STATEMENT

OF

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"THE CONSIDERATION OF REGULATORY RELIEF PROPOSALS"

BEFORE THE

COMMITTEE
ON
BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE

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Chairman Shelby, Ranking Member Sarbanes, and Members of the Committee: on behalf of the National Credit Union Administration (NCUA) I am pleased to be here today to present our agency's views on regulatory relief initiatives being considered by Congress. NCUA's longstanding view on this issue is that enactment will provide a tangible benefit to America's consumers by giving them access to more modern, up to date and efficient financial institutions. An equally important benefit will be an overall improvement in regulatory efficiency by removing outmoded, duplicative, and unnecessary regulations while maintaining a focus on the primary safety and soundness responsibility that Congress has conferred on the Agency.

REGULATORY RELIEF AND EFFICIENCY

In June of 2005 I testified before this Committee and presented several legislative proposals NCUA recommended for your consideration. NCUA continues to recommend these provisions as desirable components of regulatory reform:

- Permit federal credit unions to cash checks and money transfer services for individuals in their field of membership but not yet members. This is particularly important to federal credit unions in furthering their efforts to serve those of limited income or means in their field of membership. These individuals, in many instances, do not have mainstream financial services available to them and are often forced to pay excessive fees for

check cashing, wire transfer and other services. The House of Representatives has taken this up as H.R. 749, amended it to include international remittances and passed the bill. Section 3 of S. 31, introduced by Senator Sarbanes and other Members of the Committee includes a similar provision;

- Increase the allowable maturity on federal credit union loans from 12 to 15 years. Federal credit unions should be able to make loans for second homes, recreational vehicles and other purposes in accordance with conventional maturities that are commonly accepted in the market today;
- Increase the investment limit in credit union service organizations (CUSO's) from one percent to three percent. The one percent aggregate investment limit is unrealistically low and forces credit unions to either bring services in-house, thus potentially increasing risk to the credit union and the NCUSIF, or turn to outside providers and lose control;
- Safely increase options for credit unions to invest their funds by expanding authority beyond loans, government securities, deposits in other financial institutions and certain other very limited investments. The recommendation is to permit additional investments in corporate debt securities (as opposed to equity) and further establish specific percentage limitations and investment grade standards;
- Alleviate NCUA from the process now required that it consider a spin-off of any group of over 3,000 members in the merging credit union when two credit unions merge voluntarily. A spin-off would most likely undermine

financial services to the affected group and may create safety and soundness concerns;

- Provide relief for credit unions from a requirement that they register with the SEC as broker-dealers when engaging in certain de minimums securities activities. The principle established by the present bank exemption, and a similar exemption sought by thrifts, is that securities activities of an incidental nature to the financial institutions do not have to be placed into a separate affiliate;
- Make needed technical corrections to the Federal Credit Union Act.

These NCUA recommendations are more fully described on the following pages. Additionally, NCUA encourages this Committee to consider changes to the current credit union member business lending regimen that would improve the ability of credit unions to provide a source of needed credit to small businesses.

NCUA has also reviewed the following additional credit union provisions included in the matrix circulated by Senator Crapo in anticipation of this hearing. We have carefully examined each and have determined that these provisions present no safety and soundness concerns for the credit unions we regulate and/or insure: leases of land on federal facilities for credit unions; exclusion of member business loans to non-profit religious organizations; criteria for continued membership of certain member groups in community charter conversions; credit union governance provisions; providing NCUA with greater flexibility to adjust the

federal usury ceiling for federal credit unions; and an exemption from the pre-merger notification requirements of the Clayton Act.

PRESERVING THE NET WORTH OF CREDIT UNIONS IN MERGERS

NCUA is aware that the Financial Accounting Standards Board (FASB) has extended its expected date to publish a final rule requiring the acquisition method of accounting for mergers of credit unions to 2007. This new rule would eliminate the "pooling" method and require the "acquisition" or "purchase" method to be used. [1] When this change to accounting rules is implemented it will require that, in a merger, the net assets on a fair value basis of the merging credit union as a whole be carried over as "acquired equity." The Federal Credit Union Act does not recognize "acquired equity" as part of capital rather defining capital in terms of "retained earnings". Retained earnings does not include acquired equity. This FASB policy has been in place since mid-2001 for most business combinations and the delay by FASB in implementing it for credit unions, as well as other cooperative organizations, has allowed all of us to explore how credit unions could conform to the new financial reporting standards.

