

**Committee Name:**

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions  
(SC-PECFI)**

**Appointments**

01hr\_SC-PECFI\_Appoint\_pt00

**Clearinghouse Rules**

01hr\_SC-PECFI\_CRule\_02-034\_pt03

**Committee Hearings**

01hr\_SC-PECFI\_CH\_pt00

**Committee Reports**

01hr\_SC-PECFI\_CR\_pt00

**Executive Sessions**

01hr\_SC-PECFI\_ES\_pt00

**Hearing Records**

01hr\_ab0000

01hr\_sb0000

**Misc.**

01hr\_SC-PECFI\_Misc\_pt01

**Record of Committee Proceedings**

01hr\_SC-PECFI\_RCP\_pt00



June 7, 2002

**HAND DELIVERED**

The Honorable Jon Erpenbach  
State Senator  
State Capitol  
Madison, Wisconsin 53702

**RE: DFI-CU 72**

Dear Chairman Erpenbach:

The Wisconsin Bankers Association appreciates you holding a hearing on DFI-CU 72 on May 23. As was stated during that hearing, WBA continues to have significant objections to the rule as currently proposed. We also feel compelled to respond to statements made after the hearing.

I am aware that the credit unions have indicated that if DFI-CU 72 were amended in any way, it would delay its implementation for at least one year. That is an exaggeration. If your committee agrees to make the modest alterations WBA has requested, DFI-CU 72 would have to be resubmitted to the National Credit Union Administration (NCUA) Board. The NCUA Board meets 11 times a year and is known for its quick action on proposed rules, like this one. It is more than reasonable to assume that NCUA could rapidly approve the changes that your committee deems necessary to protect the safety and soundness of state chartered credit unions in Wisconsin.

I am also aware that some have argued that DFI was given similarly broad authority to regulate state chartered banks, savings banks and savings & loans under Clearinghouse Rule 00-045 relating to financial subsidiaries. That too is an exaggeration. As you may recall, the so-called financial subsidiary rule was intended to parallel a similar provision in the federal Gramm-Leach-Bliley Act of 1999 (GLBA). GLBA allows national banks and federal thrifts to engage in "financially related" activities through a financial subsidiary. However, Clearinghouse Rule 00-045 limited the scope for taxpaying state chartered institutions to 38 specific activities.

The difference is that Clearinghouse Rule 00-045 was less than exact parity with federal law, while the DFI-CU 72 is far broader than anything that exists in federal law.

It is also important to note that the original draft of the Universal Bank Bill (UBB) gave DFI's Division of Banking similar waiver granting authority to what is proposed in DFI-CU 72. However, at the time, lawmakers on both the Senate and Assembly Financial Institutions Committees opposed giving DFI such broad regulatory discretion and the provision was removed. The lawmakers opposed the UBB provision because they did not want to surrender their oversight authority. But that is exactly what DFI-CU 72 does -- it erodes legislative oversight.

The obvious question to ask is why is it okay to grant the state credit union regulator authority that the state-banking regulator was denied?

4721 SOUTH BILTMORE LANE  
MADISON, WI 53718

P. O. BOX 8880  
MADISON, WI 53708-8880

608-441-1200  
FAX 608-661-9381

[www.wisbank.com](http://www.wisbank.com)



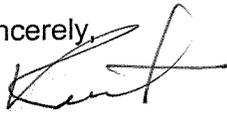
WBA respectfully requests that the overly broad waiver provision relating to lending limits be struck from the rule. As was stated during the hearing, no other financial institution regulator is authorized to waive such requirements in the same manner.



During the hearing, Office of Credit Union Administrator Ginger Larson said that under the proposed rule the lending limit for state chartered credit unions would be a percentage of capital, not assets – just like taxpaying financial institutions. WBA also requests that the rule be changed to clearly indicate her intention.

Thank you again for your willingness to hear our concerns.

Sincerely,



Kurt R. Bauer  
Vice President-Government Relations



**Public Hearing of the  
Assembly Committee on Financial Institutions And  
Senate Committee on Privacy, Electronic Commerce and Financial Institutions  
Proposed Rule DFI-CU 72**

**Testimony of Daryll Lund, President & CEO  
Community Bankers of Wisconsin**

Chairperson Jeskewitz and Chairperson Erpenbach and members of the committees, my name is Daryll Lund, President & CEO of the Community Bankers of Wisconsin (CBW). CBW is a statewide trade association representing the interests of approximately 220 community based financial institutions.

