



THE COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF BANKS  
1000 Washington Street, 10<sup>th</sup> Floor, Boston, Massachusetts 02118

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LIEUTENANT GOVERNOR

**DAVID J. COTNEY**  
COMMISSIONER OF BANKS

April 28, 2016

The Honorable Steven T. James  
Clerk of the House of Representatives  
State House, Room 145  
Boston, Massachusetts 02133

Dear Mr. James:

Enclosed for filing please find the Division of Banks' (Division) summary of its proposed amendments to 209 CMR 50.00: *Parity with Federal Credit Unions* (Parity Regulations), which are the implementing regulations for Massachusetts General Laws chapter 171, section 6A. This statute authorizes the Commissioner of Banks to propose regulations, subject to Legislative review, to authorize activities that are available to federally chartered credit unions in order to make the state charter more competitive. A copy of the statute is attached to this letter. This summary and a copy of the proposed amendments, found at [Appendix A](#) , are required to be filed with your office pursuant to the statute. The Division's required statement that it has complied with the pertinent provisions of Massachusetts General Laws chapter 30A is found at Appendix B.

### **Public Hearing**

A public hearing on these amendments was held pursuant to Massachusetts General Laws chapter 30A on Thursday, January 14, 2016 and written comments were accepted through 5:00 p.m. on Thursday, January 21, 2016. The credit union trade association provided oral comments on the proposed amendments. The credit union trade association and the banking trade association also provided written comments. Although the banking trade association expressed certain concerns in its letter, the credit union trade association was in support.<sup>[1]</sup>

### **Summary of Proposed Amendments**

#### ***Overview***

As noted above, the purpose of 209 CMR 50.00 is to implement G.L. c. 171, s. 6A, which authorizes the Commissioner of Banks to promulgate regulations to grant state-chartered credit unions certain expanded powers in parity with federally-chartered credit unions. The proposed amendments add several new types of authorities. In addition, the proposed amendments restructure and streamline procedural requirements by allowing credit unions to exercise certain authorities after notice to the Division or with no notice requirements, rather than requiring that the credit unions receive advance approval from the Division. The proposed amendments also clarify the authority of state-chartered credit unions relative to making or investing in loan participations, and make additional technical changes.

Following is an overview of some of the major amendments establishing new authorities and reducing regulatory burden, some of which are intertwined, such as investments in land, building, improvement and equipment and authority for non-member deposits for credit unions not designated as low-income. Updated provisions relative to loan participations and the purchase and sale of loans and the purchase of loans are also noted. A section-by-section summary of all amendments, including new authorities, as well as amendments to reduce regulatory burden, consolidate provisions, and make technical changes, appears below.



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*New Authorities*

Some of the new authorities set forth in the proposed amendments are as follows:

1. Authority for derivatives;
2. Authority for secondary capital;
3. Authority for private label investments;
4. Authority for charitable donation accounts;
5. Expanded authority for charitable contributions and donations;
6. Increased authority for investments in land, building, improvements and equipment of more than \$1,000,000, which is also now a notice authority;
7. Authority for investments in land, building, improvements and equipment is increased from \$500,000 to \$1,000,000, which remains an authority requiring neither notice nor approval;
8. Authority for non-member deposits for credit unions not designated as low-income to accept deposits for any purpose from any credit union insured by the National Credit Union Administration (NCUA) up to the aggregate of 20% of its existing deposits or \$3 million, whichever is greater. This authority is also amended from an approval authority to a notice authority;
9. Authority to invest in CUSOs with non-credit union parties; and
10. Authority for credit union service organization (CUSO) related activities regarding business loan origination.

*Reduced Regulatory Burden*

Some of the major amendments to reduce regulatory burden are set forth below:

1. Authority for leasing activities is amended from requiring approval to requiring neither approval nor notice;
2. Authority to request a waiver from the notice requirement for both credit unions and for CUSO-related activities to wait 30 days before commencing the activity;
3. Authority for loan related products, specifically debt cancellation and debt suspension products, is amended from approval to requiring neither notice nor approval;
4. Authority for operational programs is amended from approval to notice;
5. Authority for certain finder activities is amended from approval to notice;
6. Eligibility requirements regarding capital for credit unions are amended so that adequately capitalized state-chartered credit unions are now eligible for authorities requiring neither notice nor approval;



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7. Authority for interest-bearing corporate checking accounts is amended from notice to requiring neither notice nor approval;
8. Authority for Treasury Tax and Loan Depositories is amended from notice to requiring neither notice nor approval; and
9. Authority for real estate loan participations has been amended from approval to requiring neither notice nor approval.