[1] Statement of Financial Accounting Standard (SFAS) No. 141, Business Combinations, requiring the acquisition method for business combinations and effectively eliminating the pooling method. The pooling method has typically been used by credit unions to account for credit union mergers. The standards became effective for combinations initiated after June 30, 2001. Paragraph 60 of the standard deferred the effective date for mutual enterprises (i.e., credit unions) until the FASB could develop purchase method procedures for those combinations. In the interim, credit unions have continued to account for mergers as poolings (simple combination of financial statement components).

Without the changes to the Federal Credit Union Act, only "retained earnings" of the continuing credit union will count as net worth after a merger. This result would seriously reduce the post-merger net worth ratio of a federally insured credit union, because this ratio is the retained earnings of only the continuing credit union stated as a percentage of the combined assets of the two institutions. Not only would this inaccurately depict the actual net worth of the new, merged credit union, a lower net worth ratio also has adverse implications under the statutory "prompt corrective action" (PCA) regulation. This result will discourage voluntary mergers and on occasion make NCUA assisted mergers more difficult and costly to the National Credit Union Share Insurance Fund (NCUSIF). Absent a legislative remedy, an important NCUA tool for reducing costs and efficiently managing the fund will be unavailable. NCUA encourages this Committee to include language in legislation to allow NCUA to redefine "net worth" to include the pre-merger retained earnings of the merging credit union for purposes of regulatory capital calculation and prompt corrective action. Credit unions would continue to be required to prepare financial reports consistent with generally accepted accounting principles including FAS 141.

A solution was passed unanimously by the House last June, H.R. 1042, the "Net Worth for Credit Unions Act," and I strongly encourage this Committee to include that bill language in any regulatory relief legislation that you introduce.

REFORM OF PROMPT CORRECTIVE ACTION SYSTEM FOR FEDERALLY INSURED CREDIT UNIONS

The Credit Union Membership Access Act of 1998 mandated a system of Prompt Corrective Action (PCA) for credit unions designed to ensure problems in federally insured credit unions are resolved at the least long-term cost to the NCUSIF. PCA, and the focus it creates on active management of capital levels, has proven very valuable to NCUA's management of the National Credit Union Share Insurance Fund (NCUSIF) and the overall health of the credit union system. NCUA continues to strongly support a robust, statutorily mandated PCA system that fosters healthy capitalization levels and effective capital management in federally insured credit unions.

However, the current statutory requirements for credit unions are too inflexible and establish a structure based primarily on a "one-size-fits all" approach, relying largely on a high leverage requirement of net worth to total assets. This creates inequities for credit unions with low-risk balance sheets, limits NCUA's ability to have a risk-based requirement that governs more often, without requiring unduly high capital levels, and fosters accumulation of capital levels well in excess of what is needed for most credit unions' safety and soundness and strategic needs.

Credit unions enjoy very strong capital levels, with 98% of credit unions categorized as well capitalized under PCA. Credit unions' conservative nature

and limited ability to manage compliance with capital standards has resulted in their accumulating a cushion of capital well in excess of PCA requirements, with the aggregate level of capital at 11.24% of total assets. Though high capital levels afford the insurance fund with additional protection and the institution with various benefits, it does not come without a cost. Consider that 85% of credit unions maintain a leverage ratio (net worth to total assets) in excess of 9%. As the table below illustrates, this results in net worth in the credit union system of $15.2 billion above this level. If credit unions had more flexibility to manage their compliance with PCA, they could still maintain a good cushion above regulatory requirements while safely returning more earnings to the members and expanding member services and other outreach programs.

Based on December 31, 2005, Data	
Total Federally-Insured Credit Unions (FICUs)	8,965
Number of FICUs with Net Worth Ratio > 9%	7,604
% of FICUs with Net Worth Ratio > 9%	84.8%
Total Net Worth at 11.24% of assets (billions)	$76.3
Amount of Net Worth in Excess of 9% of assets (billions)	$15.2

Further, as the federal bank and thrift regulators are in the process of implementing changes to the capital standards their regulated institutions operate under, it becomes even more important that capital standards for credit unions

are able to be updated to remain comparable and incorporate relevant improvements in approaches to measuring risk and allocating capital. Thus, reform of PCA standards for federally insured credit union remains a vital issue.

