

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on February 5, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Daryl Toews (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 165, 182
Executive Action: None.

HEARING ON HB 182

Opening Statement by Sponsor:

Representative Bachini, House District 14, stated HB 182 was before the Committee because of the mandates by the Federal Government to make changes in the credit union laws. He stated HB 182 was an act generally revising the laws relating to the Central Credit Union to change the terminology from "central" to "corporate" and revising the membership requirements.

Proponents' Testimony:

Bob Pyfer, Vice President of Government Relations, Montana Credit Unions, spoke from prepared testimony which he supplied the Committee (Exhibit #1). He also supplied a copy of the statute as it now stands (Exhibit #2).

Myrtle White, Vice President, Financial Services, Montana Credit Union League, spoke from prepared testimony in support of HB 182 (Exhibit #3).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Christiaens asked Ms. White about the 1% membership share. Ms. White stated the 1% is a permanent deposit from the Credit Unions who are members of the Corporate Credit Union (CCU), and the language has been changed to "membership share". Ms. White stated the deposits are voluntary. Senator Christiaens asked if it was true that in order to get a loan through a credit union, the credit union must have the 1% deposit. Ms. white answered that was incorrect and the membership shares are voluntary accounts with incentives.

Senator Gage asked how the effective date would affect the rule making procedures of the CCU until the rules went into effect. Don Hutchinson, Commissioner, Financial Institutions, Department of Commerce stated the introduction of HB 201 was anticipated and would allow the Department to get at the rule making early, but would not be until March or April of this year.

Senator Gage asked Bob Pyfer what the CCU would do until the law went into effect. Bob Pyfer stated the CCU had the power to "self-execute" until the law went into effect and he didn't see a real problem in the interim.

Senator Klampe asked Mr. Hutchinson if HB 182 would make it more difficult for another CCU to be established in Montana. Mr. Hutchinson stated he didn't see a need for another CCU, but the legislation would not hinder the opening of another one.

Closing by Sponsor:

Senator Bachini closed stating Senator Christiaens had agreed to carry HB 182.

EXECUTIVE ACTION ON HB 182

Motion/Vote:

Senator Koehnke moved HB 182 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

Announcement:

Senator Lynch announced a second hearing and executive action on SB 233 as amended to be set for February 11, 1993.

HEARING ON HB 165

Opening Statement by Sponsor:

Representative Larson, House District 65, stated HB 165 defines additional terms regarding LPG containers (propane tanks). HB 165 states it is the right of the owners to fill their own LPG tanks and clarifies the legal liability of the owners who lease the tanks to a user. He said if the tank is overfilled, the valve damaged, or there an explosion or an accident occurs, the owner of the tank is liable.

Proponents' Testimony:

Ronna Alexander, representing Montana/Wyoming Gas Association (MWGA) stated MWGA supports HB 165. Ms. Alexander clarified the tanks being referred to in HB 165 are those tanks leased to business and homeowners and were over 110 gallons in size. She stated the tanks addressed are used for heating or cooking. She stated the MWGA supports HB 165 because of the safety factor, and having a company responsible for maintaining and filling the tanks makes it safer for the consumer. She referred to federal rules which paralleling HB 165 which are mentioned in a handout she supplied (Exhibit #4). She stated the U.S. Consumer Product Safety Commission has endorsed the ownership rule, along with the National Association of Fire Marshals. Ms. Alexander stated HB 165 is based on the fact that the tanks owner is the one who best knows the condition of the tank and can be counted on to carry out the necessary safety precautions in filling and inspecting the tank. She stated industry standards and federal rules hold the tank owner responsible for the condition of the tank and the suitability of the tank for service. Ms. Alexander stated the state law was needed because state agencies who regulate the use and transportation of LPG base their enforcement on industry standards and not federal standards. She concluded HB 165 was needed in Montana for product safety, liability of the tank owner and consumer protection.

Gary South, Regulation Compliance Manager, Northern Energy, stated his support of HB 165 for the reasons of consumer safety. He stated an LPG container which is filled by someone other than the owner without the owners authorization is a liability to the owner of the container. He stated HB 165 was drafted in respects to the ASME containers, which are stationary containers set at residential or commercial locations for the use of heating, water heating and cooking. Mr. South added HB 165 was not proposed to restrict the filling of DOT-ICC cylinders, which are portable cylinders.

Darryl South, Owner/Operator Montana Propane, stated his support of HB 165 for its safety aspects. He stated liability insurance is one of his major costs and in order to minimize that cost, they must work on safety and maintenance of the tanks. He stated HB 165 would allow the company to monitor the tanks and minimize the cost of liability insurance.

Dean Stapleton, Manager, Cenex Propane Plant, and Director, State of Montana/Wyoming National Propane Gas Association, expresses his support of HB 165 as well as the Association's support of HB 165.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Mesaros asked Jack Brown, Montana Propane Gas Association, if, upon the lease of a tank he is locked into a company. Mr. Brown stated a consumer is locked into a tank, but the switching of the tank would exclude any other company from filling the tank.

Senator Bruski-Maus asked Mr. Brown who would be liable for a party who owned their own tank. Mr. Brown stated the owner would be responsible, but the filler would be responsible for the condition of the tank. Senator Bruski-Maus continued, asking Mr. Brown about the situation where two tanks are connected, and one is privately owned and the other tank is leased. Mr. Brown stated the tanks would be the responsibility of the regular filler of the tanks.

Senator Koehnke asked Mr. Brown if HB 165 would affect the owner of a propane tank loader. Mr. Brown answered no.

Senator Kennedy asked Mr. Brown if there were any licensure requirements for propane dealers. Mr. Brown stated there were licensing requirements. Senator Kennedy asked if there were any rules from the licensing board that people who fill tanks have to check tanks for leaks, or the condition of the tank. Mr. Brown stated there are internal rules regulating LPG companies and

their employees. Senator Kennedy asked Mr. Brown who they were trying to protect the consumers from. Mr. Brown stated they are trying to protect the consumers from fillers who don't have a record on the tanks.

Senator Rea asked Mr. Brown if there was an emergency situation where a different company had to come and fill a tank, who would be responsible. Mr. Brown answered the clients regular filler would be responsible because they are liable for the condition of the tank.

Senator Harding asked Mr. Brown if the basis of HB 165 was to make sure whoever owns the tank is authorized to fill it. Mr. Brown stated that was correct, and HB 165 also deals with customer safety.

Senator Klampe asked Mr. Brown if he had any idea as to how many accidents have happened with the tanks. Mr. Brown stated he had no statistics.

Senator Bruski-Maus asked Mr. Brown what the life expectancy of a LPG tank was. Mr. Brown answered they had no set period of time as long as the tanks were in good repair. Senator Bruski-Maus asked Mr. Brown if HB 165 would restrict price shopping. Mr. Brown stated HB 165 wouldn't affect the ability of a consumer to price shop.

Senator Toews asked Mr. Brown why legislation was necessary and if there was any way the companies could include phraseology in the lease agreements which would encompass the issues. Mr. Brown stated the law was necessary in order to file the documents with the courthouse.

Senator Lynch asked Mr. Brown if there were any gas companies with lower prices who don't own any tanks but just fill tanks. Mr. Brown answered there was no one in Montana that he was aware of. Senator Lynch asked Mr. Brown if the prices are relatively competitive. Mr. Brown stated the prices vary.

Senator Mesaros asked Mr. Brown if it is a common procedure for the fillers of the tanks to keep records. Mr. Brown answered yes. Senator Mesaros stated HB 165 would make it difficult for a person to easily switch suppliers because they would have to switch tanks. Mr. Brown stated the clients could purchase their own tanks and then they would have the freedom to trade with whomever they wanted.