***Updated Provisions***

In addition, upon further review of authorities relative to consumer and non-residential loan participations, the purchase and sale of loan portfolios, and the purchase of loans, the Division proposes the following amendments to the Parity Regulations, which are described in greater detail in the section-by-section summary:

1. The authority for a credit union to enter into consumer loan participations with CUSOs and governmental agencies now requires neither notice nor approval;
2. The authority for a credit union to enter into a real estate loan participation now authorizes participations with CUSOs and governmental agencies, now requires neither notice nor approval, and has been clarified to be for all real estate loan participations; and
3. The authorities for the purchase and sale of loan portfolios, as well as for the purchase of loans, are governed by G.L. c. 171, s. 65A. Therefore, authority under the Parity Regulations is no longer required, and is repealed.

**Section-by-Section Summary**

A section-by-section summary of the proposed amendments to 209 CMR 50.00 *et seq.* and additional comments regarding the public hearing follow. It should be noted that citations below are to the proposed amendments to the Parity Regulations.

**209 CMR 50.01: Purpose and Scope**

The limitations on lending authorities pursuant to G.L. c. 171, s. 58 are moved to this section, as part of the restructuring of the regulation.

**209 CMR 50.02: Definitions**

The definition of “health savings account” is moved to 209 CMR 50.07(2)(h)2.k.

The definition of “residential real estate mortgage loan” is amended to “real estate loan” to more clearly reference the potential types of loans.

The references within definition of “strong or satisfactory management” are updated.

The definition of “troubled condition” is added.



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The definition of “trustee or custodial services” is moved to 209 CMR 50.05(3)(i)2.b.

**209 CMR 50.04: Credit Union Eligibility to Conduct Activities**

This is a technical update to the eligibility requirements to provide that a credit union cannot be in troubled condition if it wishes to conduct activities under the Parity Regulations. This provision is at 209 CMR 50.04(1).

**209 CMR 50.05: Application Process to Conduct Certain Activities**

- *Eligibility:* This is a technical change to streamline the requirement that a credit union be well or adequately capitalized under this section. This provision is at 209 CMR 50.05(1).
- *Application Process:* This amendment to the application process at 209 CMR 50.05(2) changes the requirement for a detailed business plan to a description of the business purpose as well as the anticipated financial and business impact.
- *Community Development Loan Pools:* This amendment clarifies that credit unions shall comply with the member business lending provisions in the NCUA Rules and Regulations when lending to mortgage loan pools. This authority is now at 209 CMR 50.05(3)(c)(2).
- *Employee Benefits Funded by Impermissible Investments:* This amendment is a technical update to reflect that this authority is solely for those employee benefits funded by otherwise impermissible investments. It is now at 209 CMR 50.05(3)(d).
- *Purchase and Sale of Loan Portfolios:* It is the position of the Division that G.L. c. 171, s. 65A, as added by Chapter 454 of the Acts of 2008, provides this authority for state-chartered credit unions under the statute. Accordingly, authority under the Parity Regulations is no longer required and is repealed. This authority was formerly at 209 CMR 50.06(3)(g).
- *Derivatives Authority:* A credit union may engage in derivatives activities. This is a new authority at 50.05(3)(e), as authorized by 12 CFR 703, Subpart B.
  - This authority was opposed by a banking industry association in testimony during the public hearing process on the basis that it would greatly enhance the powers of state-chartered credit unions, and should be authorized through legislation. In addition, the association raised general concerns relative to the impact of all the proposed amendments on the banking community.
- *Pilot Investment Program:* This authority has been consolidated with the approval authorities at 209 CMR 50.05(3)(f).
- *Secondary Capital:* This is a new approval authority for a credit union designated as “low income” to accept secondary capital accounts, at 209 CMR 50.05(3)(g).
  - *Testimony on Secondary Capital:* This authority was also opposed by a banking industry association in testimony during the public hearing process on the basis that it would greatly enhance the powers of state-chartered credit unions, and should be authorized through legislation.



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- *Private Label Investments:* This is a new approval authority to invest in private label mortgage-related securities, as authorized pursuant to 12 CFR § 703.14(a). The authority is at 209 CMR 50.05(3)(h).
- This authority is proposed based on testimony received at the public hearing.
- *Additional Powers:* This amendment includes technical updates to 209 CMR 50.05(3)(i).
- *Certain Correspondent Services:* Technical updates include “other credit unions” to replace a reference to “foreign credit unions”. This authority is at 209 CMR 50.05(3)(i)2.a.
- *Trustee or Custodial Services through Outside Vendors:* This authority now combines the authorities for credit unions to provide trustee services directly or through a third party. It remains an approval authority at 209 CMR 50.05(3)(i)2.b.
- *Trustee or Custodial Services:* This authority has been combined with the authority at 209 CMR 50.05(i)2.b. for a credit union to offer trustee or custodial services through outside vendors.
- *Note:* The Expedited Review Process for Certain Activities formerly at 209 CMR 50.08 is repealed in light of the amendments to streamline regulatory review.

**209 CMR 50.06: Notice Process to Conduct Certain Activities**

- *General:* This amendment extends eligibility to adequately capitalized credit unions. In addition, it changes the timing of notice to the Division from the current 10 days after commencing the activity to 30 days before commencing the activity. However, at the time the notice is filed or at any time the notice is pending, a credit union may request a waiver of all or part of the 30-day period. This authority is at 209 CMR 50.06(1).
- The waiver provision is added in response to comments received during the public hearing process.
- *Notice:* This amendment also clarifies that the Commissioner may require additional information. This is moved to 209 CMR 50.06(2).
- *Activities Subject to Notice.* This is moved to 209 CMR 50.06(3).
- *Purchase and Sale of Loan Portfolios:* As noted above, it is the position of the Division that G.L. c. 171, s. 65A, as added by Chapter 454 of the Acts of 2008, provides this authority for state-chartered credit unions under the statute. Accordingly, authority under the Parity Regulations is no longer required and is repealed.
- *Non-Member Monetary Instrument Services.* This amendment includes technical updates. It is at 209 CMR 50.06(3)(a).
- *Certain Finder Activities.* This authority allows credit unions to offer certain insurance products, mutual funds and annuities, as well as additional finder activities, to members. This is moved from approval to notice authority. It is now at 209 CMR 50.06(3)(b).



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- *Operational Programs.* This authority to provide payroll services is moved from approval to notice authority. It is now at 209 CMR 50.06(3)(c).
- *Non-Member Deposits for Credit Unions Designated as Low Income.* This amendment provides authority for a credit union designated as low-income by the Division and the NCUA to accept deposits for any purpose from any source up to the aggregate of 20% of its existing deposits or \$3 million, whichever is greater. This clarifies existing authority, and is at 209 CMR 50.06(3)(d)1. This also includes authority to accept deposits from corporate credit unions, formerly at 209 CMR 50.11(4)(b)1.
- *Non-Member Deposits for Credit Unions Not Designated as Low Income.* This amendment provides authority for a credit union that is not designated as low-income by the Division and the NCUA to accept deposits for any purpose from any credit union insured by the NCUA up to the aggregate of 20% of its existing deposits or \$3 million, whichever is greater. This amends and expands a former approval authority. It is now at 209 CMR 50.06(3)(d)2. This provision also includes the authority for accepting deposits from any state-chartered or federally chartered credit union having its main office in the Commonwealth formerly at 209 CMR 50.11(4)(b)2.
- *Investments in Land, Building, Improvements, and Equipment:* This authority for investments in land, building, improvements and equipment of more than \$1,000,000 is now a notice authority at 209 CMR 50.06(3)(e). It formerly required approval, and the maximum amount is increased from \$500,000 to \$1,000,000.
- This proposed amendment was further revised based on comments received at the public hearing.
- *Charitable Donation Accounts.* This is a new notice authority to establish charitable donations accounts. It is at 209 CMR 50.06(3)(f).

**209 CMR 50.07: Activities Requiring No Application or Notice**

*209 CMR 50.07(1): Eligibility.* The eligibility criteria for this section are consolidated and amended to allow credit unions that are adequately capitalized, in addition to credit unions that are well-capitalized.

*209 CMR 50.07(2): Permissible Activities.*

- *Consumer Loan Participations:* The authority for consumer loan participations is at G.L. c. 171, s. 65E(3), as added by Chapter 454 of the Acts of 2008, and as noted in a Division of Banks letter to credit unions dated October 2, 2014. Accordingly, authority under the Parity Regulations is no longer required in certain instances. However, the provision in G.L. c. 171, s. 65E(3) does not authorize credit unions to make or invest in consumer loan participations with a credit union service organization (CUSO) or any state or federal government agency and its subdivisions. Accordingly, the authority for a credit union to enter into consumer loan participations with CUSOs or governmental agencies now requires neither notice nor approval. It is now at 209 CMR 50.07(2)(a).
- *Real Estate Loan Participations:* This authority has been amended to no longer require approval, and is now for real estate loan participations, rather than for non-residential real estate loan participations. It is now at 209 CMR 50.07(2)(b). This authority was also discussed in the Division of Banks letter to credit unions dated October 2, 2014.
- *Deposits in Federally Insured Banks and Credit Unions.* This authority is amended to delete requirements regarding investment policies. It is at 209 CMR 50.07(2)(c).



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- *Additional Investment Authorities.* This includes technical updates, and is now at 209 CMR 50.07(2)(d).
- *Interest-Bearing Corporate Checking Accounts.* The authority to offer interest-bearing corporate checking accounts is moved from notice to requiring neither notice nor approval. It is now at 209 CMR 50.07(2)(e).
- *Treasury Tax and Loan Depositories.* The authority to establish Treasury Tax and Loan Remittance Accounts is moved from notice to requiring neither notice nor approval. It is now at 209 CMR 50.07(2)(f).
- *Leasing Activities:* This amendment moves authority for leasing activities from one that required approval to one that requires neither notice nor approval. It is now at 209 CMR 50.07(2)(g).
- *Additional Powers.* This is moved to 209 CMR 50.07(2)(h).
- *General Powers.* This amendment includes technical updates and a repeal of separate eligibility requirements at 209 CMR 50.07(2)(h)1.
- *Charitable Contributions and Donations.* This is expanded authority to provide charitable contributions and donations. It is at 209 CMR 50.07(2)(h)2.b.
- *Marketing Activities:* The technical change for this authority is at 209 CMR 50.07(2)(h)2.h.
- *Member Monetary Instrument Services.* This is amended to clarify that the services are for credit union members. It is at 209 CMR 50.07(2)(i).
- *Health Savings Accounts.* This is amended to include the definition previously in 209 CMR 50.04. This provision is at 209 CMR 50.07(2)(h)2.k.
- *Loan-Related Products:* This authority for debt cancellation agreements and debt suspension agreements is moved from approval authority to require neither notice nor approval. It is at 209 CMR 50.07(2)(h)2.l. In addition, conditions previously included in the approvals are included in the regulation.
- *Investments in Land, Building, Improvements, and Equipment:* The maximum amount for investments in land, building, improvements and equipment is increased from \$500,000 to \$1,000,000. This authority is now at 209 CMR 50.07(2)(h)2.m.
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- This amendment was further revised based on comments received at the public hearing.
- *Non-Member Deposits.* Authority for a credit union to for a credit union to accept deposits from the former Central Credit Union Fund, Inc. has been repealed. This was formerly at 209 CMR 50.11(4)(b)1. In addition, as noted above, authority for a credit union to accept deposits from another credit union or federally chartered credit union having its main office in the Commonwealth, formerly at 209 CMR 50.11(4)(b)2., is now included at 209 CMR 50.06(3)(d).



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- *Mortgage Loans Written in Accordance with Certain Mortgage Loan Programs of Public Instrumentalities.* Mortgage loans are governed by G.L. c. 171, s. 65A, as added by Chapter 454 of the Acts of 2008. This provision, formerly at 209 CMR 50.11(4)(g), is no longer required.
- *Purchase and Sale of Loan Portfolios:* As noted above, it is the position of the Division that G.L. c. 171, s. 65A, as added by Chapter 454 of the Acts of 2008, provides this authority for state-chartered credit unions under the statute. Accordingly, authority under the Parity Regulations is no longer required and this provision, formerly 209 CMR 50.11(4)(i), is repealed.
- *Purchase of Loans:* This separate authority for the purchase of loan portfolios, formerly at 209 CMR 50.11(4)(h) is also repealed, since the authority is provided in G.L. c. 171, s. 65A.

**209 CMR 50.08: Credit Union Service Organizations**

- Authorities for credit union service organizations (CUSOs) are moved from 209 CMR 50.07 to 209 CMR 50.08, as described below.
- *Application Process to Conduct Certain Activities Relative to CUSOs: General:* This is amended to include a reference to well-capitalized credit unions as well as adequately capitalized credit unions, and is now at 209 CMR 50.08(1)(a).
- *Application.* This is amended to require a description of the business purpose as well as anticipated financial and business impact, instead of the current requirement for a detailed business plan containing financial projections and assumptions. This authority is now at 209 CMR 50.08(1)(b).
- *Activities Subject to Application and Approval: Investments in Credit Union Service Organizations:* This is amended to authorize credit unions to invest with non-credit union parties. This authority is now at 209 CMR 50.08(2)(a).
- *Business Loan Origination:* This adds business loan origination, including the authority to buy and sell participation interests in such loans. This authority is 209 CMR 50.08(2)(b)3.
- *Notice Process to Conduct Certain Activities Relative to CUSOs:* This amends this provision to include well-capitalized credit unions. It also changes the notice requirement from 10 days after commencing activity to 30 days before commencing the activity. However, at the time the notice is filed or at any time the notice is pending, a credit union may request a waiver of all or part of the 30-day period. The waiver provision was added in response to a request relative to credit unions during the public hearing process. The current regulation provided that once a credit union received approval for a CUSO activity under parity, it then could provide notice for the listed activities in the notice section to the Division. The amendments change this to allow a credit union that has received approval for a CUSO activity under parity to be authorized to provide notice for any of the approval activities. This authority is at 209 CMR 50.08(6).

**General Background on the Parity Regulations Amendment Process**

The Parity with Federal Credit Union regulations had been authorized by the enactment of Chapter 223 of the Acts of 1998, *An Act Relative to State-Chartered Credit Unions* (Act), which authorized the Division to propose regulations that would grant state-chartered credit unions certain expanded powers enjoyed by federally-chartered credit unions. This Act amended Massachusetts General Laws chapter 171, *The Massachusetts Credit Union Act*, by





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inserting a new section 6A, which permits state-chartered credit unions to exercise certain powers granted to federal credit unions under the Federal Credit Union Act<sup>[2]</sup>. In addition, this provision specifically charged the Commissioner of Banks with promulgating regulations authorizing state-chartered credit unions to exercise such federal credit union powers not otherwise prohibited by Massachusetts law. The Act required the Division's proposed regulations to be subject to Legislative review. Under the law, the Division is precluded from filing final regulations until 90 days after they have been submitted to the Legislature.

The Act's purpose was to ensure that state-chartered credit unions remain competitive with their federally-chartered credit union counterparts in terms of permissible powers and activities. Toward that end, the Parity Regulations, and the amendments proposed, grant state-chartered credit unions certain expanded powers enjoyed by federally-chartered credit unions in order to promote "competitive equality" between state-chartered credit unions and federally-chartered credit unions. In addition, the Parity Regulations cover all adequately-capitalized and eligible credit unions regardless of size, so all eligible small- and medium-sized credit unions are able to take full advantage of the expanded authorities. In general, the Division's goal in proposing amendments to the Parity Regulations is to continue to offer new authorities in a manner that will make it easier for eligible credit unions to implement and remain competitive.

The Parity Regulations were not intended to be a definitive or static listing of federally-chartered credit union powers. The Legislature, the Division and the credit union movement all view the federally-chartered credit union parity process as a continuously evolving one. Consequently, it was intended that additional federally-chartered credit union powers would be adopted on a periodic basis to reflect changes in federal credit union laws, official interpretations, and operating conditions.

Please contact me at (617) 956-1510 or the Division's Legal Unit at (617) 956-1520, if there are any questions regarding these proposed regulations.

Sincerely,

David J. Cotney  
Commissioner of Banks

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<sup>[1]</sup> The concerns of the banking trade association, and the additional proposed amendments of the credit union trade association, will each be addressed in the Division's comments below in the section-by-section summary.

<sup>[2]</sup> 12 U.S.C. §§1751 *et seq.*