I appear before you today to testify in opposition to DFI-CU 72 relating to member business loans. Our association believes that the proposed rule makes three major substantive changes from current credit union rules related to member business loans. These changes include the elimination of the need for personal guaranties, the ability to make unsecured business loans and the granting of almost unlimited authority to the Office of Credit Unions.

First, the elimination of a personal guaranty is unusual in most business loans. Commercial banks may be subject to criticism by their regulator if such a guaranty was not in place. The loan policies of most community banks require personal guaranties for business loans. Since business loans are a relatively new practice for many credit unions they should be required to follow the reasonable and customary practices of the industry. Personal guaranties should not be eliminated as a requirement for credit union business loans.

The second major substantive change relates to unsecured business loans. It is not a reasonable and customary practice for community banks to make unsecured business loans. When they do it is based upon the financial strength of the borrower not the financial strength of the financial institution as is being proposed in this rule. The proposed rule potentially creates an unsafe and unsound banking practice by allowing credit unions to make unsecured loans business loans up to 10% of the net worth of the credit union.

The third and most significant change authorized by the proposed rule is the granting of almost unlimited authority to the Office of Credit Unions with respect to the setting of member business loan standards and the ability to

approve exceptions and waivers. This expanded authority circumvents the intent of the legislature for a system of checks and balances. It is important to note that this authority to waive regulatory requirements is currently not available to commercial banks, savings banks or savings and loans.

If a credit union is granted an exception it appears that none of the business loan restrictions would apply. Moreover, in addition to exceptions the Office of Credit Unions can grant waivers for:

- 1) Construction and development loan requirements.
- 2) Loan-to-value ratios
- 3) Maximum loan amount to a member and associated members
- 4) Aggregate member business loan limits

Allowing a state regulator to arbitrarily set standards on a case by case basis is bad public policy and is in direct conflict with current business lending regulatory oversight. At what level is the maximum loan amount to a member considered excessive? What should be the aggregate amount of business loans a credit union can make? By approving this rule with this waiver and exception authority all of the standards are merely guidelines not regulatory limitations.

Proposed section 72.14 sets an aggregate member business loan limit. However, 72.15 provide three exceptions to this limit. The third **exception** 72.15(3) appears to create a major loophole to the aggregate limit. For example a community based credit union that advertises that membership is open to anyone in southern Wisconsin (including businesses) could apply for an exception to the aggregate business loan limit because their field of membership and business plan includes loans to businesses. If the exception is granted there would be no aggregate lending limit.

Proposed section 72.08 addresses the amount of business loan to a member or associated members. Again if the credit union chooses they can seek a **waiver** from the Office of Credit Unions for a higher amount. The level of the loan amount again is arbitrary and on a case by case basis. Banks in Wisconsin have discussed a higher lending limit with the DFI. However, a higher lending limit would require a statutory change with approval by the legislature. This issue has not advanced because DFI has expressed safety and soundness concerns with the increased lending limit.

If a credit union is granted either an exception or a waiver then it appears that the individual loan limit would be governed by Wisconsin statutes. State chartered credit unions already enjoy a much higher lending limit than

commercial banks, savings institutions and savings and loans.

Wisconsin statute §186.098(5) allows a credit union to make loans to any member up to **10% of assets**.

Commercial bank lending limits are governed by §221.0320, which sets the limit at **20% of capital**. Savings banks are governed by §214.54, which sets the limit at **15% of capital**. Savings and loans are governed by §215.21(5)(a), which sets the limit at **10% of capital**.

The result is credit unions have a substantially higher loan limit than other financial institutions. The chart below demonstrates this discrepancy. It is clear that if the Office of Credit Unions proposes changes to the business lending rules then it is also appropriate for the legislature to examine the current statutory lending limits for credit unions.

**Comparison of Lending Limits  
(Based upon Wisconsin Statutes 186.098(5) and 221.0320)**

	Landmark CU, Waukesha	Waukesha State Bank	Educators CU, Racine	Johnson Bank, Racine
Assets	\$594 million	\$547 million	\$474 million	\$1.6 billion
Equity Capital	\$45 million	\$74 million	\$45 million	\$114 million
Lending Limit	<b>\$59.4 million</b>	<b>\$14.8 million</b>	<b>\$47.4 million</b>	<b>\$22.8 million</b>
Limit as % of Capital	<b>132%</b>	20%	<b>105%</b>	20%

For the foregoing reasons we respectfully oppose the proposed business lending rule. Thank you for your consideration.



