 parties named in the owner's statement; a subcontractor's sworn
- 437 statement from each subcontractor named in the general
- 438 contractor's statement; and partial and final unconditional lien
- 439 waivers from the general contractor and all subcontractors and
- 440 materialmen indicating that they have completed their respective
- 441 portion of the work and been paid in full. The credit union must
- 442 inspect, or cause to be inspected by a third party, the completion of
- 443 each phase of the work for which an advance of any portion of the
- 444 loan proceeds is sought. Any such inspections must be clearly
- 445 documented in the file as to the date of the inspection and a brief
- 446 explanation of the work progression. Additionally, the credit
- 447 union must obtain a borrower payment authorization, in connection
- 448 with each payment to the general contractor. This subsection
- 449 (h)(1)(H) shall not apply to a loan to finance the repair, alteration
- 450 or improvement of a residential dwelling which is the residence of
- 451 the member-borrower.
- 452
- 453 2) A loan secured by a lien on real estate is exempt from the requirements of
- 454 subsections (h)(1)(B), (C) and (G) of this Section if the loan complies with
- 455 the following criteria:
- 456
- 457 A) The loan is not used for the purchase or refinancing of the real
- 458 estate securing the loan.
- 459
- 460 B) The lien on real estate is taken as collateral solely through an
- 461 abundance of caution.
- 462

- 463 C) The terms of the transaction are not more favorable than they
464 would have been in the absence of the lien on real estate.
465
- 466 D) The transaction complies with the lending limits and other
467 requirements for consumer loans set forth in Section 190.160.
468
- 469 i) Sale of Real Estate Loans
- 470
- 471 1) A credit union may sell, in whole or in part, any loan secured by real
472 estate to:
- 473
- 474 A) Federal National Mortgage Association (FNMA).
475
- 476 B) Government National Mortgage Association.
477
- 478 C) Federal Home Loan Mortgage Corporation.
479
- 480 D) The Federal Home Loan Bank of the Federal Home Loan Bank
481 System district in which the credit union is located.
482
- 483 E) Federal, Illinois and Local Housing Authorities.
484
- 485 F) Credit Unions, Banks, Savings Banks and Savings and Loan
486 Associations chartered under the laws of the United States, the
487 State of Illinois or any other state.
488
- 489 G) Residential mortgage licensees properly registered with and
490 licensed by the Department of Financial and Professional
491 Regulation-Division of Banking.
492
- 493 H) Other institutions approved by the Secretary.
494
- 495 2) All such sales shall not be subject to recourse or repurchase that enables
496 the credit union to retain control over the transferred assets. The credit
497 union shall have surrendered control over the transferred assets if:
- 498
- 499 A) The transferred assets have been put presumptively beyond the
500 reach of the credit union transferring the assets and its creditors;
501
- 502 B) The purchaser has the right to pledge or exchange the assets; and
503
- 504 C) The credit union does not maintain effective control over the
505 transferred assets through an agreement that both entitles and

506 obligates the credit union to repurchase the assets before their
507 maturity.

508
509 3) A limited recourse provision in a sale agreement that obligates the credit
510 union transferring assets to purchase the assets because of breach of
511 warranty or misrepresentation shall be considered a sale.

512
513 (Source: Amended at 41 Ill. Reg. _____, effective _____)

514
515 **Section 190.150 Reverse Mortgage (Repealed)**

516
517 (Source: Repealed at 41 Ill. Reg. _____, effective _____)

518
519 **Section 190.165 Business Loans**

520
521 a) Purpose and Scope

522
523 1) This Section is intended to accomplish two broad objectives. First, it sets
524 out policy and program responsibilities that an Illinois chartered credit
525 union must adopt and implement as part of a safe and sound commercial
526 lending program. Second, it incorporates the statutory limit on the
527 aggregate amount of member business loans that a federally insured credit
528 union may make pursuant to Section 107A of the Federal Credit Union
529 Act (12 USC 1757a). This Section distinguishes between these two
530 distinct objectives.

