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Financial Services Regulatory Relief Act of 2003 (H.R. 1375): Credit Union Provisions

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Summary

On March 18, 2004, the House passed omnibus regulatory relief legislation (H.R. 1375) for insured depository financial institutions. The bill would alter or eliminate statutory banking provisions considered outdated, unnecessary, or ineffective in an effort to lessen the overall burden of compliance. Another goal of this legislation is to counterbalance the additional regulatory burdens being placed on banks and thrifts by the anti-money laundering and anti-terrorist financing provisions of the 2001 USA Patriot Act. Title III of H.R. 1375 contains 13 credit union provisions. The provisions are based on recommendations from the credit union industry. This report provides background on the legislation and an overview of Title III. This report will be updated as legislative developments warrant.

Background

The USA Patriot Act (P.L. 107-56) was enacted on October 26, 2001. The law requires federal financial regulators to issue regulations to implement the provisions which seek to protect the U.S. financial system from money laundering and terrorist financing. To comply with the Act, federal regulators are producing a set of procedures and systems that will require the commitment of considerable resources by depository financial institutions. During the 107th Congress, the House Committee on Financial Services worked with regulators and industry representatives to develop legislation that would reduce existing regulatory requirements on depository financial institutions. The goal was to identify outdated, duplicative, or ineffective regulations that were not justified by either the need to ensure safety and soundness or to provide consumer protection. The resulting bill, H.R. 3951, was reported to the House but no further action was taken.

Similar legislation was introduced early in the first session of the 108th Congress as the Financial Services Regulatory Relief Act of 2003 (H.R. 1375). Like the previous legislation this bill has separate titles for three categories of financial institutions: national banks, savings associations, and credit unions. Additional titles address regulatory

agencies and banking affiliates. H.R. 1375 was introduced on March 3, 2003 and on March 27, 2003 hearings were held by the Subcommittee on Financial Institutions and Consumer Credit of the House Committee on Financial Services. The bill was approved by the House Financial Services Committee on May 2, 2003 and passed by the House on March 18, 2004. The regulatory relief legislation was then referred to the Senate. The Senate Committee on Banking, Housing, and Urban Affairs has asked for recommendations for reforms or changes from the regulators and the financial services industry.

The credit union industry worked closely with committee staff to develop the legislative proposals for credit unions. Regulators, trade associations, and individual institutions contributed to or commented on recommendations. Both H.R. 3951 in the 107th Congress and H.R. 1375 in the 108th Congress have been largely viewed as noncontroversial. The credit union provisions of H.R. 3951 did draw some initial criticism from banking industry representatives. In general this criticism was countered by statements that the legislation provides regulatory relief to all depository institutions and therefore relief to one segment should not be singled out for comment.

Credit Union Provisions

Title III of the Financial Services Regulatory Relief Act of 2003 contains 13 credit union provisions. The following is an overview of each of the 13 sections.

Section 301. Privately Insured Credit Unions Authorized to Become Members of a Federal Home Loan Bank

All federally chartered credit unions are members of the National Credit Union Share Insurance Fund (NCUSIF), the federal deposit insurance fund for credit unions. The vast majority of state-chartered institutions are also federally insured, but approximately 365 credit unions are privately insured.¹ Currently, only federally insured credit unions can apply for membership in a Federal Home Loan Bank. This section would permit privately insured credit unions to apply for membership. The state regulator would be required to certify that the institution meets the eligibility requirements for federal deposit insurance before the credit union could qualify for membership.

Section 302. Leases of Land on Federal Facilities for Credit Unions

This section would give authorities in charge of buildings erected on federal property the discretion to extend real estate leases at minimal charge to credit unions that finance the construction of credit union facilities on the federal land.

Section 303. Investments in Securities by Federal Credit Unions

The investment authority of federal credit unions is limited by statute to loans, government securities, deposits in other financial institutions, and certain other limited investments. This may place them at a competitive disadvantage with state-chartered credit unions and other depository financial institutions. This section would expand the investment options by permitting a federal credit union to purchase for its own account

¹ U.S. Congress, House, Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, *Financial Services Regulatory Relief Act of 2003 (H.R. 1375)*, unpublished hearings on H.R. 1375, 108th Cong., 1st sess., March 27, 2003.

certain investment securities of a defined investment grade (to be determined by the National Credit Union Administration, the federal regulator). The total amount of the investment securities of any one obligor or maker can not exceed 10% of an institution's net worth.

