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September 16, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Frank,

On behalf of the Credit Union National Association (CUNA), I am writing regarding the hearing entitled, "Proposals to Enhance the Community Reinvestment Act." We would like to take this opportunity to express our strong opposition to H.R. 1479, the *Community Reinvestment Act Modernization Act of 2009*, as it applies to credit unions, and to respond to a recent report produced by an organization testifying at today's hearing. CUNA represents nearly 90% of America's 8,000 credit unions and their 92 million members.

We greatly appreciate your long history of supporting credit unions and their efforts to serve their members. However, we are puzzled and disappointed by this legislation which seeks to impose significant regulatory burdens on credit unions. From a credit union perspective, this bill is at best unnecessary and possibly harmful to credit unions and their members.

H.R. 1479 would extend *Community Reinvestment Act of 1977* (CRA) requirements to credit unions. As you have said, if every financial institution were similar to a credit union, CRA would be unnecessary.[1] We must, therefore, oppose this legislation: Credit unions have not – and do not – engage in redlining; credit unions continue to lend when others have reduced credit availability; credit unions serve their members at all income levels; and increasing the regulatory burden on credit unions could prove harmful to member service. In short, credit unions have done nothing to deserve the regulatory framework that has been rightly imposed on banks for their misdeeds.

Credit unions do, however, seek to serve the underserved in a greater capacity. For over a decade, we have asked Congress to enact legislation that clarifies that all credit unions may add underserved areas to their field of membership and restores credit unions' ability to fully serve their business-owning members, including those operating businesses in underserved areas. The data show that credit unions do a much better job at serving low- and moderate-income borrowers than banks despite these restrictions, but imagine what credit unions could do without these unnecessary statutory restrictions.

[1] "CRA Review Hearing on the Horizon." Credit Union Times. February 5, 2008. http://www.cutimes.com/News/2008/2/Pages/CRA-Review-Hearing-on-the-Horizon.aspx?k=CRA+Review

The attached white paper describes in detail why credit unions oppose this legislation so strongly, and identifies several significant flaws in the report recently released by the National Community Reinvestment Coalition (NCRC) entitled, “Credit Unions: True to Their Mission? (Part II).”[2] Finally, we identify structural concerns that we have with H.R. 1479 and the detrimental effect it would have on credit unions and their members.

We expect that the NCRC report will receive considerable consideration at today’s hearing inasmuch as it suggests that credit unions are not fulfilling their statutory mission to serve their members, including those of modest means. Publicly available data and credible analysis do not support this claim, and rather suggest that credit unions serve their members in all ethnic groups and at all income levels despite the statutory barriers preventing many credit unions from serving underserved communities.

The problems with the NCRC report are many, and it deserves considerable scrutiny. The sheer volume of data produced by NCRC helps to hide the essential fact that, compared to banks, credit union make a larger percentage of loans to low/moderate income borrowers. Disparity ratio analysis is well known to produce false or misleading signals of comparative lender effectiveness. Denial and approval rates are far more effective measures to compare performance; and even NCRC’s data show that credit unions consistently approve more and deny fewer lower income and minority applicants than banks do. NCRC’s analysis focuses only on prime loans and fails to statistically adjust for statutory restrictions on credit union service as well as the difference in size of the average-sized bank and the average-sized credit union. NCRC’s analysis of Massachusetts credit union data is flawed due to substantial compositional problems. The report is conveniently silent on changes in loan volume over time. And finally, NCRC has conflicts of interest which should not be ignored.

Despite the considerable attention we give to the NCRC study, our argument that extending the requirements of the Community Reinvestment Act to credit unions is unnecessary and unwarranted does not stand on the defects of the NCRC report alone. We are confident that credit unions are fulfilling their mission; the data support our confidence; and credit unions would like to be able to do even more. However, we do not believe that credit unions—which have done so much right when everything else in the financial services sector has gone wrong—deserve to pay for the sins of bankers thirty years ago.

On behalf of America’s 92 million credit union members, thank you very much for your consideration.

Sincerely,

Daniel A. Mica

Daniel A. Mica
President & CEO

Attachment

[2] http://www.ncrc.org/images/stories/mediaCenter_reports/creditunionreport090309.pdf

H.R. 1479, the Community Reinvestment Act Modernization Act of 2009

Executive Summary

This paper describes the details of the credit union opposition to H.R. 1479, and the fundamental flaws in the recently released report by the National Community Reinvestment Coalition (NCRC). Credit unions have not—and do not—engage in redlining; credit unions continue to lend when others have reduced credit availability; credit unions serve their members at all income levels; and increasing the regulatory burden on credit unions could prove harmful to member service. In short, credit unions have done nothing to deserve the regulatory framework that has been rightly imposed on banks for their misdeeds.

Credit Unions Do Not Redline

Congress enacted the *Community Reinvestment Act* in response to redlining of lower income and minority neighborhoods by bank and thrift institutions during the 1960s and early 1970s. The purpose was to ensure that for-profit financial institutions were adequately meeting the financial service needs of all parts of the communities from which they draw deposits. Credit unions did not participate in the redlining activities that provided the impetus for CRA, and there is no evidence to suggest that credit unions are redlining today. Credit unions should not be subjected to added regulatory burdens today for the sins of bankers thirty years ago.

