

# LENDING

## Contents

<b>1. Legislation</b> .....	<b>2</b>
<b>2. Regulations</b> .....	<b>8</b>
<b>3. Central Bank Requirements</b> .....	<b>15</b>
<b>4. Guidance</b> .....	<b>15</b>
4.1 Lending Policies .....	15
4.1.1 <i>Credit policy</i> .....	16
4.1.2 <i>Credit control policy</i> .....	17
4.1.3 <i>Provisioning policy</i> .....	18
4.2 Commercial loans .....	18
4.3 House Loans .....	18
4.4 Single or lump sum repayment loans .....	19
4.5 Interest rates on higher risk loans .....	19
4.6 Security for loans .....	19
4.6.1 <i>Home Improvement Loans</i> .....	20
4.6.2 <i>Attached shares</i> .....	20
4.6.3 <i>Guarantors</i> .....	20
4.7 Credit Assessment .....	21
4.8 Credit Committee and Credit Control Committee .....	23
4.9 Calculation of concentration limits .....	23
4.10 Related party lending .....	24
4.11 Large exposures .....	25
4.11.1 <i>Connected borrowers</i> .....	25
4.11.2 <i>Limits on large exposures</i> .....	26

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Link to Section 35 Regulatory Requirements for credit unions reflects updated requirements effective from 1 October 2013.
1.1	October 2013	Inserted footnote 1 to reflect deletion of section 60 from the 1997 Act.
1.2	November 2015	<ul style="list-style-type: none"> <li>Amended section 35 to reflect the commencement of section 11 of the 2012 Act.</li> <li>Inserted regulations in Section 2.</li> </ul>
1.3	January 2016	<ul style="list-style-type: none"> <li>Updated regulations in Section 2.</li> </ul>
1.4	December 2016	<ul style="list-style-type: none"> <li>Updated Section 4.11 and 4.12 to provide additional guidance.</li> </ul>
1.5	April 2018	<ul style="list-style-type: none"> <li>Removed Section 4.9 on Provisioning to reflect introduction of stand-alone Provisioning Guidelines for Credit Unions.</li> </ul>
1.6	May 2019	<ul style="list-style-type: none"> <li>Updated table of contents.</li> </ul>

## 1. Legislation

### Section 35- Making of loans\*

(1)

(a) In this section 'large exposure', in relation to loans of a credit union to a borrower or a group of borrowers who are connected, means the total exposure (including contingent liabilities) of the credit union where the total exposure to such borrower or group of borrowers would be greater than an amount (whether expressed as a monetary amount or as a percentage of some monetary amount or determinable monetary amount) prescribed by the Bank.

(b) For the purposes of this subsection—

'control' has the meaning assigned to it by section 432 of the Taxes Consolidation Act 1997 and the other relevant provisions of Part 13 of that Act;

'group of borrowers who are connected' means 2 or more persons—

(i) who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other person or persons (not being individuals); or

(ii) between whom there is no relationship of control as set out in subparagraph (i), but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other person or some or all of the other persons would be likely to encounter repayment difficulties.

- (2) A credit union may make a loan to a member for such purpose as the credit union considers appropriate, upon such security (or without security) and terms as the rules of the credit union may provide. The ability of the loan applicant to repay shall be the primary consideration in the underwriting process of the credit union.
- (3) A credit union shall manage and control lending to ensure the making of loans does not involve undue risk to members' savings taking into account the nature, scale, complexity and risk profile of the credit union.
- (4) Every application to a credit union for a loan shall be in writing and shall state the purpose for which the loan is required and the security (if any) offered for it.
- (5) A credit union shall not accept from an officer of the credit union a guarantee for a loan to another member unless that other member is the officer's spouse or civil partner, child or parent.
- (6) Where the rules of a credit union so provide, the credit union may determine in accordance with those rules the total, including percentage, amount of loans (if any) that it may grant to non-qualifying members.
- (7) In relation to loans to which this section relates and for the adequate protection of the savings of members of credit unions, the Bank may prescribe one or more of the following:
  - (a) the classes of lending a credit union may engage in whether by reference to any common characteristic of the credit unions or loans concerned, or otherwise;
  - (b) the limits on the total, including percentage, amount of loans generally, or unsecured loans or class or classes of loans, that may be lent by credit unions, having regard to period or periods of time for which loans concerned are made;
  - (c) the matters relating to large exposures of credit unions and limits relating to such exposures;
  - (d) the limits on the concentration of lending, including concentration limits on loan classes, including concentration limits on loans to a member of a credit union;