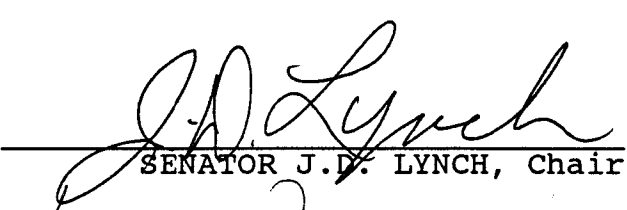
Closing by Sponsor:

Representative Larson closed, stating many of the questions asked were the same as those asked in the House hearing. He gave two examples of propane tank accidents, one where he paid most of the damages and one where the filler of the tank paid all the

damages. He asked the Committee for a favorable consideration.

ADJOURNMENT

Adjournment: 10:55 a.m.



SENATOR J.D. LYNCH, Chair



KRISTIE WOLTER, Secretary

JDL/klw

ROLL CALL

SENATE COMMITTEE Business & Industry DATE Feb. 5, 1993

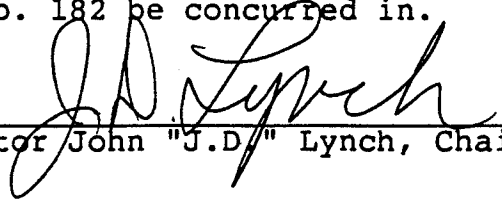
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christaens	✓		
Senator Bruski-Maus	✓		
Senator Gage	✓		
Senator Hager	✓		
Senator Harding	✓		
Senator Kennedy	✓		
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews	✓		
Senator Wilson	✓		


SENATE STANDING COMMITTEE REPORT

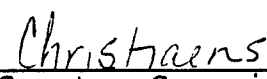
Page 1 of 1
February 5, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 182 (first reading copy -- white), respectfully report that House Bill No. 182 be concurred in.

Signed: 
Senator John "J.D." Lynch, Chair


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

291143SC.San

HOUSE BILL 182

Senate Business and Industry Committee

February 5, 1993

Testimony of:
Robert C. Pyfer
Vice President, Government Relations
Montana Credit Unions League

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 2/5/93

BILL NO. HB 182

Mr. Chairman, members of the committee, for the record, I'm Bob Pyfer, Vice President-Government Relations, for the Montana Credit Unions League. The League represents 90 of Montana's 94 natural person credit unions. Credit unions are not-for-profit, nonstock, consumer financial cooperatives. A credit union is owned and controlled by its user-members through a one-member, one-vote process, whereby the board of directors is elected. All board and committee members are uncompensated volunteers.

This bill relates to a special kind of credit union--what is called "a corporate credit union." A corporate credit union is a credit union's credit union. Other credit unions become members of the corporate. The member credit unions may borrow from the corporate, if necessary, and invest excess funds with their corporate credit union. The corporate may also provide its members other financial services such as correspondent check collection and automated funds transfer services.

My testimony today will consist of three parts. The first part will give the purpose of the legislation; the second part will describe the methodology behind the bill as drafted; and the third part will involve a brief section by section analysis.

I. PURPOSE

The purpose of this bill is to respond to a federal mandate. NCUA, or the National Credit Union Administration, is the chief regulator for federally chartered credit unions. NCUA also administers the National Credit Union Share Insurance Fund, or NCUSIF, which insures both federally chartered credit unions and state chartered credit unions. NCUA has adopted an extensive new regulation applicable to federally chartered corporate credit unions. It has also made the regulation applicable to state chartered corporates by prohibiting federally insured credit unions from investing in a corporate that is not in compliance. Since all credit unions in Montana, state and federal charters, are federally insured through NCUSIF, any corporate in Montana would have to comply, whether that corporate were state or federally chartered.

In fact, we have just one corporate credit union in Montana--that is Treasure State Corporate Central Credit Union, which is located here in Helena. Treasure State Corporate is a state chartered credit union and therefore subject to the state laws on corporate credit unions which this bill amends. The bill amends our state laws to bring them into conformance with the new federal regulation and thereby to bring Treasure State into conformance with the new regulation.

Without these amendments, Treasure State would be forced to convert to a federal charter. We don't want this to happen because we want Treasure State Corporate to stay a state chartered credit union, thereby supporting our dual chartering system for

financial institutions here in Montana. A dual chartering system allows for a choice between state and federal charters and has many benefits. In general, a state regulator is closer to home, more accessible, and more knowledgeable about the special problems indigenous to our local state economy.

II. METHODOLOGY

As mentioned earlier, this bill is necessary to conform to a federal regulation. It would be easiest to simply incorporate the federal regulation by reference simply stating that Montana state chartered corporates "shall comply with Title 12, Part 704, of the Code of Federal Regulations in all respects." However, we have Montana Supreme Court cases that would declare such an incorporation by reference an unconstitutional delegation of legislative authority to the federal government. On the other hand, to repeat verbatim all of the federal regulation in our state statutes would be overly wordy, cumbersome, and inflexible. It would be impossible to change our state law on a timely basis whenever the federal regulation changed.

The approach we have chosen, therefore, is something of a hybrid. We do repeat nearly verbatim some parts of the federal regulation in the bill where this is essential to understanding and to give sufficient detail to avoid the constitutional problem. We then give rulemaking authority to the Department of Commerce which regulates state chartered credit unions. The Department would fill in the gaps by adopting rules that

conform to the federal regulation. As the federal regulation changes, the Department could revise its rules on an ongoing basis. In this way, we avoid the constitutional problem but still provide adequate flexibility.

III. SECTION BY SECTION ANALYSIS

Section 1. Amends 32-3-801, MCA. Organization.

The only change here is in the name. "Central Credit Union" is changed to "Corporate Credit Union." This merely comports with the nomenclature used in the federal regulation and recognizes the corporate as a credit union serving other corporate entities.

Section 2. Amends 32-3-802, MCA. Purpose--Membership.

New subsection (1) makes it clear that the primary purpose of a corporate credit union is to serve other credit unions. New subsection (4) specifically limits natural person members to seven, which is the number required to incorporate a new credit union under our Montana state act. The federal regulation requires reference to the number of persons necessary to incorporate under state law. Other revisions basically delete various types of natural person members.

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In a credit union, every member has one vote in the election of directors and committee members. NCUA's concern here is that too many natural person members could control a corporate credit union to the potential detriment of the corporate members, i.e., the credit unions, which the corporate is primarily created to serve.

Section 3. Amends 32-3-803, MCA. Conflict of Interest.

Subsection (2) (a) incorporates the basic rule against conflicts of interest involving the personal pecuniary interests of an official or an employee.

Subsection (2) (b) incorporates the basic rule against conflicts of interest involving another organization in which an official or an employee has an interest. The interested person may not participate if the matter is "material." Material is defined by Department rule under this subsection. The rule would follow the federal regulation which currently says material means 5% of capital. If the federal regulation changes, the Department of Commerce would respond with a conforming rule change.

Subsection (3) provides for express rule making authority to the Department of Commerce in conformance with the federal regulation.

Section 4. Amends 32-3-804, MCA. Additional Rights and Powers.

In subsection (2), the bill deletes current language allowing the purchase (or acceptance of a "merger") of a liquidated natural person credit union. This again merely comports with the concept of a corporate credit union as a credit union's credit union. All other changes in this section merely tie corporate activities to governance by Department rule. Activities listed include loans, correspondent services and other financial services, borrowing, investments, strategic planning, funds management, capital goals, and services in general. Department rules must conform with the federal regulation.

Section 5. New. Membership Capital Share Deposits.

Myrt White, chief operating officer of Treasure State Corporate Central Credit Union, will give more details on membership capital share deposits (MCSD) in her testimony.

In essence, this section would allow the corporate to issue at-risk shares subordinated to all other liabilities in order to increase the corporate's capital base. The section is nearly verbatim from the federal regulation definition. The intent is to describe attributes of a true capital investment.

Section 6. New. Fixed Assets.

This section limits the amount that a corporate can have tied up in fixed assets, such as real estate, to 15% of capital. This recognizes the liquidity risks of fixed asset

investments. It also recognizes the primary purpose of a corporate to serve its member credit unions as opposed to making long-term investments in fixed assets. NCUA asked that this limitation be specified in state law. This is the reason that the 15% figure is stated rather than left to Department rule. If NCUA increases this amount and Treasure State wants to take advantage of the increase, we would have to wait until the next session of the Legislature.

