STATEMENT

OF

JOANN JOHNSON, CHAIRMAN
NATIONAL CREDIT UNION ADMINISTRATION

ON

“THE NEED FOR CREDIT UNION REGULATORY RELIEF”

BEFORE THE

HOUSE FINANCIAL SERVICES COMMITTEE

MARCH 6, 2008

The National Credit Union Administration (NCUA or Board) appreciates this opportunity to comment on several legislative proposals to provide regulatory relief for credit unions. H.R. 1537, the Credit Union Regulatory Improvements Act (CURIA), H.R. 1849, the Credit Union Small Business Lending Act, H.R. 3113, the Affordable Financial Services Enforcement Act, and H.R. 5519, the Credit Union Regulatory Relief Act of 2008, enhance the ability of NCUA to regulate, supervise and insure the credit union industry, incorporate a variety of improvements to the statutory regime currently in place, and provide significant benefits to consumers. NCUA supports these legislative proposals within a framework that allows for important regulatory controls.

Of particular interest to NCUA are the provisions that:

- Reform the system of Prompt Corrective Action (PCA) and establish a risk-based capital regime; and
- Clarify the ability of NCUA to allow all types of federal credit unions to adopt underserved areas.

Viewed in their totality, these legislative proposals present Congress with an opportunity to prudently modernize a variety of elements of the Federal Credit Union Act (the Act) by enhancing regulatory and supervisory oversight capabilities of the NCUA and improving the public benefits of credit unions.

NCUA's primary missions are to ensure both safety and soundness and compliance with applicable federal regulations for federally insured credit unions. It performs these important public function by examining all federally chartered credit unions (FCUs), participating in the supervision of federally insured state-chartered credit unions in coordination with state regulators, and insuring credit union member accounts. In its statutory role as the administrator for the National Credit Union Share Insurance Fund (NCUSIF), NCUA provides oversight and supervision to 8101 federally insured credit unions (as of 12/31/07), representing 98 percent of all credit unions and approximately 87 million members.[1]

The NCUA regulates and insures all FCUs and insures most state-chartered credit unions. Under this framework, NCUA is responsible for enforcing regulations in FCUs and for evaluating safety and soundness in all federally insured credit unions. NCUA is responsible for monitoring and enforcing compliance with most federal consumer laws and regulations in FCUs. In state-

[1] Approximately 170 state-chartered credit unions are privately insured and are not subject to NCUA oversight.

chartered credit unions, the appropriate state supervisory authority has regulatory oversight and enforces state consumer laws and regulations.

NCUA's testimony will address each provision in the legislative proposals.

Section by Section Review of H.R. 1537 -- Credit Union Regulatory Improvements Act of 2007

Title I Capital Modernization

Prompt Corrective Action Reform and Establishment of a Risk-Based Capital Regime

In June 2007, the Board formally introduced a revised plan to enhance and modernize the system of PCA for credit unions, including significant proposed improvements to the risk-based capital system. The revised proposal reflects direct input by the Department of the Treasury and incorporates developments that have occurred with the adoption of new capital standards related to BASEL II for FDIC-insured institutions. However, it is important to note that while the Board action establishes a public record about the rationale and basis for the proposed changes, modification to the Act is necessary to authorize NCUA to adopt the changes.

NCUA is a strong advocate for reform of the PCA system for credit unions because the current statutory PCA requirements are too rigid and not tailored to each credit union's individual risk profile in order to strengthen its safety and soundness. The current system's rigidity and limited risk orientation:

- create inequities for credit unions with low-risk balance sheets;
- limit NCUA's ability to have a more relevant risk-based requirement without requiring unduly high capital levels; and
- foster accumulation of capital levels in excess of what is needed for most credit unions' safety and soundness and strategic needs.

The proposed PCA reforms result in a more fully risk-based system and are consistent with sound risk management principles. The shift in emphasis to the risk-based requirement will promote more active management of risk in relation to capital levels. It will also reduce any competitive disadvantage to credit unions of being held to an unwarranted higher capital standard than other federally insured institutions. As the federal bank and thrift regulators are in the process of modernizing capital standards under which their regulated institutions operate, it becomes even more important that capital standards for credit unions be updated. From both an industry competition and risk management perspective, it is important for the capital standards for credit unions to remain comparable and incorporate the improvements in approaches to measuring risk and allocating capital.