Section 304. Increase in General 12-Year Limitation of Term of Federal Credit Union Loans to 15 Years

Federal credit unions are authorized to make loans to members, other credit unions, and to credit union organizations. Loans are restricted by a statutory 12-year maturity limit with a few exceptions. This section would increase that maturity limit to 15 years or to longer terms if permitted by the National Credit Union Administration.

Section 305. Increase in 1% Investment Limit in Credit Union Service Organizations

Organizations that provide services to credit unions and credit union members are commonly known as credit union service organizations (CUSOs). An individual federal credit union is authorized to invest in aggregate up to 1% of its shares² and undivided earnings in CUSOs. This section would raise the limit to 3%.

Section 306. Member Business Loan Exclusion for Loans to Non-Profit Religious Organizations

There is a statutory ceiling for member business loans. Federal credit unions can lend up to a total amount of 12.25% of their assets (with some exceptions). This section would exclude loans or loan participations to non-profit religious organizations from the member business loan limit.

Section 307. Check Cashing and Money Transfer Services Offered Within the Field of Membership

Federal credit unions are authorized to provide check cashing and money transfer services to their members. In an effort to meet the needs of individuals who are not account holders at mainstream depository financial institutions, this section would allow federal credit unions to provide these services to anyone eligible to become a member.

Section 308. Voluntary Mergers Involving Multiple Common Bond³ Credit Unions

The groups forming a multiple common bond charter are restricted to 3,000 members under most circumstances. This numerical limitation has been a concern in voluntary mergers of multiple bond credit unions. The National Credit Union Administration (NCUA) has required member groups resulting from the merger that are larger than 3,000 to spin off

² Individual credit unions are owned by their membership. Members' savings are referred to as shares and earn dividends instead of interest.

³ Credit union charters are granted by federal or state governments on the basis of a "common bond." This requirement determines the field of membership, and is unique among depository financial institutions. The common bond for establishing a credit union might be occupational, associational, or community. There are three types of federal credit union charters: single common bond (occupational and associational), multiple common bond (more than one group each having a common bond of occupation or association), and community.

and form separate credit unions. This section would provide that this numerical limitation does not apply in voluntary mergers.

Section 309. Conversions Involving Common Bond Credit Unions

This section addresses voluntary mergers or conversions involving a single or multiple common bond credit union and a community credit union (see footnote 3 for an explanation of common bond). Community charters are required to be based on a single, geographically well-defined local community neighborhood, or rural district. This section would require the NCUA to establish the criteria to use to determine that a member group or other portion of a credit union's existing membership, located outside the community base, can be satisfactorily served and remain within the newly constituted credit union's field of membership.

Section 310. Credit Union Governance

This section deals with three separate issues. It provides the expulsion of a federal credit union member for a good cause by a majority vote of the institution's board of directors. Currently, a two-thirds vote of the membership is required. It would give institutions the authority to limit the number of consecutive terms an individual could serve on the board of directors in an effort to encourage broader representation on the board. Finally, federal credit unions would be able to reimburse volunteer board members for wages they would otherwise forfeit by participating in credit union affairs.

Section 311. Providing the National Credit Union Administration with Greater Flexibility in Responding to Market Conditions

The rate of interest on loans made by a federal credit union may not exceed 15% under most circumstances. This section would permit the NCUA to consider whether rising interest rates or the prevailing interest rate levels threaten the safety and soundness of individual institutions when the agency debates lifting the usury ceiling.

Section 312. Exemption from Pre-Merger Notification Requirement of the Clayton Act

This section would give all federally insured credit unions the same exemption as banks and thrift institutions from pre-merger notification requirements and fees of the Federal Trade Commission.

Section 313. Treatment of Credit Unions as Depository Institutions Under Securities Laws

This section would provide federally insured credit unions exceptions, similar to those provided banks, from broker-dealer and investment adviser registration requirements.