

2012 -- S 2435

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO FINANCIAL INSTITUTIONS - CREDIT UNIONS

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 16, 2012

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 19-5-15.1 of the General Laws in Chapter 19-5 entitled "Credit
2 Unions" is hereby amended to read as follows:

3 **19-5-15.1. Purchase, sale and pledge of eligible obligations and assets.** -- (a) For
4 purposes of this section:

5 (1) "Eligible Obligation" means a loan or group or portfolio of loans and includes a
6 participation interest in a loan or group or portfolio of loans.

7 (2) "Participation Interest" means a loan where one or more federally-insured financial
8 institutions or federally-insured credit unions participate pursuant to a written agreement with the
9 originating lender.

10 ~~(2)~~(3) "Student loan" means a loan granted to finance the borrower's attendance at an
11 institution of higher education or at a vocational school, which is secured by and on which
12 payment of the outstanding principal and interest has been deferred in accordance with the
13 insurance or guarantee of the federal government, of a state government, or any agency of either.

14 (b) Purchase.

15 (1) A credit union may purchase, in whole or in part, within the limitations of the board
16 of directors' written purchase policies:

17 (i) Eligible obligations of its members, from any source, if either:

18 (A) They are loans it is empowered to grant; or

19 (B) They are refinanced with the consent of the borrowers, within sixty (60) days after

1 they are purchased, so that they are loans it is empowered to grant;

2 (ii) Eligible obligations of a liquidating credit union's individual members, from the
3 liquidating credit union;

4 (iii) Student loans, from any source, if the purchaser is granting student loans on an
5 ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool
6 of such loans to be sold or pledged on the secondary market;

7 (iv) Real estate-secured loans, from any source, if the purchaser is granting real estate-
8 secured loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's
9 packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. A
10 pool must include a substantial portion of the credit union's members' loans and must be sold
11 promptly; ~~and~~

12 (v) Participation interests in loans made by federally-insured financial institutions or
13 federally-insured credit unions; and

14 ~~(v)~~(vi) An indirect lending or indirect leasing arrangement shall be classified as a loan
15 and is not the purchase of an eligible obligation because the credit union makes the final
16 underwriting decision and the sales or lease contract is assigned to the credit union very soon
17 after it is signed by the member and the dealer or leasing company.

18 (2) A credit union may make purchases in accordance with this section (b), provided:

19 (i) The board of directors approves the purchase;

20 (ii) A written agreement and schedule of the eligible obligations covered by the
21 agreement are retained in the purchaser's office; and

22 (iii) For purchases under paragraph (b)(1)(ii) of this section, any advance written
23 approval required by the ~~national~~ National Credit Union ~~Association~~ Administration is obtained
24 before consummation of such purchase; ~~;~~ and

25 (iv) For purchases under paragraph (b)(1)(v) of this section, fifteen (15) business days
26 prior written notice is given to the director or the director's designee. Such notice shall set forth
27 such information as the director or the director's designee shall from time to time require. In the
28 event the director or the director's designee fails to object to the proposed purchase within the
29 fifteen (15) business day notice period, the purchase shall be deemed approved.

30 (3) The aggregate of the unpaid balance of eligible obligations purchased under
31 paragraph (b) of this section shall not exceed five percent (5%) of the unimpaired capital and
32 surplus of the purchaser. The following may be excluded in calculating this five percent (5%)
33 limitation:

34 (i) Student loans purchased in accordance with paragraph (b)(1)(iii) of this section;

1 (ii) Real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section;
2 and

3 (iii) Eligible obligations purchased in accordance with paragraph (b)(1)(i) of this section
4 that are refinanced by the purchaser so that it is a loan it is empowered to grant;

5 (c) Sale. - A credit union may sell, in whole or in part, to any source, eligible obligations
6 of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this
7 section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real
8 estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the
9 limitations of the board of directors' written sale policies, provided:

10 (1) The board of directors approves the sale; and

11 (2) A written agreement and a schedule of the eligible obligations covered by the
12 agreement are retained in the seller's office.

13 (d) Pledge.

14 (1) A credit union may pledge, in whole or in part, to any source, eligible obligations of
15 its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this
16 section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real
17 estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the
18 limitations of the board of directors' written pledge policies, provided:

19 (i) The board of directors approves the pledge;

20 (ii) Copies of the original loan documents are retained; and

21 (iii) A written agreement covering the pledging arrangement is retained in the office of
22 the credit union that pledges the eligible obligations.

23 (2) The pledge agreement shall identify the eligible obligations covered by the
24 agreement.

25 (e) Servicing. - A credit union may agree to service any eligible obligation it purchases
26 or sells in whole or in part.

27 (f) Ten percent (10%) limitation. - The total indebtedness owing to any credit union by
28 any person, inclusive of retained and reacquired interests, shall not exceed ten percent (10%) of
29 its impaired capital and surplus.

30 (g) Conflicts of Interest.

31 (1) No credit union official, employee, or their immediate family member may receive,
32 directly or indirectly, any compensation in connection with that credit union's purchase, sale, or
33 pledge of an eligible obligation under the provisions of this section.

34 (2) Permissible payments. - This section does not prohibit:

- 1 (i) A credit union's payment of salary to employees;
- 2 (ii) A credit union's payment of an incentive or bonus to an employee based on the credit
3 union's overall financial performance;
- 4 (iii) A credit union's payment of an incentive or bonus to an employee, other than a
5 senior management employee, in connection with that credit union's purchase, sale or pledge of
6 an eligible obligation. This payment is permissible if the board of directors establishes a written
7 policy and internal controls for the incentive or bonus program and monitors compliance with the
8 policy and controls at least annually; and
- 9 (iv) Payment by a person other than the credit union of compensation to a volunteer
10 official, non-senior management, employee, or their immediate family member, for a service or
11 activity performed outside the credit union provided that the credit union, the official, employee,
12 or their immediate family member has not made a referral.
- 13 (3) Business associates and family members. - All transactions under this section with
14 business associates or family members not specifically prohibited by subdivision (g)(1) of this
15 section must be conducted at arm's length and in the interest of the credit union.
- 16 (4) Definitions.
- 17 (i) "Compensation" includes non-monetary items, except those of nominal value.
- 18 (ii) "Immediate family member" means a spouse or other family member living in the
19 same household.
- 20 (iii) "Official" means any member of the board of directors or a volunteer committee.
- 21 (iv) "Person" means an individual or an organization.
- 22 (v) "Senior management employee" means the credit union's chief executive officer
23 (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief
24 executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager), and
25 the chief financial officer (Comptroller).
- 26 (vi) "Volunteer official" means an official of a credit union who does not receive
27 compensation from the credit union solely for his or her service as an official.

28 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO FINANCIAL INSTITUTIONS - CREDIT UNIONS

- 1 This act would allow credit unions to purchase participation interest loans.
- 2 This act would take effect upon passage.

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