The new system of PCA would also provide credit unions with greater ability to manage compliance through adjustments to their assets and activities. If credit unions had more flexibility to manage their compliance with PCA, they could still maintain an appropriate protective cushion above regulatory requirements while safely returning more earnings to the members and/or expanding member services and other outreach programs.

Table 1 below compares the proposed PCA system for credit unions to that applied by federal banking regulators:

Table 1 - Proposed PCA Thresholds for Credit Unions Compared to Bank PCA Thresholds

	Credit Unions		FDIC Insured**		
PCA Category	**Leverage Ratio**	**Risk-Based Ratio**	**Tier 1 Capital to Total Assets (Leverage)**	**Tier 1 Capital to Risk Assets**	**Total Capital to Risk Assets**
Well Capitalized	5.25% or greater	10% or greater	5% or greater	6% or greater	10% or greater
Adequately Capitalized	4.25% to < 5.25%	8% to < 10%	4% to < 5% > 3% for CAMEL 1	4% to < 5%	8% to < 10%
Undercapitalized	3.25% to < 4.25%	6% to < 8%	3% to < 4% or < 3% for CAMEL 1	3% to < 4%	6% to < 8%
Significantly Undercapitalized	2% to < 3.25%	< 6%	2% to < 3%	< 3%	< 6%
Critically Undercapitalized	< 2%	NA	< 2% (tangible equity)	NA	NA

** Source: FDIC Rules and Regulations, 12 C.F.R §325.103

As illustrated in Table 2 below (Column B), the proposed leverage ratio retains the original capital requirement for "significantly undercapitalized" while raising the capital requirement for "critically undercapitalized." For the remaining categories, the actual reduction from the old to the new leverage ratio requirement is considerably less than the *prima facie* 175 basis point change in the threshold. This is due to the impact of the change in the method of calculating the net worth ratio that subtracts the NCUSIF deposit from both net worth and total assets (see Appendix 3). As Column C of Table 2 shows, the required average net worth level would only decline by 104 basis points in the top three PCA categories. The new calculation method will actually require 74 basis points more in net worth in the "critically undercapitalized" category than the existing requirement.[2]

[2] The amount of change in a credit union's leverage ratio between the current and proposed calculations is dependent upon the level of insured shares. The new calculation would result in the same leverage ratio threshold if a credit union had no insured shares. The largest reduction from the current leverage ratio to the calculated leverage ratio would occur when a credit union

Table 2 - Current vs. Proposed Leverage Ratio Standard

PCA Category	Column A Current Requirement Net Worth / Total Assets	Column B Proposed Requirement (Net Worth – NCUSIF) / (Total Assets – NCUSIF)	Column C Net Worth Required by Column B to Total Assets [Range]
Well Capitalized	> 7%	> 5.25%	5.96%*
Adequately Capitalized	< 7%	< 5.25%	5.96%*
Undercapitalized	< 6%	< 4.25%	4.96%* [
Significantly Undercapitalized	< 4%	< 3.25%	3.97%*
Critically Undercapitalized	< 2%	< 2%	2.74%*

* Calculation based upon the average insured share to asset ratio of 75%.

NCUA supports the sections of H.R. 1537 that enhance the operational efficiency of the system of PCA for credit unions. Section 103 would allow the Board to delegate, subject to review, its authority to reclassify a credit union to a lower net worth category on safety and soundness grounds to address interest rate risk. Section 105 would give the Board additional flexibility to impose PCA in several ways:

- Allowing a temporary waiver of the requirement to file a Net Worth Restoration Plan (NWRP) in the event of a natural or man-made disaster;
- Authorizing the Board, in lieu of the present earnings retention requirement, to require a credit union that became less than "well capitalized" for safety and soundness reasons to file an NWRP if those reasons remain unresolved;
- Giving the Board discretion to order a "critically undercapitalized" credit union to take specific "other corrective action" to achieve the purposes of PCA; and
- Requiring the Board to allow a State Supervisory Authority to impose PCA on a state-chartered credit union *only when* the Board determines that "such action by the official will carry out the purpose of [PCA]."

