

## **Kansas Economic Recovery Loan Deposit Program; Credit Unions, Field of Membership; Privilege Tax, Deductions; SB 15**

**SB 15** establishes the Kansas Economic Recovery Loan Deposit Program (Program); amends law governing linked deposit programs and related investment procedures; amends field-of-membership requirements placed on state-chartered credit unions to increase the permissible geographic area for a credit union's field of membership; and permits national banking associations, state banks, trust companies, and savings and loan associations, for all taxable years commencing after December 31, 2022, to deduct from net income the net interest income received from qualified agricultural real estate loans and the net interest income received from single-family residence loans to the extent such interest is included in the Kansas taxable income of a corporation.

### ***Kansas Economic Recovery Loan Deposit Program (New Sections 1-7; Section 9)***

#### *Program Citation; Definitions (New Sections 1-2)*

The bill designates sections 1 through 7 of the bill as the Kansas Economic Recovery Loan Deposit Program and further provides the Program shall be part of and supplemental to Article 42, Chapter 75 of the *Kansas Statutes Annotated* (Article 42 pertains to state moneys including the investment of state moneys, activities of the Pooled Money Investment Board, and the administration of certain loan deposit programs).

#### *Definitions (New Section 2)*

The bill defines terms, including the following:

- “Economic recovery loan deposit” means an investment account placed by the Director of Investments under the provisions of statutes pertaining to investment of state moneys with an eligible lending institution for the purpose of carrying out the intent of the Program;
- “Economic recovery loan deposit loan” or “loan” means a loan made by an eligible lending institution to an eligible borrower from the eligible lending institution's economic recovery loan deposit as part of the Program;
- “Economic recovery loan deposit program” or “program” means a state-administered program in which eligible lenders are charged less than the market rate of interest and eligible borrowers receive a reduction in interest charged on a loan in the amount of the deposit;
- “Eligible borrower” means any individual or entity operating a business primarily for commercial or agricultural purposes with no more than 200 full-time employees maintaining offices or operating facilities and transacting business in the state of Kansas and is not an individual obtaining a loan primarily for personal, family, or household purposes; and

- “Eligible lending institution” means a financial institution that is:
  - A bank, as defined in KSA 75-4201, that agrees to participate in the Program and is eligible to be a depository of state funds;
  - A credit union, as defined in the State Credit Union Code, that agrees to participate in the Program and provides securities acceptable to the Pooled Money Investment Board (PMIB) pursuant to statutes pertaining to investment of state moneys; or
  - An institution of the Farm Credit System organized under the federal Farm Credit Act of 1971, as amended, having at least one branch in the state of Kansas that agrees to participate in the Program and provides securities acceptable to the PMIB pursuant to statutes pertaining to investment of state moneys.

The bill also defines the terms “director of investments” and “economic recovery loan deposit loan package.”

### ***Program Administration and Purpose (New Section 3)***

The bill authorizes the State Treasurer to administer the Program and states the Program shall be for the purpose of providing incentives for the making of business loans. The bill further specifies the total aggregate amount of loans made under the Program must not exceed \$60.0 million of unencumbered funds pursuant to statutes pertaining to investment of state moneys.

### ***Rules and Regulations***

The bill requires the State Treasurer to adopt all rules and regulations necessary to enact and administer the provisions of the Program. Such rules and regulations must be adopted no later than February 1, 2022.

### ***Annual Report; Legislative Review***

The bill requires the State Treasurer to submit an annual report to the Legislature and the Governor identifying the eligible lending institutions participating in the Program and the eligible borrowers who have received an economic recovery loan deposit loan. The bill also requires the annual report to provide the aggregate amount of moneys loaned and the amount of moneys still available for loan, if any. The report will be due on or before January 1, 2023, and each January 1 thereafter. The bill requires the Legislature perform a review of the Program as part of the State Treasurer’s annual report on or after January 1, 2024.

