



# Credit Union, Bank, and Thrift Regulatory Relief Act of 2008

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July 23, 2008

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

RS22924

**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

## Summary

Credit unions, banks and thrifts (savings associations) are subject to numerous safety, soundness, and consumer protection laws and regulations. Since 2001, both the banking/thrift and the credit union industries have worked with Congress to develop legislative proposals that would reduce existing regulatory requirements and what are seen as the burdens compliance enforcement places on depository financial institutions. During the 109<sup>th</sup> Congress, legislation was enacted (P.L. 109-351; 120 Stat. 1966) that provided some of the changes sought by the industries. The statute reduced regulatory requirements for all types of depository financial institutions. Both the banking/thrift and credit union industries remain interested in the regulatory relief provisions excluded from the law. Current legislation, the Credit Union, Bank, and Thrift Regulatory Relief Act of 2008 (H.R. 6312), would provide additional steps towards obtaining the package of regulatory relief originally sought. The legislation moved quickly through the House. H.R. 6312 was introduced on June 19, 2008, and on June 24, 2008, the bill was considered under suspension of the rules and passed by the House. On June 25, 2008, the legislation was referred to the Senate Committee on Banking, Housing, and Urban Affairs.

This report will be updated as developments warrant.

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## Background

While federal financial regulatory agencies engaged in the process of implementing the provisions of the Financial Services Regulatory Relief Act of 2006 (P.L. 109-351), new financial services regulatory relief measures were introduced in the 110<sup>th</sup> Congress.<sup>1</sup> Reducing the regulatory burden on financial service providers has been an ongoing concern since the passage of the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA, 110 Stat. 3009-394) mandating that financial regulators review their regulations at least once every 10 years in an effort to eliminate any regulatory requirements that are outdated, unnecessary, or unduly burdensome. In addition, the intended purpose of regulatory relief is to enhance the services provided by depository institutions, and to contain the growing costs of regulatory compliance. The experience of prior Congresses has shown that bills incorporating provisions that would reduce regulatory requirements on banks, thrifts, and credit unions tend to receive stronger support or less opposition than legislative proposals that address the industries separately. H.R. 6312 is viewed as a compromise bill drafted to attract support from advocates for both the banking/thrift and the credit union industries. The legislation, like P.L. 109-351, provides some, but not all, of the changes sought separately by advocates for the banking/thrift and the credit union industries. Therefore, even if H.R. 6312 is enacted the industries' interests in regulatory relief are likely to continue.

## An Overview of H.R. 6312

The Credit Union, Bank and Thrift Regulatory Relief Act of 2008 (H.R. 6312) was introduced on June 19, 2008, by Representative Kanjorski, and was cosponsored by 3 members. The legislation passed the House on June 24, 2008 and on June 25, 2008 was referred to the Senate Committee on Banking, Housing, and Urban Affairs. H.R. 6312 has four Titles: Credit Unions, Saving Association Provisions, Notice Provisions and Business Checking. The following is an overview of the legislation.

## Title I—Credit Unions

**Sec. 101. Investments in Securities by Federal Credit Unions.** This provision would expand federal credit unions' securities investment activities. Federal credit unions are presently limited in their investment activities for safety and soundness reasons by the Federal Credit Union Act. Currently, investment authority is limited to loans, government securities, deposits in other financial institutions and certain other investments. This provision would allow credit unions to have similar powers to banks in the securities business. It would allow credit unions to purchase certain investment-grade securities for the credit union's own account. The total investment in these instruments of any one obligor or maker could not exceed 10% of the credit union's net worth and the total investments could not exceed 10% of total assets.

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<sup>1</sup> For information on regulatory relief measures (in addition to H.R. 6312) in the 110<sup>th</sup> Congress, please see CRS Report RS22651, *Financial Services Regulatory Relief: Implementation and Reintroduced Provisions in the 110<sup>th</sup> Congress*, by (name redacted) and CRS Report RS22661, *Credit Union Regulatory Improvements Act (CURIA): H.R. 1537 and S. 2957*, by (name redacted).

**Sec. 102. Increase in 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 currently authorized to invest in aggregate up to 1% of its unimpaired capital and surplus in CUSOs. The provision would raise the amount a credit union may invest in CUSOs from 1% to 3%. Banks and thrifts have the authority to make similar kinds of investments in their services related businesses.

**Sec. 103. Member Business Loan Exclusion for Loans to Non-profit Religious Organizations.** Under current law, federal credit unions can make loans only to their members, to other credit unions, and to credit union organizations. The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth, or 12.25% of the credit union's total assets. This legislation would exclude from the member business loan limit, loans or loan participations to nonprofit religious organizations, effectively increasing the amount of business lending credit unions could make.

**Sec. 104. Authority of the NCUA to Establish Longer Maturity for Certain Credit Union Loans.** The Regulatory Relief Act of 2006 gave the NCUA the authority to increase the 12-year maturity limit on non-real estate secured loans to 15 years. This section would provide the NCUA with the additional flexibility to issue regulations to increase that 15-year maturity limit to a longer term for specific types of loans.

