

## **INITIAL STATEMENT OF REASONS FOR AMENDMENTS TO REGULATIONS**

The Commissioner of the Department of Business Oversight (Department) licenses and regulates state-chartered credit unions and foreign (other state) credit unions conducting business in California under the California Credit Union Law (Credit Union Law). Pursuant to Section 14201 of the Credit Union Law, the Department has promulgated rules in subchapter 30 in the California Code of Regulations, title 10, chapter 1.

### **PROBLEM STATEMENT**

Pursuant to Financial Code section 16000 *et seq.*, the Department regulates credit unions chartered by other states (foreign (other state) credit unions) but that are conducting credit union business within California. The Department has found that the regulations listed below do not reflect the statutory amendments made to state and federal law. For example, in 2000, many provisions related to out-of-state credit unions were repealed in 2000 and contemporaneously, the Foreign (Other State) Credit Union Law (Financial Code section 16000 *et seq.*) was enacted. However, since then, the regulations related to foreign (other state) credit unions were not updated to reflect the changes in the references or in the statutory requirements.

Additionally, the current regulations do not account for the ways that the Department can gather information now, as a result of modernization of communication. Also, under current regulations, credit unions are authorized to invest in certain types of investment without requiring additional approval from the Department. However, the authorized list of investments does not reflect the types of investments in which the credit unions are investing. As a result, the credit unions must first seek Department approval to make those investments.

### **STATEMENT OF BENEFITS**

The anticipated benefits of the proposed amendments to the regulations include: updating regulations to reflect updates to respective statutes so that credit unions better understand where to find the referenced statutes and to ensure that the regulations reflect the most recent amendments to state and federal law; updating the regulations to reflect how information can be sent to the Department and how the Department can obtain required information; and allowing credit unions greater flexibility in their choice of investments while still ensuring that they are making safe and sound decisions.

### **SPECIFIC PURPOSE OF EACH PROPOSED REVISION**

To address the problems stated above, and for the reasons specified below, the Department requests approval of the proposed revisions to the following regulations:

#### **Section 30.101.5**

This section has been deleted in its entirety. Subdivision (a) prohibited a credit union from stating that it or any of its officers or agents were bonded to, supervised by, regulated by,

licensed by, audited by, or examined by the State of California or any of its agencies. If a credit union explains its relationship to the Department in a manner that is not misleading (e.g., that the Department endorses this particular credit union), however, there is no consumer protection reason to prohibit a credit union from disclosing such relationship. Therefore, removing this subdivision is necessary to repeal an outdated and useless advertising prohibition.

Subdivision (b) required a foreign (other state) credit union to identify the state where the credit union is organized in connection with the use of its name in California. However, the Department understands that this is over-burdensome and unnecessary, as Financial Code section 16009 already requires a foreign (other state) credit union to post the state in which it was organized or chartered in its office. Because this is duplicative of a statutory requirement, it should be repealed.

### **Section 30.200, heading**

This subdivision has been amended to change the term “out of state credit union” to “foreign (other state) credit union” to be consistent with the revisions made to the Credit Union Law in 2000, in which Financial Code section 14157, which discussed the application requirements for “out of state credit unions,” was repealed and, contemporaneously, the Foreign (Other State) Credit Union Law (Financial Code section 16000 *et seq.*) was enacted.<sup>1</sup>

### **Section 30.200, subdivision (a)**

This subdivision has been amended to change the term “out-of-state credit union” to “foreign (other state) credit union” to be consistent with the revisions made to the Credit Union Law in 2000, as discussed above.<sup>2</sup>

This subdivision has been amended to delete the phrase “become a credit union organized and operating” and replace it with “operate” because this subdivision applies to foreign (other state) credit unions, which are not organized in California.

