March 11, 2021

Commissioner of Financial Protection and Innovation
Attn: Regulations Coordinator, Legal Division
300 So. Spring Street, Suite 15513
Los Angeles, CA 90013
Via: regulations@dfpi.ca.gov

Re: Comments on Modified Proposed Regulations Concerning Credit Union Regulations

Dear Commissioner Alvarez,
I am writing on behalf of the California Credit Union League (League), one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 230 California credit unions and their more than 11.6 million members.

On June 26, 2020, the California Department of Financial Protection and Innovation (DFPI), formerly known as the California Department of Business Oversight (DBO), issued proposed amendments to Title 10, Chapter 1, Subchapter 30, of the California Code of Regulations (CCR) pertaining to credit unions. On February 24, 2021, the DFPI proposed further amendments to the regulations based on the initial comments received.

The League has significant concerns with certain components of the proposed amendment language, and strongly opposes the proposed investment limit of 10 percent of the credit union's equity capital in amended 10 CCR §30.300. We offer the following comments and recommendations.

I. Investments – 10 CCR §30.300(b)

A. <u>10 Percent Limitation on Investment Activities</u>

Under the proposal, a credit union is authorized to:

> "[I]nvest in securities issued by any person, as that term is defined in Section 14001.1 of the Financial Code, subject to the limitation that the credit union's total investments in the securities issued by any one person shall not exceed 10 percent of the credit union's equity capital, as that term is defined in Section 14400 of the Financial Code."

The following outlines our specific issues regarding the 10 percent limitation:

a. 10 Percent Limitation is Exceedingly Restrictive

The Leagues have received feedback from multiple credit unions that the proposed limit of 10 percent of the credit union's equity capital will prove to be overly restrictive and detrimental to credit union investment opportunities. In terms of concentration risk in general, what is deemed safe and sound will vary by each credit union, as some credit unions have the capability to take on a greater level of concentration risk than others based upon their financial condition, expertise, investment types, policies, and current economic conditions. Imposing an "across-the-board" standard by way of the proposed 10 percent limit would not be an effective approach. In lieu of enforcing an unnecessarily restrictive blanket limitation on all credit unions, the DFPI's purposes would be better served by considering each credit union's unique circumstances and raising any safety and soundness concerns with the individual credit union at the time of examination.

While it may be argued that, pursuant to Cal. Fin. Code §14653.5, a credit union would retain the right to seek a variance from this proposed 10 percent regulatory limit, this option is not clear from the language currently proposed, especially when compared with comparable language in 30.306 regarding investments in fixed assets and service corporations. However, even if clarified, the imposition of a new blanket pre-

approval requirement for concentration risk over a specified level not only fails to recognize the existing flexibility and unique circumstances of each credit union, it creates a new layer of administrative burden and places into immediate question the ongoing permissibility of any existing investments currently outside this proposed new limitation.

The League urges the DFPI to remove the 10 percent limitation.

b. Federal Credit Union Parity

Part 703 of NCUA Rules and Regulations are particular in addressing permissible investments for federal credit unions. In fact, federal credit unions operating under Part 703 have a long track record of prudent investment management in various economic environments.

Compared to the DFPI's proposed 10 percent limit, Part 703 does not impose a blanket limitation. Rather, NCUA rules place limits on certain investment activities that may be deemed higher risk.[1] For California state-chartered credit unions to have the ability to compete in the marketplace, their approved investment authority should be on a level equal to federally chartered credit unions in Part 703. The League urges parity with federal credit unions.

c. Corporate Credit Union Consideration

Corporate credit unions play an important role in the credit union system, providing core financial services, clearing house services, liquidity, and investment services to many credit unions. The 10 percent limitation would create an unnecessary regulatory burden on many credit unions and, as a result, hamper their relationship with their corporate credit unions in terms of the credit union's ability to utilize their core services.

B. <u>Exceptions</u>

The modified proposed amendments add the following language to §30.300(b):

> "Investments in [a]… mutual fund… or trusts provided all investments and investment practices of the investment company or trust would be permissible if made directly by the credit union or federal credit unions are not subject to this limit."

We have no opposition to the proposed change. However, we believe the language is oddly worded and therefore has the potential to create confusion. We strongly recommend the language be further amended for clarity.

II. Member business loans – 10 CCR § 30.803(a)

The amendments as originally proposed deleted the reference to Part 701.21(h) and other related sections, and instead added "<u>Part 723 of the</u> National Credit Union Administration ("NCUA") <u>regulations concerning member business loans (12 C.F.R. 723) (as of February 5, 2019)</u>" to reflect the renumbering of the NCUA regulations in 1997 and to incorporate this regulation by reference. References to other related NCUA regulations were also proposed to be omitted as a result.

In our July 23, 2020 comment letter, we expressed concern that the proposed amendment included a date of reference for the applicable NCUA regulation, Part 723, creating a question as to whether subsequent amendments to the NCUA regulation will be effective as to California credit unions.

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[1] *See, e.g., NCUA Rules and Regulations §703.14*

The modified proposed regulations now amend Section 30.803(a) to incorporate by reference the January 1, 2020 version of the cited federal regulations,and returns the previously deleted related regulatory provisions and adds dates of reference to those as well.

We continue to have strong concerns that including a date of reference creates a question as to how subsequent amendments to the NCUA regulations will impact California credit unions, particularly those changes that are adopted mid-year. It would create a difficult burden to require California credit unions, for any length of time, to comply with a federal regulation that is no longer published or in effect. Moreover, it removes parity with federal credit unions.

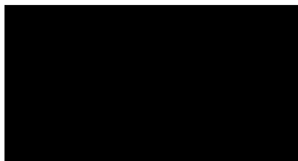
Accordingly, we recommend the amendment reference the regulation, 12 C.F.R. 723, without a limiting date.

Final Comments

Flexible investment authority for credit unions is critical to their ability to serve their members and meet the demands of a changing financial marketplace – particularly during this COVID-19 pandemic crisis. Accordingly, the League strongly opposes the 10 percent limitation, and we recommend parity with federally chartered credit unions. Additionally, we ask that the Department consider the concerns we have raised with other areas of the proposed amendment language.

We thank you for the opportunity to comment on the proposal and for considering our views. If you have any questions regarding our comments, please contact me.

Sincerely,



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