The Credit Union System: Lending Activities and Selected Regulatory Developments

Updated April 10, 2025

Congressional Research Service
https://crsreports.congress.gov
R46360

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R46360

April 10, 2025

Darryl E. Getter
Specialist in Financial Economics

The Credit Union System: Lending Activities and Selected Regulatory Developments

Credit unions make loans to their members, other credit unions, and corporate credit unions that provide financial services to individual credit unions. Historically, credit unions have faced statutory restrictions on their lending activities, including those to members. Other lending restrictions include a 15% statutory loan interest rate ceiling, with some authority to operate above the cap under certain circumstances; a 15-year maturity limit on most loans (with some exceptions, such as residential mortgages); and an aggregate limit on an individual credit union's member business loan (MBL) activity (in the form of outstanding loan balances) and on the amount that can be loaned to any one member.

Congress passed the Federal Credit Union Act of 1934 (FCU Act, 48 Stat. 1216) to create a class of federally chartered financial institutions to "promote thrift among its members and create a source of credit for provident or productive purposes." The original concept of a credit union stemmed from small lending cooperatives that not only provided a low-cost source of credit but also promoted thriftiness among their members. Since their inception, credit unions have been granted additional lending authorities as the marketplace has evolved. Nevertheless, the credit union system still faces more lending restrictions relative to the commercial banking system.

Credit union industry advocates argue that lifting lending restrictions to make the system more comparable with the banking system would increase borrowers' available pools of credit. Community banks, which often compete with credit unions, argue that policies such as raising the business lending cap, for example, would allow credit unions to expand beyond their congressionally mandated mission and could pose a threat to financial stability. By amending the FCU Act several times to expand permissible lending activities, Congress arguably recognizes that the credit union system has evolved into a more sophisticated financial intermediation system. In addition to various FCU Act amendments over the past several decades, Congress has recently passed various legislation that would allow credit unions to expand their lending activities. For example, P.L. 115-174 revised the MBL definition, allowing credit unions to extend loans to dwellings for one to four families regardless of whether the dwellings are primary residences. In the 119th Congress, H.R. 1791 would amend the FCU Act to allow the National Credit Union Administration (NCUA)—the primary regulator of federally insured credit unions—the flexibility to extend loan maturities for all loans, including MBLs and student loans.

Recognizing credit unions' primary mission as meeting consumers' credit and savings needs, Congress emphasized prudential safety and soundness concerns when establishing the statutory cap on MBLs and a capital supervisory framework for the credit union system. Following the 2008 financial crisis, the federal bank prudential regulators (i.e., the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) enhanced their prudential capital requirements to increase the U.S. banking system's resilience to systemic risk events. The NCUA has since increased capital (net worth) requirements, effective in 2022, for credit unions with $500 million or more in assets. Meanwhile, the NCUA has also implemented rules designed to support the expansion of membership and lending activities. The NCUA has also made efforts to expand credit union services to underserved, unserved, and disadvantaged communities. Whether achieving the goal of financial inclusion requires adopting a regulatory framework for the credit union system that is similar to the one for the banking system is a policy issue of interest to Congress. Implementing a regulatory framework to encourage credit expansion, however, would likely present customization challenges in light of the credit unions' statutory limitations on lending activities, their smaller sizes, and their specialized financial product offerings.

Contents

Contacts

Introduction

Credit unions are nonprofit depository financial institutions that are owned and operated entirely by their members.[1] Specifically, these *natural person* credit unions, also known as retail credit unions, are financial cooperatives that return profits to their memberships. Member deposits are referred to as *shares*, and the interest earned by members is referred to as *share dividends*, which are comparable to shareholder profit distributions. Credit unions (and banks) engage in *financial intermediation*, or facilitating transfers of funds back and forth between savers (via accepting deposits) and borrowers (via loans). Share deposits can be subsequently used to provide loans to members, other credit unions, and credit union organizations.

The National Credit Union Administration (NCUA), an independent federal agency, is the primary federal regulator and share deposit insurer for credit unions.[2] Oversight of the nation's credit unions shares certain similarities and dissimilarities with that of the nation's banks. There are three federal bank prudential regulators: the Office of the Comptroller of the Currency charters and supervises national depository (commercial) banks; the Federal Deposit Insurance Corporation (FDIC) provides deposit insurance by collecting insurance premiums from member banks and places the proceeds in its Deposit Insurance Fund (DIF), which are subsequently used to reimburse depositors when acting as the receiver of a failed bank; and the Federal Reserve provides lender-of-last-resort liquidity to solvent banks via its discount window. The NCUA, by comparison, serves all three functions for federally regulated credit unions. The NCUA also manages the National Credit Union Share Insurance Fund (NCUSIF), which is the federal deposit insurance fund—equivalent to the DIF—for credit unions.

Federally Guaranteed Deposits

The NCUA insures share deposit accounts, savings accounts, certificates of deposit, and funds in traditional and Roth Individual Retirement Accounts (IRAs) up to $250,000.[3] The NCUA provides separate coverage for deposits held in different account ownership categories, such as single accounts, joint accounts, and IRAs. For example, the funds in a deposit account and those in an IRA would be insured separately, even if the accounts belonged to the same individual. The NCUA does not insure stocks, bonds, mutual funds, money market funds, life insurance policies, annuities, municipal securities, or other nondeposits (investments) even if these products were purchased from an insured depository. In addition, the NCUA does not insure safe deposit boxes, bank theft or fraud losses, accounting error losses, and U.S. government-backed investments, such as Treasury securities and savings bonds. In short, NCUA insurance coverages apply only to deposits associated with an insolvent credit union's closure. The FDIC performs the same deposit insurance functions for the banking system.

Although scholars are unable to pinpoint the precise origin of the credit union movement, the organization of membership-owned cooperatives to raise funds for members lacking sufficient collateral or wealth necessary to qualify for bank loans dates back to colonial times.[4] During their infancy stages, credit cooperatives basically emerged as a form of microlending in financially underserved localities to provide unsecured small-dollar loans. Small group cooperatives initially relied on pooled funds, donations, and subsidies to make loans (allocated via lotteries or auctions)

[1] For additional information about the credit unions along with comparisons to banks, see CRS In Focus IF11048, *Introduction to Bank Regulation: Credit Unions and Community Banks: A Comparison*, by Darryl E. Getter.

[2] The National Credit Union Administration (NCUA) was created by the Federal Credit Union Act of 1934 (48 Stat. 1216). P.L. 91-468, 84 Stat. 994 made the NCUA an independent agency, which is governed by a three-member board.

[3] See NCUA, *How Your Accounts Are Federally Insured*, https://www.ncua.gov/files/press-releases-news/NCUAHowYourAcctInsured.pdf; and Federal Deposit Insurance Corporation (FDIC), "Are My Deposit Accounts Insured by the FDIC?," https://www.fdic.gov/resources/deposit-insurance/financial-products-insured.

[4] See Erdis W. Smith, "Federal Credit Unions: Origin and Development," *Social Security Bulletin*, vol. 18, no. 11 (November 1955).

until evolving into self-sufficient systems more reliant on deposits.[5] Small memberships for group credit cooperatives allow members to know each other, which facilitates peer monitoring of the lending decisions and borrowers' repayment behavior.[6] Thus, the original concept of a credit union stemmed from cooperatives formed to promote thrift among its members and to provide them with a low-cost source of credit.

Following numerous bank failures and runs during the Great Depression that resulted in an extensive contraction of credit, Congress sought to enhance cooperative organizations' ability to meet their members' credit needs.[7] Congress passed the Federal Credit Union Act of 1934 (FCU Act; 48 Stat. 1216) to create a class of federally chartered financial institutions for "promoting thrift among its members and creating a source of credit for provident or productive purposes."[8] Over time, Congress expanded credit unions' permissible activities because the original concept of a credit union arguably needed to evolve with the marketplace. According to the NCUA

> When Congress amended the FCU Act in 1977 to add an extensive array of savings, lending and investment powers, it intended to "allow credit unions to continue to attract and retain the savings of their members by providing essential and contemporary services," and acknowledged that credit unions are entitled to "updated and more flexible authority granting them the opportunity to better serve their members in a highly-competitive and ever-changing financial environment." H.R. Rep. 95–23 at 7 (1977), *reprinted in* 1977 U.S.C.C.A.N. 105, 110. Congress acknowledged the difficulty in "regulating contemporary financial institutions within the framework of an Act that has on a continuing basis required major updating by means of regulation."[9]

Although small memberships may be more advantageous for informal microlending systems, advanced intermediation systems—such as banking and the modern credit union industry—benefit from *economies of scale*. In other words, holding more assets (loans), collecting more deposits, and processing more transactions enhances financial risk diversification and lowers the average cost per transaction, thus reducing vulnerability to financial disruptions that would be confined to a particular small group.[10]

On April 19, 1977, P.L. 95-22 substantially amended the FCU Act.[11] It authorized the credit union industry to provide many financial products (e.g., loans, checking and savings deposit services) similar to those offered by the commercial banking system.[12] Today, modern credit unions

---

[5] See Thorsten Beck, "Microfinance: A Critical Literature Survey," Independent Evaluation Group, 2015, http://documents.worldbank.org/curated/en/588931467993754857.

[6] For centuries, (rural) cooperative microfinance systems—particularly during their initial stages—typically relied on peer monitoring to encourage loan repayment and maintain operational self-sufficiency. For more information, see Timothy Besley and Stephen Coate, "Group Lending, Repayment Incentives, and Social Collateral," *Journal of Development Economics*, vol. 46, no. 1 (February 1995), pp. 1-18; and Prabal Roy Chowdhury, "Group Lending: Sequential Financing, Lender Monitoring and Joint Liability," *Journal of Development Economics*, vol. 77, no. 2 (August 2005), pp. 415-439.

[7] William R. Emmons and Frank A. Schmid, "Credit Unions Make Friends—but Not with Bankers," Federal Reserve Bank of St. Louis, October 2003, https://www.stlouisfed.org/publications/regional-economist/october-2003/credit-unions-make-friendsbut-not-with-bankers.

[8] See NCUA, "Rules and Regulations," https://ncua.gov/regulation-supervision/rules-regulations.

[9] See NCUA, "Federal Credit Union Incidental Powers Activities," 66 *Federal Register* 40845-40859, August 6, 2011.

[10] See James A. Wilcox, *Economies of Scale and Continuing Consolidation of Credit Unions*, Federal Reserve Bank of San Francisco, November 4, 2005, https://www.frbsf.org/economic-research/publications/economic-letter/2005/november/economies-of-scale-and-continuing-consolidation-of-credit-unions/#subhead2.

[11] P.L. 95-22 is also referred to as the Mini Bill of 1977.

[12] See Alane K. Moysich, "An Overview of the U.S. Credit Union Industry," *FDIC Banking Review*, vol. 3, no. 1 (Fall 1990), pp. 12-25, https://www.fdic.gov/bank/analytical/banking/br1990vol3no1full.pdf.

primarily engage in consumer and residential lending, and some originate commercial business loans for members.