Section 7. New. Reserves.

This section requires risk-based reserves; that is, it requires a minimum ratio or percentage of reserves to assets according to a schedule of types of assets and percentages. For example, coin and currency is considered a no-risk asset so 0% reserves are required in the schedule. At the other end of the spectrum, unsecured loans to credit unions must be calculated at 100% for reserving purposes. This schedule of types of assets and the percentages to be applied are listed in the federal regulation. This regulation is quite lengthy. The Department of Commerce would incorporate this schedule into its regulations and change it as NCUA changed their schedule.

Section 8. New. Annual Audit.

This section requires an annual CPA audit of the corporate and provides for distribution of the audit reports. This section is essentially verbatim from the federal regulations.

Section 9. New. Contracts.

This section relates to shared facilities, personnel, and equipment. Treasure State Corporate currently purchases services and rents facilities from the Montana Credit Unions League at our offices on Helena Avenue. This section requires a written contract supporting and documenting the arrangement. We currently have a written agreement. Again, this section is essentially verbatim from the federal regulation.

Section 10. New. Codification.

This is the standard codification instruction placing the new bill sections into the corporate credit union part of the state credit union act.

Section 11. New. Effective Date.

This section provides for an immediate effective date in order to give Treasure State the earliest possible compliance with the federal regulation. Currently Treasure State is on temporary waiver from NCUA pending action by our Montana Legislature.

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Mr. Chairman, members of the committee, this concludes my formal remarks on the bill.

We'd be happy to answer any questions from the committee. We urge a "do pass"

recommendation from the committee. Thank you.



NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

November 4, 1992

Mr. Robert C. Pyfer
Vice President, Government Relations
Montana Credit Union Network
1236 Helena Avenue
Helena, MT 59601

Dear Mr. Pyfer:

As you requested, we have reviewed your proposed legislation regarding corporate credit unions.

It appears that the material requirements of Part 704 have been addressed in your legislation. Additional language should be considered addressing Part 704 requirements for strategic plans, policies addressing funds management, capital goals, and services. Requirements should be set forth requiring an annual opinion audit and that services, facilities, personnel, or equipment shared with any party be supported by a written contract. Also, consideration should be given to limiting the corporate credit union's investment in fixed assets in the legislation.

If you have any questions or comments, please contact us.

Sincerely,


D. Michael Riley
Director
Office of Examination and Insurance

EI/KAI:ki



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

2-5-93

HB-183

January 8, 1993

Mr. Robert C. Pyfer
Vice President, Government Relations
Montana Credit Union Network
1236 Helena Avenue
Helena, MT 59601

Dear Mr. Pyfer:

We have reviewed your second draft bill for revision to the Montana laws governing corporate centrals. It appears that the concerns raised in our letter of November 4 were addressed in this second draft. We have no additional comments or recommendations.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Michael Riley'.

D. Michael Riley
Director
Office of Examination and Insurance

EI/KAI:ki

cc: Region VI Director
CE Doug Ito
Ron Alf

§704.1 Scope.

(a) This Part establishes special rules for all federally insured corporate credit unions and grants certain additional authorities to federal corporate credit unions. Except to the extent that they are inconsistent with this Part, other provisions of NCUA's Rules and Regulations (12 CFR Part 700 *et. seq.*) and the Federal Credit Union Act apply to federally chartered corporate credit unions and federally insured state-chartered corporate credit unions to the same extent that they apply to other federally chartered and federally insured state-chartered credit unions, respectively.

(b) The NCUAB has the authority to issue orders which vary from this Part. This authority is provided under Section 120(a) of the Federal Credit Union Act, 12 U.S.C. 1766(a).

§704.2 Definitions.

"Affiliated organization" means (1) an organization with which the corporate credit union shares facilities, personnel, equipment, or services; or (2) an organization which is at least 20 percent owned or controlled by an organization with which the corporate credit union shares services, facilities, personnel, or equipment.

"Asset-backed securities" (ABS) means all securities supported by installment loans or leases or by revolving lines of credit. This definition excludes those securities referred to in the financial markets as mortgage-backed securities (MBS) which includes collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs).

"Average daily assets" means the daily average of net assets calculated on the basis of assets at the close of each day in the period.

"Average life" means the weighted average time to principal repayment with the amount of the principal paydowns (both scheduled and unscheduled) as the weights.

"Capital" means the total of all corporate reserves (regular or statutory reserves, as applicable), all undivided earnings, net income, and membership capital share deposit (or equivalent) accounts.

"Capital of a broker/dealer" means the sum of stockholder equity plus subordinated debt which qualifies as capital for regulatory purposes.

Part 704

Corporate Credit Unions

"Claims" means loans or other debt obligations.

"Commitments" means any unconditional arrangement that obligates a corporate credit union to extend credit in the form of loans or lease financing receivables; to purchase loans, securities or other assets; or to participate in loans and leases. Commitments also include overdraft facilities, revolving credit, home equity, and mortgage lines of credit, and similar transactions. An obligation is conditional if the corporate credit union is not automatically obligated to extend funds.

"Corporate credit union" means a credit union that: (1) is operated primarily for the purpose of serving other credit unions; (2) is designated by the National Credit Union Administration as a corporate credit union; and (3) limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

"Corporate reserves" means regular or statutory reserves, as applicable, excluding all valuation allowances established to meet the full and fair disclosure requirements of Section 702.3 of this Chapter.

"Credit equivalent amounts" means the face amount of each off-balance sheet item multiplied by a credit conversion factor outlined in Appendix B.

"Credit union service organization" (CUSO) means an organization that: (1) exists primarily to meet the needs of credit unions; and (2) engages only in business activities relating to the daily operations of the credit unions it serves or provides services associated with the routine operations of credit unions.

"Expected maturity" means the date on which all remaining principal amounts of an instrument or bond are anticipated to be paid off on the basis of projected payment assumptions.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

Change 7/August, 1992

DATE 2/5/93

704-1

"Federally issued CMO/REMIC" means a CMO or REMIC which is issued by a U.S. Government agency or a U.S. Government-sponsored corporation or enterprise.

"Foreign bank" means an institution which is organized under the laws of a country other than the United States, which is engaged in the business of banking, and which is recognized as a bank by the banking supervisory authority of the country in which it is organized.

"Material" means an amount that exceeds 5 percent of the corporate credit union's capital.

"Membership capital share deposit" (MCSD) account means a share, or deposit, or other account that: (1) is established, at a minimum, as a 12-month notice account; (2) is limited to members; (3) is not subject to share insurance coverage by the National Credit Union Share Insurance Fund (NCUSIF) or other deposit insurers; and (4) in the event of liquidation of the corporate credit union, is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured obligations to shareholders and the NCUSIF. In any event, an MCSD account shall not be repayable until notice that the account holder credit union intends to withdraw MCSD account funds from the corporate credit union, except in the case of a credit union that is placed into liquidation, is purchased and assumed, or is merged. MCSD accounts cannot be used to pledge borrowings. Corporate credit unions that issue MCSD accounts shall disclose, at least annually to their members, the terms and conditions under which such accounts are issued.

"Member reverse repurchase transaction" means an integrated transaction in which a corporate credit union purchases a security from one of its member credit unions under agreement by that member credit union to repurchase the same security at a specified time in the future. The corporate credit union then sells that same security, on the same day, to a third party, under agreement to repurchase it on the same date on which the corporate credit union is obligated to return the security to its member credit union.

"Net assets" means total assets less Central Liquidity Facility (CLF) stock subscriptions, CLF loans guaranteed by the NCUSIF, U.S. Central CLF certificates, and member reverse repurchase transactions.

"Non credit union member" means any member of a corporate credit union that is not chartered or licensed as a credit union.

"Original maturity" means the length of time between the date when a commitment is issued and the earliest date on which the corporate credit union can unconditionally cancel the commitment.

"Other reserves" means reserves other than corporate reserves.

