

\*\*\* DRAFT - NOT YET FILED \*\*\*

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**Investments.**

(A) For the purchase of notes of liquidating other credit unions, notes made by individual members of a credit union may be purchased by another credit union at a price agreed upon by the credit unions and subject to the prior written approval of the superintendent.

(B) Authorized investments and investment restrictions

(1) No credit union shall invest any of its funds in any securities or other property not specifically authorized in section 1733.30 of the Revised Code unless the superintendent has approved of the investment policy in writing. The credit union shall file with the superintendent such investment policy with a copy of a resolution of the board of directors of such credit union approving the investment policy. The superintendent shall notify the credit union not more than fifteen business days after the filing of the policy whether it is denied, approved, or needs modification. If the superintendent does not respond within fifteen business days after the filing of the policy, it shall be deemed approved; unless, the superintendent notifies the credit union in writing within fifteen business days of the credit union's request being filed that additional documentation is required. If additional documentation is required, the credit union shall have thirty days to file the additional documentation with the superintendent. If the superintendent does not respond within fifteen business days of receipt of the additional documentation, the policy shall be deemed approved.

(2) In addition to investments authorized by section 1733.30 of the Revised Code, credit unions may invest in the following, subject to paragraph (B)(1) of this rule:

(a) Government security mutual funds and government security money market funds not to exceed in the aggregate ten per cent of its shares and undivided earnings;

(b) Shares, stocks, deposits in, or other obligations of any organization, corporation, or association providing services associated with the general purposes of the credit union or engaging in activities incidental to the operations of a credit union, provided that such investments in the aggregate do not exceed five per cent of the credit union's shares and undivided earnings;

- (c) Shares, share certificates, share deposits, or other investments of insured credit unions, including corporate credit unions;
  - (d) Investments for the purpose of funding an employee benefit plan, including credit union owned life insurance policies, not to exceed in the aggregate ten per cent of its shares and undivided earnings;
  - (e) Any securities or other properties not specifically described in section 1733.30 of the Revised Code and paragraph (B)(2) of this rule, to an extent not exceeding in the aggregate five per cent of shares and undivided earnings as of the thirty-first day of December of the previous year.
- (3) Participation loans with the prior approval of the superintendent. This division does not apply to the purchase of an investment interest in a pool of loans.

The credit union shall file with the superintendent a copy of the credit union participation policy prior to engaging in participation loans with other credit unions or credit union organizations or financial institutions as defined by 15 U.S.C. 78c(a)(46), as amended, or any state or federal government agency and its subdivisions. The superintendent shall notify the credit union not more than fifteen business days after the filing of the policy whether it is denied, approved, or needs modification. If the superintendent does not respond within fifteen business days after the filing of the policy, it shall be deemed approved; unless the superintendent notifies the credit union in writing within fifteen business days of the credit union's request being filed that additional information is required. If additional information is required, the credit union shall have thirty days to file the additional information with the superintendent. If the superintendent does not respond within fifteen business days of receipt of the additional information, the request or policy shall be deemed approved.

- (a) A credit union may purchase a participation interest in a loan only if the loan is one the purchasing credit union is empowered to grant and the following additional conditions are satisfied:
  - (i) The purchase complies with all regulatory requirements to the same extent as if the purchasing credit union had originated the loan;
  - (ii) The purchasing credit union has executed a written loan participation agreement with the originating lender and the agreement meets the minimum requirements for a loan participation agreement as described in paragraph (B)(3)(c) of this section;

(iii) The originating lender retains an interest in each participated loan of at least 5 per cent of the outstanding balance of the loan through the life of the loan; and

(iv) The purchase complies with the purchasing credit union's internal written loan participation policy, which, at a minimum, must:

(a) Establish underwriting standards for loan participations;

(b) Establish a limit on the aggregate amount of loan participations that may be purchased from any one originating lender, not to exceed the greater of \$5,000,000 or 100 per cent of the credit union's net worth, unless this amount is waived by the superintendent;

(c) Establish limits on the amount of loan participations that may be purchased by each loan type, not to exceed a specified percentage of the credit union's net worth; and

(d) Establish a limit on the aggregate amount of loan participations that may be purchased with respect to a single borrower, or group of associated borrowers, not to exceed 15 per cent of the credit union's net worth, unless waived by the superintendent.