To implement this last modification, section 105(e) requires a technical correction. To indicate where the quoted language should be inserted section 216(l)(3)(A)(ii) of the Act, the phrase "after the words 'proposed action.'" should be added to section 105(e) on page 9 at the end of line 7.

---

has all insured shares. Under the proposed calculation, over 92 percent of credit unions would realize a reduction in the leverage ratio from 50 basis points to 90 basis points with an average reduction of 75 basis points.

Title II -- Economic Growth

As with all federally-insured financial institutions, the general deterioration in the overall credit markets over the last 18 months has affected credit union assets. As a result, NCUA began sometime ago to focus significantly more attention to active supervision and monitoring of all types of credit union lending, with a special emphasis on risk management and due diligence responsibilities.

In response to the changing environment for credit union member business lending, NCUA has devoted additional resources, special expertise and the array of supervisory remedies and restrictions it already has to address problems such as excessive rate of growth, substandard underwriting standards and criteria, over-concentration in certain categories of loans, high loan-to-value ratios, poor documentation, inexperience with MBL standards, violation of loans-to-one-borrower limits, and insufficient net worth.[3] Enacting PCA reform as proposed in Title I would add a critical supervisory tool to those NCUA already relies upon to ensure safe and sound lending.

We are confident that most credit unions involved in member business lending will be able to adjust to a statutory increase in the individual and aggregate MBL caps. Regardless of the increased caps and additional exemptions, however, NCUA is poised to continue its vigilant and aggressive approach to regulating and supervising these activities.

Section 201 -- Limits on MBLs.

Section 201 would increase the current cap on Member Business Loans (MBLs). This will allow credit unions to accommodate the expansion in member demand for these loans that has taken place over the last 10 years. Without this increase, credit unions' ability to offer this product will be limited, and in some cases eliminated, forcing members to go elsewhere to meet their MBL needs. While acknowledging the benefit to credit unions of increased member business lending, NCUA stands ready to aggressively exercise the regulatory authority it already has to regulate this type of lending. This means that we will not hesitate to impose the supervisory remedies and restrictions necessary to prevent and address problems, such as those described above, that may accompany an expansion in member business lending.

[3] For example, recent guidance in *Letter to Credit Unions CU-07-13* emphasizes the importance of credit unions themselves assuming the responsibility to conduct its due diligence evaluation of a lending activity, even when that activity is otherwise done through a third party vendor, to ensure that the credit union fully understands the structure, practices and financial condition of the third party.

Section 202 -- Definition of MBL.

Section 202 would amend the definition of "Member Business Loans" to increase the minimum balance of such loans to one member from $50,000 to $100,000. This increase will allow member business lending to keep pace with the increase in unit costs, due to inflation and other factors, of goods and services typically financed with such loans. Compared to 10 years ago, the 25 percent of credit unions that make MBLs (as of 12/31/07) has demonstrated on the whole the ability to manage that activity safely and soundly. As with increasing the credit union MBL cap, we appreciate the benefit not only to credit unions, but to their members, of expanding the minimum size of an MBL. At the same time, we stand ready to deploy the array of supervisory remedies and restrictions NCUA already has to address problems.

Section 203 -- Restriction on MBLs.

Section 203 would grant the Board authority to make exceptions to the freeze on MBLs that applies when a credit union becomes "undercapitalized" and remains in place until it returns to "adequately capitalized." Giving the Board this flexibility acknowledges that member business lending is not always the problem that causes a credit union to become "undercapitalized." In fact, allowing member business lending to *increase* may sometimes be part of the solution that returns a credit union to "adequately capitalized."

Section 204 -- MBL Exclusion for Loans to Non-Profit Religious Organizations.

Section 204 would exempt loans to non-profit religious organizations in any amount from a credit union's MBL cap. This exemption will enhance the availability of loans to religious organizations seeking to acquire or construct a house of worship. While these loans would be excluded from the MBL cap, they remain subject to our supervision to ensure their safety and soundness.

Section 205 -- CU Leasing of Space in its Office Buildings Located in Underserved Areas.