- (e) any other limit that the Bank considers appropriate.
- (8) For the adequate protection of the savings of members of credit unions the Bank may prescribe such other requirements as it considers necessary in relation to any one or more of the following matters:
- (a) the lending practices of credit unions, including—
- (i) loan application assessments,
  - (ii) the making of provision for specified matters,
  - (iii) reviews to assess the adequacy of provisions,
  - (iv) maintaining policies for the holding of provisions, for credit and for credit control,
  - (v) the types of security that may be accepted;
- (b) reporting loans to the Bank;
- (c) the holding by credit unions of provisions, reserves or capital against loans or specified classes or types of loans.
- (9) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are effective and proportionate having regard to the nature, scale and complexity of credit unions, or the category or categories of credit unions, to which the regulations will apply.
- (10) A credit union shall ensure that it has appropriate processes, procedures, systems, controls and reporting arrangements to monitor compliance with the requirements of this section and any requirement imposed under this section.
- (11) Subject to its rules, in respect of a loan, a credit union may accept, in addition to other forms of security—
- (a) a guarantee by a member, or
- (b) a pledge by a member of shares in or deposits with the credit union,
- and, where such a guarantee or pledge is accepted, it shall be deemed to be a security for the loan.



**Section 36 – Approval of loans**

- (1) A credit union shall not make a loan to a member unless it is approved in accordance with this section.
- (2) Subject to *subsections (3) and (5)*, a loan must be approved, according as the rules of the credit union require—
- (a) by such number of members of the board of directors voting by secret ballot at a meeting of the board at which the application for the loan is considered as represents at least two-thirds of those present and a majority of the members of the board as a whole; or
- (b) by such number of members of the credit committee present at a meeting of that committee at which the application for the loan is considered as represents at least two-thirds of those present and a majority of the committee members as a whole; or
- (c) by a credit officer.
- (3) † Subject to subsection (5), a loan to an officer is required to be approved by not less than two-thirds of the members of a special committee voting by secret ballot at a meeting at which the application for the loan is considered.
- (4) † The special committee referred to in subsection (3) shall consist of—
- (a) a majority of the board of directors, and
- (b) at least one member of the credit committee,
- but shall not include the applicant for the loan.
- (5) † Notwithstanding subsection (3), a loan to an officer which does not exceed the value of the officer's attached savings may be approved as mentioned in *paragraph (b) or (c)* of subsection (2).

**Section 37 – Appeal against non-approval of loan**

- (1) If an application for a loan which was considered by the credit committee or by a credit officer was not approved under *section 36*, the applicant may appeal to an appellate body which, by a decision of such members of the body present at the meeting at which the appeal is considered as represents at least two-thirds of those present and a majority of the body as a whole, may give approval to the loan, overriding the decision of the credit committee or credit officer, as the case may be.
- (2) The appellate body referred to in *subsection (1)*, shall consist of—
- (a) the board of directors, excluding, where the application for the loan was considered by the credit committee, any director who is a member of that committee;
- (3) † For the purposes of the consideration of an appeal under this section, the appellate body shall not be regarded as quorate unless there are present a majority of the directors referred to in *subsection (2)(a)*.

**Section 38 – Interest on loans**

- (1) A credit union may charge interest on loans made to its members under *section 35* subject to the following conditions—
- (a) the interest on a loan shall not at any time exceed one per cent. per month on the amount of the loan outstanding at that time;
- (b) the interest on a loan shall in every case include all the charges made by the credit union in making the loan;
- (c) the rate of interest charged on any class of loans granted at a particular time shall be the same for all loans of the class.
- (2) † If a credit union knowingly charges or accepts interest on a loan at a rate greater than that permitted under this section—
- (a) all the interest agreed to be paid by the member shall be deemed to have been waived by the credit union; and
- (b) any interest paid on the loan shall be recoverable summarily by the member (or his personal representative) as a simple contract debt.

**Section 55 – Functions of board of directors\***

*(This Chapter has not reproduced the entirety of section 55 – please consult the Credit Union Act, 1997 for the full provision.)*

(1) Without prejudice to the generality of section 53(1), the functions of the board of directors of a credit union shall include the following:

...

(o) approving, reviewing, and updating, where necessary, but at least annually, all plans, policies and procedures of the credit union, including the following:

(i) lending policies including lending limits;

...

**2. Regulations****CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) REGULATIONS 2016**

**(S.I. No. 1 of 2016)**

*(This Chapter has not reproduced the entirety of Part 1 – please consult the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 for the full provision.)*

**PART 1****PRELIMINARY AND GENERAL****Interpretation**

In these Regulations, unless the context otherwise required:-

“the Bank” means the Central Bank of Ireland;

“commercial loan” means a loan, the primary objective of which is to fund an activity whose purpose is to make a profit;

“community loan” means a loan to a community or voluntary organisation which is established for the express purpose of furthering the social, economic or



environmental well-being of individuals within the common bond of the credit union in any of the following areas -

- (a) sport and recreation;
- (b) culture and heritage;
- (c) the arts (within the meaning of the Arts Act 2003);
- (d) health of the community;
- (e) youth, welfare and amenities; and
- (f) natural environment;

