

# **NASCUS**

## **Submission for the Record**

**Senate Banking, Housing and Urban  
Affairs Committee  
Consideration of Regulatory Relief  
Proposals Hearing**

**June 21, 2005**

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To the Senate Banking, Housing and Urban Affairs Committee  
Consideration of Regulatory Relief Proposals Hearing  
National Association of State Credit Union Supervisors (NASCUS)  
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### **NASCUS History and Purpose**

The National Association of State Credit Union Supervisors (NASCUS) is a professional association representing the forty-eight (48) state and territorial regulatory agencies that supervise the nation's more than 3,800 state-chartered credit unions. NASCUS has been committed to enhancing state credit union supervision and advocating for a safe and sound state credit union system since its inception in 1965. NASCUS is the sole organization dedicated exclusively to the promotion of the dual chartering system and advancing the autonomy and expertise of state credit union regulatory agencies. NASCUS appreciates the opportunity to provide a submission for the record to the Senate Banking, Housing and Urban Affairs Committee for its hearing, Consideration of Regulatory Relief Proposals.

NASCUS appreciates the Committee's continued commitment to providing regulatory relief, and ensuring a safe and sound environment for credit unions and the consumers they serve. We enjoyed the opportunity to be involved in establishing regulatory relief priorities during the 108<sup>th</sup> Congress and having input in the matrix containing regulatory concerns for financial institutions in 2004.

We are providing written testimony to reinforce the regulatory priorities we presented in the matrix, as well as to share new regulatory priorities. We thank the Committee for its study and consideration of the NASCUS priorities for regulatory relief. We further encourage the Committee to consider the provisions we present when drafting regulatory relief legislation.

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## **NASCUS Priorities for Regulatory Relief**

NASCUS priorities for regulatory relief legislation focus on the reforms that will strengthen the state system of credit union supervision and enhance the capabilities of state-chartered credit unions. The ultimate goal is to meet the financial needs of consumer members while assuring that the state system is operating in a safe and sound manner.

In this testimony, NASCUS addresses the following regulatory relief issues vital to state-chartered credit unions:

- capital reform, including amending the current Prompt Corrective Action (PCA) provision for credit unions, risk-based capital reform, and amending the definition of net worth to include the retained earnings of a merging credit union when calculating net worth;
- access to alternative capital for credit unions;
- member business lending, expanding the lending provision and amending the definition of a member business loan;
- Securities and Exchange Commission (SEC) regulatory modernization that provides parity for credit unions with other financial institutions;
- allowing non-federally insured credit unions to join the Federal Home Loan Banks (FHLBs);

- NASCUS strongly believes that the process for converting a state-chartered credit union to another financial institution charter is a matter that should be determined by state law and regulation, not dictated in federal legislation.
- preservation of the dual chartering system and protection against the preemption of state laws.

## **Capital Reform**

Credit unions need an amendment to the PCA provision of the Federal Credit Union Act (FCUA) that would obligate federally insured credit unions to include all forms of capital when calculating the required net worth ratio. Under the current federal statute, credit union net worth is defined as and limited to retained earnings.

The exclusive reliance on retained earnings limits a credit union's ability to implement new programs or expand services to meet the changing needs of American consumers in its membership. The failure to authorize these credit unions to include all forms of capital in their PCA net worth calculation distorts the credit union's actual financial position. NASCUS believes this change has been necessary since 1998, when the current PCA standards for credit unions were established in federal statute. We noted its importance in our testimony, presented by NASCUS Chairman Roger W. Little, to this Committee on June 22 2004; it is also in the regulatory matrix created from the regulatory relief testimony.

NASCUS is encouraged by the May 2005 American Institute of Certified Public Accountants (AICPA) letter to the NCUA acknowledging the disparity in

regulatory reporting among insured institutions. AICPA correctly recognizes that credit unions may only use retained earnings when calculating net worth and that all other federal agencies recognize total equity as determined in accordance with GAAP, as a basis for calculating regulatory capital. The AICPA further states that retained earnings are only one component of GAAP equity.