531
532 2) Credit Unions and Loans Covered by this Section

533
534 A) This Section applies to Illinois chartered natural person credit
535 unions. However, an Illinois chartered natural person credit union
536 is not subject to subsections (c) and (d) if it meets all of the
537 following conditions:

538
539 i) The credit union's total assets are less than \$250 million.

540
541 ii) The credit union's aggregate amount of outstanding
542 commercial loan balances and unfunded commitments, plus
543 any outstanding commercial loan balances and unfunded
544 commitments of participations sold, plus any outstanding
545 commercial loan balances and unfunded commitments sold
546 and serviced by the credit union total less than 15% of the
547 credit union's net worth.

548

- 549 iii) In a given calendar year the amount of originated and sold
550 commercial loans the credit union does not continue to
551 service total less than 15% of the credit union's net worth.
552
- 553 B) This Section does not apply to loans:
554
- 555 i) Made by a corporate credit union, as defined in Section 1.1
556 of the Act;
557
- 558 ii) Made by a federally insured credit union to another
559 federally insured credit union;
560
- 561 iii) Made by a credit union to a credit union service
562 organization, as defined in Section 190.5; or
563
- 564 iv) Fully secured by a lien on a 1 to 4 family residential
565 property that is a member's primary residence.
566
- 567 3) Other Regulations that Apply
568
- 569 A) As required by section 741.203 of the NCUA regulations (12 CFR
570 741.203), a federally insured, State chartered credit union must
571 comply with sections 701.21(c)(8) (prohibited fees) and (d)(5)
572 (non-preferential loans) (12 CFR 701.21(c)(8) and (d)(5)).
573
- 574 B) When a credit union makes a commercial loan as part of a loan
575 program in which a federal or state agency (or its political
576 subdivision) insures repayment, guarantees repayment, or provides
577 an advance commitment to purchase the loan in full and that
578 program has requirements that are less restrictive than those
579 required by this Section, the credit union may follow the loan
580 requirements of the relevant guaranteed loan program.
581
- 582 C) The requirements of section 701.22 of the NCUA regulations (12
583 CFR 701.22) apply to a federally insured credit union's purchase of
584 a participation interest in a commercial loan.
585
- 586 b) Definitions – For purposes of this Section, the following definitions apply:
587
- 588 1) "Associated borrower" means any other person or entity with a shared
589 ownership, investment or other pecuniary interest in a business or
590 commercial endeavor with the borrower. This means any person or entity
591 named as a borrower or debtor in a loan or extension of credit, or any

592 other person or entity, such as a drawer, endorser or guarantor, engaged in
593 a common enterprise with the borrower, or deriving a direct benefit from
594 the loan to the borrower. Exceptions to this definition for partnerships,
595 joint ventures and associations are as follows:
596

597 A) If the borrower is a partnership, joint venture or association, and
598 the other person with a shared ownership, investment or other
599 pecuniary interest in a business or commercial endeavor with the
600 borrower is a member or partner of the borrower, and neither a
601 direct benefit nor a common enterprise exists, this other person is
602 not an associated borrower.
603

604 B) If the borrower is a member or partner of a partnership, joint
605 venture or association, the other entity is not an associated
606 borrower if:
607

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

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

613 iii) by the terms of a partnership or membership agreement
614 valid under applicable law, the borrower is not held
615 generally liable for the debts or actions of that other entity.
616
617

618 C) If the borrower is a member or partner of a partnership, joint
619 venture or association, the other person is not an associated
620 borrower if:
621

622 i) the other person with a shared ownership, investment or
623 other pecuniary interest in a business or commercial
624 endeavor with the borrower is another member or partner
625 of the partnership, joint venture or association; and
626

627 ii) neither a direct benefit nor a common enterprise exists.
628
629

630 2) "Commercial loan" means any loan, line of credit or letter of credit
631 (including any unfunded commitments), and any interest a credit union
632 obtains in loans made by another lender, to individuals, sole
633 proprietorships, partnerships, corporations or other business enterprises for