NCUA's purposes in seeking PCA reform is to achieve greater comparability with other federally insured financial institutions, provide a good balance between sound protection for the insurance fund and reasonable constraints on insured institutions, and to make our capital requirements more risk-sensitive. We recognize that some credit unions will be provided with greater flexibility in managing capital levels as a result, which is largely a function of their relatively low risk profiles and strong capital levels. On the whole we believe reforms to our system can strike an effective balance between maintaining robust standards while providing additional flexibility where warranted. Also, we very much appreciate that there are inherent limitations in risk-based capital techniques, and thus the leverage ratio plays an important part in a good regulatory capital system given. It is important to have the right interaction between the leverage and risk-based requirements to ensure the risk-based requirement is effective in influencing risk management decisions of institutions and more closely relates required capital levels to institution specific risk profiles.

In March 2005, NCUA published specific PCA reform recommendations designed to achieve these goals. The reform proposal is intended to provide enough details to enable a thoughtful consideration of the impact of any such

reform, as well as to establish a basis for specific statutory language that would be needed to accomplish our reform objectives. In order to achieve greater comparability and a more risk-based system, we have proposed some reduction in the standard net worth (i.e., leverage) ratio requirement for credit unions. Adjustment of the leverage ratio for credit unions will enable it to effectively complement the risk-based requirement, not overshadow it. Credit unions will have to more actively manage the risk they take in relation to their capital levels. It will reduce any competitive disadvantage that results from being held to a higher capital standard than other federally insured institutions when the higher standard is not warranted.

NCUA recognizes that there are some differences between the types of federally insured financial institutions that need to be taken into account, and we will continue to consult with the Department of Treasury on comparability issues. For example, credit unions do have limitations on their ability to raise capital. However, they also have a relatively low risk profile given greater restrictions on powers compared to other financial institutions, as evidenced by their low loss history. We recognize the need to account for the 1% deposit method of capitalizing the NCUSIF given its effect on the overall capital in the share insurance fund and the credit union system. Thus, our reform proposal incorporates a revised method for calculating the net worth ratio for PCA purposes by adjusting for the deposit credit unions maintain in the share insurance fund. Our proposed treatment of the NCUSIF deposit for purposes of

regulatory capital standards in no way alters its treatment as an asset under generally accepted accounting principles, or NCUA's steadfast support of the mutual, deposit-based nature of the NCUSIF.

This reform proposal also outlines improvements we believe are needed to make our risk-based net worth requirement more risk-sensitive and relevant. We intend to have a well designed risk-based system that maintains comparability with FDIC's risk-based capital requirements for non-BASEL II insured institutions. For potential impact analysis purposes, we designed a risk-based model using elements of BASEL I and the standard approach of BASEL II. However, since we issued our proposal, there have been further developments related to risk-based capital standards for other federally insured financial institutions. We continue to closely monitor developments in risk-based capital standards for other insured financial institutions and will modify our risk-based requirement model and impact analysis as needed.

As there are limitations in any regulatory capital scheme, NCUA's reform proposal also includes recommendations to address these other forms of risk under the second pillar of the supervisory framework, a robust supervisory review process. Through our examination and supervision process, NCUA will continue to analyze each credit union's capital position in relation to the overall risk of the institution, which will at times reflect a need for capital levels higher than regulatory minimums.

Enabling NCUA to adopt a PCA system that remains relevant and up-to-date with emerging trends in credit unions and the marketplace provides safety, efficiency, and benefits to the credit union consumer. I believe our reform proposal achieves a much needed balance between enabling credit unions to utilize capital efficiently to better serve their members while maintaining safety and soundness and protecting the share insurance fund. A well-designed risk based system would alleviate regulatory concerns by not penalizing low risk activities and by providing credit union management with the ability to manage their compliance through adjustments to their assets and activities. A PCA system that is more fully risk-based would better achieve the objectives of PCA and is consistent with sound risk management principles.

REFORM OF CREDIT UNION MEMBER BUSINESS LENDING

NCUA recommends improvements in the current credit union member business lending regimen that would provide an enhanced ability to make those loans while maintaining a strong focus on safety and soundness.

Specifically, NCUA would support legislative changes that would:

- remove the limit on assets a credit union can place in member business loans, currently calculated at 1.75 times actual net worth, and substitute a flat rate of 20% of the credit union's total assets.
- eliminate the current $50,000 threshold for defining a loan as a MBL, and grant NCUA authority to exclude member business loans under $100,000.