Section 205 would permit a credit union that is housed in a building it owns located in an underserved area to lease out space not used for credit union operations. This flexibility will allow credit unions to make productive use of space not used for credit union operations while at the same time stimulating the economy of the underserved area where the space is located. However, the implementation of this shift from current policy is subject to Board regulation.

Sections 206 and 207 -- Amendments Relating to CU Service to Underserved Areas.

Sections 206 and 207 would expressly permit all types of federally chartered credit unions to adopt “underserved areas.” Currently, the Act permits only federal credit unions with *multiple* common bond charters to add underserved areas into their fields of membership (FOM); it is silent about *single-group* and *community* charters from doing so. NCUA is emphatic in supporting this statutory change because it fully implements longstanding Congressional intent to give consumers in economically disadvantaged areas greater access to credit union service.

In 1998 Congress passed the Credit Union Membership Access Act (CUMAA) in order to codify the authority of NCUA to charter multiple common-bond credit unions. Pub. L. 105-219, 112 Stat. 914 (1998). CUMAA specifically authorized certain federal credit unions to add geographically based “underserved areas” to their FOMs. The concept acknowledges that geographic areas exist in the United States that exhibit certain criteria, such as a declining population base or increasing rate of unemployment, that can result in diminished access by residents and businesses to financial products and services. However, the final language of CUMAA expressly authorized only multiple common-bond credit unions to serve persons or organizations within an area that was underserved. 12 U.S.C. 1759(c)(2). CUMAA also provided a definition of an “underserved area."

To reflect CUMAA, NCUA changed its FOM regulations to substitute the term “underserved area" and its definition for the then-existing language allowing all charter types to serve low-income communities and associations. Although the “underserved” designation is not strictly a function of income level of the residents, it is expected that over time broader demographic representation among the membership will occur in FCUs that have added underserved areas.

Through outreach efforts and otherwise, NCUA continued to conscientiously carry out the intent of Congress to maximize credit union service to underserved areas. This included continuing to allow *all three* charter types to adopt them--just as NCUA had been doing before CUMAA to maximize credit union service to low-income designated areas and associations. These efforts were brought to a halt by a banking industry lawsuit challenging the authority of single group and community charter credit unions to add underserved areas. As a result of the lawsuit, NCUA amended its FOM regulation in June 2006 to limit underserved area expansions only to federally chartered credit unions serving multiple groups.

NCUA is convinced that CUMAA’s omission of express authority for single-group and community credit union to serve underserved areas was an oversight. When CUMMA was enacted, Congress was duly focused on undoing the impact of the

Supreme Court's decision affecting multiple group charters.[4] As the legislative history indicates, Congress was nonetheless aware of NCUA's long-standing policy of allowing *all* federal charters to serve low-income communities and associations, which were the predecessors to underserved areas. Further, to our knowledge, no objection was made on the record to a provision in CUMAA that would have allowed *all* federal charters to adopt underserved areas. Sections 206 and 207, by extending to single-group and community charters the authority to add underserved areas, would finally correct this oversight.

In addition to maximizing credit union service to underserved, sections 206 and 207 of H.R. 1537 would achieve several other objectives without imposing additional service requirements. They would eliminate duplicative and superfluous regulatory requirements; refine the employment of census track data in making a determination about an underserved area; and codify the requirement that a branch or service facility must be established in the underserved area within two years.

Title III -- Regulatory Modernization

Section 301 -- Investments in Securities by FCUs.

Section 301 would authorize the Board, by regulation, to allow FCUs to invest in certain debt obligations (i.e., a bond, note, debenture or other non-equity "investment security")--provided they meet the statutory definition of "investment grade" securities--for their own accounts. The section imposes prudent limits of an aggregate maximum of 10% of total assets and a single obligor limit of 10% of net worth. With these constraints and further regulatory limitations set by the Board, the authority to add these types of investments provides FCUs with a safe means of further diversifying their investment portfolios. A technical correction is needed to implement this new authority. Section 301 must be amended to conform to the long-standing format of current section 107 of the Act. The present lack of conformity makes it impossible to determine where in section 107 this new authority is supposed to be located.

Section 302 -- NCUA Authority to Establish Longer Term Maturities for CU Loans.