- 634 commercial, industrial, agricultural or professional purposes, but not for
635 personal expenditure purposes. Excluded from this definition are loans:
636
637 A) made by a corporate credit union;
638
639 B) made by a federally insured credit union to another federally
640 insured credit union;
641
642 C) made by a credit union to a credit union service organization;
643
644 D) made by a credit union not subject to section 107A of the Federal
645 Credit Union Act (12 USC 1757a) to another credit union;
646
647 E) secured by a 1 to 4 family residential property (whether or not it is
648 the borrower's primary residence);
649
650 F) fully secured by shares in the credit union making the extension of
651 credit or deposits in other financial institutions;
652
653 G) secured by a vehicle manufactured for household use; and
654
655 H) that would otherwise meet the definition of commercial loan, when
656 the aggregate outstanding balances plus unfunded commitments
657 less any portion secured by shares in the credit union to a borrower
658 or an associated borrower are less than \$50,000.
659
- 660 3) "Common enterprise" means:
661
662 A) The expected source of repayment for each loan or extension of
663 credit is the same for each borrower and no individual borrower
664 has another source of income from which the loan (together with
665 the borrower's other obligations) may be fully repaid. An employer
666 will not be treated as a source of repayment because of wages and
667 salaries paid to an employee, unless the standards described in
668 subsection (b)(3)(B) are met;
669
670 B) Loans or extensions of credit are made:
671
672 i) To borrowers who are related directly or indirectly through
673 common control, including when one borrower is directly
674 or indirectly controlled by another borrower; and
675

- 676 ii) Substantial financial interdependence exists between or
677 among the borrowers. Substantial financial interdependence
678 means 50% or more of one borrower's gross receipts or
679 gross expenditures (on an annual basis) are derived from
680 transactions with another borrower. Gross receipts and
681 expenditures include gross revenues or expenses,
682 intercompany loans, dividends, capital contributions and
683 similar receipts or payments; or
684
- 685 C) Separate borrowers obtain loans or extensions of credit to acquire a
686 business enterprise of which those borrowers will own more than
687 50% of the voting securities or voting interests.
688
- 689 4) "Control" means a person or entity directly or indirectly, or acting through
690 or together with one or more persons or entities:
691
- 692 A) Owns, controls or has the power to vote 25% or more of any class
693 of voting securities of another person or entity;
694
- 695 B) Controls, in any manner, the election of a majority of the directors,
696 trustees or other persons exercising similar functions of another
697 person or entity; or
698
- 699 C) Has the power to exercise a controlling influence over the
700 management or policies of another person or entity.
701
- 702 5) "Credit risk rating system" means a formal process that identifies and
703 assigns a relative credit risk score to each commercial loan in a credit
704 union's portfolio, using ordinal ratings to represent the degree of risk. The
705 credit risk score is determined through an evaluation of quantitative
706 factors based on financial performance and qualitative factors based on
707 management, operational, market and business environmental factors.
708
- 709 6) "Direct benefit" means the proceeds of a loan or extension of credit to a
710 borrower, or assets purchased with those proceeds, that are transferred to
711 another person or entity, other than in a bona fide arm's-length transaction,
712 when the proceeds are used to acquire property, goods or services.
713
- 714 7) "Financial statement quality" is determined by:
715
- 716 A) The level of assurance provided by the preparer and the required
717 professional standards supporting the preparer's opinion. In many
718 cases, tax returns and/or financial statements professionally