The lending and investment powers of the credit union industry, however, are still more restrictive than those of commercial banks:

- Credit unions can make loans only to their members, other credit unions, and credit union organizations, thus limiting whom they can serve.
- A statutory interest rate cap for credit union loans exists (with exceptions that allow for sufficient earnings necessary to maintain credit availability).
- Loans made by federally insured credit unions are generally limited to 15 years (except for residential mortgages).
- Federal credit unions' investment authority is limited by statute to loans, government securities, deposits in other financial institutions, and certain other limited investments given their origins to promote thrift rather than be long-term investors.[13]
- Business lending restrictions include an aggregate limit on an individual credit union's member business loan balances and on the amount that can be loaned to one member.

If some or all of these restrictions are relaxed to allow the credit union system's lending powers to expand and become more comparable to the banking system, the prudential regulatory regimes may require greater harmonization to protect against comparable financial risk exposures.[14] Another policy issue is whether some credit unions should also be evaluated like banks, which currently operate under a framework that encourages them to serve the local areas where they are charted and acquire deposits. This issue has captured the attention of Congress.

This report focuses on policy developments pertaining to the credit union system. It begins with an overview of selected developments to further expand the system's lending capacities, such as the ability to increase mortgage lending activities, and how the system's exposure to interest rate and credit (default) risk grew. The NCUA's efforts to improve the system's resiliency to interest rate, credit, and insolvency risks in response to financial distress originating in mortgage markets are then discussed. Next, this report discusses expanding system membership—particularly in underserved, unserved, and disadvantaged communities. Encouraging credit expansion, however, would likely present customization challenges in light of the credit unions' statutory limitations on lending activities, their generally smaller sizes, and their specialized financial product offerings. Finally, this report briefly notes challenges monitoring operational risk, a non-financial risk facing financial firms. The balance sheet terminology defined in the box below is used throughout this report.

---

[13] See Stephen F. Ambrose Jr., "The Legality of Credit Union Share Draft Accounts Under Federal Law," *Fordham Law Review*, vol. 46, no. 6 (1978).

[14] See CRS Report R44573, *Overview of the Prudential Regulatory Framework for U.S. Banks: Basel III and the Dodd-Frank Act*, by Darryl E. Getter.

Credit Union Balance Sheet Terminology

Credit union assets include consumer (e.g., automobile, credit card, installment) and mortgage loans, cash, and other financial securities that are held in their portfolios. Commercial member business loans are also assets for credit unions (discussed in more detail below). Assets generate earnings (revenues) or losses, depending largely upon whether borrowers (who are also shareholders) repay or default on their loans. The maturities of loans made by credit unions are generally restricted to 15 years or less with the exception of primary mortgages and other designated loans.

Credit union liabilities include the funds that they borrow (for shorter periods of time). For example, when customers (share depositors) make savings or checking share deposits into a credit union, the credit union essentially borrows those funds short-term to lend them out for longer periods of time. Payments on liabilities are, therefore, the costs incurred by the credit unions to obtain the funds necessary to originate member loans.

Credit union net worth is the difference between assets and liabilities, which is analogous to bank capital. Net worth consists of retained earnings, or the allotment of profits not paid to members in the form of dividends. Given that the share deposits are federally insured, credit unions are required to maintain sufficient net worth to absorb their shareholders' loan defaults. Compliance with regulatory capital requirements broadly requires asset (lending) portfolios to grow only if net worth grows proportionately. If sufficient net worth is maintained to absorb the losses, then loan defaults by borrowers are less likely to result in failure of a credit union to repay its shorter-term obligations. If, however, a credit union's net worth falls below minimum regulatory threshold levels, it would be considered undercapitalized and could face the prospect of the NCUA shutting it down. The NCUA also serves as the receiver of the insolvent institution.

Expanding Permissible Lending Activities

Congress has passed legislation, and the NCUA has implemented and promulgated rules, to support the expansion of lending activities that could enhance credit unions' *economies of scale*—that is, increase their financial transaction volumes and simultaneously lower their per unit costs. The expansion of lending activities, as discussed in this section, is likely to generate greater cash flows and revenues for the credit union system.

Field of Membership and Common Bonds

A credit union's "field of membership" is the legal definition of who is eligible to join. Federal or state governments grant credit union charters on the basis of a "common bond." There are three types of charters: (1) a single common bond (occupation or association based); (2) a multiple common bond (more than one group each having a common bond of occupation or association); and (3) a community-based (geographically defined) common bond. Individual credit unions are owned by their memberships.[15] Credit union members elect a board of directors from their institution's membership (one member, one vote).[16] Credit unions can make loans only to their members, other credit unions, and credit union organizations.

In some cases, field of membership charters may limit the ability of credit unions to collect liquid deposits that are subsequently used to fund less liquid loan portfolios.[17] Associational charters, for

[15] A credit union that is established with an occupational or associational charter usually consists of individuals that share an affiliation (e.g., employer). A credit union that is established with a multiple common bond charter may consist of individuals with different affiliations, but merging into a single cooperative is likely to improve the financial soundness of the depository institution. A credit union that is established with a geographical charter is likely to consist of members, for example, that reside in a single state.

[16] Credit union board member positions are voluntary and unpaid. The board of directors may appoint a president or chief operating officer, who is paid and reports directly to the board.

[17] Common bond requirements on credit unions can be considered analogous to U.S. restrictions on interstate and branch banking, which are no longer in place. See David L. Mengle, *The Case for Interstate Branch Banking*, Federal (continued...)

example, may restrict membership to small groups. By limiting access to supplementary sources of funds, a credit union (or bank) becomes more vulnerable to cash flow disruptions (e.g., increases in loan defaults, substantial deposit withdrawals) following adverse events—including those that would directly affect the depositors comprising its field of membership. Some associational charters, however, may allow for large, diversified depositor bases that can achieve greater economies of scale. Because small credit unions can retain current membership levels and possibly increase scale by obtaining community-based common-bond charters, the NCUA has updated the definition of *community-based common bond*, which is discussed amid policy challenges in the section entitled "Policy Issue: Community Charters."

Lending Terms

Although the credit union system has evolved into a formal intermediation system that provides a range of financial services, it has still not acquired all of the lending powers comparable to those of banks. For example, some of the system's current lending authorities are temporary and must be regularly renewed. This section reviews some of the temporary or limited lending authorities that the credit union industry and some policymakers argue could be enhanced.

Interest Rate Ceilings and Exemptions

The FCU Act originally set in 1934 an annual 12% interest rate ceiling (or cap) for loans made by federally chartered credit unions and federally insured state-chartered credit unions.[18] The Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221) lifted the statutory loan interest rate ceiling to 15% per annum. It also permits the NCUA to set a ceiling above the 15% cap for up to an 18-month period after consulting with Congress, the U.S. Department of the Treasury, and other federal financial agencies.[19]

Specifically, when setting the interest rate above 15%, the NCUA must (1) review money market interest rate trends and (2) assess how prevailing interest rate movements (volatility) might threaten credit unions' safety and soundness in terms of the ability to sustain their lending activities, the effect on their *net-interest income* (earnings), and the effect on their liquidity.[20] After raising the ceiling to 21% in December 1980, the NCUA board reduced the rate ceiling in May 1987 to 18%.[21] The NCUA board expressed concern that a ceiling below 18% could result in lower net interest income, considered to be the key driver of credit union earnings, thus reducing credit union profitability and limiting borrowers' access to credit.[22] The 18% rate ceiling has since

Reserve Bank of Richmond, November/December 1990, https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_review/1990/pdf/er760601.pdf.

[18] See NCUA, "Federal Credit Union Loan Interest Rate Ceiling Supplemental Information and Analysis," July 2024.

[19] See NCUA, "Attachment 1. Supplemental Information and Interest Rate Statistics," https://www.ncua.gov/files/press-releases-news/AG20170223Item2b.pdf.

[20] Net interest income is the difference between interest received from assets (e.g., the rates charged borrowers for loans) and interest paid on liabilities (i.e., what the financial institution must pay to acquire the funds to be lent). The NCUA has computed average term spreads (differences) by observing movements of the yield curve over the 1982-2007 period, finding it to be approximately 168 basis points (1.68%). See NCUA, "Attachment 1. Supplemental Information and Interest Rate Statistics."

[21] See NCUA, "Attachment 1. Supplemental Information and Interest Rate Statistics."

[22] See letter from Larry Fazio, Director, Office of Examination and Insurance, NCUA Board, July 18, 2018, https://www.ncua.gov/files/agenda-items/AG20180802Item2a.pdf; and U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Hearing on the Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act*, 116th Cong., 1st sess., October 2, 2018, https://www.ncua.gov/files/press-releases-news/testimony-written-chairman-mcwatters-implementation-economic-growth.pdf.

been retained due to NCUA factors such as (1) rising money market rates; (2) adverse liquidity, capital, earnings, and growth trends; and (3) consultations with the relevant federal agencies.[23]

In July 2024, the NCUA board voted to continue the temporary 18% interest rate ceiling.[24] According to NCUA notices, its interest rate ceiling is an annual percentage rate (APR) rather than a pure interest rate.[25] The APR represents the *total* annual borrowing costs of a loan expressed as a percentage, meaning that it is calculated using *both* interest rates and origination fees. The text box below explains more about how to calculate and interpret the APR.

APR Computation and Interpretation

A general formula to calculate the APR is

APR = [(Total interest and fees)/(Loan amount)]*(365/Loan length in days)*100

The formula shows that the APR rises with increases in interest and fees paid by the borrower. Furthermore, the APR is inversely related to (1) the loan amount and (2) the length of time the loan will be outstanding. If interest and fees are held constant, a loan expected to be repaid in 30 days or less (in a single balloon payment) would have a higher APR than a larger loan in which the repayment of principal and total charges occurs over a longer period of time in multiple installment payments. Thus, the appropriateness to use an APR for loans originated for less than 365 days has been debated.[26] An APR based on a term length of *one year* or greater accurately reflects the *annual* cost of credit. By contrast, the APR for a loan that is expected to be repaid in *less than 365 days* is likely to be large. (For example, payday loans with term lengths of 30 days or less are likely to have triple-digit APRs, because the interest and fees would be due shortly after origination.)

For this reason, APR comparisons are more useful for loans with identical maturity lengths.[27] APR comparisons of loans with different maturities, such as a 30-day payday loan and a 365-day maturity loan, are misleading. Although the longer-term loan's APR will be mathematically lower, the borrower's interest and fees may actually be higher. Hence, when maturity lengths differ significantly, APR comparisons are more likely to capture differences in loan amounts or maturities rather than solely borrowing cost differences.

The Military Lending Act of 2006 (MLA, P.L. 109-364) was passed to protect active-duty military personnel and their eligible family members from predatory lending.[28] The MLA limits the military APR (MAPR) to 36% for small-dollar loans and credit products, such as credit cards, deposit advances, overdraft lines of credits, and certain types of installment loans.[29] The MLA, however, does not apply to mortgages, automobile loans, and secured loans. A credit union borrower typically receives an APR below the MAPR ceiling for covered transactions. Hence, the

[23] See NCUA "Continuation of Federal Credit Union Loan Interest Rate Ceiling," https://www.ncua.gov/files/agenda-items/AG20200123Item5a.pdf.