This subdivision has been amended to delete the reference to Financial Code section 14157, which was repealed in 2000 and contemporaneously, the Foreign (Other State) Credit Union Law (Financial Code section 16000 *et seq.*) was enacted.<sup>3</sup>

This subdivision has been amended to remove the requirement that an application be filed on a specific form and filed in the Department’s Los Angeles Office and to allow the application to be filed in any of the Department’s offices. Technological advances have significantly changed the Department’s information-gathering and information-sharing methods. For example, in 2000, the National Credit Union Association (NCUA) created the PC 5300 automated system,<sup>4</sup> which allowed credit unions to submit their call reports electronically rather than mailing paper copies. The PC 5300 automated system is now a

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<sup>1</sup> Stats. 2000, ch. 612.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 67 Fed.Reg. 12460 (March 19, 2002).

web-based solution called “CU Online.”<sup>5</sup> It allows the Department to retrieve information electronically that previously was only available from the applicant credit union in paper form. Because this information can be accessed and provided electronically, there is no reason to require a paper application. Additionally, any of the Department’s statewide offices can accept these applications, as they can easily be shared electronically between staff in other offices.

This subdivision has been amended to add a requirement for a foreign (other state) credit union that is applying for approval to show how it satisfies the factors set forth in section 16022 of the Financial Code in a cover letter, because the Department must consider this information when determining whether to grant the application of the foreign (other state) credit union for approval to establish a California branch office. The credit union is the party most able to provide this information to the Department.

### **Section 30.200, subdivision (b)**

Subdivision (b)(2) has been deleted. That section required foreign (other state) credit unions to provide the Commissioner a schedule of interest rates that they would charge California residents, a statement that they understand the provisions of Financial Code section 14157, subdivision (a)(3), and a copy of the law that establishes maximum interest rates under which the foreign (other state) credit union operates. The requirement to provide a schedule of interest rates was based on Financial Code section 14157, subdivision (a)(3). That subdivision provided that foreign (other state) credit unions applying to operate in California could not charge a higher interest rate on loans to members residing in California than permitted by their home state. Financial Code section 14157 was repealed in 2000<sup>6</sup> and not replaced; as such, there is no need to provide this information.

As a result of that deletion, subdivisions (b)(3) through (b)(5) have been renumbered to be subdivisions (b)(2) through (b)(4).

Subdivision (b)(4), as renumbered, has been amended to only require the most recent examination from the home-state supervisor and share insurer, rather than requiring the credit union to provide a letter from the home-state supervisor indicating that the credit union is in good standing. Obtaining this information would allow the Department to independently determine whether the credit union is in good standing, rather than relying on a letter stating that it is in good standing, and to determine whether the foreign (other state) credit union satisfies the factors in Financial Code section 16022. Specifically, Financial Code section 16022, subdivision (a), requires the Department to evaluate the credit union’s directors and officers; its financial history and condition; its management; the likelihood that the credit union will comply with laws, regulations and orders; the convenience to its members; if it will operate successfully in California; and if more than 50 percent of its members are or will be California residents.

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<sup>5</sup> [www.cuonline.ncua.gov/](http://www.cuonline.ncua.gov/).

<sup>6</sup> Stats. 2000, ch. 612.

Subdivision (b)(6) has been deleted. That subdivision requires foreign (other state) credit unions that operate in a fiscal year different from the calendar year, to provide a statement indicating the period covered by the credit union's last fiscal year. Financial Code section 14157, subdivision (a)(6), which was repealed in 2000, required foreign (other state) credit unions to submit an annual audit report. Foreign (other state) credit unions that applied to operate in California would not have yet submitted an audit report until after their first year of operation. Their fiscal year would therefore not have been known at the time of their application. The fiscal year provided the Department a point of reference upon which to evaluate the annual audit report and determine a foreign (other state) credit union's strength. Financial Code section 16022, which replaced Financial Code section 14157, does not require foreign (other state) credit unions to submit an annual audit report and therefore the fiscal year is no longer needed.

As a result of the above deletions, subdivisions (b)(7) through (b)(9) have been renumbered as subdivisions (b)(5) through (b)(7).