- 719 prepared in accordance with generally accepted accounting
720 principles (GAAP) will be sufficient for less complex borrowing
721 relationships, such as those that are limited to a single operation of
722 the borrower and principal with relatively low debt. For more
723 complex and larger borrowing relationships, such as those
724 involving borrowers or principals with significant loans
725 outstanding or multiple or interrelated operations, the credit union
726 should require borrowers and principals to provide either:
727
- 728 i) An auditor's review of the financial statements prepared
729 consistent with GAAP to obtain limited assurance (i.e., a
730 "review quality" financial statement); or
731
 - 732 ii) an independent financial statement audit under generally
733 accepted auditing standards (GAAS) for the expression of
734 an opinion on the financial statements prepared in
735 accordance with GAAP (i.e., an "audit quality" financial
736 statement).
737
- 738 B) Credit unions should address the criteria and thresholds for the
739 required financial reporting in their policies. Credit unions should
740 allow exceptions in their credit policies if they determine the
741 relationship does not require the same level of assurance and they
742 are satisfied that the lesser quality still provides them with accurate
743 reporting of the borrower's financial performance. Credit unions
744 will be expected to address the issue of exceptions in their loan
745 policies. Any exception should be documented by credit union
746 staff and approved by the appropriate designated internal authority.
747
- 748 8) "Immediate family member" means a spouse or other family member
749 living in the same household.
750
 - 751 9) "Loan secured by a 1 to 4 family residential property" means a loan that,
752 at origination, is secured wholly or substantially by a lien on a 1 to 4
753 family residential property for which the lien is central to the extension of
754 the credit; that is, the borrower would not have been extended credit in the
755 same amount or on terms as favorable without the lien. A loan is wholly or
756 substantially secured by a lien on a 1 to 4 family residential property if the
757 estimated value of the real estate collateral at origination (after deducting
758 any senior liens held by others) is greater than 50% of the principal
759 amount of the loan.
760

- 761 10) "Loan secured by a vehicle manufactured for household use" means a loan
762 that, at origination, is secured wholly or substantially by a lien on a new or
763 used passenger car or other vehicle such as a minivan, sport-utility
764 vehicle, pickup truck or similar light truck or heavy-duty truck generally
765 manufactured for personal, family or household use and not used as a fleet
766 vehicle or to carry fare-paying passengers, for which the lien is central to
767 the extension of credit. A lien is central to the extension of credit if the
768 borrower would not have been extended credit in the same amount or on
769 terms as favorable without the lien. A loan is wholly or substantially
770 secured by a lien on a vehicle manufactured for household use if the
771 estimated value of the collateral at origination (after deducting any senior
772 liens held by others) is greater than 50% of the principal amount of the
773 loan.
774
- 775 11) "Loan-to-value ratio" means, with respect to any item of collateral, the
776 aggregate amount of all sums borrowed and secured by that collateral,
777 including outstanding balances plus any unfunded commitment or line of
778 credit from another lender that is senior to the credit union's lien position,
779 divided by the current collateral value. The current collateral value must
780 be established by prudent and accepted commercial lending practices and
781 comply with all regulatory requirements. For a construction and
782 development loan, the collateral value is the lesser of cost to complete or
783 prospective market value, as determined in accordance with subsection (f).
784
- 785 12) "Net worth" means a credit union's net worth, as defined in Section 190.2.
786
- 787 13) "Readily marketable collateral" means a financial instrument or bullion
788 that is salable under ordinary market conditions with reasonable
789 promptness at a fair market value determined by quotations based upon
790 actual transactions on an auction or similarly available daily bid and ask
791 price market.
792
- 793 14) "Residential property" means a house, condominium unit, cooperative
794 unit, manufactured home (whether completed or under construction) or
795 unimproved land zoned for 1 to 4 family residential use. A boat or motor
796 home, even if used as a primary residence, or timeshare property is not
797 residential property.
798
- 799 c) Board of Directors and Management Responsibilities
800 Prior to engaging in commercial lending, a credit union must address the
801 following board responsibilities and operational requirements:
802

- 803 1) Board of Directors. A credit union's board of directors, at a minimum,
804 must:
805
- 806 A) Approve a commercial loan policy that complies with subsection
807 (d). The board must review its policy on an annual basis, prior to
808 any material change in the credit union's commercial lending
809 program or related organizational structure, and in response to any
810 material change in portfolio performance or economic conditions,
811 and update it when warranted.
812
- 813 B) Ensure the credit union appropriately staffs its commercial lending
814 program in compliance with subsection (c)(2).
815
- 816 C) Understand and remain informed, through periodic briefings from
817 responsible staff and other methods, about the nature and level of
818 risk in the credit union's commercial loan portfolio, including its
819 potential impact on the credit union's earnings and net worth.
820
- 821 2) Required Expertise and Experience. A credit union making, purchasing or
822 holding any commercial loan must internally possess the following
823 experience and competencies:
824
- 825 A) Senior Executive Officers. A credit union's senior executive
826 officers overseeing the commercial lending function must
827 understand the credit union's commercial lending activities. At a
828 minimum, senior executive officers must have a comprehensive
829 understanding of the role of commercial lending in the credit
830 union's overall business model and establish risk management
831 processes and controls necessary to safely conduct commercial
832 lending.
833
- 834 B) Qualified Lending Personnel. A credit union must employ
835 qualified staff with experience in the following areas:
836
- 837 i) Underwriting and processing for the type of commercial
838 lending in which the credit union is engaged;
839
- 840 ii) Overseeing and evaluating the performance of a
841 commercial loan portfolio, including rating and quantifying
842 risk through a credit risk rating system; and
843