Testimony before the  
Senate Committee on Privacy, Electronic Commerce and Financial Institutions  
and  
Assembly Committee on Financial Institutions

**In Opposition to DFI-CU 72**

10:00 am, May 23, 2002  
by Rose Oswald Poels  
Wisconsin Bankers Association

Senator Erpenbach, Representative Jeskewitz and members of the Committees, my name is Rose Oswald Poels. I am the vice president of the legal department for the Wisconsin Bankers Association (WBA). WBA represents nearly 350 commercial banks, savings banks and savings & loan institutions of all sizes throughout the state. WBA appreciates the opportunity to provide you with written and verbal comments on the proposed creation of new Chapter DFI-CU 72 related to member business loans. WBA is opposed to the proposed rule as drafted.

**The proposed rule is too broad and more liberal than federal law thus raising significant questions of safety and soundness.**

WBA understands that credit unions in Wisconsin have been able to make business loans for some time now and we do not challenge that authority. WBA further understands that in early February 2002, the National Credit Union Administration (NCUA) Board approved a complete exemption for Wisconsin credit unions from the NCUA member business loan rule based on their approval of new Chapter DFI-CU 72. Despite NCUA's approval of the new Wisconsin member business loan rule, WBA remains very concerned that there are not sufficient safeguards in place in the rule to mitigate risks to the NCUSIF.

Specifically, the variances between the proposed rule and the NCUA's rule involve three critical distinctions. First, the Wisconsin rule requires a borrower to have a 30% equity interest in loans for land development and a 25% equity interest if the loan is for construction or construction/development purposes. NCUA rules require a 35% equity interest. Second, Wisconsin will exempt certain collateral and security requirements in certain circumstances. NCUA rules do not have these exemptions to the collateral and security requirements. Finally, the NCUA provisions relating to personal liability and guarantees are not covered under Wisconsin's rule.

4721 SOUTH BILTMORE LANE  
MADISON, WI 53718

P. O. BOX 8880  
MADISON, WI 53708-8880

608-441-1200  
FAX 608-661-9381

[www.wisbank.com](http://www.wisbank.com)

The state chartered credit unions in Wisconsin are familiar with and used to the NCUA rules because the NCUA rules are what they currently need to follow when making business loans. There is no reasonable justification for setting forth these questionable differences between the federal and state law.

In fact, these differences result in an expansion of the law for state chartered credit unions. Currently, in certain circumstances, if a credit union wants to make a business loan to a member in a manner not allowed under current law, it must obtain a waiver from both the Office of Credit Unions (OCU) and NCUA. This proposal entirely eliminates the need for such waivers for a broader class of business loans because the rule itself automatically provides the broader authority. No regulator will review the appropriateness of the expanded business lending authority for that particular credit union other than during the course of a regular examination, at which point it might be too late. WBA strongly recommends that these substantive variances be eliminated and that the state's rule be parallel to the federal law.

**The proposed rule giving the Director total discretion to waive certain requirements of the rule is bad public policy and is inconsistent with the authorities of any other state financial institution regulator.**

Proposed section DFI-CU 72.10 allows a credit union to seek a waiver from the Director of OCU for any of the following: construction and development loan requirements under the proposed rule, loan to value ratios under the proposed rule, and maximum loan amount to a member and associated members under the proposed rule. A waiver of the appraisal requirements of the NCUA rules must be approved by both OCU and NCUA.

No other financial institution regulator is authorized to waive statutory requirements, like lending limits, in the same manner. While waivers are something currently permitted under NCUA's rules, there is a checks and balances system in place in that two regulators, OCU and NCUA, are needed to approve the waiver. The ability of the Director alone to essentially make up the law on a case by case basis through the waivers and exceptions is bad public policy. It is of great concern to WBA that the Director of OCU is given such an extraordinary power to waive statutory requirements. WBA strongly recommends that the waiver provisions be eliminated.

### Conclusion

WBA appreciates this opportunity to provide both Committees with its concerns related to new Chapter DFI-CU 72. WBA respectfully urges the Committees to eliminate the breadth of the proposal and, instead, make it parallel to federal law, as well as remove the waiver authority of the Director. Thank you for your consideration of WBA's comments.



