

## MEMORANDUM

To: NASCUS Membership

From: NASCUS Legislative and Regulatory Affairs Department

Re: NCUA Board Reform Briefing Paper

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In 1995, two very similar pieces of legislation were introduced during the 104th Congress. The first, which proposed that one member of the FDIC's Board of Directors be required to have "State bank supervisory experience," was passed into law as part of an omnibus consolidated appropriations act for the fiscal year ending September 30, 1997.<sup>1</sup> The second, which proposed expanding the NCUA's Board of Directors to five members and reserving one of the seats for a state credit union supervisor, was referred to the House Subcommittee on Financial Institutions and Consumer Credit, and never emerged. This memorandum provides a short synopsis of the history and structure of each bill, a few recommendations for reintroducing the NCUA bill, and is followed by appendices including the text of the 1995 NCUA bill, and draft language for a new legislative amendment.

### The FDI Act

The Federal Deposit Insurance Act ("FDI Act") vests the management of the FDIC in a five member Board of Directors.<sup>2</sup> Of those five members, one seat is reserved for the Comptroller of the Currency, one for the Director of the Consumer Financial Protection Bureau, and the remaining three are appointed by the President with the advice and consent of the

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<sup>1</sup> Pub. L. 104-208, Div. A, Title II, §2243; 110 Stat. 3009-419.

<sup>2</sup> 12 U.S.C. § 1812(a).

Senate.<sup>3</sup> From his appointees, the President designates a Chairperson and Vice Chairperson.<sup>4</sup> The Chairperson serves in that position for a term of five years, but may continue to serve after the expiration of the term of office until a successor has been appointed.<sup>5</sup> Each appointed member serves a six year term.<sup>6</sup> Board members must be citizens of the United States, and no more than three of the Directors may be members of the same political party.<sup>7</sup>

Section 2(a)(1)(C) of the FDI Act<sup>8</sup> was amended in 1996 by inserting the phrase "[one] of whom shall have State bank supervisory experience." This amendment maintained the general structure of a five person Board of Directors, but provided that one of the three directors that are appointed by the President must have some form of state bank supervisory experience. The legislative history indicates that this provision originally required that one of the appointed members be a current state bank supervisor, however, several objections were raised to that formulation.<sup>9</sup>

The FDIC Chairman supported the concept of assuring state bank regulatory experience on the FDIC board.<sup>10</sup> The Chairman testified that "having such State bank supervisory experience on the FDIC board would complement our continuing strong efforts to coordinate supervisory activities with State banking departments. This effort has been a central theme of the FDIC's functions and activities for 61 years, and a particular interest of mine as FDIC

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<sup>3</sup> *Id.*

<sup>4</sup> 12 U.S.C. § 1812(b).

<sup>5</sup> *Id.*

<sup>6</sup> 12 U.S.C. § 1812(c).

<sup>7</sup> 12 U.S.C. § 1812(a).

<sup>8</sup> 12 U.S.C. § 1812(a)(1)(C).

<sup>9</sup> For example, it was noted that some states prohibit state employees from holding a federal office, which would limit the ability of certain States to gain representation on the board. In addition, appointing a current state bank supervisor introduced succession problems, since there is no guarantee that the appointed supervisor would maintain his or her state position for the duration of the six year appointed term. *See* The Economic Growth and Regulatory Paperwork Reduction Act - S. 650, S. Rep. 104-185, Committee on Banking, Housing, and Urban Affairs 13-14 (Dec. 1995).

<sup>10</sup> The Economic Growth and Regulatory Paperwork Reduction Act - S. 650, S. Hrg. 104-223, Committee on Banking, Housing, and Urban Affairs 102-03 (May 1995).

Chairman."<sup>11</sup> Although the Chairman was enthusiastic regarding the inclusion of a state bank supervisory experience requirement, she opposed expanding the Board of Directors to a six person panel that would include an additional seat for a sitting state bank regulator. The Chairman voiced concern that inclusion of a sitting state regulator would result in half of the board maintaining primary commitments outside of their duties to the FDIC.

Alternatively, the Chairman endorsed maintaining a five person board with one seat reserved for an individual with state bank regulatory experience. This person would be able to provide state regulatory perspective and expertise, while also being committed full-time to FDIC matters. The Senate Committee on Banking, Housing, and Urban Affairs took these comments under consideration and recommended the final language of the amendment, which they believed "str[uck] a proper balance between these concerns."<sup>12</sup>

### **The Federal Credit Union Act**

The Federal Credit Union Act ("FCU Act") vests the management of the NCUA in a three member Board of Directors, all three of whom are appointed by the President with the advice and consent of the Senate.<sup>13</sup> The President designates the Chairman of the Board, and no more than two members of the board may be members of the same political party.<sup>14</sup> The FCU Act specifies that board members must have appropriate experience in financial services, and that no more than one member may be a current or recent institution-affiliated party of any

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<sup>11</sup> *Id.* at 103.

<sup>12</sup> S. Rep. 104-185 at 14.

<sup>13</sup> 12 U.S.C. § 1752a(b)(1).