- 844 iii) Conducting collection and loss mitigation activities for the
845 type of commercial lending in which the credit union is
846 engaged.
847
- 848 C) Options to Meet the Required Experience. A credit union may
849 meet the experience requirements in subsections (c)(2)(A) and
850 (c)(2)(B) by conducting internal training and development, hiring
851 qualified individuals or using a third-party, such as an independent
852 contractor or a credit union service organization. However, with
853 respect to the qualified lending personnel requirements in
854 subsection (c)(2)(B), use of a third-party is permissible only if the
855 following conditions are met:
856
- 857 i) The third-party has no affiliation or contractual relationship
858 with the borrower or any associated borrowers;
859
- 860 ii) The actual decision to grant a loan must reside with the
861 credit union;
862
- 863 iii) Qualified credit union staff exercises ongoing oversight
864 over the third party by regularly evaluating the quality of
865 any work the third party performs for the credit union; and
866
- 867 iv) The third-party arrangement must otherwise comply with
868 subsection (g).
869
- 870 d) Commercial Loan Policy
871 Prior to engaging in commercial lending, a credit union must adopt and
872 implement a comprehensive written commercial loan policy and establish
873 procedures for commercial lending. The board-approved policy must ensure the
874 credit union's commercial lending activities are performed in a safe and sound
875 manner by providing for ongoing control, measurement and management of the
876 credit union's commercial lending activities. At a minimum, a credit union's
877 commercial loan policy must address each of the following:
878
- 879 1) Type of commercial loans permitted.
880
- 881 2) Trade area.
882
- 883 3) Maximum amount of assets, in relation to net worth, allowed:
884
- 885 A) in secured, unsecured and unguaranteed commercial loans;
886

- 887 B) in any given category or type of commercial loan; and
888
889 C) to any one borrower or group of associated borrowers, provided:
890
891 i) the policy must specify that the aggregate dollar amount of
892 commercial loans to any one borrower or group of
893 associated borrowers may not exceed the greater of 15% of
894 the credit union's net worth or \$100,000, plus an additional
895 10% of the credit union's net worth if the amount that
896 exceeds the credit union's 15% general limit is fully
897 secured at all times with a perfected security interest by
898 readily marketable collateral, as defined in subsection (b);
899
900 ii) any insured or guaranteed portion of a commercial loan
901 made through a program in which a federal or state agency
902 (or its political subdivision) insures repayment, guarantees
903 repayment or provides an advance commitment to purchase
904 the loan in full, is excluded from this limit; and
905
906 iii) the maximum limit on commercial loans is in addition to
907 the secured and unsecured limits established in Sections
908 190.140 and 190.160; provided, however, in no event shall
909 all loans to any borrower or group of associated borrowers
910 exceed in the aggregate 10% of the credit union's
911 unimpaired capital and surplus.
912
913 4) Qualifications and experience requirements for personnel involved in
914 underwriting, processing, approving, administering and collecting
915 commercial loans.
916
917 5) Loan approval processes, including establishing levels of loan approval
918 authority commensurate with the individual's or committee's proficiency
919 in evaluating and understanding commercial loan risk, when considered in
920 terms of the level of risk the borrowing relationship poses to the credit
921 union.
922
923 6) Underwriting standards commensurate with the size, scope and
924 complexity of the commercial lending activities and borrowing
925 relationships contemplated. The standards must, at a minimum, address
926 the following:
927

