



Credit Union National Association

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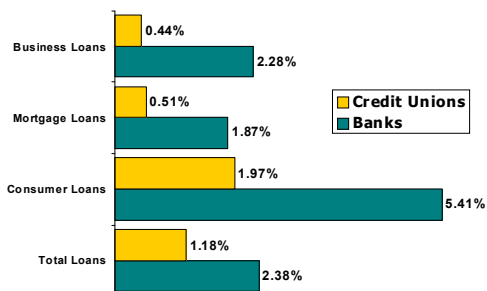
LEGISLATIVE BRIEFING PAPER

JOB CREATION: CREDIT UNIONS LENDING TO SMALL BUSINESSES SAFELY AND SOUNDLY AT NO COST TO TAXPAYERS (H.R. 3380 / S. 2919)

America's small businesses are the engine of growth of our nation's economy. The effects of the sub-prime mortgage crisis have spread to all types of lending resulting in a reduction in the availability of business credit. As Congress continues to consider ways to help the economy recover and create jobs, CUNA supports an economic stimulus option that would **create 108,000 new jobs** without increasing government spending or the size of government: Raise the statutory cap on credit union member business lending.

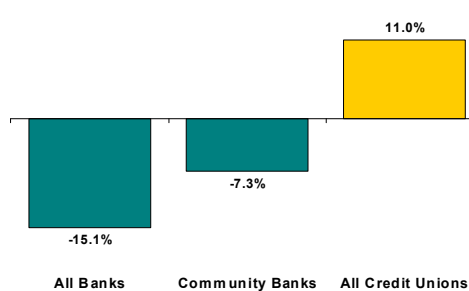
The cap on credit union member business lending (currently 12.25% of the total assets of the credit union) has no economic, safety and soundness or historical rationale. It was enacted in 1998, and after a decade, it is time to remove this arbitrary restriction. Credit unions have been lending to their business-owning members for a century. Net charge-off rates for credit union business loans are lower than charge-off rates for business loans made by banks. At a time when banks are withdrawing credit from America's small businesses, credit unions have actually been expanding credit to small businesses. It makes economic sense to restore credit unions' full ability to lend to their business-owning members.

Safety & Soundness Concerns?
Annualized Loan Charge-Offs as of 9/09



Source: FDIC, NCUA & CUNA E&S.

Business Loan Growth
12 Months Ending September 2009



Source: FDIC, NCUA & CUNA E&S. Community banks are defined as banks with less than \$1 billion in assets.

If the statutory cap on the amount of business lending a credit union could lend was increased in 25% of total assets, CUNA estimates that credit unions could make up to an additional **\$10 billion in business loans in the first twelve months, creating 108,000 new jobs.** This represents significant economic stimulus that does not cost the taxpayers a dime and does not expand the size of government.

Legislation (H.R. 3380 / S. 2919) to raise the MBL cap to 25% of total assets and exempt loans less than \$250,000 from the cap has been introduced in both the House and the Senate. In the Senate, S. 2919 has been introduced by Senators Mark Udall, Charles Schumer, Joe Lieberman, Olympia Snowe, Susan Collins, Barbara Boxer and Kirsten Gillibrand. H.R. 3380 has been introduced by Representatives Paul Kanjorski and Ed Royce, and has been cosponsored by over 50 House members. CUNA strongly supports H.R. 3380 and S. 2919, and hopes the provisions of these bills will be included in job creation legislation.



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CREDIT UNIONS SERVE THEIR MEMBERS AT ALL INCOME LEVELS, DESPITE STATUTORY RESTRICTIONS THAT IMPEDE GREATER SERVICE

The Federal credit union system was established during the Great Depression to help stabilize the credit structure of the United States. Therefore, it should come as no surprise that when the financial markets crumbled, credit unions were there to meet the credit needs of their members. In fact, the most recently available data suggest that at a time when other lenders continue to reduce credit availability, credit unions continue to lend. In the year ending September 2009, credit union loans outstanding grew by nearly 3%; while during that same period of time, banks reduced their loans by nearly \$575 billion, a decline of -7.2%, according to FDIC and NCUA.

Credit unions serve their members in all ethnic groups and at all income levels despite the statutory barriers prevent many credit unions from serving underserved communities. According to Home Mortgage Disclosure Act data, credit unions make a larger percentage of loans to low and moderate income borrowers than banks and thrifts. According to the National Credit Union Administration, 96% of the members of Federal credit unions have household incomes of less than \$100,000 per year. The NCUA will begin publishing regularly updated data on credit union service to their members in 2011.