[24] See NCUA, "Permissible Loan Interest Rate Ceiling Extended," August 2024, https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/permissible-loan-interest-rate-ceiling-extended.

[25] See NCUA, "Permissible Interest Rate Ceiling," April 2011, https://www.ncua.gov/files/letters-federal-credit-unions/LFCU2011-04.pdf.

[26] See Randy Mitchelson, "Why APR Can Be Misleading," *Daily Dollar*, October 1, 2009, http://dailydollarnewsletter.com/2009/10/01/why-apr-can-be-misleading/.

[27] See Robert DeYoung et al., "Reframing the Debate About Payday Lending," *Liberty Street Economics*, Federal Reserve Bank of New York, October 19, 2015, https://libertystreeteconomics.newyorkfed.org/2015/10/reframing-the-debate-about-payday-lending/; and American Financial Services Association Education Foundation, "Personal Loans 101: Understanding APR," http://afsaef.org/Portals/0/Resources/Understanding_APR1.pdf.

[28] See Military One Source, "Expanded Credit Protections for Service Members and Their Families," https://www.militaryonesource.mil/financial-legal/personal-finance/borrowing/expanded-credit-protections-for-service-members-and-their-families.

[29] See FDIC, *Chapter 5-13.1. Lending—Military Lending Act*, Consumer Compliance Examination Manual, 2016, https://www.fdic.gov/regulations/compliance/manual/5/V-13.1.pdf. For more background on the MLA implementation, see CRS Report R44868, *Short-Term, Small-Dollar Lending: Policy Issues and Implications*, by Darryl E. Getter.

credit union interest rate ceiling is currently below the federal MLA cap on consumer loans offered to military personnel.

In 2010, the NCUA permitted the credit union system to make *payday alternative loans (PALs)* to its membership with certain restrictions, intended to be a viable alternative to conventional payday loans.[30] Under the existing permissible framework, a PAL amount may range from $200 to $1,000; it must have fully amortizing payments; the term length must range from 46 days to 180 days; and the application fee must be $20 or less.[31] If the borrower cannot repay the initial PAL, a credit union may allow for a rollover into a new PAL of the same initial maturity so long as no additional fees are charged or no additional credit is extended. No more than three PALs can be made to a single borrower in a rolling six-month period. This specific loan product, referred to as a PALs I, requires a one-month membership before it can be offered.

The PALs program has a 28% ceiling, exempting it from the 18% interest rate ceiling that covers other loan originations made by federally insured credit unions. The PALs program is also exempt from the 36% MAPR ceiling.[32] The MAPR ceiling includes the origination fees, but the NCUA PALs ceiling excludes the $20 origination fee. The PAL loan APR when including the $20 origination fee, in many cases, exceeds the 36% MAPR ceiling.[33] To avoid lending reductions by credit unions to military service customers, the NCUA requested and was granted a PAL exemption from the MAPR so that the PAL application fee is not included in the APR computation.[34] The higher PAL ceiling also does not include an initial origination fee of up to $20 in the APR calculation.

In 2019, the NCUA broadened the PALs framework to allow credit unions to offer additional short-term, small-dollar products, called *PALs II*.[35] PALs II may have amounts up to $2,000 with fully amortizing payments over a one- to 12-month term. Furthermore, no minimum membership length is required to be eligible for a PALs II, which may allow borrowers to quickly consolidate multiple non-credit-union payday loans into one PALs loan. Credit unions may not charge any overdraft or insufficient funds fees for any PALs II drawn against member accounts, thus reducing the likelihood of creating negative account balances and still allowing credit unions to make sufficient (as opposed to maximum) returns in this line of business.

---

[30] See NCUA, "Short-Term, Small Amount Loans," 75 *Federal Register* 58285-58290, September 24, 2010. The effect of small-dollar lending—particularly whether borrowers' financial situations would be made worse off by using expensive credit or having limited access to credit—is widely debated. See CRS Report R44868, *Short-Term, Small-Dollar Lending: Policy Issues and Implications*, by Darryl E. Getter.

[31] See NCUA, "Short-Term, Small Amount Loans," 75 *Federal Register* 58285-58290, September 24, 2010.

[32] Because payday alternative loans (PALs) typically have longer maturities than payday loans (typically a two-week loan), PALs have lower APRs. For a summary of PALs activity from 2020 to 2023, see NCUA, "NCUA Vice Chairman Kyle S. Hauptman Statement on the Federal Credit Union Loan Interest Rate Ceiling," July 2024, https://ncua.gov/newsroom/speech/2024/ncua-vice-chairman-kyle-s-hauptman-statement-federal-credit-union-loan-interest-rate-ceiling.

[33] For more information, see NCUA, *Complying with Recent Changes to the Military Lending Act Regulation*, https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/complying-recent-changes-military-lending-act-regulation. The APR is inversely related to (1) the length of time the loan will be outstanding and (2) the loan amount. For this reason, short-term, small-dollar loans (e.g., often for less than one year and with low initial principal amounts—often less than $1,000) generally have higher APRs than relatively longer-term large loans do.

[34] See NCUA, "Metsger Asks CFPB to Exempt Payday Alternative Loans in Proposed Rule," press release, October 5, 2016, https://www.ncua.gov/newsroom/Pages/news-2016-oct-metsger-asks-exempt-payday-alternative-loans.aspx.

[35] See NCUA, "Payday Alternative Loans," 84 *Federal Register* 51942-51952, October 1, 2019.

Loan Maturity Length and Exemption Caps

When the FCU Act was initially passed, credit unions were allowed to make loans with maturities not to exceed two years. Congress has since revisited system-originated loan maturity lengths several times:

- In 1959, Section 8 of P.L. 86-354 amended the FCU Act to increase credit union loan maturities for up to five years.[36]
- In 1968, Section 1 of P.L. 90-375 amended the FCU Act to allow credit unions to make unsecured loans with maturities not to exceed five years and secured loans with maturities not to exceed 10 years.[37]
- P.L. 95-22 allowed loan maturities not to exceed 12 years. It also allowed credit unions to make residential real estate loans with maturities up to 30 years. Home improvement loans and mobile home loans (for principal residence) were allowed for up to 15 years.
- The Garn-St. Germain Depository Institutions Act of 1982 (Garn-St. Germain Act, P.L. 97-320, 96 Stat. 1469) permitted mortgage loan refinancing and extended the maturity limit to 15 years for all second mortgages.
- The Competitive Equality Banking Act of 1987 (P.L. 100-86) amended the FCU Act to authorize the NCUA to allow second mortgage, home improvement, and mobile home loans beyond 15 years.[38] In 1989, the NCUA finalized the rule to extend the maturity limit to 20 years.[39]
- In 2006, Section 502 of P.L. 109-351 amended the FCU Act to set a 15-year maximum maturity on credit union loans, with some exceptions. For example, residential one- to four-family mortgages may exceed the 15-year maturity term so long as the property is the borrower's primary residence.

In the 119th Congress, H.R. 1791, which was introduced on March 3, 2025, and referred to the House Committee on Financial Services, would amend Section 107(5) of the FCU Act to increase the federal credit union loan maturity cap from 15 to 20 years. It would also remove the requirement that mortgages be originated only for a credit union member's principal residence.

Member Business and Commercial Lending

Lending caps on member business (commercial) loans offered by credit unions did not exist until 1998. Congress included provisions in the Credit Union Membership Access Act of 1998 (CUMAA, P.L. 105-219) that limit most credit unions' commercial lending to no more than 12.25% of their assets to small businesses, among other provisions.[40]

---

[36] 73 Stat. 628, https://www.govinfo.gov/content/pkg/STATUTE-73/pdf/STATUTE-73-Pg628.pdf#page=2.

[37] 82 Stat. 284, https://uscode.house.gov/statutes/pl/90/375.pdf.

[38] Title VII—Credit Union Amendments, Section 702.

[39] NCUA, "15 Year Loans," 54 *Federal Register* 43277-43278, October 24, 1989.

[40] For a discussion of the Supreme Court decision and congressional response to it that resulted in P.L. 105-219, see *National Credit Union Administration, Petitioner, v. First National Bank & Trust Co., et al.; AT&T Family Federal Credit Union, et al., Petitioners, v. First National Bank and Trust Co., et al.*, 118 S. Ct. 927 96-843, 96-847 (1998). See also William R. Emmons and Frank A. Schmid, "Credit Unions and the Common Bond," *Federal Reserve Bank of St. Louis Review*, September/October 1999, https://www.researchgate.net/profile/William-Emmons-2/publication/5047189_Credit_Unions_and_the_Common_Bond/links/0c960521eaf5497f88000000/Credit-Unions-and-the-Common-Bond.pdf.

Rationale for Member Business Loan (MBL) Cap

The following passages from the Senate's CUMAA report explain the rationale for establishing the MBL cap.[41]

- "The purpose of H.R. 1151, the CUMAA, as reported from the Committee, is to amend existing law with regard to the field of membership of federal credit unions, to preserve the integrity and purpose of federal credit unions and to enhance supervisory oversight of federally insured credit unions…. The bill significantly strengthens the prudential safeguards applicable to federally insured credit unions and makes the credit union system safer, sounder and more resilient."
- "*Section 203. Limitation on member business loans.* In new section 107A(a), the Committee has imposed substantial new restrictions on commercial business lending by insured credit unions. Those restrictions are intended to ensure that credit unions continue to fulfill their specified mission of meeting the credit and savings needs of consumers, especially persons of modest means, through an emphasis on consumer rather than business loans. The Committee action will prevent significant amounts of credit union resources from being allocated in the future to large commercial loans that may present additional safety and soundness concerns for credit unions, and that could potentially increase the risk of taxpayer losses through the National Credit Union Share Insurance Fund."

The CUMAA contained the following provisions:

- The *MBL* definition was codified as "any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purpose," but it does not include an extension of credit that is fully secured by a lien on a one- to four-family dwelling that is a member's primary residence.[42]
- The aggregate amount of MBLs that can be made by an individual credit union was limited to the lesser of 1.75 times the credit union's actual net worth or 1.75 times the minimum net worth amount required to be well-capitalized under the prompt corrective action supervisory framework, typically calculated to be 12.25% of total assets.[43]
- Three exceptions to the aggregate MBL limit were authorized for credit unions (1) that have *low-income credit union designation* or participate in the Community Development Financial Institutions (CDFIs) program,[44] (2) chartered for the purpose of making business loans (as determined by the NCUA), and (3) with a history of primarily making such loans (as determined by the NCUA).

---

[41] See U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Credit Union Membership Access Act*, Report 105-193 to accompany H.R. 1151, 105th Cong., 2nd sess., May 21, 1988, pp. 1-25, https://www.congress.gov/105/crpt/srpt193/CRPT-105srpt193.pdf.

[42] 12 U.S.C. §1757a(c)(1).