Credit Unions Continue to Lend When Others Have Reduced Credit Availability

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 are reducing credit availability, credit unions continue to lend. In the year ending June 2009, credit union loans outstanding grew by nearly 4%; while during that same period of time, banks reduced their loans by nearly $400 billion, a decline of -4.6%, according to FDIC and NCUA. The bank decline is likely significantly more dramatic than this top-line number suggests because, in the past, banks originated and sold a large volume of loans. The secondary market is now dysfunctional so there is a much smaller volume of loans sales, added to the decline in portfolio loans reported above.

Credit Unions Serve Their Members at All Income Levels, but Statutory Barriers Prevent Many Credit Unions from Serving Underserved Areas

A much ballyhooed argument for expanding the CRA requirements to credit unions is that credit unions are not meeting their mission to serve their members, including those of modest means. Publicly available data and credible analysis do not support this claim, and rather suggest that 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. Simply put, credit unions do well, but could do even more if Congress were to permit them to do so.

National Community Reinvestment Coalition Report
In September 2009, the National Community Reinvestment Coalition (NCRC) released a report entitled, "Credit Unions: True to Their Mission? (Part II)."[1] The report purports to show that credit unions do not do as well as banks in lending to lower income and minority borrowers, and that therefore credit unions should be subject to the Community Reinvestment Act (CRA). CUNA believes that the report contains numerous and fundamental flaws making it a strikingly poor tool for evaluating lender performance

The report was based on Home Mortgage Disclosure Act (HMDA) data for the years 2005, 2006 and 2007. The NCRC based its analysis on three measures of lending activity:

1. Portfolio composition (portfolio share indicators), defined as the percentage of total loans made to various subgroups of low-and-moderate-income (LMI) and minority borrowers;
2. Denial "disparity ratios" calculated as a lender's denial rate for a target group (e.g., LMI borrowers) divided by the denial rate for a broader group of borrowers (e.g., white borrowers); and
3. Approval "disparity ratios" calculated as a lender's approval rate for a target group (e.g., LMI borrowers) divided by its approval rate for a broader group of borrowers (e.g., white borrowers).

These three broad measures calculated for various demographic groups and subgroups – a total of 23 in all. Specifically, NCRC creates nine portfolio composition comparison groups; seven denial disparity comparison groups; and seven approval disparity comparison groups.

NCRC calculates these measures for three loan-types (home purchase loans, home refinance loans, and home improvement loans) and for two groups of lenders - credit unions and banks - and compares the lender results. In each case, an "advantage" is conferred to the lender with a higher portfolio concentration ratio; lower denial disparity ratio or higher approval disparity ratio. When the comparative measures are nearly identical, NCRC declares a "tie". Using this approach, NCRC creates and analyzes 207 comparative data points for each lender (i.e., 23 demographic groups x 3 loan-types x 3 years of data). The NCRC reports that banks perform better than credit unions on 65% of these fair lending indicators.

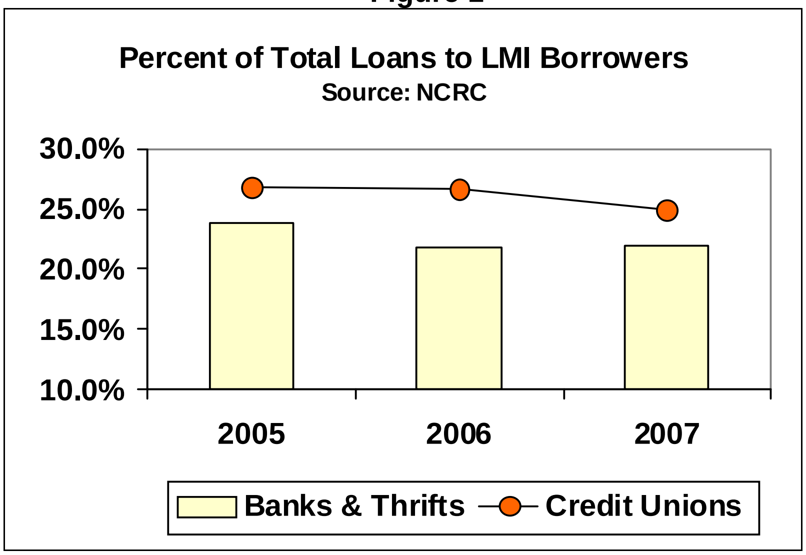
[1] http://www.ncrc.org/images/stories/mediaCenter_reports/creditunionreport090309.pdf

For the following reasons, the credibility of the report is questionable and the results are incredibly misleading as a result of several very significant flaws.

1. <u>The sheer volume of data produced by NCRC helps to hide the essential fact that, compared to banks, credit union make a larger percentage of loans to low/moderate income borrowers.</u>

This is true in each of the years NCRC evaluates.

