



MBA Issue Paper: Credit Unions

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When the Federal Credit Union Act was enacted in 1934, credit unions were small, not-for-profit organizations focused exclusively on providing financial services to sections of communities that were otherwise unable to obtain them from commercial banks or thrifts. Because of their relative size and community orientation, Congress gave them special benefits, such as tax exemption. Since their simple beginnings, some credit unions have grown into large and complex financial institutions, collectively holding approximately \$770 billion in assets and serving 88.5 million people nationwide. Today, credit union powers closely resemble those of banks, blurring the distinctions between the two. Many banks and thrifts assert that, as a result of their tax-free status, credit unions have an unfair advantage in the market.

About Credit Unions:

This paper is intended as a primer on current regulatory issues surrounding credit unions. Its purpose is education, not persuasive advocacy of any kind.

What are credit unions?

A credit union is a cooperative financial institution, owned and operated by its members and chartered by a state or the federal government. A credit union's customers, known as members, must reside or be associated with its field of membership (FOM) as specified in its charter. The FOM must reflect a common bond shared among members—or a unifying characteristic among members that distinguishes them from the general public.¹ A credit union's FOM, was initially characterized as small groups of people sharing a common bond related to a social or community group. The National Credit Union Administration's (NCUA) interpretations of statutory FOM requirements have broadened the term tremendously, allowing a membership's common bond relationship to be any affiliation related to employment, organization, community,² or residence. This has given rise to more expansive FOMs. For example, the term "community" has come to encompass entire metropolitan areas or multiple counties. Also, credit unions sponsored by multinational corporations or branches of the military operate all over the world.

Credit unions do not issue stocks, like other thrift and loan institutions. Instead, credit unions transfer earnings to their members by way of limited fees, lower rates on loans, and higher rates on deposits.³ Surplus income is also returned to members in the form of dividends.

Federal credit unions are regulated by NCUA, established in 1970, while state chartered credit unions are regulated by the state which charters them. Insurance on customer deposits is provided by the National Credit Union Share Insurance Fund (NCUSIF), which is also administered by NCUA. As a result of several loose interpretations of authorized powers and credit union membership restrictions, NCUA has been criticized for being the industry's advocate as well as its overseer.

The credit union industry also comprises corporate credit unions (CCUs) and credit union service organizations (CUSOs). CCUs are similar to Federal Home Loan Banks

(FHLBanks) or so-called “bankers’ banks” in that CCUs provide products and services to credit unions rather than consumers. For example, CCUs offer mortgage servicing to credit unions. CUSOs are similar to subsidiary corporations of depository institutions. CUSOs engage in activities that credit unions are unauthorized to perform themselves, such as issuing mortgage-backed securities (MBS).

In 2007, there were a total of 8,266 credit unions with 88.5 million members and assets which totaled approximately \$770 billion.⁴ According to NCUA, in 2007, there were 5,036 federally chartered credit unions and 3,065 state chartered credit unions.⁵ From 2006 to 2007, credit union membership increased, by 1.1 million or 1.27 percent,⁶ while assets increased by \$43.46 billion or 6.12 percent to \$753.46 billion.⁷ The majority of credit unions (57 percent) held increasing assets in 2007.⁸

How are credit unions similar and dissimilar to banks?

Differences

Credit unions are different from other depository institutions in more ways than their tax-status. Banks are free to offer products and services to anyone or any entity without regard to geographic location. In contrast, credit unions face restrictions on membership (or FOM) and product offerings. Moreover, credit unions must be far greater capitalized than other depository institutions, although they can only build capital through retained earnings because they cannot issue stock. In order to be well-capitalized, credit unions are required to hold seven percent of their capital in reserve, although on average, they hold nearly 12 percent.⁹

Member Business Lending

Another important distinction between credit unions and other depository institutions is the extent to which credit unions can engage in commercial lending. In 1998, the Credit Union Membership Access Act (CUMAA) was enacted—implementing the last major changes made to the Federal Credit Union Act¹⁰—imposing limits on a credit union’s ability to engage in commercial lending, or in credit union parlance “member business loans.” The rationale for these limits was to keep credit unions engaged in consumer lending.

