

# Limitations on Business Lending for NC State Chartered Credit Unions

## Analysis of NC v Federal Rules

Subject Area	NC Rule	New Federal (NCUA) Rule	Analysis
Maximum amount of assets in business loans	04 NCAC 06C .0407(b)(2)(A)(iii)-(iv) - Requires adoption of written loan policies that set the maximum amount of credit union assets, in relation to reserves, that will be invested in business loans; and the maximum amount of credit union assets, in relation to reserves that will be invested in a given category or type of business loan.	Section 723.4 requires the credit union to adopt and implement a commercial loan policy that includes establishing the "maximum amount of assets, in relation to net worth, allowed in secured, unsecured, and unguaranteed commercial loans and in any given category or type of commercial loan."	Similar requirements in both rules.
Loan limitations	04 NCAC 06C .0407(b)(2)(A)(v) - Requires adoption of a written loan policy that sets the maximum amount that will be loaned to one member or group of associated members. 04 NCAC 06C .0407(b)(2)(C)(i) - Establishes by rule a threshold of 15% of the credit unions reserves or \$75,000 whichever is higher. Requires Administrator and NCUA approval to exceed that threshold in any one loan.	Under Section 723.4, a credit union's commercial lending policy must specify that the aggregate dollar amount of commercial loans to any one borrower or group of associated borrowers may not exceed the greater of 15 percent of the federally insured credit union's net worth or \$100,000, plus an additional 10 percent of the credit union's net worth if the amount that exceeds the credit union's 15 percent general limit is fully secured at all times with a perfected security interest by readily marketable collateral, as defined by the rule.	NCUA rule provides credit unions with additional flexibility through a higher dollar threshold and recognition of readily marketable collateral.
Qualifications & experience requirements for personnel	04 NCAC 06C .0407(b)(2)(A)(vi) - Requires adoption of a written policy by the Board of Directors that sets the experience level of "personnel involved in making or administering business loans" to have a minimum of two years direct experience with business lending.	The new rule removes the specific two-year staff experience requirement.	In adopting the new rule, the NCUA Board agreed that "having an experience requirement expressed in years is overly simplistic and may be unreliable as a means to ensure adequately skilled credit staff are in place." The NC rule maintains the two-year requirement.
Collateral requirements	04 NCAC 06C .0407(b)(2)(A)(ix)- Requires adoption of a written policy that outlines collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;	The new rule requires that a credit union must establish a policy for monitoring collateral, including systems and processes to respond to changes in asset values.	NCUA rule provides credit unions with flexibility in writing policies for collateral valuation based on the nature of their commercial lending program.

Subject Area	NC Rule	New Federal (NCUA) Rule	Analysis
Loan-to-Value (LTV) collateralization requirements	04 NCAC 06C .0407(b)(2)(B)(i) - Loans shall be granted on a fully secured basis by collateral as follows: (I) Second lien for LTV ratios of up to 70 percent; (II) First lien for LTV ratios of up to 80 percent; (III) First lien with a LTV ratio in excess of 80 percent shall be granted only where the value in excess of 80 percent is covered through acquisition of private mortgage, or equivalent type insurance provided by an insurer acceptable to the credit union or insurance or guarantees by or subject to advance commitment to purchase by, an agency of the federal government or of a state or any of its political subdivisions, and in no event shall the LTV ratio exceed 95 percent;	Under the new rule, all of the specific prescriptive limits and requirements related to collateral in the current rule were eliminated and replaced with the fundamental principle that commercial loans must be appropriately collateralized.	NC rule sets specific LTV requirements. NCUA rule allows credit unions to establish policy for LTV requirements based on safe and sound business lending practices.
Personal liability and guarantee requirements	04 NCAC 06C .0407(b)(2)(B)(ii) - Loans shall not be granted without the personal liability and guarantees of the principals (natural person members) except where the borrower is a not-for-profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501);	The new federal rule eliminates the requirement that credit unions must first obtain a personal guarantee from the principal(s) of the borrower before making a commercial loan.	NC requires personal guarantee; federal rule removes personal guarantee requirement for all commercial loans. Worth noting that while the other provisions of the new federal rule become effective January 1, 2017, NCUA eliminates the personal guarantee requirement effective May 13, 2016.
Monitoring requirements	04 NCAC 06C .0407(b)(2)(A)(xi) - Requires written policy outlining loan monitoring, servicing and follow-up procedures, including collections procedures; 04 NCAC 06C .0407(b)(2)(C)(iv) - Outlines additional monitoring and report requirements for any credit union with business loans in excess of 100% of reserves	Part 723.4 requires the credit union to adopt and implement a commercial loan policy that includes a process for ensuring that "commercial lending activities are performed in a safe and sound manner by providing for ongoing control, measurement, and management ..."	Another example of federal rules giving credit unions latitude to determine what constitutes safe and sound business practices, rather than prescribing specific rules as does the state.
Allowance for loan loss classifications	04 NCAC 06C .0407(b)(2)(D) - Sets specific standards for how and when state chartered credit union must calculate their allowance for loan losses.	The new rule does not outline specific requirements for the allowance for loan losses.	Federal rule less prescriptive than state rule.
Construction & development lending	04 NCAC 06C .0407(b)(3) - Outlines additional requirements to finance construction and development of commercial or residential property, including: (1) aggregate of C&D loans cannot exceed 15% of reserves, (2) borrower must have 35% equity, and (3) funds cannot be released for C&D loans prior to an on-site inspection by independent credit union personnel.	The new rule outlines separate requirements that apply exclusively to construction and development lending. The rule clarifies the definition of a construction and development loan, describes alternative methods for valuing a construction project, and explains which costs are considered allowable in determining value of the project and therefore maybe funded from loan proceeds. The proposal also outlines required procedures to be followed in the administration of construction and development loans.	Federal rule removes 15% aggregate limit (which still exists in state rule); Federal rule removes 25% minimum equity requirement (which still exists in the state rule at an even higher threshold to meet - 35%).