Figure 1



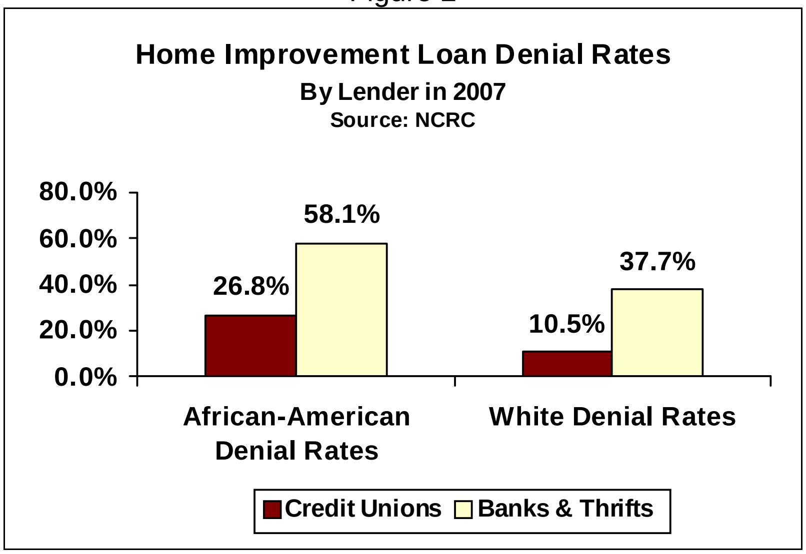
2. <u>Disparity Ratio Analysis Produces False of Misleading Signals of Comparative Lender Effectiveness</u>

The NCRC study uses "disparity ratios" to measure lender effectiveness. Disparity ratios are a horrible metric because they simply do not measure lender effectiveness. Ratios of percentages (e.g., disparity ratios) are not appropriate for inter-group comparisons when evaluating dissimilar distributions. The generally higher approval rates and lower denial rates at credit unions make these disparity ratios particularly misleading.

To illustrate the problem with disparity ratios from the NCRC report, consider the following example. The NCRC-produced data in Figure 2 show that both African-American and white borrowers who wanted a home improvement loan in 2007 were much better off seeking such a loan at a credit union.[2] Only 27% of African-American borrowers were denied at credit unions – whereas a whopping 58% were denied at banks. In other words, an African-American applying for a home improvement loan is twice as likely to be denied at a bank as at a credit union. Even more notable, an African-American home improvement loan applicant at a credit union is less likely to get denied than a white applicant seeking the same type of loan at a bank. Clearly the consumer "advantage" lies with credit unions.

[2] National Community Reinvestment Coalition. "Credit Unions: True to Their Mission? (Part II)." 32.

Figure 2



However, the report ignores this information, and instead uses the denial data to compute denial disparity ratios. Using the denial disparity ratio NCRC reaches the incorrect conclusion that the "advantage" lies with banks![3]

In all, NCRC uses a total of 126 disparity ratios in its analysis—nearly two-thirds (60%) of the 207 total metrics NCRC evaluated—despite the fact that ratios of percentages (e.g., disparity ratios) are not appropriate for inter-group comparisons when evaluating dissimilar distributions.

In other words, disparity ratios can be used to make credit unions appear to be less effective than banks in serving the mortgage needs of LMI and minority borrowers. However, using more straightforward and appropriate measures—simple denial or approval rates—credit unions dramatically outperform banks. Simply put, an LMI or minority applicant is typically much more likely to have their loan application approved at a credit union than at a bank. Rather than suggesting that credit unions should be subject to CRA, NCRC should be advising LMI and minority applicants to seek out a credit union, and encouraging Congress to make credit union membership more available to LMI and minority populations.

3. Denial and Approval Rates Are More Effective Measures to Compare Performance

[3] The credit union denial disparity ratio is calculated by dividing the credit union African-American denial rate by the credit union white denial rate: CU denial disparity ratio = 0.268/0.105 = 2.55. The bank denial disparity ratio is calculated by dividing the bank African-American denial rate by the bank white denial rate: bank denial disparity ratio = 0.581/0.377 = 1.54.

The underlying data NCRC used to produce these disparity ratios clearly shows that credit unions outperform banks: it shows that credit unions approve mortgage loan applications at higher rates (usually much higher rates) and they deny applications at lower rates (usually much lower rates) compared to banks. This is true in almost every single demographic group analyzed, among every loan type analyzed and across each of the three years of data it analyzed. Specifically, looking at 2007 approval and denial rates, NCRC data shows that credit unions outperform banks in 64 out of 72 of these metrics—89% of the total.

A complete listing for each of the three loan types across each of the three years evaluated is in the Appendix of this document.

4. NCRC's Analysis Focuses Only on Prime Loans

The NCRC analysis focuses only on "prime" loans.[4] This is a glaring oversight for a study that presumes to gauge the effectiveness of lending to lower-income individuals. NCRC defines "prime" loans as those not classified as high-cost loans.[5] However, credit union loan rates tend to be lower (in many cases much lower) than comparable rates on bank loans.[6] Thus, it is possible that, using NCRC definitions, a disproportionate percentage of credit union sub-prime loans are included in the NCRC analysis and a disproportionate percentage of bank sub-prime loans are excluded from the analysis. This would have the effect of creating and/or magnifying many of the reported bank "advantages".

5. NCRC Fails to Statistically Adjust for Statutory Restrictions on Credit Union Service as well as the Difference in Size of the Average-Sized Bank and the Average-sized Credit Union

In a discussion of the legal and structural constraints credit unions face in serving people of modest means, NCRC acknowledges the fact that credit unions and banks legally cannot serve the same groups of people.[7] However, the report simply explains-away or dismisses those substantial differences when it should be statistically controlling for them. Banks and thrifts can serve anyone. Credit unions, on the other hand, are statutorily restricted to serving membership groups described in one of three categories: single common-bond credit union; multiple-common bond credit union; and community credit union.[8] One-third of credit unions, serving 20% of all credit union members, have single-group occupational charters.