- 928 A) The level and depth of financial analysis necessary to evaluate the
929 financial trends and condition of the borrower and the ability of the
930 borrower to meet debt service requirements;
931
- 932 B) Thorough due diligence of the principals to determine whether any
933 related interests of the principals might have a negative impact or
934 place an undue burden on the borrower and related interests with
935 regard to meeting the debt obligations with the credit union;
936
- 937 C) Requirements of a borrower-prepared projection when historic
938 performance does not support projected debt payments. The
939 projection must be supported by reasonable rationale and, at a
940 minimum, must include a projected balance sheet and income and
941 expense statement;
942
- 943 D) The financial statement quality and the degree of verification
944 sufficient to support an accurate financial analysis and risk
945 assessment;
946
- 947 E) The methods to be used in collateral evaluation, for all types of
948 collateral authorized, including loan-to-value ratio limits. These
949 methods must be appropriate for the particular type of collateral.
950 The means to secure various types of collateral, and the measures
951 taken for environmental due diligence, must also be appropriate for
952 all authorized collateral; and
953
- 954 F) Other appropriate risk assessment, including analysis of the impact
955 of current market conditions on the borrower and associated
956 borrowers.
957
- 958 7) Risk management processes commensurate with the size, scope and
959 complexity of the credit union's commercial lending activities and
960 borrowing relationships. These processes must, at a minimum, address the
961 following:
962
- 963 A) Use of loan covenants, if appropriate, including frequency of
964 borrower and guarantor financial reporting;
965
- 966 B) Periodic loan review, consistent with loan covenants, sufficient to
967 conduct portfolio risk management. This review must include a
968 periodic reevaluation of the value and marketability of any
969 collateral;
970

- 971 C) A credit risk rating system. Credit risk ratings must be assigned to
972 commercial loans at inception and reviewed as frequently as
973 necessary to satisfy the credit union's risk monitoring and reporting
974 policies and to ensure adequate reserves as required by GAAP; and
975
976 D) A process to identify, report and monitor loans approved as
977 exceptions to the credit union's loan policy.
978
- 979 e) Collateral and Security
980
- 981 1) A credit union must require collateral commensurate with the level of risk
982 associated with the size and type of any commercial loan. Collateral must
983 be sufficient to ensure adequate loan balance protection, along with
984 appropriate risk sharing with the borrower and principals. A credit union
985 making an unsecured loan must determine and document in the loan file
986 that mitigating factors sufficiently offset the relevant risk.
987
- 988 2) A credit union that does not require the full and unconditional personal
989 guarantee from the principals of the borrower who has a controlling
990 interest in the borrower must determine and document in the loan file that
991 mitigating factors sufficiently offset the relevant risk.
992
- 993 f) Construction and Development Loans
994 In addition to the requirements of subsections (a) through (e), the following
995 requirements apply to a construction and development loan made by any credit
996 union.
997
- 998 1) For the purposes of this subsection (f), a construction or development loan
999 means any financing arrangement enabling the borrower to acquire
1000 property or rights to property, including land or structures, with the intent
1001 to construct or renovate an income producing property, such as residential
1002 housing for rental or sale, or a commercial building, such as may be used
1003 for commercial, agricultural, industrial or other similar purposes. It also
1004 means a financing arrangement for the construction, major expansion or
1005 renovation of the property types referenced in this subsection (f). The
1006 collateral valuation for securing a construction or development loan
1007 depends on the satisfactory completion of the proposed construction or
1008 renovation when the loan proceeds are disbursed in increments as the
1009 work is completed. A loan to finance maintenance, repairs or
1010 improvements to an existing income producing property that does not
1011 change its use or materially impact the property is not a construction or
1012 development loan.
1013