“final repayment date” means the date on which the loan is due to expire, as indicated on the relevant credit agreement in accordance with section 37C(1)(j) of the Act or any subsequent date agreed between the credit union and the member to whom the loan has been made;

“house” means any building or part of a building used or suitable for use as a dwelling and any outhouse, yard, garden or other land appurtenant thereto or usually enjoyed therewith;

“house loan” means a loan made to a member secured by property for the purpose of enabling the member to:

- (a) have a house constructed on the property as their principal residence;
- (b) improve or renovate a house on the property that is already used as their principal residence,
- (c) buy a house that is already constructed on the property for use as their principal residence, or
- (d) refinance a loan previously provided for one of the purposes specified in (a), (b) or (c) for the same purpose;

“member of the family” means in relation to any person, that person’s father, mother, spouse or civil partner, cohabitant, son, daughter, brother, or sister;

“personal loan” means a loan to a natural person, once the loan is for purposes unrelated to the person’s trade, business, profession or the purchase of property;

“related company” means companies related within the meaning of section 2(1) of the Companies Act 2014;

“related party” means -

- (a) a member of the board of directors or the management team of a credit union;
- (b) a member of the family of a member of the board of directors or the management team of a credit union; or
- (c) a business in which a member of the board of directors or the management team of a credit union has a significant shareholding;

“significant shareholding” means 10 per cent or more of the shares or voting rights in the business;

“the Act” means the Credit Union Act, 1997;

“unattached savings” means those total savings which are not attached to loans or otherwise pledged as security and are withdrawable by members.

## **PART 4**

### **LENDING**

#### **Categories of Lending**

11. (1) A credit union shall only make loans that fall within the following categories:
- (a) Personal loans;
  - (b) Commercial loans;
  - (c) Community loans;
  - (d) House loans;
  - (e) Loans to other credit unions.
- (2) A commercial loan granted by a credit union, where the total amount of commercial loans granted to a borrower, or group of borrowers who are connected, is less than €25,000, is not subject to Regulations 12(a) or 16. For the purposes of paragraph (2), a commercial loan is included in the

calculation of commercial loans until the commercial loan has been repaid in full.

### **Concentration Limits**

12. A credit union shall not make:

- (a) a commercial loan, where such a loan would cause the total amount of outstanding commercial loans of the credit union to exceed 50 per cent of the credit union's regulatory reserve,
- (b) a community loan, where such a loan would cause the total amount of outstanding community loans to exceed 25 per cent of the credit union's regulatory reserve, or
- (c) a loan to another credit union, where such a loan would cause the total amount of outstanding loans to other credit unions to exceed 12.5 per cent of the credit union's regulatory reserve.

### **Large Exposure Limit**

13. (1) A credit union shall not make a loan to a borrower or a group of borrowers who are connected which would cause the credit union to have a total exposure to the borrower or group of borrowers who are connected of greater than €39,000 or 10 per cent of the regulatory reserve of the credit union.
- (2) Where an exposure to a borrower or group of borrowers who are connected exceeds the limit set out in paragraph (1), the credit union must hold the amount of the exposure that is in excess of the limit in a realised reserve, separate from the regulatory reserve of the credit union.
- (3) The requirement specified in paragraph (2) shall not apply, to exposures existing at the time of commencement of these Regulations, for a period of 2 years from the commencement of these Regulations.

### **Maturity Limits**

14. (1) A credit union shall not make a loan to a member:–
- (a) for a period exceeding 5 years if, were the loan to be made, the total gross amount outstanding in relation to all loans with more than 5 years to the final repayment date would exceed –

- (i) 30 per cent of the total gross loan book balance outstanding at that time in relation to all loans made by the credit union, or
  - (ii) if the Bank so approves in writing, 40 per cent of the total gross loan book balance outstanding at that time in relation to all loans made by the credit union, or
- (b) for a period exceeding 10 years if, were the loan to be made, the total gross amount outstanding in relation to all loans with more than 10 years to the final repayment date would exceed –
  - (i) 10 per cent of the total gross loan book balance outstanding at that time in relation to all loans made by the credit union, or
  - (ii) if the Bank so approves in writing, 15 per cent of the total gross loan book balance outstanding at that time in relation to all loans made by the credit union.
- (2) The Bank may impose on approval, for the purposes of subparagraph (a)(ii) or (b)(ii) of this Regulation, any condition that the Bank considers appropriate.
- (3) A credit union shall not make a loan to a member for a period exceeding 25 years.

#### **Requirement for House Loans**

15. A credit union shall only grant a house loan where it holds the first legal charge on the property in respect of which the loan is to be provided.