While approximately one-quarter of credit unions have community charters, many of these institutions have just recently converted to the wider charter, and they face a specific statutory restriction that prevents them from adding underserved areas to their field of membership.[9] In 2005, the American Bankers Association (ABA), a group which we understand will also be represented at today's hearing, took the National Credit Union Administration (NCUA) to court over this specific statutory restriction two days

[4] Ibid. 25.
[5] HMDA reporters are required to provide pricing data whenever a loan rate exceeds the rate on a comparable-maturity Treasury security by more than three percentage points.
[6] GAO-07-29, 27-29.
[7] NCRC. 7-8.
[8] 12 U.S.C. 1759(b).
[9] 12 U.S.C. 1759(c)(2).

after they appeared before a House Ways and Means Committee hearing (referenced throughout the report) to complain that credit unions were not doing enough to serve people of modest means.[10] By definition, credit union membership fields cannot and will not perfectly reflect the income or racial make-up of the geographic community in which they are located.

The report also ignores potentially important differences related to institution size. The average bank has well over $1 billion in total assets whereas the average credit union has less than $100 million in total assets. It is conceivable that size differences might give rise to credit-risk evaluation advantages, though this is not considered in the NCRC analysis.

6. NCRC's Analysis of Massachusetts Credit Union Data is Flawed Due to Substantial Compositional Problems.

The report claims that state-chartered credit unions in Massachusetts outperform Federally-chartered credit unions in Massachusetts because the former class of institutions is subject to CRA.[11] However the NCRC analysis makes no adjustments for field of membership differences between the two classes of institutions. Eighty percent (80%) of the members who belong to state-chartered credit unions in Massachusetts belong to community chartered credit unions. In contrast, less than one-third (28%) of the members of federal-chartered credit unions in Massachusetts belong to community credit unions. In other words, federal credit unions in Massachusetts are operating with much more restricted membership fields than are their state-chartered counterparts. Thus, the NCRC analysis is not an apples-to-apples performance comparison and it is likely that the report's alleged performance disparities are largely a reflection of substantial demographic differences in Massachusetts credit union membership fields.

NCRC fails to note that BOTH state- and Federally-chartered credit unions in Massachusetts outperform U.S. banks on nearly all approval and denial metrics and on many key portfolio share indicators. For example, among Federal credit unions in Massachusetts 27% of home purchase loans originated in 2007 were to LMI borrowers. Among state credit unions in Massachusetts 29% of these loans were to LMI borrowers. In contrast, in the same year, only 22.5% of U.S. bank home purchase loans were made to LMI borrowers.[12] NCRC does not report any data on Massachusetts bank performance.

7. The Report is Conveniently Silent on Changes in Loan Volume Over Time

The NCRC analysis is conveniently silent on changes in loan volume over time – an oversight that ignores how credit unions "stayed in the game" while other lenders substantially curtailed lending in key demographic groups. The years covered by the NCRC analysis were unprecedented in the history of HMDA collection. They include the tail end of the sub-prime boom and the beginning of the subsequent housing market crash. Bank lending in most of the key markets NCRC evaluated declined substantially, while credit union lending either increased or declined at much slower rates.

[10] American Bankers Association v. National Credit Union Administration (2005).
[11] NCRC. 4.
[12] NCRC. 30, 39.

For example, CUNA's comparison of 2007 and 2006 lending volume reveals:

- Banking institution loan originations to LMI borrowers declined by 27%, whereas the decline at credit unions was just 8%.
- Banking institution loan originations to African-American borrowers declined by 41%, whereas the decline at credit unions was just 3%.
- Banking institution loan originations to Hispanic borrowers declined by 45%, whereas credit unions their increased originations to Hispanics by nearly 5%.

8. <u>NCRC Has Conflicts of Interest Which Should Not Be Ignored</u>

It is also important to keep in mind that NCRC benefits directly and indirectly when the number of institutions that are subject to CRA increases. Many of its member organizations receive significant funding from banks as part of the banks' CRA investment obligations. In addition, the NCRC has formed a strategic partnership with the nation's "top banks."[13] It is no secret that banks have a longstanding goal of seeing CRA imposed on credit unions. This goal has little or nothing to do with a desire to advance consumer interests and more to do with a desire to saddle credit unions with the same regulatory burdens and costs borne by banks. In any case, policymakers would be better served if NCRC fully disclosed its true interests in this issue.

In contrast to its current banker-backed stance, if NCRC were true to its mission to "increase the flow of private capital into traditionally underserved communities," it would be vigorously supporting expansion of credit union service authority into underserved areas rather than attempting to impose new and unneeded regulatory burdens.

National Credit Union Administration Report

In 2006, NCUA released a report entitled, "Member Service Assessment Pilot Program (MSAP): A Study of Federal Credit Union Service."[14] This report was produced in response to questions raised by Congress and the Government Accountability Office (GAO) with respect to whether Federal credit unions continue to serve their mission and purpose. The report noted that questions about who credit unions should serve are often "framed by an important, and often overriding, limitation about whom they can serve."[15]

It is important to keep in mind that a credit union is not only restricted in terms of who they can serve by their field of membership restrictions, but also by who within that group decides to join the credit union. A credit union can only serve those individuals within its field of membership who affirmatively choose to be members of the credit union.

