NCUA
National Credit Union Administration

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Congressional Testimony

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Hearing on Fostering Economic Growth: Regulator Perspective

NCUA is the independent federal agency created by the U.S. Congress to regulate, charter, and supervise federal credit unions. With the backing of the full faith and credit of the United States, NCUA operates and manages the National Credit Union Share Insurance Fund, insuring the deposits of 108 million account holders in all federal credit unions and the overwhelming majority of state-chartered credit unions. At MyCreditUnion.gov and Pocket Cents, NCUA also educates the public on consumer protection and financial literacy issues.

Congressional Testimony

Chairman Crapo, Ranking Member Brown, and Members of the Committee, as Acting Chairman of the National Credit Union Administration Board, I appreciate the invitation to testify about regulatory relief. I was sworn in as a Member of the NCUA Board in 2014 and named Acting Chairman by President Trump on January 23, 2017.

As requested in your letter of June 6, my testimony today addresses recommendations to achieve real relief while maintaining safety and soundness and compliance with all legal requirements. I cover recommendations in the most recent report under the Economic Growth and Regulatory Paperwork Reduction Act, EGRPRA, and in the U.S. Treasury Department's June 2017 report, "A Financial System That Creates Economic Opportunities Banks and Credit Unions." I also discuss the NCUA Board's most recent efforts to reduce regulatory and examination burdens for credit unions to help create economic growth.

Economic Growth and Regulatory Paperwork Reduction Act

The NCUA voluntarily participates in the ongoing interagency review process created by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[1] EGRPRA requires the Federal Financial Institutions Examination Council and its member agencies to review their regulations at least once every ten years to identify rules that might be outdated, unnecessary, or unduly burdensome.

Overview of the NCUA's Participation in EGRPRA

The NCUA is not required by law to participate in the EGRPRA review process, because the NCUA is not defined as an "appropriate Federal banking agency," under EGRPRA.[2] Nonetheless, the NCUA embraces the objectives of EGRPRA and, in keeping with the spirit of the law, the NCUA participates in the review process. (The NCUA also participated in the first EGRPRA review, which ended in 2006).

The categories used by the NCUA to identify and address issues are:

- Agency Programs;
- Applications and Reporting;
- Capital;
- Consumer Protection;
- Corporate Credit Unions;

[1] 12 U.S.C. 3311.

[2] See 12 USC 1813(q).

- Directors, Officers and Employees;
- Money Laundering;
- Powers and Activities;
- Rules of Procedure; and
- Safety and Soundness.

These categories are comparable, but not identical, to the categories developed jointly by the banking agencies covered by EGRPRA, and reflect some of the fundamental differences between credit unions and banks. For example, 'corporate credit unions' is a category unique to the NCUA. For the same reason, the NCUA decided to publish its notices separately from the joint notices used by the banking agencies, although all of the notices were published at approximately the same time. The NCUA included in its EGRPRA review all rules over which the NCUA has drafting authority, except for certain rules that pertain exclusively to internal operational or organizational matters at the agency, such as the NCUA's Freedom of Information Act rule.

The NCUA is also mindful that credit unions are subject to certain rules issued or administered by other regulatory agencies, such as the Consumer Financial Protection Bureau (CFPB) and the Department of the Treasury's Financial Crimes Enforcement Network. Because we have no independent authority to change such rules, our notices (like the joint notices prepared by the other agencies) advise that comments submitted to us but focused on a rule administered by another agency will be forwarded to that agency for appropriate consideration.

Response to EGRPRA Comments:

Field of Membership

Credit unions are limited to providing service to individuals and entities that share a common bond, which defines their field of membership. The NCUA Board diligently implements the Federal Credit Union Act's directives regarding credit union membership. In October 2016, the NCUA Board modified and updated its field of membership rule addressing issues such as:

- The definitions of local community, rural district, and underserved area;
- Multiple common-bond credit unions and members' proximity to them;
- Single common-bond credit unions based on a trade, industry, or profession; and
- The process of applying for a new charter or expanding an existing federal credit union.[3]

[3] A challenge of this rule by the American Bankers Association is currently pending.