Subdivision (b)(10), which requires foreign (other state) credit unions to submit a copy of their articles of incorporation, has been deleted. This requirement is no longer necessary because the fact of a foreign (other state) credit union's incorporation is evidenced by the certificate of authorization issued by its home-state regulator, which is one of the documents that the applicant credit union must provide pursuant to subdivision (b)(1) of this section.

Subdivision (b)(11), which requires foreign (other state) credit unions to submit a copy of their bylaws, has been deleted. This requirement is not necessary because the Department defers to the home-state regulator's review of the foreign (other state) credit union's bylaws.

As a result of the above deletions, subdivision (b)(12) has been renumbered as subdivision (b)(8).

Subdivision (b)(13), which requires foreign (other state) credit unions to submit a completed Customer Authorization of Disclosure of Financial Records, which gave the Department authority to access the financial records of the foreign (other state) credit union, has been deleted. This requirement is no longer necessary because the Department has the authority to access the books, records, and accounts of a foreign (other state) credit union pursuant to Financial Code section 16150, enacted in 2000.

Subdivision (b)(14) has been deleted. This section referenced the language requirements related to a foreign (other state) credit union's name. This section referenced "Section 30.101(b)" but, because Section 30.101, subdivision (b) does not have any language requirements related to naming, it appears that it was an erroneous reference that should have read "Section 30.101.5(b)." As explained above, the Department has deleted Section 30.101.5, subdivision (b) in these proposed amendments. As such, subdivision (b)(14) is no longer required.

Subdivision (b)(15), which requires foreign (other state) credit unions to submit a copy of a resolution of the board of directors agreeing to keep the Department informed of the

location of the credit union's books, records, safes, and vaults, has been deleted. This is no longer necessary because Financial Code section 16154 already requires foreign (other state) credit unions to preserve their books and records as the Department may require by order or regulation.

As a result of the above deletions, subdivision (b)(16) has been renumbered as subdivision (b)(9).

Subdivision (b)(16)(A), which requires foreign (other state) credit unions to submit a resolution of the board to submit annual reports to the Department, has been deleted. This requirement is no longer necessary because Financial Code section 16152 requires foreign (other state) credit unions to provide audit or examination reports to the Department within 10 days of their receipt and these reports contain the same relevant information that the Department reviewed from annual reports.

As a result of the above deletion of subdivision (b)(16)(A), subdivision (b)(16)(B) has been renumbered as subdivision (b)(9)(A). Additionally, the reference to section 14353 of the Credit Union Law has been amended to refer to Financial Code section 16006. Financial Code section 14353 requires state credit unions to pay an annual assessment. Financial Code section 16006, enacted in 2000, provides the fees that shall be paid by foreign (other state) credit unions, which is the applicable statutory reference for this regulation.

As a result of the above deletions and renumbering, subdivision (b)(16)(C) has been renumbered as (b)(9)(B). Additionally, the reference to section 14351 of the Credit Union Law has been amended to refer to Financial Code section 16006. Financial Code section 14351 provides the formula for state credit unions to use to calculate the annual assessment. Financial Code section 16006, enacted in 2000, provides the fees that shall be paid by foreign (other state) credit unions, which is the applicable statutory reference for this regulation.

Subdivision (b)(16)(D) has been deleted. This requirement for foreign (other state) credit unions to submit the names of elected officers within 15 days of their election contemporaneously with the names of their directors is no longer necessary because the Department does not regulate foreign (other state) credit unions for issues related to board governance. If an issue arises whereby this information is needed by the Department, it can be obtained pursuant to Financial Code section 16150, which states that Department has the authority to access the books, records, and accounts of a foreign (other state) credit union.