Section 302 would give the Board the authority, by regulation, to make exceptions to the present 15-year maximum maturity on loans. This will give the Board the flexibility to allow maturities in excess of 15 years when necessary to ensure parity with other financial institutions that are permitted to offer longer maturities (e.g., student loans). Without this flexibility, credit union members will

[4] NCUA v. First National Bank & Trust Co., 522 U.S. 479 (1998).

have no choice but to rely on these institutions instead of their credit unions when they need loans with terms of longer than 15 years.

Section 303 -- Increase in Lending and Investment Limits in CUSOs.

Section 303 would increase the ceiling on both credit union loans to Credit Union Service Organizations (CUSO), and credit union investments in them, from--in each category--1% to 2% of the credit union's paid-in and unimpaired capital and surplus, provided the Board also is authorized to reduce each ceiling on a case-by-case basis when appropriate to preserve a credit union's safety and soundness. Increasing the ceiling on credit union loans to, and investments in, CUSOs will enhance their capitalization, in turn expanding the availability of the resources necessary to perform services and activities that benefit credit unions and their members. This will especially benefit small credit unions by providing the opportunity to diversify their products and services within a safe and sound regulatory framework.

Section 304 -- Voluntary Mergers Involving Multiple Common Bond CUs.

Section 304 would add an exemption from the 3000-member limit on group additions for any group transferred to a multiple group credit union by a merger approved by the Board on or after August 7, 1998---the date CUMMA was signed into law. When a credit union converts to a community charter, it is unfair to exclude certain groups from its FOM based on their size when all groups regardless of size were previously admitted legally to its FOM.

Section 305 -- Conversions of Certain CUs to a Community Charter.

Section 305 would give the Board the authority, by regulation, to determine whether a credit union that converts to a community charter can continue to add new members from its former member groups located outside the well-defined local community. This will ensure that group members outside the community (especially those who became group members *after* the conversion) will be able to obtain credit union service after the credit union converts to a community charter (i.e., a "once a group, always a group" policy).

Section 306 -- Credit Union Governance

Section 306 authorizes credit unions, through a by-law amendment, to expand their authority to expel a member, by a majority vote of the board of directors, for just cause, including disruption of a credit union's operations or nonparticipation in its affairs. In addition, the provision authorized credit unions, through a by-law amendment, to limit the number of consecutive terms a person may serve on the board of directors. Permitting these by-law amendments promotes the orderly functioning of credit unions and is consistent with the existing governance provisions of the Act.

Section 307 -- Greater Flexibility for NCUA to Respond to Market Conditions.

Section 307 would expand the Board's authority to establish a temporary interest rate ceiling higher than 15% under *either* of two events--when money market interest rates rise over the preceding 6 months *or* when prevailing interest rate levels threaten the safety and soundness of individual credit unions--instead of both, as is presently required. Untying these two conditions improves the Board's flexibility to timely respond when an exception to the 15% rate ceiling will ensure that credit unions remain both safe and sound and competitive with other financial institutions.

Section 308 – Credit Union Conversion Voting Requirements.

NCUA supports requiring a minimum of 30% membership participation in a vote to convert to a bank in order for a majority vote of those who participate to approve the proposal. We further support requiring a credit union that proposes to convert to hold a Special Meeting of the membership at least 30 days prior to issuing members their ballots, and to give notice of the Special Meeting in the notices the credit union already is required to send to its members. Finally, we support a ban on offering a voting incentive to members in any form in connection with the membership vote on a conversion proposal. Given that converting to a bank is a shift in a credit union's fundamental structure, all three measures maximize membership representation, awareness, and freedom from undue influences when members faced with such a crucial proposal.

This section requires a technical correction. Section 308 refers to the parallel U.S. Code citation for section 205(b)(2) of the Act as "12 U.S.C. 1785(b)(2)(B)", when in fact subsection (B) at the end should be omitted.

Section 309 -- Exemption from Clayton Act Pre-Merger Notice Requirement.

Section 309 would amend the Clayton Antitrust Act to exclude voluntary credit union mergers from its pre-merger notification requirement. Under this requirement, merging credit unions must file data with the Federal Trade Commission, at considerable effort and expense, so that agency can assess the merger's impact on competition in the financial services market. Excluding credit unions from the Clayton Act would relieve them of the need to comply with these burdensome notification and filing requirements.