We agree that credit unions can do more to serve underserved communities and consumers. The obstacle to further credit union service to these groups is not the lack of desire, capacity, or absence of a law that requires measurement of credit union service to the underserved; it is statutory restrictions which limit who credit unions can serve and what products they can offer. That is why we have been asking Congress for nearly a decade to permit all credit unions to serve the underserved and restore credit unions' ability to serve members who own small businesses. In these difficult economic times, credit unions are ready and able to do more, but the law, not the credit union, is the greatest barrier.

Some have suggested that the Community Reinvestment Act (CRA) should apply to credit unions; but, expanding CRA to cover credit unions is not the answer to this problem. CRA was enacted because banks were redlining; credit unions have never engaged in redlining. CRA was enacted to coerce banks to engage in activity that they did not want to do; credit unions serve their members at all income levels, offer affordable products and have continued to lend when others have reduced credit availability. Credit unions do not need a law to tell them to serve the underserved: they have done it throughout their history.

The most effective actions Congress could take to encourage greater credit union service would be to:

- permit all credit unions to serve underserved areas, so credit unions can serve the communities that need it the most;
- relax credit union field of membership restrictions, so that it is easier for consumers to join credit unions that are convenient to them;
- increase the credit union member business lending cap, so that credit unions can invest in their communities by helping their small business-owning members maintain and expand their local businesses; and
- give credit unions access to alternative forms of capital.

We urge Congress not to make it more difficult for credit unions to serve the underserved by enacting H.R. 1479 or other bills that would expand punitive law on credit unions. Give credit unions the opportunity to serve those who have the greatest need for financial services.

FINANCIAL REGULATORY RESTRUCTURING: CONSUMER FINANCIAL PROTECTION

Credit unions are unique among all financial institutions in that they are not-for-profit financial cooperatives, which are owned and controlled by their members. As a result, credit unions' motives and mission are different from their counterparts in the for-profit financial sector. Credit unions have a special obligation to balance the consumer needs of their members with the business interests of the credit union.

Consumers of financial products, especially for consumers of products and services provided by currently unregulated entities, need greater protections. Congress is currently considering a variety of options for providing consumer with additional protection, including the creation of a new independent agency.

Credit unions will evaluate any proposal to create a new agency on the following principals:

- Although consumer protection rulemaking may be done by an independent agency working in coordination with prudential regulators, the examination, supervision and enforcement of consumer protection should be entrusted to each credit union's prudential regulator.
- Any new regulatory structure should not stifle competition or innovation—credit unions should have the ability to decide what products are appropriate to offer their membership.
- Any new agency or structure should be directed to streamline and modernize consumer protection regulation so as to minimize unnecessary regulatory burden. Duplicative and overlapping rules should be eliminated. Regulations should have reasonable compliance effective dates and be amended in an orderly fashion so that regulations are not continually being revised.
- Finally, the federal consumer protection rules should preempt state rules applicable to the products covered by the regulator. In order to achieve the regulatory simplicity that is a key objective for consumers and institutions alike, there needs to be one rule of the road. If Congress creates a CFPA and its rules merely become the floor in terms of consumer protection, many state laws will remain or be passed, and the size and complexity of consumer disclosures will not adequately be resolved. In short, the consumer will not see the simplification benefits of this agency if there is not preemption.

We continue to review the various proposals to create a consumer agency and may have additional thoughts or concerns as the deliberative process continues.

FINANCIAL REGULATORY RESTRUCTURING: SYSTEMIC RISK REGULATION

Credit unions do not pose a systemic risk to the financial system, and therefore should not be entangled in legislation designed to deal with systemically significant institutions. The failure of any single credit union or a group of credit unions would not have a systemic impact on the financial system. In fact, the total assets of the entire credit union movement are less than the total assets of the largest bank in the United States. Moreover, the National Credit Union Share Insurance Fund (NCUSIF) is designed to resolve troubled credit unions. The additional tools that the Congress gave the National Credit Union Administration through the enactment of the Helping Families Save Their Home Act of 2009 (P.L. 111-22) should help credit unions and the NCUSIF weather the financial crisis and address future threats to the NCUSIF.

As Congress considers legislation to address too-big-to-fail institutions and the systemic risk they impose, credit unions strongly oppose any bill which would require any credit unions to pay to bail out huge, failing, for-profit financial institutions. It is not good public policy to require member-owned financial cooperatives to cover the losses of large, complex, for-profit financial companies, especially given the fact that credit unions have an independent insurance fund and credit union regulators have the tools necessary to handle systemic risks within the credit union system.

