
AUTHORIZED SYNDICATING (LEAD) CREDIT UNIONS IN A LOAN SYNDICATION

This Advisory outlines the limitations set out in the *Credit Unions and Caisses Populaires Act 1994 (the "Act")* and provides guidance on confirming compliance with the provisions of the Act. It also serves as an update to Lending Risk Advisory #2 (Oct 2011) following changes to O. Reg 237/09 on Jan 1, 2018.

Background and Limitations

As outlined in subsection 190 (1) of the Act, a credit union may only lend to its members or by participating in a loan syndication. Following amendments to O. Reg. 237/09, which came into force on Jan 1, 2018, a credit union may now participate in syndicated loans outside Ontario.

The syndicating (lead) credit union to a loan syndication agreement is restricted to prescribed organizations listed in subsection 56 of O. Reg. 237/09, as follows:

Syndicated loans in Ontario

- Credit unions chartered or continued in Ontario
- Leagues chartered in Ontario
- Central 1 Credit Union
- La Fédération des caisses Desjardins du Québec
- La Caisse centrale Desjardins du Québec

Syndicated loans outside Ontario

- Entities incorporated as credit unions in a province or territory of Canada other than Ontario under legislation that is comparable to the Act
- Central 1 Credit Union
- La Fédération des caisses Desjardins du Québec
- La Caisse centrale Desjardins du Québec

Organizations that are not listed above, including without limitation banks within the meaning of Section 2 of the Bank Act (Canada) e.g. TD Bank, Concentra Bank, are not included as prescribed organizations and are not authorized to act as a syndicating (lead) credit union to a syndicated loan within or outside Ontario.

Guidance

Syndicating (lead) credit unions to a loan syndication agreement are limited to organizations as prescribed under legislation. Credit Unions participating in loan syndications should ensure that the syndicating (lead) credit union is a prescribed organization as defined in O. Reg. 237/09 subsection 56.

A review of each credit union's largest five syndicated loans, which are reported to DICO on a monthly basis, has identified instances where the syndicating (lead) credit union is not a prescribed organization. Where a credit union is currently participating in a loan syndication with a non-qualified syndicating (lead) lender, consideration will be given on a case by case basis, to grandfathering such loans for a reasonable period of time, possibly until renewal of a committed term. Please contact your Relationship Manager to discuss plans for achieving compliance.

DICO's examination process will include a review of syndicated loans to confirm that all legislative requirements are met.

Request for Information

Credit unions are requested to review all syndicated loans in their portfolios to determine if they are participating in any loans with a non-qualified syndicating (lead) lender. Please report these loans using the attached template by uploading the information via DICO's website no later than Friday Sep 14, 2018.

Please refer to Appendix 1 regarding supporting legislative authority.

If you have any questions, please contact your Relationship Manager at DICO.

APPENDIX 1

Legislative Authority

The Caisses populaires and Credit Union Act, 1994

Section 1- Definitions

“credit union” means a corporation incorporated or continued as a credit union or caisse populaire under this Act or a predecessor of this Act;

Subsection 190 (1).

190. (1) A credit union shall loan money only,

- (a) to its members; or
- (b) by participating in a syndicated loan. 2016, c. 37, Sched. 5, s. 1.

Ontario Regulation 237/09

Syndicated loan in Ontario

56. A syndicated loan in Ontario is a loan, including any related credit facilities, to which all of the following conditions apply:

1. The loan is made under a syndicated loan agreement.
2. The syndicating credit union is one of the following institutions:
 - i. A credit union.
 - ii. A league.
 - iii. Central 1 Credit Union.
 - iv. Fédération des caisses Desjardins du Québec.
 - v. La Caisse centrale Desjardins du Québec.
3. The only parties to the syndicated loan agreement are the following entities:
 - i. The syndicating credit union.
 - ii. A borrower who is a member of a credit union that is one of the lenders in the syndicated loan.
 - iii. One or more of the following entities:
 - A. Another credit union or its subsidiary or affiliate.
 - B. A league.
 - C. Central 1 Credit Union.
 - D. Fédération des caisses Desjardins du Québec.
 - E. La Caisse centrale Desjardins du Québec.
 - F. A financial institution other than a securities dealer.
 - G. An extra-provincial credit union registered under clause 332 (6) (a) of the Act.
4. Each of the parties to the syndicated loan agreement, other than the borrower, agrees to contribute a specified portion of the loan and to be bound by the terms and conditions of the syndicated loan agreement.
5. The syndicating credit union contributes at least 10 per cent of the loans, including any related credit facilities, and underwrites, disburses and administers them on behalf of the parties to the syndicated loan agreement. O. Reg. 68/17, s. 15.

Syndicated loan outside Ontario

56.1 A syndicated loan outside Ontario is a loan, including any related credit facilities, to which all of the following conditions apply:

1. The loan is made under a syndicated loan agreement.
2. The syndicating credit union is one of the following entities:
 - i. An entity that is incorporated as a credit union in a province or territory of Canada other than Ontario under legislation that is comparable to the Act.
 - ii. Central 1 Credit Union.
 - iii. Fédération des caisses Desjardins du Québec.
 - iv. La Caisse centrale Desjardins du Québec.
3. The parties to the syndicated loan agreement include, but are not limited to, the following entities:
 - i. The syndicating credit union.
 - ii. A borrower from a province or territory of Canada other than Ontario.
 - iii. A credit union or a league.
4. Each of the parties to the syndicated loan agreement, other than the borrower, agrees to contribute a specified portion of the loan and to be bound by the terms and conditions of the syndicated loan agreement.
5. The syndicating credit union contributes at least 10 per cent of the loans, including any related credit facilities, and underwrites, disburses and administers them on behalf of the parties to the syndicated loan agreement. O. Reg. 68/17, s. 15.