#### **Lending Practices for Specific categories of Lending**

16. (1) A credit union shall only grant a commercial loan, community loan or loan to another credit union where a comprehensive business plan and detailed financial projections (supported by evidence based assumptions), appropriate for the scale and complexity of the loan, are provided and in place before granting the relevant loan.
- (2) A credit union shall report on the performance of loans, in writing, to the board of directors of the credit union on a monthly basis. For the purposes of paragraph (2), such a report shall include details on the performance of commercial loans, community loans and loans to other credit unions.

**General Lending Practices**

17. (1) A credit union shall permit a member to repay a loan on any day that the credit union is open for business (including opening hours of branch or otherwise available for business).
- (2) A credit union shall establish and maintain the matters specified below in writing:
- (a) limits in respect of credit concentration and loan portfolio diversification including the maximum amount of commercial lending, community lending and lending to other credit unions; and
- (b) processes which the credit union will follow in relation to arrears management and rescheduling.
- (3) A credit union shall ensure that its credit assessment process is based on coherent and clearly defined criteria and that the process of approving loans and amending loans is clearly established and documented in its credit policy.

**Related Parties-General**

18. (1) A credit union shall not make a loan to a related party which would provide that party with more favourable terms than a loan by the credit union to non-related parties (including, without limitation, terms as to credit assessment, duration, interest rates, amortisation schedules, collateral requirements).
- (2) A credit union shall not manage a loan to a related party on more favourable terms than a loan by the credit union to non-related parties (including but not limited to varying the terms of a loan, permitting rescheduling, interest roll-up, granting a grace period for payment, loan write-off in whole or in part, provisioning against a loan, decisions to take or not to take enforcement action).

**Related Parties-Specific**

19. (1) Subject to Regulation 18, a credit union shall ensure that the making of a loan to a related party is subject to individual prior approval in writing by the credit committee and that actions in relation to the management of a loan are subject to individual prior approval in writing by the credit committee or the credit control committee of the credit union as appropriate.

- (2) A credit union shall exclude individuals on the credit committee or the credit control committee with conflicts of interest in relation to matters specified in paragraph (1).

#### **Related Parties-Exempt Exposures**

20. (1) Regulations 19 and 21 do not apply where the total credit union exposure to the related party is not greater than €2,000.
- (2) In relation to exempt exposures referred to in paragraph (1), a credit union shall ensure that:-
- (a) the credit union monitors these loans to ensure that the limit imposed is not exceeded;
  - (b) a register of these loans recording how it has complied with this requirement is maintained by the credit union; and
  - (c) a report on these loans is reviewed and approved by the board of directors of the credit union on a quarterly basis.

#### **Related Parties- Recording and Monitoring Requirements**

21. (1) A credit union shall record and monitor loans made to related parties and report, in writing, to the board of directors on related party loans on a monthly basis. Such a report shall include details of loans advanced to related parties during the month, total loans outstanding to related parties, the performance of loans to related parties and actions in respect of the management of loans to related parties.
- (2) A credit union shall ensure that the internal audit function assesses, at least annually, the compliance or otherwise by a credit union with Regulation 19 and paragraph (1) of this Regulation and, after each assessment, submit a written report to the board of directors indicating their findings and conclusions and, where appropriate, making recommendations on any changes required.

#### **Related Parties- Credit Policy**

22. A credit union shall include the process in relation to lending to a related party in its Credit Policy.

### **Lending Policies**

23. A credit union shall, at a minimum, establish and maintain the following written lending policies:-

- (a) Credit Policy;
- (b) Credit Control Policy; and
- (c) Provisioning Policy.

### **Transitional Arrangements**

24. (1) Nothing in these Regulations shall render unlawful any loan made in accordance with or under the Act to a member before the commencement of these Regulations.

- (2) Where, at the commencement of these Regulations, a credit union is failing to comply with the requirements in this Part, that credit union shall only make a loan where the making of such a loan would not cause the credit union to either fail to comply or exacerbate a failure to comply with any of the requirements in this Part.

## **3. Central Bank Requirements**

The Central Bank has issued the following regulatory requirements in relation to lending under section 35 of the 1997 Act:

- [Section 35 Regulatory Requirements for Credit Unions \(October 2013\)](#)

## **4. Guidance**

### **4.1 Lending Policies**

Credit unions are required to maintain written lending policies including the following:

- credit policy;
- credit control policy; and
- provisioning policy.