A business loan is a loan made to a member business, nonprofit organization or individual where the loan proceeds are used for a commercial, corporate, business investment, or agricultural purpose. CUMAA imposed a ceiling on credit union business lending activity of approximately 12.25 percent of an institution’s total assets. However, the law also provides the following four categories of business loans that are not subject to the 12.25 percent of assets limit:

- A loan fully secured by a lien on a one- to four-family dwelling that is the primary residence of the member/borrower, regardless of how the member plans to use the loan proceeds.
- A loan that is fully secured by credit union shares or other financial institution deposits.

- Loans to one member (or more than one member in the same business venture) which, when added together, total less than \$50,000.
- A loan where a federal or state agency fully insures or guarantees repayment of the loan or provides an advance commitment to purchase the loan. Also, the guaranteed portion of a loan is not included in calculating whether the \$50,000 threshold is met.

Credit unions have been successful in expanding the scope of these four exceptions through interpretive rulings and regulations issued by the NCUA. Nevertheless, coupled with the FOM restrictions, the MBL limits constrain the commercial lending activities of credit unions to the advantage of other depository institutions.

Similarities

Apart from the distinctions identified above, credit unions are virtually identical to other financial institutions. For example, they have access to the capital markets through Fannie Mae and Freddie Mac. They are also permitted to be FHLBank members and access FHLB advances. Through CUSOs, credit unions can conduct activities that they are otherwise prohibited from conducting, such as packaging MBS.

Other similarities include the fact that credit union's deposits are insured by the Credit Union Share Insurance Fund, just like bank deposits are insured by the Federal Deposit Insurance Fund. The NCUA is also a member of the Federal Financial Institutions Examination Council, which means interagency guidance, such as the nontraditional mortgage product guidance, applies to credit unions in the same way the guidance applies to banks.

Credit unions also have the charter choice flexibility of the dual banking system. Like banks, credit unions can choose between a federal charter and a state charter, depending on which one is more appropriate for its business objectives.

What advantages do credit unions have over banks?

At the root of tension between banks and credit unions lies tax-exemption privilege. Tax-exemption was initially granted to credit unions when they were primarily small, minor players in the financial services arena, serving equally small FOMs. Ultimately, however, some credit unions matured into sophisticated, financially and technologically savvy institutions that compete with their equally complex, tax-paying competitors. Banking trade associations argue this gives credit unions an unfair competitive advantage, as banks, like any other business corporation, must pay payroll, sales, and property taxes (federally chartered credit unions are exempt from state sales, payroll, and property taxes).

Moreover, it has been suggested that credit unions are able to transfer their tax savings to their members in the form of better interest rates on loans and deposits. According to an analysis by the Government Accountability Office (GAO), credit unions generally offer better rates on consumer loans than other depository institutions. However, it remains uncertain whether those rates are reflective of the tax subsidy that credit unions

receive by tax-exemption, as there may be other reasons for the discrepancies in loan rates.¹¹ For example, confounding variables may include, but are not limited to creditworthiness and geographic market differences. The GAO report also states that the benefits from tax exemption may surface in ways different than loan and deposit rates. Nevertheless, the financial reserves of credit unions, which may or may not be affected by tax-exempt savings, can be used to finance additional services to credit union members.¹²

While credit unions are the only depository institutions that enjoy tax exemption, certain banks qualify for tax exemption under Subchapter S status. Subchapter S status, added to the Internal Revenue Code in 1958, provides tax exemption for small businesses. Since 1997, approximately one-third of all banks, or 2,500 banks are exempt from corporate federal income tax under Subchapter S.¹³ However, banks that utilize Subchapter S status are still taxed at the shareholder level, in addition to being subject to state and local taxes.¹⁴

In 2007, the Treasury Department broached credit union tax exemption status in two reports regarding U.S. business taxation. The Treasury Department found the government will forego approximately \$1.48 billion in revenue in fiscal year 2008 from credit union tax exemption. Moreover, the Joint Committee on Taxation found that taxation on credit unions with assets of more than \$10 million would amount to \$1.8 billion in revenue for fiscal year 2009.¹⁵

