
REGULATION UNDER THE CREDIT UNIONS AND CAISSES POPULAIRES ACT, 1994

This attachment highlights key sections of the Ontario Regulations 237/09 and 238/09.

It should be noted that Ontario Regulation 76/95 Credit Union, Ontario Regulation 77/95 Leagues, and Ontario Regulation 78/95 Deposit Insurance Corporation of Ontario (DICO) have been consolidated into Ontario Regulation 237/09, and that Ontario Regulation 79/95 Stabilization Funds has been repealed.

The majority of provisions under Regulation 237/09 take effect October 1, 2009, while Regulation 238/09, in its entirety, takes effect October 1, 2010.

For a complete listing of amended regulations under the Credit Unions and Caisses Populaires Act (CUCP Act), refer to the website www.e-laws.gov.on.ca.

ONTARIO REGULATION 237/09 – GENERAL

Part I: Interpretation

Definitions

The *Capital Adequacy Guideline for Ontario's Credit Unions and Caisses Populaires* refers to the publication of the same name published in *The Ontario Gazette* by DICO.

Section 2 – Class 2 credit unions (REVISED)

The assets used to determine when a credit union becomes a class 2 credit union are based on the most recent audited financial statement. A class 1 credit union may apply to DICO to become a class 2 credit union and will become a class 2 once DICO is satisfied that prescribed conditions are met.

Part III: Membership

Section 6 – Trusts for named beneficiaries (NEW)

A credit union is permitted to accept deposits from a member in trust for a named beneficiary if the deposits are required or governed under an Act. The regulation lists the Acts that are prescribed for these purposes.

Section 7 – Payments re: deceased members (REVISED)

The amount of deposit in the name of a deceased member that can be paid out is increased to \$50,000 from \$10,000, subject to circumstances set out in section 42(2) of the CUCP Act.

Part IV: Capital Structure

Section 8 – Number of membership shares (NEW)

A member of a credit union is permitted to hold more than the minimum number of membership shares required to be a member. Up to \$1,000 in additional membership shares may be purchased without the need for an offering statement. These additional membership shares are included in the determination of the regulatory capital of a credit union.

Section 9 – Disclosure re insurance of membership shares (*NEW*)

Prior to issuing any membership shares a credit union shall disclose to the member that the shares are not insured by DICO.

Section 11 – Offering statement (*REVISED*)

Requirements that relate to an amalgamation in an offering statement have been added.

Part V: Capital and Liquidity

Section 16 – Total Assets (*REVISED*)

- deferred charges are removed as a deduction when determining capital adequacy
- the description of allowable “intangibles” provided has been expanded
- other deductions may be required as outlined in the *Capital Adequacy Guideline*
- the *Capital Adequacy Guideline* outlines the equity method of accounting to be used for investments in subsidiaries.

Section 17 – Regulatory Capital (*REVISED*)

Tier 1 and Tier 2 capital components are now defined. Tier 1 capital includes:

- the amount of patronage shares and other qualifying shares that are not redeemable in the next 12 months
- any accumulated net after tax unrealized loss on available for sale equity securities reported in other comprehensive income.

Tier 2 capital includes:

- the amount of patronage shares and other qualifying shares that are redeemable in the next 12 months
- any accumulated net after tax unrealized gain on available for sale equity securities reported in other comprehensive income
- any loan loss allowance in excess of any specific loan loss allowance up to 0.75 per cent of total assets for a class 1 credit union and 1.25 per cent of risk weighted assets.

A qualifying share issued after the regulations come into force cannot be redeemed or cancelled in the first five years after its issue except upon death or expulsion of the holder.

Section 18 – Risk weighted assets of a credit union (*REVISED*)

- Insured residential mortgages, other than those insured or guaranteed by the Government of Canada (e.g., Canada Mortgage and Housing Corporation), are zero weighted ONLY up to 90 per cent for an approved insurer. The remaining portion of the loan is to be risk weighted at 100 per cent unless the insurer has a credit rating as described in the *Capital Adequacy Guideline* in which case the equivalent risk weight is to be used.
- Uninsured residential mortgage loans that are 90 days or more past due are risk weighted at 100 per cent.

Section 19 – Group capital (*NEW*)

The requirements for an agreement under section 84(3) of the CUCP Act for credit unions and a league to form a group for the purposes of satisfying the requirements for capital adequacy are outlined. Grounds under which DICO may revoke a group capital agreement are also prescribed.

