

Comparison Handout for August 30, 2016 MBL Rulemaking Meeting

Compare 12 CFR 723.2 Definitions to WAC 208-460-010 Definitions

12 CFR 723.2 Definitions	WAC 208-460-010 Definitions	Proposed Definitions
<p>For purposes of this part, the following definitions apply:</p> <p><i>Associated borrower</i> means any other person or entity with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower. This means any person or entity named as a borrower or debtor in a loan or extension of credit, or any other person or entity, such as a drawer, endorser, or guarantor, engaged in a common enterprise with the borrower, or deriving a direct benefit from the loan to the borrower. Exceptions to this definition for partnerships, joint ventures and associations are as follows:</p> <p>(1) If the borrower is a partnership, joint venture or association, and the other person with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is a member or partner of the borrower, and neither a direct benefit nor a common enterprise exists, such other person is not an associated borrower.</p> <p>(2) If the borrower is a member or partner of a partnership, joint venture, or association, and the other entity with a shared ownership,</p>	<p>What is a member business loan?</p> <p>(1) Definition of MBL. "Member business loan" or "MBL" includes any loan, line of credit, letter of credit, or any unfunded commitment to make a loan, where the borrower intends to use the proceeds for any of the following purposes:</p> <p>(a) Commercial;</p> <p>(b) Corporate;</p> <p>(c) Investment property;</p> <p>(d) Business venture; or</p> <p>(e) Agricultural.</p> <p>(2) Exemptions. The following are not member business loans:</p> <p>(a) A business purpose loan fully secured by a lien on a one to four family dwelling that is the member's primary residence;</p> <p>(b) A business purpose loan fully secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by deposits in other financial institutions;</p>	<p>(1) Definition of MBL. "Member business loan" or "MBL" means any commercial loan, except a commercial loan that meets one or more of the exemptions below are not MBLs and are not counted toward the aggregate MBL limit.</p> <p>(2) Exemptions. The following are not member business loans:</p> <p>(a) A commercial loan fully secured by a lien on a one to four residential property that is not the member's primary residence;</p> <p>(b) A commercial loan fully secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or by shares or deposits in other financial institutions;</p> <p>(c) One or more commercial loans to a member or any associated member in which the outstanding aggregate net member business loan balance is less than \$50,000;</p> <p>(d) A commercial loan where a federal or state agency (or any political subdivision of a state) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or</p> <p>(e) A loan granted by a corporate credit union to another credit union.</p>

<p>investment, or other pecuniary interest in a business or commercial endeavor with the borrower is the partnership, joint venture, or association and the borrower is a limited partner of that other entity, and by the terms of a partnership or membership agreement valid under applicable law, the borrower is not held generally liable for the debts or actions of that other entity, such other entity is not an associated borrower.</p> <p>(3) If the borrower is a member or partner of a partnership, joint venture, or association, and the other person with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is another member or partner of the partnership, joint venture, or association, and neither a direct benefit nor a common enterprise exists, such other person is not an associated borrower. <i>Commercial loan</i> means any loan, line of credit, or letter of credit (including any unfunded commitments), 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. 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 federally insured credit union to a credit union</p>	<p>(c) One or more business purpose loans to a member or any associated member which in the aggregate do not exceed the amount of 49,999 dollars. The entire amount of such a loan that exceeds this figure, or that causes the aggregate to exceed this figure, is a MBL;</p> <p>(d) A business purpose loan where a federal or state agency (or any political subdivision of a state) fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full; or</p> <p>(e) A loan granted by a corporate credit union to another credit union.</p> <p>(3) Other definitions. Certain other terms used in this chapter are defined in WAC 208-460-170.</p>	<p>(f) Any commercial 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 purposes.</p> <p>(3) Method of Calculation for the net MBL balance. The net member business loan balance is determined by calculating the outstanding loan balance plus any unfunded commitments, and reduced by any of the following:</p> <ul style="list-style-type: none"> a) any portion of the loan that is secured by shares or deposits in the credit union, or by shares or deposits in other financial institutions, b) the amount of a first lien on a member's primary residence, not to exceed the MBL balance, c) the amount insured or guaranteed by any agency of the federal government, a state or any political subdivision of such state, d) the amount subject to an advance commitment to purchase by any agency of the Federal Government, a state or any political subdivision of such state, or e) the amount sold as a participation interest without recourse and qualifying for true sales accounting under generally accepted accounting principles. <p><u>"Commercial loan"</u> means any loan, line of credit, letter of credit (including any unfunded commitments), or other extension of credit, and any interest a credit union obtains in such</p>