Another advantage that credit unions have over banks is that they are not subject to the Community Reinvestment Act (CRA). The CRA was implemented in 1977 to ensure that banks were investing and providing financial services to their communities, including low- and moderate-income neighborhoods. The CRA requires depository institutions to demonstrate that they provide products, services, and investments in their CRA “assessment areas.” Credit unions are exempt from the CRA regulatory burdens imposed on banks and thrifts such as human capital, overhead, procedural, and implementation costs, in addition to traditional financing. As well, depository institutions are regularly examined for compliance and are prohibited from expanding or offering new products or services if their CRA rating is less than satisfactory. Banks also assert that the CRA is used by some activists groups to negotiate compensatory settlements by banks for the organization they represent. The banking industry and House Financial Services Committee Chairman Barney Frank have suggested extending CRA to credit unions, although no legislative action has been taken. Credit unions argue that CRA compliance is an unnecessary regulatory burden, as credit unions already participate in community reinvestment activities.¹⁶

There are other regulatory distinctions between credit unions and other depository institutions. For example, all federally chartered banks and thrifts have at least two layers of regulatory oversight; they are regulated by their chartering authority (i.e. the Office of the Comptroller of the Currency or the Office of Thrift Supervision) and the Federal Deposit Insurance Corporation. Moreover, stockholder-owned depository institutions have yet a third layer of regulatory supervision by virtue of their oversight by

the Securities and Exchange Commission. Federal credit unions are only regulated by the NCUA.

Mortgage Banking Intersection:

Which credit unions are the top mortgage lenders?

According to the Home Mortgage Disclosure Act (HMDA) database, the top ten credit unions by loan origination volume in 2007 were as follows:

Rank	Lending Institution	No. Lenders	All Originations		All Originations	
			Number	%	Dollar Volume (\$000)	%
1	Navy Federal Credit Union	1	37,707	7.2	\$ 5,883,304	10.2
2	Pentagon Federal Credit Union	1	13,910	2.7	\$ 2,332,033	4.0
3	State Employees' Credit Union	1	11,457	2.2	\$ 1,584,144	2.7
4	Boeing Employees' Credit Union	1	4,581	0.9	\$ 972,172	1.7
5	Kinecta Federal Credit Union	1	1,776	0.3	\$ 951,058	1.6
6	Desert Schools Federal Credit Union	1	6,964	1.3	\$ 782,286	1.4
7	Golden 1 Credit Union	1	6,251	1.2	\$ 657,682	1.1
8	Suncoast Schools Federal Credit Union	1	3,927	0.8	\$ 493,972	0.9
9	America First Credit Union	1	4,670	0.9	\$ 472,129	0.8
10	San Diego County Credit Union	1	2,126	0.4	\$ 441,768	0.8

Mortgage Lending

GAO found that while credit unions generally “charged lower interest rates for consumer loans, similarly sized credit unions and banks charged virtually identical rates on larger loans such as mortgages, from 2000 through 2005. In some limited instances, banks offered lower rates than similarly sized credit unions. Also, larger institutions in general offered lower rates than smaller institutions.”¹⁷ However, recent data indicates that credit union mortgage lending activity has increased. For credit unions in 2007, first mortgage real estate lending grew by \$19.63 billion or 12.28 percent from the previous year.¹⁸ In the year ending September 2007, credit unions first mortgage origination increased by five percent, or \$57.9 billion from full-year 2006 results. Credit unions sold 30.4 percent of their mortgages into the secondary market.¹⁹

Credit Union National Association (CUNA) & National Association of Federal Credit Union (NAFCU) Policy Positions

This section compares and contrasts the differences between MBA's public policy positions and those of the two largest credit union trade associations, CUNA and NAFCU. CUNA represents 90 percent of all 8,400 credit unions, or 90 million credit union members. NAFCU's membership includes a significant number of large credit unions with sophisticated operations, as well as credit unions that are relatively small and have limited operations.²⁰

Bankruptcy

Both CUNA and NAFCU have expressed concerns over bankruptcy cramdown legislation, however both are willing to compromise on provisions in proposed bills, while MBA has vehemently opposed any such changes to the bankruptcy code. CUNA acknowledges that bankruptcy cramdown would increase uncertainty and risk related to mortgage investing, in addition to reducing mortgage credit in the future, tightening underwriting,²¹ and increasing interest rates by 50 to 200 basis points [CUNA citing other analysts].²² Similar to MBA's position, CUNA believes that bankruptcy cramdown would adversely affect the secondary market by calling into question the value and safety of existing mortgage-backed securities, in turn, decreasing investor confidence and reducing liquidity in the capital markets.²³ Regarding bankruptcy reform, NAFCU is concerned that bankruptcy reform could have adverse effects on the availability of credit in the future, a situation where the costs may outweigh the benefits. Last year, NAFCU worked with Senator Durbin (D-IL) to craft a compromise that facilitates the use of a means test, although no floor action has been taken on this measure.²⁴