- 1014 2) A credit union that elects to make a construction or development loan
1015 must ensure that its commercial loan policy includes adequate provisions
1016 by which the collateral value associated with the project is properly
1017 determined and established. For a construction or development loan,
1018 collateral value is the lesser of the project's cost to complete or its
1019 prospective market value.
- 1020
- 1021 A) For the purposes of this subsection (f), "cost to complete" means
1022 the sum of all qualifying costs necessary to complete a
1023 construction project and documented in an approved construction
1024 budget. Qualifying costs generally include on-site or off-site
1025 improvements, building construction, other reasonable and
1026 customary costs paid to construct or improve a project, including
1027 general contractor's fees, and other expenses normally included in
1028 a construction contract, such as bonding and contractor insurance.
1029 Qualifying costs include the value of the land, determined as the
1030 lesser of appraised market value or purchase price plus the cost of
1031 any improvements. Qualifying costs also include interest, a
1032 contingency account to fund unanticipated overruns, and other
1033 development costs such as fees and related pre-development
1034 expenses. Interest expense is a qualifying cost only to the extent it
1035 is included in the construction budget and is calculated based on
1036 the projected changes in the loan balance up to the expected "as-
1037 complete" date for owner-occupied non-income producing
1038 commercial real estate or the "as-stabilized" date for income
1039 producing real estate. Project costs for related parties, such as
1040 developer fees, leasing expenses, brokerage commissions and
1041 management fees, are included in qualifying costs only if
1042 reasonable in comparison to the cost of similar services from a
1043 third party. Qualifying costs exclude interest or preferred returns
1044 payable to equity partners or subordinated debt holders, the
1045 developer's general corporate overhead, and selling costs to be
1046 funded out of sales proceeds, such as brokerage commissions and
1047 other closing costs.
- 1048
- 1049 B) For the purposes of this subsection (f), "prospective market value"
1050 means the market value opinion determined by an independent
1051 appraiser in compliance with the relevant standards set forth in the
1052 USPAP. Prospective value opinions are intended to reflect the
1053 current expectations and perceptions of market participants, based
1054 on available data. Two prospective value opinions may be required
1055 to reflect the time frame during which development, construction
1056 and occupancy occur. The prospective market value "as-

- 1057 completed" reflects the property's market value as of the time that
1058 development is to be completed. The prospective market value "as-
1059 stabilized" reflects the property's market value as of the time the
1060 property is projected to achieve stabilized occupancy. For an
1061 income producing property, stabilized occupancy is the occupancy
1062 level that a property is expected to achieve after the property is
1063 exposed to the market for lease over a reasonable period of time
1064 and at comparable terms and conditions to other similar properties.
1065
- 1066 3) A credit union that elects to make a construction and development loan
1067 must also assure its commercial loan policy meets the following
1068 conditions:
1069
- 1070 A) Qualified personnel representing the interests of the credit union
1071 must conduct a review and approval of any line item construction
1072 budget prior to closing the loan;
1073
- 1074 B) A credit union approved requisition and loan disbursement process
1075 is established;
1076
- 1077 C) Release or disbursement of loan funds occurs only after on-site
1078 inspections, documented in a written report by qualified personnel
1079 representing the interests of the credit union, certifying that the
1080 work requisitioned for payment has been satisfactorily completed,
1081 and the remaining funds available to be disbursed from the
1082 construction and development loan are sufficient to complete the
1083 project; and
1084
- 1085 D) Each loan disbursement is subject to confirmation that no
1086 intervening liens have been filed.
1087
- 1088 g) Prohibited Activities
1089
- 1090 1) Ineligible Borrowers. A credit union shall not grant a commercial loan to
1091 the following:
1092
- 1093 A) Any senior management employee directly or indirectly involved
1094 in the credit union's commercial loan underwriting, servicing and
1095 collection process, and any of their immediate family members;
1096
- 1097 B) Any person meeting the definition of an associated borrower with
1098 respect to persons identified in subsection (g)(1)(A); or
1099