Member Business Lending

Congress has empowered the Board to implement the provisions in the Federal Credit Union Act that address member business loans. A final rule adopted by the NCUA Board in February 2016 was challenged by the Independent Community Bankers of America, but was affirmed by the District Court for the Eastern District of Virginia in January 2017. The final rule, approved unanimously by the Board, is wholly consistent with the Act, as the Court reinforced, and contains regulatory provisions which:

- Give credit union loan officers the ability, under certain circumstances, to no longer require a personal guarantee;
- Replace explicit loan-to-value limits with the principle of appropriate collateral and eliminating the need for a waiver;
- Lift limits on construction and development loans;
- Exempt credit unions with assets under $250 million and small commercial loan portfolios from certain requirements; and
- Affirm that non-member loan participations, which are authorized under the Federal Credit Union Act, do not count against the statutory member business lending cap.

Federal Credit Union Ownership of Fixed Assets

In December 2016, the NCUA Board issued a final rule that eliminated the requirement that federal credit unions have a plan by which they will achieve full occupancy of premises within an explicit timeframe. The final rule allows federal credit unions to plan for and manage their use of office space and related premises in accordance with their strategic plans and risk-management policies. It also clarified that, "partial occupancy" means occupation of 50 percent of the relevant space.

Expansion of Share Insurance Fund Coverage

With the enactment by Congress of the Credit Union Share Insurance Fund Parity Act in December 2014, the NCUA was expressly authorized to extend federal share insurance coverage on a pass-through basis to funds held on deposit at federally insured credit unions and maintained by attorneys in trust for their clients, without regard to the membership status of the clients.[4] Many industry advocates, including some EGRPRA commenters, urged the NCUA to consider ways to expand this type of pass-through treatment to other types of escrow and trust accounts maintained by professionals on behalf of their clients. The NCUA Board issued a proposed rule in April 2015, inviting comment on ways in which the principles articulated in the Parity Act might be expanded into other areas and types of account relationships.

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[4] See Pub. L. No 113-252 (December 18, 2014)

Reviewing the numerous comments received in response to this invitation, the agency undertook extensive research and analysis and concluded that some expansion of this concept into other areas was warranted and legally permissible. Accordingly, in December 2015, the NCUA Board unanimously approved the issuance of a final rule in which expanded share insurance coverage on a pass-through basis would be provided for a licensed professional or other fiduciary that holds funds for the benefit of a client or a principal as part of a transaction or business relationship. As noted in the preamble to the final rule, examples of such accounts include, but are not limited to, real estate escrow accounts and prepaid funeral accounts.

Improvements for Small Credit Unions

The credit union system is characterized by a significant number of small credit unions. The NCUA is acutely aware that the compliance burden on these institutions can become overwhelming, leading to significant expense in terms of staff time and money, strain on earnings, and, ultimately, consolidation within the industry as smaller institutions are unable to maintain their separate existence. While this is a difficult, multi-faceted problem, the NCUA is committed to finding creative ways to ease the regulatory burden without sacrificing the goal of safety and soundness throughout the credit union system.

The agency has approached this problem from several different angles. Among the adjustments and improvements implemented in recent years are the following:

- Responding to requests to facilitate access to and use of secondary capital by low-income credit unions (of which a significant percentage are also small), the agency has developed a more flexible policy. Investors can now call for early redemption of portions of secondary capital that low-income credit unions may no longer need. These changes also were designed to provide investors greater clarity and confidence.[5]

- Low-income designated credit unions have expanded powers to serve their members. The process by which credit unions may claim the low-income designation has also been streamlined and improved. Now, following an NCUA examination, credit unions that are eligible for the designation are informed by the NCUA of their eligibility and provided with a straightforward opt-in procedure through which they may claim the low-income designation. During the six-year period ending December 31, 2016, the number of low-income credit unions increased from 1,110 to 2,491, reflecting an increase of 124 percent over that timeframe. Today more than 40 percent of credit unions have the low-income designation. Together, low-income credit unions had 39.3 million members and more than $409 billion in assets at year-end 2016, compared to 5.8 million members and more than $40 billion in assets at the end of 2010.

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[5] See https://www.ncua.gov/newsroom/Pages/NW20150406NSPMSecondaryCapital.aspx for more information about the low-income credit union secondary capital announcement.