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<p>service organization; loans secured by a 1- to 4- family residential property (whether or not it is the borrower's primary residence); loans fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions; loans secured by a vehicle manufactured for household use; and loans that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balances plus unfunded commitments less any portion secured by shares in the credit union to a borrower or an associated borrower, are equal to less than \$50,000.</p> <p><i>Common enterprise</i> means:</p> <p>(1) 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 (2) of this definition are met;</p> <p>(2) Loans or extensions of credit are made:</p> <p>(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and</p> <p>(ii) Substantial financial interdependence exists between or among the borrowers.</p>		<p>an extension of credit made by another lender, for commercial, industrial, agricultural, or professional purposes, but not for personal, family or household purposes, provided that "commercial loan" specifically excludes: loans made by a corporate credit union; loans made by a federally insured credit union to another federally insured credit union; loans made to a credit union service organization to which the credit union is affiliated; loans secured by a one-to-four family residential property (whether or not it is the borrower's primary residence); loans fully secured by shares or deposits in the credit union making the extension of credit; loans secured by a vehicle manufactured for household use and which is not part of a fleet of vehicles; and loans that would otherwise meet the definition of "commercial loan" and which, when the aggregate outstanding balances plus unfunded commitments less any portion secured by shares in the credit union to a borrower or an associated borrower, equal an amount less than \$50,000.</p> <p>"Agricultural real estate" means real property which the primary (51% or more) use is for agricultural purposes, including, without limitation, farming, livestock, grazing, or aquaculture.</p> <p>"Non-real estate collateral" includes collateral for commercial loans consisting of accounts receivable, business inventory, harvested</p>
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<p>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. Gross receipts and expenditures include gross revenues or expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments; or</p> <p>(3) 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.</p> <p><i>Control</i> means a person or entity directly or indirectly, or acting through or together with one or more persons or entities:</p> <p>(1) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another person or entity;</p> <p>(2) 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</p> <p>(3) Has the power to exercise a controlling influence over the management or policies of another person or entity.</p> <p><i>Credit risk rating system</i> means a formal process that identifies and assigns a relative credit risk score to each commercial loan in a federally insured credit union’s portfolio, using ordinal ratings to represent the degree</p>		<p>crops, equipment and machinery, commercial-purpose (fleet) vehicles, or other tangible or intangible personal property having a commercial purpose.</p> <p>“Commercial real estate loan” is a commercial loan secured by real property.</p> <p>“Remodel or renovation” means a capital improvement to an existing real property that substantially changes the use and impact of the property. Excluded from this definition is repair, maintenance, or minor improvements on an income-producing property that does not change the use or materially impact the property.</p> <p>“Acquisition loan” is a commercial loan made for the purpose of acquiring raw land or a developed parcel for future commercial development, new construction, or remodel or renovation by means other than the acquisition loan.</p> <p>“Construction loan” is a commercial loan made for the purpose of new construction or substantial renovation and remodel on property that has been developed or repurposed to the point where the planned new construction or remodel or renovation is permissible and feasibly ready for construction.</p> <p>“Development loan” is a commercial loan</p>
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<p>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.</p> <p><i>Direct benefit</i> 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.</p> <p><i>Immediate family member</i> means a spouse or other family member living in the same household.</p> <p><i>Loan secured by a 1- to 4-family residential property</i> means a loan that, at origination, is secured wholly or substantially by a lien on a 1- to 4- family residential property for which the lien is central to the extension of the credit; that is, the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a 1- to 4-family residential property if the estimated value of the real estate collateral at origination (after deducting any senior liens held by others) is greater than 50 percent of the principal amount of the loan.</p> <p><i>Loan secured by a vehicle manufactured for household use</i> means a loan that, at</p>		<p>made for the purpose of improving raw land or repurposing improved property to make it permissible, feasible, and ready for new construction or remodel or renovation.