[43] At the time of the Credit Union Membership Access Act of 1998 (CUMAA), some Members of Congress were concerned that commercial lending, which is considered riskier than consumer lending, would increase the risk profile of the credit union system. In deliberations over the CUMAA, some Members expressed concern that a cap calculated as 12.25% (1.75 multiplied by the 7% statutory requirement to be well-capitalized) of a credit union's total assets was too high if small loans (under $50,000) were not counted toward the cap, and they were also concerned that such an exemption could open up a regulatory arbitrage opportunity enabling chartered credit unions to assume more financial risk and circumvent the cap limitation in the legislation. Nevertheless, the 12.25% cap arguably represented a compromise between having no cap, which was the case prior to enactment of CUMAA, and allowing loans under $50,000 not to be counted toward the cap. See additional discussions in U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Credit Union Membership Access Act*, report to accompany H.R. 1151, 105th Cong., 2nd sess., May 21, 1998, S.Rept. 105-193.

[44] For more information about *low-income credit unions*, see NCUA, "Low-Income Credit Union Designation," https://ncua.gov/support-services/credit-union-resources-expansion/field-membership-expansion/low-income-credit-union-designation. For information about CDFI-designated institutions, see CRS Report R47169, *Community Development Financial Institutions (CDFI) Fund: Overview and Programs*, by Donald J. Marples and Darryl E. Getter.

In addition to the statute, an NCUA regulation limits the aggregate amount of a business loan that can be made to one member or group of associated members at 15% of the credit union's net worth or $100,000, whichever is greater.[45]

MBL Definition and Requirement Updates

In 2016, the NCUA implemented final MBL rules to replace the prescriptive requirements (and limitations) with a broad, principles-based regulatory approach, which became effective on January 1, 2017.[46] The prescriptive approach, for example, required credit unions to request MBL origination waivers for NCUA approval, among other requirements. According to the NCUA, the prescriptive approach took significant time and resources from both credit unions and the NCUA, resulting in delays in processing MBL applications.[47] The principles approach, by contrast, streamlines the MBL underwriting process by granting credit unions more flexibility and individual autonomy to best fit their members' needs. Credit unions are still expected to comply with prudential underwriting practices and commensurate net worth requirements.

To facilitate the streamlined underwriting approach, the NCUA updated various MBL exemptions, resulting in several new definitions. For example, a *commercial loan* is a business loan (1) that is fully guaranteed by a federal or state agency or provides an advance commitment to purchase in full or (2) made to a nonmember or part of a joint lending arrangement with an entity that is not a member of the credit union system.[48] Commercial loans do not count toward the MBL cap.[49]

In 2018, Section 105 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA, P.L. 115-174) amended the statutory MBL definition (i.e., it removed the phrase *that is the primary residence of a member*) to address a disparity in the treatment of certain residential real estate loans made by credit unions and banks.[50] The NCUA has since revised the MBL definition to exclude any extension of credit that is fully secured by a lien on a one- to four-family dwelling regardless of the borrower's occupancy status.[51] For this reason, *non-owner*-occupied real estate (e.g., rental property) loans are no longer considered MBLs and do not count toward the aggregate MBL cap.

In addition to amending the MBL definition, EGRRCPA Section 103 amended the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (P.L. 101-73) to exempt from appraisal requirements certain federally related[52] rural real estate transactions valued at or below

[45] See 12 C.F.R. §723.4—Commercial Loan Policy, at https://www.law.cornell.edu/cfr/text/12/723.4.

[46] See NCUA, "Member Business Loans; Commercial Lending," 81 *Federal Register*, 13530-13559, March 14, 2016.

[47] In 2016, NCUA reported having over 1,000 active requests while processing 336 and 225 waivers in 2014 and 2015, respectively. See NCUA, "Member Business Loans; Commercial Lending," 81 *Federal Register*, March 14, 2016.

[48] See NCUA, "Summary of Key Changes to NCUA's Member Business Loan Final Rule: Table 2—Comparison of Member Business Loans and Commercial Loan Definitions," https://www.ncua.gov/files/agenda-items/AG20160218Item2c.pdf.

[49] A *participation loan* is a joint lending arrangement among multiple depository institutions, discussed in more detail in the section entitled "Policy Options Related to Increasing the MBL Cap Increase."

[50] See U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Hearing on the Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act*, 116th Cong., 1st sess., October 2018, https://www.ncua.gov/files/press-releases-news/testimony-written-chairman-mcwatters-implementation-economic-growth.pdf.

[51] See NCUA, "Commercial Lending," 83 *Federal Register* 25881-25882, June 5, 2018, https://www.govinfo.gov/content/pkg/FR-2018-06-05/pdf/2018-11946.pdf.

[52] 12 U.S.C. §3350(4). A *federally related transaction* is a real-estate-related financial transaction that a federal-
(continued...)

$400,000 if no state-certified or state-licensed appraiser is available. The NCUA implemented this provision in a July 2019 final rule.[53] Depository lenders typically require appraised collateral as backing for their loans. The rise in home prices (since the $250,000 appraisal threshold was set in 1994) along with the innovation of less expensive automated appraisal valuations has arguably reduced the need for manual appraisals on less expensive homes, thereby lowering borrowers' closing costs.[54] The NCUA also increased the appraisal threshold to $1 million for commercial real estate and qualified MBLs.[55] The $1 million commercial appraisal threshold is higher than the current $500,000 for banks.[56] The NCUA board, however, did not unanimously agree on the $1 million commercial appraisal threshold because, despite the credit union system's low exposure to commercial real estate risks, the banking system still has more expertise evaluating and managing commercial lending risks.[57]

Policy Options Related to an MBL Cap Increase

The credit union industry has generally supported efforts to increase or eliminate the MBL cap.[58] If MBL capacity were increased, some larger credit unions could become more competitive with small community banks as well as with some midsize and regional banks.[59] Credit unions that

prudential-regulated financial institution engages in or contracts for, for which the agencies require a Title XI appraisal. See Office of the Comptroller of the Currency (OCC), Treasury, Federal Reserve, and FDIC, "Real Estate Appraisals," 83 *Federal Register* 63110, December 7, 2018.

[53] See NCUA, "Real Estate Appraisals," 84 *Federal Register* 35525-35538, July 24, 2019. By comparison, the final rule for banks increases the threshold level at or below $400,000 at which appraisals are not required for all residential real estate transactions secured by a one- to four-family residential property. See OCC), Treasury, Federal Reserve, and FDIC, "Real Estate Appraisals," 84 *Federal Register* 53579-53597, October 8, 2019. Banks must still obtain appraisals for exempt residential transactions, but they are not required to use licensed or certified appraisers. Under the Economic Growth, Regulatory Relief, and Consumer Protection Act, rural residential properties, which banking regulators had previously exempted from appraisal requirements, must now obtain appraisals. See FDIC, "New Appraisal Threshold for Residential Real Estate Loans," *Financial Institutions Letter*, September 27, 2019, https://www.fdic.gov/news/news/financial/2019/fil19053.pdf.

[54] For more information on developments that have reduced appraisal costs and appraiser shortages, see Comment Letter from Pete Mills, Mortgage Bankers Association, "Real Estate Appraisals [RIN: 1557-AE57; 3064-AE87; 7100-AF30]"; OCC, FDIC, Federal Reserve, February 5, 2019; and Mortgage Bankers Association, "The State of Automated Valuation Models in the Age of Big Data," January 2019. For more on the use of collateral to secure loans, see U.S. Treasury and OCC, *OCC Comptroller's Handbook*, section on "Asset-Based Lending," January 27, 2017, https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/asset-based-lending/pub-ch-asset-based-lending.pdf; and CRS In Focus IF12385, *Single-Family Residential Appraisals: An Overview*, by Darryl E. Getter.

[55] See NCUA, "Real Estate Appraisals," 83 *Federal Register* 49857-49869, October 3, 2018.

[56] See OCC, Treasury, Federal Reserve, and FDIC, "Real Estate Appraisals," 83 *Federal Register* 15019-15036, April 9, 2018.

[57] See NCUA, "NCUA Board Member Todd M. Harper Statement on the Final Rule—Real Estate Appraisals," July 2019, https://www.ncua.gov/newsroom/speech/2019/ncua-board-member-todd-m-harper-statement-final-rule-real-estate-appraisals.

[58] See America's Credit Unions, "Member Business Lending," https://www.americascreditunions.org/issue/member-business-lending.

[59] Smaller credit unions—with assets under $10 million—would be unlikely to substantially increase their presence in the commercial lending market because it would not be cost effective for them to invest in the necessary underwriting systems given the low volume of commercial lending that they would feasibly be able to do. MBL is perhaps the most complex lending activity for credit unions and would require significant resources that many smaller credit unions would find cost prohibitive. (For example, church- or faith-based organizations that are open for limited hours during the week, with an all-volunteer management and staff, are likely to fall into this small-asset-size category.) See the testimony of the Honorable Debbie Matz, chairman of the NCUA, in U.S. Congress, House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, *H.R. 1418: The Small Business Lending* (continued...)

currently enjoy a presence in the commercial lending market and already have sufficiently large asset bases or are already operating close to the existing statutory limit would be more likely to increase their presence in the commercial market if the cap were raised.

Moreover, the credit union *system* as a whole can support increased MBL by increasing its use of *participation loans*. Financial institutions use loan participations to provide credit jointly. The loan originator, which often structures the loan participation arrangement, typically retains the largest share of the loan and sells smaller portions to other institutions.[60] This practice allows the originator to maintain control of the customer relationship (including the loan servicing) and overcome funding limitations. The other participating institutions can use their individual portions of the loan to diversify their asset (loan) portfolios, which can be a cost-effective financial risk management tool. The credit union system could, therefore, become a more prominent competitor in the commercial lending market with the banking system, which also uses participation lending arrangements to diversify risks. Nevertheless, loan participation arrangements with multiple credit unions would still expose the NCUSIF to financial risks.[61]

From an economic perspective, a lending cap imposes a distortionary limit that may be too high for some credit unions and too low for others, thus resulting in MBL shortages in the latter situations. For those credit unions that provide few or no MBLs, a cap is irrelevant. Credit unions facing an active MBL market must abruptly cease this type of lending when activity volume reaches the cap, which some may argue is set too low given that they can no longer satisfy their memberships' financial needs. Hence, a lending cap is arguably a blunt instrument to the extent that it imposes the same requirement on all institutions without taking into account differences in asset size and market purview.

Rather than limit MBL quantities, an alternative policy tool with a greater focus on the costs to originate MBLs—specifically subjecting the net income derived from MBL activities to a type of tax—would impose financial costs on credit unions without directly capping their lending ability.[62] For example, the unrelated business income tax (UBIT) for tax-exempt organizations could be applied to MBLs.[63] At the entity level, credit unions are exempt from federal income tax because they are nonprofit financial cooperatives. If, for example, a credit union were to provide

Enhancement Act of 2011, 112th Cong., 1st sess., October 12, 2011, pp. 11-12, http://financialservices.house.gov/UploadedFiles/101211matz.pdf.

[60] Although credit unions often enter into participations together (and banks often enter into participations together), loan originators can sell loan portions to any financial entity. In this case, loan portions sold directly to specific entities should not be confused with securitizations, in which loan portions are restructured into new public offerings.