- Explicit regulatory relief: Small credit unions have been expressly exempted from the NCUA's risk-based capital requirements and the NCUA's rule pertaining to access to sources of emergency liquidity.

- Expedited exam process: The NCUA has created an expedited exam process for well-managed credit unions with CAMEL ratings of 1, 2, or 3 and assets of up to $50 million. These expedited exams require less time by examiners on site and focus on issues most likely to pose threats to the smallest credit unions.

- CDFI enhancements: The NCUA signed an agreement in January 2016 with the Department of the Treasury's Community Development Financial Institutions Fund to double the number of credit unions certified as Community Development Financial Institutions within one year. The NCUA is leveraging data it routinely collects from credit unions to provide a pre-analysis and to assist in the streamlining of the CDFI application process. In addition, the NCUA recently adopted several technical amendments to its rule governing the Community Development Revolving Loan Fund. The amendments update the rule and make it more succinct, improving its transparency, organization and ease of use by credit unions.[6]

Expanded Powers for Credit Unions

Enhanced powers for regulated institutions, consistent with statutory requirements, can have a significant beneficial effect that is similar in some ways to a reduced compliance burden. The NCUA has taken several recent steps to provide federal credit unions with broader powers. These enhancements, as discussed below, have positioned credit unions to take better advantage of the activities Congress has authorized to strengthen their balance sheets.

- In January 2014, the NCUA Board amended its rule governing permissible investments to allow federal credit unions to invest in certain types of safe and legal derivatives for hedging purposes. This authority enables federal credit unions to use simple "plain vanilla" derivative investments as a hedge against interest rate risk inherent in their balance sheets.

- In February 2013, the NCUA Board amended its investments rule to add Treasury Inflation Protected Securities to the list of permissible investments for federal credit unions. These securities provide credit unions with an additional investment portfolio risk-management tool that can be useful in an inflationary economic environment.

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[6] Located within the U.S. Department of the Treasury, the Community Development Financial Institutions Fund's mission is to expand the capacity of financial institutions to provide credit, capital, and financial services to underserved populations and communities in the United States.

- In March 2016, the NCUA Board further amended its investments rule to eliminate language that unduly restricted federal credit unions from investing in bank notes with maturities in excess of five years. With this change, federal credit unions are now able to invest in such instruments regardless of the original maturity, so long as the remaining maturity at the time of purchase is less than five years. This amendment broadens the range of permissible investments and provides greater flexibility to credit unions, consistent with the Federal Credit Union Act.

- In December 2013, the NCUA Board approved a rule change to clarify that federal credit unions are authorized to create and fund charitable donation accounts–styled as a hybrid charitable and investment vehicle–as an incidental power, subject to certain specified regulatory conditions to ensure safety and soundness.

Consumer Complaint Processing

Responding to comments received by interested parties, the NCUA conducted a thorough review of the way in which it deals with complaints members may have against their credit union. In June 2015, the agency announced a new process, as set out more fully in Letter to Credit Unions 15-CU-04.[7] The new process refers consumer complaints that involve federal financial consumer protection laws for which the NCUA is the primary regulator to the credit union, which will then have 60 days to resolve the issue with its member before the NCUA's Office of Consumer Financial Protection and Access considers whether to initiate a formal investigation of the matter. Results of the new process have been excellent, with the majority of complaints resolved at the level closest to the consumer and with a minimal NCUA footprint.

Interagency Task Force on Appraisals

12 CFR part 722 of the NCUA's rules and regulations establishes thresholds for certain types of lending and requires that loans above the thresholds must be supported by an appraisal performed by a state-certified or licensed appraiser. The rule is consistent with an essentially uniform rule that was adopted by the banking agencies after the enactment of FIRREA. The rule covers both residential and commercial lending.[8]

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[7] Letter to Credit Unions 15-CU-04

[8] In contrast to the agencies, the NCUA's rule contains no distinction, with respect to the appraisal requirement, between commercial loans for which either sales of real estate parcels or rental income derived from the property is the primary basis for repayment of the loan, and loans for which income generated by the business itself is the primary repayment source. Under 12 CFR part 722, the dollar threshold for either type of commercial loan is $250,000; loans above that amount must be supported by an appraisal performed by a state certified appraiser. By contrast, the banking agencies' rule creates a separate category for the latter type of commercial loan and establishes a threshold of $1 million; loans in this category but below that threshold do not require an appraisal.

