



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. Many blame lax or ineffective regulators for the failures that have occurred across the spectrum of financial services providers. Others have tried to make the case that many activities and products of large investment banks, like Lehman Brothers and Bear Stearns, were offered with little or no regulatory oversight at all.

Early last year, House Financial Services Committee Chairman Barney Frank (D-MA) called for substantial changes in how financial services entities are regulated. Specifically, Frank called for the establishment of a “Financial Services Systemic Risk Regulator”. He called for this new regulator to come under the regulatory structure of the Federal Reserve. Senator Chris Dodd (D-CT), Chairman of the Senate Banking Committee, favors a similar approach but does not believe that the Federal Reserve should be entrusted with this authority. He would prefer instead that the FDIC take on this responsibility. Frank also proposed similar regulatory oversight for different types of financial services providers that offer the same products and services. In addition, Frank also proposed removing perceived duplicative regulatory structures. However, he has indicated support for the National Credit Union Administration maintaining its independent oversight of credit unions.

On June 17, 2009, President Obama unveiled a massive plan to overhaul the regulatory structure as well as the operational practices of the entire financial services sector. Under the Obama plan, NCUA would retain its current role as the safety and soundness regulator for federally insured credit unions. A new “Consumer Financial Protection Agency” would be created as the sole primary federal regulator for consumer protection with rulemaking, examination and enforcement authority over credit, savings, payment, and other consumer financial products, as well as financial institutions, including credit unions. There are also provisions that deal with executive compensation structures. Click [here](#) for a detailed summary of the Obama proposal.

Senators Charles Schumer (D-NY) and Richard Durbin (D-IL), with Dodd’s support, have introduced legislation to create a “Financial Product Safety Commission”, an independent agency to issue rules covering the sale of financial products. Enforcement would be coordinated among the federal financial regulators.

CUNA POSITION: 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.

CUNA will continue to analyze all financial sector restructuring proposals and assess their impact on credit unions and their members. CUNA will also continue to work with Congress and the Administration to develop a financial services overhaul bill that maintains an independent NCUA. CUNA has already begun the process of discussing ways to avoid burdensome and unnecessary additional regulations that could be imposed on credit unions as a result of this reforming process.

Specifically with respect to the proposals to create a Consumer Financial Protection Agency, CUNA acknowledges the need for greater protection for U.S. consumers of financial products, particularly in the case of products and services provided by currently unregulated entities. CUNA further agrees that a new Consumer Financial Protection Agency (CFPA) could be an effective way to provide that protection. However, because credit unions are member-owned cooperatives that seek to protect consumers, and because credit unions are already significantly regulated, including for consumer protection, CUNA wants to ensure that a CFPA does not impose unnecessary burdens on credit unions. Therefore, CUNA could support the creation of a CFPA if the following issues are satisfactorily addressed:

1. The CFPA should have complete rulemaking authority on consumer protection issues as long as the examination, supervision and enforcement of consumer protection are entrusted to each credit union's prudential regulator.
2. Credit unions should have the ability to decide what products are appropriate to offer their membership, with a CFPA regulatory structure that does not stifle competition or innovation.
3. Collection of depositor data by census tract should only be required of institutions for which similar data is not already collected by a federal or state regulator. There should be significant limits on the use of data collected by the CFPA.
4. The operating expenses of the CFPA should be paid by federal appropriations with the exception of examination expenses which should be paid through examination fees levied on the institutions the CFPA examines.
5. 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.
6. The federal rules adopted by the CFPA should preempt state rules applicable to the products covered by CFPA regulations.
7. The CFPA should have a larger Board that is statutorily inclusive of industry representatives, including credit unions.
8. The CFPA should not have any regulatory authority for any aspect of the Community Reinvestment Act.
9. 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.

We are also concerned that credit life and credit disability insurance products have been included as a covered product in H.R. 3126, while all other forms of life insurance are specifically excluded from the purview of the proposed CFPA. We believe that CFPA regulation of credit life and disability insurance 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 earlier this year when it passed H.R. 1728.

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

STATUS/OUTLOOK:

Most of the Obama plan cannot be implemented without Congressional action. As a result, the Congress has held a number of hearings and is in the process of developing legislation that will likely incorporate a fairly balanced mix of their own views and those expressed in the Obama plan. On March 24, 2009, CUNA President and CEO Dan Mica [testified](#) before the Senate Banking Subcommittee on Financial Institutions. At the hearing, Mica presented the committee with a cogent explanation the uniqueness of credit unions and the need for an independent, and competent, federal regulator.

On July 28, 2009, as part of the restructuring effort, the House Financial Services Committee passed H.R. 3629, the Corporate and Financial Institution Compensation Fairness Act of 2009. An amendment to the bill was adopted that would exempt most credit unions and other financial institutions with less than \$1 billion in total assets from portions aimed at curbing some incentive-based compensation structures. Sections of the bill which address incentive-based compensation would require financial institutions to disclose compensation structures that include any incentive-based elements. Portions of the legislation grant regulatory powers over any compensation structure or incentive-based payment arrangement that is determined to encourage inappropriate risks by financial institutions that could threaten the safety and soundness of a given institution or, more broadly, harm the economy as a whole. The NCUA already has compensation regulations in place that are designed to prevent many risky compensation structures, and CUNA communicated this message to legislators.

In addition, the Committee passed a manager's amendment that included three provisions relevant to credit unions. The amendment states that financial companies that do not have incentive-based payment arrangements are not required to make disclosures regarding incentive-based payment arrangements; narrows the scope of the regulators' authority to prohibit compensation structures by rule to allow such prohibitions only of incentive-based payment arrangements (as opposed to any compensation structures or incentive-based payment arrangements) of covered financial institutions; and the amendment clarifies that nothing in Section 4 shall be construed as requiring the reporting of actual compensation of particular individuals.

The House Financial Services Committee is expected to consider CFPA legislation in October. The Senate is expected to consider a broad regulatory restructuring bill later this year.

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RELATED DOCUMENTS:

[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](#)

[House Financial Services Committee Schedule](#)

[Senate Banking Committee Schedule](#)

[CUNA Summary of the Obama Financial Services Regulatory Restructuring Plan](#)

[CUNA Short Summary of H.R. 3126, the Consumer Financial Protection Agency Act of 2009](#)

[CUNA Detailed Summary of H.R. 3126, the Consumer Financial Protection Agency Act of 2009](#)

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