



## *Department of Banking and Finance*

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### **DECLARATORY ORDER**

**TO:** All State-Chartered Credit Unions November 7, 2016

**RE:** In order to provide parity with federal credit unions, split dollar life insurance plans offered by state-chartered credit unions as part of an employee benefit program to recruit and retain officers are not subject to the preferential loan restriction in O.C.G.A. § 7-1-658(c).

The Department of Banking and Finance (“Department”) has received a written request from an industry group representing the interests of credit unions as well as a state-chartered credit union for the issuance of a parity order related to split dollar life insurance plans<sup>1</sup> offered as part of an employee benefit program to recruit and retain senior management employees. The ultimate issue is whether Georgia state-chartered credit unions may use such plans, which involve a loan from the credit union to the employee, notwithstanding the preferential loan restriction in O.C.G.A. § 7-1-658(c). As set forth in more detail below, in light of the fact the National Credit Union Administration (“NCUA”) has authorized federal credit unions to use such plans, the Commissioner declares that the use of split dollar life insurance plans for officers is not subject to the state law preferential loan restriction in O.C.G.A. § 7-1-658(c). However, the use of such plans is governed by all other applicable laws and rules as well as the terms of this Order.

The Commissioner is expressly authorized to enter parity orders pursuant to O.C.G.A. § 7-1-61.1, which provides in pertinent part that:

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<sup>1</sup> For purposes of this Declaratory Order, the term split dollar life insurance plan refers solely to the type of plan commonly known as an employee-owned or collateral assignment split dollar life insurance plan where the employee owns the life insurance policy and the employer provides the premium payment as a loan(s) below market rate to the employee. Under these plans, the employee collaterally assigns a portion of the policy to the employer for repayment of the premium, thereby creating a security interest for the employer in the policy.

- (a) For purposes of this Code section, the term “power” means any banking or corporate power, right, benefit, privilege, or immunity of a financial institution, the deposits of which are federally insured, as set forth in any federal statute or any regulation, ruling, circular, bulletin, order, or interpretation issued by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, or Federal Reserve System.
- (b) To provide parity with financial institutions whose deposits are federally insured, the commissioner may, by specific order directed to an individual bank or credit union or category of banks or credit unions, grant any power conferred upon a financial institution, subject to the supervision of the federal government, to:
  - (1) state chartered banks and credit unions to enable such banks and credit unions to compete; ...
- (c) No order provided for in subsection (b) of this Code section shall be issued unless the commissioner determines that such activity will not present undue safety and soundness risks to the banks or credit unions involved. In making such determination, the commissioner shall consider the financial condition and regulatory safety and soundness ratings of the banks or credit unions affected and the ability of management to administer and supervise the activity...

Therefore, in reviewing the request that the Commissioner exercise his parity power under O.C.G.A. § 7-1-61.1, the Commissioner must consider the permissible scope of activity for other federally insured financial institutions.

Pursuant to 12 C.F.R. 701.21(d)(5), federal credit unions are authorized to make loans to officials, provided that the “rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by an official... shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members.” Federal law defines a credit union “official” as “any member of the board of directors, credit committee or supervisory committee.” 12 C.F.R. § 701.21(d)(2)

On January 19, 2007, the NCUA issued an opinion letter finding that split dollar life insurance plans are not prohibited by 12 C.F.R. § 701.21(d)(5). The NCUA based its determination, in part, on the fact that the federal preferential loan restriction does not apply to employees as the federal rule is only intended to prevent a federal credit union from making preferential loans to compensate volunteer board and committee officials who are precluded from being compensated. The NCUA also concluded that “loans that are part of an executive compensation program are not ‘comparable’ loans available to members.” In support of this determination, the NCUA noted that split dollar life insurance plans are a “valuable tool for funding employee benefit plans used to attract and retain senior managers and employees.”

Quite simply, the NCUA has determined that the federal preferential loan prohibition does not apply to split dollar life insurance plans.

Unlike the federal preferential loan rule, which is limited to “any member of the board of directors, credit committee or supervisory committee,” Georgia law contains a broader preferential loan restriction which also applies to officers of state-chartered credit unions. Specifically, O.C.G.A. § 7-1-658(c) provides in pertinent part that “[l]oans may be made to *officers*, directors, and committee members of the credit union under the same general terms and conditions as to other members of the credit union.” (Emphasis added). Thus, the use of a split dollar life insurance plan involving a loan to an officer of a Georgia state-chartered credit union may be in violation of O.C.G.A. § 7-1-658(c). Since federally-chartered credit unions are authorized to use split dollar life insurance plans to recruit and retain senior managers and employees, then Georgia state-chartered credit unions, if not permitted to use such plans, would be at a competitive disadvantage in their efforts to recruit and retain officers.

In light of the above, pursuant to the authority conveyed by the General Assembly under O.C.G.A. § 7-1-61(b), the Commissioner modifies the authority of state-chartered credit unions to make loans to their officers under O.C.G.A. § 7-1-658(c) to expressly permit the use of split dollar life insurance plans as part of an employee benefit program for the purpose of recruiting and retaining officers. However, the use of split dollar life insurance plans by a state-chartered credit union as permitted by this Order must be consistent with the safety and soundness of the credit union. Therefore, the use of such plans for all employees, including, but not limited to, officers, shall be subject to the limitations and expectations set forth in the Interagency Statement on the Purchase and Risk Management of Life Insurance OCC 2004-56 (“Interagency Statement”)<sup>2</sup> dated December 7, 2004, which was jointly issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, as well as the Department’s Statement of Policies.<sup>3</sup> Prior to investing in split dollar life insurance plans, a financial institution must have in place a prudent risk management process which includes: 1) effective senior management and board oversight; 2) comprehensive policies and procedures, including appropriate limits; 3) a thorough pre-purchase analysis of split dollar life insurance products; and 4) an effective ongoing system of risk assessment, management, monitoring, and internal control processes, including appropriate internal audit and compliance frameworks. As it relates to the requirement of an appropriate investment limit, the Interagency Statement expressly provides that “it is generally not prudent for an institution to hold [life insurance] with an aggregate [cash surrender value] that exceeds 25 percent of the institution’s capital.” An institution holding life insurance that approaches or exceeds the 25 percent capital concentration threshold will be more closely scrutinized by the Department and, if the risk management policies and controls are in any way deficient, the institution will be required to take corrective action, which may include disgorgement.

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<sup>2</sup> The Interagency Statement may be found at <https://occ.gov/news-issuances/bulletins/2004/bulletin-2004-56a.pdf>.

<sup>3</sup> The Department’s Statement of Policies expressly provides that “[w]hile written in terms of banking institutions, policies contained herein are applicable to … credit unions unless clearly inapplicable by statute, regulation, or other policy statements issued specifically in those areas.”

Notwithstanding the express language of O.C.G.A. § 7-1-658(c), this determination permits Georgia state-chartered credit unions to use split dollar life insurance plans as part of an employee benefit plan to recruit and retain officers in order to ensure parity with federal credit unions operating in the State of Georgia subject to all other applicable laws and rules. Further, should any federal law or regulation be enacted or amended that imposes new limitations on the use of such plans for employees, Georgia state-chartered credit unions will be subject to those provisions to which federal credit unions are subject, in addition to the restrictions set forth in this Order and any future rules and regulations which the Department may promulgate.

SO ORDERED THIS 7TH DAY OF NOVEMBER, 2016.



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KEVIN B. HAGLER  
Commissioner