In response to comments received through the EGRPRA process, the NCUA joined with the banking agencies to establish an interagency task force to consider whether changes in the appraisal thresholds are warranted. Work by the task force is underway, including the development of a proposal to increase the threshold related to commercial real estate loans from $250,000 to $400,000. Any other recommendations developed by the task force will receive due consideration by the NCUA.

Recommendations in the June 2017 Treasury Study

The June Treasury Department report, written pursuant to Executive Order 13772, seeks to align the regulation of financial institutions to help meet the needs of our economy more efficiently and effectively. It calls for the tailoring of rules to target specific problems areas and recommends greater cooperation among financial regulators. These recommendations combine to form a framework that is consistent with my approach as Acting Chairman and many of the efforts the NCUA Board has been pursuing in the past several months, which are addressed in this testimony.

Several of the report's specific recommendations could be particularly effective in achieving regulatory reform, depending on how they are implemented. For example, the proposal to allow institutions with at least ten percent capital to achieve regulatory relief could be important for all types of financial institutions.

The report also recognizes that the interests of consumers and financial inclusion must be integral pillars of regulatory reform. At the same time, the Treasury report reflects the realization that consumer protection rules are among the most burdensome that financial institutions face. In that regard, the report makes a number of recommendations for regulatory relief, including key changes to the Ability to Repay/Qualified Mortgage rule.

Credit union-specific proposals include raising the threshold for stress testing requirements for federally insured credit unions to $50 billion in assets (from assets of $10 billion) and relief in the examination process, two key areas the NCUA has reviewed. The report also supports greater coordination among the NCUA, CFPB, and state regulators to streamline the supervisory process.

Additional NCUA Initiatives

The NCUA Board is actively considering several initiatives to reduce the regulatory burden on credit unions and to update and improve our rules. These are likely to be implemented within the relatively near term.

Possible Temporary Corporate Credit Union Stabilization Fund Proposal for Early Termination

Congress authorized the creation of the Temporary Corporate Credit Union Stabilization Fund in 2009.[9] The availability of this fund allowed the agency to respond to the insolvency and failure of five large corporate credit unions without immediate depletion of the Share Insurance Fund, which protects the deposits and savings of credit union members. This fund also enabled the agency to fund massive liquidation expenses and guarantees on notes sold to investors backed by the distressed assets of the five failed corporate credit unions.

Current projections are that the distressed assets underlying the notes will perform better than initially expected. In addition to improved asset performance, significant recoveries on legal claims have created a surplus that may eventually be returned to insured credit unions. The NCUA is exploring ways to speed up this process, principally by closing the Stabilization Fund and transferring its remaining assets to the Share Insurance Fund more quickly than initially anticipated. Doing so would bolster the equity ratio of the Share Insurance Fund, leading to a potential distribution of funds in excess of the Share Insurance Fund's established equity ratio.

Call Report Enhancements

The NCUA intends to conduct a comprehensive review of the process by which it conducts its offsite monitoring of credit unions, namely through the Form 5300 Call Report and Profile. As the data reflected in these reports affect virtually all of the NCUA's major systems, the agency's exploration of changes in the content of the Call Report and Profile will be on the front end of the NCUA's recently announced Enterprise Solutions Modernization initiative, which will be a multi-year process. Started in the summer of 2016, this effort is comprehensive, ranging from the content of the Call Report and Profile to the systems that collect and use these data such as CU Online and the Automated Integrated Regulatory Examination System or AIRES. Throughout the process, we will seek input from external stakeholders to ensure our overarching goals are met.

The imperative driving this modernization effort is– quite simply–that credit unions, like other depository institutions, are growing larger and more complex every day. At the same time, smaller credit unions face significant competitive challenges. In such an environment, it is incumbent on the NCUA to ensure its reporting and data systems produce the information needed to properly monitor and supervise risk at federally insured credit unions while leveraging the latest technology to ease the burden of examinations and reporting on supervised institutions.

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[9] Pub. L. No. 111-22 (May 20, 2009), §204(f).