"Primary capital" means all corporate reserves and undivided earnings.

"Privately issued CMO/REMIC" means a CMO or REMIC that qualifies as a permissible investment for a federal credit union pursuant to the provisions of Section 107(15) (B) of the Federal Credit Union Act.

"Risk-based capital" means the total of primary capital and secondary capital (up to 100 percent of primary capital).

"Risk-weighted assets" means the sum of total balance sheet assets and off-balance sheet credit equivalent amounts multiplied by their appropriate risk weights.

"SEC-recognized rating agency" means any firm recognized by the Securities and Exchange Commission (SEC) as qualified to assign risk ratings to various instruments required to be registered with the SEC.

"Secondary capital" means MCSD or equivalent accounts (except for MCSD accounts owned by other corporates unless the MCSD account is held by a corporate whose members are primarily other corporates and organizations recognized under Section 501(c) (6) of the Internal Revenue Code), allowance for loan and lease losses up to a maximum of 1.25 percent of risk-weighted assets, and term subordinated debt weighted by remaining maturity as indicated:

1. 5 years or more until maturity—100 percent;
2. 4 to less than 5 years until maturity—80 percent;
3. 3 to less than 4 years until maturity—60 percent;
4. 2 to less than 3 years until maturity—40 percent;
5. 1 to less than 2 years until maturity—20 percent; and

6. Less than 1 year remaining maturity—0 percent.

MCSD accounts upon which the accountholder has given the corporate credit union notice of intent to withdraw may no longer be considered secondary capital.

“Speculative activities” means the use of forwards, options, futures, or similar activities other than when used to reduce interest rate risk.

“Term subordinated debt” means debt of a corporate credit union that: (1) is unsecured; (2) is not a deposit; (3) is not insured by the National Credit Union Administration; (4) is subordinated to general creditors and claims of depositors; (5) has an original maturity of at least 7 years; (6) is not redeemable prior to maturity except with the approval of NCUA; (7) is ineligible as collateral for a loan; and (8) is represented by a debt instrument which clearly states that it will absorb losses.

“Undivided earnings” means all forms of retained earnings, except: (1) corporate reserves (regular or statutory reserves, as applicable); and (2) valuation allowances established to meet the full and fair disclosure requirements of Section 702.3 of this Chapter.

“United States depository institutions” means offices or branches (foreign and domestic) of federally insured banks and depository institutions chartered and headquartered in the United States, Puerto Rico, and U.S. territories and possessions. This includes banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, international banking facilities of domestic depository institutions, and U.S. chartered depository institutions owned by entities outside of the United States.

“United States Government or its agencies” means the United States Government or instrumentalities of the United States whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government (see Appendix C).

“United States Government-sponsored corporations and enterprises” means agencies originally established or chartered to serve public purposes

specified by Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government (see Appendix C).

§704.3 Planning: Strategic and Business Plans.

(a) The board of directors of a corporate credit union shall adopt a strategic plan with appropriate objectives and goals. This plan will be reviewed periodically during the year to determine that the goals are being accomplished. At least annually, the strategic plan will be reviewed and updated.

(b) A business plan will be prepared for any material expenditure in fixed assets, new products and services, or investments in a CUSO.

§704.4 Asset/Liability Management.

(a) *General.* Corporate credit unions shall develop and implement comprehensive written funds management policies.

(b) *Monitoring.* Corporate credit unions shall prepare monthly reports showing the degree of mismatch between the sources and uses of funds for the various timeframes.

§704.5 Capital Goals, Objectives and Strategies.

(a) *General.* Corporate credit unions shall adopt formal, written goals (both long-term and short-term), objectives and strategies, including a budgetary process, for the building of capital.

(b) *Impact study.* Where a proposed new service or program, purchase or lease of a fixed asset, or investment in or loan to a CUSO has a material effect on a corporate credit union, the corporate credit union shall perform a cost/benefit analysis of the activity and a study of its impact on the capital position of the corporate credit union.

(c) *Monitoring.* Management will establish monitoring standards and procedures to periodically review and reassess the capital position of the corporate credit union and will document the review.

§704.6 Investment.

(a) *Policies.* A corporate credit union shall develop written investment policies which address, at a minimum:

(1) Risk diversification;

- (2) Funds management strategies;
- (3) Approved investment issuers, instruments, credit limits, credit ratings, and list of permissible institutions;
- (4) Approved list of broker/dealers;
- (5) Authorization of and limitations on persons/committees making investments; and
- (6) Procedures to periodically evaluate the quality of the investment portfolio.

(b) *Limitations.*

(1) Credit Union Service Organizations (CUSOs). The aggregate of all investments in CUSOs shall not exceed 15 percent of a corporate credit union's capital unless permission is obtained from the National Credit Union Administration Board (NCUAB). A corporate credit union is prohibited from utilizing CUSO authority to acquire control, directly or indirectly, of another financial institution, or to invest in shares, stocks or obligations of another financial institution, insurance company, trade association, liquidity facility, or similar organization. Except to the extent that they are inconsistent with this paragraph, a corporate credit union investing in a CUSO shall adhere to the applicable provisions of paragraphs (c)-(e) of Section 701.27 of this Chapter.

(2) Other Investments. Corporate credit unions shall be limited to the following additional investments:

(i) Investments authorized by Sections 107(7), 107(8), and 107(15) of the Federal Credit Union Act and Part 703 of this Chapter, except where those authorities are inconsistent with other limitations of this section;

(ii) Deposits in state banks, trust companies, and mutual savings banks not domiciled in the state in which the corporate credit union does business;

(iii) Deposits in, the sale of Federal Funds to, and debt obligations of foreign banks subject to the following requirements: (A) the bank must have assets of at least US\$ 20 billion, and the investment must be rated not lower than A-1 (or equivalent) for short-term (initial maturity of 1 year or less) investments by an SEC-recognized rating agency, and not lower than AA- (or

equivalent) for long-term (initial maturity over 1 year) investments. Short-term investments downgraded below A-2 (or equivalent) and long-term investments downgraded below A- (or equivalent) by the same rating agency used when the investment was purchased, if material in amount, shall be divested; (B) the investment shall be denominated in United States dollars; (C) the country in which the issuing bank is organized shall be rated AAA (or equivalent) for political and economic stability by an SEC recognized rating agency; and (D) aggregate investments in any single foreign bank are limited to not more than 5 percent of the corporate credit union's net assets;

(iv) Debt obligations of U.S. bank holding companies and other U.S. chartered corporations rated not lower than A-1 (or equivalent) for short-term investments (initial maturity of 1 year or less) by an SEC-recognized rating agency and not lower than AA- (or equivalent) for long-term investments (initial maturity over 1 year). Short-term investments downgraded below A-2 (or equivalent) and long-term investments downgraded below A- (or equivalent) by the same rating agency used when the investment was purchased, if material in amount, shall be divested. The total investment in the obligations of any single issuer shall not exceed 5 percent of the corporate credit union's net assets. This authority does not apply to debt obligations that are convertible into the stock of the corporation or holding company;

(v) Asset-backed securities subject to the following requirements: (1) rated not lower than AAA (or equivalent) by an SEC-recognized rating agency; (2) limited to a maximum of 5 percent of the corporate credit union's net assets for any single security or trust; and (3) having an average life at the time of purchase not to exceed 5 years. Asset-backed securities downgraded below AA- (or equivalent) by the same rating agency used when the investment was purchased, if material in amount, shall be divested;

(vi) Federally issued CMOs/REMICs and privately issued CMOs/REMICs as defined in Section 3(a) (41) of the Securities Exchange Act of 1934. CMOs and REMICs are limited further as follows:

(A) *Fixed rate.* An investment in a fixed-rate CMO/REMIC must have an expected average life not to exceed 5 years given an immediate and

sustained increase of 300 basis points in mortgage loan commitment rates. This average life standard shall apply at the time of purchase and on any subsequent review date assuming market interest rates and prepayment speeds at the time that the test is applied. A corporate credit union shall use the average of the prepayment estimates of several major securities dealers as the prepayment assumption for the underlying mortgages. In computing the expected average life of a CMO/REMIC investment, it must be assumed that the anticipated rate of prepayment remains constant over the remaining life of the mortgage collateral. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability.