Real Estate Settlement Procedures Act

Additionally, both CUNA and NAFCU agree with MBA on many issues regarding the Real Estate Settlement Procedures Act (*RESPA*). Both trade associations believe that the Department of Housing and Urban Development (HUD) should coordinate its efforts with the Federal Reserve Board (FRB) to ensure that the RESPA rule and the upcoming changes to Regulation Z are coordinated and have the same implementation date. Additionally, CUNA and NAFCU believe that extending the good faith estimate (GFE) form from one to four pages will only confuse borrowers,^{25,26} the very confusion the rule seeks to prevent.

National Flood Insurance Program

CUNA shares MBA's position on supporting the reauthorization of the National Flood Insurance Program. CUNA believes that "adequate funding for the program is important to ensure that people living in flood plains are able to secure protection, obtain mandatory coverage, for their homes and mortgages."²⁷

Anti-Predatory Lending

Regarding predatory lending, NAFCU believes that any anti-predatory lending legislation should not "inadvertently discourage legitimate efforts of lenders to meet the needs of borrowers with sub-par credit records."²⁸ CUNA shares a similar position to

NAFCU, as it generally supports the application of anti-predatory lending legislation permitted that “the regulatory burden of compliance is minimized.” Additionally, CUNA asserts that some provisions should be tailored to the mortgage brokerage industry rather than focusing on depository institutions.²⁹

Community Reinvestment Act

Both NAFCU and CUNA oppose any expansive changes to the Community Reinvestment Act, as credit unions claim to have outperformed banks and thrifts without being obligated to under the Act. NAFCU and CUNA believe that extending CRA would establish unfounded regulatory burdens on credit unions.^{30,31}

Legislative, Regulatory, and Judicial Activity: Credit Unions

This section provides a brief summary of legislative, regulatory, judicial, and other relevant activity regarding the expansion of credit union powers. Specifically, the legislative and regulatory activities exemplify credit unions’ attempt to expand their jurisdiction. The judicial activity illustrates NCUA’s interpretations of FOM rules that would seem to be an effort to extend membership privileges beyond NCUA’s statutory authority. The court cases that are cited were ruled in favor of the banking industry. In addition, the last section discusses the National Association of Realtors’ (NAR) application to open its own credit union.

Legislative proposals

As credit unions continue to push for increased powers, especially regarding FOM and MBL provisions, the differences between credit unions and other depository institutions are increasingly unclear. Current legislative proposals that seek to expand credit union authority and decrease regulatory obligations are prime examples of the lessening differences. Currently, there are three significant legislative proposals circulating that aim to expand federal credit union authority: H.R. 1537, “The Credit Union Regulatory Improvements Act” (CURIA); H.R. 5519, “The Credit Union Regulatory Relief Act of 2008;” and H.R. 6312, “The Credit Union, Bank and Thrift Regulatory Relief Act.” Please find short descriptions of each bill below. For a section-by-section summary of each bill please see Appendix A, B, and C. H.R. 1849, “The Credit Union Small Business Lending Act” and H.R. 3113, the “Affordable Financial Services Enhancement Act,” have been omitted from this paper because there has been little movement on these bills. While there has been minimal action in the Senate, the House has been more deliberative on credit union legislation. There has also been legislative activity on the State level; however, the scope of this paper is focused on the federal level.

CURIA is by far the most expansive credit union legislation currently in Congress. If enacted, significant CURIA provisions would: ease capital requirements for credit unions from seven to 5.25 percent; expand MBL ability by increasing MBL to 20 percent of capital, up from 12.25 percent; provide MBL exclusion for loans made to nonprofit religious organizations; and enlarge FOM by expanding the definition of “underserved area,” where entire cities would qualify. Additionally, CURIA would modify regulatory provisions by allowing investments in investment grade securities; enable NCUA to extend maturity for loans beyond 15 years; and allow NCUA greater flexibility to