[61] Since 2007, the number of credit unions purchasing loan participations increased 15%, and the dollar value of loan participations on credit unions' balance sheets grew by more than 40%. The NCUA also reported that participation loan charge-offs increased by more than 160% during the same period that credit unions increased their participation loan purchases. The NCUA has since provided more participation loan rules to mitigate risks to the NCUSIF while still attempting to maintain the viability of this diversification tool for individual credit unions. See NCUA, "Loan Participation Rule Provides Flexibility for Credit Unions, Security for Industry," press release, June 20, 2013, https://ncua.gov/newsroom/news/2013/loan-participation-rule-provides-flexibility-credit-unions-security-industry; and NCUA, "Financial Innovation: Loan Participations, Eligible Obligations, and Notes of Liquidating Credit Unions," 88 *Federal Register* 67570-67601, September 29, 2023.

[62] Economic theory suggests that an anticipated reduction in market transactions linked to tax incidence tends to be smaller relative to an anticipated reduction linked to a cap on the quantity supplied. See Hal R. Varian and Marc J. Melitz, *Intermediate Microeconomics*, 10th ed.

[63] Levying a UBIT has a policy implication—namely, to make explicit that a taxed activity should be considered unrelated to an entity's mission. However, the UBIT option discussed in this section is not meant to promote a policy stance on the appropriateness of MBL lending activity for the credit union system. Instead, the UBIT option is presented solely to illustrate a risk mitigation tool that can account for differences in the scale and MBL markets facing individual credit unions, thereby restraining MBL lending activities more efficiently and less arbitrarily.

financial services (e.g., check cashing) to nonmembers, any revenue generated from those activities would be subject to UBIT.[64] Likewise, implementing the UBIT for MBLs would allow costs to grow in proportion to the amount of MBL activity while minimizing an abrupt discontinuation of the activity for those credit unions nearing their established policy caps.

Another policy option, also with similarities to a tax, would be to adopt capitalization requirements comparable to those implemented for the banking system. The CUMAA established the MBL cap and a capital-based supervisory framework as tools to enhance prudential safety and soundness, ultimately providing more protection for the share deposit insurance fund. Enhanced capitalization (net worth) requirements could substitute for an MBL cap.[65] In short, policy tools operating via cost disincentives rather than quantity restrictions may still allow the credit union system to restrain MBL activity but with more flexibility for certain circumstances.

Prudential Risk Management Developments

Prudential safety and soundness regulation, which includes interest rate management and holding sufficient capital reserves, may reduce the financial institutions' insolvency (failure) risk and promote public confidence in the financial system. Larger capital reserves, for example, may not prevent adverse financial risk events from occurring, but the ability of financial firms to absorb greater losses associated with loan defaults may be enhanced. Greater absorption capacity may also strengthen public confidence in the soundness of these financial institutions and increase their ability to function during periods of financial stress. For this reason, the NCUA has increased prudential requirements to improve the credit union system's resilience to insolvency risk and to minimize possible losses to the NCUSIF—discussed in the textbox entitled "The 2008 Financial Crisis and NCUSIF Insolvency Risk"—and ultimately to taxpayers. These prudential developments are discussed in this section.

Mitigating Interest Rate Risks

Credit unions were granted the authority to increase their participation in the mortgage market during the late 1970s and 1980s.[66] As credit unions increased their participation in the mortgage market, they also grew more susceptible to the financial risks linked to this market—namely interest rate and credit (default) risks.[67] Rising interest rates was a major risk factor in the savings and loan crisis during the 1980s, as discussed in the text box below.

---

[64] Some credit unions may occasionally inquire about the permissibility to cash checks for nonmembers, which is not permissible under the FCU Act. See NCUA, "Cashing of U.S. Government Checks for Nonmembers," April 2001, https://ncua.gov/regulation-supervision/legal-opinions/2001/cashing-us-government-checks-nonmembers; NCUA, "Cashing Checks for Nonmembers," November 1999, https://ncua.gov/regulation-supervision/legal-opinions/1999/cashing-checks-nonmembers; NCUA, "Check Cashing Services to Nonmembers," June 1998, https://ncua.gov/regulation-supervision/legal-opinions/1998/check-cashing-services-nonmembers.

[65] The Community Bank Leverage Ratio framework is briefly discussed in the section entitled "The Risk-Based Capital Rule." For more information, see FDIC, "Community Bank Leverage Ratio Framework," November 4, 2019, https://www.fdic.gov/news/news/financial/2019/fil19066.html.

[66] See Alane K. Moysich, "An Overview of the U.S. Credit Union Industry," *FDIC Banking Review*, vol. 3, no. 1 (fall 1990), pp. 12-25, https://www.fdic.gov/analysis/archived-research/banking-review/br1990vol3no1full.pdf.

[67] For more information on the risks of single-family mortgages, see CRS Report R46980, *Single-Family Mortgage Pricing and Primary Market Policy Issues*, by Darryl E. Getter.

The Savings and Loan (S&L) Crisis

Financial institutions were generally provided with more tools to manage their interest rate risk exposures following the S&L crisis of the 1980s. Similar to credit unions, S&Ls were nonprofit, member-owned financial institutions specializing in taking savings deposits to facilitate residential home mortgage lending. Between 1980 and 1983, 4,853 S&Ls, which were holding portfolios consisting primarily of traditional fixed-rate mortgages, failed after the short-term interest rates paid to depositors rose to historic levels.[68] Regulation Q interest rate ceilings, which stemmed from the Banking Acts of 1933 and 1935, imposed interest rate ceilings on time and savings deposits. Depositors subsequently withdrew funds from S&L accounts with interest rate restrictions and deposited them in accounts without ceilings, such as money market mutual funds. Many S&Ls became insolvent when they were unable to maintain enough depositors to fund loans after deposit rates soared (with accelerating inflation).

The Garn-St. Germain Act granted financial institutions more tools to manage their interest rate risks.[69] For example, the ability to sell loans allows financial institutions to dampen their balance sheet losses should an interest rate spike reduce the value of portfolio assets. In addition to hedging against a potential decline in asset values, various interest rate derivatives may also be used to manage the mismatch between asset and liability maturities, specifically the risk that arises when their asset portfolio duration (i.e., the length of time it takes borrowers to repay their longer-term loans) exceeds their liabilities duration (i.e., the length of time financial institutions must repay their short-term borrowings).

The credit union system was subsequently granted more powers to mitigate interest rate risk stemming from its increased exposure to mortgage market risk, listed below:

- After P.L. 95-22 was passed, the NCUA adopted regulations on August 7, 1978, permitting credit unions to sell mortgage loans in the secondary market—specifically to Fannie Mae, Freddie Mac, and Ginnie Mae (government-sponsored enterprises, or GSEs) as well as to federal, state, and local housing authorities.[70] On August 16, 1978, federal credit unions were also granted the authority to sell their members' federally guaranteed student loans.[71]
- The Garn-St. Germain Act eliminated limits on the size and maturity of first lien mortgages, permitted refinancing of mortgage loans, and extended the maturity limit to 15 years for all second mortgages. The Competitive Equality Banking Act amended the FCU Act to authorize the NCUA to allow second-mortgage, home-improvement, and mobile home loans beyond 15 years.
- The Garn-St. Germain Act amended the FCU Act to allow credit unions to issue and sell securities, which are guaranteed pursuant to Section 306(g) of the

[68] See Alane K. Moysich, "The Savings and Loan Crisis and Its Relationship to Banking," in FDIC, *History of the 80s: An Examination of the Banking Crises of the 1980s and Early 1990s*, December 1997, https://www.fdic.gov/resources/publications/history-eighties/volume-1/history-80s-volume-1-part1-04.pdf. A chronology and bibliography of the S&L crisis is provided at https://www.fdic.gov/publications/history-eighties-lessons-future-volume-1. See also Paul Calem, "The New Bank Deposit Markets: Goodbye to Regulation Q," *Business Review*, Federal Reserve Bank of Philadelphia, November/December 1985, https://www.philadelphiafed.org/-/media/frbp/assets/economy/articles/business-review/1985/brnd85pc.pdf; Alton Gilbert, "Will the Removal of Regulation Q Raise Mortgage Interest Rates?," *Federal Reserve Bank of St. Louis Review*, December 1981; and Charlotte E. Ruebling, "The Administration of Regulation Q," *Federal Reserve Bank of St. Louis Review*, February 1970, https://fraser.stlouisfed.org/title/review-federal-reserve-bank-st-louis-820/february-1970-24495?page=29.

[69] See Gillian Garcia et al., "The Garn-St Germain Depository Institutions Act of 1982," *Economic Perspectives*, vol. 7 (March/April 1983), https://www.chicagofed.org/publications/economic-perspectives/1983/march-april-garcia.

[70] See NCUA, "Sale of Eligible Obligations," *1978 Annual Report of the National Credit Union Administration*, September 1979, https://www.ncua.gov/files/annual-reports/AR1978.pdf.

[71] NCUA, "Sale of Eligible Obligations."

National Housing Act.[72] In other words, federal credit unions were given the authority to participate in activities that would allow them to securitize assets.

- In 1988, the NCUA allowed credit unions to invest in mortgage-backed securities (MBS).[73] Rather than hold, for example, 30-year mortgages, the ability to hold MBS of shorter (e.g., 10-year) maturities reduces asset duration risk (discussed in the previous text box).
- In 1989, credit unions were allowed to use financial derivatives to purchase insurance against declines in GSE-issued MBS values that would occur after a rise in interest rates, thus protecting the overall value of their asset (loan) portfolios.[74] (The NCUA noted that the credit union system had experienced a 48% increase in real estate lending in 1987.)

The NCUA issued a final rule in 2012 requiring credit unions to develop written policies on their interest rate risk management policies.[75] The rule adopted a *supervisory interest rate risk threshold ratio*, computed using mortgages as well as investments with maturities greater than five years. However, credit unions with less than $10 million in assets were exempt from the rule. The NCUA has since made revisions to its interest rate supervisory framework as the system's assets have grown and interest rates have risen. Particularly for credit unions holding over $50 million in assets, recent updates established tolerance thresholds and valuation tools to facilitate interest rate risk management as well as further adjustments.[76]

Developments for Enhancing Capitalization Requirements

Exposure to mortgage credit risk—namely a sharp rise in the percentage of seriously delinquent mortgage loans in the United States—resulted in distress experienced by the credit union system in 2008.[77] Specifically, *corporate credit unions* faced increasing liquidity pressures during 2008 after a significant portion of their MBSs—following a deterioration of the underlying real estate collateral—lost value and were subsequently downgraded below investment grade.[78] Corporate credit unions operate as wholesale credit unions, meaning that they provide financing, investment, and clearing services for the retail credit unions that interface directly with customers. The corporates accept deposits from, as well as provide liquidity and correspondent lending services to, retail credit unions. This reduces the costs that smaller institutions would bear

[72] See NCUA, Office of General Counsel, "Authority to Issue and Sell Securities," https://www.ncua.gov/files/legal-opinions/asset-securitization-authority.pdf.

[73] See NCUA, Letter No. 96, March 1988, https://www.ncua.gov/files/letters-credit-unions/LCU1988-96.pdf.

[74] See NCUA, "Loans to Members and Lines of Credit to Members," 53 *Federal Register* 19748-19752, May 31, 1988. The final rule specifically discusses purchasing financial *put options*, which would allow a credit union to sell any MBS holdings to a counterparty at their initial prices prior to an interest rate increase.