**MEMORANDUM**

**DATE:** April 5, 2002  
**TO:** Senator Jon Erpenbach  
**FROM:** Brett Thompson  
**SUBJECT:** Member Business Loan Rule

As I promised, attached is a summary of the proposed member business loan rule for Wisconsin credit unions.

This rule simply does one thing – *it gives state control over state chartered credit unions* – by giving the Office of Credit Unions the authority to regulate business loans made by state credit unions.

Please feel free to call me if you have any questions or would like to discuss this issue further. My direct number is 800-242-0833 ext. 3011.

Attachment

Wisconsin Credit  
Union League

League Services  
Corporation

League Collection  
Agency

N25 W23131 Paul Road  
Pewaukee, Wisconsin  
53072-5779

262.549.0200  
800.242.0833  
fax 262.549.7722

[www.wcul.org](http://www.wcul.org)

## Summary of Proposed DFI-CU 72

### ***State Control Over Member Business Loans Made by State Credit Unions***

DFI—CU 72 Member Business Loans (the “State rule”) would provide for **state control** over member business loans made by Wisconsin credit unions. As of December 31, 2001, there were 326 credit unions in Wisconsin – 323 of which were state chartered. The member business loans of Wisconsin’s 323 state-chartered credit unions currently are governed by NCUA Rules and Regulations 12 C.F.R. Part 723 (the “Federal rule”).

The NCUA regulations contemplate state supervision of the member business loans made by federally-insured, state-chartered credit unions. Under the Federal rule, the NCUA Board may exempt federally-insured, state-chartered credit unions in a given state from NCUA’s member business loan rule if the NCUA approves the state’s rule for use for federally-insured, state-chartered credit unions. In making its determination, the Board reviews the proposed rule for safety and soundness considerations and whether the state regulation minimizes risk and accomplishes the overall objectives of NCUA’s member business loan rule. Having no safety and soundness concerns, the NCUA Board unanimously approved the State rule on February 7, 2002.

Apart from subjecting Wisconsin’s 323 state-chartered credit unions to the supervision of the OCU – and not the NCUA – the terms of the State rule substantially mirror the terms of the Federal rule. The significant differences in the two rules are as follows:

- Under the State rule, a credit union cannot make construction and development loans unless it utilizes the services of an individual with at least five years direct experience in construction and development lending. The Federal rule has a two-year experience requirement.
- Like commercial lending by banks and thrifts, the State rule has no requirement for personal guarantees by principals of the business. The Federal rule requires personal guarantees by business principal unless waived by the NCUA.
- Under the State rule, a member business loan made by the credit union need not be secured if:
  - the loan does not exceed 1% of the credit union’s net worth,
  - the aggregate of the unsecured business loans made by the credit union does not exceed 10% of the credit union’s net worth,
  - the credit union has a net worth of at least 7%, and
  - the credit union submits reports to the Office of Credit Unions demonstrating compliance with this rule.

Under the Federal rule, a credit union must obtain a waiver from the NCUA if the member business loan is unsecured.

- The Federal rule requires that a member have at least 35% equity interest in a construction or development project being financed. Under the State rule, the borrower must have at least 30% equity interest in the project being financed if the loan is for land development, and at least 25% equity interest in the project being financed if the loan is for construction or for a combination of development and construction.
- The State rule requires that member business loan policies include guidelines for the purchase and sale of member business loans and loan participations if the credit union intends to engage in those activities. The Federal rule has no similar requirement.

# DRAFT

## PROPOSED RULE STATE OF WISCONSIN OFFICE OF CREDIT UNIONS

An order to create ch. DFI—CU 72. Analysis: Statutes authority: ss. 186.115(1) and (2), 186.235(8) and 227.11(2), Stats. Statutes interpreted: ss. 186.115(1) and (2), 186.235(8), Stats. Summary: The rule provides certain criteria, exemptions, prohibitions and waivers; establishes procedures for programs and criteria for policies; sets forth collateral, security and record keeping requirements; and sets forth limitations, calculations and classifications relating to member business loans. The rule would be the implementing provision under state law authorizing credit unions to make loans to their members. The promulgation of this rule has been approved by the Credit Union Review Board. Agency person to be contacted for substantive questions and responsible for the agency's internal processing: Ginger Larson, Director, Office of Credit Unions, tel. (608) 261-9543. Pursuant to the statutory authority referenced above, the Office of Credit Unions adopts the following:

SECTION 1: CHAPTER DFI—CU 72 is created to read:

