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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 441  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
FINANCE AND SECURITIES REGULATION

**FILED**

03/25/2022 12:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Authorization to allow Oregon chartered credit unions to make member business loans

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/29/2022 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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350 Winter Street NE  
Salem, OR 97301

Filed By:  
Karen Winkel  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 04/22/2022

TIME: 10:30 AM

OFFICER: Lauren Winters

ADDRESS: Labor & Industries Building  
350 Winter Street NE  
Salem, OR 97301

SPECIAL INSTRUCTIONS:

Virtual only due to COVID-19.

Microsoft Teams meeting:

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

+1 503-446-4951,,616816508# United States, Portland

Phone Conference ID: 616 816 508#

NEED FOR THE RULE(S)

In February 2016, the National Credit Union Administration (NCUA) Board approved a final member business lending (MBL) rule to amend Part 723 of the federal NCUA rules. While a portion of the federal rule took effect in February 2016, the effective date for the majority of the rule was January 1, 2017. The new NCUA MBL rule applies to federally insured credit unions, which includes all Oregon chartered credit unions under Oregon Revised Statutes (ORS) chapter 723 unless the state has a pre-existing, NCUA approved rule.

Pursuant to ORS 723.156, Oregon chartered credit unions have the same rights, powers, privileges, benefits, and immunities as a federally chartered credit union doing business in Oregon and may engage in member business lending that is consistent with the NCUA MBL rule. Oregon, under the NCUA MBL rule, has the option of adopting its own MBL

rules if the NCUA approves them. Oregon submitted its proposed changes to the current state rules governing member business lending to the NCUA for approval. Working with representatives from the Oregon credit union industry, including the Northwest Credit Union Association, the Division proposed amendments to OAR 441-720-0300 to 441-720-0380 to conform to federal credit union laws governing member business loans.

In March 2020, subject to further review and revision, the NCUA Western Region approved the changes to the Oregon administrative rules and, on September 23, 2021, the NCUA Board approved the Oregon revisions to the administrative rules by letter dated September 30, 2021. When the Division received approval from the NCUA Western Region, the Division on behalf of the Department of Consumer and Business Services (DCBS or department) invited the Northwest Credit Union Association and members of credit union community, including credit unions with 50 or fewer employees, to participate in a Rulemaking Advisory Committee (RAC). The RAC meeting was held via teleconference on March 26, 2020, and the RAC members supported the adoption of the proposed rules.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed changes to the rules will impact Oregon chartered credit unions engaged in making member business loans, and it is unlikely to impact one group of people differently than others because of the federal and state criteria used to determine safety and soundness standards for operating a credit union.

While the proposed changes are unlikely to affect specific business lending practices to communities of color and other underrepresented groups, the proposed changes may provide Oregon charter credit unions with some flexibility in providing business capital to low-income communities and other groups who have historically been locked out of the financial system or who have found it difficult to obtain business loans.

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#### FISCAL AND ECONOMIC IMPACT:

Based on information currently available to DCBS, the proposed rule would not have a fiscal or economic impact on state agencies, local government units, nor the public. The proposed changes to the rules do not add any new requirements on public entities. Other state agencies and local governments are not involved in enforcing the Oregon Credit Union Act and are not expected to incur any fiscal impact from the adoption of the proposed rules.

The department is not expected to incur any fiscal impact as a result of the proposed rules because it simply gives Oregon chartered credit unions the flexibility to originate member business loans by making the proposed rules consistent with the federal final rules and do not expand member business lending requirements.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) Based on information currently available to DCBS, the proposed rule would not have a fiscal or economic impact on state agencies, local government units, nor the public. The proposed changes to the rules do not add any new requirements on public entities. Other state agencies and local governments are not involved in enforcing the Oregon

Credit Union Act and are not expected to incur any fiscal impact from the adoption of the proposed rules.

(2)(a) The department estimates that seven small businesses would be subject to the rule. The department currently supervises 20 Oregon chartered credit unions. Seven of the 20 Oregon chartered credit unions employ 50 or fewer employees. As such, the Oregon chartered credit unions meet the definition of "small business" under ORS 183.310. Based on feedback from the RAC, none of the regulated entities will be adversely affected by the proposed rules.

(2)(b) Based on the available information and feedback from the RAC, it is unlikely that the proposed rule will require Oregon chartered credit unions to file additional reports, increase recordkeeping activities, or perform other administrative activities in order to comply with the proposed rule.