Subdivision (b)(16)(E) has been deleted. This requirement for foreign (other state) credit unions to submit an annual report that names each California branch manager and a Statement of Identity and Questionnaire within 10 business days after a change in managers is obsolete. The Department no longer requires this information from its credit union licensees and, therefore, does not believe it is necessary to require it from foreign (other state) credit unions. Generally, any safety and soundness issues are addressed with a credit union's executive management. If, for some reason, the Department needed to obtain the contact information for a branch manager of a foreign (other state) credit union,

the Department can still acquire it from the foreign (other state) credit union's executive management.

Subdivision (b)(16)(F) has been deleted. This required foreign (other state) credit unions to submit a copy of a resolution of the board of directors committing the credit union to continually submit reports of annual audits or examinations issued by the credit union's supervisor or its independent or certified public accountants within 10 days of their receipt and any responses to them. The requirement to submit these documents was superseded by Financial Code section 16152, which requires foreign (other state) credit unions to submit audit and examination reports to the Department within 10 days of their receipt and any responses to them.

Subdivision (b)(16)(G) has been deleted. This required foreign (other state) credit unions to submit a copy of a resolution of the board of directors committing the credit union to furnish the Department all amendments of the credit union's articles of incorporation, bylaws, and field of membership within 30 days of adoption. This information is not needed by the Department. The foreign (other state) credit union's home-state regulator is responsible for determining the adequacy of its articles of incorporation, bylaws, and field of membership. Its authorization to operate as a credit union is evidence that it has incorporated in its home state. And this information does not bear on a foreign (other state) credit union's safety and soundness or negatively impact credit unions organized in California.

As a result of the above deletions and renumbering, subdivision (b)(16)(H) has been renumbered as subdivision (b)(9)(C).

### **Section 30.200, subdivision (c)**

This subdivision, which requires foreign (other state) credit unions to pay an annual fee of \$250 by December 31 of each year and potentially have their certificate to operate suspended for nonpayment, has been deleted. The repeal of Financial Code section 14157 and enactment of Financial Code section 16006 in 2000,<sup>7</sup> which requires foreign (other state) credit unions to pay an annual fee, have superseded this requirement, so this requirement is unnecessary. The authority to suspend a license for non-payment is addressed in Financial Code section 16202, subdivision (a).

### **Section 30.300, subdivision (b)**

Section 30.300, subdivision (b) has been amended to delete subdivision (b)(1) through (b)(6), as it is outdated. Specifically, it does not reflect the types of investments that most credit unions are currently making and interested in making. Instead, this subdivision has been amended to allow a credit union's total investment in the securities issued by a single person to be up to 10 percent of its equity, rather than prescribing a list of pre-authorized investments. It is also amended to clarify that obligations of the United States and those for

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<sup>7</sup> Stats. 2000, ch. 612, § 3.

which the faith and credit of the United States are pledged for the payment of the principal and interest are not subject to this limit.

This standard would allow credit unions greater flexibility in their choice of investments, but does so in a manner that prevents overconcentration of their portfolio and ensures that such investment decisions are made through appropriate risk management. The 10 percent threshold is consistent with the other thresholds set in other parts of Credit Union Law.<sup>8</sup>

### **Section 30.300, subdivision (d)**

Subdivisions (d)(2) through (d)(6) have been deleted. Based on the amendment to Section 30.300, subdivision (b), credit unions would no longer be limited to the prescribed list of investments under the proposed rule and therefore the definitions of “authorized financial institution,” “banker’s acceptance,” “Eurodollar deposit,” and “federal funds transaction” are no longer needed.

As a result of the above deletions, subdivisions (d)(6) and (d)(7) have been renumbered to be subdivisions (d)(2) through (d)(3).

Subdivisions (d)(8) and (d)(9) have been deleted. Based on the amendment to Section 30.300, subdivision (b), credit unions would no longer be limited to the prescribed list of investments under the proposed rule and therefore the definitions of “market price” and “maturity date” are no longer needed.

As a result of the above deletions, subdivisions (d)(10) through (d)(12) have been renumbered to be subdivisions (d)(4) through (d)(6).