### **4.1.1 Credit policy**

The credit policy should cover the following at a minimum:

- objectives of the policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in lending including credit officers and the credit committee;
- the lending authorisation limits of the credit committee and credit officers including clear limits on the total funds available for the granting of loans;
- the classes of loans that the credit union may offer;
- the maximum repayment period appropriate to different classes of loans;
- the interest rate applicable to each class of loan, if applicable;
- processes on lending to related persons which shall:
  - prevent members of staff of the credit union making a loan to a related party which would provide that party with more favourable terms than a loan by the credit union to non-related parties;
  - prevent persons related to the borrower from being part of the process of granting and managing a loan to such a borrower;
  - prevent members of staff of the credit union managing a loan to a related party on more favourable terms than a loan by the credit union to non-related parties;
  - arrangements for the on-going reporting, monitoring and review of the related party policies;
  - arrangements for monthly written reports to the board of directors; and
  - arrangements for annual internal audit assessment of compliance with related party lending requirements.
- circumstances in which atypical loans will be considered and particular approval conditions, including security conditions, attaching to such loans;
- policy regarding curtailment of loans to members in arrears;
- circumstances in which security (including guarantors) for loans must be obtained and the differing type and level of security required depending on the size and/or risk profile of the loan;
- the types of security which may be accepted for loans;
- limits in respect of credit concentration and loan portfolio diversification including:
  - the maximum amount of commercial lending as a percentage of the total loan book;
- the application, assessment and decision making process for the approval of loans including the lending criteria to establish capacity to repay for all types of borrowers;
- specific procedures for evaluating and monitoring commercial loans, community loans and loans to other credit unions;
- the factors to be taken into account in the review of the policy including:
  - the appropriateness of the prevailing interest rates on the various categories of loans depending on current or likely future economic conditions; and



- the effect of any interest rate increase on borrowers' ability to meet their repayment obligations.
- procedures to prevent conflicts of interest and ensure segregation of duties between the approval and payment of loans;
- systems of control to ensure a credit union does not breach any limits including concentration limits, large exposure limits and maturity limits;
- procedures for retention of loan documentation, including loan application forms / credit agreements, security and ability to repay documentation;
- reporting arrangements, including the frequency, form and content of reporting by the credit committee to the board of directors; and
- the process for the approval, review and update of the credit policy by the board of directors.

#### **4.1.2 Credit control policy**

The credit control policy should cover the following at a minimum:

- objectives of the policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in credit control including the credit control committee and credit control officers;
- procedures for the recording and monitoring of loans;
- processes in relation to arrears management and rescheduling;
- the standard time after which the credit control procedure is to be first activated in respect of loans in arrears;
- description of the various stages of the credit control procedure from first contact with members in arrears to the legal recovery process and / or enforcement of security;
- the criteria and procedure, including approval procedure and authorisation required, for rescheduling of loans and for transferring members share balances against loan arrears;
- the criteria and procedure, including approval procedure and authorisation required, for writing off bad debts;
- procedure for review and follow up of bad debts written off;
- procedures for the recording and monitoring of loans;
- procedures for communication with members in relation to the loan, monitoring arrears and for changing the terms of the loan agreement;
- reporting arrangements, including the frequency, form and content of reporting by the credit control committee to the board of directors; and
- the process for the approval, review and update of the credit control policy by the board of directors.

### **4.1.3 Provisioning policy**

For guidance on Provisioning Policy, please see section 3 of the Provisioning Guidelines for Credit Unions located in Chapter 13A of the Credit Union Handbook.

## **4.2 Commercial loans**

Where a credit union is considering granting a commercial loan, a comprehensive business plan and detailed financial projections (supported by evidence based assumptions), appropriate for the scale and complexity of the loan, should be provided and in place before granting the relevant loan. This should enable the credit union to ensure that they are satisfied that the borrowing business has the capacity to generate sufficient income to repay the commercial loan.

A comprehensive business plan should include the following at a minimum:

- an executive summary;
- a company description;
- market analysis;
- current sector/market position;
- staffing and operations; and
- financial projections including;
  - key assumptions;
  - profit and loss accounts;
  - balance sheets; and
  - cashflow projections for 3 years.

## **4.3 House Loans**

The Regulations identify house loans as a category of lending for credit unions, provide a definition of house loans and set out specific requirements in relation to house loans.

Buy to let loans do not fall under the definition of house loans. Buy to let loans fall under the definition of commercial loans.

Where a credit union provides a house loan, this loan may also fall within the definition of a housing loan as set out in the [Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\) \(Housing Loan Requirements\) Regulations 2015 \(S.I. No. 47 of 2015\)](#) introduced in relation to residential mortgage lending (the "**Section 48 Regulations**"). Where this is the case the credit union must also comply with the requirements set out in the Section 48 Regulations. Not all loans that fall within the definition of house loan will also fall within the definition of a housing loan.

Further information on these regulations can be found on the Macroprudential Policy section of the RCU website available at this [link](#).

Credit unions should ensure that requirements set out in these regulations are reflected in their credit policy.

#### **4.4 Single or lump sum repayment loans**

Single or lump sum repayment loans should be regarded as those loans whose repayment takes the form of a single payment or where the repayment schedule is less frequent than on a monthly basis. The financial impact of default associated with these loans can be significant.

Lump sum repayment loans should only be granted in line with prudent approval criteria laid down in the credit policy.