**Sec. 105. 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% (the usury limit) under most circumstances. This section would permit the NCUA to consider whether sustained increases in money market interest rates or prevailing market interest rate levels threaten the safety and soundness of individual institutions when the agency is determining whether or not to lift the usury ceiling.

**Sec. 106. Conversions Involving Certain Credit Unions to Community Charter.** This section addresses a single or multiple common bond credit union converting to a community credit union. 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 used 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.

**Sec. 107. Credit Union Participation in the SBA Section 504 Program.** This provision would clarify existing law and regulations that permit credit unions to participate in loan programs secured by the insurance, guarantees, or commitments of state or the federal governments. It requires that the loan maturities, terms, and other conditions of these loans be specified in applicable regulations.

**Sec. 108. Amendments Related to Credit Union Service to Underserved Areas.** The 1998 Credit Union Membership Access Act (P.L. 105-219) permits only credit unions with multiple common bond charters to expand services to individuals and groups living in areas of high unemployment and below median incomes that are underserved by other depository institutions. This proposal would permit all federal credit unions, regardless of charter type, to expand services to eligible underserved communities. These underserved areas include "investment areas" under the Treasury Department's Community Development Financial Institution (CDFI) program and qualified "low income area" under the New Markets Tax Credit Targeting formula

adopted by Congress in 2000. Census tracts which would otherwise qualify but in which more than 50% of resident families make more than \$75,000 per year would not qualify. The provisions call for credit unions serving an underserved area to establish and maintain an office or facility within 24 months of receiving approval from the NCUA Board and would require such credit unions to report to the NCUA on their work in the underserved area.

**Sec. 109. Short-term Payday Loan Alternatives within the Field of Membership.** This section addresses expanding access to a defined and limited set of services to non-member individuals. This section would permit credit unions to offer short-term loans as an alternative to payday loans to non-member individuals within their field of membership.

**Sec. 110. Credit Union Governance.** This provision allows federal credit unions to limit the length of service of their boards of directors to ensure broader representation from membership. It provides for the expulsion of a federal credit union member for a good cause by a majority vote of a quorum of the institution's board of directors.

**Sec. 111. Encouraging Small Business Development in Underserved Urban and Rural Communities.** This provision enables credit unions to make more business loans by excluding from a credit union's member business loan cap the member business loans made to underserved communities. It adds the clarification that business loans made to national operated businesses are not exempt from the cap, but business loans made to locally-owned franchises of businesses operating nationally would be exempt if they are in a underserved area.

## **Title II—Savings Association Provisions**

**Sec 201. Restatement of Authority for Federal Savings Associations to Invest in Small Business Investment Companies.** Under this proposal the amount that federal savings associations could invest in Small Business Investment Companies (SBICs) and/or in entities established to invest solely in SBIC would increase from 1% to 5% of its capital and surplus.

**Sec. 202. Removal of Limitation on Investments in Auto Loans.** Current law places an aggregate limit (35% of total assets) on thrift loans or leases for motor vehicles. This provision allows a savings association to invest in, sell, or deal in auto and other vehicle loans and leases for personal, family, or household purposes without a percentage of assets limitation. This provision is an attempt to level the playing field with credit unions' investments in auto loans and leasing.

**Sec.203. Repeal of Qualified Thrift Lending Requirements with Respect to Out-of -State Branches.** Current law requires that federal savings associations must meet the qualified thrift lender (QTL) test both as a entity operating regionally or nationally and in each state where the association has a branch. This provision would eliminate the second requirement that a multi-state federal savings association meet the QTL test on a state-by-state basis. The beneficiaries of this proposal are thrifts operating in more than one state.

**Sec. 204. Small Business and Other Commercial Loans.** This section would eliminate the current small business lending limit for federal savings associations, and would increase lending limit for other types of business loans from 10 to 20% of total assets.

**Sec. 205. Increase in Limits on Commercial Real Estate Loans.** This section would expand the capacity of savings associations to make more commercial real estate loans. The aggregate limit for this category of loans would be increased from 400% to 500% of a thrift's capital.

**Sec. 206. Savings Association Credit Card Banks.** This provision would change current law that requires a savings and loan holding company to charter a credit card savings association as a national or state bank in order to maintain its exemption from the activity restrictions imposed on companies that control multiple thrifts. Under this provision, a unitary thrift holding company would be permitted to charter a credit card savings association and maintain its exempt status.

