

# Chapter 208-436 WAC

## RULES GOVERNING SUPERVISORY APPROVAL OF CREDIT UNION INVESTMENT PRACTICES

(Formerly chapter 419-36 WAC)

### WAC

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**WAC 208-436-010 Application to make investments not otherwise permitted by law.** If any credit union wishes to deposit or invest its capital, deposits, or surplus funds in a manner not specifically permitted to credit unions by chapter 31.12 RCW, the credit union shall, before engaging in the proposed investment practice, make written application to the director for authority to make the proposed investment. The application shall contain at least the following information:

- (a) The name of the credit union;
- (b) The proposed source or sources of the funds to be deposited or invested;
- (c) A detailed description of the type of deposit or investment the credit union proposes to make, including the names of any natural persons, corporations, financial institutions or government agencies serving as banker, trustee, management agent, broker, guarantor, seller of securities, or purchaser of securities;
- (d) References, if known to the applicant, showing that other state chartered credit unions have been permitted to make the same type of investment or deposit;
- (e) Copies of statutes, regulations, rulings, official correspondence or other information showing that federally chartered credit unions are permitted to make the type of investment or deposit proposed in the application;
- (f) Such other information as the applicant credit union wishes to offer in evidence that the proposed investment or deposit would be a safe and prudent one for the applicant credit union to engage in.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-010, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-010, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-010, filed 6/7/79.]

**WAC 208-436-020 Supplementary application information.** Upon receiving an application from a credit union to engage in an investment or deposit practice pursuant to this chapter, the director may request such additional information

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as he or she deems necessary for the informed disposition of the application. If supplementary application information is requested by the director, the application will not be deemed complete until the supplementary information is supplied.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-020, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-020, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-020, filed 6/7/79.]

**WAC 208-436-030 Investments previously approved for other state chartered credit unions.** If the director finds that the applicant credit union proposes to make the same type of investment or deposit which one or more other state chartered credit unions have previously received permission to make, the director shall grant the application unless he or she finds that the financial position or the state of management of the applicant credit union is such that the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union, in which case the director may instead grant the application conditionally, grant it in modified form, or deny the application.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-030, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-030, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-030, filed 6/7/79.]

**WAC 208-436-040 Investment practice permitted to federally chartered credit unions.** If the director finds that the applicant credit union proposes to make the same type of investment or deposit which one or more other federally chartered credit unions have previously received permission to make, the director shall grant the application unless he or she finds that the financial position or the state of management of the applicant credit union is such that the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union, in which case the director may instead grant the application conditionally, grant it in modified form, or deny the application.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-040, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-040, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-040, filed 6/7/79.]

**WAC 208-436-050 Investment practice not previously permitted to any credit union.** If the director finds that the proposed investment or deposit practice has not previously been permitted to any state chartered or federally chartered credit union, the director shall make inquiry as to whether the proposed investment or deposit practice would be consistent with Washington law and as to whether the proposed investment or deposit practice would be a sound and

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prudent practice for the applicant credit union. In connection with this inquiry, the director may consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the application, examinations, or such other information as may be at hand. If the director finds that the investment or deposit practice as proposed would be contrary to or inconsistent with the laws of the state of Washington, or would not be a sound investment practice, the director shall deny the application. If the director finds that proposed investment or deposit practice would be a sound and prudent practice for the applicant credit union, the director shall grant the application. Alternatively, the director may, for cause, grant the application conditionally, grant it in modified form, or deny it in whole or in part.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-050, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-050, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-050, filed 6/7/79.]

#### **WAC 208-436-060 Director action on application.**

After receiving an application from a credit union to engage in an investment or deposit practice not otherwise permitted by law, and after having considered it as provided in this chapter, the director shall grant, grant conditionally, grant in modified form, or deny the application, and shall inform the applicant credit union in writing of this action and of the reasons therefor. Any application not acted upon within six months after its receipt by the director shall be deemed denied unless the director, in writing, informs the applicant credit union that the application is being held for further review.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-060, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-060, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-060, filed 6/7/79.]