#### **4.5 Interest rates on higher risk loans**

When considering the interest rate to be applied to different categories of loans, the board of directors should take proper account of the level of risk involved in such loans, subject to the limit on interest rates set out in section 38 of the 1997 Act.

#### **4.6 Security for loans**

Under the Regulations, a first legal charge is required on the property in respect of which a house loan is to be provided. Credit unions may determine that security should be required for other types of loans.

The level of security required in respect of individual loan applications should reflect the size and risk profile of the proposed loan. Approved types of security and the circumstances in which security should be taken, should be clearly set out in the credit policy. Vague undertakings to repay a loan on the occurrence of an uncertain future event should not be relied upon as loan security.

Professional legal advice should be obtained when taking security for large or complex loans e.g. bridging loans, commercial loans, property loans etc. to ensure that legal title is properly perfected and enforceable in the event of default. Security documentation should be securely and efficiently maintained.

#### **4.6.1 Home Improvement Loans**

In relation to home improvement loans and first legal charges, under the Regulations where a credit union is providing home improvement loans these may be provided as either personal loans or as house loans. Where such a loan is provided as a house loan the credit union must hold the first legal charge secured on the property.

However, where such a loan is provided as a personal loan there is no requirement to hold the first legal charge secured on the property. It will be a matter for credit unions to determine if a loan is to be issued as a house loan or a personal loan.

#### **4.6.2 Attached shares**

While a member may have savings up to (or in excess) of the loan they have applied for, it is important to note that a member's savings are not attached to a member's loan unless the savings are attached or pledged as part of the credit agreement with the member at the time of issuing of the loan.

Under section 32(3)(a) of the 1997 Act, a member can withdraw any savings that are not attached to a loan and any attached savings, following approval by the board, provided the value of the member's attached savings immediately after the withdrawal would not be less than 25 per cent of the member's outstanding liability<sup>1</sup>.

#### **4.6.3 Guarantors**

Prior to approving a loan application the credit committee or credit officer should take appropriate steps to satisfy themselves that potential guarantors are of sufficient standing and have the financial capacity to repay a loan in the event that the guarantee is called upon.

At the time of signing any loan guarantee documents, guarantors should be made aware of the implications of providing a guarantee for a loan particularly in cases where a credit union may have a lending restriction in place. Lending limits in relation to a group of borrowers who are connected may have an impact on the guarantor's ability to apply for credit in their own name. Unless savings are pledged by the guarantor under a specific legal assignment, the normal procedures regarding access to a guarantor's own savings should apply. The credit union should take the necessary steps to clarify the legal status of any assignment of savings/shares as security against loans granted by the credit union.

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<sup>1</sup> Under section 32(4) of the 1997 Act, the Central Bank may require that a higher or lower percentage applies to a particular credit union under section 32(3).

## 4.7 Credit Assessment

A credit union is required to ensure that the ability of the loan applicant to repay shall be the primary consideration in the underwriting process of the credit union. All applications for credit should be appropriately assessed to ensure that the applicant's financial position, including commitments to other financial institutions is fully disclosed. This may involve the use of a credit bureau or credit reference agency, where appropriate.

Where a member has savings but the savings are not being used to repay a loan, the credit union must determine how the member will repay the loan. In light of this and section 32(3)(a) of the 1997 Act, while attached savings will be a factor in assessing a loan, it is appropriate that a creditworthiness assessment is undertaken. This needs to be supported by evidence, which could include previous repayment history on loans.

An important factor in determining creditworthiness in the current environment is whether a member is already in difficulty in repaying an existing debt and in particular mortgage debt.

Therefore when assessing applications for new loans and/or for topping up existing loan facilities, the Central Bank expect that a credit union must be fully satisfied as to a member's creditworthiness and ability to service all debts before advancing any new credit or top up credit facilities, especially where the borrower is in arrears on their mortgage or in non-permanent forbearance<sup>2</sup>.

The European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No 281 of 2010) was transposed into Irish law on 11 June 2010. These regulations give effect to the provisions of Directive 2008/48/EC on Credit Agreements for Consumers (the "CCD") and the scope includes credit agreements where the loan amounts are between €200 and €75,000.

Specifically, Part 2, Regulation 11 of these regulations titled "Part 2 Information and practices preliminary to conclusion of credit agreements. Obligation to assess creditworthiness of consumers" states:

- (1) Before concluding a credit agreement with a consumer, a creditor shall assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.

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<sup>2</sup> Non-permanent forbearance is defined as forbearance other than capitalisation of arrears, split mortgage or term extension of the mortgage.

- (2) If a creditor and a consumer agree to change the total amount of credit after a credit agreement is concluded, the creditor—
- a. Shall update the financial information at the creditor's disposal concerning the consumer, and
  - b. Shall assess the consumer's creditworthiness before agreeing to any significant increase in the total amount of credit.
- (3) A creditor or credit intermediary that contravenes a provision of this Regulation commits an offence.