(b) To seek a waiver from any of the limitations in paragraph (B)(3)(a) of this section, a credit union shall submit a written request for a waiver along with a complete and detailed explanation of why it is requesting a waiver. The superintendent shall respond to the waiver request within forty-five days of receiving the waiver request. The superintendent's decision will be based on safety and soundness, as well as other considerations. If the superintendent does not respond within forty-five days to the waiver request such request is deemed approved.

(c) A loan participation agreement must:

(i) Be properly executed by authorized representatives of all parties under applicable law;

(ii) Be properly authorized by the credit union's board of directors or, if the board has so delegated in its policy, a designated committee or senior management official, under the credit union's articles, code, or bylaws and all applicable law;

(iii) Be retained (original or copies) in the credit union's office; and

(iv) Include provisions which, at a minimum, address the following:

- (a) Prior to purchase, the identification of the specific loan participation(s) being purchased, either directly in the agreement or through a document which is incorporated by reference into the agreement;
  - (b) The interest that the originating lender will retain in the loan to be participated. The retained interest must be at least 5 per cent of the outstanding balance of the loan through the life of the loan;
  - (c) The location and custodian for original loan documents;
  - (d) An explanation of the conditions under which parties to the agreement can gain access to financial and other performance information about a loan, the borrower, and the servicer so the parties can monitor the loan;
  - (e) An explanation of the duties and responsibilities of the originating lender, servicer, and participants with respect to all aspects of the participation, including servicing, default, foreclosure, collection, and other matters involving the ongoing administration of the loan; and
  - (f) Circumstances and conditions under which participants may replace the servicer.
- ~~(a) No credit union shall obtain an interest in a participation loan if the sum of that interest and any other indebtedness owing to the credit union by the borrower exceeds ten per cent of the credit union's unimpaired capital and surplus.~~
- ~~(b) A written master participation agreement shall be properly executed and acted upon by the credit union's board of directors or, if the board has so delegated in its policy, the investment committee or senior management official(s), and retained in the credit union's office. The master agreement shall include provisions for identifying, either through a document which is incorporated by reference into the master agreement, or directly in the master agreement, the participation loan or loans prior to their sale.~~
- ~~(c) A credit union may sell to or purchase from any participation the servicing of any loan in which it owns a participation interest.~~
- ~~(d) An originating lender which is a credit union shall:~~

- ~~(i) Originate loans only to its members;~~
- ~~(ii) Retain an interest of the face amount of each loan unless otherwise approved by the superintendent;~~
- ~~(iii) Retain the original or copies of the loan documents; and~~
- ~~(iv) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.~~

~~(e) A participant credit union that is not an originating lender shall:~~

- ~~(i) Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;~~
- ~~(ii) Participate in participation loans only if made to its own members, eligible members, or members of another participating credit union;~~
- ~~(iii) Retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and~~
- ~~(iv) Obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.~~

(4) No investment in any securities of the United States, any state or territory of the United States, or the District of Columbia, or any municipal corporation may be made if the issuer has not been in existence for at least ten years. Nor may any such aforementioned investment be made if the issuing government has, within the preceding ten-year period from which the investment is to be made, defaulted for more than ninety days in the payment of any part of either principal or interest of any debt contracted by it.

(5) In addition to investments authorized by section 1733.30 of the Revised Code, a corporate credit union may invest in the following, subject to paragraph

(B)(1) of this rule:

(a) Deposits in, the sale of federal funds to, and debt obligations of foreign banks subject to the following requirements:

(i) The bank must have assets of at least United States twenty billion dollars and the investment must not be rated lower than A-1 (or equivalent for short-term (initial maturity of one year or less) by a rating agency recognized by the securities and exchange commission (SEC), and not lower than AA- (or equivalent) for long-term (initial maturity over one year) investments. The corporate credit union must divest itself of short-term investments, if material in amount, downgraded below A-2 (or equivalent) and long-term investments downgraded below A- (or equivalent) by the same rating agency used when the investment was purchased.

(ii) The investment shall be dominated in United States dollars;

(iii) The country in which the issuing bank is located shall be rated AAA (or equivalent) for political and economic stability by a SEC-recognized rating agency;

(iv) The aggregate investments in any single foreign bank shall not exceed five per cent of the corporate credit union's net assets.