Section by Section Review of H.R. 1849 -- Credit Union Small Business Lending Act

H.R. 1849 would implement the Credit Union Small Business Lending Act. That statute would amend sections 107 and 107A of the Act, 12 U.S.C. 1757, 1757a, and section 7(a) of the Small Business Act, 15 U.S.C. 636(a), to improve small

business lending and cooperation between NCUA and the Small Business Administration (SBA), as follows:

- Section 2 excludes from the Act's definition of MBL any loan made in cooperation with the SBA under section 7(a) of the Small Business Act;
- Section 3 directs the SBA to implement an outreach program to increase credit union participation in the SBA's section 7(a) loan program and to simplify the application process for credit unions;
- Section 4 directs SBA to provide up to an 85% guaranty for loans made by a credit union up to $250,000 to a member residing in an underserved area, or where the member's business that is receiving assistance is located in an underserved area;
- Section 5 clarifies that a federal credit union making a loan secured by the insurance, guarantee, or advance commitment to purchase by the federal government or a state government (or agency of either) may make the loan under the terms and conditions specified in the law *and applicable regulations* under which the insurance, guarantee, or commitment is provided.

This bill will enhance credit unions' ability to serve their members' small business loan needs in a safe and sound manner.

Finally, a remaining obstacle to credit union participation in the SBA's Certified Development Company (CDC)/504 loan program (CDC/504 program) warrants attention. That program is a long-term financing tool for economic development within a community. It provides businesses with long-term, fixed-rate financing for major fixed assets, such as land and buildings. CDCs, which are non-profit organizations, work with the SBA and private-sector lenders to provide financing to small businesses.

Typically, a 504 project includes a loan secured with a senior lien from a private-sector lender covering up to 50 percent of the project cost, a loan secured with a junior lien from the CDC (backed by a 100 percent SBA-guaranteed debenture) covering up to 40 percent of the cost, and a contribution of at least 10 percent equity from the small business being helped.

Credit unions already participate as private-sector lenders in the CDC/504 program. However, because the credit union's underlying 504 loans are not SBA-guaranteed, credit unions must count its 504 loans toward its aggregate cap on MBLs. This discourages, and in some cases precludes, a credit union from making this type of community development loan.

Review of H.R. 3113--
Affordable Financial Services Enhancement Act

H.R. 3113 would implement the Affordable Financial Services Enhancement Act. If enacted, that law would achieve the same purpose as section 206 of H.R. 1537-- extending to single-group and community charters the authority to add and serve underserved areas. H.R. 3113 would accomplish that by amending section 109(c)(2) of the Act, 12 U.S.C. 1759(c)(2), to exclude the "field of membership category" limitation--currently limited to multiple group charters--thus allowing all credit unions, regardless of charter type, to serve underserved areas.

Section by Section Review of H.R. 5519 --
Credit Union Regulatory Relief Act of 2008

Section 2 -- Investments in Securities by FCUs.

Same as section 301 of H.R. 1537 discussed above.

Section 3 -- Increase in Investment Limit in CUSOs.

Same as section 303 of H.R. 1537 discussed above, except that: (1) the ceiling on CU loans to, and investments in, CUSOs would each be raised to from 1 percent to 3 percent of paid-in and unimpaired capital and surplus (instead of to 2 percent); and (2) the Board would not be given the authority to reduce each ceiling on a case-by-case basis when appropriate to preserve a credit union's safety and soundness.

Section 4 -- MBL Exclusion for Loans to Non-Profit Religious Organizations.

Same as section 204 of H.R. 1537 discussed above.

Section 5 -- NCUA Authority to Establish Longer Maturities for Certain CU Loans.

Same as section 302 of H.R. 1537 discussed above, except that the Board's authority to make exceptions to the present 15-year maximum maturity on loans would be subject to any provision of the Act that provides otherwise.

Section 6 -- Providing NCUA With Greater Flexibility in Responding to Market Conditions.

Same as section 307 of H.R. 1537 discussed above.

Section 7 -- Conversions Involving Certain CUs to Community Charter.