NASCUS supports this position and firmly believes that the equity section of a credit union's balance sheet includes more than just retained earnings. NASCUS asks for this Committee's support in amending the definition of net worth in the FCUA to include more than retained earnings. This would provide consistency in capital standards with the other federally insured depository institutions.

In addition, amending the definition of net worth cures the unintended consequences for credit unions of the Financial Accounting Standards Board (FASB) business combination accounting rules. FASB's Financial Accounting Standard No. 141 requires the acquisition method for business combinations and effectively eliminates the pooling method for the combinations of mutual enterprises.

NASCUS applauds the introduction of H.R. 1042, and its passage via voice vote in the House of Representatives, which amends the definition of net worth to include the net retained earnings of a merging credit union with that of the surviving credit union. We recognize and appreciate that a similar provision was introduced in H.R. 2317, the Credit Union Regulatory Improvement Act, CURIA.

In short, the acquisition accounting method would require the valuation of the target credit union at fair value, the recognition of identifiable intangibles (i.e., core deposit intangibles and/or goodwill), when relevant, and the application of a market-based acquisition model to a non-bargained transaction. The retained

earnings of the merging institution would no longer be combined with those of the continuing credit union, creating a potentially significant dilution of statutory net worth and an unintended impediment to credit union mergers. Mergers are a safety and soundness tool regulators use to protect funds deposited by American consumers and to preserve the National Credit Union Share Insurance Fund (NCUSIF).

If a credit union cannot be merged due to PCA concerns caused by the inability to add the capital of the merged credit union, then credit unions in a weakened condition might face liquidation. There may also be more requests for NCUA to provide financial assistance in merger transactions. An increase in liquidations may cause greater reputation risk, severe loss of confidence for the credit union industry, greater losses to the NCUSIF and increased costs to the industry and ultimately to consumers. This scenario spells disaster for credit unions. The credit union community jointly agrees on the importance of this provision. NASCUS supports both H.R. 1042 and Section 104 in H.R. 2317. We respectfully request this Committee to introduce similar provisions in the regulatory relief bill that is currently being drafted.

### **Risk-Based Capital**

NASCUS endorses and has a long-standing policy supporting risk-based capital for credit unions. Risk-weighted capital reform should be flexible. NASCUS believes that any new regulations should be progressive and not designed to regulate to the lowest common denominator.

We believe risk-based capital is a sound and logical approach to capital reform for credit unions. We support a risk-based capital plan, such as presented in Title I of H.R. 2317, and believe additional enhancements that work in tandem with

risk-based capital would be prudent and provide even greater safety and soundness for credit unions. We further believe that alternative capital authority and a risk-based system are complementary capital reforms. NASCUS' support of risk-based capital is reflected in the matrix of regulatory relief proposals.

### **Alternative Capital for Credit Unions**

We support capital reform beyond the risk-weighted capital and FASB merger fix. NASCUS believes that an important part of capital reform is providing credit unions access to alternative capital. The combination of current PCA requirements and a changing economic landscape have created a regulatory dilemma for many state-chartered credit unions. As noted above, the FCUA defines credit union net worth as retained earnings. The National Credit Union Administration (NCUA) has determined that it lacks the regulatory authority to broaden the net worth definition to include other forms of capital as a part of PCA calculations. Thus, credit unions require an amendment to the Act to rectify this statutory deficiency.

NASCUS has always supported the concept of alternative capital for credit unions. After study, NASCUS has created a white paper illustrating both equity and debt models for alternative capital. NASCUS firmly believes and the white paper demonstrates that alternative capital is a viable method for credit unions to build net worth.

Each of the models presented in the white paper were designed with the following features:

- Preserve the not-for-profit structure of credit unions;
- No voting rights;

- No put rights on the part of the holder;
- Redemption only at the discretion of the issuer, and then only at the face amount;
- Interest or dividends payable at a fixed rate rather than based on performance;
- Subordination to claims of creditors and depositors.

Structured in this manner, these instruments ensure that ownership interest (including influence) remains with the members. As such, these instruments would not affect the federal income tax exemption that credit unions have historically enjoyed. The three model instruments are introduced below.