(2)(c) Based on available information and feedback from the RAC, the proposed rule will not require Oregon chartered credit unions with fewer than 50 employees to acquire additional equipment or supplies or incur increased labor costs or administration in order to comply with the proposed rule.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Northwest Credit Union Association, whose membership includes Oregon chartered credit unions with fewer than 50 employees, as well as credit unions with fewer than 50 employees were consulted as part of the proposed rules' development.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

441-720-0300, 441-720-0305, 441-720-0310, 441-720-0315, 441-720-0320, 441-720-0325, 441-720-0330, 441-720-0335, 441-720-0340, 441-720-0345, 441-720-0350, 441-720-0355, 441-720-0360, 441-720-0365, 441-720-0370, 441-720-0375, 441-720-0380

AMEND: 441-720-0300

RULE SUMMARY: Includes new definitions that address whether and when the member business lending rules apply, including which credit union members and loans fall within the rules.

CHANGES TO RULE:

441-720-0300

Definitions ¶¶

(1) "~~Associated member~~" ~~means any member with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor~~ 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.¶¶

(2) "Commercial loan" means:¶¶

(a) Any loan, line of credit, or letter of credit, and any interest a credit union obtains in such 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. ¶¶

(b) Excluded from this definition are loans made by a corporate credit union; loans made by a federally insured credit union to another federally insured credit union; loans made by a credit union to a credit union service organization; loans fully secured by shares, including deposits, in the credit union making the extension of credit or in other financial institutions; loans secured by a one-to-four (1-4) family residential property (whether or not it is the borrower's primary residence); loans secured by a vehicle manufactured for household use that will be used for a commercial, corporate, other business investment property or venture, or agricultural purpose (unless a fleet of six or more vehicles); and loans that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balances and unfunded commitments to a borrower or an associated borrower, less any loans fully secured by shares, including deposits, are equal to less than \$50,000. The definition of "commercial

loan" also excludes covered loans issued under the Small Business Administration's Paycheck Protection Program.

(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 paragraph (b) of this definition are met;

(b) Loans or extensions of credit are made:

(A) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(B) Substantial financial interdependence exists between or among the borrowers. "Substantial financial interdependence" means 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with another borrower.

(2) 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 percent of the voting securities or voting interests.

(4) "Community development financial institution" means a financial institution, with a primary mission of community development that provides credit and financial services to underserved markets and population and is certified by an entity recognized by the director.

(5) "Construction or development loan" means a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to construct or renovate an income-producing property such as residential housing for rental or sale; or a commercial use; industrial use; or similar uses; building for industrial use; or similar uses. It also means a financing arrangement for the construction, major expansion, or renovation of the property types referenced in this section.

(6) "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 percent 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.

(7) "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.

(38) "Director" means the Director. "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 where the proceeds are used to acquire property, goods, or services.

(9) "Director" means the director of the Department of Consumer and Business Services.

(410) "Immediate family member," for the application of this rule, means a spouse or other family member living in the same household.

(511) "Loan secured by a 1-4 family residential property" means a loan that, at origination, is secured wholly or substantially by a lien on a 1-4 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 1-4 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 percent of the principal amount of the loan.

(12) "Loan-to-value ratio or LTV ratio" means the aggregate amount of all sums borrowed, including senior liens, outstanding balances plus, and any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loans secured by the collateral, divided by the market value of the collateral. 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 applicable subsection of OAR 441-720-0355.

(13) "Low-income designation" means a credit union that has received the designation from the National Credit Union Administration or the director because of the income thresholds of the members or field of membership.

(14) "Member business loan" means any commercial loan as defined in OAR 441-720-0300(2) of this part, and any

loan secured by a vehicle manufactured for household use that will be used for a commercial, corporate, other business investment property or venture, or agricultural purpose if the aggregate member business loan balance and unfunded commitments to a member and associated borrowers is \$50,000 or greater.¶

(15) "Net member business loan" means the amount of the outstanding balances and unfunded commitments of the member business loans, reduced by 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 or any loan that is fully secured by a lien on a 1-4 family dwelling; or any portion of a loan sold as a participation interest without recourse and qualifying for true sales accounting under Generally Accepted Accounting Principles.¶

(16) "Net Worth" means retained earnings of the credit union at quarter-end as determined under Generally Accepted Accounting Principles (GAAP). Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. It does not include the Allowance for Loan and Lease Losses account.¶

(17) "NCUA" means the National Credit Union Administration.¶

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

Statutory/Other Authority: ORS 723.102,~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

REPEAL: 441-720-0305

RULE SUMMARY: Deletes member business loan requirements.