Given the extensive regulations under which credit union member business lending is done, NCUA believes that both the 12.25% cap and the $50,000 limit present an unnecessary barrier to a type of lending that experience has shown to be exceptionally safe and sound.

EXPLANATION OF NCUA RECOMMENDED PROVISIONS FOR CONSIDERATION BY THE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Check Cashing and Money Transfer Services Offered within the Field of Membership of the Credit Union

Current Law

Section 107 of the Federal Credit Union Act authorizes federal credit unions to provide check cashing and money transfer services to members.

Proposed Amendment

This amendment permits federal credit unions to offer these same services to persons eligible to be members of the credit union, defined as those that fall within the field of membership of the credit union.

Reasons for Change

- Congress and the Administration are asking financial institutions to do more to reach the "unbanked."
- Credit unions are constrained from extending the most basic financial transaction (check cashing) to those who have avoided traditional financial institutions.
- Expanding check cashing, wire transfer, and similar services to non-members within a credit union's field of membership would provide an introduction to reliable low-cost financial services which can provide a viable alternative to less savory practices while at the same time increase confidence in traditional financial organizations.
- With more and more credit unions adopting underserved areas, these services become especially important in reaching out to the underserved.

Eliminate the 12-year Limit on Term of Federal Credit Union Loans

Current Law

The Federal Credit Union Act imposes a 12-year loan maturity limit on most credit union loans. Principal residence loans have maturities up to 30 years, and principal mobile home loans have maturities of 15 years.

Proposed Amendment

The proposed amendment permits the NCUA Board to provide for maturity limits up to 15 years, or longer, as the NCUA Board may allow by regulation.

Reasons for Change

- The current restriction placed on federal credit unions is outdated and unnecessarily restricts a credit union's lending terms to its members.
- Members of Federal credit unions should be able to obtain loans for second homes, recreational vehicles, and other purposes in accordance with conventional maturities that are commonly accepted in the market today.

Increase in 1 percent Investment Limit in CUSOs

Current Law

The Federal Credit Union Act permits federal credit unions to invest in Credit Union Service Organizations (CUSOs)--organizations providing services to credit unions and credit union members. An individual credit union, however, may invest in aggregate no more than 1% of its shares and undivided earning in these organizations.

Proposed Amendment

The provision increases the permissible credit union investment in CUSO's from 1% to 3% of its shares and undivided earnings.

Reasons for Change

- CUSOs are frequently established by several credit unions to provide important services to credit unions, such as check clearing and data processing, which can be done more efficiently for a group.
- When these services are provided through a CUSO, any financial risks are isolated from the credit union while allowing the credit unions to retain quality control over the services offered and the prices paid by the credit unions or their members.
- An increase in the CUSO investment to 3% allows the CUSO to continue servicing its credit union members without having to bring services back in-house or engage outside providers. This controls risk and expense to the credit union.
- The 1% limit has not been updated since its inception in 1977.

Investments in Securities by Federal Credit Unions

Current Law

The Federal Credit Union Act authorizes federal credit unions to invest in loans, obligations of the United States, or securities fully guaranteed as to principal and interest by the U.S. government, deposits in other financial institutions, and certain other limited investments, such as obligations of federal home loan banks, wholly-owned government corporations, or in obligations, participations or other instruments issued by, or fully guaranteed by FNMA, GNMA, or FHLMC.

Proposed Amendment

This amendment would provide authority for federal credit unions to purchase and hold for their own account "investment securities" if they are in one of the four highest investment rating categories -- subject to further definition and qualification by NCUA rulemaking.

The amendment limits federal credit unions' investments in investment securities in two ways. First, a statutory "single obligor" percentage limitation is established, such that the total amount of investment securities of any single obligor or maker held by the federal credit union for the credit union's own account cannot exceed 10% of the net worth of the credit union. Second, the aggregate amount of investments held by the federal credit union for its own account cannot exceed 10% of the assets of the credit union.

Reasons for Change

- A number of private debt instruments such as highly rated commercial paper, corporate notes, and asset-backed securities would be appropriate investments for federal credit unions.
- Other federally regulated and state regulated financial institutions have a proven track record with these limited investments.
- Allowing such investments would give credit unions more asset liability management options.
- NCUA implementing regulations will further address appropriate investment gradings, possible minimum credit union net worth requirements, and other safety and soundness requirements.
- With a percentage limitation of 10% of net worth per single obligor, this modest increase in investment flexibility will not subject credit unions to undue risk.
- The 10% limitation language parallels the limitation applicable to national banks when applied to the "net worth" measurement for credit unions.
- The prohibition against investment in equity securities is maintained.