(B) *Variable rate.* If the CMO/REMIC has a variable interest rate with a cap, then the lesser of the highest interest rate cap or the final interest rate cap during the average life at the time of purchase must be at least 200 basis points above the rate of the corresponding liability that it is matched against. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability.

(C) *Divestiture.* Any CMO/REMIC security downgraded below AA- (or equivalent) by the same SEC-recognized rating agency used when the investment was purchased, if material in amount, shall be divested.

(D) *Issuer Limitation.* Privately issued CMO/REMIC securities shall not exceed 5 percent of the corporate credit union's net assets for any single issuer.

(vii) Additional investments provided the corporate credit union has obtained permission from the NCUAB.

(c) *Exclusion.* The requirements of this section to divest investments downgraded below the minimum acceptable ratings do not apply if the expected maturity for the downgraded investment is 3 months or less.

(d) *Divestiture Time Frame.* The corporate credit union has 10 business days to divest itself of any investment that does not comply with the requirements of this section or to request permission from the NCUAB to hold the investment.

Any investment acquired before the effective date of this regulation is not subject to this divestiture requirement.

§704.7 Lending.

(a) *Policies.* A corporate credit union shall develop written loan policies which address, at a minimum:

- (1) Loan types and limits;
- (2) Documentation for each loan and line of credit;
- (3) Security;
- (4) Analysis of financial and operational data;
- (5) Monitoring standards; and
- (6) Review and reassessment of the credit quality of the borrower.

(b) *General.* Each individual loan or line of credit limit will be determined after analyzing the financial and operational soundness of the applicant and the ability of the applicant to repay the loan. Loans are limited as follows:

(1) *Loans to member credit unions.* The maximum aggregate amount in loans and approved lines of credit to any one member that is a credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF and member reverse repurchase transactions, shall not exceed the corporate credit union's capital or 10 percent of the corporate credit union's shares and capital, whichever is greater;

(2) *Loans to members that are not credit unions.* The aggregate amount of loans and lines of credit to credit union service organizations (CUSOs) and to members other than credit unions shall not exceed 15 percent of the corporate credit union's capital unless permission is obtained from the NCUAB.

(3) *Loans to credit unions that are not members of the corporate credit union.* The aggregate amount of loans to other credit unions that are not members of the corporate credit union shall not exceed 25 percent of the corporate credit union's shares and capital. The maximum aggregate amount in loans and approved lines of credit to any one borrower, excluding pass-through and guaranteed loans from the CLF and the NCUSIF and member reverse repurchase transactions, shall not exceed the corporate credit union's capital

or 10 percent of the corporate credit union's shares and capital, whichever is greater. Loans resulting from a loan participation purchased from another corporate credit union are excluded from this 25 percent limitation.

(c) *Participation loans with other corporate credit unions.* A corporate credit union is permitted to participate in a loan with another corporate credit union and must retain an interest of at least 5 percent of the face amount of the loan. The participation agreement may be executed at any time prior to, during, or after disbursement.

(d) *Prepayment penalties.* If provided for in the loan contract, a corporate credit union is authorized to assess prepayment penalties on loans made at fixed and variable rates to member credit unions or other organizations.

§704.8 Borrowing.

A corporate credit union may borrow up to 10 times capital or 50 percent of shares (excluding shares created by the use of member reverse repurchase agreements) and capital, whichever is greater. CLF borrowings and borrowed funds created by the use of member reverse repurchase agreements are excluded from this limit. Additional borrowing authority can be obtained from the NCUAB.

§704.9 Services.

A corporate credit union may provide services to its members involving investments, liquidity management, payment systems, and correspondent services, unless otherwise prohibited by the NCUAB, or, in the case of a state-chartered corporate credit union, prohibited by state law. The corporate credit union will maintain written agreements with vendors and other providers of services.

§704.10 Fixed Assets.

(a) *General.* A corporate credit union's ownership in fixed assets shall be limited as described in Section 701.36 of this Chapter, except that in lieu of paragraphs (c)(1)-(4) of Section 701.36, paragraph (b) of this section applies.

(b) *Investment in Fixed Assets.*

(1) No corporate credit union, without the prior written approval of the NCUAB, shall invest in

fixed assets where the aggregate of all such investments exceeds 15 percent of capital.

(2) A corporate credit union shall submit requests to exceed the limitation of paragraph (b) (1) of this section to the Director, Office of Examination and Insurance. Requests shall be supplemented by such statements and reports as the Director, Office of Examination and Insurance, may require. If the corporate credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the Director, Office of Examination and Insurance, the corporate credit union may proceed with its proposed investment in fixed assets. If the NCUAB determines that the proposal will not adversely affect the corporate credit union, it will respond in writing and an aggregate dollar amount or percentage of total capital will be approved for investment in fixed assets.

§704.11 Corporate Reserves.

(a) *Minimum Capital Ratio.* Each corporate credit union shall maintain a minimum ratio of risk-based capital to risk-weighted assets as follows:

(1) Within 90 days of the effective date of this regulation, primary capital shall be at least 4 percent of risk-weighted assets, or the corporate credit union will develop and implement a plan acceptable to NCUA for achieving an adequate level of primary capital consistent with the provisions of this regulation. This plan shall be submitted to the Director, Office of Examination and Insurance.

(2) By January 1, 1994, total capital shall equal at least 8 percent of risk-weighted assets, or the corporate credit union will develop and implement a plan acceptable to NCUA for achieving an adequate level of capital consistent with the provisions of this regulation. This plan shall be submitted to the Director, Office of Examination and Insurance.

(b) *Exceptions.* The NCUAB may modify a corporate credit union's reserve requirements under special circumstances.

(c) *Components of risk-based capital.* A corporate credit union's qualifying capital base

consists of primary and secondary capital of which at least 50 percent shall be composed of primary capital.

(d) *Limitations.* For purposes of calculating the amount of secondary capital, term subordinated debt shall not exceed 50 percent of secondary capital.

(e) *Procedures.* Balance sheet assets and credit equivalent amounts for off-balance sheet items are assigned to a risk-weight category. The total dollar amount in each category shall be multiplied by the risk-weight assigned to that category. The sum of the categories comprises risk-weighted assets.

(f) *Frequency.* Each corporate credit union shall calculate the ratio of capital to risk-weighted assets each month. A record of such calculation shall be maintained.

(g) *Risk Weights for Balance Sheet Assets.* Each balance sheet asset shall be assigned a risk weight of 0 percent, 20 percent, 50 percent, and 100 percent as indicated in Appendix A.

(h) *Other Considerations.* (1) An investment in the shares of a mutual fund is assigned to the risk category appropriate to the highest risk-weighted asset that the fund is permitted to hold. In addition, if the fund engages in speculative activities as defined in Section 704.2, then investments in the fund will be assigned to the 100 percent risk category.

(2) Accruals will be assigned the risk-weighting of the underlying asset that they represent.

(i) *Credit Conversion Factors for Off-Balance Sheet Items.* Off-balance sheet items will be risk-weighted each month using credit conversion factors as indicated in Appendix B.

(j) *Risk-Based Capital Ratios.* (1) The primary capital ratio is computed by dividing primary capital by total risk-weighted assets.

(2) The total capital ratio is computed by dividing risk-based capital by total risk-weighted assets.

(3) Month-end amounts will be used to calculate corporate credit union capital ratios.

(k) *Required Reserve Transfers.* The amount that a corporate credit union is required to transfer

or set aside in corporate reserves is based on both the corporate credit union's primary and total capital ratios. Ranges of capital ratios have been established. These capital ratio ranges are then associated with 1 of 6 corresponding categories in determining the required reserve transfer. To qualify for a lower reserve transfer category, the capital ratios must fall in both the primary and total capital ratio ranges of the applicable category. The corporate credit union shall set aside an amount equal to the appropriate required reserve transfer percentage times the corporate credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365. Until January 1, 1994, transfers shall be based on the level of primary capital only.

