

COMMON SENSE CREDIT UNION CAPITAL RELIEF ACT OF
2017

APRIL 24, 2018.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4464]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4464) to repeal the rule issued by the National Credit Union Administration titled “Risk-Based Capital”, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Bill Posey on November 28, 2017, H.R. 4464, the “Common Sense Credit Union Relief Act of 2017,” repeals the October 15, 2015, National Credit Union Administration (NCUA) Final Risk-Based Capital Rule (80 FR 66626).

BACKGROUND AND NEED FOR LEGISLATION

The National Credit Union Administration (NCUA) is the independent federal agency created by the U.S. Congress to regulate, charter, and supervise federal credit unions. The NCUA operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures the deposits of the account holders in all federal credit unions and the majority of state-chartered credit unions.

Beginning in 1934 with the passage of the Federal Credit Union Act (FCUA), the NCUA, through its predecessors, engages in the supervision and regulation of federal credit unions. The NCUA is responsible for the regulation and supervision of 5,696 federally insured credit unions with approximately 109 million members and more than \$1 trillion in assets across all states and U.S. territories. In 1970, this supervision of federal credit unions evolved to include the addition of the NCUSIF, which provides to credit union accounts the backing of the full faith and credit of the U.S. Government. Administered by the NCUA, provides members with at least \$250,000 of insurance at a federally insured credit union and the NCUA's overview of the NCUSIF states that "Credit union members have never lost a penny of insured savings at a federally insured credit union."¹

On January 23, 2014, the NCUA issued a proposed rule to amend its risk-based capital requirements for credit unions. Known as the "Risk-Based Net Worth Rule," the proposal generated significant controversy and garnered over 2,000 comment letters, including more than 300 from members of Congress. In response, the NCUA withdrew its original proposal and on January 15, 2015, the NCUA issued a revised risk-based capital rule. The 2015 revised proposal did not extinguish the concerns of interested commentators, as shown by the 2,147 comment letters received by the NCUA after re-issuance. Yet, on October 15, 2015, the NCUA Board voted 2-1 to approve a final risk-based capital rule, which will take effect January 1, 2019.

Many commentators are concerned that risk-based capital for federal credit unions is unnecessary, because, as former NCUA Chairman Matz noted in a December 2011 letter to the Government Accountability Office, "consumer credit unions performed very well during the worst financial crisis since the Great Depression and NCUA was highly successful overall in mitigating failures and losses for consumer credit unions."² While the NCUA must ensure that credit unions remain sound to withstand a range of economic conditions, there is a notable absence of comprehensive research, dialogue, and due diligence as part of its rulemaking efforts.

Additionally, there are concerns that the 2015 final rule exceeds NCUA's statutory authority, as current law does not expressly permit the NCUA to establish a two-tiered risk-based capital system. As a result, several legal opinions were commissioned to determine whether the NCUA has legal authority to do so. The law firm of *Paul Hastings, LLP*, found that the FCUA is both ambiguous and susceptible to differing interpretations, including that of the NCUA. Another law firm, *Venable, LLP*, concluded that the FCUA does not permit the NCUA to establish a higher risk based capital component for "well-capitalized" credit unions than what is required for "adequately capitalized" credit unions, and therefore the rule would violate the FCUA.

In 2015, then NCUA Board Member, and now-Chairman, Mark McWatters, an attorney and former law professor, voted against the final risk-based capital rule. Board Member McWatters argued

¹ See: Share Insurance Fund Overview, available at: <https://www.ncua.gov/services/pages/share-insurance.aspx>.