In assessing a borrower's creditworthiness the Central Bank expects credit unions to:

- (a) Apply prudent lending standards to the granting of all new loans or top-ups of existing loans and the Central Bank would encourage the credit union to use the services of a credit bureau or credit reference agency to ensure the credit union has the most accurate available financial information on the credit union's borrowers when processing such new lending applications;
- (b) Have systems in place to ensure that such applications are fully assessed to confirm the borrower's ability to repay the loan. In this regard, credit unions must satisfy themselves that they are fully appraised of the borrower's financial position before granting a loan.

In order to fully assess a borrower's ability to repay the loan, the Central Bank's expectation is that credit unions will avail of at least one of the following:

1. Employ the services of a suitable credit bureau or credit reference agency.
2. Require the borrower to obtain confirmation from the private dwelling mortgage lender on the payment status of their mortgage.
3. Require the borrower to provide an up to date mortgage statement covering a 12 month period.
4. Such other process employed by the credit union to determine if the borrower is in arrears on their mortgage in non-permanent forbearance.

The borrower should also be required to provide any other additional supporting documentation required to assess creditworthiness (e.g. proof of income, current account, credit card and other mortgage statements).

The Central Bank expects that all additional credit applications will be supported by adequate evidence to illustrate that appropriate credit assessment has taken place and that such evidence will be retained on file and be available to the Central Bank in the event of an inspection.

#### **4.8 Credit Committee and Credit Control Committee**

The credit and credit control committees should meet as often as necessary to carry out their functions, to comply with any instruction of the board of directors and to submit written reports on their activities to the board of directors at each meeting of the board.

The written reports submitted by each committee to the board of directors should contain sufficient financial and other information to enable the board assess compliance with legal and regulatory requirements and guidance and the credit union's written policies so as to ensure proper oversight of the credit and credit control functions.

Those credit unions that do not currently have a credit officer and a credit control officer should actively consider making such appointments or put in place other arrangements to assist the respective committees in the proper discharge of their functions.

It is important to note that, while the board of directors can delegate authority for certain credit and credit control functions, it cannot delegate responsibility or accountability in relation to these functions.

#### **4.9 Calculation of concentration limits**

In calculating whether an individual proposed commercial loan would cause the total amount of outstanding commercial loans of the credit union to exceed 50 per cent of the credit union's regulatory reserve a credit union should take account of all outstanding commercial loans (gross of attached shares) and the proposed commercial loan. Buy to let loans should be included in the calculation of the total amount of outstanding commercial loans.

In assessing whether a commercial loan exceeds the €25,000 limit set out in paragraph (2) of regulation 11, credit unions should take account of all top-ups on existing outstanding commercial loans issued prior to the commencement of the Regulations. Any top-up with a defined purpose other than commercial should be granted as a new loan.

In calculating whether a loan to another credit union would cause the total amount of outstanding loans to other credit unions to exceed 12.5 per cent of the credit union's regulatory reserve, the Central Bank would expect credit unions to take account of all outstanding loans to other credit unions (gross of attached shares) issued prior to the commencement of the Regulations and the proposed loan to another credit union.

In calculating whether a community loan would cause the total amount of outstanding community loans of the credit union to exceed 25 per cent of the credit union's regulatory reserve, the Central Bank would expect credit unions to take account of all outstanding community loans (gross of attached shares) issued prior to the commencement of the Regulations and the proposed community loan. Credit unions would be expected to take account of all top-ups on existing outstanding community loans issued prior to the commencement of the Regulations in calculating the limit.

#### **4.10 Related party lending**

The objective of the requirements for related party lending set out in the Regulations is to ensure that related parties do not receive more favourable treatment than other credit union members and that there is appropriate oversight of such loans. The Regulations contain an explicit requirement that related parties do not receive more favourable treatment than non-related parties.

Credit unions should have processes in place to ensure that they can comply with requirements relating to related party lending. Section 4.1.1 of this guidance sets out a number of the areas that these processes should cover. Regulation 21 of the Regulations requires that each credit union record, monitor and report data on related party lending.

The Central Bank does not supervise compliance with data protection law; this is the role of the Office of the Data Protection Commissioner. A credit union is the controller of the personal data of its members, officers and staff and each credit union must ensure that all personal data is processed in accordance with the Data Protection Acts. The processing, use of and disclosure of data on related party lending by a credit union for the purposes of compliance with the Regulations has a lawful basis for the purposes of data protection law by virtue of S2A(1)(b)(iii) of the Data Protection Acts 1988 and 2003 (the Data Protection Acts) as it is to comply with legal obligations imposed by law, including those imposed by the Credit Union Act 1997. When processing personal data, credit unions must comply with the Principles of Data Protection set out in section 2 of the Data Protection Acts. This includes the obligations imposed by section 2(1)(c)(iii) which states '*the data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they were collected or are further processed*' and by section 2(1)(d) which requires that data controllers such as credit unions ensure that '*appropriate security measures shall be taken against unauthorised access to, or unauthorised alteration, disclosure or destruction of, the data*'. These obligations may mean that a credit union has to limit internal access to certain data on related party lending.