### ***Program Loan Package Requirements and Loan Information (New Section 4)***

The bill authorizes the State Treasurer to disseminate information and provide economic recovery loan deposit loan packages (loan packages) to the eligible lending institutions.

### *Eligible Borrowers, Applications, Loan Limitations*

The bill provides the following requirements and other criteria for participation in the Program:

- The loan package must be completed by the eligible borrower before being forwarded to the lending institution for consideration;
- An eligible lending institution that agrees to receive an economic recovery loan deposit must accept and review applications for loans from eligible borrowers;
- The lending institution must apply all usual lending standards to determine the credit worthiness of eligible borrowers;
- No single economic recovery loan deposit loan can exceed \$250,000;
- Only one economic recovery loan deposit loan can be made and be outstanding at any one time to any eligible borrower; and
- No loan may be amortized for a period of more than ten years.

### *Certification and Loan Approval*

The bill requires an eligible borrower to certify on the loan application that the reduced rate loan will be used exclusively for the expenses involved in operating the borrower's business in Kansas. The eligible lending institution will be permitted to approve or reject a loan package based on the institution's evaluation of the eligible borrowers included in the package, the amount of the individual loan in the package, and other appropriate considerations. The eligible lending institution is required to forward to the State Treasurer an approved loan package in the prescribed form and manner. The bill requires the package to include a certification by the applicant that such applicant is an eligible borrower.

### ***Evaluation of the Economic Recovery Loan Deposit Loan Package; Interest and Market Rates; Loan Agreement (New Section 5)***

The bill permits the State Treasurer to either accept or reject the loan package based on the State Treasurer's evaluation of whether the loan meets the Program requirements. The bill would further provide, if sufficient funds are not available for a loan deposit, then the applications may be considered in the order received when funds are once again available, subject to a review by the lending institution.

Upon acceptance of a loan package, the State Treasurer will be required to certify to the Director of Investments (Director) the required amount for the package and the Director will be required to place an economic recovery loan deposit in the amount certified with the eligible lending institution at an interest rate that is 2.0 percent below the market rate provided in KSA 75-4237 (a floating rate). The bill requires such rate to be recalculated on the first business day of January each year using the market rate then in effect. The bill further specifies the minimum

interest rate (or floor) would be 0.25 percent if the market rate is below 2.25 percent. The bill permits the State Treasurer to request the Director place an economic recovery loan deposit with the eligible lending institution prior to acceptance of a loan package when necessary.

An eligible lending institution is required to enter into an economic recovery loan deposit agreement with the State Treasurer. Such agreement will include requirements necessary to implement the purposes of the Program. The bill specifies requirements must include an agreement by the eligible lending institution to lend an amount equal to the loan deposit to eligible borrowers at an interest rate that is not more than 3.0 percent greater than the interest rate made available to the lending institution (effectively capping the interest rate spread at 3.0 percent). The borrower's rate must be recalculated on an annual basis. The bill provides the loan agreement will include provisions for the loan deposit to be placed for a time not to exceed a period of ten years and that is considered appropriate in coordination with the underlying loan. The bill also requires the agreement to include provisions for the reduction of the loan deposit in an amount equal to any payment of loan principal by the eligible borrower.

#### ***Funding of the Loan by the Lending Institution (New Section 6)***

The bill requires, upon placement of a loan deposit with an eligible lending institution, the institution to fund the loan to each approved eligible borrower listed in the loan package in accordance with the agreement between the institution and the State Treasurer. The bill requires the loan to be at the rate established in the agreement and established pursuant to requirements of this bill.

#### ***Liability for Default or Delay in Payments (New Section 7)***

The bill states the State and the State Treasurer shall not be liable to any eligible lending institution in any manner for payment of the principal or interest on any economic recovery loan deposit loan to an eligible borrower. The bill also states any delay in payments or default on the part of the eligible borrower does not in any manner affect the economic recovery loan deposit agreement between the eligible lending institution and the State Treasurer.