The data not only suggest that credit unions continue to serve their members well during this time of crisis, but also that credit unions serve their members at all income levels. As the MSAP reported, 96% of Federal credit union members have annual family incomes

[13] http://www.ncrc.org/index.php?option=com_content&task=blogcategory&id=85&Itemid=198
[14] This report, which is available at http://www.ncua.gov/Resources/Reports/MSAP/MSAP-Pilot.pdf, was limited to Federal Credit Unions; the National Association of State Credit Union Supervisors conducted a similar study on state chartered credit unions.
[15] National Credit Union Administration. Member Service Assessment Pilot Program: A Study of Federal Credit Union Service. November 3, 2006. 3.

of less than $100,000.[16] In fact, NCUA found that Federal credit unions predominately serve families earning in the range of $30,000 to $100,000.[17]

NCUA also found that credit unions are offering affordable products to their members. Over 80 percent of credit unions reported that they offer their members free checking and free bill payer service. Of the credit unions that own ATMs, over 80 percent indicated that they offer ATM services to their members free of charge. The average minimum balance for membership is $17, according to NCUA, with the most frequently reported minimum at $5.[18] It begs the question whether over 80 percent of depository institutions subject to CRA provide these services at these prices for their customers; and it demonstrates that credit unions do not need to be subject to the onerous requirements of CRA in order to fulfill their mission.

On the lending side, the MSAP looked at a variety of lending products offered by Federal credit unions. According to NCUA, the most frequently offered type of loan is a credit builder loan that is primarily used by members to build a credit history in cases where the member has either a negative credit history or no credit history. Almost 60 percent of credit unions said that they offer this type of loan. The next most frequent type of loan credit unions offer their members, according to the MSAP, is the micro-consumer loan. Fifty-four percent of credit unions offer this type of loan to their membership. The smallest unsecured loan amount granted by credit unions averaged $436; the smallest secured loan amount granted averaged $1,048.[19]

Credit unions are also providing services in addition to deposit and lending services. The MSAP reported that 42 percent of Federal credit unions provide financial literacy programs; 60 percent offer financial counseling. Sixty seven percent of Federal credit unions donated funds to one or more charity organization in their local community or field of membership; over half collected funds on behalf of charities.[20]

However, if the record of what credit unions are currently doing to serve their members is not sufficient to demonstrate that this legislation is a remedy in search of a problem, please consider the conclusions that NCUA reached with respect to community chartered credit unions. NCUA found that:

> "The less restrictive community charters serve more of the membership earning less than the median than any other charter type. MSAP results also indicate community charters in existence greater than five years serve a higher percent of the membership earning below the median than those community charters less than or equal to five years in existence. Finally, [Federal credit unions] in MSAP that added underserved areas, as well as those designated as low income, serve more of the membership earning less than the median than the FCU system collectively."[21]

[16] Ibid. 28.
[17] Ibid. 34.
[18] Ibid. 35.
[19] Ibid. 37.
[20] Ibid. 37-38.
[21] Ibid. 34.

The more credit unions are given the opportunity to serve underserved areas and have community charters, the greater the penetration credit unions have with members earning less than the median income. Unfortunately, credit unions currently face statutory restrictions on adding underserved areas to their field of membership.

While we believe that Congress intended for all credit unions to be eligible to serve underserved areas when it enacted the *Credit Union Membership Access Act of 1998*, only multiple common bond credit unions are permitted to add underserved areas to their field of membership. In 2005, just two days after testifying before the House Committee on Ways and Means that credit unions were not doing enough to serve people of modest means, the ABA took NCUA to court to limit credit unions' ability to serve underserved areas.[22] The ABA agreed to dismiss the case only after NCUA agreed not to approve additional underserved area charters for community chartered credit unions. As a result, community chartered credit unions and single sponsor credit unions may not serve underserved areas.

To the extent that this legislation is intended to encourage credit unions to do even more to serve underserved areas, we respectfully suggest that a more appropriate alternative would be to remove the statutory barriers on credit unions adding underserved areas to their fields of membership. If Congress permits credit unions to serve these areas, history suggests that they will not only do it, but the longer they are serving an area the better they will serve it.

Increasing Regulatory Burden on Credit Unions Could Prove Harmful

Credit unions remain the most highly regulated depository institutions. The regulatory burden associated with the implementation of this bill would undoubtedly and unnecessarily distract credit unions from their core mission, serving their members, and it may overwhelm some smaller credit unions to the point that merger with a larger credit union is the only viable option. Small credit unions generally only have a small number of employees that do not have the time, knowledge or training to deal with additional regulatory burden. When forced to deal with major regulatory changes, such as those required by this bill, these small institutions will often attempt to merge with a larger credit union so that their members can continue to be provided the high quality service they have come to expect.

Overall, the regulatory burden on credit unions and other depository institutions has exploded since the beginning of this decade. This has included additional regulatory requirements in areas such as the *Bank Secrecy Act*, the *Fair Credit Reporting Act*, the *Unlawful Internet Gambling Enforcement Act*, the *Truth in Lending Act*, the *Real Estate Settlement Procedures Act*, the *Credit Card Accountability, Responsibility and Disclosure Act*, as well as privacy laws. Credit unions are concerned that this burden will only increase further as Congress focuses on regulatory restructuring and other issues to address the current financial crisis.

H.R. 1479 would require regulatory approval for credit unions to place new branches when there is generally not such a requirement under current law. Since credit unions are subject to field of membership restrictions, the placing of a new branch does not

[22] American Bankers Association v. National Credit Union Administration (2005).

generally mean that the credit union is expanding the community that it serves in the same manner that a new bank branch expands that bank's service area.