#### *Member Paid-In Capital*

The first model presents the key characteristics of members paid-in capital (PIC). The first hybrid capital instrument model could be called Member Paid-In Capital because of its similarity to instruments by the same name currently issued by corporate credit unions. The member PIC issued by corporate credit unions is recognized by the NCUA as regulatory capital.<sup>1</sup> Put plainly, Member PIC amounts to little more than a share account issued to existing credit union members.

Under Member PIC, dividends (which are structured to be equivalent to interest) would be payable at a specified rate, most likely based on external standard (e.g., LIBOR, FHLB stock dividend rate). To satisfy GAAP equity accounting standards, dividends on PIC could be deferred at the credit union board's discretion (e.g., the credit union could forgo a dividend payment if, immediately

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<sup>1</sup> Corporate credit unions are specifically exempt from the Federal Credit Union Act's prompt corrective action requirements. Thus, there is no statutory "net worth definition" impediment to the NCUA's recognition of alternative forms of instruments or accounts as capital for regulatory purposes.

thereafter, the credit union would fail to meet one or more applicable capital compliance ratios).

Like equity instruments, Member PIC could not be put by the member back to the credit union – meaning that the member has no right to immediate redemption. However, the credit union could redeem Member PIC in a variety of situations at the credit union’s sole discretion. For example, the credit union could either call member PIC or offer pro rata redemption. In addition, the credit union could choose, in its sole discretion, to honor a member’s redemption request under limited circumstances. Those limited circumstances most likely would include both a lengthy waiting period (*e.g.*, five years) and a requirement that, immediately following such redemption, the credit union would remain in compliance with all applicable capital compliance ratios.

To give Member PIC two additional features typically present in GAAP equity instruments, it would have no stated maturity date and would be subordinate to other obligations and share accounts. Member PIC has sufficient GAAP equity characteristics that would undoubtedly qualify it as Tier 1 capital in the eyes of the other Federal Financial Institution Examination Council (FFIEC) regulatory agencies.

On the other hand, bolstering the argument that Member PIC would not be capital stock for tax purposes, it would not grant holders any voting rights in the credit union nor would it be transferable to non-members without the consent of the credit union. Treating Member PIC’s tax treatment as debt rather than capital stock would entitle holders the right only to receive interest payments and the face amount on liquidation or redemption by the credit union. Member PIC’s priority also tends to support its debt characterization for tax purposes. In this regard, Member PIC would have priority over retained earnings, meaning that

Member PIC would not suffer losses until all retained earnings had been exhausted to meet the credit union's liabilities.

In 1997, the Internal Revenue Service (IRS) issued a private letter ruling to the effect that U.S. Central Member PIC with the above characteristics did not constitute capital stock for purposes of determining whether U.S. Central was exempt from federal income taxation under Section 501(c)(14)(A). Meanwhile, U.S. Central's independent auditors have consistently treated such instruments as equity for GAAP purposes.

To support further Member PIC as a viable option of alternative capital, State Employees' Credit Union of North Carolina obtained a private letter ruling from the IRS on May 2, 2005, that confirmed its equity shares, similar to the PIC instrument described, did not constitute capital stock. The private letter ruling notes, "... equity shares do not constitute capital stock with the meaning of section 501(c)(14)(A) of the code because they are merely a means of saving in that they grant neither a participating equity interest in credit union nor any participation in the management of the credit union." The IRS made its determination based on the information presented by the credit union and representation by its legal counsel.

#### *Non-Member Paid-In Capital*

The second alternative capital instrument model is designed to obtain capital from outside the credit union's members, and is thus called Non-Member PIC. The non-members have only an indirect interest in the credit union and never become members.

Under this model, the credit union would first cause a limited liability company (LLC) to be formed. The initial contributors to the LLC's capital (and, thus, its

initial owners) would be a limited number (*e.g.*, seven to ten) of current individual members of the credit union, most likely officers or directors of the credit union. These individuals would contribute at least 3 percent of the proposed total capital of the LLC (*i.e.*, the total capital to be contributed to the credit union), in exchange for 100 percent of the voting junior interests to be issued by the LLC. The LLC would obtain the remaining 97 percent of its capital by issuing 100 percent of its non-voting senior interests to persons not necessarily affiliated with the credit union. The LLC would be treated as a partnership for federal income tax purposes.