#### ***Amendments to Linked Deposit Loan Program Law (Section 9)***

The bill amends law governing the investment of state moneys, which also includes previously authorized linked deposit programs, to add those loan deposits made under the Program and applicable interest rates established by the bill.

#### ***Field of Membership—Credit Unions (Section 8)***

The bill also amends geographic area criteria associated with defining field of membership for state-chartered credit unions in the State Credit Union Code (Code). Continuing law requires credit union members to be linked by one of three fields of membership: geographic area, occupation, or association.

Under current law, a geographic area is permitted to include a single political jurisdiction or multiple contiguous political jurisdictions, until the aggregate total of the population of the

geographic area reaches 500,000. The law further provides, however, if the headquarters of the credit union is located within a metropolitan statistical area (MSA) of more than one county, a different maximum population limit would apply. That limit is determined by a formula:

Multiply the population of the most populous MSA within Kansas (*i.e.*, the population of the Kansas City MSA counties within Kansas) by the fraction having 1.0 million as the numerator and 750,000 as the denominator. [*Note*: Current population numbers are those of the adjusted federal census information presented to the Legislature by the Secretary of State.]

The bill permits a single political jurisdiction (continuing law) but modifies other criteria to:

- Increase the permitted maximum for multiple contiguous political jurisdictions for an aggregate of the total population from 500,000 to 2.5 million, as determined by official state population figures, or any portion thereof, which are identical to the decennial census data from the enumeration conducted by the U.S. Census Bureau (language attributable to the Census data is located in the definition of “population data” in the current field-of-membership requirements); and
- Remove language that separately applied to credit unions with headquarters located within an MSA of more than one county (allowed for a different maximum population limit).

The bill also modifies a requirement that provides, from and after July 1, 2008, no geographic area shall consist of any congressional district or the entire state of Kansas to instead state no geographic area shall consist of the entire state of Kansas.

The bill removes definitions within the Code for “MSA,” “population data,” and “overt act.” Some of the requirements within the definitions had been specific to operations of credit unions, including branch locations, construction of new buildings, and membership of occupation or association groups on or before either February 1, 2008, or June 30, 2008.

### ***Kansas Financial Institutions Privilege Tax—Definitions (Section 10)***

The bill permits a deduction from net income, beginning in tax year 2023, for financial institutions subject to the Kansas Financial Institutions Privilege Tax (privilege tax) equal to the net interest income received from qualified agricultural real estate and single family residence loans attributable to Kansas to the extent such interest is included in the Kansas taxable income. The bill creates definitions for the terms “interest,” “qualified agricultural real estate,” and “single family residence” and also creates a calculation methodology for “net interest income received from qualified agricultural real estate loans” and for “net interest income from single family residence loans” as follows:

- “Interest” means interest on indebtedness attributed to Kansas and incurred in the ordinary course of the active conduct of any business and interest on indebtedness incurred that is secured by a single family residence;

- “Qualified agricultural real estate loans” means loans made on real property that is substantially used for the production of one of more agricultural products and that:
  - Have maturities of not less than 5 years and not more than 40 years;
  - Are secured by a first lien interest in real estate, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property; and
  - Have an outstanding loan balance when made that is less than 85 percent of the appraised value of the real estate, except that a loan for which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate to the extent the loan amount in excess of 85 percent is covered by such insurance;
  
- “Net interest income received from qualified agricultural real estate loans attributed to Kansas” means the product of the ratio of the interest income earned on qualified agricultural real estate loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company, or savings and loan association without regard to this deduction;
  
- “Net interest income received from single family residence loans attributed to Kansas” means the product of the ratio of the interest income earned on single family residence loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company, or savings and loan association without regard to this deduction; and
  
- “Single family residence” means a residence that is:
  - The principal residence of its occupant;
  - Located in Kansas in a rural area, as defined by the U.S. Department of Agriculture, that is not within an MSA and has a population of 2,500 or less as determined by the most recent census for which data is available; and
  - Purchased or improved with the proceeds of the loan.