CHANGES TO RULE:

~~441-720-0305~~

~~Member Business Loan~~

~~(1) A member business loan includes any loan, line of credit, or letter of credit (including any unfunded commitments), of which the proceeds will be used for the following purposes:¶¶~~

~~(a) Commercial;¶¶~~

~~(b) Corporate;¶¶~~

~~(c) Other business investment property or venture; or¶¶~~

~~(d) Agricultural.¶¶~~

~~(2) Exceptions. The following are not considered a member business loan:¶¶~~

~~(a) A loan secured by a lien on a 1 to 4 family dwelling that is the member's primary residence;¶¶~~

~~(b) A loan fully secured by shares in the credit union making the extension of credit or fully secured by deposits in other financial institutions;¶¶~~

~~(c) Loan(s) to a member or an associated member which, when added together, are equal to less than \$50,000.¶¶~~

~~(d) A loan where a federal or state agency (or any political subdivision of a state) fully insures or guarantees repayment, or provides an advance commitment to purchase the loan in full; or¶¶~~

~~(e) A loan granted by a corporate credit union to another credit union.~~

~~Statutory/Other Authority: ORS 723.102, 723.156~~

~~Statutes/Other Implemented: ORS 723.156, 723.502~~

AMEND: 441-720-0310

RULE SUMMARY: Clarifies the credit union's board needs to review and update the commercial loan policy if there is a material change in circumstances.

CHANGES TO RULE:

441-720-0310

Implementation of Member Business Loan Program Board of Directors and Management Responsibilities

~~(1) It is the responsibility of the board of directors to:~~

~~(a) Adopt specific member business loan policies and review them at least annually.~~

~~(b) Send a copy of the policies to the Director prior to beginning~~ 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 OAR 441-720-0315. 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 the program.~~

~~(c) Make certain that management of the credit union:~~

~~(A) Utilizes the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in; except paragraph (2)(b) of this section.~~

~~(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 that~~

~~(B) If the credit union is engaged in a comprehensive understanding of the role of commercial lending in the credit union's overall business model and establish risk management processes and construction and development lending, the qualified individual must have five years direct experience.~~ ols necessary to safely conduct commercial lending.

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

~~(dA) The qualified individual does not have to be on staff, but the expertise must be readily available.~~

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

~~(B) Overseeing and evaluating the performance of a commercial loan portfolio, including rating and quantifying risk through a credit risk rating system; and~~

~~(C) Conducting collection and loss mitigation activities for the type(s) of commercial lending in which the credit union is engaged.~~

~~(c) Options to meet the required experience. A credit union may meet the experience requirement can be met through various approaches. For example, the credit union may use:~~

~~(A) The services in paragraphs (2)(a) and (b) of this section by conducting internal training and development, hiring qualified individuals, or using a third-party, such as an independent contractor of a credit union service organization;~~

~~(B) An employee of another credit union; however, with respect to the qualified lending personnel requirements in paragraph (2)(b) of this section, use of a third-party is permissible only if the following conditions are met:~~

~~(CA) An independent contractor; or~~

~~(D) Other third parties. The third-party has no affiliation or contractual relationship with the borrower or any associated borrowers;~~

~~(2B) The actual decision to grant a loan must be made by the originating credit union;~~

~~(3C) A Credit Union Service Organization (CUSO) may not grant or fund a member business loan, but may provide member business loan services to a credit union staff exercises ongoing oversight over the third-party by regularly evaluating the quality of any work the third party performs for the credit union; and~~

~~(D) The third-party arrangement must otherwise comply with OAR 441-720-0370.~~

Statutory/Other Authority: ORS 723.102, 723.156

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012





AMEND: 441-720-0315

RULE SUMMARY: Adds discrete provisions for the roles and responsibilities of the board of directors, senior management, and commercial lending staff.