Same as section 305 of H.R. 1537 discussed above, except for the omission of the clarifying phrase "permitting new members to be added to such groups" (page 17, lines 4-5, of H.R. 1537). NCUA is concerned that the absence of this phrase may be misinterpreted to mean that a credit union can serve only those group members who joined prior to its conversion to a community charter--a result no different than the Act's "once a member, always a member" policy already allows.

Section 8 -- Credit Union Participation in the SBA Section 504 Program.

Same as section 5 of H.R. 1849 discussed above.

Section 9 -- Amendments Relating to CU Service to Underserved Areas.

Section 9 departs significantly from section 206 of H.R. 1537 discussed above. Both section 206 and section 9(a) would exclude the "field of membership category" limitation--currently limited to multiple group charters--for service to underserved areas (as H.R. 3113 also would) and would impose a 2-year deadline for establishing a credit union office or facility within the underserved area. If that 2-year deadline were not met, section 9(a) also would mandate termination of the approval to serve the underserved area.

But section 9(a) then goes much further, imposing minimum net worth and underserved area reporting requirements:

- To serve an underserved area, a credit union must have a net worth classification of at least "adequately classified";
- Once a credit union is approved to serve an underserved area, it must annually report to NCUA the number of its underserved members and the number of offices and facilities it maintains in its underserved area(s);
- NCUA must annually publish a report listing the underserved area applications it has approved, the number and location of underserved areas it has taken into account in approving such applications, and the total number of all credit union members within underserved areas.

While NCUA agrees that it is critically important that credit unions make every reasonable effort to fully serve their entire FOM, including underserved areas, we must reserve judgment on the specific requirements of section 9(a), which were only recently received by NCUA, pending further analysis and consideration by the NCUA Board.

Section 9(b), which modifies the Act's present definition of "underserved area," is substantially similar to section 207 of H.R. 1537 and section 4 of H.R. 1849 (which amends the Small Business Act). Each provision retains the present

"investment area" criterion, but replaces the present "underserved by other depository institutions" criterion with a "low income community" criterion derived from the Internal Revenue Code.

Section 10 -- Short-Term Payday Loan Alternatives Within the FOM.

Section 10 gives the Board, in addition to its existing authority to cash money transfer instruments, 12 U.S.C. 1757(12)(B), the authority, by regulation, to "provide short-term loans as an alternative to payday loans."

Section 11 -- Credit Union Governance.

Same as section 306 of H.R. 1537 discussed above.

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

Section 12 affects section 2 of H.R. 1849, which would exclude from the Act's MBL definition any SBA section 7(a) loan. Instead, section 12 excludes from the MBL definition a commercial, corporate, business, farm or agricultural loan to a member provided any of the following conditions is met: the member either resides or does business within an underserved area; the loan is secured by real property located within such underserved area; or the loan will be used to operate a business located within such underserved area.

Comparing the difference in scope between the two sections, section 12 excludes more than just SBA loans, but all the loans it excludes must be tied to an underserved area. Section 2 of H.R. 1849, in contrast, excludes only one category of loans--SBA section 7(a) loans--but they are excluded without regard to an underserved area. NCUA is concerned that section 12, as currently written, would unnecessarily sacrifice the exclusion for Government-guaranteed section 7(a) loans.

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

Same as section 309 of H.R. 1537 discussed above.

Conclusion

NCUA has reviewed the various legislative proposals in the 110th Congress that address the issue of regulatory relief for credit unions. These proposals contain provisions that represent significant and positive improvements to NCUA's ability to regulate and supervise credit unions, and to carry out Congressional intent as expressed in the Federal Credit Union Act.

In particular, NCUA supports those provisions that grant greater flexibility to NCUA in the regulation of the capital structure of federally insured credit unions while at the same time allowing those credit unions to more accurately assess balance sheet risk. NCUA also supports legislation restoring the ability of credit unions to extend membership in underserved areas, in concert with longstanding Congressional interest in credit unions having a responsibility to provide financial services to consumers of modest means. NCUA supports legislation that modernizes a wide variety of credit union investment and lending options within regulatory framework that enables NCUA to perform the necessary supervision to preserve credit union safety and soundness.

NCUA appreciates this opportunity to present our views to Congress, and stands ready to answer questions regarding its perspective on these beneficial and forward looking legislative proposals.