Voluntary Merger Authority

Current Law

Section 109 of the Federal Credit Union Act requires NCUA to engage in an analysis of every voluntary merger of healthy federal credit unions to determine whether a spin-off of any select employee group (SEG) of over 3,000 members in the merging credit union can be effectively accomplished.

Proposed Amendment

The recommendation is to eliminate the requirement that NCUA engage in an analysis of every voluntary merger to determine whether a select employee group over 3,000 can be spun-off into a separate credit union.

Reasons for Change

- Requiring NCUA to engage in an analysis of every voluntary merger of healthy federal credit unions to consider a spin-off from the merging credit union of any select employee group (SEG) of over 3,000 is cumbersome and provides little practical benefit or purpose. There are about 300 a year.
- When two healthy multiple bond credit unions pursue a merger, it increases their financial strength and member service is enhanced, as well as their long-term safety and soundness.
- Member employee (or other) groups over 3,000 are already included in a multiple group credit union in accordance with statutory standards.

Treatment of Credit Unions as Depository Institutions Under Securities Laws

Current Law

Section 201 and 202 of the Gramm Leach Bliley Act, enacted in 1999, created specific exemptions from broker-dealer registration requirements of the Bank Exchange Act of 1934 for certain bank securities activities. Banks are also exempt from the registration and other requirements of the Investment Advisors Act of 1940. The principle established in these laws is that securities activities of an incidental nature to the bank do not have to be placed into a separate affiliate and functionally regulated.

Proposed Amendment

This provision would provide a statutory exemption for credit unions similar to that already provided banks and allow credit unions, like banks, to avoid complicated filings with the Securities and Exchange Commission for incidental activities.

Reasons for Change

- Federal credit unions are empowered to engage in specific activities enumerated in the FCUA and any other activities incidental to the enumerated activities. Among the specific broker-related activities currently authorized are third-party brokerage arrangements, sweep accounts, safekeeping and custodial activities. Among the dealer-related

activities are the purchase and sale of particular securities, including but not limited to municipal securities and “Identified Banking Products” for the credit union’s own account.

- These incidental activities might trigger SEC registration if not exempted by law.
- This important regulatory relief and efficiency provision would reduce the cost and complication to credit unions having to approach the SEC on a case-by-case basis or through regulation – the only avenues now available to them for relief.
- While a federal or state chartered credit union might be granted authority to engage in otherwise lawful activities, the credit union might have to abandon the activity or outsource it to a third party at increased expense if this exemption is not provided.
- This exemption would not expand the types of securities activities that credit unions are authorized to engage in. It simply serves to provide parity with banks and thrifts regarding an exemption from SEC registration for the limited securities activities credit unions are authorized to engage in.

Technical Corrections to the Federal Credit Union Act

Explanation of Proposed Amendment

28 purely technical and clerical corrections to the Federal Credit Union Act have been identified as needed.

Reasons for Change

To make the Federal Credit Union Act accurate and correct.

NCUA's Viewpoint Regarding Other Items Under Consideration

NCUA has reviewed additional items in order to determine whether it would also be advisable to maintain parallel treatment under the Federal Credit Union Act with our fellow financial regulators should the Committee include any of these suggestions in a legislative proposal. The proposals where NCUA would seek parallel treatment, and language to achieve that, follows.

Item 144: Technical Amendment to Section 8(i) of the FDI Act

This item clarifies that a Federal banking agency may take enforcement action against a person for conduct that occurred during his or her affiliation with a banking organization even if the person resigns from the organization, regardless of whether the enforcement action is initiated through a notice or an order.

Section 206(k)(3) of the FCU Act parallels §8(i) of the FDI Act. If §8(i) is amended, we recommend the same amendment to the FCU Act.

Suggested Language:

Section 206(k)(3) of the Federal Credit Union Act (12 U.S.C. 1786(k)(3)) is amended by inserting "or order" after "notice" each place such term appears.

Item 147. Clarification that Change in Control Conditions are Enforceable

This item amends section 8 of the FDI Act (12 U.S.C. 1818) to clarify the appropriate Federal banking agencies' authority to take enforcement action against the institutions they supervise based on violations of conditions imposed in writing in connection with any action by the agency on an application, notice, or other request by an insured depository institution or institution-affiliated party (IAP).