CHANGES TO RULE:

441-720-0315

~~Member Business~~Commercial Loan Policies and Procedures ¶¶

Prior to engaging in ~~member business~~commercial lending, a credit union ~~must adopt member business loan policies and procedures~~board must approve policies, and management must prepare procedures, for the types of loans the credit union is originating (or plans to originate). At a minimum, the policies and procedures ~~must~~should address the following:¶¶

- (1) Types of ~~business~~commercial loans to be made;¶¶
- (2) Identification of trade area to be served;¶¶
- (3) The maximum amount of ~~credit union assets, relative to net worth,~~ that will be invested in ~~member business~~commercial loans;¶¶
- (4) The maximum amount of ~~credit union assets, relative to net worth,~~ that will be invested in a given category or type of ~~member business~~commercial loan;¶¶
- (5) The maximum amount of ~~credit union assets, relative to net worth,~~ that will be loaned to any one member ~~or (including those loans that the member guarantees) and group of associated memb~~borrowers, subject to OAR 441-720-0330;¶¶
- (6) ~~The q~~Qualifications and experience (minimum of 2 years experience) of personnel involved in making and administering business requirements for personnel involved in underwriting, processing, approving, administering, and collecting commercial loans;¶¶
- (7) Initial and ongoing analysis and documentation of the ability of the borrower to repay the loan;¶¶
- (8) ~~R~~Periodic receipt and periodic updating of analysis of the financial statements and other documents, including tax returns;¶¶
- ~~(9, of the borrower(s) and guarantor(s); ¶¶~~  
(9) Considerations governing the quality and complexity of the financial statements;¶¶
- (10) Documentation sufficient to support each request for an extension of credit, or an increase in an existing loan or line of credit, except where the ~~board of directors~~credit union finds that the required documentation is ~~not~~ generally not available for a particular type of loan and states the reasons for those findings in the credit union's written policies. The documentation ~~must~~is expected to include the following:¶¶
- (a) Understanding and history of the borrower(s) and guarantor(s) and the business operation and ownership;¶¶
- (b) Balance sheet, income statement, and tax returns;¶¶
- (bc) Cash flow analysis, history of borrower and business, and analysis of leveragingAnalysis of financial statements, cash flow, and leverage position; debt service coverage ratio guidelines including, but not limited to, the lessees of non-owner occupied property; and the global financial ability to repay;¶¶
- (ed) Comparison with industry average or similar analysis;¶¶
- (e) Explanation of the related debt with the credit union;¶¶
- (f) A detailed explanation of the complexity of the loan purpose, repayment, collateral, loan structure, conditions, capacity, relationship, strengths and weaknesses, and associated risks; and¶¶
- (g) Borrower documentation such as loan agreement and covenants, note, security agreement, borrowing authority, and commitment letter. ¶¶
- (110) Collateral requirements must include all of the following:¶¶
- (a) ~~Loan-to-value ratios~~Steps to be taken to secure various types of collateral;¶¶
- (b) Determination of ~~value~~ownership;¶¶
- (c) Determination of ~~ownership;~~¶¶
- (d) ~~Steps to be taken to secure various types of collateral~~value, source, and marketability, including a real estate appraisal policy;¶¶
- (d) Maximum loan-to-value ratio guidelines;¶¶
- (e) Frequency of reevaluation of the value and marketability of the collateral; and¶¶
- (f) Insurance, if applicable.¶¶
- (112) Interest rates and maturities of business loans;General underwriting guidelines such as cash-out purpose and maximum financing; expectations for due diligence of loan brokers and their loans and borrowers; and expectations for stress-testing. ¶¶
- (123) General loan procedures which include:¶¶
- (a) ~~Loan monitoring; including loan review and g~~credit risk management and administration procedures which

include:¶

(a) Loan approval authorities and limits;¶

(b) Credit risk rating system;¶

(c) Servicing and follow-up;¶

(d) Collection process;¶

(e) Loan officer limits; and¶

(f) Borrower Documentation; such as loan agreement, note, security agreement, borrowing authority, and commitment letter; Frequency and type of loan monitoring, which may include financial analysis, documented collateral inspection, loan agreement and covenant compliance, and credit risk rating system review;¶

(g) Review of concentrations and limits, loan losses, delinquencies, and underwriting standards and practices; and¶

(h) Internal controls and audit processes.¶

(14) Interest rates and maturities of loan type; pricing and risk philosophy. ¶

(15) Procedures for adequate safeguards to minimize potential environmental liability.¶

(16) Identification of individuals prohibited from receiving member business loans commercial loans under OAR 441-720-0370.¶

(17) Procedures for adequate safeguards to minimize potential environmental liability; Approval of policy exceptions and reporting process, noting distinctions between the process for routine exceptions and significant exceptions and, to control risk, how to avoid frequent exceptions.¶

(18) If, however, a credit union makes a commercial loan 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, and that program has requirements that are less restrictive than those required by this rule, then the credit union may follow the loan requirements of the relevant guaranteed loan program.

