



Credit Union National Association

CUNA Issue Summary

REGULATORY RESTRUCTURING

ISSUE: In response to the failures of large financial services companies like Lehman Brothers and the associated costs incurred by the federal government to prevent other similar failures, the Congress and the Obama Administration have put forth legislative proposals to prevent future economic turmoil like that our country has experienced in the last year. The implications of this restructuring will have broad implications for the credit union system and CUNA has been working with Congress to mitigate any negative or unintended consequences of this reform effort.

CUNA POSITION: On December 11, 2009, the House of Representatives passed the *Wall Street Reform and Consumer Protection Act* (H.R. 4173), a comprehensive restructuring of many aspects of the financial services sector. The Senate has not acted as quickly as the House. In November, Senate Banking Committee Chairman Chris Dodd released a draft of a comprehensive reform bill, the *Restoring American Financial Stability Act*, and began committee consideration of the draft bill.

Independent Credit Union Regulator

CUNA continues to lobby Congress against merging the National Credit Union Administration (NCUA) into any new consolidated financial services regulatory authority. The credit union charter could be weakened if credit unions were placed under the regulatory authority of a single, consolidated federal bank regulator. A consolidation of the federal financial services regulators would only result in increased loan rates, decreased savings rates, higher fees, and the loss of the not-for-profit credit union alternative for the nation's 90 million credit union members.

The House-passed bill creates a "Financial Services Oversight Council" with the NCUA serving as one of its nine voting members. While not eliminating prudential regulatory authorities like the NCUA, the bill empowers the Council to identify, in consultation with the Federal Reserve Board and the appropriate regulator, financial companies and financial activities that should be subject to more stringent regulatory standards.

The Senate Banking Committee draft bill retains the NCUA as the sole safety and soundness regulator for credit unions. It also retains the dual banking system.

Consumer Financial Protection Agency

As part of the overhaul effort, Congress has been considering the creation of a "Consumer Financial Protection Agency", a single federal agency to supervise, examine and enforce consumer financial protection laws.

Consumers of financial products, especially for consumers of products and services provided by currently unregulated entities, need greater protections, and CUNA agrees that a CFPA could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions. In order for a CFPA to work, consumer protection regulation must be consolidated and streamlined; the CFPA should not add to the regulatory burden of those that have been regulated and performed well, such as credit unions.

CUNA could support the creation of a CFPA provided that several concerns are addressed. While we agree that the CFPA should have complete rulemaking authority on consumer protection issues, the examination, supervision and enforcement of consumer protection should be entrusted to the prudential regulator. Also, the CFPA regulatory structure should not stifle competition or innovation—credit unions should have the ability to decide what products are appropriate to offer their membership.

The law creating the CFPA should include the requirement that the agency streamline and modernize consumer protection regulation so as to minimize unnecessary regulatory burden. Duplicative and overlapping rules should be eliminated. Any regulations adopted by the CFPA should have reasonable compliance effective dates and be amended in an orderly fashion so that regulations are not continually being revised.

Finally, the federal rules adopted by the CFPA should preempt state rules applicable to the products covered by CFPA regulations. 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.

The House-passed bill excludes community banks and credit unions from CFPA examination and enforcement if their assets do not exceed \$10 billion. During debate on the bill, Representative Ed Perlmutter (D-CO) engaged Chairman Frank in a colloquy regarding the treatment of credit unions and small banks by the CFPA. Representative Perlmutter noted that the language in the underlying bill permits the CFPA to delegate to the prudential regulator of a bank or credit union examination and enforcement authority, and he asked Chairman Frank if he agreed that the CFPA should use this authority for credit unions and banks with more than \$10 billion in total assets if these institutions demonstrate a favorable record of consumer protection regulation compliance. The Chairman agreed that he agreed and said "I hope the CFPA would take full advantage of this authority" under those circumstances.

CUNA is also concerned that credit life and credit disability insurance products have been included as a covered products in the Dodd draft bill. The House removed these types of insurance from its version of the bill and CUNA believes that CFPA regulation these insurance lines would be duplicative and would also add an additional compliance burden on credit unions that offer these financial products to their members. An alternative approach would be to prohibit single-premium credit insurance products in connection with residential mortgage loans, as the House did when it adopted H.R. 1728 as part of H.R. 4173.

The Senate Banking Committee draft bill creates a CFPA that would be led by a five member board with a single independent director, and would be the sole agency held accountable for consumer protection. While the Senate version of the CFPA would not exempt credit unions from examination and supervision by CFPA, CUNA will be working hard to fix this issue.

Systemic Risk

As part of the overall regulatory restructuring plan, the Congress is considering the creation of a financial stability oversight authority to monitor financial companies that may pose a systemic risk to the financial system. In the House-passed bill, the concept of this plan is that complex financial holding companies pose potentially systemic risk, and in the event of the failure of such a holding company, the FDIC must be given the authority and the funds to wind the company down in such a way as to not cause substantial harm to the entire financial system. CUNA opposed credit union inclusion in this system because it does not believe it makes sense to include credit unions in this legislation because: (a) all credit unions combined cannot pose a systemic risk that one complex financial holding company can to the stability of the economy; (b) credit unions already have a separate federal agency that is designed to manage risks; and (c) credit unions already support a separate federal insurance fund to address "systemic risks" that may arise within the credit union system. In November, the House Financial Services Committee considered H.R. 3996, the *Financial Stability Improvement Act of 2009*. CUNA was able to win an exemption from the bill's provisions for credit unions with less than \$50 billion in assets, having the effect of exempting all credit unions. This exemption was incorporated into H.R. 4173.

Executive Compensation

In July, the House of Representatives passed H.R. 3269, the *Corporate and Financial Compensation Fairness Act*. CUNA opposed this legislation because would direct the federal financial regulators to require financial institutions with over \$1 billion in assets to disclose information related to the structure of incentive based compensation structures. The final House-passed bill, H.R. 4173, authorizes prudential regulators to develop regulations for financial firms with at least \$1 billion in assets that have executive compensation structures "that pose a risk to financial institutions and the broader economy." The bill does not require the disclosure of any individual's compensation, nor does it address actual compensation levels or regulator approval of compensation.

Cramdown

During debate on H.R. 4173, Representative Jim Marshall (D-GA) offered an amendment to allow bankruptcy judges to lower the principal owed on primary residential mortgages, a practice often referred to as cramdown. CUNA vigorously objected and the amendment and it was defeated by a vote of 188 to 241.

Asset-Backed Securities

H.R. 4173 requires creditors to retain 5 percent of the credit risk for mortgage loans sold into the secondary market. Prudential regulators are given the flexibility to raise or lower the percentage.

STATUS/OUTLOOK: The Senate Banking Committee is likely to continue portions of its markup of the Chairman's draft bill in January. However, with the Senate debate on healthcare reform expected to continue into January, it is unlikely that the full Senate will vote on financial services regulatory restructuring until well into 2010.

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RELATED DOCUMENTS:

[November 18, 2009: Letter from CUNA President and CEO Dan Mica to House Financial Services Committee Chairman Barney Frank \(D-MA\) and Ranking Member Spencer Bachus \(R-AL\) in support of the Perlmutter-Lucas amendment to H.R. 3996, the Financial Stability Improvements Act, regarding accounting standards](#)

[November 17, 2009: Letter from CUNA President and CEO Dan Mica to House Financial Services Committee Chairman Barney Frank \(D-MA\) and Ranking Member Spencer Bachus \(R-AL\) in support of the Sherman Amendment \(004\) to H.R. 3996, the Financial Stability Improvement Act](#)

[November 2, 2009: Letter from CUNA President and CEO Dan Mica to House Financial Services Committee Chairman Barney Frank \(D-MA\) and Ranking Member Spencer Bachus \(R-AL\) regarding the Financial Stability Improvement Act](#)

[October 14, 2009: Letter from Dan Mica and Pete Crear, President and CEO of the World Council of Credit Unions, to House Financial Services Committee Chairman Barney Frank \(D-MA\) regarding the remittances provisions of the manager's amendment to the Consumer Financial Protection Agency Act](#)

[September 30, 2009: Letter from CUNA President and CEO Dan Mica to House Financial Services Committee Chairman Barney Frank \(D-MA\) and Ranking Member Spencer Bachus \(R-AL\) regarding legislation to create a Consumer Financial Protection Agency](#)

[July 31, 2009: Joint letter from the Credit Union National Association and the National Association of Federal Credit Unions regarding H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act](#)

[July 28, 2009: Letter from CUNA President and CEO Dan Mica to Rep. Joe Baca \(D-CA\) regarding his amendment to H.R. 3269, the Corporate and Financial Compensation Fairness Act](#)

[July 24, 2009: Letter from CUNA President and CEO Dan Mica to House Financial Services Committee Chairman Barney Frank \(D-MA\) and Ranking Member Spencer Bachus \(R-AL\) regarding H.R. 3269, the Corporate and Financial Compensation and Fairness Act](#)

[July 14, 2009: Letter from CUNA President and CEO Dan Mica to House Financial Services Committee Chairman Barney Frank \(D-MA\) regarding H.R. 3126, the Consumer Financial Protection Agency Act of 2009](#)

[June 19, 2009: Letter from CUNA President and CEO Dan Mica to President Obama Regarding the Administration's Financial Regulatory Restructuring Proposal](#)

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