The LLC would then become a member of the credit union and purchase a special share certificate with many of the features outlined above for Member PIC (the obligation). Despite its financial interest in the credit union, the LLC would have but one vote on matters coming before the credit union members for a vote. Meanwhile, the voting control of the LLC would be vested solely in the holders of the voting junior interests. The only exception would be a limited voting right for the holders of the non-voting senior interests in the event that the credit union failed to pay interest to the LLC for an extended period (*e.g.*, three years).

The credit union would pay interest on the obligation to the LLC at a specified preferred rate. The LLC, in turn, would pass on all or substantially all of its income from the obligation to the holders of the LLC's non-voting senior interests. Further, interest would have to be paid in full to the holders of the non-voting senior interests before any interest could be paid to the holders of the voting junior interests. Interest on the obligation could be deferred, but deferred interest would compound at a specified rate. To overcome the obligation's subordination and the lack of voting rights associated with the non-voting senior interests, the rate of return on both instruments would have to be attractive to non-members of the credit union.

While the obligation would have no stated maturity date, it would be callable by the credit union at any time after five years following issuance.

This structure is an adaptation of trust preferred securities that bank holding companies have routinely issued since 1987, and which is recognized as Tier 1 capital by other FFIEC regulatory agencies.

In 1997, the IRS issued a private letter ruling to U.S. Central to the effect that neither of the instruments involved in the above arrangement, pursuant to which U.S. Central could raise capital from non-members, would constitute capital stock for purposes of determining whether or not U.S. Central was exempt from federal income taxation under Section 501(c)(14)(A). For business reasons, U.S. Central has not, however, raised capital from non-members under this or any other arrangement.

#### *Subordinated Debt*

The third model presented in the NASCUS Alternative Capital White Paper is subordinated debt. It is acknowledged that other FFIEC regulatory agencies recognize subordinated debt instruments as valuable capital supplements for the banks and thrifts they supervise. Under such agencies' regulations, in order to qualify as Tier 2 capital, subordinated debt must:

1. be unsecured, i.e., not supported by pledged assets;
2. be subordinated, or junior to the claims of holders of credit union share accounts;
3. not be insured by the Federal Deposit Insurance Corporation (FDIC) with no protection in the event of insolvency;

4. not contain put options (*i.e.*, provisions that permit holders to accelerate the payment of principal prior to maturity);
5. not be credit-sensitive (*i.e.*, not make increased interest payments in near-default situations); and
6. have an original weighted average maturity of no less than 5 years. Issues with a remaining maturity of between 4 and 5 years are weighted to be counted as capital at 80% of face value; between 3-4 years at 60%; between 2-3 years at 40%; between 1-2 years at 20 percent. Issues with remaining maturity of less than one year receive a 0 % weight.

The amount of subordinated debt (plus intermediate-term preferred stock) that qualifies as Tier 2 capital cannot exceed 50% of Tier 1 capital.

The Federal Credit Union Act's definition of net worth includes uninsured subordinated debt for low-income credit unions, as defined in the Act. State-chartered credit union regulators believe that there is no reason that the FCUA should not be amended to make such instruments available to all insured credit unions.

### **Further Reasoning for Alternative Capital**

Some state-chartered credit unions continue to indicate that alternative capital is necessary for them to continue meeting the financial needs of their members. This is especially true for credit unions providing services such as financing for home ownership, or financial education and credit counseling—each an important part in achieving the American dream.

We believe, even with the lower leverage ratio and risk-based capital proposed in H.R. 2317, that some state-chartered credit unions may not be able to rely solely

on retained earnings to meet the capital base required by PCA standards. As credit unions grow and serve more consumers in their fields of memberships, their assets will grow. As assets grow, credit unions experience reduced net worth ratios as earnings retention lags growth in assets.