respond to market conditions by enabling the authority to increase the temporary interest rate ceiling beyond 15 percent under certain conditions. H.R. 5519 contains eight allegedly non-controversial provisions found in CURIA. Similar to CURIA, H.R. 5519: allows investments in investment grade securities; provides MBL exclusion for loans made to nonprofit religious organizations; and provides NCUA with greater flexibility to respond to market conditions. However, H.R. 5519 departs from CURIA concerning the service to “underserved areas” provision. Both bills allow credit unions to extend membership to any person or organization within an “underserved area,” and mandate that a credit union establish an office in said area within two years. However, in H.R. 5519, this power is conditional on minimum net worth and underserved area reporting requirements.³² All the credit union provisions in H.R. 6312—which passed the House in June and has been referred to the Senate Banking Committee—are either identical or very similar to provisions found in both CURIA and H.R. 5519. Significant provisions are as follows (also aforementioned): service to “underserved areas;” investments in investment grade securities; enabling NCUA to extend maturity for loans beyond 15 years; allowing NCUA greater flexibility to respond to market conditions by enabling the authority to increase the temporary interest rate ceiling beyond 15 percent under certain conditions; and providing MBL exclusion for loans made to nonprofit religious organizations.

Regulatory activity

On June 25, 2008, NCUA published an advanced notice of proposed rulemaking and request for comment regarding MBL in the *Federal Register*. NCUA is considering amending its MBL rule to revise provisions related to loan-to-value (LTV) ratio requirements; collateral and security requirements; credit union service organization involvement in the MBL process; MBL loan participation; and waivers. NCUA is also seeking comment on whether to lower the borrower equity requirement for construction and development (C&D) loans from the current 25 percent to 20 percent. This change would allow credit unions to finance up to 80 percent of a construction loan (up from 75 percent), while banks are able to finance up to 85 percent. Credit unions can finance up to 80 percent on other commercial loans. CUNA stated that easing restrictions on C & D lending would not likely lead to expansive changes. However, some credit unions advocates prefer an overall expansion on the MBL cap— an increase from 12.25 to 20 percent of a credit union’s total assets—that would be more significant to the minor change that NCUA’s proposed rule would establish.³³

In December 2008, NCUA published a final rule in the *Federal Register* that clarifies the eligibility guidelines for “underserved areas.” The rule clarifies the procedure for establishing whether a “underserved area” qualifies as a local community; makes explicit the process for determining whether an economic distressed area that combines multiple geographic units qualifies as a “underserved area;” updates the documentation and clarifies the scope requirements for demonstrating that a proposed area has “significant unmet needs” for applicable financial services; and uses data to determine whether an area is considered underserved by other depository institutions. Under the new rule, NCUA will use median family income to determine if a credit union qualifies for low-income designation. Credit unions will no longer need to apply for low-income

designation, as NCUA will have income data on credit union members to evaluate whether or not a credit union qualifies. This rule is effective on January 2, 2009.

Judicial Activity

In 1998, the Supreme Court heard *National Credit Union Administration v. First National Bank & Trust Co.*, where the American Bankers Association (ABA) and banks filed suit against NCUA's interpretation of the multiple group common bond in the membership provisions of the Federal Credit Union Act (FCUA). The court ruled in favor of the banking industry, citing that NCUA was interpreting FCUA to permit multiple common bonds when the statute is clearly limited to a single common bond.³⁴

Once again in July 2008, the ABA took NCUA to court over membership rules in *American Bankers Association, et al. v. National Credit Union Administration*. ABA challenged NCUA's decision to approve a seven-county community charter that spanned 3,400 square miles and included 1.1 million individuals, which NCUA constituted as a well-defined local community, neighborhood, or rural district. The district court ruled in favor of ABA, "declaring the NCUA's action arbitrary and capricious."³⁵

Other Activity: The National Association of Realtors'® application to open a credit union

On March 10, 2008, the National Association of Realtors® (NAR) submitted its application to open the Realtors® Federal Credit Union, which was chartered on November 7, 2008 by NCUA. NAR's credit union could become one of the largest in the nation by granting instant eligibility to the group's 1.3 million members and members of their immediate families and households.³⁶ The online credit union will offer business and personal accounts, as well as home, car and business start-up loans.³⁷

There are also tremendous competitive considerations for MBA members. For example, Realtors® may promote home purchase financing through their credit union and abandon other lender channels. Traditionally, NAR and credit unions have not seen eye-to-eye in Washington, as the Realtors® have lobbied against federally chartered organizations from offering real estate brokerage services.³⁸ It is also important to note the relationship that may result as these groups join forces, especially with regard to their combined lobbying power and the expansion of credit unions' FOM.³⁹

Conclusion:

As illustrated in this issue paper, credit unions have significantly evolved since their inception in 1934. Credit Unions have grown into complex financial institutions that offer products and services similar to those of bank and thrift institutions, though credit unions have a tax-exempt pricing advantage. In the future, dialogue on the tax-exempt status of credit unions should consider the similarities and differences between credit unions and bank and thrift organizations; member business lending and mortgage origination; and recent legislative, regulatory and judiciary developments.