(1) Category 1 requires a corporate reserve transfer percentage of at least 25 basis points of average daily assets when either the primary capital ratio is less than 4.0 percent or the total capital ratio is less than 8.0 percent. A corporate reserve transfer percentage greater than 25 basis points of average daily assets is required if needed to bring either or both of the capital ratios up to the minimum acceptable level, or the corporate credit union would have to obtain approval from the NCUAB to operate below the minimum capital levels.

(2) Category 2 requires a corporate reserve transfer percentage of 20 basis points of average daily assets when the primary capital ratio is greater than 4.0 percent and less than 6.0 percent or the total capital ratio is greater than 8.0 percent and less than 9.0 percent.

(3) Category 3 requires a corporate reserve transfer percentage of 15 basis points of average daily assets when either the primary capital ratio is greater than 6.0 percent and less than 8.0 percent or the total capital ratio is greater than 9.0 percent and less than 12.0 percent.

(4) Category 4 requires a corporate reserve transfer percentage of 10 basis points of average daily assets when either the primary capital ratio is greater than 8.0 percent and less than 10.0 percent or the total capital ratio is greater than 12.0 percent and less than 15.0 percent.

(5) Category 5 requires a corporate reserve transfer percentage of 5 basis points of average

daily assets when either the primary capital ratio is greater than 10.0 percent and less than 12.0 percent or the total capital ratio percentage is greater than 15.0 percent and less than 18.0 percent.

(6) Category 6 requires a corporate reserve transfer percentage of 0 basis points when the primary capital ratio is greater than 12.0 percent and the total capital ratio percentage is greater than 18.0 percent.

(1) Corporate credit unions must provide reserves necessary for full and fair disclosure as specified in Section 702.3 of the NCUA Rules and Regulations.

§704.12 Representation.

(a) *Board Representation.* The board shall be determined as stipulated in the corporate credit union bylaws, provided that: (1) at least three directors are individuals who are not officers, directors, or employees of an affiliated organization; or (2) steps must be taken to assure open, independent elections including the following:

(i) The institution of a reasonable nomination by petition process; and

(ii) The use of mail balloting procedures (or equivalent procedures) in conducting elections to ensure that all members are provided an opportunity to participate in the election process.

(b) *Representatives of Organizational Members.* A member credit union or affiliated non-credit union member of a corporate credit union may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend membership meetings, to vote and to stand for election on behalf of the member. No individual may serve as the representative of more than one organizational member in the same corporate credit union.

(c) *Recusal Provision.* (1) No director, committee member, officer, agent, or employee of a corporate credit union shall in any manner participate in the deliberation upon or the determination of any question affecting his/her personal pecuniary interest.

(2) No director, officer, agent, or employee shall in any manner participate in the determination of

any matter material in amount (when measured annually as an aggregate of business arrangements with the corporation, partnership, or association) affecting the pecuniary interest of any corporation, partnership, or association (other than the corporate credit union) in which he/she has a direct or indirect interest, except if the matter involves the payment of dividends to the membership.

(3) In the event of the disqualification of any directors, by operation of paragraphs (1) or (2) of this provision, the remaining qualified directors present at the meeting, if constituting a quorum with the disqualified directors, may exercise, by majority vote, all the powers of the board with respect to the matter under consideration. Where all of the directors are disqualified, the matter must be decided by the members of the corporate credit union.

(4) No committee member shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting the pecuniary interest of any corporation, partnership, or association (other than this corporate credit union) in which he/she is directly or indirectly interested. In the event of the disqualification of any committee member by operation of paragraph (1) or (4) of this subsection, the remaining qualified committee members, if constituting a quorum with the disqualified committee member, may exercise, by majority vote, all the powers of the committee with respect to the matter under consideration. Where all of the committee members are disqualified, the matter shall be decided by the board of directors.

(5) If any director, officer, agent, or employee participates in the determination of any matter which is not material in amount (when measured annually as an aggregate of business arrangements with the corporation, partnership, or association) affecting the pecuniary interest of any corporation, partnership, or association (other than the corporate credit union) in which he/she has a direct or indirect interest, that matter shall be documented in the minutes of the meeting and made available to any member upon request. Such approved matters shall also be disclosed to all members of the corporate credit union by appropriate means, such as the annual report of the corporate credit union. Disclosure to members shall include the names of all directors present

who acted on the matter and the nature of their interest, a description of the matter considered, the amounts involved, and evidence that the matter is fair and reasonable to the corporate credit union.

§704.13 Annual Audit.

(a) The supervisory committee of a corporate credit union shall cause an annual opinion audit to be made by an independent, duly licensed certified public accountant (CPA) and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting;

(b) The CPA's audit workpapers shall be made available for review by the examiner during the examination; and

(c) A copy of the audit report and reportable conditions letter (i. e., management letter) shall be submitted to the Director, Office of Examination and Insurance, within 30 days after receipt by the board of directors.

§704.14 Contracts/Written Agreements.

Services, facilities, personnel, or equipment shared with any party shall be supported by a written contract, with the duties and responsibilities of each party specified and the allocation of service fee/expenses fully supported and documented.

§704.15 State-Chartered Corporate Credit Unions.

This Part does not expand the powers and authorities of any state-chartered corporate credit union, beyond those powers and authorities provided under the laws of the state in which it was chartered.

§704.16 Effective Date.

This regulation is effective beginning December 2, 1992 or June 29, 1992 if the corporate credit union plans to use the expanded authorities of paragraphs 6, 7, and 8 and has substantially complied with the other provisions of this Part. Any corporate credit union that is unable to comply with this regulation by the effective date shall obtain a temporary waiver from the Director, Office of Examination and Insurance. To obtain a waiver, the officials of the corporate credit union shall, at

least 90 days before the effective date of this regulation, explain in writing the nature of and reasons for the noncompliance, state a target date by which the corporate credit union will be in compliance with the regulation, submit any and all information requested by the Director, Office of Examination and Insurance, necessary to make a decision concerning the waiver and request, in writing, that a waiver of this regulation be granted. The Director, Office of Examination and Insurance, will respond in writing within 45 days of receiving all requested information necessary to make a decision.

Appendix A

Summary of Risk Weights and Risk Categories for Corporate Credit Unions:

Category 1: Zero Percent Risk Weight.

- a. Coin and currency on hand or physically in transit.
- b. Balances due from and claims on Federal Reserve Banks.
- c. Claims on and portions of claims that are unconditionally guaranteed by the U.S. Government or its agencies.
- d. Claims collateralized by cash or eligible deposits.
- e. CLF subscriptions, including U.S. Central CLF Participation Certificates, and CLF Pass-Through Loans from the CLF through U.S. Central to the corporate credit unions.
- f. Asset Accounts related to Member Reverse Repurchase Agreements without indemnity obligation.
- g. Claims on or unconditionally guaranteed by sovereign central governments of "AAA" rated countries.
- h. Accrued interest receivable on the above.

Category 2: 20 Percent Risk Weight.

- a. Items, other than coin and currency, in process of collection.
- b. Claims on or portions of claims guaranteed by U.S. Government-sponsored corporations and enterprises.
- c. Claims conditionally guaranteed by the U.S. Government or its agencies or U.S. Government-sponsored corporations and enterprises.
- d. Claims or portions of claims (including Repurchase Agreements) collateralized by

securities issued by the U.S. Government or its agencies or U.S. Government-sponsored corporations and enterprises.

e. General obligation claims on state and local governments located in the United States.

f. Claims on U.S. depository institutions (including Federal Funds sold) subject to the ratings requirements shown below.

g. Claims on depository institutions (including Federal Funds sold) chartered in countries rated AAA other than the United States subject to the ratings requirements shown below.

h. Claims on a corporate credit union.

i. Asset accounts related to Member Reverse Repurchase Agreements with indemnity obligations.

j. Delivery Versus Payment (DVP) Repurchase Transactions in which the corporate receives the securities collateralizing the transactions, and the corporate is authorized to invest in these securities.

k. Tri-party repurchase transactions with broker/dealers having at least \$100 million in capital which are collateralized by securities that the corporate credit union is authorized to invest in.

l. Asset-backed securities rated no lower than AAA with remaining weighted average lives of 3 years or less.

m. All CMOs/REMICs (excluding CMOs/REMICs collateralized by whole loan mortgages) that comply with Section 6(b)(2)(vi).

n. Secured loans to credit unions.

o. Accrued Interest Receivable on above.

