California
CREDIT UNION LEAGUE

May 10, 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 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 (Original Proposed Amendments). Based on initial comments received, on February 24, 2021, the DFPI proposed further modifications to Section 30.300(b) and Section 30.803(a), and non-substantive changes to Section 30.102 (First Modifications). On April 23, 2021, the DFPI proposed a second set of modifications in response to further comments received (Second Modifications).

The League generally supports the proposed Second Modifications and appreciates the DFPI giving consideration to concerns raised regarding the proposed investment limit of 10 percent of the credit union's equity capital in amended 10 CCR §30.300.

We respectfully offer the following comments and feedback for your further consideration.

Second Modifications

Investments – 10 CCR §30.300(b)

The Second Modifications clarify that a credit union may invest more than 10 percent of its equity capital in the securities of a person if it receives the prior written authorization of the Commissioner. Moreover, the proposed amendments clarify that the following investments are authorized and not subject to this limitation:

i. Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of the principal and interest;
ii. Investments in an investment company or trust, provided all investments and investment practices of the investment company or trust would be permissible if made directly by federal credit unions;
iii. Investments in deposits of authorized financial institutions; and
iv. Funds sold to authorized financial institutions, provided that the interest or other consideration received from the authorized financial institution is the market value of federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

We support the proposed amendments to subdivision (b) and believe these positive changes address the concerns raised by multiple credit unions. We believe that, by the removal of the restrictive blanket limitation, credit unions are now capable of having broader investment opportunities. The elimination of the

blanket limitation also gives the DFPI the ability to consider each credit union's unique circumstances and raise any safety and soundness concerns with the individual credit union at the time of examination.

However, while the League generally supports the above proposed amendments, we would like to offer some additional feedback for your consideration:

State chartered credit unions need parity with federal credit unions relating to bank notes as a permissible investment.

Part 703 of NCUA Rules and Regulations addresses permissible investments for federal credit unions. Specifically, federal credit unions are permitted to invest in bank notes with weighted maturities of less than five years.[1] With this, federal credit unions are able to diversify investment portfolio holdings and, accompanied with a prudent level of credit due diligence and risk limitation, enhance portfolio return. This is something that is currently unavailable to state chartered credit unions. We have heard from credit unions that indicate a need to be afforded with the same ability and flexibility as federal credit unions. It is simply unclear as to whether bank notes are contemplated in the list of permissible investments in the Second Modifications. In order for state-chartered credit unions to be on a level equal to federally chartered credit unions, the League urges clarity to ensure parity.

Investments – 10 CCR §30.300(d)

Consistent with the current regulations, the Second Modifications retain the definitions of "authorized financial institution," "federal funds transaction," and "market price" to ensure that these terms remain defined for purposes of interpreting other subdivisions of this section.

The League supports these proposed amendments and thanks the DFPI for providing further clarification. In particular, the returned definition of an "authorized financial institution" in subsection (d)(2) helps to address our previous concern arising from the definition of "person" in §30.300(b).

Additional Comments

Member Business Loans – 10 CCR § 30.803(a) – Date of Reference

The Original Proposed Amendments deleted the reference to Part 701.21(h) and other related sections, and instead added "Part 723 of the National Credit Union Administration ("NCUA") regulations concerning member business loans (12 C.F.R. 723) (as of February 5, 2019)" 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. The First Modifications further amended Section 30.803(a) to incorporate by reference the January 1, 2020 version of the cited federal regulations, returned the previously deleted related regulatory provisions, and added dates of reference to those as well.

In our July 23, 2020 and March 11, 2021 comment letters, we expressed concern that the inclusion of a date of reference for the applicable NCUA regulations created a question as to how subsequent amendments to the NCUA regulations will affect California credit unions.

The Second Modifications still include the effective date of the applicable NCUA regulations.

We continue to have strong concerns about the inclusion of a date of reference. We believe the date of reference ensures that either: 1) future confusion will result from the need to comply with an outdated regulation; or 2) future amendments will be necessary to conform with any NCUA amendments to the regulation. The first would place a difficult burden on California credit unions to require compliance, for any length of time, with a federal regulation that is no longer published or in effect. Both will result in a lack of

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

parity with federal credit unions whenever the federal regulation is amended until such time as the DFPI is able to enact necessary amendments.

We continue to recommend that 30.803(a) be amended to reference the applicable federal regulations without any limiting dates.

Final Comments

Thank you for taking the time to consider our concerns on the proposed amendments to the credit union regulations. Again, while we generally support the Second Modifications, we believe additional clarity is needed in the investment regulations regarding the permissibility of bank notes and the member business loans regulations. Thank you for the opportunity to comment on the proposal. If you have any questions regarding our comments, please do not hesitate to contact me.

Sincerely,

Diana R. Dykstra
President and CEO
California Credit Union League