[75] See NCUA, "Interest Rate Risk Policy and Program," 77 *Federal Register* 5155-5167, February 2, 2012.

[76] See NCUA, "Revised Interest Rate Risk Supervision," October 2016, https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/revised-interest-rate-risk-supervision; and NCUA, "Updates to Interest Rate Risk Supervisory Framework," September 2022, https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/updates-interest-rate-risk-supervisory-framework-0.

[77] See John Weinberg, "The Great Recession and Its Aftermath," Federal Reserve Bank of Richmond, November 22, 2013, https://www.federalreservehistory.org/essays/great_recession_and_its_aftermath.

[78] See statement of Deborah Matz, chairman, NCUA, "The State of the Credit Union Industry," p. 3, http://www.ncua.gov/News/Documents/SP20101209Matz.pdf, which was given in U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, 111th Cong., 2nd sess., December 9, 2010.

individually to perform various financial transactions for members.[79] Given that retail credit unions are cooperative owners of corporate credit unions, they are also federally insured by the NCUSIF. The NCUA placed two corporate credit unions into conservatorship in March 2009 and three additional corporates in September 2010. The five corporates under conservatorship at the time had represented approximately 70% of the entire corporate system's assets and 98.6% of the investment losses within the system.[80]

The 2008 Financial Crisis and NCUSIF Insolvency Risks

Congress created the NCUSIF in 1970 as the insurance fund for all federally regulated credit unions.[81] The NCUA manages the NCUSIF, which is completely funded by insured credit unions. The NCUSIF's primary income source is the premiums collected from credit unions,[82] which pay the fund's operating expenses, cover losses, and build reserves. Premiums were originally set at 1/12 of 1% of the total amount of member share accounts. However, P.L. 98-369 required each federally insured credit union to maintain a deposit at the NCUSIF equal to 1% of its insured share accounts.[83] Examination fees and any penalties collected by the NCUA from insured institutions are also deposited into the NCUSIF. Fund portions not applied to current operations can be invested in government securities, and the earnings also generate income for the fund. Thus, the NCUSIF's reserves consist of the 1% deposit, plus the fund's accumulated insurance premiums, fees, and interest earnings.

The share equity ratio—the ratio of total funds in the NCUSIF relative to the estimated amount of share deposits held by credit unions—is an indicator that represents the adequacy of reserves available to protect share depositors and maintain public confidence. The NCUA annually determines the normal operating level for the share equity ratio, which statutorily must fall between 1.2% and 1.5%. The 2006 equity ratio was 1.30% and fell below the statutory minimum to 1.18% by August 2010. The NCUA board may assess a premium when the ratio falls between 1.2% and the declared operating level, but it is required to assess a premium if the equity ratio falls below 1.2%. Similarly, the NCUA board may declare a dividend if, at the end of the calendar year, the equity level exceeds the normal operating level. It is required to do so if the equity ratio exceeds 1.5%.

Rather than deplete the NCUSIF, Congress in May 2009 established a Temporary Corporate Credit Union Stabilization Fund (TCCUSF) to accrue and recover losses from the corporates. The TCCUSF borrowed from Treasury to help cover conservatorship costs, and the NCUA also raised assessments on all federally insured credit unions, including those that did not avail themselves of corporate credit union services. The premium assessment reflected a plan to restore the NCUSIF equity ratio to 1.3%, which happened by December 2011.

After achieving a positive net position of $1.9 billion as of May 2017, the NCUA, in July 2017, proposed closing the TCCUSF and providing credit unions with a Share Insurance Fund distribution in 2018, estimated to be between $600 million and $800 million. The TCCUSF officially closed on October 1, 2017. Its assets and obligations were transferred to the NCUSIF. The NCUA reduced the share equity ratio from 1.39, which had previously been set in September 2017, to 1.38, administering an equity distribution (rebate) of $160.1 million to member institutions.

The Risk-Based Capital Rule

On January 23, 2014, the NCUA announced increases in capital requirements for a subset of natural person credit unions designated as *complex*.[84] The NCUA initially defined *complex credit union* as one having at least $50 million in assets.[85] On January 27, 2015, the NCUA revised the

[79] See Robert McGarvey, "How Many Corporate Credit Unions Will Be Standing by Year End?," *Credit Union Times*, March 2, 2011, http://www.cutimes.com/2011/03/02/how-many-corporate-credit-unions-will-be-standing?page=3.

[80] See Matz, "The State of the Credit Union Industry," p. 3.

[81] An insurance fund provides deposit insurance to protect members' accounts in the event of a credit union failure.

[82] These arrangements are similar to those of the FDIC's Deposit Insurance Fund.

[83] July 18, 1984, 98 Stat. 494. The 1% is carried on each individual institution's books as an asset.

[84] See NCUA, "NCUA Board Advances Greater Protection and Modern Regulation," press release, January 23, 2014, https://www.ncua.gov/newsroom/news/2014/ncua-board-advances-greater-protection-and-modern-regulation.

[85] The CUMAA required the NCUA to develop the definition of *complex credit union*. The Regulatory Flexibility Act (P.L. 96-354) requires federal agencies to consider the impact of their proposed and final rules on small entities. Consequently, the NCUA currently defines *complex credit union* as a natural person credit union with at least $50 (continued...)

initial proposed rule, amending the definition as having at least $100 million in assets.[86] On October 29, 2015, the NCUA finalized the risk-based capital rule.[87] Some of the rule's specific requirements included the following:

- A new asset *risk-weighting* system was introduced that would apply to *complex* credit unions, which would be more consistent with the methodology used for U.S. federally insured banking institutions.[88]
- A new risk-based capital ratio (defined using the narrower risk-based capital measure in the numerator and total risk-weighted assets, which are computed using the new risk-weighting system, in the denominator) of 10% would be required for complex credit unions to be *well-capitalized* under the prompt corrective action supervisory framework.[89] The risk-based capital ratio was designed to be more consistent with the capital adequacy requirements commonly applied to banking institutions worldwide.[90] Compliance of complex credit unions with the risk-based capital ratio requirements as well as the existing statutory 7% net worth asset ratio would have been effective by January 1, 2019, to avoid NCUA supervisory enforcement actions. However, the effective date was moved to January 1, 2020, after parts of the 2015 final rule were amended.[91]
- Non-complex credit unions with assets below $100 million would not have been required to comply with the new risk-weighting system, and they would no longer be required to risk-weight their assets. Instead, non-complex credit unions must comply with the existing statutory 7% net-worth asset ratio.[92]
- Credit unions with a concentration in commercial lending in excess of 50% of their total assets would be required to hold higher amounts of net worth to abate the higher levels of concentration risk.[93]

million in assets. This definition became effective on February 19, 2013, reflecting an increase from the 2003 definition that used the asset threshold of at least $10 million. See NCUA, "Prompt Corrective Action, Requirements for Insurance, and Promulgation of NCUA Rules and Regulations," 78 *Federal Register* 4032-4038, January 18, 2013.

[86] See NCUA, "Part II: Risk-Based Capital; Proposed Rule," 80 *Federal Register* 17, January 27, 2015.

[87] See NCUA, "Risk-Based Capital," 80 *Federal Register* 66626-66723, October 29, 2015, http://www.gpo.gov/fdsys/pkg/FR-2015-10-29/pdf/2015-26790.pdf.

[88] See "Summary of the Risk Weights" in the NCUA final rule, which includes an NCUA and FDIC risk weights comparison. The Federal Reserve and the OCC adopted the risk-weighting-assets system on July 2, 2013, and the FDIC adopted it on July 9, 2013. See OCC, "Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule," 78 *Federal Register* 198, October 11, 2013, https://www.govinfo.gov/content/pkg/FR-2013-10-11/pdf/2013-21653.pdf. The risk-based capital measure primarily accounts for credit (default) and concentration risk.

[89] Under the prompt corrective action supervisory framework, regulators examine whether credit unions and banks meet the requirements to be considered well-capitalized, adequately capitalized, under-capitalized, significantly undercapitalized, and critically undercapitalized. The level of scrutiny, restrictions, and penalties imposed by regulators increases as the financial health of a depository institution deteriorates.

[90] See CRS Report R42744, *U.S. Implementation of the Basel Capital Regulatory Framework*, by Darryl E. Getter.

[91] See NCUA, "Risk-Based Capital, Final Rule; supplemental," 83 *Federal Register* 55467-55478, November 6, 2018.

[92] Credit unions' statutory net worth requirements may be found at Illustration 17-A—Statutory Net Worth Category Classification on the NCUA website at http://www.ncua.gov/Legal/GuidesEtc/ExaminerGuide/chapter17.pdf.

[93] A risk weight of 150% will be applied to commercial loans should the total amount exceed 50% of total assets. See NCUA, "Risk Weights at a Glance," https://ncua.gov/regulation-supervision/regulatory-compliance-resources/risk-based-capital-rule-resources/risk-weights-glance.

On December 17, 2019, the NCUA issued a final rule to move the effective date to January 1, 2022.[94] The NCUA also amended the definition of *complex credit union* by increasing the asset threshold level from $100 million to $500 million.

Complex Credit Union Leverage Ratio

On July 22, 2021, the NCUA released a proposed rule that would allow eligible complex credit unions to opt into a complex credit union leverage ratio (CCULR) framework, which is comparable to the optional Community Bank Leverage Ratio framework,[95] under which banks with less than $10 billion in average total consolidated assets that meet certain risk-profile criteria may elect to maintain a leverage ratio of greater than 9% to satisfy both the risk-based and leverage capital requirements to be well-capitalized.[96] Likewise, rather than having complex credit unions calculate risk-based capital requirements, the CCULR framework would require them to meet a minimum net worth ratio initially established at 9% by January 1, 2022, that would gradually increase to 10% by January 1, 2024. The comment period ended on October 15, 2021. On December 23, 2021, the *Federal Register* published a final rule requiring a complex credit union to have a CCULR of at least 9% or greater that became effective on January 1, 2022. However, the NCUA did not adopt the transition provision to 10%.[97]

Supplemental Capital

Because credit unions do not issue common stock equity, they do not have access to capital sources beyond retained earnings. If alternative sources of capital (referred to as supplemental capital) were to be used in addition to net worth, then credit unions would be able to increase their lending while remaining in compliance with their safety and soundness net worth requirements. The proposal discussed below to adopt *supplemental capital* requirements would enhance the credit union system's lending capacity and introduce a new prudential risk management tool.

An NCUA working group has developed three general sources of supplemental capital that credit unions could raise, all of which would be repaid after reimbursement of the NCUSIF following liquidation of an insolvent credit union.[98] The types of capital are as follows:

[94] See NCUA, "Delay of Effective Date of the Risk-Based Capital Rules," 84 *Federal Register* 68781-68787, December 17, 2019; and NCUA, "Risk-Based Capital Rule Resources," https://ncua.gov/regulation-supervision/regulatory-compliance-resources/risk-based-capital-rule-resources.

[95] See NCUA, "NCUA Board Proposes Complex Credit Union Leverage Ratio," press release, July 22, 2021, https://www.ncua.gov/newsroom/press-release/2021/ncua-board-proposes-complex-credit-union-leverage-ratio; and NCUA, "Capital Adequacy: The Complex Credit Union Leverage Ratio; Risk-Based Capital," 86 *Federal Register* 45824-45854, August 16, 2021.

