



ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

ORDER ISSUED UNDER SECTION 12–a OF THE NEW YORK BANKING LAW

WHEREAS, pursuant to Section 12–a of the Banking Law, the Superintendent of Financial Services (the “Superintendent”) may issue an order authorizing one or more state-chartered banking institutions to exercise a federally permitted power (as such term is used in Section 12–a), subject to such terms and conditions as the Superintendent shall find necessary and appropriate;

WHEREAS, Section 701.23 of the regulations of the National Credit Union Administration (“NCUA”) limits the purchase of loans by a federally chartered credit union to those where the borrower is a member of the purchasing credit union prior to the purchase, but contains certain exceptions to such limitation when the borrower is a non-member of the purchasing credit union as follows:

- (a) A federally chartered credit union is allowed to purchase in whole or in part:
 - From a liquidating credit union, loans where the borrower is an individual member of that liquidating credit union, and
 - From any source, certain student loans and real estate-secured loans if the purchasing credit union is granting such loans on an on-going basis and the loans are purchased to facilitate the packaging of a pool to be sold or pledged on the secondary market by the purchasing credit union; and
- (b) A federally chartered credit union that has received a composite CAMEL rating of 1 or 2 in its last two full examinations and that has been well capitalized for the six immediately preceding quarters, as described in Section 701.23 of the NCUA regulations, is allowed to purchase loans:
 - From a federally insured credit union, provided such loans are:
 - Loans that the purchasing credit union is empowered to grant, or
 - Loans refinanced, with the consent of the borrower, within sixty days of purchase so that they are loans that the purchasing credit union is empowered to grant.
 - From a liquidating credit union without regard to whether such loans are obligations of the liquidating credit union’s members, and
 - From a federally insured credit union, provided such loans are student loans, as defined in Section 701.23(a)(2) of the NCUA regulations, or real estate-secured loans;

WHEREAS Section 483 of the New York Banking Law generally prohibits a New York State-chartered credit union from making or participating in a loan to a non-member, and with one

exception¹ contains no statutory exceptions to the prohibition on making or participating in a loan or part of a loan to a non-member that are analogous to the Federal exceptions listed above;

WHEREAS, subject to a number of conditions and requirements, Section 701.22 of the regulations of the NCUA additionally permits a federally chartered credit union to purchase a participation in a loan to a non-member (where a continuing obligation between the seller and purchaser is contemplated) from a broad range of sources, including any federally chartered or federally insured financial institution or any state or federal government agency and its subdivisions;

WHEREAS, Section 454.35 of the Banking Law authorizes New York State-chartered credit unions to participate in loans only “with other credit unions, credit union organizations, or other banking organizations,” which is a narrower set of entities than that from which a federally chartered credit union may acquire a participation in a loan;

WHEREAS, the legislative history of Section 454.35 indicates that the New York legislature intended to adopt the Federal rules applicable to participations then in effect; and

WHEREAS, the Superintendent finds that the issuance of this order is consistent with the policy of the State of New York as declared in Section 10 of the Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers, and is necessary to achieve or maintain parity between New York-chartered credit unions and federally chartered credit unions, with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions;

NOW, THEREFORE, BE IT ORDERED THAT

Notwithstanding anything in law or regulations to the contrary, pursuant to Section 12–a of the Banking Law, to the extent that a federally chartered credit union would be able to do so:

A. A New York State-chartered credit union may, within the limitations of the written loan purchase policies of its board of directors, purchase loans, in whole or in part, (when the borrower is a non-member of the purchasing credit union and no continuing contractual obligation between the seller and purchaser is contemplated):

1. From a liquidating credit union, if such loans are to individual members of that liquidating credit union;
2. From any source, if such loans are of the following types and are purchased to facilitate the packaging of a pool to be sold or pledged on the secondary market by the purchasing credit union:
 - a) Student loans, as defined in Section 701.23(a)(2) of the NCUA regulations, provided that the purchasing credit union is granting student loans on an ongoing basis.

¹ This exception in Section 454.35 of the Banking Law allows a New York State-chartered credit union to participate in certain loans to non-members provided that such non-members are members of another credit union.

b) Real estate-secured loans, provided that the purchasing credit union is granting on an ongoing basis real estate-secured loans pursuant to Section 701.21 of the regulations of the NCUA, and provided further such purchase will facilitate the purchasing credit union's packaging a pool of such loans to be sold or pledged on the secondary mortgage market and that each pool must include a substantial portion of loans to the credit union's members' loans and must be sold promptly.

- B.** A New York State-chartered credit union that has received a composite CAMEL rating of 1 or 2 in its last two full examinations and that has been well capitalized for the six immediately preceding quarters, as described in Section 701.23 of the NCUA regulations, may (when the borrower is a non-member of the purchasing credit union and no continuing contractual obligation between the seller and the purchaser is contemplated) purchase loans:
1. From a federally insured credit union, provided such loans are:
 - a) Loans that the purchasing credit union is empowered to grant, or
 - b) Loans refinanced, with the consent of the borrower, within sixty days of purchase so that they are loans that the purchasing credit union is empowered to grant.
 2. From a liquidating credit union without regard to whether such loans are obligations of the liquidating credit union's members, and
 3. From a federally insured credit union, provided such loans are student loans, as defined in Section 701.23, or real estate-secured loans.
- C.** A New York State-chartered credit union may purchase a participation in a loan (when the borrower is a non-member of the purchasing credit union and a continuing contractual obligation between the seller and purchaser is contemplated) from an eligible organization, as defined in Section 701.22(a) of the NCUA regulations, including any state or federal government agency and its subdivisions, provided that such purchase is in compliance with the requirements of Section 701.22 of the NCUA regulations.
- D.** A New York State-chartered credit union may sell a participation in a loan (when a continuing contractual obligation between the seller and purchaser is contemplated) to such an eligible organization, provided that such sale is in compliance with the requirements of Section 701.22 of the NCUA regulations.



Linda A. Lacewell

Superintendent of Financial Services

Dated: April 14, 2020