Subdivision (d)(13) has been deleted. Based on the amendment to Section 30.300, subdivision (b), credit unions would no longer be limited to the prescribed list of investments under the proposed rule and therefore the definition of “Yankee Dollar deposit” is no longer needed.

### **Section 30.300, subdivision (e)**

This subdivision has been added to clarify to credit unions that, although an investment discussed in this section may be authorized, it is still subject to the oversight of the Department and, in carrying out that oversight, the Department may determine that an investment is unsafe pursuant to Financial Code section 14204. This oversight ensures the safety and soundness of the credit union.

### **Section 30.803**

This section has been amended to remove the defined term “Law” to improve readability.

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<sup>8</sup> See, e.g., Fin. Code, § 15100, subd. (b) &(c); Fin. Code, § 15050, subd. (c)(2); 10 C.C.R. 30.306(b).

### **Section 30.803, subdivision (a)**

This subdivision has been amended to reference the “California Credit Union Law” for clarity and readability.

This subdivision has also been amended to delete “701.21(h)” and add “723” to reflect the renumbering of the NCUA regulations in 1997 and to incorporate this regulation by reference.<sup>9</sup> Additionally, the references to NCUA Regulation 701.21(c)(8) concerning prohibited fees, and NCUA Regulation 701.21(d)(5) concerning non-preferential loans are deleted. Both regulations are duplicated by Financial Code sections 14753 and 15050, respectively, and are, therefore, unnecessary.

### **Section 30.803, subdivision (b)**

This subdivision has been amended to change “regulations” to “regulation.” Additionally, this subdivision has been amended to change “require” to “requires.” These grammatical changes are necessary to reflect the amendments to subdivision (a) above.

### **OTHER REQUIRED SHOWINGS**

#### **Major Regulations**

The Department has determined that this proposed rulemaking action is not a major regulation.

#### **Studies Relied Upon**

The Department did not rely upon any reports or studies in proposing this rulemaking action.

#### **Economic Impact Assessment**

This regulatory proposal only impacts credit unions subject to the Department’s regulatory oversight. Specifically, it updates statutory references to reflect changes in the Financial Code; revises the application process for foreign (other state) credit unions; and allows credit unions more discretion in making investment choices. Each of these changes only affect the operations of the credit union and will have little or no impact to consumers generally.

Based on the foregoing, the Department has determined that it is not likely that this regulatory proposal will have an impact on:

- the creation or elimination of jobs in the State of California;
- the creation of new businesses or the elimination of existing businesses in the State of California

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<sup>9</sup> 62 Fed.Reg. 41313 (Aug. 1, 1997).



- the expansion of businesses currently doing business in California, although it is possible that credit unions will choose to invest in businesses within California, which could allow those businesses to grow; or,
- benefits to worker safety.

### Benefits of Regulatory Proposal

The Department has assessed that the regulatory action will indirectly benefit the health and welfare of California residents by streamlining the application process for out-of-state credit unions, which may provide more financial service options for Californian residents. This regulatory action will also indirectly benefit the environment by accepting electronic filings and using existing databases to gather information that was previously required to be submitted on paper.

### **Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business**

The proposed action will only affect credit unions in California. Changes to the application process, or investment authority will not cause a significant adverse economic impact on these credit unions. This regulatory action is being proposed, in part, to update the references to laws that have been amended or renumbered, or to more closely align with how credit unions are operating already. For example, if a credit union wishes to invest in something that is not already explicitly permitted in the current regulations, the credit union will apply to the Department for approval to make that investment. Under the proposed action, credit unions will likely be making those same types of investments, but without having to first apply to the Department for approval to do so.

Therefore, the proposed regulations will not have a significant statewide adverse economic impact directly on credit unions.

### **Reasonable Alternatives**

- A. The Department is not aware of any reasonable alternative that would achieve the same purpose and be equally effective.
- B. The proposed rulemaking action would not have any adverse impact on small businesses. The Department has not proposed any alternatives to the proposed regulatory action.