### CHAPTER DFI—CU 72

#### MEMBER BUSINESS LOANS

**DFI-CU 72.01 Definitions.** In this chapter:

- (1) "Amount" of a business loan includes all the following:
  - (a) Any unfunded commitment to make the loan;
  - (b) The outstanding balance of the loan; and
  - (c) Any undisbursed proceeds of the loan.
- (2) "Associated member" means a person who is associated with another if he or she has a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor.
- (3) "Business purpose" means a loan where the borrower intends to use the proceeds for any of the purposes listed in s. DFI-CU 72.02.
- (4) "Construction or development loan" means a financing arrangement for acquiring real property or rights to real property, including land or structures, with the intent to develop or improve it for any of the following:

(a) Residential housing for sale.

(b) Income property.

(c) Commercial use.

(d) Industrial use.

(e) Any similar uses.

(5) "Director" means the director of the office of credit unions or an authorized representative of the director.

(6) "Loan-to-value ratio" or "LTV ratio" means the amount of all member business loans by the credit union secured by an item of collateral added to the amount of all outstanding loans by other lenders secured by that item of collateral, that total amount then being divided by the market value of that item of collateral.

(7) "Member business loan" has the meaning set forth in s. DFI—CU 72.02.

(8) "NCUA" means the National Credit Union Administration.

(9) "Net worth" means the retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities.

**DFI-CU 72.02 Member business loan.** (1) "Member business loan" means 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:

(a) Commercial.

(b) Corporate.

(c) Investment property.

(d) Business venture.

(e) Agricultural.

(2) "Member business loan" shall not include any of the following:

(a) A business purpose loan fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence.

(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.

(c) One or more business purpose loans to a member or any associated member that, in the aggregate, are less than \$50,000. The entire amount of such a loan or loans that equals or exceeds this amount, or that causes the aggregate to exceed this amount is a business loan.

(d) A business purpose loan where a federal or state agency or any of their political subdivisions fully insures repayment, or fully guarantees repayment, or provides an advance commitment to purchase in full.

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

**DFI-CU 72.03 Prohibited member business loans. (1) OFFICERS.** A credit union shall not grant a member business loan to any of the following:

(a) Chief executive officer. *Example: President, Treasurer or Manager.*

(b) Assistant chief executive officers. *Example: Assistant President, Vice President, Assistant Treasurer or Assistant Manager.*

(c) Chief financial officer. *Example: Comptroller.*

(d) Any associated member or immediate family member of anyone listed in this subsection.

**(2) EQUITY AGREEMENTS OR JOINT VENTURES.** A credit union shall not grant a member business loan if any additional income received by the credit union or its senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

**(3) DIRECTORS.** A credit union shall not grant a member business loan to a director unless the board of directors approves granting the loan and the director is recused from the decision making process.

**DFI-CU 72.04 Construction and development loans.** Unless the director grants a waiver, a credit union that makes construction or development loans shall be subject to all of the following:

**(1)** The aggregate of all construction and development loans shall not exceed 15% of net worth. In determining the aggregate, the credit union may exclude any portion of a loan that is any of the following:

(a) 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.

(b) Insured or guaranteed by any agency of the federal government, state, or any of their political subdivisions.

(c) Subject to an advance commitment to purchase by any agency of the federal government, state, or any of their political subdivisions.

(2) The borrower shall have a minimum of the following:

(a) 30% equity interest in the project being financed if the loan is for land development; and

(b) 25% equity interest in the project being financed if the loan is for construction or for a combination of development and construction.

(3) The funds shall be released only after on-site inspections, documented in writing, by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.

(4) The credit union shall not make construction and development loans unless it utilizes the services of an individual with at least five years direct experience in construction and development lending.

**DFI-CU 72.05 Implementation of a member business loan program.** (1) The board of directors shall adopt a specific member business loan policy and review it at least annually.

(2) In making member business loans, the credit union shall utilize the services of an individual with at least two years direct experience with the type of lending in which it will engage, except as provided s. DFI-CU 72.04(4).

(3) A credit union does not have to hire staff to meet the requirements of this section. However, credit unions shall ensure that expertise with the type of lending in which it will engage is available. *Example: A credit union may meet the experience requirement through various approaches, such as the services of a credit union service organization, an employee of another credit union, an independent contractor or other third parties.*

(4) The actual decision to grant a loan shall reside solely with the credit union.