Section 206 of the FCU Act has parallel sections to the portions of §8 of the FDI Act this amendment changes. If the FDI Act is amended in this way, we recommend the same amendment to the FCU Act.

Suggested language:

Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended—

(a) in subsection (b) (1), in the first sentence, by striking "the granting of any application or other request by the credit union" and inserting "any action on

any application, notice, or other request by the credit union or institution-affiliated party,";

(b) in subsection (g)(1)(A)(i)(III), by striking "the grant of any application or other request by such credit union" and inserting "any action on any application, notice, or request by such credit union or institution-affiliated party"; and

(c) in subsection (k)(2)(A)(iii), by striking "the grant of any application or other request by such credit union" and inserting "any action on any application, notice, or other request by the credit union or institution-affiliated party".

Item 153. Parity in Standards for Institution-Affiliated Parties

This item deletes the phrase "knowingly or recklessly" from the definition of "institution-affiliated party" in the Federal Deposit Insurance Act (12 U.S.C. 1813(u)(4)). The FCU Act has an identical definition section, which should be similarly amended.

Suggested language:

Section 206(r)(3) of the Federal Credit Union Act (12 U.S.C. 1786(r)(3)) is amended by striking "knowingly or recklessly".

Item 155. Receiver's or Conservator's Consent Requirement

This item would require the consent of the receiver or conservator before a party to a contract to which the depository institution is a party could exercise any right or power to terminate, accelerate, or declare a default under any contract, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution.

Section 207(c)(12) of the FCU Act (12 U.S.C. 1787(c)(12)) parallels the section of the FDI Act this amendment changes. If the FDI Act is amended in this way, we recommend similar changes to the FCU Act.

Suggested language:

Section 207(c)(12) of the Federal Credit Union Act (12 U.S.C. 1787(c)(12)) is amended by adding the following new subparagraph --

"(C) Consent Requirement. --

(i) In general. --

Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the credit union is a party, or to obtain

possession of or exercise control over any property of the credit union or affect any contractual rights of the credit union, without the consent of the conservator or liquidating agent, as appropriate, for a period of 45 days from the date of the appointment of the conservator, or for a period of 90 days from the date of the appointment of the liquidating agent.

(ii) Certain exceptions. --

No provision of this subparagraph shall apply to a director's or officer's liability insurance contract or a credit union bond, or to the rights of parties to certain qualified financial contracts pursuant to subsection (c)(8), or shall be construed as permitting the conservator or liquidating agent to fail to comply with otherwise enforceable provisions of such contract.

(iii) Rule of Construction. --

Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11 of the United States Code.".

Item 156. Acquisition of FICO Scores

This item would amend the FCRA to define an FDIC request for FICO scores as part of its preparation for a resolution as a permissible purpose, enabling the FDIC to obtain FICO scores of bank borrowers by contacting credit reporting agencies and to obtain current consumer credit reports. The explanation states that this power is necessary so that FDIC can gain access to information that is helpful in evaluating the asset portfolios of troubled institutions.

Although this has not yet been an issue for NCUA, we believe it would be helpful to include NCUA in this amendment.

Suggested language: (additions to FDIC language bolded)

Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended by adding a new paragraph after paragraph (5) as follows:

"(6) To the Federal Deposit Insurance Corporation ***or the National Credit Union Administration*** *as part of its preparation for its appointment or as part of its exercise of powers as conservator**,** [or] receiver* ***or liquidating agent*** *for an insured depository institution* ***or insured credit union*** *under the Federal Deposit Insurance Act* ***or the Federal Credit Union Act*** *or other applicable Federal or State law or in connection with the resolution or liquidation of a failed or failing insured depository institution* ***or insured credit union****.".*

Item 157. Elimination of Criminal Indictments Against Receiverships

This item would amend the Federal Deposit Insurance Act to require that any criminal indictment against a bank be dismissed, if the FDIC is appointed receiver of that bank.

This has not yet been an issue for NCUA but it would be prudent to have a similar amendment to the FCU Act. The FCU Act does not have a parallel section to the section of the FDI Act being amended in this item, but we suggest adding similar language to the end of §206.

Suggested language:

Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding the following new subsection after subsection (v):

"(w) The Administration shall be exempt from all prosecution by the United States, any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by a credit union, or persons acting on behalf of a credit union, prior to the appointment of the Administration as liquidating agent.".