Statutory/Other Authority: ORS 723.102, 723.156

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

AMEND: 441-720-0320

RULE SUMMARY: Revises collateral and security requirements.

CHANGES TO RULE:

441-720-0320

Collateral and Security Requirements ¶¶

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

(a) A credit card line of credit granted to nonnatural person members that is limited to routine purposes normally made available under such lines of credit; or¶¶

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

(A) The amount of the loan does not exceed \$50,000;¶¶

(B) The aggregate of unsecured member business loan under this paragraph (1)(b) does not exceed 10% of the credit union's net worth;¶¶

(C) The loan is guaranteed or insured by a fina 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 principally responsible guarantor or insurer and the credit union has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement;¶¶

(D) The credit union has a net worth of at least 7%; and(s) A credit union making an unsecured loan must document in the loan file the mitigating factors that sufficiently offset the relevant risk. ¶¶

(E2) TheA credit union submits reports to the Division with its NCUA 5300s, providing numbers and such other detail as may be that does not required by the Director to demonstrate compliance with this paragraph (1)(b).¶¶

(2) In the case of a member business loan secured by collateral on which the credit union will have a first lien, the credit union may grant the loan with a LTV ratio in excess of 80% only where the value in excess of 80% is:¶¶

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

(b) Insured or guaranteed, or subject to advance commitment to purchase, by an agency of the Federal government, state, or any of its political subdivisions. In no event may the LTV ratio exceed 95%;¶¶

(3) In the case of a member business loan secured by collateral on which the credit union will have a second priority lien, the credit union may not grant the loan with a LTV ratio in excess of 80%; and¶¶

(4) In the case of member business loans secured by the same collateral,¶¶

(a) On which the credit union will have a first lien as well as other lesser priority liens, the credit union may grant the loans with a LTV ratio in excess of 80% only if section (2) of this rule is satisfied. In no event may the LTV ratio exceed 95%; and¶¶

(b) On which the credit union will have lesser priority liens but no first lien, the credit union may not grant loans with a LTV ratio in excess of 80%.¶¶

(5) Principals, other than a not for profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501) must assume personal liability and guarantee the loanfull and unconditional personal guarantee from the principal or principals of the borrower, who have a controlling interest in the borrower, must document in the loan file the mitigating factors that sufficiently offset the relevant risk.¶¶

(3) Collateral is not required when the loan is guaranteed or insured by a private insurer that the credit union has determined has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

Statutory/Other Authority: ORS 723.102, ~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

AMEND: 441-720-0325

RULE SUMMARY: Adds new recordkeeping requirements.

CHANGES TO RULE:

441-720-0325

Recordkeeping Requirements ¶

The credit union must separately identify member business and commercial loans in its records and in the aggregate on its regulatory financial reports.

Statutory/Other Authority: ORS 723.102, ~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

AMEND: 441-720-0330

RULE SUMMARY: Defines the terms and scope of aggregate lending limit to credit union members and associated borrowers.

CHANGES TO RULE:

441-720-0330

~~Aggregate Loans~~ Aggregate Lending Limit to a Member ~~or~~ and Associated ~~Members~~ Borrowers ¶

The aggregate amount of ~~outstanding member business loans (including the credit union's outstanding loans and any unfunded commitments)~~ outstanding member business loans (including those loans guaranteed by the member) to a member ~~or~~ and a group of associated ~~members~~ borrowers may not exceed the greater of: ¶

~~(1) 15%~~ 15 percent of the credit union's net worth; or ¶

~~(2) \$100,000.~~

Statutory/Other Authority: ORS 723.102, ~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

AMEND: 441-720-0335

RULE SUMMARY: Defines how to calculate the aggregate 15% lending limit.

CHANGES TO RULE:

441-720-0335

Calculation of the Aggregate 15% Lending Limit ¶¶

For purposes of complying with the provisions of OAR 441-720-0330, a credit union must:¶¶

(1) Calculate the numerator by adding together the credit union's total outstanding balance(s) of member business loans to any one member, or loans and any unfunded commitments to any one member (including those loans that the member guarantees) and groups of associated memb~~borrows~~ers. From this amount, subtract any ~~portion~~:¶¶

~~(a) Loans fully secured by shares, in the credit union;¶¶~~

~~(b) Secured by~~cluding deposits, in the credit union or in another financial institution;¶¶

~~(c) Fully or partially insured or guaranteed by any agency of the Federal government, state, or its political subdivisions;¶¶~~

~~(d) Subject to an advance commitment to purchase by any agency of the Federal government, state, or its political subdivisions; and¶¶~~

(2) Divide the numerator by the net worth of the credit union.