From a regulatory perspective, it makes sound economic sense for credit unions to access other forms of capital to improve their safety and soundness. We should take every financially feasible step to strengthen the capital base of this nation's credit union system. NASCUS requests your support providing credit unions access to alternative capital. Alternative capital for credit unions should be included in an updated matrix with regulatory relief proposals and should be considered a provision in the Committee's regulatory relief legislation.

Strong capital reform requires that state and federal regulators work together. In 1998, the Credit Union Membership Access Act, H.R. 1151, provided that NCUA consult and cooperate with state regulators in constructing PCA and member business lending (MBL) regulations as required by the FCUA. NASCUS always stands ready to discuss and assist in the implementation of new regulations effecting state-chartered credit unions. We firmly believe that cooperation results in better regulation and a stronger and safer credit union system.

### **Expanding Member Business Lending Authority**

Regulatory relief is important for consumers in the area of member business lending. NASCUS has a vision of providing well-thought-out regulations to best position credit unions to make members' dreams become reality. As included in the NASCUS portion of the matrix of financial services regulatory relief proposals, created during the summer of 2004, we continue to believe the following provisions are important to state-chartered credit union regulatory relief.

Title II of H.R. 2317 provides an opportunity for economic growth for credit unions. Credit unions should be given greater authority to meet their member business lending needs. Raising the statutory limit on credit union member business loans (MBLs) to 20 percent of total assets, as proposed in Section 201 of H.R. 2317, facilitates member business lending without jeopardizing safety and soundness at participating credit unions.

Further, we support Section 202 of H.R. 2317, which amends the current definition of a member business loan by granting NCUA the authority to exempt loans \$100,000 or less. This increases the definition of business loans subject to the current amount of \$50,000 to \$100,000. Prior regulatory relief bills have similarly expanded for federal savings institutions. We urge that the statutory definition of a credit union MBL be changed from the current \$50,000 limit contained in the FCUA. In fact, we support redefining credit union MBLs to the Fannie/Freddie conforming loan limit of \$359,650, increased in January 2005. We believe this is a safe and sound, well established and readily understandable index that has served lenders and the public interest well for many years.

Both of these provisions provide credit unions with regulatory relief as it concerns member business lending. We request that these provisions be included in regulatory relief bills drafted by this Committee; they were included also in the regulatory relief matrix created in 2004.

### **Regulatory Modernization**

It is time to update regulations to reflect parity of treatment between credit unions and other financial institutions. It makes sound business sense and provides for equitable competition; parity of treatment is logical. NASCUS' support is reflected

for these provisions by their inclusion in the 2004 matrix of financial services regulatory relief proposals.

NASCUS supports Section 311 of H.R. 2317 that provides all federally insured credit unions the same exemptions as banks and thrift institutions from Federal Trade Commission pre-merger notification requirements and fees. In fact, we believe this provision should be expanded to include all state-chartered credit unions.

Additionally, NASCUS supports providing federally insured credit unions and savings institutions parity treatment with commercial banks with regard to exemptions from SEC registration requirements that banks were provided in the Gramm-Leach-Bliley Act. NASCUS is pleased this provision is included in Section 312 is part of H.R. 2317.

Our major concern is that, if state-chartered credit unions are not accorded the same SEC treatment as commercial banks and savings institutions, the powers granted to credit unions by state legislatures and state regulators might be unnecessarily preempted by SEC regulation. Unless appropriate regulatory relief is provided, credit unions offering these services may be subject to redundant and costly examination. We urge that credit unions be accorded similar regulatory treatment as other financial institutions.

Both of these provisions were included in H.R. 1375 as Sections 312 and 313, respectively. We respectfully request the Senate Committee on Banking, Housing and Urban Affairs include these provisions in upcoming regulatory relief legislation.

## **Privately-Insured Credit Unions Should Be Eligible to Join Federal Home Loan Banks**

As NASCUS noted in the 2004 regulatory relief matrix, not all credit unions operate with access to the same benefits. Federally insured credit unions have access to the FHLBs, while privately-insured credit unions do not. NASCUS supports non-federally insured credit unions being eligible to join the FHLBs. This provision was included during the 108<sup>th</sup> Congress in H.R. 1375.