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Appendix A

H.R. 1537, The Credit Union Regulatory Improvements Act (CURIA)

CURIA was introduced by Representative Paul Kanjorski (D-PA) and Ed Royce (R-CA) on March 15, 2007 (148 cosponsors). This bill has been circulating since the 108th Congress. Significant provisions include: prompt correction action reform and the utilization of a risk-based capital regime congruent with Basel II standards; expanded member business lending; license to adopt “underserved areas” into a credit union’s FOM; and regulatory modernization, including: allowing credit unions to invest in securities; and enabling NCUA’s authority to extend the current 15-year term maturity on loans.

A detailed section-by-section summary is provided below, although several provisions not relevant to MBA were omitted. If implemented CURIA would:

Title I. Capital Modernization:

Section 101. Amendments to Net Worth Categories- Reform Prompt Corrective Action (PCA) by redefining the banking code’s “well-capitalized” definition to include a risk-based net worth ratio. Currently, statutory PCA requirements do not take the individual credit unions’ risk profile. Proposed PCA reform would utilize a risk-based system where *capital levels would be determined by risk*.⁴⁰ The proposed PCA threshold would change the leverage ratio standard, decreasing the amount required to be well-capitalized from 7 to 5.25 percent.⁴¹

Title II. Economic Growth:

Section 201. Limits on Member Business Loans- Increase the current limit on member business loans (MBL) from 12.25 percent to 20 percent of a credit union’s total assets.

Section 202. Definition of Member Business Loan- Amend the definition of member business loans to exclude business loans under \$100,000, up from the current exemption limit of \$50,000; thus, increasing a credit union’s business lending capacity.

Section 203. Restrictions on Member Business Loans- Grant the Board discretion over whether to continue business loan lending in the event that a credit union becomes undercapitalized.

Section 204. Member Business Loan Exclusion for Loans to Nonprofit Religious Organization- Exempt loans made to non-profit religious organizations from the cap on MBL.

Section 206. Amendments Relating to Credit Union Service to Underserved Areas- Allow all federal credit unions to extend membership to any person or organization within a local community, neighborhood, or rural district if the Board (NCUA) determines (anytime after August 7, 1998) that any of the aforementioned areas is an underserved area. Currently, only federal credit unions with multiple common bond charters are permitted to include underserved areas into a FOM. Under CURIA, all federally chartered credit unions would be permitted to adopt “underserved

areas.”⁴² Additionally, the credit union must establish an office in the underserved area within a two-year time frame.

Section 207. Underserved Areas as Defined- Define “underserved area” as a geographic area that consists of one or more census tracts that encompass or are located within: an investment area, defined by the Community Development Act or the Financial Institutions Act; or a low income community, as defined by the Internal Revenue Code.

Title III- Regulatory Modifications:

Section 301. Investment in Securities by Federal Credit Unions- Allow federal credit unions to purchase and hold investment grade securities, or “marketable obligations evidencing the indebtedness of any person in the form of bonds, notes, or debentures and other instruments commonly referred to as investment securities,” if authorized by the Board.

Section 302. Authority of NCUA to Establish Longer Maturities for Certain Credit Union Loans-

Give NCUA the authority to extend maturity for loans beyond 15 years.

Section 303. Increase in Lending and Investment Limits in Credit Union Service Organizations-

Allow loans made to credit union organizations to be raised from one to two percent of the paid-in and unimpaired capital and surplus of the credit union. Additionally, the Board will have the authority to reduce this percentage limitation on a case-by-case basis.

Section 304. Voluntary Mergers Involving Multiple Common-Bond Credit Unions-

Add an exemption from the numerical limitation set at 3,000 members, for any group transferred in connection with a voluntary merger of a federal credit union with another insured credit union contingent on the Board’s approval.

Section 305. Conversions of Certain Credit Unions to a Community Charter- In the case of a conversion to a community charter, grant the Board authority to determine whether a member group or other portion of a credit union’s membership that is located outside the well-defined local community, can remain inside the credit union’s FOM and continue taking new members.