**DFI-CU 72.06 Member business loan policy requirements.** A credit union's member business loan policy shall include all of the following:

(1) The types of business loans the credit union will make.

- (2) The credit union's trade area.
- (3) The maximum amount of the credit union's assets, in relation to net worth, that it will invest in member business loans.
- (4) The maximum amount of the credit union's assets, in relation to net worth, that it will invest in a given type of business loans.
- (5) The maximum amount of the credit union's assets, in relation to net worth, that it will loan to a member or associated members, subject to s. DFI-CU 72.08.
- (6) The qualifications and experience of personnel involved in making and administering business loans.
- (7) A requirement for analysis and documentation of the ability of the borrower to repay the loan.
- (8) Receipt and periodic updating of financial statements and other documentation, including tax returns.
- (9) Documentation sufficient to support each request to extend credit, or increase an existing loan or line of credit, except where the board of directors finds that the required documentation is not generally available for a particular type of loan and states the reasons for those findings in the credit union's written policies. The documentation shall include all of the following:
  - (a) Balance sheet.
  - (b) Cash flow analysis.
  - (c) Income statement.
  - (d) Tax data.
  - (e) Analysis of leveraging.
  - (f) Comparison with industry average or similar analysis.
- (10) Collateral requirements, including all of the following:
  - (a) Loan-to-value ratios.
  - (b) Determination of value.
  - (c) Determination of ownership.

- (d) Steps to secure various types of collateral.
- (e) A schedule as to how often the credit union will reevaluate the value and marketability of collateral.
- (11) The interest rates and maturities of the business loans.
- (12) General loan procedures, including all of the following:
  - (a) Loan monitoring.
  - (b) Servicing and follow-up.
  - (c) Collection.
- (13) Identification of those individuals prohibited from receiving member business loans.
- (14) Guidelines for purchase and sale of member business loans and loan participations if the credit union intends to engage in these activities.

*Note:* The Office of Credit Unions recognizes that all of the provisions of the policy may not apply to every loan.

**DFI-CU 72.07 Collateral and security requirements.** Unless granted a waiver by the director, all of the following shall apply:

- (1) All member business loans shall be secured by collateral in accordance with this section, except for the following:
  - (a) A credit card line of credit granted to nonnatural persons that is limited to routine purposes normally made available under such lines of credit.
  - (b) A loan made by a credit union where the loan and the credit union meet all of the following:
    1. The amount of the loan or loans to any one individual does not exceed 1% of the credit union's net worth.
    2. The aggregate of the unsecured business loans under par. (b) does not exceed 10% of the credit union's net worth.
    3. The credit union has a net worth of at least 7%.
    4. The credit union submits reports to the Office of Credit Unions with its NCUA call reports providing numbers and such other details as may be required by the director to demonstrate compliance with par. (b).

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

(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; and

(c) The LTV ratio does not exceed 95%.

(3) For a member business loan secured by collateral on which the credit union will have a second or lesser priority lien, the credit union shall not grant the loan with a LTV ratio in excess of 80%.

(4) For a member business loan secured by the same collateral on which the credit union will have a first lien as well as other lesser priority liens, the credit union may grant the loan with a LTV ratio in excess of 80% only if sub. (2)(a) or (b) is satisfied. In no case shall the LTV ratio exceed 95%.

(5) For a member business loan secured by the collateral on which the credit union will have lesser priority liens but no first lien, the credit union shall not grant the loan with a LTV ratio in excess of 80%.

**DFI-CU 72.08 Amount of loan.** Unless the director grants a waiver for a higher amount, the aggregate amount of business loans to a member or associated members shall not exceed 15% of the credit union's net worth or \$100,000.00, whichever is greater.

**DFI-CU 72.09 Calculating the aggregate 15% limit.** To calculate the aggregate 15% limitation, the credit union shall do the following:

(1) Calculate the numerator by adding together the amount of the member business loans to a member and associated members, if any. From this amount, the credit union shall subtract each of the following:

(a) Any portion secured by shares or deposits in the credit union making the extension of credit or in other credit unions, or deposits in other financial institutions.

(b) Any portion insured or guaranteed by any agency of the federal government, state or any of their political subdivisions.

(c) Any portion subject to an advance commitment to purchase by any agency of the federal government, state or any of their political subdivisions.

(2) After completing the calculation in sub. (1), divide the numerator by net worth.

**DFI-CU 72.10 Available waivers.** A credit union may seek waiver for any of the following:

(1) Construction and development loan requirements under s. DFI-CU 72.04.