Today, there are approximately 375 credit unions that are non-federally insured. All of these credit unions are regulated and examined by state regulatory agencies to ensure they are operating in a safe and sound manner. Regulatory functions are a primary determinant of the safety and soundness of the credit union system. The function of the credit union regulator is to assure consumers that their deposits are safe. The credit union regulator performs this mission by:

- issuing rules to assure safe and sound financial practices in credit unions;
- ensuring that violations of those safety and soundness rules are corrected;
- performing safety and soundness examinations of credit unions under their supervision;
- requiring correction of financial and operational deficiencies identified during the examination process; and
- taking enforcement actions to assure that financial remedies are implemented by the credit union (including letters of understanding and agreement, closure of the credit union, etc.).

Both federal and private share insurance systems have been established to protect credit union shareholders. To manage and price insurance risk, each share insurer relies significantly on the examination reports of the institution's

primary regulator. Most state credit union agencies use the NCUA Automated Integrated Regulatory Examination Software (AIRES) examination platform when they examine state-chartered credit unions for safety and soundness purposes. NASCUS agencies participate in the development and testing of NCUA's AIRES examination program and procedures. In short, there is an excellent working relationship and substantially similar examination standards for both federally and state-chartered credit unions.

The private insurers, primarily American Share Insurance in the United States and a cooperative insurance fund in Puerto Rico, have established additional solvency standards to minimize risks in their insured credit unions.

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) established a series of safety and soundness requirements both for entities that offer private deposit insurance to credit unions and for credit unions which would opt for private deposit insurance.

FDICIA also requires that privately insured credit unions must be certified to meet eligibility requirements for federal deposit insurance. Specifically, the Act states that no depository institution, which lacks federal deposit insurance, may use “the mails or any instrumentality of interstate commerce to receive or facilitate receiving deposits, *unless* the appropriate supervisor of the State in which the institution is chartered has determined that the institution meets all eligibility requirements for Federal deposit insurance ... .” (Emphasis added.) As a practical matter, this requirement applies to every state-chartered, privately insured credit union, as every such credit union uses some instrumentality of interstate commerce or the mails.

FDICIA also dictates the manner and extent to which institutions opting for private deposit insurance disclose fully that their deposits are privately insured. Therefore, there should be no concern that these credit unions are not operated in a safe and sound manner.

Permitting non-federally insured institutions to join the FHLBank system would not establish a new membership principle for the system. More than 50 insurance companies, chartered and regulated by state governments with no federal oversight or insurance, are now members of these Banks. Allowing FHLBank membership for privately-insured credit unions would provide additional opportunities for housing finance and not inflict any new or unusual exposure on the Bank System.

Moreover, an additional layer of financial discipline would be introduced. Each Federal Home Loan Bank has a sophisticated credit screening system to assure that any borrower, federally insured or not, is credit worthy. In addition, every advance is secured by marketable collateral. Indeed, even during the savings and loan debacle, we understand that no Federal Home Loan Bank suffered a loss on advances extended to their members.

In the past, Congress has expanded the membership eligibility for the Bank System to help local financial institutions meet the housing and home ownership needs of their communities. Enabling state-chartered, privately insured credit unions to be eligible to join the FHLBank system, is merely one more step in bringing home ownership opportunities to these credit union members.

NASCUS would appreciate your support by including this proposal in Regulatory Relief legislation. We urge the Committee to include this to help achieve our nation's housing and home ownership goals.

## **Federal Preemption of State Regulation**

Finally, in our previous testimony before this Committee, NASCUS opposed H.R. 3579 § 113, the section pertaining to credit union conversion voting requirements. Further explanation is necessary as to the reason we oppose this provision. NASCUS strongly believes that the process for converting a state-chartered credit union to another financial institution charter is a matter that should be determined by state law and regulation, not dictated in federal legislation. NASCUS strongly endorses states' rights.

In fact, as state credit union regulators, we have a significant stake in the ongoing controversy among federal banking regulators and the National Governors' Association, the National Association of Attorney's General, the Conference of State Bank Supervisors, the National Conference of State Legislatures and others pertaining to the issue of escalating federal preemption of state laws and regulations.