Section 20 – Adequate liquidity for class 1 credit unions (*REVISED*)

The minimum requirement is reduced to five per cent, where a credit union has a line of credit with a financial institution, Credit Union Central of Canada, Central 1 Credit Union, La Fédération des caisses Desjardins du Québec or La Caisse centrale Desjardins du Québec as outlined. In other cases, the minimum requirement is seven per cent. Also, the types of eligible assets for adequate liquidity are modified.

Section 21 – Adequate liquidity for class 2 credit unions (*REVISED*)

Class 2 credit unions shall establish and maintain prudent levels and forms of liquidity to meet their ongoing cash flow needs. Assets used to satisfy liquidity requirements must be authorized for that purpose in policies.

Section 22 – Encumbered asset (*REVISED*)

An encumbered asset cannot be used to satisfy adequate liquidity unless it is assigned to DICO.

Section 23 – Failure to meet requirements for adequate liquidity (*REVISED*)

A report must be submitted to DICO and the Superintendent when a credit union fails to meet the requirements for adequate liquidity.

Part VI: Governing the Credit Union

Section 26 – Frequency of board meeting (*NEW*)

The board of the credit union must meet at least quarterly during each financial year.

Credit committee (*REPEALED*)

The requirements for a credit committee are repealed. To encourage accountability to credit union members and improved corporate governance, the credit union's directors and management are now directly responsible for setting the credit union's lending policy, overseeing credit decisions and establishing internal controls.

Section 27 – Duties of audit committee (*REVISED*)

Duties of the audit committee now include reviewing:

- the effectiveness of the internal audit practices and to make recommendations to the board to address any deficiencies
- findings and recommendations of internal auditors concerning the accounting practices and internal controls and review of the responses by management to any significant or material deficiencies
- the effectiveness of the committee in carrying out its duties, at least annually.

The audit committee's report to members at the annual meeting must include information about the number of meetings held, a summary of significant activities undertaken, confirmation it is conducting its affairs in accordance with the CUCP Act, and information about any failure of the credit union to implement any significant recommendation previously made by the committee.

Section 28 – Remuneration reported in financial statements (NEW)

For the purpose of s.140(5) of the CUCP Act, the credit union's financial statements must disclose the name, title, salary, bonuses, and benefits paid to the officers or employees of the credit union whose total remuneration for the year is over \$150,000. Only the five highest earners whose total remuneration is over \$150,000 need to be disclosed.

Section 29 – Bond for persons handling money (REVISED)

The \$1 million minimum bond has been raised to \$5 million or the amount of the credit union's assets whichever is less. The increased amount and conditions do not apply until after December 31, 2010.

Section 30 – Bond (NEW)

The bond must provide coverage for dishonesty and to satisfy specific conditions. The insurer is also required to provide the Superintendent and DICO with notice concerning termination or potential termination of coverage after December 31, 2010.

Part VII: Restrictions on Business

Section 31 – Ancillary businesses (REVISED)

Certain permitted activities from the previous CUCP Act have been moved to the regulations.

Part VIII: Investment and Lending

Section 48 – Security interests in credit union property (REVISED)

This provision outlines the requirements under which a credit union may grant a security interest in its property to secure a debt, including any obligations to settle for payment items in accordance with the rules of the Canadian Payments Association.

It also outlines the conditions under which a credit union may create a general security interest in its property.

As a transitional measure, a credit union would be given at least 90 days after the provisions come into force to pay the outstanding balance of non-complying indebtedness and to discharge the security interest or to amend the terms of a non-complying security agreement.

A credit union would not be able to create a security interest in assets used to satisfy the requirements for adequate liquidity.

Sections 49 to 57 – Classes of loans (REVISED)

The requirement for a credit union to obtain a lending licence is repealed. However, the regulation defines classes of loans for the purposes of the lending limits set out in the regulation.

Section 52(2) – Commercial loan (*REVISED*)

A commercial loan includes the supply of funds for use in automated bank machines that are not owned and operated by the credit union.

Section 57 – Loan to an unincorporated association (*NEW*)

The regulation defines an unincorporated association.

Section 58 and 59 – Lending Limits (*REVISED*)

The current lending limits for class 1 and 2 credit unions would remain unchanged, except for the following changes:

- A credit union may lend up to 50 per cent of its regulatory capital to an agency of the Government of Canada, an agency of the government of a province or territory of Canada, or a school board. This limit applies to both class 1 and class 2 credit unions.
- Investments are allowed as eligible investments.