(2) Loan-to-value ratios under s. DFI-CU 72.07.

(3) Maximum loan amount to a member and associated members under s. DFI-CU 72.08.

(4) Appraisal requirements under s. 722.3 of NCUA rules.

*Note:* A copy of NCUA rules may be obtained by writing to the Office of Credit Unions, P.O. Box 14137, Madison, WI 53714-0137.

**DFI-CU 72.11 Obtaining a waiver.** (1) To obtain a waiver under s. DFI-CU 72.10, a credit union shall submit a request to the director. The request shall contain all of 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.

(e) An analysis of the credit union's prior experience making member business loans, including each of the following:

1. The history of loan losses and loan delinquency.

2. Volume and cyclical or seasonal patterns.

3. Diversification.

4. Concentrations of credit to a member and associated members in excess of 15% of net worth.

5. Underwriting standards and practices.

6. Types of loans grouped by purpose and collateral.

7. The qualifications of personnel responsible for underwriting and administering member business loans.

(2) Upon receipt of the request for waiver, the director shall do all of the following:

(a) Review the information provided in the request.

(b) Evaluate the level of risk to the credit union.

(c) Consider the credit union's historical capital, asset, quality, management, earnings and liquidity ("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.

(3) In connection with a waiver request under s. DFI-CU 72.10(1) through (3), all of the following shall apply:

(a) The director shall provide a copy of the waiver request to the respective regional director of the NCUA, and shall consult and seek to work cooperatively with the respective regional director in deciding upon the request.

(b) The waiver shall not be effective until the director approves it.

(c) If the requester does not receive notification within 45 calendar days of the date the complete request was received by the director, the waiver request shall be deemed approved by the director.

(d) The director shall promptly notify the respective regional director of NCUA of his or her decision on the request.

(4) In connection with a waiver request under s. DFI-CU 72.10(4), all of the following shall apply:

(a) If the director approves the request, the director shall promptly forward the request to the respective regional director of the NCUA for decision under 12 C.F.R. 723.12.

(b) The waiver shall not be effective until the respective regional director of the NCUA approves it in accordance with 12 C.F.R. 723.12.

(c) The credit union may appeal the regional director's decision in accordance with 12 C.F.R. 723.13.

**DFI-CU 72.12 Classifying non-delinquent member business loans to reserve for potential loss.** Non-delinquent member business loans shall be classified based on factors such as the adequacy of analysis and supporting documentation. A credit union

shall classify potential loss loans as either substandard, doubtful or loss. The criteria for determining the classification of loans shall be as follows:

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

(2) **DOUBTFUL.** A loan classified as doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weakness or 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.

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

**DFI-CU 72.13 Schedule of reserves.** The following schedule sets the minimum amount a credit union shall reserve for classified member business loans:

<b>Classification</b>	<b>Amount Required</b>
Substandard	10% of outstanding balance unless other factors indicate a greater or lesser amount is appropriate. <i>Example: An example of a factor is the history of such loans at the credit union.</i>
Doubtful	50% of the outstanding balance.
Loss	100% of the outstanding balance.

**DFI-CU 72.14 Aggregate member business loan limit.** The aggregate limit on the amount of a credit union's member business loans is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets.

**DFI-CU 72.15 Exceptions to the aggregate business loan limit.** Credit unions that meet any one of the following criteria qualify for an exception from the aggregate member business loan limit:

- (1) Credit unions that have a low-income designation.
- (2) Credit unions that participate in the Community Development Financial Institutions program.
- (3) Credit unions that are chartered for the purpose of making member business loans, as supported by documentary evidence. *Example: the credit union's charter, bylaws, business plan, field of membership, board minutes and loan portfolio.*

**DFI-CU 72.16 Obtaining an exception.** (1) The exception under s. DFI-CU 72.15(1) and (2) shall be effective upon written notice to the director of such designation or participation.

(2) To obtain an exception under s. DFI-CU 72.15(3), a credit union shall submit its request to the director. An exception shall not be effective until approved by the director. The exception request shall include documentation demonstrating that the credit union meets the criteria for the exception. The exception shall not expire unless revoked for safety and soundness reasons by the director.

(3) The director shall promptly notify the respective region of the NCUA of his or her decision on the request.

**DFI-CU 72.17 Record keeping requirements.** A credit union shall separately identify member business loans in its records and in the aggregate on its financial reports.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.