**WAC 208-436-070 Engagement in unauthorized investment practice prohibited.** No state chartered credit union shall engage in any investment or deposit practice not authorized by a specific provision of Washington state law or by the director in accordance with this chapter. Unless the director, in writing, informs an applicant credit union that it may engage in an investment or deposit practice provisionally while the application is being reviewed, no credit union shall make deposits or investments pursuant to an application made under this chapter until it has received written authority to do so as provided herein. Failure of a credit union to comply with the terms of this chapter shall be deemed an unsound credit union practice and a wilful violation of an order of the director and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-070, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-070, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-070, filed 6/7/79.]

**WAC 208-436-080 Modification or revocation of investment practices previously authorized.** The director may find that an investment or deposit practice previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, or has become inconsistent

with applicable state or federal law, or has ceased to be a safe and prudent practice in one or more particular credit unions in light of their financial condition or management. Upon such a finding, the director may in writing inform the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the director so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question (if authority to engage in the practice has been revoked) or to make such modifications as the director requires. The director may for cause shown grant a credit union some definite period of time in which to arrange its affairs to comply with the director's orders. Credit unions which continue to engage in investment practices where their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound credit union practice and a wilful violation of an order of the director and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-080, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-080, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.260(g). 79-07-002 (Order 79-1), § 419-36-080, filed 6/7/79.]

**WAC 208-436-090 Investment limitations—Other requirements.** The director finds that investments in common trust funds under RCW 31.12.425 (1)(f) present potential serious risks to credit unions and that rules establishing specific procedures for those investments are necessary to protect the safety and soundness of credit unions. These rules are not intended to either endorse or encourage credit union investment in common trust funds. Credit unions investing in common trust funds as authorized by RCW 31.12.425 (1)(f) are therefore subject to the following limitations:

(1) Prior to making any investment in a common trust fund, the board of directors shall approve an investment policy detailing the maximum investment the credit union may have in common trust funds and specific investment guidelines. The policy shall also specify who is to authorize such investments.

(2) A credit union shall not invest an aggregate amount of greater than fifteen percent of its total assets in all such common trust funds.

(3) A credit union shall not invest an aggregate amount greater than five percent of its total assets in common trust funds without the director's prior written approval of its investment policy.

(4) A credit union shall not invest an aggregate amount greater than ten percent of its total assets in common trust funds without the director's prior written approval to make such investment.

(5) A credit union whose aggregate investment in common trust funds exceeds ten percent of its total assets shall establish, by transfer from undivided earnings, a special investment valuation reserve in an amount equal to five percent of the aggregate investment in common trust funds exceeding ten percent of total assets. The special reserve shall be adjusted not less than quarterly based on the aggregate

investment in common trust funds amount exceeding ten percent of total assets.

(6) Prior to making any investment in a common trust fund, a credit union shall obtain a prospectus for such fund and determine that all investments, investment activities and deposits of such common trust fund would be legal investments if held by the credit union.

(7) Prior to making any investment in a common trust fund, a credit union shall secure from the investment company marketing the fund a written statement, in addition to any prospectus, specifying that the fund is not engaged in and will not engage in any speculative marketing activity including but not limited to adjusted trading, futures contracts, short sales, and standby commitments, defined as follows:

(a) Adjusted trading means any method of transaction used to defer a loss by selling a security at a price above its current market price and simultaneously purchasing or committing to purchase from that same party another security at a price above its current market price, including interest rate swaps.

(b) Futures contract means a contract for the future delivery of commodities, including certain government securities, sold on commodities exchanges.

(c) Short sale means the sale of a security not owned by the seller.

(d) Standby commitment means a commitment to either buy or sell a security, on or before a future date, at a predetermined price. The seller of the commitment is the party receiving payment for assuming the risk associated with committing either to purchase a security in the future at a predetermined price, or to sell a security in the future at a predetermined price. The seller of the commitment is required to either accept delivery of a security (in the case of a commitment to buy) or make delivery of a security (in the case of a commitment to sell), in either case at the option of the buyer of the commitment.

(8) A credit union's directors, officials, committee members, and employees, and immediate family members of such persons, may not receive consideration in any form in connection with the making of an investment or deposit in a common trust fund by the credit union.

[Statutory Authority: RCW 42.320.040 [43.320.040] and 31.12.535. 96-17-071, § 208-436-090, filed 8/20/96, effective 9/20/96. 96-06-011, recodified as § 208-436-090, filed 2/23/96, effective 6/1/96. Statutory Authority: RCW 31.12.545. 86-04-068 (Order 85-7), § 419-36-090, filed 2/5/86.]