We appreciate that the House Financial Services Committee approved the Sherman-Maffei amendment, which increased the threshold for assessment on financial institutions for the resolution fund from \$10 billion to \$50 billion. While this essentially excludes all credit unions from the scope of the House legislation, we hope that any systemic risk legislation enacted into law will state clearly that credit union members are not responsible for funding the dissolution of huge, for-profit financial companies.

OVERDRAFT PROTECTION: GIVE THE NEW RULES AN OPPORTUNITY TO WORK

Credit unions have long been involved in providing some form of overdraft or bounced check protection to their members. For credit unions, this is fully consistent with their philosophy and mission to serve members' financial needs and to help them resolve short-term financial problems. While the terms and features of these overdraft privilege programs may vary, most are consistent in offering to pay, rather than return, non-sufficient funds transactions on checking accounts in exchange for fees that are similar to those typically charged for returned items. All these programs are intended to spare members the embarrassment of returned checks as well as avoid additional fees charged by merchants.

Generally, overdraft protection programs offered by credit unions refrain from:

- Deceptive advertising that leads consumers to expect all overdrafts to be paid when other documents indicate payment of overdrafts is discretionary;
- Promoting overdraft protection in a manner that encourages consumers to frequently or regularly overdraw their account;
- Enticing consumers to overdraw their accounts by including the amount of overdraft coverage as part of "available funds" in ATM messages, online statements and telephone balance statements; and
- Failing to inform frequent users of overdraft protection services of available alternatives that could be more appropriate and less expensive.

On November 12, 2009, the Federal Reserve issued a final rule reforming the regulation of overdraft programs. The new rule, which becomes effective on July 1, 2010, significantly improves consumer protections with respect to these programs by:

- Requiring that consumers opt-in to the payment of overdrafts for ATM and one-time debit card transactions before fees may be assessed;
- Requiring consumers receive disclosures explaining the overdraft services, the fees, and the consumer's right to opt-in – prior to the consumer opting-in. The rule provides a model notice;
- Giving consumers an ongoing right to revoke this consent.
- Prohibiting financial institutions from requiring that a consumer opt-in to ATM and one-time debit card overdrafts in exchange for having overdrafts paid on checks.
- Requiring financial institutions to provide consumers who do not opt-in with the same account terms, conditions, and features that are provided to those who do opt-in.

Credit unions are making changes to their programs to comply with the new rules. We believe the new Fed Rules should be given a chance to work before Congress further considers overdraft protection legislation.

We have grave concerns regarding the impact pending legislation (S. 1799 / H.R. 3904) would have on credit union members who use and value the overdraft protection services their credit union provides. The provisions of these bills that would limit the number of overdraft fees that could be charged per month and per year would simply end overdraft programs to the detriment of many consumers who truly value these programs. If these bills were law, credit union members would incur more non-sufficient fund (NSF) fees with none of the benefits of having many transactions honored. Merchants would deal with more bounced checks and have more bills that are currently paid under automated bill-paying services rejected. Inevitably, other adjustments would be made in checking account services and maintenance fees that would impact a wide range of accountholders.

Credit union members lose if S. 1799 or H.R. 3904 becomes law; therefore, we strongly oppose this legislation.

INTERCHANGE FEES: MAINTAINING A CONVENIENT, SAFE AND AFFORDABLE PAYMENT SYSTEM FOR CONSUMERS (H.R. 2382/H.R. 2695/S. 1212)

Credit unions issue debit cards and credit cards to their members. Interchange revenue from the use of these cards is vital to credit unions to support the administrative expense of card programs. Interchange fees allow business costs, including both operating expenses and the risk of consumer nonpayment, to be shared by the payments participants.

CUNA opposes statutory and rulemaking proposals that would affect interchange fees as such action would adversely affect consumer options, competition and technological innovation. Government intervention in interchange will result in increased cost for consumers, decreased competition, and an unfair disruption of the marketplace.

Increased costs for consumers: For consumer-members, government intervention in interchange fees would likely result in cost-shifting from merchants to consumers and increased fees for consumers to obtain debit and credit cards. Interchange enables and supports the convenience of credit cards and debit cards with competitive rates and terms.

Decreased competition for consumers: Debit and credit cards obtained through credit unions offer competitive rates and consumer-friendly terms. By managing a debit or credit card account through a credit union, a member is able to effectively manage their bills and establish a strong credit history. Interchange enables credit unions of all sizes to issue debit and credit cards for its members.

Unfair disruption of marketplace: The merchants' legislative proposals would unfairly disrupt a functioning marketplace by giving merchants an enormous competitive advantage over card-issuing credit unions in interchange negotiations. Any resulting reduction in the merchants' interchange responsibility would shift to the consumers; resulting in higher fees and reduced access to a convenient and cost-effective payment card system.