(b) Debt obligations of U.S. bank holding companies and other U.S. chartered corporations subject to the following requirements:

(i) The investments must not be rated lower than A-1 (or equivalent for short-term (initial maturity of one year or less) investment by a SEC-recognized rating agency and not lower than AA- (or equivalent) for long-term (initial maturity of over one year) investments. The corporate credit union must divest itself of short-term investments, if material in amount, downgraded below A-2 (or equivalent) and long-term investments downgraded below A- (or equivalent) by the same rating agency used when the investment was purchased.

(ii) The aggregate investments in the obligations of any single issuer shall not exceed five per cent of the corporate credit union's net assets.

- (iii) This authority does not apply to debt obligations that are convertible into the stock of the corporation or the holding company.

(c) Asset-backed securities subject to the following requirements:

- (i) The security must not be rated lower than AAA (or equivalent) by a SEC-recognized rating agency. The corporate credit union must divest itself of asset-backed securities, if material in amount, downgraded below AA- (or equivalent) by the same rating agency used when the investment was purchased;
- (ii) The investment in any single security or trust shall not exceed five per cent of the corporate credit union's net assets; and
- (iii) The security must have an average life at time of purchase of no more than five years.

(d) Federally issued collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs) and privately issued CMOs and REMICs as defined in section 3(a)(41) of the Securities and Exchange Act of 1934 subject to the following requirements:

- (i) An investment in a fixed rate obligation must have an average life at time of purchase and on subsequent review dates not to exceed five years given an immediate increase of three hundred basis points in mortgage loan commitment rates assuming market interest rates and prepayment speeds at the time the tests are applied. Industry consensus prepayment models will be used when computing the average life. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability.
- (ii) For an investment in a variable rate obligation with a cap, the lesser of the highest interest rate cap or the final interest rate cap during the average life at the time of purchase must be at least two hundred basis points above the rate of the corresponding liability that the investment is matched against. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability.
- (iii) The corporate credit union must divest itself of any CMO or

REMIC security, if material in amount, downgraded below AA- (or equivalent) by the same SEC-recognized rating agency used when the investment was purchased;

- (iv) The investment in any single issuer shall not exceed five per cent of the corporate credit union's net assets;
- (e) Additional investments provided the corporate credit union has obtained prior written approval from the superintendent.
- (f) The requirements of this rule to divest investments downgraded below the minimum acceptable ratings do not apply if the expected maturity of the downgraded investment is three months or less. The corporate credit union has ten business days to divest itself of any investment downgraded below the minimum credit ratings specified in this rule or to request in writing permission from the superintendent to retain the investment.
- (g) The following definitions apply for purposes of this rule for corporate credit union investments:
  - (i) "Capital" means the total of regular or statutory reserves, undivided earnings, net income, and membership capital share deposit accounts.
  - (ii) "Material" means an amount that exceeds five per cent or more of the corporate credit union's capital.
  - (iii) "Net assets" mean total assets minus central liquidity facility (CLF) stock subscriptions, CLF loans guaranteed by the national credit union share insurance fund, U.S. central credit union CLF certificates, and member reverse repurchase transactions.
- (6) For any investments not expressly authorized in division (A) of section 1733.30 of the Revised Code, or paragraph (B)(2) of this rule, the superintendent may require a reserve to be established and maintained to be used as a reserve against losses resulting from such investments. The superintendent may, in his discretion, require an allowance for investment losses to be maintained based on the degree of risk and exposure of the investment.
- (7) The provisions of this rule shall not affect the propriety of legality of an investment made by any credit union which was in accordance with the laws

of this state at the time such investment was made, nor shall this rule affect the propriety or legality of any investment or investment policy authorized by the division of financial institutions prior to December 31, 1975; except where a program exists which provides for the automatic reinvestment of income or capital gains in additional securities from which such income is derived and the reinvestment of which income would exceed the limits of this rule.

- (8) In applying the provision of this rule, membership fees and annual assessments required by sections 1761.01 to 1761.18 of the Revised Code shall not be considered an investment for the purpose of this rule.

Effective:

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Certification

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Date

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