Statutory/Other Authority: ORS 723.102, ~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

AMEND: 441-720-0340

RULE SUMMARY: Defines what constitutes an aggregate (net) member business loan limit.

CHANGES TO RULE:

441-720-0340

Aggregate (Net) Member Business Loan Limit ~~for a Credit Union~~ ¶

(1) For purposes of this rule, "net member business loans" means the amount of outstanding balances and any unfunded commitments of the member business loans, reduced by any loan in which a federal or state agency (or its political subdivision) fully insures repayment, fully guarantees repayment, provides an advance commitment to purchase the loan in full, or any loan that is fully secured by a lien on a 1-4 family dwelling; or any portion of a loan sold as a participation interest without recourse and qualifying for true sales accounting under GAAP. ¶

(2) The aggregate limit on the amount of a credit union's ~~net~~ member business loan ~~outstandings~~, including ~~balances and~~ any unfunded commitments, is the lesser of: ¶

(1a) 1.75 times the credit union's ~~actual~~ net worth; or ¶

(2b) ~~12.25 percent of the credit union's total assets~~, 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), as of 2018). ¶

(3) Purchases of non-member commercial loans or non-member participation interests are excluded from the aggregate member business loan limit provided the credit union acquired the non-member loans or participation interests in compliance with all relevant laws and regulations and it is not, with one or more credit unions, trading member business loans to circumvent the aggregate limit.

Statutory/Other Authority: ORS 723.102, ~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

AMEND: 441-720-0345

RULE SUMMARY: Creates exemption to the aggregate (net) member business loan limit.

CHANGES TO RULE:

441-720-0345

Exemptions to the Aggregate (Net) Member Business Loan Limit for a Credit Union ¶

A credit union can qualify for an exception from the aggregate member business loan limit if the credit union meets any one of the following:¶

(1) Designated as a low-income credit union in accordance with the requirements of 12 U.S.C. 1757a;¶

(2) That has a low-income designation, or participates in the Ca community Ddevelopment Ffinancial Iinstitutions program;¶

(3) Originally, or was chartered for the purpose of making member business loans and can provide documentary evidence such as the charter, bylaws, business, or which as of the date of enactment of the Credit Union Membership Access Act of 1998 had a history of primarily making commercial loans, is exempt from complian; field of membership, board minutes or loan portfolce with the aggregate member business loan limits in this section.

Statutory/Other Authority: ORS 723.102, ~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012



REPEAL: 441-720-0350

RULE SUMMARY: Deletes the procedures for obtaining an exception to member business loan limitations.

CHANGES TO RULE:

~~441-720-0350~~

~~Exception Procedure~~

~~To obtain an exception:¶~~

~~(1) The credit union must submit documentation to the Director substantiating it meets the criteria of one of the exceptions in 441-720-0345.¶~~

~~(2) The Director shall notify the credit union of the Director's decision.¶~~

~~(3) The Director will forward the agency's decision to NCUA.¶~~

~~(4) If granted, the exception does not expire unless it is revoked by the Director.~~

~~Statutory/Other Authority: ORS 723.102, 723.156~~

~~Statutes/Other Implemented: ORS 723.156, 723.502~~

AMEND: 441-720-0355

RULE SUMMARY: Defines what constitutes construction and development lending.

CHANGES TO RULE:

441-720-0355

### Construction and Development Lending ¶

~~A credit union that makes a member business~~In addition to the foregoing, the following requirements apply to a construction and development loan made by a credit union. ¶

~~(1) For the purposes of this section, a construction or development loan means any financing arrangement to enable the borrower to acquire property or rights to property, including land for construction and development of commercial or residential property 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 subject to section. The following requirements:~~¶

~~(1) The aggregate of all such loans must not exceed 15% of net worth of the credit union. To determine the aggregate, a credit union may exclude any portion of a loan:~~¶

~~(a) Secured by shares in the credit union.~~¶

~~(b) Secured by deposits~~ateral valuation for securing a construction or development loan depends on the satisfactory completion of the proposed construction or renovation where 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 section, 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 another contractor financial institution surance. 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.~~¶

~~(c) For land that has been held for an extended period, generally mor partially insured or guaranteed by any agency of the federal government, state, or its political subdivisions; or~~¶

~~(d) Subject to an advance commitment to pure than 12 months, by a borrower or principal, the credit union may use the market value of the land, as documented by a current appraisal.~~¶