- 1100 C) Any compensated director, unless the credit union's board of
1101 directors approves granting the loan and the compensated director
1102 was recused from the board's decision making process.
1103
- 1104 2) Equity Agreements/Joint Ventures. A credit union shall not grant a
1105 commercial loan if any additional income received by the credit union or
1106 its senior management employees is tied to the profit or sale of any
1107 business or commercial endeavor that benefits from the proceeds of the
1108 loan.
1109
- 1110 3) Conflicts of Interest. Any third party used by a credit union to meet the
1111 requirements of this Section must be independent from the commercial
1112 loan transaction and shall not have a participation interest in a loan or an
1113 interest in any collateral securing a loan that the third party is responsible
1114 for reviewing, or an expectation of receiving compensation of any sort that
1115 is contingent on the closing of the loan, with the following exceptions:
1116
- 1117 A) A third party may provide a service to the credit union that is
1118 related to the transaction, such as loan servicing.
1119
- 1120 B) The third party may provide the requisite experience to a credit
1121 union and purchase a loan or a participation interest in a loan
1122 originated by the credit union that the third party reviewed.
1123
- 1124 C) A credit union may use the services of a credit union service
1125 organization that otherwise meets the requirements of subsection
1126 (c)(2)(C) even if the credit union service organization is not
1127 independent from the transaction, provided the credit union has a
1128 controlling financial interest in the credit union service
1129 organization as determined under GAAP.
1130
- 1131 h) Aggregate Member Business Loan Limit; Exclusions and Exceptions
1132 This subsection (h) incorporates the statutory limits on the aggregate amount of
1133 member business loans that may be held by a federally insured credit union and
1134 establishes the method for calculating a federally insured credit union's net
1135 member business loan balance for purposes of the statutory limits and NCUA
1136 form 5300 reporting.
1137
- 1138 1) Statutory Limits. The aggregate limit on a federally insured credit union's
1139 net member business loan balances is the lesser of 1.75 times the actual
1140 net worth of the credit union, or 1.75 times the minimum net worth
1141 required under section 1790d(c)(1)(A) of the Federal Credit Union Act (12
1142 USC 1790d(c)(1)(A)).

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1184
- 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

- 1185 outstanding loan balance plus any unfunded commitments, reduced by any
1186 portion of the loan that is:
1187
- 1188 A) secured by shares in the credit union;
1189
 - 1190 B) secured by shares or deposits in other financial institutions;
1191
 - 1192 C) secured by a lien on a member's primary residence;
1193
 - 1194 D) insured or guaranteed by any agency of the federal government, a
1195 state or any political subdivision of that state;
1196
 - 1197 E) subject to an advance commitment to purchase by any agency of
1198 the federal government, a state or any political subdivision of that
1199 state; or
1200
 - 1201 F) sold as a participation interest without recourse and qualifying for
1202 true sales accounting under GAAP.
1203
- 1204 i) Transitional Provisions
1205 This subsection (i) governs circumstances in which, as of January 1, 2017, a credit
1206 union is operating in accordance with an approved waiver from the Division or
1207 NCUA or is subject to any enforcement constraint relative to its commercial
1208 lending activities.
1209
- 1210 1) Waivers. As of January 1, 2017, any waiver approved by the Division or
1211 NCUA concerning a credit union's commercial lending activity is rendered
1212 moot, except that waivers granted prior to January 1, 2017, for borrowing
1213 relationships (loans made to one borrower or group of associated
1214 borrowers), will be grandfathered. However, the debt associated with
1215 those relationships may not be increased.
1216
 - 1217 2) Enforcement Constraints. Limitations or other conditions imposed on a
1218 credit union in any written directive from the Division or NCUA,
1219 including, but not limited to, items specified in any Document of
1220 Resolution, any published or unpublished Letter of Understanding and
1221 Agreement, Regional Director Letter, Preliminary Warning Letter, or
1222 formal enforcement action, are unaffected by the adoption of this
1223 Section. Included within this subsection (i)(2) are any constraints or
1224 conditions embedded within any waiver issued by the Division or NCUA.
1225 As of January 1, 2017, all these limitations or other conditions remain in
1226 place until they are modified by the Division or NCUA.
1227

- 1228 j) Allowance for Loan Losses for Business Loans
1229 Allowance for loan losses for business loans will be determined in accordance
1230 with GAAP. The external auditor conducting the credit union's financial statement
1231 audit shall analyze the methodology employed by the credit union and conclude
1232 that the financial statements, including the allowance for loan losses, are fairly
1233 stated in all material respects in accordance with GAAP.
1234
1235 (Source: Amended at 41 Ill. Reg. _____, effective _____)