

TITLE 10. CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT
[Notice published June 26, 2020]

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Business Oversight (Department) proposes to amend the regulations listed below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed as follows:

Regular Mail

Department of Business Oversight
Attn: Regulations Coordinator, Legal Division
1515 K Street, Suite 200
Sacramento, CA 95814

Electronic Mail: regulations@dbo.ca.gov

Comments may be submitted through August 10, 2020.

AUTHORITY

Financial Code sections 321, 326, 334, and 14201 authorize the Department to promulgate regulations governing credit unions.

REFERENCE

The propose regulations implement, interpret, and make specific Financial Code sections 14200, 14203, 14205, 14250, 14409, 14652, 14653, 14653.5, 14950, 14952, 14953, 14954, 14955, 14957, 14958, 15100, 16000, 16006, and 16022.

INFORMATIVE DIGEST

Policy Statement and Specific Benefits Anticipated from Regulatory Action

The objectives of the proposed regulations are several-fold. One is to modernize the regulations in order to reflect changes to the Financial Code and federal regulations. Another is to streamline the process for out-of-state credit unions that apply to operate in California. A third objective is to allow credit unions a greater choice of permissible investments

The proposed regulations accomplish these objectives in several ways. They update references to sections of the Financial Code and National Credit Union Administration's regulations. They require out-of-state credit unions to specifically address each statutory factor regarding their eligibility to operate in California. The proposed regulations also repeal obsolete application requirements for out-of-state credit unions. The proposed regulations also repeal an exhaustive list of permissible investments and instead provide the credit union with broader discretion in making investment choices.

Anticipated Benefits of the Proposed Regulations:

The benefits anticipated by the proposed adoption of the rules include modest relief to out-of-state credit unions that apply to operate in California. The proposed amendments also afford credit unions broader investment choices and eliminate the requirement to obtain the Department's prior approval for routine investments. The updated references to statutes and federal regulations ensure their accuracy. For further discussion of benefit analysis, see *Results of the Economic Impact Assessment* below.

Summary of Existing Laws and Regulations and Effect of Proposed Action

Credit unions are licensed and regulated under the California Credit Union Law.¹ Financial Code section 16009 requires out-of-state credit unions to publicly post at each location their name, type of office, and their home state. The effect of the proposed changes to Section 30.101.5. is to update the citation to the relevant section of the Financial Code.

Financial Code section 16022 requires out-of-state credit unions to apply for a license to establish a branch office in California. The effect of the proposed changes to Section 30.200 is to allow out-of-state credit unions to use the format of their choice rather than a prescribed application form. The effect is also to require the application to satisfy the factors Financial Code section 16022. Another effect is to eliminate the requirement to submit certain information about the credit union that is already available to the Department by other means or unnecessary and thus reduce the administrative burden on the applicant.

¹ Fin. Code, § 14000 *et seq.*

Financial Code section 14652 permits credit unions to invest in securities and other assets described in Chapter 10 of Division 1, which governs legal investments for nonbank licensees. In addition, Financial Code section 14653.5 permits credit unions to invest in any investment authorized by regulation or in writing by the Department. The effect of the proposed changes to Section 30.300 is to reduce redundant paperwork caused by the requirement to obtain approval for routine investments. The effect is also that credit unions will have greater discretion over their choice of investments while investing no more than 10 percent of the sum of their net worth and allowance for loan and lease losses in any single person.

Financial Code section 14950 permits credit unions to loan money to their members. It also provides restrictions on loans. Currently, section 30.803 states that those credit unions which are insured by the National Credit Union Share Insurance Fund are subject to certain federal regulations. The proposed changes will update the reference to the federal regulations regarding member business lending and will remove references to two specific restrictions, which are repetitive of existing state law. The first restriction prohibits family members of a credit union official from receiving preferential treatment for loans over \$20,000. The second restriction prohibits family members from receiving fees, compensation, or commissions in connection with any loan made by the credit union.

Existing Federal Regulation or Statute

The Federal Credit Union Act² and National Credit Union Administration's regulations³ do not include a provision comparable to the signage requirement for foreign (other state) credit unions in California Code of Regulations, title 10, section 30.101.5.