<sup>14</sup> *Id.*

insured credit union.<sup>15</sup> Board members are appointed for staggered six year terms, with one appointment expiring every two years.<sup>16</sup>

The State Credit Union Representation Act (the "Act"), was introduced in the House of Representatives on July 10, 1995 by Representative Bob Barr of Georgia.<sup>17</sup> The Act proposed to amend the FCU Act to establish a five member Board of Directors, one of whom would be a sitting state credit union supervisor.<sup>18</sup> The board member who was also a state credit union supervisor would not be eligible to serve as Chairman of the Board, and would serve only a single two-year term.<sup>19</sup> If the state credit union supervisor ceased to serve as a state supervisor during the two-year appointment, that Director's membership on the NCUA Board of Directors would terminate immediately.<sup>20</sup>

The Act also provided that the state credit union supervisor position could not be filled by the same individual twice, or by a representative from the same state twice in a row.<sup>21</sup> Presumptively, this provision was included to ensure that no single state would be permitted to dominate the board position. Finally, the Act provided that the state credit union supervisor would serve on the board without compensation, except for travel expenses and per diem while away from home.<sup>22</sup> Unfortunately, this legislation stalled in the House Financial Services Committee and never reached a vote.

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<sup>15</sup> 12 U.S.C. § 1752a(b)(2).

<sup>16</sup> 12 U.S.C. § 1752a(c).

<sup>17</sup> State Credit Union Representation Act, H.R. 1998 (July 10, 1995).

<sup>18</sup> *Id.* at (b)(1).

<sup>19</sup> *Id.* at (b)(1), (b)(2)(A)(i).

<sup>20</sup> *Id.* at (b)(2)(A)(ii).

<sup>21</sup> *Id.* at (b)(2)(B).

<sup>22</sup> *Id.* at (g).

### **Parity for Insurance Fund Governance**

For the last two decades, credit unions have faced the comparative disadvantage of operating under a federal insurer without the guarantee of a state perspective. As the FDIC Chairman noted in her 1995 testimony, strong coordination with state regulators should be a central priority for a federal deposit insurer. That priority should be even stronger for NCUA, which must maintain an appropriate balance between its roles as the prudential regulator for federal credit unions and the administrator of the share insurance fund for all federally insured credit unions. NASCUS urges Congress to correct this disparity by providing the nation's credit unions and their 100 million members the same cooperative governance structure enjoyed by the FDIC.

The 1995 Act created a board position for a state credit union supervisor that was uniquely limited. Many of those limitations were included to reflect the state regulator's external supervisory obligations and the lack of full-time commitment to NCUA matters. NASCUS is urging Congress to adopt a new bill that would reserve a seat on the NCUA board for a candidate who has served as a state credit union supervisor, but is no longer a sitting regulator. This modification would eliminate the need for differentiation between the board member with state supervisory experience and the other members of the board. A board member with state supervisory experience should be appointed for the same term as the other board members, receive the same compensation, and enjoy the same eligibility to serve as Chairman. There is nothing limiting or disqualifying about having a background in state, as opposed to federal, credit union regulation, and a board member with such experience should not be limited from

contributing to NCUA deliberations in any way. The text of the 1995 Act and proposed text for a new bill to amend the FCU Act are included in the appendix to this memorandum.

## **APPENDIX**

### **I. Text of 1995 Bill**

104TH CONGRESS

1ST SESSION H. R. 1998

To provide for State credit union representation on the National Credit Union Administration Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1995

Mr. BARR introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To provide for State credit union representation on the National Credit Union Administration Board, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “State Credit Union Representation Act”.

#### **SEC. 2. STATE CREDIT UNION REPRESENTATION ON NCUA BOARD.**

IN GENERAL.—Section 102(b) of the Federal Credit Union Act (12 U.S.C. 1752a(b)) is amended to read as follows:

“(b)(1) The Board shall consist of 5 members who are broadly representative of the public interest and 1 of whom is a State credit union supervisor (or the functional equivalent thereof), appointed by the President, by and with the advice and consent of the Senate. In appointing members of the Board, the President shall designate 1 of the members of the Board, other than the member who is a State credit union supervisor (or the functional equivalent thereof), as Chairperson. Not more than 3 of the members shall be members of the same political party.

“(2)(A) STATE CREDIT UNION REPRESENTATIVES.—

“(i) IN GENERAL.—Except as provided in clause (ii), each member who is a State credit union supervisor (or the functional equivalent thereof) shall be appointed for a single term of 2 years.

“(ii) EXCEPTION.—If a member described in subsection (b)(2)(A)(i) ceases to be a State credit union supervisor (or the functional equivalent thereof) on a date prior to the expiration of the 2-year period described in clause (i), such member’s membership on the Board shall terminate on that date.”

“(B) RESTRICTIONS.—

“(i) SAME INDIVIDUAL.—In filling a vacancy on the Board for a member described in subsection (b)(2)(A)(i), the President may not appoint an individual who has previously served as a member described in subsection (b)(2)(A)(i).

“(ii) SAME STATE.—In filling a vacancy on the Board for a member described in subsection (b)(2)(A)(i) (other than a vacancy occurring under subsection (b)(2)(A)(ii)), the

President may not appoint an individual who is serving as the State credit union supervisor (or the functional equivalent thereof) of the same State as the most recently appointed member described in subsection (b)(2)(A)(i).’

(e) NONCOMPENSATION; TRAVEL EXPENSES.—Section 102 of the Federal Credit Union Act (12 U.S.C. 1752a) is amended by adding at the end the following:

“(g) PERSONNEL MATTERS RELATING TO STATE CREDIT UNION REPRESENTATIVES.—Members of the Board described in subsection (b)(2)(A)(i)—

“(1) shall serve without compensation; and

“(2) shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.”

## **II. Suggested Amendment Text**

Section 102(b) of the Federal Credit Union Act (12 U.S.C. 1752a(b)) is amended to read as follows:

(1) In general.—The Board shall consist of five members, who are broadly representative of the public interest, appointed by the President, by and with the advice and consent of the Senate, 1 of whom shall have served as a State credit union supervisor. In appointing the members of the Board, the President shall designate the Chairman. Not more than three members of the Board shall be members of the same political party.