~~(B) Any appreciation represented in the real estate valuation must be realistic and well-supported by current market conditions in an appraisal.~~¶

~~(C) 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 ase by any agency of the federal government, or by a state government, or its political subdiv 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.~~¶

~~(2b) The borrower must have a minimum of:~~¶

~~(a) 25% equity interest in the project being financed, except if the loan is for land development the equity interest must be 35%; and~~¶

~~(b) The funds may be~~For the purposes of this section, prospective market value means the market value opinion determined by an independent appraiser in compliance with the relevant standards set forth in the Uniform Standards of Professional Appraisal Practice. 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" released only after onsite, written inspections by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth 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 ensure that 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; ¶

(3b) ~~The~~A credit union may not make such loans unless it utilizes the services of an individual who has at least five years direct experience in development and construction 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 is sufficient to complete the project; and ¶

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

Statutory/Other Authority: ORS 723.102, ~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

AMEND: 441-720-0360

RULE SUMMARY: Creates commercial loan risk classifications.

CHANGES TO RULE:

441-720-0360

Classification of Member Business Commercial Loans to Reserve for Potential Loss Risk Classifications ¶

~~Non-delinquent member business~~ Commercial loans ~~may~~ must be classified (graded) as to risk, based upon factors ~~such as the adequacy of analysis, established by the credit union. Such factors should include the analysis of the credit and supporting documentation; for the risk classification (grades) given, based upon the financial strength of the borrower. The credit union must classify potential loss~~ such as the adequacy of analysis, established by the credit union. Such factors should include the analysis of the credit and supporting documentation; for the risk classification (grades) given, based upon the financial strength of the borrower. The credit union must classify potential loss ~~rating system should include, but not be limited to, these categories: ¶~~

~~(1) SPECIAL MENTION. A special mention loans has either substandard, doubtful, or loss. The criteria for determining potential weaknesses that deserve management's close attention. If left uncorrected, these potential weaknesses may result in deterioration of the repayment prospects for the classification of loans are: et or in the credit union's credit position at some future date. ¶~~

~~(12) SUBSTANDARD. A substandard loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. The loan classified has a well-defined weakness or weaknesses that jeopardize the liquidation of debt. The loan is characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard. ¶~~

~~(23) DOUBTFUL. A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans. ¶~~

~~(34) LOSS. A loan classified loss is considered uncollectible and of such little value that its continuance as a loan is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.~~

Statutory/Other Authority: ORS 723.102, ~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

REPEAL: 441-720-0365

RULE SUMMARY: Deletes the minimum reserves for potential loan losses.

CHANGES TO RULE:

~~441-720-0365~~

~~Minimum Reserves for Potential Loan Losses~~

~~The following schedule sets the minimum amount the credit union must reserve for classified loans:¶~~

~~Classification - Amount Required.¶~~

~~Substandard - 10% of outstanding balance unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.¶~~

~~Doubtful - 50% of the outstanding balance.¶~~

~~Loss - 100% of the outstanding balance.~~

~~Statutory/Other Authority: ORS 723.102, 723.156~~

~~Statutes/Other Implemented: ORS 723.156, 723.502~~

AMEND: 441-720-0370

RULE SUMMARY: Defines what constitutes prohibited commercial loans.

CHANGES TO RULE:

441-720-0370

~~Prohibited Member Business~~Commercial Loans ¶

(1) A credit union may not grant a ~~member business loan to the following:~~¶

~~(a) The credit union's chief executive officer;¶~~

~~(b) Any assist~~commercial loan to the credit union's senior management, which shall include all chief officers, vice presidents and staff directors, as well as any chief executive officers;¶

~~(c) The chief financial officer; or¶~~

~~(d) A credit union staff directly involved in commercial lending management, underwriting, servicing, or collecting; or any associated mem~~borrower or the immediate family member of anyone listed in subsections (a) through (c) of this section.¶

(2) Equity agreement/~~joint v~~ventures. The credit union may not grant a member business~~commercial~~ loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.¶

(3) Loans to members of the board of directors. A credit union may not grant a ~~member business loan to a commercial loan to a director who is a member of the credit union board of directors~~ unless the board of directors approves in advance granting the loan and the director is recused from the decision making process.¶

(4) Conflicts of interest. Any third-party used by a credit union to meet the requirements of this part must be independent from the commercial loan transaction and may not have a participation interest in a loan or an 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 federally insured 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 OAR 441-720-0310(2)(c) of this part even if the credit union service organization is not independent from the transaction, provided the credit union has a controlling financial interest in the credit union service organization as determined under GAAP.