The Federal Credit Union Act allows federal credit unions to invest in securities that are sold pursuant to section 4(5) of the Securities Act of 1933, are mortgage related as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934, and small business related as defined in section 3(a)(53) of the Securities Exchange Act of 1934.⁴ 12 Code of Federal Regulations part 703.14 provides a detailed list of permissible investments for federal credit unions. The Financial Code contains a similar list of investments permitted to credit unions. In addition, Financial Code section 14653.5 permits credit unions to make any investment authorized by the commissioner by regulation, which is the purpose of the proposed amendments to Section 30.300.

The Federal Credit Union Act allows federally insured credit unions to engage in member business lending.⁵ The National Credit Union Administration administers the member business lending regulations in 12 Code of Federal Regulations part 723. After the adoption of Section 30.803, the federal regulations governing member business lending⁶

² 12 U.S.C. § 1751 *et seq.*

³ 12 C.F.R. § 700 *et seq.*

⁴ 12 U.S.C. § 1757(15).

⁵ 12 U.S.C. § 1757a.

⁶ 12 C.F.R. § 723.

were renumbered as 12 Code of Federal Regulations part 723.⁷ The proposed changes to Section 30.803 update the reference to the corresponding federal regulations to reflect this change.

Existing State Regulations

The Department has conducted an evaluation of whether the proposed regulations are consistent with existing state regulations and has concluded that the proposed changes are consistent and compatible with those regulations.

Forms Incorporated by Reference

12 Code of Federal Regulations part 723, as of February 5, 2019, is incorporated by reference in Section 30.803, subdivision (a).

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other nondiscretionary cost or savings imposed on local agencies: none.

Cost or savings in federal funding to the state: none.

Cost or impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: none. Although the proposed action will directly affect credit unions in California, the Department concludes that any adverse economic impact, including the ability of California credit unions to compete with credit unions in other states, will not be significant.

Significant effect on housing costs: none.

⁷ 64 Fed. Reg. 28721 (Sept. 9, 1998).

Results of the Economic Impact Analysis/Assessment:

The Department has determined that:

- The proposed action will not create or eliminate jobs within California;
- The proposed action will not create new businesses or eliminate existing businesses within this state;
- The proposed action will not have a negative impact on the expansion of businesses currently doing business within California, but it is possible that credit unions will choose to invest in businesses within California, which could indirectly allow businesses to grow; and
- No benefits or adverse impacts to worker safety are anticipated from this regulatory action.
- The proposed 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.

Business Reporting Requirement

This regulatory action does not require businesses to file a report with the Department.

Effect on Small Business

The proposed regulations will not affect small business because credit unions are not a small business within the meaning of Government Code section 11342.610. Subdivision (b)(1) of Government Code section 11342.610 provides that “small business” does not include a credit union.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at the address listed in this notice.

As of the date this notice is published, the rulemaking file consists of this notice, the initial statement of reasons, the proposed text of the regulation, and any factual information upon which the proposed rulemaking is based. Copies may be obtained by contacting the contact person at the address or phone number listed in this notice.

AVAILABILITY OF THE DOCUMENTS ON THE INTERNET

The notice, initial statement of reasons and proposed text are also available on the Department's website at www dbo ca gov. To access the documents from the Department's website, click on the "Laws and Regulations" tab at the top of the home page, click on the "Rulemaking" link, and then click on the "Credit Union Law" link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person named in this notice. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONTACT PERSONS

Inquiries concerning the proposed administrative action including requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, or the modified text of the regulation, or questions regarding the timelines or rulemaking status, may be directed to:

Department of Business Oversight
Attn: Julie Jacob, Senior Counsel
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-6927
e-mail: Julie.Jacob@dbo.ca.gov

The backup contact person for these inquiries is:

Department of Business Oversight
Attn: Sandra Sandoval, Legal Assistant
300 S. Spring Street, Suite 15513
Los Angeles, California 90013
Telephone: (213) 897-3432
e-mail: Sandra.Sandoval@dbo.ca.gov

Dated: June 26, 2020
Sacramento, California