Sections 60 to 62 – Eligible investments (*REVISED*)

Class 1 credit unions can only invest in or hold the types of securities and property listed as eligible investments. Class 2 credit unions are permitted to hold any asset authorized by its investment policies so long as the investment meets the conditions set out in the regulation and is not otherwise prohibited.

The following restrictions apply to both class 1 and class 2 credit unions:

- the total book value of all investments in improved real estate in Canada cannot exceed 100 per cent of the credit union's regulatory capital (formerly 10 per cent of regulatory capital and deposits)
- no investments will be permitted in any commodity, including metals, food, and grain, that trade on a commodity exchange
- a derivative instrument unless purchased for the purpose of managing interest rate risk.

In addition, the total book value of all investments in shares or participating shares cannot exceed 25 per cent of regulatory capital for class 1 credit unions or 70 per cent of regulatory capital for class 2 credit unions.

Section 65 – Restrictions re single investments (*REVISED*)

The limit for a single investment for both class 1 and class 2 credit unions is changed to 25 per cent of regulatory capital.

Section 69 – Restriction on investments in subsidiaries (*REVISED*)

The aggregate limit on investments for both class 1 and class 2 credit unions in subsidiaries in accordance with section 200(7) is changed to 100 per cent of regulatory capital.

Part XI: Meetings

Section 84 – Financial Statements (*REVISED*)

The required disclosures in financial statements to be placed before the members are:

-
- the amount and composition of Tier 1 and Tier 2 capital
 - the percentage of regulatory capital held
 - the amount of each type of asset held for liquidity purposes
 - the amount of outstanding loans in each of the loan classes
 - the amount of impaired loans, the allowance for impairment and the charge for impairment
 - the value of investments in marketable securities that are held to maturity, available for sale and designated as held for trading.

Part XII: Returns, Examinations and Records

Section 85 – Document retention (*REVISED*)

The retention requirements for certain documents from the previous CUCP Act have been moved to the regulation. Also, a credit union may dispose of minutes of committee proceedings that were held more than six years before the disposition.

Part XIV: Deposit Insurance Corporation of Ontario

Section 103 – Deposit insurance limit (*REVISED*)

DICO insures the amount of any deposit held in a registered account under the Income Tax Act, as prescribed. This means that deposits in these registered accounts have unlimited deposit insurance protection.

Part XV: Continuing as or Ceasing to be an Ontario Credit Union (*NEW*)

The CUCP Act permits an entity incorporated under the laws of another jurisdiction in Canada, or under another Ontario Act, to be continued under the Act, and for an Ontario credit union to transfer to another jurisdiction or another Ontario Act.

The regulation sets out documents that need to be provided and conditions that need to be met in order to obtain approval for the continuance.

Part XVI: Consumer Protection

Section 113 – Disclosure re interest rate etc. (*REVISED*)

When there is a change in interest rate or in the manner of calculating interest that applies to a deposit account, the credit union shall disclose the change by the means set out in this section.

Section 116 – Consumer complaints by members or depositors (*NEW*)

A credit union is required to designate an employee or officer responsible for reporting to the credit union's board at least once annually on complaints received from members and depositors and how they were resolved.

A credit union is required to inform its members of the name and contact information of the individual handling complaints. The credit union is also required to respond in writing to all

written complaints and to keep records related to these complaints for six years from the date of the original complaint.

The credit union is required to inform complainants that they may refer their complaint to the Superintendent if they are not satisfied with the proposed solution and if the complaint relates to a contravention of the CUCP Act or its Regulations.

Part XVII: Administrative Penalties

Section 118 – Administrative penalties (NEW)

The Superintendent or DICO can impose an administrative penalty if a person or entity contravened certain requirements. The regulation establishes a fixed-rate administrative penalty of \$100 per day for a class 1 credit union and \$250 per day for a class 2 credit union and when a contravention occurs.

ONTARIO REGULATION 238/09 – COST OF BORROWING AND DISCLOSURES TO BORROWERS

Ontario Regulation 238/09 describes how the cost of borrowing is to be calculated by a credit union and disclosed to a borrower. It also stipulates mandatory disclosure requirements and rules about advertising related to the cost of borrowing. This regulation takes effect on October 1, 2010.