For these reasons, three of the other FFIEC agencies—the FDIC, OCC, and Federal Reserve—are currently reviewing their Call Report forms with an eye to reducing reporting burden.

The NCUA's goals in reviewing its data collection are:

- Enhancing the value of data collected in pre-exam planning and off-site monitoring;
- Improving the experience of users;
- Protecting the security of the data collected; and
- Minimizing the reporting burden for credit unions.

The NCUA will review all aspects of its data collection for federally insured credit unions. This review will go beyond reviewing the content of the Call Report and Profile to look at the systems credit unions use to submit data to the NCUA—namely CU Online. The agency has already conducted a broad canvassing of internal and external stakeholders to obtain their feedback on potential improvements to the Call Report and Profile. We have engaged stakeholders through a variety of methods, including a request for information published in the *Federal Register* with a 60-day comment period.[10] The comment period was intended to provide all interested parties an opportunity to provide input very early in the process. We also developed a structured focus group process to aid in assessing ideas (to complement internal and state regulatory agency input), and we have created data-collection systems that can be used to activate the focus group.

Supplemental Capital

The NCUA plans to explore ways to permit credit unions that do not have a low-income designation to issue subordinated debt instruments to investors that would count as capital against the credit union's risk-based net worth requirements. At present, only credit unions having a low-income designation are allowed to issue secondary capital instruments that count against their mandatory leverage ratios. For credit unions that do not have the low-income designation, only retained earnings may be used to meet the leverage requirements of the Federal Credit Union Act.[11] Consistent with its regulatory review objectives, the NCUA issued an advance notice of proposed rulemaking regarding certain constraints that, if applied to subordinated debt instruments issued by credit unions, would enable institutions to count those instruments as capital for purposes of the risk-based capital rule.

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[10] 81 Fed. Reg. 36,600 (June 7, 2016).
[11] 12 USC 1790d(o)(2); see Legislative Recommendations, infra, for additional discussion about this requirement and the NCUA's support for amending this provision.

Risk-Based Capital

I intend to revisit the NCUA's recently finalized risk-based capital rule in its entirety and to consider whether significant revision or repeal of the rule is warranted.[12]

Examination Flexibility

In response to the financial crisis and the Great Recession that ensued, the NCUA determined in 2009 to shorten its examination cycle to 12 months.[13] The agency also hired dozens of new examiners at that time. Since then, the agency policy has been that every federal credit union, and every federally insured, state-chartered credit union with assets over $250 million, should undergo an examination at least once per calendar year.

In an effort to implement regulatory relief and to address some inefficiencies associated with the current program, the agency has undertaken a comprehensive review of all issues associated with examiner time spent onsite at credit unions, including both frequency and duration of examinations. The relatively strong health of the credit union industry at present supports addressing exam efficiencies. A working group within the agency was established, and it solicited input from the various stakeholders, including from within the agency, state regulatory authorities, and credit union representatives. The working group issued recommendations, which the Board incorporated into the agency's 2017–18 budget. These included the recommendation that the agency provide greater flexibility in scheduling exams of well-managed and well-capitalized credit unions, consistent with the practices of other federal financial regulators and the agency's responsibility to protect the safety and soundness of the Share Insurance Fund.

Other objectives for consideration include evaluating the feasibility of incorporating a virtual examination approach, as well as improvements to examiner training and a movement away from undue reliance on "best practices" that are unsupported by statute or regulation. In addition, the agency intends to revisit its recently enacted rule on stress testing for the largest credit unions to consider whether it is properly calibrated, and also to explore whether to move this important function in-house and out of the realm of expensive third-party contractors. The ultimate goal of the NCUA's examination review and other initiatives has been and remains that safety and soundness will be assured with minimal disruptive impact on the well-managed credit unions subject to examination.

[12] 12 CFR part 702, subpart A; see 80 Fed. Reg. 66, 706 (October 29, 2015).

[13] Although the exam cycle immediately prior to 2009 had been in the 18-month range, for most of its history the NCUA has followed an exam cycle of approximately one year.

Enterprise Solutions Modernization

The NCUA's Enterprise Solutions Modernization program is a multi-year effort to introduce emerging and secure technology that supports the agency's examination, data collection and reporting efforts in a cost effective and efficient way. The changes in our technology and other systems will improve the efficiency of the examination process and lessen, where possible, examination burdens on credit unions, including cost and other concerns identified during our EGRPRA review.