Item 158. Resolution of Deposit Insurance Disputes

This item would amend §11(f) of the FDI Act to clarify that the APA standard of review, the 60-day limitation period, and U.S. district court jurisdiction apply to the FDIC's final determination of insurance coverage whether made pursuant to procedural regulations or not. The explanation states that the current version of the statute creates uncertainty about whether the statute of limitations applies in the absence of FDIC regulations and whether appellate or district courts have original jurisdiction to review FDIC's decisions about insurance coverage.

Section 207(f) of the FCU Act (12 U.S.C. 1787(f)) parallels §11(f) of the FDI Act. If §11(f) is amended, we recommend a similar amendment to the FCU Act.

Suggested language:

> *Paragraphs (3), (4), and (5) of section 207(f) of the Federal Credit Union Act (12 U.S.C. 1787(f)(3)) are amended to read as follows:*
>
> > *"(3) RESOLUTION OF DISPUTES. -- The Administration's determination regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Board may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured*

deposit or any determination of insurance coverage with respect to any deposit.

(4) REVIEW OF BOARD'S DETERMINATION. -- A final determination made by the Board shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code, by the United States district court for the Federal judicial district where the principal place of business of the credit union is located.

(5) STATUTE OF LIMITATIONS. – Any request for review of a final determination by the Board shall be filed with the appropriate United States district court not later than 60 days after such determination is issued.”.

Item 160. Recordkeeping Amendment

This item would permit the FDIC to destroy records that are 10 or more years old at the time of its appointment as receiver, unless directed not to do so by a court or a government agency or prohibited by law.

This provision amends section 11(d)(15)(D) of the FDI Act, which parallels section 207(b)(15)(D) of the FCU Act. If the FDI Act is amended in this way, we recommend similar changes to the FCU Act.

Suggested language:

Section 207(b)(15)(D) of the Federal Credit Union Act (12 U.S.C. 1787(b)(15)(D)) is amended—

(1) by striking "Recordkeeping requirement.—After the end of the 6-year period" and inserting

> *"(i) In general.—Except as provided in clause (ii), after the end of the 6-year period'; and*

(2) by adding at the end the following new clause:

> *"(ii) Old records.---In the case of records of an insured credit union which are at least 10 years old as of the date the Board is appointed as liquidating agent of such credit union, the Board may destroy such records in accordance with clause (i) any time after such appointment is final without regard to the 6-year period of limitation contained in such clause.".*

Item 161. Preservation of Records by Optical Imaging and Other Means (§ 605 of H.R. 1375)

This item would allow FDIC to rely upon records preserved electronically, such as optically imaged or computer scanned images.

This has not yet been an issue, but if FDIC has this option, we recommend explicitly granting this option to NCUA as well in case electronic imaging becomes more cost-effective. The provision of the FDI Act being amended does not have an exact parallel in the FCU Act. Our suggested language adds the new provision to section 206(s) of the FCU Act.

Suggested language:

Section 206(s) of the Federal Credit Union Act (12 U.S.C. 1786(s)) is amended by inserting at the end the following new paragraph:

"(9) Preservation of Records.—

"(A) In general.—The Board my cause any and all records, papers, or documents kept by the Administration or in the possession or custody of the Administration to be—

"(i) photographed or micrographed or otherwise reproduced upon film; or

"(ii) preserved in any electronic medium or format which is capable of

"(a) being read or scanned by computer; and

"(b) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

“(B) Treatment as original records.—Any photographs, micrographs, or photographic film or copies thereof described in clause (A)(i) or reproduction of electronically stored data described in clause (A)(ii) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

“(C) Authority of the Administration.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (9)(A) or reproduction of electronically stored data described in paragraph (9)(B) shall be preserved in such manner as the Administration shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Administration may direct.”.

Item 164. Issue of more than one NCUA Board Member with credit union experience

This not strictly a regulatory matter in that it does not involve specific functions of the NCUA as they relate to credit union supervision or insurance. NCUA does note, however, that it is the only federal financial regulator with this restriction on board members with industry experience. This could be interpreted as a negative assessment of the ability of an individual with credit union experience to perform the duties of an NCUA board member in a fair and impartial manner.

Conclusion

Thank you for the opportunity to appear before you today on behalf of NCUA to discuss these important and needed regulatory enhancements efficiency for NCUA, credit unions and 85 million credit union members across America. I am pleased to respond to any questions the Committee may have or to be a source of any additional information that may assist you in this worthwhile endeavor.

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