Section 307. Providing NCUA with Greater Flexibility in Responding to Market Conditions- Expand the Board’s authority to increase the temporary interest rate ceiling beyond 15 percent if either money market interest rates have risen over the preceding six-month period or if prevailing interest rate levels threaten the safety and soundness of individual credit unions “as evidenced by adverse trends in liquidity, capital, earnings, and growth.”

Section 309. Exemption from Pre-Merger Notification Requirement of the Clayton Act- Exempt credit union mergers from the Clayton Antitrust Act pre-merger notification requirement, which requires merging credit unions to file with the Federal Trade Commission so that they can assess the merger’s impact on financial services competition.⁴³

Appendix B

H.R. 5519, “The Credit Union Regulatory Relief Act of 2008”

H.R. 5519 was introduced by Representative Kanjorski on March 3, 2008 (18 cosponsors). This bill contains eight provisions found in CURIA and was previously passed by the House.⁴⁴ Significant provisions include: allowing investment in securities; increasing investments in, and loans to credit union service organizations from one to three percent of capital surplus; enabling NCUA’s authority to extend the current 15-year term maturity on loans; and license to adopt “underserved areas” into a credit union’s FOM.

Several provisions of H.R. 5519 not relevant to MBA were omitted. H.R. 5519 would:

Section 2. Investments in Securities by Federal Credit Unions- Allow federal credit unions to purchase and hold investment grade securities, or “marketable obligations evidencing the indebtedness of any person in the form of bonds, notes, or debentures and other instruments commonly referred to as investment securities,” if authorized by the Board. (Same as H.R. 1537)

Section 3. Increase in Investment Limit in Credit Union Service Organizations- Allow loans made to, and investments in credit union service organizations to be raised from one to three percent of the paid-in and unimpaired capital and surplus of the credit union.

Section 4. Member Business Loan Exclusion for Loans to Nonprofit Religious Organizations- Exempt loans made to non-profit religious organizations from the cap on MBL. (Same as H.R. 1537)

Section 5. Authority of NCUA to Establish Longer Maturities for Certain Credit Union Loans- Give NCUA the authority to extend maturity for loans beyond 15 years, except as otherwise provided in this Act.

Section 6. Providing NCUA with Greater Flexibility in Responding to Market Conditions- Expand the Board’s authority to increase the temporary interest rate ceiling beyond 15 percent if either money market interest rates have risen over the preceding six-month period or if prevailing interest rate levels threaten the safety and soundness of individual credit unions “as evidenced by adverse trends in liquidity, capital, earnings, and growth.” (Same as H.R. 1537)

Section 7. Conversions of Certain Credit Unions to a Community Charter- In the case of a conversion to a community charter, grant the Board authority to determine whether a member group or other portion of a credit union’s membership that is located outside the well-defined local community, can remain inside the credit union’s FOM.

Section 8. Credit Union Participation in the SBA Section 504 Program- Loans to members shall be made in conformity with criteria established by the board of directors: Provided that a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the federal government, a state government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law, and applicable regulations, under which such insurance, guarantee, or commitment is provided.

Section 9. Amendments Relating to Credit Union Service to Underserved Areas-

Allow credit unions to serve all underserved areas, under the qualification that it is at least adequately capitalized, as well as require the credit union to establish an office in the underserved area within a two-year time frame. Additionally, this section requires that the credit union report on the number of members it has and the number of offices it holds in the underserved area. NCUA will be required to report all applications, the number and locations of the underserved areas, and the total number of underserved area members. Underserved area will be defined as an area consisting of at least a single census tract that meets the criteria for either a low income community as defined by the Internal Revenue Code or an investment area under the Community Development Banking and Financial Institutions Act.

Section 10. Short-Term Payday Loan Alternatives within Field of Membership-

Enable credit union to provide short-term loans as an alternative to payday loans.

Section 12. Encouraging Small Business Development in Underserved Urban and Rural Communities-

Provides an additional exclusion from the term MBL. Extensions of credit made to members that use the proceeds towards business purposes will be excluded from the credit union's MBL cap if such extension of credit is made to a person in an underserved area being served by the credit union.