[96] See FDIC, "Community Bank Leverage Ratio Framework, November 4, 2019, https://www.fdic.gov/news/news/financial/2019/fil19066.html; and CRS Report R45989, *Community Bank Leverage Ratio (CBLR): Background and Analysis of Bank Data*, by David W. Perkins. In addition, the NCUA issued a final rule in April 2018 that amended its regulations regarding capital planning and stress testing for federally insured credit unions with $10 billion or more in assets. See NCUA, "Capital Planning and Supervisory Stress Testing," 83 *Federal Register* 17901-17910, April 25, 2018. Because of Section 4012 of the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136), the Community Bank Leverage Ratio (CBLR) was temporarily lowered to 8%. The initial CBLR at greater than 9% was fully re-established effective on January 1, 2022. See Federal Reserve, OCC, FDIC, "Agencies Announce Changes to the Community Bank Leverage Ratio," April 6, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200406a.htm.

[97] See NCUA, "Capital Adequacy: The Complex Credit Union Leverage Ratio; Risk-Based Capital," 86 *Federal Register* 72784-72806, December 23, 2021.

[98] See National Association of State Credit Union Supervisors, "NACSUS Supplemental Capital Resources," https://www.nascus.org/regulatory-resources/nascus-supplemental-capital-resources/.

- *Voluntary patronage capital* (VPC) if (noninstitutional) members were to purchase *equity shares* in the organization.[99] VPC equity shares would pay dividends. However, a VPC investor would not obtain any additional voting rights, and no investment would be allowed to exceed 5% of a credit union's net worth.
- *Mandatory membership capital* (MMC) if a member pays what may be conceptually analogous to a membership fee. MMC capital would still be considered equity for the credit union but, unlike VPC, it would not accrue any dividends.
- *Subordinate debt* (SD) from external and institutional investors. SD investors would have no voting rights or involvement in a credit union's managerial affairs. SD would function as a hybrid debt-equity instrument, meaning the investor would simply be a creditor with no equity share in the credit union while it is solvent and would not be repaid principal or interest should the credit union become insolvent. SD investors must make a minimum five-year investment with no option for early redemption.

Because the net worth for credit unions is defined in statute, congressional legislative action would be required to permit other forms of supplemental capital to count toward their net worth prudential requirements.

Policy Issue: Community Charters

In 1982, the NCUA adopted a policy permitting a credit union's membership to consist of multiple groups, each with its own distinct common bond.[100] By allowing multiple credit unions with unlike common bonds to combine, prudential concerns could be addressed more quickly as opposed to going through more formal processes to amend charters or facilitate mergers. The policy also allowed small groups lacking the resources to form individual credit unions to collectively join the credit union system. A lawsuit was filed by bankers to contest the policy change, resulting in the Supreme Court invalidating the NCUA's decision.[101] To achieve the NCUA's policy objectives, Congress subsequently passed P.L. 105-219, directing the NCUA to prescribe, by regulation, a definition for a *well-defined local community, neighborhood, or rural district*.

In 2016, the NCUA published a final rule comprehensively amending its chartering and field of membership rules to maximize access to federal credit union services to the extent permitted by law, which included a definition for a *well-defined local community (WDLC)*, among other definitions.[102] Credit union competitors, however, legally challenged the revisions. The WDLC provision, for example, which would have allowed a combined statistical area with fewer than 2.5 million people to qualify as a local community, arguably could have had a discriminatory impact on poor and minority urban residents. Challengers also argued that an associational charter may limit the ability of a credit union to add underserved areas (e.g., local urban or rural underserved areas as determined by the NCUA) to its field of membership unless it also has a multiple common-bond charter.[103]

[99] In discussions of supplemental capital, the term *equity shares* is used to help distinguish from *share deposits*, which is the term generally used in discussions about credit unions' deposits.

[100] See NCUA, "Organization and Operations of Federal Credit Unions," 61 *Federal Register* 59305-59311, November 22, 1996, https://www.govinfo.gov/content/pkg/FR-1996-11-22/pdf/96-29886.pdf.

[101] See NCUA v. First Nat'l Bank & Trust Co, 522 U.S. 479 (1998).

[102] See NCUA, "Chartering and Field of Membership Manual," 81 *Federal Register* 88412-88523, December 7, 2016. NCUA revised certain terms such as *rural district*, *underserved area*, and *multiple common-bond credit union* and implemented other rules intended to broaden access to federal credit unions.

[103] See 12 U.S.C. §1759(c)(2).

In 2019, the D.C. Circuit Court of Appeals upheld the NCUA's revised field of membership rule but remanded two provisions.[104] One remanded provision would have raised the population limit for rural districts from the greater of 250,000 or 3% of the relevant state's population to 1 million people. Some geographical areas arguably could have been defined to extend beyond the state borders of a credit union's headquarters. The WDLC definition was also remanded, and the NCUA proposed to clarify its authority to reject fields of membership applications that would want to exclude low- or moderate-income (LMI) individuals.[105] In 2020, the NCUA re-adopted the WDLC provision to allow a credit union to designate a combined statistical area or an individual, contiguous portion if the chosen area has a population of 2.5 million or fewer. An explicit provision was added to address potential discriminatory concerns.[106]

In 2023, the NCUA proposed additional revisions to its charting and field of membership guidelines, specifically focusing on community-based fields of memberships and underserved areas.[107] In the rule, the NCUA notes that many credit unions initially chartered with single or multiple common bond would experience substantial membership losses following employer relocations, prompting the need for conversions to community charters.[108] Moreover, the NCUA launched the Advancing Communities through Credit, Education, Stability, and Support (ACCESS) initiative to expand access to financial services provided by credit unions in underserved, unserved, or disadvantaged communities.[109] For these reasons, the NCUA's rule intends to streamline and clarify procedures for charter conversion applications as well as those designed to enhance access for underserved and LMI individuals. For example, because the NCUA's statutory definition of *underserved area* includes the CDFI definition of *investment area*, the NCUA rule incorporates definitional updates made by the CDFI Fund (e.g., adoption of the U.S. Census Bureau's American Community Survey as the successor to the decennial census long form data[110]) among other simplifying requirements for adding underserved areas to fields of membership.[111]

Ensuring credit accessibility in underserved areas that are part of WDLCs has led to interest in the Community Reinvestment Act (CRA, P.L. 95-128, 12 U.S.C. §§2901-2908), which addresses

---

[104] See *American Bankers Association, Appellee v. National Credit Union Administration*, No. 18-5154 (United States Court of Appeals for the District of Columbia Circuit 2019), https://www.cadc.uscourts.gov/internet/opinions.nsf/EB59CD243BABE1BD8525845C0050E450/$file/18-5154.pdf.

[105] See NCUA, "NCUA Board Member Todd M. Harper Statement on the Proposed Community Field of Membership Rule," October 24, 2019, https://www.ncua.gov/newsroom/speech/2019/ncua-board-member-todd-m-harper-statement-proposed-community-field-membership-rule.

[106] See NCUA, "Chartering and Field of Membership," 85 *Federal Register* 56498-56514, September 14, 2020.

[107] See NCUA, "NCUA Chairman Todd M. Harper Statement on the Proposed Rule on Field of Membership and Chartering," February 2023, https://ncua.gov/newsroom/speech/2023/ncua-chairman-todd-m-harper-statement-proposed-rule-field-membership-and-chartering; and NCUA, "Chartering and Field of Membership," 88 *Federal Register* 12606-12621, February 28, 2023.

[108] See NCUA, "Chartering and Field of Membership," 88 *Federal Register* 12616, February 28, 2023.

[109] See NCUA, "Chairman Hood Reinforces Commitment to Financial Inclusion, Launches ACCESS Initiative," October 2020, https://ncua.gov/newsroom/press-release/2020/chairman-hood-reinforces-commitment-financial-inclusion-launches-access-initiative; and NCUA, "ACCESS Initiative," https://ncua.gov/support-services/access.

[110] See CRS Insight IN12303, *The American Community Survey*, by Taylor R. Knoedl.

[111] The NCUA notes that *underserved area* is defined in the FCU Act as a local community, neighborhood, or rural district that meets the definition of *investment area* under Section 103(16) of the Reigle Community Development Regulatory Improvement Act of 1994 (P.L. 103-325)—also referred to by Title I, Subtitle A: Community Development Banking and Financial Institutions Act—and is underserved by other depository institutions based on data of the NCUA and the federal banking agencies. For more information about the *target markets* and *investment area* as defined by the CDFI Fund, see CRS Report R47217, *Community Development Financial Institutions (CDFIs): Overview and Selected Issues*, by Darryl E. Getter.

how banking institutions meet the credit needs of the localities they serve—particularly in LMI neighborhoods—and is currently implemented by the federal bank regulators.[112] A CRA regulatory framework, which relies upon geographically designated areas for banks, can be adapted for credit unions with community charters.[113] A CRA examination can also be designed to provide quantitative and qualitative performance measures of an institution's lending activities.[114]

CRA Overview

The CRA does not define specific loan types or impose lending quotas on banks. Instead, regulators issue performance ratings to banks for their activities—such as mortgage, consumer, and business lending; community investment; and low-cost services that would benefit LMI areas and entities—that occur within their designated *assessment areas* during specified periods.[115] CRA ratings are subsequently taken into account when banks apply for new branch openings, mergers, and acquisitions, among other things.

One motivation prompting Congress to pass the CRA grew from concerns with the extent banks were using deposits collected from local neighborhoods to fund out-of-state as well as various international lending activities at the expense of addressing the local areas' housing, agricultural, and small business credit needs during the late 1970s and early 1980s as more states began to allow bank holding companies to acquire out-of-state subsidiaries. Another motivation was to discourage *redlining* practices. One type of redlining can be defined as the refusal of a bank to make credit available to all neighborhoods in its immediate geographical range, including LMI neighborhoods where it may have collected deposits. A second type of redlining is denying creditworthy applicants credit based on the neighborhoods where they live, perhaps due to discrimination.

Although the CRA currently applies only to banks with FDIC-insured deposits, some states have adapted various CRA requirements that apply to nonbank financial institutions—including credit unions—designed to meet the lending and investment needs of their communities.[116] For example, Illinois, Massachusetts, and New York have CRA-like requirements to encourage mortgage originations in LMI areas.[117] Connecticut requires its state-chartered credit unions wanting to amend their fields of membership and expand to have their CRA records reviewed and considered beforehand. Other states have considered adopting CRA-like rules.[118]

---

[112] For more information, see CRS Report R48096, *Modernization of the Community Reinvestment Act*, by Darryl E. Getter.

[113] CRA requirements for Connecticut-based credit unions, for example, have been adopted for those with geographic charters and at least $10 million in assets, with only 14 institutions receiving ratings.

[114] The NCUA cites U.S. Government Accountability Office (GAO), *Banking Services: Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could Be Improved*, GAO-22-104468, February 2022, pp. 1-85, https://www.gao.gov/assets/gao-22-104468.pdf. In this report, GAO recommends that the NCUA and other depository regulators adopt outcome-based performance measures to assess agency performance in facilitating access to credit union services.