In order to have a 20 percent risk weighting, U.S. depository institutions and foreign banks must meet one of the following conditions:

(a) The institution has a short-term debt rating not lower than A-2 (or equivalent) by a SEC-recognized rating agency; or

(b) The institution has a long-term debt rating not lower than A- (or equivalent) by a SEC-recognized rating agency; or

(c) The institution has an issuer rating not lower than B/C (or equivalent) by a SEC-recognized rating agency.

Category 3: 50 Percent Risk Weight.

a. Asset-backed securities rated no lower than AAA with remaining weighted average lives greater than 3 years.

b. All CMOs/REMICs collateralized by whole-loan mortgages that qualify under Section 6(b)(2)(vi).

c. Accrued Interest Receivable on the above.

Category 4: 100 Percent Risk Weight for All Other Assets Including, but NOT LIMITED to:

a. Loans to and investments in CUSOs.

b. Unsecured loans to credit unions.

c. All fixed assets, including land, buildings, furniture, fixtures, equipment, automobiles, and leasehold improvements.

d. All Hold-in-Custody Repurchase Agreements.

e. Member Capital Share Deposits (MCSD) in a corporate credit union.

f. Stripped Mortgage-Backed Securities.

g. Residual Interests of CMOs/REMICs.

h. Zero Coupon Securities with a maturity date more than 5 years from the purchase settlement date of the security.

i. Claims on U.S. chartered corporations and bank holding companies, including commercial paper and corporate bonds.

j. Mutual Funds that do not qualify for a lower risk weighting.

k. Prepaid Assets.

l. Accounts Receivable and other receivables.

m. NCUSIF Deposit.

n. Mortgage servicing rights.

o. Intangible assets.

p. Accrued Interest Receivable on the above.

Appendix B

OFF-BALANCE SHEET CREDIT CONVERSION FACTORS

Zero Percent Credit Conversion Factor:

Unused portions of credit lines with original maturities of 6 months or less, or which are unconditionally cancellable.

50 Percent Credit Conversion Factor:

a. Unused portions of credit lines with original maturities exceeding 6 months.

b. Commitments to participate in a loan or loan package.

100 Percent Credit Conversion Factor:

a. Irrevocable standby letters of credit guaranteeing financial performance (including VISA letters of credit issued by corporate credit unions on behalf of their members, or standby letters of credit backing Industrial Revenue Bonds).

b. Forward Commitments to purchase an asset or perform under a lease contract.

c. Securities held in safekeeping loaned with indemnification. Other off-balance sheet items will be addressed on a case-by-case basis by the Director, Office of Examination and Insurance.

Appendix C

U.S. Government Obligations and U.S. Government Agencies.

- a. U.S. Treasury Bills
- b. U.S. Treasury Notes
- c. U.S. Treasury Bonds
- d. Commodity Credit Corporation
- e. Export-Import Bank (Exim Bank)
- f. Farm Credit System Financial Assistance Corporation (FCSFAC)
- g. Farmers Home Administration (FmHA)
- h. Federal Housing Administration (FHA)
- i. General Services Administration (GSA)

j. Government National Mortgage Association (GNMA)

k. Maritime Administration (MA)

l. Overseas Private Investment Corporation (OPIC)

m. Small Business Administration (SBA)

n. Veterans Administration (VA)

o. Washington Metropolitan Area Transit Authority (WMATA)

U.S. Government-Sponsored Corporations and Enterprises.

- a. Federal Home Loan Bank (FHLB)
- b. Federal Home Loan Mortgage Corporation (FHLMC)
- c. Federal National Mortgage Association (FNMA)
- d. Resolution Trust Corporation (RTC)
- e. Student Loan Marketing Association (SLMA)

February 5, 1993

HOUSE BILL 182

**Testimony of:
Myrtle A. White**

**Vice President, Financial Services
Montana Credit Union League**

**Chief Operating Officer
Treasure State Corporate Central Credit Union**

Senate Business and Industry Committee

Mr. Chairman, members of the Committee, I am Myrtle White, Vice President-Financial Services for the Montana Credit Unions League, and Chief Operating Officer for Treasure State Corporate Central Credit Union.

My testimony will consist of general information about Treasure State Corporate Central Credit Union, its position and its services, the purpose and intent of NCUA's new regulation for corporate credit unions, and further information on selected sections of the proposed bill.

I. GENERAL INFORMATION

Treasure State Corporate Central Credit Union (TSCCCU) was chartered by the state of Montana in February 1977. TSCCCU serves 92 natural person credit unions and several related organizations with investment liquidity and correspondent financial services.

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 2/5/93

BILL NO. HB 182

At December 31, 1992, TSCCCU's assets totaled \$159 million. Because ours is a truly wholesale operation with sophisticated data processing services, we operate with a staff of 4 persons in the same physical offices as the Montana Credit Unions League.

Our member credit unions have invested approximately 40% of their investible funds in various types of accounts offered at TSCCCU.

Although at this time there is little need for loans, each credit union has an approved line of credit with TSCCCU to cover short term borrowing needs as their liquidity dictates.

TSCCCU offers other types of financial services, such as electronic transfer of funds and serving as a processor for automated clearinghouse items.

TSCCCU also serves as credit unions' access to the Federal Reserve Bank, offering several correspondent financial services through them. These include daily deposits, cash delivery, and the processing and truncation of business checks.

II. PURPOSE AND INTENT

As you might well imagine, the critical Savings and Loan crisis has spurred our Congress to scrutinize all financial institutions more closely. Pressure has been put

upon regulators of financial institutions to more closely oversee their operations and develop regulations and procedures to assure safety to the depositors and prevent further costs to the taxpayers.

NCUA felt the corporate credit union system needed a regulation which would recognize and identify corporate credit unions' unique position within the credit union system.

The regulation was almost two years in the making. NCUA solicited input from the corporate credit union community and issued a draft regulation twice for comment. The final regulation is indeed a product of the regulator and the regulated working in concert.

III. SELECTED PROVISIONS

New Section 5. Membership Capital Share Deposits.

Bob Pyfer touched on this section in his report. In essence, this would allow TSCCCU to issue at-risk shares, subordinated to all other liabilities in order to increase the corporate's capital base.

TSCCCU has offered a membership shares account to member credit unions asking them to support TSCCCU with a permanent deposit of 1% of their year-end assets, to be updated annually. 89 member credit unions currently support this voluntary account.

For many years corporate credit unions have encouraged NCUA to recognize the permanence of membership shares accounts and allow them to be considered capital. In proposed Section 5, which is nearly verbatim from the federal regulation definition, NCUA is recognizing membership shares accounts and classifying them as capital if they meet certain criteria defined here.

It is important for TSCCCU to have the authority to issue Membership Capital Share Deposits and use them as secondary capital, as many limitations described in the regulation are tied to the corporate credit union's capital.

New Section 7. Corporate Reserves.

Until the adoption of the new NCUA regulation for corporate credit unions, TSCCCU fell under the reserve requirements of our current state credit union law. This law requires credit unions to reserve a percentage of gross income, varying according to the regular reserve account as compared to the credit union's risk assets. Because TSCCCU has so few risk assets, we have not been required to reserve for some time.

Exhibit #3
2-5-93
HB-182

However, recognizing that building reserves and capital makes good business sense, TSCCCU has added to its reserves consistently.