Statutory/Other Authority: ORS 723.102,~~723.156~~

Statutes/Other Implemented: ORS 723.152, 723.156, 723.5012

REPEAL: 441-720-0375

RULE SUMMARY: Deletes the waiver provisions for specific loan types.

CHANGES TO RULE:

~~441-720-0375~~

~~Available Waivers for Specific Loan Types~~

~~A credit union may seek a waiver for a type of member business loan in the following areas:¶¶~~

~~(1) Loan to value ratios under 441-720-0320.¶¶~~

~~(2) Unsecured loan limit under 441-720-0320 not to exceed \$100,000.¶¶~~

~~(3) Maximum loan amount to one borrower or associated group of borrowers under 441-720-0330.¶¶~~

~~(4) Construction and development loan limits under 441-720-0355.¶¶~~

~~(5) Requirement for personal liability and guarantee under 441-720-0320.¶¶~~

~~(6) If a credit union is requesting a waiver of appraisal requirements of 12 C.F.R. 722.3 from the NCUA, the credit union shall:¶¶~~

~~(a) File the request with the Director; and¶¶~~

~~(b) If the Director approves the request, the Director will promptly forward the request to the Regional Director of Region VI of the NCUA (or if it is the Corporate Credit Union to the Director of the Office of Corporate Credit Unions of NCUA) for decision under NCUA rules at 12 C.F.R. 723.12; or¶¶~~

~~(c) If the Director does not approve the request, the Director will return the request to the credit union with reasons for the disapproval and provide the NCUA with notice of the Director's decision.¶¶~~

~~(d) The waiver is not effective until the Regional Director of Region VI of the NCUA (or the Director of the Office of Corporate Credit Unions) approves it in accordance with NCUA rules at 12 C.F.R. 723.12.~~

~~Statutory/Other Authority: ORS 723.102, 723.156~~

~~Statutes/Other Implemented: ORS 723.156, 723.502~~

REPEAL: 441-720-0380

RULE SUMMARY: Deletes the procedures for obtaining a waiver for specific loan types.

CHANGES TO RULE:

~~441-720-0380~~

~~Waiver Procedure~~

~~(1) A credit union must submit a request to the Director to obtain a waiver under OAR 441-720-0375. The waiver request must contain the following:~~

- ~~(a) A copy of the member business loan policy;~~
- ~~(b) The higher limit sought, if applicable;~~
- ~~(c) An explanation of the need to raise the limit, if applicable;~~
- ~~(d) Documentation supporting the credit union's ability to manage this activity; and~~
- ~~(e) Analysis of the credit union's prior experience making member business loans, including:~~
  - ~~(A) The history of loan losses and loan delinquency;~~
  - ~~(B) Loan volume and cyclical or seasonal patterns;~~
  - ~~(C) Diversification;~~
  - ~~(D) Concentrations of credit to one borrower or group of associated borrowers in excess of 15% of net worth;~~
  - ~~(E) Underwriting standards and practices;~~
  - ~~(F) Types of loans grouped by purpose and collateral;~~
  - ~~(G) The qualifications of personnel responsible for underwriting and administering member business loans; and~~
  - ~~(H) Any other information deemed relevant by the credit union or requested by the Director.~~

~~(2) The Director will:~~

- ~~(a) Review the information provided by the credit union in its request;~~
- ~~(b) Evaluate the level of risk to the credit union;~~
- ~~(c) Consider the credit union's historical CAMEL composite and component ratings;~~
- ~~(d) Notify the credit union when the waiver request is deemed complete;~~
- ~~(e) Notify the credit union of the action taken within 45 calendar days of receiving a complete request, and, if the Director approves the waiver request as not detrimental to the safety and soundness of the credit union nor contrary to the public interest, issue an order subject to NCUA approval granting the waiver; and~~
- ~~(f) Provide a copy of the waiver request under 12 C.F.R. 723.11 to NCUA, Region VI (or if it is the Corporate Credit Union to the Director of the Office of Corporate Credit Unions) for their review and approval.~~

~~(3) The waiver is not effective until the Director approves it by order.~~

~~(4) If granted, the waiver does not expire unless it is revoked by the Director.~~

~~Statutory/Other Authority: ORS 723.102, 723.156~~

~~Statutes/Other Implemented: ORS 723.156, 723.502~~