In addition, H.R. 1479 would require a 30-day public comment period not only for placing branches but also for mergers and field of membership expansions when there is no analogous requirement under current law. Further, H.R. 1479 does not include an exception from CRA-review in the case of a supervisory merger of a troubled credit union, which raises safety and soundness concerns.

Moreover, as the National Federation of Community Development Credit Unions, a nonprofit charitable organization dedicated to strengthening the credit unions serving low-income, urban and rural communities, has said:

> "Adding CRA to the compliance costs faced by credit unions may, in fact, have the unintended consequence of decreasing credit union investment in low-income communities. It may divert resources and focus to compliance instead of maintaining or expanding the voluntary investments that credit unions have made, and are increasingly making."[23]

We agree that the diversion of resources to comply with CRA will impact credit union service to all members, including those at low- and moderate-income levels.

H.R. 1479 Is Structurally Flawed

Notwithstanding our strong objection to expanding CRA requirements to credit unions, we would like to identify a structural flaw of H.R. 1479 that would place credit unions at a compliance disadvantage compared to other institution required to satisfy CRA requirements if the bill were to become law.

Expanding CRA to Credit Unions via Amendments to the Federal Credit Union Act will Subject Credit Unions to Litigation that Banks are Immune From Under CRA

Federal courts have uniformly held that third parties cannot challenge a bank's merger or branch placement based on its CRA rating, but that bankers are permitted to sue credit unions and the National Credit Union Administration (NCUA) based on the agency's administration of any part of the *Federal Credit Union Act*. By amending the *Federal Credit Union Act*—instead of the *Community Reinvestment Act*—to extend CRA to credit unions, H.R. 1479 would open the floodgates to allow bankers to challenge any and all credit union field of membership expansions, mergers, and even branch placements based on CRA ratings.

Bankers already routinely sue credit unions and NCUA to try to prevent field of membership expansions, and every dollar spent by a credit union or NCUA (which is funded entirely with Federally-insured credit unions' money) is a dollar that would be better allocated to expanding credit unions' service, especially to those of modest means. Perversely, banks are immune from similar suits under CRA because the courts have held that CRA is merely "precatory." This legislation would create a system in which banks could sue credit unions over CRA, but credit unions would not be able to make similar challenges to banks' CRA, despite the fact that over 98 percent of banks

[23] http://www.cdcu.coop/i4a/pages/index.cfm?pageid=992

receive passing CRA grades while many low- and moderate-income people remain without access to fairly priced bank products.

Other Provisions

In addition to our concerns regarding the expansion of CRA requirements to credit unions, we have a number of additional concerns regarding other provisions of this legislation.

Small Business Loan Data Collection

Section 105, Small Business Loan Data Collection, would amend the *Equal Credit Opportunity Act* (ECOA) by requiring credit unions (and other depository institutions) to inquire whether a business was women or minority-owned, and maintain a itemized record of responses much like what is required for mortgage loans under HMDA. Also like HMDA, institutions would be required to compile and report the information to NCUA (Federal credit unions) or FTC (state chartered credit unions) on an annual basis and make the information available to the public.

In essence, the provision discourages institutions from offering small business loans because of the associated regulatory burden. Credit unions already have a strong disincentive to offer business loans to their members by way of the statutory cap on credit union member business lending. At a time when small businesses are unable to secure credit from banks, it seems odd to impose additional burdens on those institutions being urged to help stimulate the economy by lending to small businesses.

Data Collection of Deposit Accounts

Section 106, Data Collection of Deposit Accounts, also requires the unnecessary extension of HMDA-like provisions to credit union members' deposit accounts. This provision would require credit unions (and other depository institutions) to collect and maintain records of the number and dollar amounts of deposit accounts of members for each branch, ATMs where deposits are taken, or other deposit taking service facility. It would require credit unions to geo-code addresses of depositors in order to collect census tract data of the residence or business location of its members, and identify the "type" of depositor as residential or commercial. Further, this information would have to be compiled, maintained, and annually submitted to NCUA as the Federal agency with jurisdiction over Federal credit unions and Federally-insured state-chartered credit unions, and made available to the public just like HMDA data.

Elimination of the Small Institution Exemption from HMDA

Section 308 eliminates the small institution exemption from HMDA. Under current law, credit unions and other financial institutions with assets less than $39 million are exempt from compliance with the requirements of HMDA. Removal of this exemption will require these small institutions not only to comply with current HMDA requirements but also the even more burdensome HMDA requirements prescribed by this legislation. Requiring such small institutions to comply not only with CRA but with a more burdensome HMDA will be very harmful and could cause these small credit unions to seek merger with larger credit unions that are more able to cope with the additional compliance burdens.

Conclusion

CUNA wholeheartedly agrees with those who want credit unions to do more to serve underserved areas. That is why we have been asking Congress for over a decade to permit all credit unions to do this type of service, as well as restore credit unions' ability to serve members who own small businesses. There is a willingness on the part of credit unions to do more, especially in these difficult economic times. However, H.R. 1479, to the extent that it is intended to encourage additional services to these areas, is a step in the wrong direction.