</p> <p>“A & D loan” is the combination of an acquisition loan and a development loan into a single loan.</p> <p>“D & C loan” is the combination of a development loan and a construction loan into a single loan.</p> <p>“ADC loan” is a combination of an acquisition loan, development loan and construction loan into a single loan.</p> <p>“Cost to complete” means the sum of all qualifying costs necessary to complete a development or construction loan, or combinations of the above, as documented in an approved budget.</p> <p>“Equity” means, the lesser of the appraised value of a completed project or the sales price of the subject property, as applicable, minus the principal amount of the loan.</p> <p>“Prospective market value” means the market value opinion determined by an independent appraiser in compliance with applicable USPAP standards.</p> <p>“Qualified costs” means the aggregate</p>
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<p>origination, is secured wholly or substantially by a lien on a new and used passenger car and other vehicle such as a minivan, sport-utility vehicle, pickup truck, and similar light truck or heavy-duty truck generally manufactured for personal, family, or household use and not used as a fleet vehicle or to carry fare-paying passengers, for which the lien is central to the extension of credit. A lien is central to the extension of credit if the borrower would not have been extended credit in the same amount or on terms as favorable without the lien. A loan is wholly or substantially secured by a lien on a vehicle manufactured for household use if the estimated value of the collateral at origination (after deducting any senior liens held by others) is greater than 50 percent of the principal amount of the loan.</p> <p><i>Loan-to-value ratio</i> means, with respect to any item of collateral, the aggregate amount of all sums borrowed and secured by that collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the federally insured credit union's lien position, divided by the current collateral value. The current collateral value must be established by prudent and accepted commercial lending practices and comply with all regulatory requirements. For a construction and development loan, the collateral value is the lesser of cost to complete or prospective market value, as determined in accordance</p>		<p>itemized costs of development, construction, remodel or renovation approved by a credit union.</p> <p>"USPAP" means the Uniform Standards of Professional Appraisal Practice, or successor appraisal standards as may be authorized by the Federal Financial Institutions Examination Council.</p> <p>"Controlling person" means a person or entity who directly or indirectly, or acting through or together with one or more persons or entities:</p> <ul style="list-style-type: none"> (a) Owns, controls, or has the power to vote twenty-five 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. <p>"Credit risk rating system" means a formal process that identifies and assigns a relative credit risk score to each commercial loan in a federally insured 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,</p>
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<p>with § 723.6 of this part.</p> <p><i>Net worth</i> means a federally insured credit union’s net worth, as defined in part 702 of this chapter.</p> <p><i>Readily marketable collateral</i> means a financial instrument or bullion that is salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.</p> <p><i>Residential property</i> means a house, condominium unit, cooperative unit, manufactured home (whether completed or under construction), or unimproved land zoned for 1- to 4- family residential use. A boat or motor home, even if used as a primary residence, or timeshare property is not residential property.</p>		<p>operational market, and business environmental factors.</p> <p>“Loan-to-value ratio” means, with respect to any item of collateral, the aggregate amount of all sums borrowed and secured by that collateral, including outstanding balances plus any unfunded commitment or line of credit from another lender that is senior to the federally insured credit union’s lien position, divided by the current collateral value. The current collateral value must be established by prudent and accepted commercial lending practices and comply with all regulatory requirements. For a construction and development loan, the collateral value is the lesser of cost to complete or prospective market value, as determined in accordance with § 723.6 of this part.</p> <p>“net worth” means a federally insured credit union’s net worth, as defined in part 702 of this chapter.</p> <p>“Readily marketable collateral” means a financial instrument or bullion that is salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.</p> <p>“Residential property” means a house,</p>
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		<p>condominium unit, cooperative unit, manufactured home (whether completed or under construction), or unimproved land zoned for 1- to 4- family residential use. A boat or motor home, even if used as a primary residence, or timeshare property is not residential property.</p> <p>“Associated Borrower” means any other person or entity with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower. This means any person or entity named as a borrower or debtor in a loan or extension of credit, or any other person or entity, such as a drawer, endorser, or guarantor, engaged in a common enterprise with borrower, or deriving a direct benefit from the loan to borrower.</p>
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