[115] Banks define and update their *assessment areas*, the areas where they collect deposits and are subsequently evaluated on their reciprocal statutory obligations to meet credit needs—particularly the needs of their low- or moderate-income (LMI) patrons.

[116] See CFPB, "State Community Reinvestment Acts: Summary of State Laws," November 2, 2023, https://www.consumerfinance.gov/data-research/research-reports/state-community-reinvestment-acts-summary-of-state-laws/.

[117] Massachusetts examines the lending record of licensed mortgage lenders making 50 or more home mortgage loans in the previous two calendar years. See Commonwealth of Massachusetts, "CRA Ratings and Public Evaluations for Mortgage Lenders," https://www.mass.gov/info-details/cra-ratings-and-public-evaluations-for-mortgage-lenders. The CRA law implemented by New York also focuses primarily on mortgage lending. See Stephanie C. Robinson and Jeffrey P. Taft, "New York Becomes the Latest State to Expand Its Community Reinvestment Law to Nonbank Lenders, *Consumer Financial Services Review*, Mayer Brown, November 2, 2021, https://www.cfsreview.com/2021/11/new-york-becomes-latest-state-to-expand-its-community-reinvestment-law-to-nonbank-lenders/.

[118] See Laurie Goodman et al., "Expanding the Community Reinvestment Act as the State Level: What Do the Numbers Tell Us?," Urban Institute, April 25, 2023, https://www.urban.org/urban-wire/expanding-community-reinvestment-act-state-level-what-do-numbers-tell-us.

Congress has considered adopting CRA for credit unions. In the 118th Congress, for example, H.R. 9245 and S. 4824, the American Housing and Economic Mobility Act of 2024, would have required the adoption of provisions with similarities to CRA for some credit unions.[119] Adopting a CRA framework would likely require customization to account for differences between the credit union and banking systems.[120]

- If a credit union receives a favorable rating following a CRA evaluation, it still may not be allowed, for example, to lend beyond the statutory MBL cap. In other words, although a CRA policy tool may encourage credit unions to expand their lending activities primarily when they apply to expand charters, it may be less effective at times when chartering applications are not involved—particularly if the NCUA lacks discretionary authority to offer alternative incentives (e.g., an exemption from a statutory limitation on a permissible lending activity[121]).
- If the bank asset size thresholds adopted in the revised CRA final 2024 rule were applied, less than 6% of all federally insured credit unions in 2024 would be eligible for evaluation under all four of the bank CRA performance tests. Approximately 90% of credit unions would be evaluated under only one of the performance tests—the lending test for small banks.[122] Furthermore, most CRA data collection requirements may be more difficult for these small institutions to collect and disseminate to regulators depending upon the extent they have adopted automated technologies.[123] A less standardized and more customized CRA framework, therefore, would likely be necessary if all credit unions had to be evaluated.
- For the CRA retail lending test for banks, a *primary loan product line* is one that meets various thresholds (based upon loan dollars amounts, loan counts, or both).[124] Such thresholds would likely need recalibration even for those credit unions with higher lending volumes due to differences in lending business models and specialties. For example, as previously stated, fewer credit unions

[119] See CU Today, "Senator's Bill Would Impose New CRA-Like Provisions on Certain Credit Unions," May, 29, 2024, https://www.cutoday.info/Fresh-Today/Senator-s-Bill-Would-Impose-New-CRA-Like-Provisions-on-Certain-Credit-Unions.

[120] See "NCUA's Harper Asks for 'Flexibility' If Community Reinvestment Act Applied to Credit Unions," *American Bankers Association Banking Journal*, November 20, 2024, https://bankingjournal.aba.com/2024/11/ncuas-harper-asks-for-flexibility-if-community-reinvestment-act-applied-to-credit-unions/.

[121] For example, although banks can only participate in lending arrangements and are prohibited from having ownership interests in investments, federal banking regulators can grant exemptions for investments that promote the public welfare by providing housing, services, or jobs that primarily benefit LMI individuals or revitalizes LMI areas.

[122] The bank sizes used to determine the required CRA performance test are as follows: Small banks are those with assets of less than $600 million, intermediate banks are those with assets of at least $600 million but less than $2 billion, and large banks are those with assets of at least $2 billion as of December 31. As of fourth quarter of 2024, 3,855 of the 4,299 federally insured credit unions held assets totaling less than $500 million, which is approximately 90% of the credit union system. Of the remaining 718 credit unions, 274 held assets of at least $500 million but less than $1 billion, and 444 held assets totaling over $1 billion. Only one of the CRA performance tests is used to evaluate banks with less than $600 million. Banks with over $2 billion in assets are subject to all four CRA performance tests. In January 2025, CRS ran a query on the NCUA website, finding that 247 credit unions had $2 billion or more in assets.

[123] The bank regulators exempt small banks (defined as those with assets of less than $600 million) from various CRA loan data collection and reporting obligations.

[124] For example, New York CRA requirements apply to nonbank mortgage lenders that originate 50 or more home mortgage loans in the previous two calendar years. See Hannah Lang, "New York Expands CRA Requirements to Nonbank Mortgage Lenders," *American Banker*, November 1, 2021, https://www.americanbanker.com/news/new-york-expands-cra-requirements-to-nonbank-mortgage-lenders; and Robinson and Taft, "New York Becomes Latest State."

> have developed the equivalent expertise or infrastructure as banks to originate large numbers of MBLs—and having less incentive to do so may be partly due to the MBL cap. In addition, automobile loans, which are important in LMI credit markets, are likely to be major product lines at credit unions rather than banks.[125] Notably, adopting automobile loans as a primary product line in the 2023 updated CRA examinations for banks (with assets over $10 billion) had been proposed but not finalized due to the data collection and reporting burden necessary to establish robust market benchmarks, which may also be an issue for some credit unions.[126] Furthermore, more credit unions (relative to banks) may be likely to engage in subprime lending (e.g., subprime automobile loans and PALs) given their smaller sizes, which may be beneficial for developing member relationships and the ability to offer more customized lending terms. Although some borrowers may be better served by having access to subprime loans, bank regulators are reluctant to award CRA credit for and encourage subprime loan originations.[127] Thus, primary product lines and the criteria to evaluate them are likely to require further tailoring for credit union CRA evaluations.

Despite not having a federal CRA framework, credit unions are still encouraged to support *financial inclusion*, defined as increasing the access of traditionally underserved populations and markets to affordable financial services and products. For example, the NCUA and the CDFI Fund announced a joint initiative to encourage certification of those credit unions with a primary mission of promoting community development, making them eligible for financial awards and other assistance (provided by the CDFI Fund) that promotes community development in markets comprised of economically distressed people and places.[128]

Whether a CRA framework for the credit union system should be considered a complement or supplement to existing anti-discrimination legislation is subject to debate. Notably, credit unions (as well as banks and other lenders) are covered by the Equal Credit Opportunity Act of 1974 (P.L. 93-495, 15 U.S.C. §§1691-1691f), enacted as Title V, 88 Stat. 1521, as well as the Fair Housing Act of 1968, enacted as Title VIII of the Civil Rights Act of 1968 (P.L. 90-284).[129] Therefore, enforcement of these statutes by relying upon the existing system of fair lending exams may be a more economical approach for mitigating discrimination in comparison to establishing a formal CRA framework for the credit union system.

---

[125] Many community banks may be unlikely to have automobile loans as a major product line. See Independent Community Bankers Association, "2023 CRA Final Rule Summary," https://www.icba.org/docs/default-source/icba/advocacy-documents/summaries/comprehensive-cra-final-rule-summary.pdf. Under a CRA requirement, credit unions that specialize in automobile lending would be required to collect and maintain automobile lending data, which may be costly, particularly for small credit unions.

[126] See OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024, p. 6893.

[127] See FDIC, *Interagency Fair Lending Examination Procedures*, appendix, August 2009, https://www.fdic.gov/regulations/examinations/fairlending/documents/interagency-fl-exam-procedures-appendix.pdf; and OCC, "Fair Lending," http://www.occ.gov/topics/consumer-protection/fair-lending/index-fair-lending.html. Also, banks may be awarded CRA credit for making higher-risk loans insured by federal agencies, such as the Federal Housing Administration or the Small Business Administration.

[128] See CRS Report R47169, *Community Development Financial Institutions (CDFI) Fund: Overview and Programs*, by Donald J. Marples and Darryl E. Getter.

[129] Title VII of the Consumer Credit Protection Act prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or good faith exercise of any rights under the Consumer Credit Protection Act. See Federal Trade Commission, "Equal Credit Opportunity Act," https://www.ftc.gov/legal-library/browse/statutes/equal-credit-opportunity-act.

Policy Issue: Third-Party Service Providers

As more financial transactions are conducted online, financial institutions that lack in-house technological expertise increasingly rely on third-party technology service providers (TSPs). TSP vendors develop software and interfaces for customer accounts and payment services, as well as cloud computing services for data storage. With growing reliance on TSPs, the NCUA is increasingly concerned with *operational risks*—the risk of loss having to do with failed internal controls, people, systems, or external events such as cyber-related disruptions (e.g., unauthorized access to customer data) that can occur at either a depository or a TSP and may weaken public trust and confidence in the financial system. Although the banking regulators have the authority to supervise TSPs used by banks, the NCUA does not have the authority to supervise TSPs used by credit unions.[130] The NCUA has requested—and the Financial Stability Oversight Council has recommended—that Congress restore previous authority that would be similar to that of the banking regulators over TSPs.[131]

Credit union trade groups, however, have opposed restoring the NCUA's authority over credit union TSPs due to an anticipated increase in costs for the NCUA to hire specialized examiners, which would be covered by levying additional fees on credit unions unless the legislation provided another funding source. The trade groups recommend that the NCUA use its existing authority to obtain information from *credit union services organizations*, which are wholly or partly owned by credit unions and provide financial support services for credit unions and their members.[132] In addition, they argue that the NCUA, as a member of the Federal Financial Institutions Examination Council—an interagency body of federal financial regulators, including the banking regulators—should be able to gain access to TSP examinations conducted by other council member agencies when a TSP serves both credit unions and banks. If the NCUA is not granted access, they argue that Congress should compel the other regulators to provide them with access.

Author Information

Darryl E. Getter
Specialist in Financial Economics

[130] For more information, see CRS In Focus IF12665, *Technology Service Providers and Credit Unions*, by Darryl E. Getter and Paul Tierno.

[131] See NCUA, "NCUA Chairman Todd M. Harper's Remarks at NASCUS's State System Summit (S3)," August 27, 2023, https://ncua.gov/newsroom/speech/2023/ncua-chairman-todd-m-harpers-remarks-nascuss-state-system-summit-s3; and Financial Stability Oversight Council, *Annual Report 2023*, 2023, https://home.treasury.gov/system/files/261/FSOC2023AnnualReport.pdf.

[132] See National Association of Federally-Insured Credit Unions, "NCUA 3rd party Vendor Examination Authority," September 2022, https://www.nafcu.org/system/files/files/NCUA%203rd%20Party%20Vendor%20Examination%20Authority%202022_0.pdf.

Disclaimer