As a matter of policy, NASCUS does not take public positions on issues that only affect the commercial banking industry. However, our comments are necessary because of state regulators' concerns about the contagion impact on the credit union dual chartering system as the powers of the state banking regulators are significantly curtailed.

The Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) regulations during the past several years have preempted dozens of state banking laws enacted to protect consumers, to provide fair lending and to ensure fair competition. These actions of federal regulatory agencies have a broad impact on the dual chartering system for banks. NASCUS state regulators have a concern they may be the impetus for similar actions by

the federal credit union regulator, NCUA, unless Congress intervenes to rein in additional federal preemption powers.

Historically, states have established predatory lending and other consumer protection statutes applicable to both state and federal depository institutions. In general, the rule has been that national banks are subject to such state statutes to ensure the same level of protection for citizens opting to use the services of a federally chartered financial institution.

The trend in the last several years is that when an issue is one of consumer protection, some continue to demand that the federal banking authorities preempt state consumer protection. Such initiatives are touted as establishing exclusive national standards for regulating almost all aspects of consumer lending practices.

NASCUS is not comfortable with such federal rulemaking. What the OCC has adopted overrides state law and concentrates regulatory power at the federal level. The Governors similarly oppose these rules. The National Conference of State Legislatures has expressed its concerns about the impact of these rules on state law. The Conference of State Bank Supervisors has opposed these rules. Consumer groups have opposed federal preemptions that would vitiate hard won victories in state legislatures that provide additional protection to all consumer borrowers in their states.

Determining the extent of such additional federal banking powers is an important matter for those who support the dual chartering system for all depository institutions. Congress should resolve the conflicts rather than delegate these fundamental issues to the federal financial institution regulators to determine.

NASCUS Chairman Little noted the importance of this provision also in his testimony presented in June 2004 and reverberated in the regulatory reform matrix.

## **Conclusion**

In conclusion, NASCUS strongly supports the following issues for regulatory relief:

- NASCUS supports amendments to the PCA provision of the FCUA to obligate federally insured credit unions to include all forms of capital when calculating their net worth ratio.
- NASCUS supports amending the definition of net worth to include the retained earnings of a merging credit union with that of a surviving credit union, as included in both H.R. 1042 and Section 104 of CURIA.
- NASCUS supports risk-based capital reform.
- NASCUS believes credit unions should be permitted to issue alternative capital; NASCUS proposes three alternative capital models that preserve the not-for-profit structure of credit unions.
- NASCUS supports expanding member business lending provisions to 20% of total assets of a credit union, furthering the goal of providing loans for consumer members, as Title II, Section 201, of H.R. 2317 that focuses on member business lending.

- NASCUS supports amending the definition of a member business loan from \$50,000 to an amount not to exceed \$100,000, as included in Section 202 of Title II of H.R. 2317.
- NASCUS supports providing all federally insured credit unions the same exemptions as banks and thrift institutions from pre-merger notification requirements, as included in Section 311 of H.R. 2317
- NASCUS supports providing federally insured credit unions parity of treatment with commercial banks with regard to exemptions from SEC registration requirements according to the Gramm-Leach-Bliley Act, as included in Section 312 of H.R. 2317.
- NASCUS strongly believes non-federally insured credit unions should be eligible to join the FHLBs.
- NASCUS strongly believes that the process for converting a state-chartered credit union to another financial institution charter is a matter that should be determined by state law and regulation, not dictated in federal legislation.
- We encourage Congress to intervene and block continuing preemption of state laws.

NASCUS appreciates the opportunity to submit written testimony on regulatory relief important to state credit union regulators. As noted by our testimony, NASCUS supports the provisions of regulatory improvement in H.R. 2317 that do not preempt the authority of state regulators and NASCUS supports recognition of forms of capital as allowed under GAAP, and further enhancements.

We welcome questions from Committee members and the opportunity for discussion of legislation that impacts regulatory relief for state-chartered credit unions. We urge this Committee to protect and enhance the viability of the dual chartering system for credit unions by acting favorably on the provisions we have presented in our written testimony.

Thank you.