

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF BANKING**



POLICY STATEMENT NUMBER DBR B99-2

DATE: May 21, 1999; (revised July 15, 1999 as to Item 12 reporting requirements)

SUBJECT: R. I. Gen. Laws § 19-5-17(c) & Banking Regulation 98-5-5(c)
Loans to Officers, Directors and Committee Members

R. I. Gen. Laws § 19-5-17(c) states that the director shall promulgate regulations relating to loans to officers and directors of credit unions, which regulations shall provide for limitations and requirements similar to federal regulations governing loans to officers and directors of financial institutions. Accordingly Rhode Island Banking Regulation 98-5-5(c) was promulgated. This regulation states that no officer, director, or member of a committee may borrow under terms more preferable than those terms offered to other credit union members in the usual course of credit union business. Any loan to an officer, director, or member of a committee must be granted in compliance with federal deposit insurance regulations governing loans to officers and directors.

Loans to officers, directors or committee members will be reviewed by the Division of Banking using the same provisions of Federal Reserve System Regulation O, its successor or replacement regulation, which governs lending to officers or directors of banks or other types of deposit taking institutions as well as the provisions of National Credit Union Administration Rules and Regulations Part 701.21 (d)(5).

Part 337.3 (12 C.F.R. § 337.3) of FDIC rules and regulations ("FDIRR") governs loans to executive officers, directors, and principal shareholders of FDIC insured banks (copy of regulation attached). Part 337.3 states that with the exception of §§ 215.5(b), 215.5(c) (3), 215.5(c)(4) and 215.11, FDIC banks are subject to the restrictions contained in subpart A of Federal Regulation O (12 CFR Part 215, subpart A) to the same extent and manner as though they were member banks. Part 337.3 also states that for purposes of compliance to § 215.4(b) of Federal Regulation O, no bank may extend credit or grant a line of credit to any of its executive officers, directors, or principal shareholders or to any related interest of any such person in an amount that, when aggregated with the amount of all other extensions of credit and lines of credit by the bank to that person and to all related interest of that person, **exceeds the greater of \$25,000 or five percent (5%) of the bank's capital and unimpaired surplus, or \$500,000** unless: (1) the extension of credit or line of credit has been approved in advance by a majority of the entire board of directors of that bank; and (2) the interested party has abstained from participating directly or indirectly in the voting.

Credit unions must comply with NCUA Rules and Regulations Part 701.21(d)(5) as well as FDIC

Rules and Regulations Part 337.3 which exempts certain sections of Federal Regulation O as discussed above. To assist credit unions in better understanding the applicability of Federal Regulation O, the Division has developed the following questions and answers:

1. Does Federal Regulation O in its entirety apply to credit unions?

Pursuant to Banking Regulation 98-5-5(c), loans to officers, directors, or committee members must comply with FDIC Rule and Regulation 337.3 (12 CFR § 337.3) and NCUA Rule and Regulation 701.21(d)(5). R. I. Gen. Laws §19-5-17(c) states that regulations issued by the Director shall provide for limitations and requirements similar to federal regulations governing loans to officers and directors of financial institutions. Banking Regulation 98-5-5(c) states that any loan to an officer, director or member of a committee must be granted in compliance with federal deposit insurance rules and regulations governing loans to officers and directors. The FDIC regulation requires compliance to all of Regulation O except for sections §§ 215.5(b), 215.5(c) (3), 215.5(c)(4) and 215.11.

2. Is Banking Regulation 98-5-5(c) applicable to executive officers and insiders, which include related interest of those covered by the regulation?

Banking Regulation 98-5-5(c) applies to all credit union officers, directors, or committee members and their respective related interests. Credit unions should therefore consider any officer, director or committee member, as well as any related interest of such person, to be covered by the regulation.

3. May credit unions exceed statutory lending limits to the extent that the higher limit complies with the limitations contained in § 215.4(c) of Regulation O; and (b) does the 15% limit contained in Regulation O apply to unsecured loans?

