WAC 208-512A-100 Combining loans and extensions of credit made to separate persons—Generally. (1) Loans or extensions of credit to one person will be attributed to another person or persons when:

(a) The proceeds of the loans or extensions of credit are intended for or are used for the direct benefit of the other person or persons; or

(b) A "common enterprise" exists between the persons.

(2) The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the "direct benefit" of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction, where the proceeds are used to acquire property, goods, or services.

(3) Determination of whether a "common enterprise" exists depends upon a realistic evaluation of the facts and circumstances of the applicable transactions. A "common enterprise" exists when:

(a) The expected source of repayment for each of the multiple loans or extensions of credit is the same for each person; or

(b) Separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own or control more than fifty percent of the voting securities; or

(c) The loans or extensions of credit are made to persons who are related by common control and (i) are engaged in interdependent business or (ii) there is substantial financial interdependence among them; or

(d) The division determines, based upon a reasonable evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(4) "Substantial financial interdependence" occurs when fifty percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments).

(5) Throughout this section, the term "control" is presumed to exist when one or more persons acting in concert, directly or indirectly:

(a) Own, control, or have power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Exercise a controlling influence over the management or policies of another person; or

(c) Control in any manner the election of a majority of the directors, trustees or other persons exercising similar functions of another person. "Common control" includes control of one person by another person.

[Statutory Authority: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050 and Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013. WSR 13-03-037, § 208-512A-100, filed 1/8/13, effective 2/8/13.]