NCUA, in adopting the new regulation, has recognized that reserving on gross income is not appropriate for corporate credit unions. As interest rates fluctuate, gross income can decline dramatically. Additionally, corporate credit unions' assets can grow or shrink substantially in a short period of time. Therefore, the new NCUA regulation requires corporate credit unions to reserve based on a percentage of their average monthly assets.

Additionally, NCUA recognizes that some assets present more of a risk to a corporate credit union than others. And, as Bob stated in his testimony, they have provided a schedule of different types of assets and how much they must be risk weighted.

The regulation will allow us to use membership capital share deposits in an equal amount to primary capital (regular reserves and undivided earnings) to apply to the necessary capital ratio required. TSCCCU will meet all capital requirements.

Mr. Chairman and members of the Committee, this concludes my formal testimony on the bill. I would be happy to respond to questions from the Committee.

We urge the Committee to recommend "do pass" for House Bill 182. Thank you.



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SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 2-5-93

BILL NO. HB 1125

WHAT IS A "CONTAINER LAW"?

A container law restricts the filling of an LP-gas storage tank, or container, to its owner or someone with his authorization. A typical law states, in part, "An LP-gas container shall be filled only by the owner or upon the owner's authorization."

The need for such a restriction is acknowledged by the U.S. Consumer Product Safety Commission and organizations of safety regulatory officials such as the National Association of State Fire Marshals, among others. In fact, U.S. Department of Transportation rules (which date back to at least 1919) say that.....

".....a container charged with compressed gas must not be shipped unless...charged by or with the consent of the owner."
(49 CFR 173.301[b])

Similarly, the U.S. Department of Labor's OSHA regulations include the stipulation that.....

"...containers shall be filled or used only upon authorization of the owner." (29 CFR 1910.110[b][14][ii])

Is it in the public interest to enact a container law?

The concern and need for a state law relates to the larger cylinders and tanks built according to specifications of the U.S. Department of Transportation (DOT) and the American Society of Mechanical Engineers (ASME). DOT cylinders and ASME tanks are commonly used at residential and commercial locations for space heating, cooking, and water heating. These containers are not usually owned by consumers, though they can be. Most often, the LP-gas marketer retains ownership in order to oversee the safe operation of the entire fuel system, since consumers and business owners can't be expected to inspect and maintain their containers properly. The LP-gas supplier who retains ownership of the container can also monitor its condition and use throughout its service life. This affords an extra level of safety and assurance for the consumer.

STATE CONTAINER LAWS *

ARKANSAS Senate Bill No. 413 of 1957, located in Section 53-174 through 53-727 of state code.

CALIFORNIA Section 13480, Section 14427 and Section 13560 of the Business and Professions Code.

COLORADO Co. Rev. Statutes 8-20-302; Current edition of NFPA #58 is used.

DELEWARE Title 16, Chapter 72; NFPA #58 & #54.

FLORIDA Statute prohibits filling of containers identified by the Division as being in violation of the law or regulations or by other than the owner or authorized individual; NFPA #58 & #54 adopted.

GEORGIA LP Safety Act of GA Title 10, Act No. 558 amending Chapter 73-2 (1979); NFPA #58 & 54.

HAWAII Chapter 132, State Fire Marshall, Section 708-838.

IDAHO Title 39, Chapter 22, Section 39-2203; NFPA #58.

ILLINOIS Chapter 96 1/2, Section 5601 to 5604 of the Illinois Revised Statutes; NFPA #58 & #54.

INDIANA Title 22, Section 11-5-1, Chapter 15; NFPA #58 & #54.

KANSAS Chapter 55, Oil & Gas, Article 11, LPGas, Section 55-1101 through 55-1105; NFPA #58.

* KENTUCKY Title 29, Chapter 234, Sections 234.110-234.200; NFPA #58.

LOUISIANA Title 40, Chapter 10, Section 1106 of Louisiana Statutes; Act 214, Laws 1984 allows the Board to adopt NFPA #58.

MARYLAND Annotated Code of MD, Chapter 38A, Section 11-601-through 11-606; NFPA #58 & #54.

MASSACHUSETTS 527 CMR 6.05 (4); NFPA #58, except for chapter 6.

MICHIGAN Chapter 29, Section 429.11 of the Michigan Compiles Laws Annotated; NFPA #58.

MINNESOTA Section 299F.40 of the MN Statutes Annotated; NFPA #58.

MISSOURI Section 323.030 of the Missouri Revised Statutes.

NEVADA Section 590:535; NFPA #58 & #54.

NEW JERSEY Section 21:1B of NJSA; NFPA #54, #58, & #59.

NORTH CAROLINA Section 119-58(b); NFPA #58 & #54.

OKLAHOMA Section 420.9 of OK Statutes; NFPA #58 & #54.

PENNSYLVANIA Title 35, Chapter 14A, Section 1322; NFPA #54 & #58.

SOUTH DAKOTA Section 34-39-9; NFPA #58 & #54.

TENNESSEE Section 68-26-108; NFPA #58 & #54.

VIRGINIA Title 18.2; NFPA #58 & #54.

WISCONSIN Section 101.16(3). NFPA #58 & #54.

ALABAMA Adopted NFPA #58; No container law.

ALASKA NFPA Codes apply; No container law.

ARIZONA Adopted NFPA #58; No container law.

CONNECTICUT Adopted NFPA #58 & #54; No container law

DISTRICT OF COLUMBIA No container law.

IOWA NFPA #58 & #54; No container law.

MAINE NFPA #58 & #54; No container law.

MISSISSIPPI NFPA #58 & #54; No container law.

MONTANA Uniform Building Code and Uniform Fire Code; No container law.

NEBRASKA No specific cite for law, lists temperature correction, meter provisions, sales tickets and general info.; Statutory Authority: Chapter 81, State Administrative Agencies, Article 5, State Fire Marshal Chapter 57, Minerals, Oil, Gas, Article 5, LP Gas of the Revised Statutes of Nebraska, 1943; NFPA #58 & #54 adopted.

NEW HAMPSHIRE NFPA #58 & #54; No container law.

NEW MEXICO NFPA #58 & #54; No container law indicated.

NEW YORK NFPA #59; No container law.

NORTH DAKOTA NFPA #58 & #54; No container law.

OHIO NFPA #58, #54, & #69; No container law.

OREGON NFPA #58, #54, & #59; No container law.

RHODE ISLAND Underwriters Laboratories; NFPA #58 & #59; No container law.

SOUTH CAROLINA No cite. The regulations state that every container of 100 lbs. or greater must have a tag, label or marking which plainly shows the name of the person or firm supplying LP-Gas to the system. It is unlawful to fill the system with LP-gas without the consent of the listed supplier; however, if the consumer requests another supplier to fill the system, the new supplier is obligated to contact the old supplier within 24 hours of connecting the new service. A copy of the notice to the old supplier must also be filed with the LP-Gas Division of the South Carolina Insurance Division.

TEXAS NFPA #58; No container law.

UTAH National Fire Code and local regulations.

WASHINGTON NFPA #58; No container law.

WEST VIRGINIA NFPA #58 & #54; No container law.

WYOMING NFPA #58 and Uniform Fire & Bldg. Codes; No container law.

DATE February 5, 1993

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 1165, HB 182

Name	Representing	Bill No.	Check One	
			Support	Oppose
Gonna Alexander	MT Propane Gas Assn	165	X	
Jim Kembel	DOC	165	Information	
Jack Brown	MT Propane Gas Assn	165	X	
Dean Stapleton	GPVEX Propane / NPGA	165	X	
Gary South	Northern Energy, Inc	165	X	
Larry Muscati	Suburban & Propane	165	X	
Bob Pyfer	MT Credit Union Leas	182	X	
Myrt White	" " "	182	✓	
Don Hutchinson	COMMISSIONER OF FINANCIAL INST	182	✓	
Daryl South	Montana Propane	165	X	
Chris Bowers	Northern Energy	165	X	
JACIS MALCARE	WESTERN FUEL	165	X	
George Krause	Northern Energy	165	X	
Mervin Wang	Northern Energy	165	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY