**[Bank Letterhead]**

[DATE]

**VIA E-MAIL**

Ms. Kim Santos, Director

Office of Credit Unions

P.O. Box 14137

Madison, WI 53708-0137

[Kim.Santos@wisconsin.gov](mailto:Kim.Santos@wisconsin.gov)

**Re: Comments Regarding Final Rule Adopted Under s. 186.113(3)(b), Stats., to Revise DFI-CU 75 Related to Authorized Incidental Powers Activities**

Dear Director Santos:

I am the **[Title]** of **[Name of Bank]** located in **[city or region]**, Wisconsin. **[Bank name]** is a community bank, with **[$\_\_\_]m[b]**illion in assets, **[number]** branch locations, and **[number]** employees. **[include any other introductory information you wish about the bank].**

I write in opposition to the recent action by Office of Credit Unions (OCU) to file a final rule with the Legislative Reference Bureau on February 15, 2022, to revise DFI-CU 75 to broaden which state-chartered credit unions are able to accept secondary capital under 12 CFR Part 702, subpart D. DFI-CU 75 previously allowed only low-income designated state-charted credit unions to have such authority.

I understand the need to update terminology due to change in federal law. However, under its revised rule, OCU also broadened which credit unions may accept secondary capital.

The revised DFI-CU 75 makes subordinated debt, as defined in 12 CFR s. 702.402, an incidental powers activity preapproved by OCU. Eligibility under that federal rule, and now OCU, allows a credit union to issue subordinated debt if, at the time of issuance, the credit union: (1) is a complex credit union with a capital classification of at least “undercapitalized”, as defined in 12 CFR s. 702.102; (2) is a low-income designated credit union (LICU); (3) anticipates becoming either a complex credit union with a capital classification of at least “undercapitalized” or a LICU within 24 months after issuance of the subordinated debt notes; or (4) is a new credit union with retained earnings equal to or greater than one percent of assets.

The revised rule broadens the ability of a state-chartered credit union to accept secondary capital, including by one that is not in financial duress and in need of raising capital to minimum regulatory levels. In particular, the revised rule now allows for a complex credit union that is adequately capitalized, as the credit union is “at least “undercapitalized””, to accept secondary capital for pure asset growth purposes.

Subordinated debt is a tool commonly known to be used for financing growth, which includes the acquisition of a bank by a credit union. I oppose the broadening of the use of secondary capital by credit unions carte blanche. Credit unions should remain focused on serving members, not their third-party investors. **[If you have an example of growth outside the mission of a credit union in your area please describe that here to further customize the letter].**

Acceptance of secondary capital should not be an incidental powers activities allowed except in these narrow circumstances: (1) returning a complex credit union in financial duress to its minimum regulatory capital levels; and (2) a LICU given its uniqueness in the ability to generally attract investors.

I respectfully ask OCU to revise DFI-CU 75 to specifically state the ability to accept secondary capital is an incidental powers activity reserved for LICUs and only complex credit unions in financial duress for the purpose of returning the credit union to minimum regulatory capital levels. Absent clarity in rule, I am very concerned that some state-chartered credit unions will misuse the broadened incidental powers activity for growth activity unrelated to financial duress or a return to minimum capital levels.

Thank you for your consideration of my concerns.

Sincerely.

[signature block]

Name

Title