Appendix

Lender Advantage Based on NCRC-Calculated Approval and Denial Rates in 2007

"Advantages" represented by red circles & totaled at the bottom of each table. Differences of less than two percentage points are considered "ties" using NCRC terminology

Home Purchase 2007

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	44.6%	51.7%
Hispanics	50.6%	52.3%
Whites	67.1%	68.7%
LMI Blacks	48.8%	54.5%
LMI Hispanics	57.3%	58.3%
LMI Whites	69.9%	69.2%
Minority Tracts	58.6%	52.7%
White Tracts	73.6%	68.6%
LMI Borrowers	65.9%	65.8%
MUI Borrowers	74.1%	65.9%
LMI Tracts	63.3%	56.5%
MUI Tracts	73.4%	67.4%

Home Purchase 2007

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	26.8%	30.0%
Hispanics	19.2%	27.9%
Whites	10.1%	14.9%
LMI Blacks	30.1%	29.3%
LMI Hispanics	22.1%	25.5%
LMI Whites	12.7%	16.5%
Minority Tracts	17.3%	27.0%
White Tracts	8.5%	14.8%
LMI Borrowers	15.3%	19.2%
MUI Borrowers	7.2%	16.3%
LMI Tracts	15.8%	24.8%
MUI Tracts	8.4%	15.5%

Total Advantage: CU Adv. = 16 Bank Adv. = 3 No Difference = 5 Total = 24

Refinance 2007

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	50.2%	32.7%
Hispanics	56.2%	36.1%
Whites	73.4%	47.4%
LMI Blacks	46.0%	30.8%
LMI Hispanics	49.9%	32.2%
LMI Whites	68.6%	43.4%
Minority Tracts	56.0%	37.6%
White Tracts	70.3%	45.8%
LMI Borrowers	61.8%	39.8%
MUI Borrowers	70.4%	44.9%
LMI Tracts	59.2%	37.2%
MUI Tracts	69.6%	45.6%

Refinance 2007

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	27.0%	45.0%
Hispanics	23.7%	40.4%
Whites	11.4%	30.5%
LMI Blacks	32.6%	49.0%
LMI Hispanics	30.4%	47.3%
LMI Whites	16.2%	36.3%
Minority Tracts	22.5%	38.9%
White Tracts	12.6%	31.3%
LMI Borrowers	20.4%	39.4%
MUI Borrowers	12.0%	31.3%
LMI Tracts	21.4%	39.8%
MUI Tracts	12.9%	31.5%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Home Improvement 2007

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	62.8%	26.2%
Hispanics	62.9%	31.9%
Whites	79.7%	44.7%
LMI Blacks	56.8%	23.3%
LMI Hispanics	53.0%	25.8%
LMI Whites	73.3%	38.3%
Minority Tracts	61.2%	31.2%
White Tracts	77.4%	42.5%
LMI Borrowers	66.2%	33.1%
MUI Borrowers	78.1%	42.7%
LMI Tracts	64.9%	31.7%
MUI Tracts	76.6%	42.0%

Home Improvement 2007

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	26.8%	58.1%
Hispanics	24.9%	50.4%
Whites	10.5%	37.7%
LMI Blacks	32.9%	63.7%
LMI Hispanics	34.8%	60.6%
LMI Whites	16.3%	47.6%
Minority Tracts	25.8%	51.1%
White Tracts	11.5%	39.1%
LMI Borrowers	21.9%	52.4%
MUI Borrowers	10.8%	37.3%
LMI Tracts	23.2%	51.8%
MUI Tracts	12.1%	39.3%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Lender Advantage Based on NCRC-Calculated Approval and Denial Rates in 2006

"Advantages" represented by red circles & totaled at the bottom of each table. Differences of less than two percentage points are considered "ties" using NCRC terminology

Home Purchase 2006

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	46.5%	56.1%
Hispanics	52.5%	58.9%
Whites	69.3%	70.5%
LMI Blacks	50.9%	55.8%
LMI Hispanics	58.0%	59.7%
LMI Whites	72.8%	69.8%
Minority Tracts	60.2%	57.4%
White Tracts	75.5%	70.3%
LMI Borrowers	68.3%	66.5%
MUI Borrowers	76.2%	68.2%
LMI Tracts	64.5%	59.7%
MUI Tracts	75.4%	69.5%

Home Purchase 2006

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	25.9%	25.7%
Hispanics	18.7%	23.1%
Whites	9.1%	13.8%
LMI Blacks	28.4%	27.2%
LMI Hispanics	21.3%	24.3%
LMI Whites	11.1%	15.9%
Minority Tracts	15.9%	23.4%
White Tracts	7.6%	13.7%
LMI Borrowers	13.9%	18.2%
MUI Borrowers	6.3%	14.8%
LMI Tracts	14.6%	22.3%
MUI Tracts	7.5%	14.2%

Total Advantage: CU Adv. = 16 Bank Adv. = 3 No Difference = 5 Total = 24

Refinance 2006

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	57.3%	39.3%
Hispanics	61.4%	44.0%
Whites	76.9%	52.5%
LMI Blacks	52.7%	35.8%
LMI Hispanics	55.0%	37.0%
LMI Whites	72.6%	46.9%
Minority Tracts	61.4%	43.6%
White Tracts	74.8%	49.9%
LMI Borrowers	66.8%	42.5%
MUI Borrowers	75.2%	50.3%
LMI Tracts	64.8%	42.3%
MUI Tracts	74.2%	49.9%