Over the course of the next few years, the program will deploy new systems and technology in the following areas:

- ***Examination and Supervision***—Replace the existing legacy examination system and related supporting systems, like the Automated Integrated Regulatory Examination System or AIRES, with modernized tools allowing examiners and supervisors to be more efficient, consistent, and effective.

- ***Data Collection and Sharing***—Define requirements for a common platform to securely collect and share financial and non-financial data, including the Call Report, Credit Union Profile data, field of membership, charter, diversity and inclusion levels, loan and share data, and secure file transfer portal.

- ***Enterprise Data Reporting***—Implement business intelligence tools and establish a data warehouse to enhance our analytics and provide more robust data reporting.

Additionally, the NCUA envisions introducing new processes and technology to improve its workflow management, resource and time management, data integration and analytics, document management, and customer relationship management. Consistent with this vision, the NCUA intends to consider ways to more transparently streamline its budget and align its priorities with its budget expenditures.

Additional Areas of Focus

Several other areas present opportunities for the NCUA to focus on improving and enhancing its body of regulations and its oversight of the credit union industry. These include:

- ***Appeals Procedures.*** At present, the procedures by which a credit union or other entity aggrieved by an agency determination may seek redress at the level of the NCUA Board are inconsistent and poorly understood. As a result, the NCUA has developed proposed uniform rules to govern this area, both with respect to material supervisory determinations and other significant issues warranting review by the Board.

- ***Corporate Rule (Part 704).*** Reform and stringent controls over the corporate credit union sector was necessary during the financial crisis that began in 2008. Nine years later, a reconsideration of the corporate rule and an evaluation of whether restrictions therein may be loosened is appropriate. The NCUA will consider a proposed rule at the Board's monthly meeting this Friday.

- ***Credit Union Advisory Council.*** Development of such a council would enable the agency to listen to and learn from industry representatives more directly, enhancing our efforts to identify and eliminate unnecessarily burdensome, expensive, or outdated regulations.

Legislative Recommendations

The Committee asked the NCUA to identify ways to ease credit union regulatory burdens through legislation.

Looking ahead, the NCUA has several proposals to share with the Committee related to regulatory flexibility, field of membership requirements, member business lending, and supplemental capital.

Regulatory Flexibility

Today, there is considerable diversity in scale and business models among financial institutions. As noted earlier, many credit unions are very small and operate on extremely thin margins. They are challenged by unregulated or less-regulated competitors, as well as limited economies of scale. They often provide services to their members out of a commitment to offer a specific product or service, rather than a focus on any incremental financial gain.

The Federal Credit Union Act contains a number of provisions that limit the NCUA's ability to revise regulations and provide relief to such credit unions. Examples include limitations on the eligibility for credit unions to obtain supplemental capital, field-of-membership restrictions, investment limits, and the general 15-year loan maturity limit, among others.[14]

To that end, the NCUA encourages Congress to consider providing regulators with enhanced flexibility to write rules to address such situations, rather than imposing rigid requirements. Such flexibility would allow the agency to effectively limit additional regulatory burdens, consistent with safety and soundness considerations.

[14] 12 U.S.C. 1751 et. seq.

As previously noted, the NCUA continues to modernize existing regulations with an eye toward balancing requirements appropriately with the relatively lower levels of risk smaller credit unions pose to the credit union system. Permitting the NCUA greater discretion with respect to scale and timing when implementing statutory language would help mitigate the costs and administrative burdens imposed on smaller institutions, consistent with congressional intent and prudential supervision.

The NCUA would like to work with Congress so that future rules can be tailored to fit the risk presented and even the largest credit unions can realize regulatory relief if their operations are well managed, consistent with applicable legal requirements.

Field-of-Membership Requirements

The Federal Credit Union Act currently permits only federal credit unions with multiple common-bond charters to add underserved areas to their fields of membership. We recommend Congress modify the Federal Credit Union Act to give the NCUA the authority to streamline field of membership changes and permit all federal credit unions to grow their membership by adding underserved areas. The language of H.R. 5541, the Financial Services for the Underserved Act, introduced in the House during the 114th Congress by Congressman Ryan of Ohio, would accomplish this objective.