## 4.11 Large exposures

The Regulations set a *maximum* large exposure limit in respect of the total permitted exposure to a borrower or a group of borrowers who are connected. The regulations do not define an individual large exposure or include an aggregate of individual large exposures limit. Guidance is provided on these in Section 4.12.2 below. The Central Bank considers it important that credit unions assess their exposures and diversify their exposures appropriately. This will reduce the risk of credit unions incurring large losses as a result of the failure of an individual borrower or group of connected borrowers due to the occurrence of unforeseen events. This risk can be mitigated by avoiding the concentration of exposure to an individual borrower or a group of connected borrowers.

### 4.11.1 Connected borrowers

The Regulations contain requirements in relation to credit unions identifying groups of borrowers who are connected. A group of borrowers who are connected refers to credit union borrowers who are connected to other credit union borrowers and not to “related parties” who are borrowers that have a relationship or connection to the credit union or its officers (see 4.11 for information on related party lending).

The purpose of identifying groups of borrowers who are connected is to identify if it is likely that the financial problems of one borrower would cause difficulties for other borrowers in terms of full and timely repayment of a loan and as such whether those borrowers present a single or common risk to the credit union. Single or common risk will generally occur where the credit union considers there is **material** financial interdependence between borrowers (such economic dependence may be mutual or one way). It would be expected that in practice that connected borrowers would be identified during the standard underwriting process for a loan. The following is a non-exhaustive list of examples of potential connected borrowers. It is a matter for each credit union to determine, taking account of all of the individual circumstances, if such borrowers are connected:

- A group of borrowers who are borrowing for a common purpose and who are dependent on a single income source to repay their individual loans;
- the borrower and his/her spouse/partner if by **contractual arrangements** both are liable and the loan is **significant for both – in terms of potential impact on the ability of the spouse/partner to repay (it should be noted all spouses/partners would not automatically be presumed to be connected borrowers)**; or
- a borrower and guarantor, where the guarantee is so substantial for the guarantor that his/her ability to service their other liabilities with the credit union will be affected if the guarantee is claimed by the credit union.

It is important that a credit union identifies groups of borrowers who are connected to enable the credit union to monitor concentration risks in its loan portfolios. Each credit union needs to determine its exposure to groups of borrowers who are connected based on all the information available to the credit union, including (but not limited to) information provided by members in support of their loan application and any information provided in response to specific questions from the credit union to the borrower to enable it to identify groups of borrowers who are connected. Whether or not borrowers constitute a group of borrowers who are connected is a matter to be determined by the credit union in each different case. The assessment undertaken by the credit union to determine whether or not borrowers constitute a group of borrowers who are connected should be documented in writing.

Establishing whether borrowers are connected will involve the necessary processing of personal data in the normal course of credit union business and a credit union should ensure that there is no illegal disclosure of personal data. A credit union is the controller of the personal data of its members, officers and staff and each credit union must ensure that this data is processed in accordance with the Data Protection Acts.

#### **4.11.2 Limits on large exposures**

The Central Bank would consider it appropriate that a credit union should consider any exposure greater than 5% of the regulatory reserve to be an individual large exposure and the aggregate of individual large exposures (including contingent liabilities) of a credit union should not be greater than 500% of regulatory reserves. The relationship between the large exposure limit (as defined in the Regulations), an individual large exposure and an aggregate of individual large exposures limit is best illustrated by way of example:

In a credit union with total assets of €50 million and regulatory reserves of €5 million (10% Regulatory Reserve Ratio):

- The maximum large exposure to a borrower or group of connected borrowers permitted under the regulations would be €0.5 million (maximum of 10% of Regulatory Reserves or €39,000, whichever is the greater);
- An individual large exposure would be defined as €0.25 million (5% of Regulatory Reserves); and
- The maximum number of large exposures the credit union could have is 100 with the total aggregate large exposure limit being 500% of Regulatory Reserves (€25m).

In a credit union with total assets of €3 million and regulatory reserves of €300,000 (10% Regulatory Reserve Ratio):

- The maximum large exposure to a borrower or group of connected borrowers permitted under the regulations would be €39,000 (maximum of 10% of Regulatory Reserves or €39,000, whichever is the greater);
- An individual large exposure would be defined as €15,000 (5% of Regulatory Reserves); and
- The maximum number of large exposures the credit union could have is 100 with the total aggregate large exposure limit being 500% of Regulatory Reserves (€150,000).