Section 13. Exemption from Pre-Merger Notification Requirement of the Clayton Act-

Exempt credit union mergers from the Clayton Antitrust Act pre-merger notification requirement, which requires merging credit unions to file with the Federal Trade Commission so that they can assess the merger's impact on financial services competition.⁴⁵ (Same as H.R. 1537)

Appendix C

H.R. 6312, Credit Union, Bank and Thrift Regulatory Relief Act

H.R. 6312 includes credit union provisions in Title I. (For the purposes of this paper, only Title I will be discussed.) The Credit Union, Bank and Thrift Regulatory Relief Act would reform PCA coupled with a risk-based capital regime, increase consumer protections, and modernize credit union merger procedures covered by the Clayton act. H.R. 6312 was introduced by Representative Paul Kanjorski on June 19, 2008 and passed the House on June 24, 2008 (3 cosponsors). The bill was referred to the Senate Banking Committee on June 25, 2008.

This paper focuses on Title I of H.R. 6312, which is specific to credit unions. H.R. 6312 would:

Title I. Credit Unions:

Section 101. Investment in Securities by Federal Credit Unions- Allow federal credit unions to purchase and hold investment grade securities, or “marketable obligations evidencing the indebtedness of any person in the form of bonds, notes, or debentures and other instruments commonly referred to as investment securities,” if authorized by the Board. (Same as H.R. 1537 and H.R. 5519)

Section 102. Increase in Investment Limit in Credit Union Service Organizations- Allow loans made to, and investments in credit union service organizations to be raised from one to three percent of the paid-in and unimpaired capital and surplus of the credit union. (Same as H.R. 5519)

Section 103. Member Business Loan Exclusion for Loans to Nonprofit Religious Organization- Exempt loans made to non-profit religious organizations from the cap on MBL. (Same as H.R. 1537)

Section 104. Authority of NCUA to Establish Longer Maturities for Certain Credit Union Loans- Give NCUA the authority to extend maturity for loans beyond 15 years. (Same as H.R. 1537)

Section 105. Providing NCUA with Greater Flexibility in Responding to Market Conditions- Expand the Board’s authority to increase the temporary interest rate ceiling beyond 15 percent if either money market interest rates have risen over the preceding six-month period or if prevailing interest rate levels threaten the safety and soundness of individual credit unions “as evidenced by adverse trends in liquidity, capital, earnings, and growth.” (Same as H.R. 1537 and H.R. 5519)

Section 106. Conversions of Certain Credit Unions to a Community Charter- In the case of a conversion to a community charter, grant the Board authority to determine whether a member group or other portion of a credit union’s membership that is located outside the well-defined local community, can remain inside the credit union’s FOM. (Similar to H.R. 1537, although this language does not permit new members to join)

Section 107. Credit Union Participation in the SBA Section 504 Program- Loans to members shall be made in conformity with criteria established by the board of directors: Provided that a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the federal government, a state government, or

any agency of either may be made for the maturity and under the terms and conditions specified in the law, and applicable regulations, under which such insurance, guarantee, or commitment is provided. (Same as H.R. 5519)

Section 108. Amendments Relating to Credit Union Service to Underserved

Areas- Would allow credit unions to serve all underserved areas, under the qualification that it is at least adequately capitalized, as well as require the credit union to establish an office in the underserved area within a two-year time frame. Additionally, this section requires that the credit union report on the number of members it has and the number of offices it holds in the underserved area. NCUA will be required to report all applications, the number and locations of the underserved areas, and the total number of underserved area members. Underserved area will be defined as an area consisting of at least a single census tract that meets the criteria for either a low income community as defined by the Internal Revenue Code or an investment area under the Community Development Banking and Financial Institutions Act and is not a tract in which 50 percent or more of the resident families have annual incomes in excess of \$75,000. This provision also expands the definition of underserved area to include any geographic area where a credit union has received approval from NCUA to provide service prior to enactment of this Act.

Section 109. Short-Term Payday Loan Alternatives within Field of Membership-

Would enable credit unions to make short-term unsecured loans as an alternative to payday loans in amounts less than \$1,000 and for a time period less than 90 days.

Section 111. Encouraging Small Business Development in Underserved Urban and Rural Communities-

Provides an additional exclusion from the term MBL. Extensions of credit made to members that use the proceeds towards business purposes will be excluded from the credit union's MBL cap if such extension of credit is made to a person in an underserved area being served by the credit union. (Similar to H.R. 5519, although H.R. 6312 excludes businesses operating on a nationwide level)

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