## **Title III—Notice Provisions**

**Sec. 301. Exception to Annual Privacy Notice Requirements Under the Gramm-Leach-Bliley Act.** Provisions of the Gramm-Leach-Bliley Act (P.L. 106-102) require most financial institutions to issue annual privacy notices to their customers. These notices spell out privacy policies and how the institution may share information. This proposal would exempt institutions that (1) provide nonpublic personal information only in accordance with specified requirements; (2) do not share information with affiliates under the Fair Credit Reporting Act; and (3) have not changed their policies and practices with regard to disclosing nonpublic personal information from those disclosed in the most recent disclosure sent to their customers. In addition, state licensed institutions that are either prohibited or become prohibited (by regulation) from disclosing nonpublic personal information without the knowing and express consent of the consumer are also exempt.

## **Title IV—Business Checking**

**Sec. 401. Short Title.** This act may be referred to as the “Business Checking Fairness Act of 2008”

**Sec. 402. Interest-Bearing Transaction Accounts Authorized for All Businesses.** This proposal would legalize a common practice employed by banking institutions for many business accounts involving transferring deposits between interest earning accounts and checking accounts. This provision would authorize depository institutions to offer customers the ability to make up to 24 transfers per month from an interest-bearing or dividend earning account into any other account maintained by that customer in that institution.

**Sec. 403. Interest-bearing Transaction Accounts Authorized.** This section would repeal the prohibition against the payment of interest on demand deposits (checking accounts), which would include personal deposit accounts. It would do this by amending the laws behind the prohibition: the Home Owners Loan Act and the Deposit Insurance Act. The repeal would be effective at the end of the 2-year period beginning on the date of the enactment of this Act.

**Sec. 404. Rules of Construction.** This provision pertains to escrow accounts maintained at a depository financial institution in connection with a real estate transaction. The proposal describes certain expenses, fees, and benefits that could be incurred in connection with escrow accounts and states that these transactions shall not be treated as the payment or receipt of interest for the purposes of this legislation. In addition, this section would neither require nor prohibit an institution to pay interest on such an escrow account. Finally, this section would not preempt state law dealing with the payment of interest on escrow accounts.

**Sec. 405. Consumer Banking Costs Assessment.** This section would amend the Federal Reserve Act to require the Board of Governors of the Federal Reserve System to conduct a biennial survey of retail banking fees, services, and products provided by insured banks, thrifts, and credit unions. The proposal details certain information that must be included in the survey. The proposal includes the requirement for a biennial report to Congress. It would also amend the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, to repeal certain reporting requirements.

## Reactions to H.R. 6312

The proposed Credit Union, Bank and Thrift Regulatory Relief Act of 2008 is viewed by many as a compromise between the positions taken by credit union and the banking industries. This compromise was reached after the banking industry launched an intense lobbying effort against the Credit Union Regulatory Relief Act (H.R. 5519) and the Credit Union Regulatory Improvement Act (H.R. 1537), which would have expanded the definition of the field of membership, allowing more credit unions to provide financial services in unserved areas; increased the cap on member business lending, allowing credit unions to make more business loans; and instituted a risk-based system of Prompt Corrective Action, which would allow credit unions use their capital more efficiently and increase their capacity to make more loans. The banking industry saw these provisions as making credit unions more competitive with banks in addition to the tax exemption they already possess. The compromise was reached after the credit union industry modified its definition of underserved areas by reducing them. In addition, H.R. 6312 would lift the cap on member business loans less than it was lifted in the earlier legislation, and would drop the risk-based system. Perhaps what was most important was that the compromise added the provisions of the Bank Regulatory Relief Act of 2008 (H.R. 5841), the banking industry's own regulatory relief bill that had already passed the House. The resulting H.R. 6312 has the support of the Credit Union National Association, the Independent Community Bankers of America, and the American Bankers Association.<sup>2</sup>

One provision in H.R. 6312 that was opposed in the past by some small banking institutions is the provision to pay interest on business checking accounts. As mentioned above current law prohibits the payment of interest on checking account, because banks are required to keep higher reserve balance on transaction accounts as these deposits can be withdrawn at anytime. Smaller depository institutions that are failing at a higher rate than larger ones, are likely to be even less profitable if they are required to pay interest on business checking accounts.<sup>3</sup>

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<sup>2</sup> See "CU Reg Relief Bill Sails Through Full House," *CUNA New Now*, June 24, 2008, p. 1, Joe Adler, "Banks and CUs Alike Lukewarm on Kanjorski Bill," *American Banker*, June 25, 2008, p. 2, and Letters to the Honorable Barney Frank from the American Bankers Association and the Independent community bankers of America supporting this legislation at [http://www.aba.com/NR/rdonlyres/76DCD307-2D7E-48A6-A10F-623175F0AEAD/53999/RegRelief\\_ABAMemo\\_062308.pdf](http://www.aba.com/NR/rdonlyres/76DCD307-2D7E-48A6-A10F-623175F0AEAD/53999/RegRelief_ABAMemo_062308.pdf) and <http://www.icba.org/files/ICBASites/PDFs/ltr062408.pdf>.

<sup>3</sup> See CRS Report RL30816, *The Anticipated Effects of Depository Institutions Paying Interest on Checking Accounts*, by (name redacted), pp. 1, 7.



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