

Chapter S-L 9

PROHIBITED LOANS

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S-L 9.01 Statement of policy. (1) Except for loans that are specifically permitted to be made to association personnel and can be considered a reasonable fringe benefit of employment, the public interest is not best served when savings and loan funds that might otherwise be available for loans to the general public are used to benefit association insiders.

(2) The commissioner recognizes that it is virtually impossible to anticipate all situations in which the best interests of association insiders might conflict with those of the general public or might adversely affect the soundness of the association's loan underwriting. However, it is the purpose of this chapter and s. 215.21 (17) of the statutes to identify transactions likely to result in such situations and to prohibit them outright or require specific action on the part of the association's board of directors before they are permitted to occur. Each association is expected to remain alert to other situations that may affect the soundness or objectivity of its lending program, and to make a reasonable effort to avoid them.

(3) Insured associations are also subject to federal insurance regulations pertaining to insider loans. This chapter should be read in connection with those regulations.

Note: This introductory statement of policy is included only for the purpose of putting the chapter into perspective and giving readers a better understanding of its "spirit".

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78.

S-L 9.02 Definitions. In this chapter and s. 215.21 (17) (b) of the statutes:

(1) "Association" means a savings and loan association chartered by this state.

(2) "Business venture" means any partnership, joint venture, corporation or similar entity, but does not include any non-profit, religious, charitable or fraternal organization or a corporation in which the association has been authorized to invest by the commissioner.

(3) "Commissioner" means the commissioner of savings and loan or his or her authorized representative.

(4) "Director" means a person who is a member of a board of directors, but does not include a nonvoting advisory director or director emeritus.

Note: Nonvoting advisory directors and nonvoting directors emeritus are deliberately excluded from the definition of a director. However, advisory directors and directors emeritus are subject to this chapter if they exercise discretion in granting loans or determining the

conditions under which individual loans are made, in which case they fall within the definition of "employee" found in subsection (5) below.

(5) "Employee" means a person who is employed by an association and is directly involved in approving loans made by the association or determining the terms or conditions under which any specific loan is made.

Note: Clerical personnel and other persons who are employed by an association but are not in a position to exercise discretion in approving applications or determining the terms or conditions to which a particular loan is subject are deliberately excluded from this narrow definition.

(6) "Legal dependent" means a person treated as a dependent for federal income tax purposes.

(7) "Officer" means a president, vice president or secretary, but does not include any assistant officer.

Note: This definition is deliberately narrow. Assistant officers and other association officers excluded from this definition are subject to this chapter only if they exercise discretion in granting loans or determining the conditions under which individual loans are made, in which case they would fall within the definition of "employee" found in subsection (5) above.

(8) "Reportable interest" means an interest that is required to be disclosed under section S-L 9.04 (2) (a) of this chapter.

(9) "Statutes" mean the Wisconsin statutes.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78.

S-L 9.03 Restrictions on loans to business ventures in which association personnel or members of their immediate family have an interest. (1) **BUSINESS VENTURES IN WHICH THERE IS A REPORTABLE INTEREST.** An association may make a loan to a business venture in which an officer, director or employe of the association, or the spouse or legal dependent of such an officer, director or employe, has a reportable interest only if:

(a) The aggregate of the loan and the outstanding balance of all of the association's existing loans to that business venture will not exceed \$25,000;

(b) The officer, director or employe who has the reportable interest or whose spouse or legal dependent has the reportable interest does not in any way participate in approving the loan or determining the specific terms or conditions under which it is made; and

(c) The loan is brought before the association's board of directors for individual consideration, and is approved by a resolution of the board before the association is in any way committed to make the loan.

(2) **BUSINESS VENTURES EMPLOYING ASSOCIATION PERSONNEL.** (a) An association may make a loan to a business venture employing an officer, director or employe of the association, or the spouse or legal dependent of such an officer, director or employe, without further approval from the commissioner only if:

1. The officer, director or employe of the association who is employed by the business venture or whose spouse or legal dependent is employed by the business venture does not in any way participate in approving the loan or determining the specific terms or conditions under which it is made; and

2. The loan is brought before the association's board of directors for individual consideration, and is approved by a resolution of the board before the association is in any way committed to make the loan.

(b) For purposes of this subsection, any person who receives compensation from a business venture for services rendered as an officer, director or salaried employe of that venture is deemed to be employed by that business venture.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78.

S-L 9.04 Reports on interests and involvements in business ventures. (1) **REPORTING REQUIREMENTS.** At least once each year the board of directors of each association shall obtain from each of the association's officers, directors and employes a sworn statement containing the information required under subsection (2). Each officer, each director, and each employe of an association shall provide the association with such a statement and shall disclose any new reportable interest to the board within one month after its acquisition.

(2) **INTERESTS TO BE DISCLOSED.** The report shall identify the following interests or positions currently held by the officer, director or employe or his or her spouse or legal dependent:

(a) Every interest of \$10,000 or more in the debt or equity of a business venture, excluding:

1. Any interest in a corporation traded on a recognized stock exchange.

2. Any limited partnership interest representing a share of 5% or less.

Note: Two common forms of investment that are not considered likely to have any significant influence on the action of association personnel are specifically excluded from treatment as a "reportable interest", regardless of the value of the holding.

(b) Every position as an officer, director or salaried employe of a business venture.

(3) **VALUATION OF REPORTABLE INTERESTS.** For purposes of determining whether an interest is reportable under this section:

(a) The value of unlisted securities traded in the over-the-counter market is the average of the bid and asked price.

(b) The value of securities for which no market information is readily available is:

1. In the case of common stock or equivalent securities, net worth divided by the number of outstanding voting shares times the number of shares held.

2. In the case of preferred stock, redemption price, or par or stated value if not redeemable.

3. In the case of debt securities, the unpaid balance.

4. In the case of an interest in the capital of a partnership, the net worth of the partnership times the percentage of interest held.

(4) **NATURE OF DISCLOSURE.** Reports required under this section need only disclose the existence of any reportable interest, and need not disclose its specific value.

Note: The disclosure requirements of this section are patterned after (but somewhat less comprehensive than) the disclosures that the state ethics board requires of public officials.

History: Cr. Register, November, 1978, No. 275, eff. 12-1-78.