- (a) Since RI's limitation of 20% is more restrictive than the combined 25% contained in Regulation O, the more restrictive state limitation will apply.
- (b) Since Regulation O contains a more restrictive limitation on unsecured loans to covered persons than the general 20% limitation contained in RI law, the more restrictive provision of Regulation O will apply to unsecured loans to covered persons.

4. How is "unimpaired capital" defined for purposes of complying with those provisions of Regulation O which are based upon unimpaired capital?

Compliance to those provisions of Regulation O which are based upon unimpaired capital shall be based upon unimpaired capital as defined in R. I. Gen. Laws § 19-1-1 which states that unimpaired capital is the sum of all capital and allowance accounts minus estimated losses on assets, calculated in accordance with generally accepted accounting principles.

5. **Is Board approval required on loans to officers, directors, and committee members, which in the aggregate do not exceed \$25,000 or 5% of the credit union's unimpaired capital, since these loans do not require approval under Regulation O?**

Neither Regulation O or Banking Regulation 98-5-5(c) can override Rhode Island statutory provisions. When Rhode Island statutory provisions conflict with provisions of Federal Regulation O, the more restrictive provisions shall apply. Therefore, no extension of credit to a credit union director or committee member may be granted unless the credit has been approved in advance by the board of directors or the credit is fully secured by shares and deposits with the credit union.

6. **Does the aggregate lending limit in § 215.4(d) of Regulation O apply to credit unions?**

This section limits extensions of credit to all of a bank's insiders to the amount of unimpaired capital and unimpaired surplus. This section does apply to credit unions but the limit is based upon, for consistency sake, unimpaired capital as defined in R. I. Gen. Laws § 19-1-1. For purposes of the allowed exception to this limit, a satisfactory composite rating is defined as a composite rating of "2" or higher.

7. **Do the overdraft provisions of § 215.4(e)(2) of Regulation O supersede the overdraft provisions in R. I. Gen. Laws § 19-5-6(a)(3)?**

Neither Regulation O or Banking Regulation 98-5-5(c) can override the Rhode Island statutory provisions. When Rhode Island statutory provisions conflict with provisions in Federal Regulation O, the more restrictive provisions shall apply. Therefore the lower limit in R. I. Gen. Laws § 19-5-6(a)(3) shall apply.

8. **Does the limitation, contained in Section 215.5(c)(4) of Regulation O, of 2.5% of capital or \$25,000 for unsecured loans apply?.**

No, this section of Regulation O does not apply to credit unions.

9. **How is the term "detailed current financial statement" defined?**

The financial statement must include a breakdown of assets by category (i.e. cash in banks, real estate, investments, automobiles and equipment, or equivalent categories) and liabilities (i.e. accounts and notes payable, etc.) and net worth. The financial statement may not be older than sixty (60) days prior to the date of application.

10. Does Section 215.10 of Regulation O apply?

Yes, this section does apply. Each credit union must maintain a record of all extensions of credit granted to insiders, which record shall include the amount and terms of each such extension of credit. If a special loan trial balance can be developed to include the amounts and terms of such extensions of credit, then this would be sufficient.

11. How is compliance to Section 215.9 of Regulation O determined?

Since the limiting sections of 215.5(c) [i.e. 215.5(c)(3) & 215.5(c)(4)] do not apply to credit unions, Section 215.9, which requires each executive officer who is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in 215.5(c) to report such indebtedness to the board of directors, does not apply.

12. Does The Reporting Requirement of Section 215.10 of Regulation O apply to credit unions?

No. Banking Regulation 98-5-5(c) specifically states that credit unions are not required to report loans to officials to the Division of Banking, independent of a request by the Division of Banking for such information.

13. Is Section 215.11(b) of Regulation O applicable?

No, as stated above, federal deposit rules and regulations governing loans to officials require compliance to all of Regulation O except for sections §§ 215.5(b), 215.5(c) (3), 215.5(c)(4) and 215.11.

Dennis F. Zioli
Associate Director &
Superintendent of Banking