



Credit Union National Association

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March 8, 2012

The Honorable Jerry Moran
United States Senate
Washington, DC 20510

The Honorable Joe Manchin, III
United States Senate
Washington, DC 20510

Dear Senators Moran and Manchin:

On behalf of the Credit Union National Association (CUNA), I am writing in support of S. 2160, the Financial Institution Examination Fairness and Reform Act. CUNA is the largest credit union advocacy organization in the United States, representing nearly 90% of America's 7,300 state and federally chartered credit unions and their 93 million members.

S. 2160 would make available to financial institutions the information used to make decisions in their examination; codify certain examination policy guidance; establish an ombudsman at the Federal Financial Institution Examination Council (FFIEC) to which financial institutions could raise concerns with respect to their examination; and, establish an appeals process before an independent administrative law judge.

CUNA strongly supports this legislation and views it as a firm step in the right direction toward ensuring the federal financial institution regulatory agencies (regulators) conduct fair exams which are consistent with the law and regulation and ensure safety and soundness. This legislation seeks to address the concern that examiners are in some cases requiring credit unions and other financial institutions to take action that is not required by law or regulation and in other cases prohibiting these institutions from taking action that is otherwise permitted by law or regulation.

Credit unions support a strong and effective regulatory system for credit unions. After all, credit unions jointly stand before the taxpayer against losses in our federal share insurance system. We do not view your legislation as weakening the federal examination system. Rather, by increasing the consistency and fairness of the system, safety and soundness can also be enhanced. We applaud your leadership on this issue, and would respectfully encourage you to consider additional enhancements to S. 2160 as moves through the legislative process.



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Section 2 would require regulators to provide a final examination report to the financial institution no later than 60 days after the exit interview for an examination or the provision of additional information relating to the examination, whichever is later. This section also would require the exit interview to be conducted within nine months of the commencement of the examination. Although we do not oppose this language, it is important to note that credit unions report that the National Credit Union Administration (NCUA) generally meets these deadlines already. We encourage you to consider adding language to ensure that the deadlines proposed by this legislation do not become the new standard for regulators which have a history of more timely completion on examination processes.

Section 2 also requires regulators to include in the final examination report an appendix listing all examination or other factual information that examiners relied upon when making material supervisory determinations, upon the request of the financial institution. We appreciate your including this provision in the legislation. In fact, we feel so strongly that this type of information should be provided to financial institutions at the conclusion on the examination, we encourage you to consider eliminating the requirement that financial institutions request the information. This information should be made available to financial institutions as a matter of course. We also encourage you to add language to this provision requiring regulators to identify the specific legal basis under which any material supervisory determination is made.

Section 3 includes several provisions related to examination standards and the treatment of certain loans; these provisions appear consistent with FFIEC guidance issued in 2009. We support the intent of including this language in this legislation, which is to ensure that the policy guidance issued by Congress and the regulators in Washington is applied as intended by the examiners in the field. While we have concerns with the prescriptive nature of the language in this section, we recognize that if there were not so many concerns regarding the examination process, it would not be necessary for Congress to consider such language.

One provision of Section 3 with which we would request further consideration is the provision requiring the regulators to develop and apply identical definitions and reporting requirements for non-accrual loans. While it is important for there to be consistency among the regulators' examination processes, we believe the NCUA should have some flexibility in this area given the unique structural characteristics that differentiate credit unions from banks.

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Section 4 would establish an office of examination ombudsman at the FFIEC to receive and investigate complaints from financial institutions concerning examinations, practices and reports. This office would also be responsible for reviewing regulators' examination procedures to ensure that examination policies are being followed and adhere to the standards for consistency established by the FFIEC. This section also includes an annual report to Congress on several of the issues addressed by this legislation.

We strongly support the establishment of this office at the FFIEC, and would recommend the following three changes to this section.

First, we suggest that the ombudsman be directed to design and implement a routine survey for financial institutions to complete on a voluntary basis at the conclusion of the examination process, to report on their examination experience. The NCUA presently conducts such a voluntary survey; other regulators may as well. We envision this survey being made available to the financial institution as part of the final examination report. We believe that credit unions would be more comfortable in completing such a survey if it were collected by an ombudsman once removed from the NCUA. Further, we would hope that the results of this survey would be aggregated and reported to Congress in the annual report required under this section.

Second, the legislation includes language designed to prohibit retaliatory action against a financial institution that complains about or appeals an examination finding. We appreciate this language, but encourage you to take an additional step to assuage the real concerns that financial institutions may have regarding the utilization of the complaint or appeal process. We encourage you to direct the ombudsman to routinely follow up with financial institutions that have raised issues with respect to or appealed examination findings to ensure that there have been no retaliatory actions taken against the institution. This type of action may reduce the concern regarding retaliation that some financial institutions may have notwithstanding the prohibition against retaliatory action.

Third, we have concerns related to the language directing the ombudsman to review regulators' examination procedures to ensure that examination policies are being followed and adhere to the standards for consistency established by the FFEIC. As we have noted, credit unions have unique structural characteristics that differentiate them from banks. We encourage you to consider whether this language would sufficiently enable the NCUA to establish examination procedures that take into consideration these characteristics.

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The inconsistency and sometimes heavy-handedness of the examination process is but one of the challenges credit unions and other financial institutions face as the country recovers from the recent financial crisis. S. 2160 will enhance transparency and improve consistency in the examination process; provide a resource for financial institutions to express concern about their examination experience; and establish an independent adjudicatory process for the appeal of material supervisory determinations. We strongly support this legislation and look forward to working with you to ensure its enactment.

On behalf of America's credit unions and their 93 million members, thank you very much for your work on this legislation.

Best regards,

A handwritten signature in black ink, appearing to read "Bill Cheney", with a long, sweeping underline.

Bill Cheney
President & CEO