In November 2009, the Government Accountability Office released a report on interchange which validates many of the points that credit unions have been making for several years. Among the report's findings, the GAO stated that:

- “Consumers have benefited from competition in the credit card market, as cards often have no annual fees, lower interest rates than they did years ago, and greater rewards.” (Executive summary)
- “Many industry participants and others agreed that the costs of card acceptance might shift from merchants to card holders if interchange fees were limited, card surcharges permitted, and interchange revenues decreased.” (p.55)
- “Increased competition for acquiring services provides merchants with considerable choice and opportunities to negotiate and lower some of their card acceptance costs.” (p.35)
- “Eight of the nine small merchants we interviewed reported getting solicitations – some frequently – for their acquiring business or have shopped their acquiring business.” (p.36)
- “Representatives of credit unions and community banks reported that revenue from interchange fees allowed them to cover expenses related to offering credit cards and compete with large issuers to offer their customers credit cards.” (p.22)

Discussions regarding what value should be placed on the use of electronic payments should be within the purview of the industry participants. CUNA believes interchange is more appropriately addressed by the market participants, without any antitrust exemption advantage for the merchants. Government interference in this working market stands to harm all participants, including consumers, merchants, and credit unions.

We urge Members of Congress not to cosponsor and oppose any legislation (H.R. 2382/H.R. 2695/S. 1212) that would affect the interchange received by card-issuing credit unions.

UNDERSERVED AREAS: CLARIFYING THAT ALL CREDIT UNIONS MAY SERVE LOW-INCOME COMMUNITIES

In July 2006, as a result of a lawsuit filed by the American Bankers Association, NCUA issued a regulation prohibiting federal single-sponsor credit unions and community chartered credit unions from adding additional underserved areas to their fields of membership. The ability for all credit unions to serve underserved areas is part of the core mission of credit unions. As the nation recovers from the economic crisis, it will be essential that all Americans, including those living in underserved areas, have access to affordable financial services. CUNA urges Congress to remove the statutory limits on service to underserved areas and allow all federal credit unions (single sponsor, community chartered, and multiple common bond) to serve underserved areas.

CREDIT UNION CAPITAL REFORM: IMPROVING REGULATORY OVERSIGHT

Credit unions remain the most highly regulated and restricted of all insured financial institutions. In addition to the MBL cap, another area in which regulation impedes credit unions' ability to remain healthy is capital and the statutory requirements imposed on credit unions in this area.

By law – not regulation, as is the case for other insured depositories – credit unions must maintain a 7% net worth (or leverage) ratio in order to be considered “well capitalized.” The law also specifies that only retained earnings constitute net worth for credit unions. Credit unions are risk-averse; they do not generally engage in activities that are excessively risky. Yet, the law does not permit NCUA sufficient authority to structure net worth requirements that are appropriate for credit unions' risk levels. CUNA strongly urges Congress to reform credit union capital requirements to permit NCUA to impose a risk-based asset approach to PCA, similar to the authority given to the Federal Deposit Insurance Corporation. We also ask Congress to modify the definition of credit union net worth to include alternative forms of capital for credit unions. These new measurements would improve the safety and soundness of credit unions.

Credit unions historically have had the lowest default/delinquency rates in virtually all categories of loans and have maintained average net worth ratios well in excess of those held by banks. Credit union capital reform will reinforce and strengthen the regulatory incentive for credit unions to remain exceptionally safe and sound. And, it will allow credit unions to do even more to serve all their members.

FINANCIAL REGULATORY RESTRUCTURING: MAINTAINING AN INDEPENDENT CREDIT UNION REGULATOR

As Congress considers proposals to modernize the regulatory structure of the financial services sector, CUNA strongly believes the credit union independent federal regulator (NCUA) must be maintained. Credit unions did not cause the financial crisis; rather, credit unions have been a model of what can go right in the financial services sector in serving consumers and small businesses when so much else has gone wrong.

CUNA appreciates that the regulatory restructuring proposals supported by President Obama, Chairman Frank and Chairman Dodd preserve NCUA as an independent regulator.

CREDIT UNION TAX EXEMPTION: MAINTAINING THE CREDIT UNION STATUS

Credit unions are classic member-owned cooperatives. The credit union federal tax-exemption is provided because of the not-for-profit, cooperative structure of credit unions, and the special mission credit unions have to serve consumers. The tax status is not based on the size of credit unions or the products and services that are offered; it is based on the credit union structure. This rationale for the tax-exempt status has been ratified several times by Congress. CUNA opposes all attempts to subject credit unions to taxation, as well as efforts to use the tax debate to prevent credit unions from achieving improvements to the Federal Credit Union Act.