Allowing federal credit unions with a community or single common-bond charter the opportunity to add underserved areas would open up access for many more unbanked and underbanked households to credit union membership. This legislative change also could enable more credit unions to participate in programs offered through the congressionally established Community Development Financial Institutions Fund, thus increasing the availability of affordable financial services in distressed areas.

Congress may wish to consider other field of membership statutory reforms, as well. For example, Congress could allow federal credit unions to serve underserved areas without also requiring those areas to be local communities. Additionally, Congress could simplify the "facilities" test for determining if an area is underserved.[15]

Other possible legislative enhancements could include elimination of the provision presently contained in the Federal Credit Union Act that requires a multiple common-bond credit union to be within "reasonable proximity" to the location of a group in order to provide

[15] The Federal Credit Union Act presently requires an area to be underserved by other depository institutions, based on data collected by the NCUA or federal banking agencies. 12 U.S.C. 1759 (c) (2) (A) (ii). The NCUA has implemented this provision by requiring a facilities test to determine the relative availability of insured depository institutions within a certain area. Congress could instead allow the NCUA to use alternative methods to evaluate whether an area is underserved to show that although a financial institution may have a presence in a community, it is not qualitatively meeting the needs of an economically distressed population.

services to members of that group.[16] Another legislative enhancement that recognizes the way in which people share common bonds today, would be to provide for explicit authority for web-based communities as a basis for a credit union charter.

The NCUA stands ready to work with Congress on these proposals, as well as other options to provide consumers more access to affordable financial services through credit unions.

Member Business Lending

The NCUA reiterates the agency's long standing support for legislation to adjust the member business lending cap, such as S. 836, the Credit Union Residential Loan Parity Act, which Senators Wyden and Murkowski have introduced. This bipartisan legislation addresses a statutory disparity in the treatment of certain residential loans made by credit unions and banks.

When a bank makes a loan to purchase a one- to four-unit, non-owner-occupied residential dwelling, the loan is classified as a residential real estate loan. If a credit union were to make the same loan, it is classified as a member business loan and is, therefore, subject to the member business lending cap. To provide regulatory parity between credit unions and banks for this product, S. 836 would exclude such loans from the statutory limit. The legislation also contains appropriate safeguards to ensure strict underwriting and servicing standards are applied.

Supplemental Capital

The NCUA supports legislation to allow more credit unions to access supplemental capital, such as H.R. 1244, the Capital Access for Small Businesses and Jobs Act. Introduced by Congressmen King and Sherman, this bill would allow healthy and well-managed credit unions to issue supplemental capital that would count as net worth. This bipartisan legislation would result in a new layer of capital, in addition to retained earnings, to absorb losses at credit unions.

The high-quality capital that underpins the credit union system was a bulwark during the financial crisis and is key to its future strength. However, most federal credit unions only have one way to raise capital—through retained earnings. Thus, fast-growing, financially strong, well-capitalized credit unions may be discouraged from allowing healthy growth out of concern it will dilute their net worth ratios and trigger mandatory prompt corrective action-related supervisory actions.

A credit union's inability to raise capital outside of retained earnings limits its ability to expand its field of membership and to offer more products and services to its membership

[16] See 12 USC 1759(f)(1)

and eligible consumers. Consequently, the NCUA has previously encouraged Congress to authorize healthy and well-managed credit unions to issue supplemental capital that will count as net worth under conditions determined by the NCUA Board. Enactment of H.R. 1244 would lead to a stronger capital base for credit unions and greater protection for taxpayers.

Conclusion

In conclusion, we must slow, if not stop, the machine that grinds out a relentless flow of new regulatory burdens. We must also do much more to improve how we regulate and to consider the costs, as well as the benefits, of each new regulation. Credit unions cannot afford to let time slip through their fingers because they are too busy complying with unnecessary and burdensome regulations. Instead, they must focus on today's challenges and risks while thoughtfully preparing for the future. Absent safety and soundness concerns, the NCUA must not stand in the way of credit unions' efforts to develop and execute their business plans, meet the expectations of their members, and build a robust and dynamic credit union community for the future.

Thank you again for the invitation to testify. I am happy to answer your questions.