Refinance 2006

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	23.3%	38.3%
Hispanics	19.7%	32.7%
Whites	9.4%	26.0%
LMI Blacks	28.6%	43.6%
LMI Hispanics	26.1%	41.5%
LMI Whites	13.5%	32.5%
Minority Tracts	19.3%	32.9%
White Tracts	10.1%	27.0%
LMI Borrowers	16.9%	35.3%
MUI Borrowers	9.4%	26.1%
LMI Tracts	17.5%	34.2%
MUI Tracts	10.4%	26.9%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Home Improvement 2006

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	66.5%	29.7%
Hispanics	66.8%	36.4%
Whites	81.7%	47.7%
LMI Blacks	60.4%	25.7%
LMI Hispanics	56.5%	28.0%
LMI Whites	75.5%	40.2%
Minority Tracts	65.2%	35.1%
White Tracts	78.8%	45.5%
LMI Borrowers	68.1%	35.1%
MUI Borrowers	80.1%	46.7%
LMI Tracts	67.1%	34.8%
MUI Tracts	78.3%	45.2%

Home Improvement 2006

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	23.1%	54.2%
Hispanics	21.8%	46.0%
Whites	9.3%	35.0%
LMI Blacks	29.3%	60.9%
LMI Hispanics	31.8%	58.1%
LMI Whites	14.6%	45.3%
Minority Tracts	22.0%	47.0%
White Tracts	10.7%	36.4%
LMI Borrowers	19.9%	50.1%
MUI Borrowers	9.6%	33.6%
LMI Tracts	20.7%	48.4%
MUI Tracts	11.1%	36.4%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Lender Advantage Based on NCRC-Calculated Approval and Denial Rates in 2005

"Advantages" represented by red circles & totaled at the bottom of each table. Differences of less than two percentage points are considered "ties" using NCRC terminology

Home Purchase 2005

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	47.0%	58.9%
Hispanics	55.2%	61.2%
Whites	70.3%	72.9%
LMI Blacks	51.2%	57.4%
LMI Hispanics	60.7%	60.1%
LMI Whites	73.2%	71.1%
Minority Tracts	61.2%	60.0%
White Tracts	76.2%	73.3%
LMI Borrowers	68.8%	68.0%
MUI Borrowers	77.1%	71.2%
LMI Tracts	65.1%	62.0%
MUI Tracts	76.2%	71.8%

Home Purchase 2005

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	24.4%	22.5%
Hispanics	18.6%	20.6%
Whites	9.1%	12.2%
LMI Blacks	29.0%	24.5%
LMI Hispanics	20.7%	22.8%
LMI Whites	10.9%	14.6%
Minority Tracts	15.7%	20.8%
White Tracts	7.5%	12.3%
LMI Borrowers	13.6%	16.7%
MUI Borrowers	6.2%	12.9%
LMI Tracts	15.0%	20.0%
MUI Tracts	7.4%	12.6%

Total Advantage: CU Adv. = 14 Bank Adv. = 6 No Difference = 4 Total = 24

Refinance 2005

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	68.6%	39.3%
Hispanics	66.7%	47.4%
Whites	79.3%	56.2%
LMI Blacks	57.3%	34.0%
LMI Hispanics	60.4%	40.1%
LMI Whites	75.5%	48.9%
Minority Tracts	66.2%	46.0%
White Tracts	77.1%	54.3%
LMI Borrowers	70.1%	44.5%
MUI Borrowers	78.2%	54.8%
LMI Tracts	68.9%	43.8%
MUI Tracts	77.6%	54.1%

Refinance 2005

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	20.3%	37.0%
Hispanics	16.6%	30.1%
Whites	8.1%	23.4%
LMI Blacks	25.5%	43.0%
LMI Hispanics	22.7%	38.3%
LMI Whites	11.8%	30.4%
Minority Tracts	16.5%	30.9%
White Tracts	8.6%	24.3%
LMI Borrowers	15.0%	33.4%
MUI Borrowers	7.8%	23.5%
LMI Tracts	15.5%	33.0%
MUI Tracts	8.8%	24.1%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24

Home Improvement 2005

Approval Rates	Credit Unions	Banks/Thrifts
Blacks	69.1%	32.0%
Hispanics	66.2%	39.3%
Whites	82.1%	50.4%
LMI Blacks	62.2%	27.8%
LMI Hispanics	55.6%	30.5%
LMI Whites	76.1%	42.7%
Minority Tracts	65.8%	37.0%
White Tracts	79.9%	47.8%
LMI Borrowers	68.9%	37.1%
MUI Borrowers	81.2%	49.4%
LMI Tracts	68.0%	37.0%
MUI Tracts	79.4%	47.8%

Home Improvement 2005

Denial Rates	Credit Unions	Banks/Thrifts
Blacks	22.0%	52.2%
Hispanics	22.5%	44.4%
Whites	9.2%	33.0%
LMI Blacks	28.7%	58.7%
LMI Hispanics	14.5%	43.0%
LMI Whites	32.5%	56.2%
Minority Tracts	22.6%	45.6%
White Tracts	10.3%	33.0%
LMI Borrowers	19.9%	47.9%
MUI Borrowers	9.2%	31.4%
LMI Tracts	20.7%	47.2%
MUI Tracts	10.8%	34.4%

Total Advantage: CU Adv. = 24 Bank Adv. = 0 No Difference = 0 Total = 24