² <https://www.gao.gov/assets/590/587409.pdf>.

that the Paul Hastings legal opinion was not a strong enough basis on which to justify the NCUA's legal authority to implement a two-tier risk-based net worth system. In his October 15, 2015, dissent, now-Chairman McWatters stated:

Since I am of the view that the NCUA Board does not possess the legal authority under the FCUA to adopt a two-tier RBNW standard, and based upon other major concerns with the rule I have addressed in this statement, I will not support the RBNW regulations as currently drafted. Further, I would find it problematic to support a single-tier RBNW standard unless the rule permits the inclusion—or at least acknowledges a good faith undertaking to investigate the viability—of properly structured supplemental capital in the calculation of the RBNW ratio to the fullest extent permitted by applicable law.³

Furthermore, now-Chairman McWatters has indicated his intent to revisit the risk-based capital rule as part of a “thoughtful loosening” of regulations, because:

just as regulatory relief designed for the entire credit union community may not help an individual credit union, overall performance does not mean every institution is doing well. That is why I support and wish to enhance the NCUA's regulatory and supervisory approach to focus on the problem areas and allow well-managed credit unions to get about the business of serving their members with minimal interference.⁴

The rule was both unnecessary and poorly conceived from its inception. Even though the NCUA took unprecedented actions to rewrite the rule for a second time, the revised rule garnered even more comments than the initial version. As stated in testimony before the Financial Services Committee on December 7, 2017, by Brian Ducharme, President and CEO of MIT Federal Credit Union:

[e]nacting H.R. 4464 would stop the outdated NCUA risk-based capital rule from being implemented and, instead, allow the agency to craft a new RBC rule that considers recent developments and better reflects the needs of the credit union system.⁵

As such, by repealing the NCUA's final rule, H.R. 4464 will provide much needed regulatory relief for credit unions that have only become more stable and resilient since the NCUA originally proposed this rule some four years ago.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 4464 on April 26, 2017 and April 28, 2017.

³ <https://www.ncua.gov/newsroom/Pages/speeches/2015/october/McWatters-Statement-Final-Risk-Based-Net-Worth-Rule.aspx>.

⁴ <https://www.ncua.gov/newsroom/Pages/speech-2017-feb-remarks-of-chairman-mcwatters-gac.aspx>.

⁵ <https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-bducharme-20171207.pdf>.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on December 13, 2017, and ordered H.R. 4464 to be reported favorably to the House as amended by a recorded vote of 33 yeas to 25 nays (Record vote no. FC-132), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A recorded vote was requested on a motion by Chairman Hensarling to report the bill favorably to the House. The motion was agreed to by a recorded vote of 33 yeas to 25 nays (Record vote no. FC-132), a quorum being present. An amendment offered by Ms. Waters, no. 1, was not agreed to by a recorded vote of 25 yeas and 33 nays (Record vote no. FC-131).

Record vote no. FC-132

| Representative | Yea | Nay | Present | Representative | Yea | Nay | Present |
|-------------------------|-----|-----|---------|------------------------------------|-----|-----|---------|
| Mr. Hensarling | X | | | Ms. Maxine Waters (CA) | | X | |
| Mr. McHenry | X | | | Mrs. Carolyn B. Maloney (NY) | | X | |
| Mr. King | X | | | Ms. Velázquez | | X | |
| Mr. Royce (CA) | X | | | Mr. Sherman | | X | |
| Mr. Lucas | X | | | Mr. Neeks | | X | |
| Mr. Pearce | X | | | Mr. Capuano | | X | |
| Mr. Posey | X | | | Mr. Clay | | X | |
| Mr. Luetkemeyer | X | | | Mr. Lynch | | X | |
| Mr. Huizenga | X | | | Mr. David Scott (GA) | | X | |
| Mr. Duffy | X | | | Mr. Al Green (TX) | | X | |
| Mr. Stivers | X | | | Mr. Cleaver | | X | |
| Mr. Hultgren | X | | | Ms. Moore | | X | |
| Mr. Ross | X | | | Mr. Ellison | | X | |
| Mr. Pittenger | | | | Mr. Perlmutter | X | | |
| Mrs. Wagner | X | | | Mr. Himes | | X | |
| Mr. Barr | X | | | Mr. Foster | | X | |
| Mr. Rothfus | X | | | Mr. Kildee | | X | |
| Mr. Messer | X | | | Mr. Delaney | | X | |
| Mr. Tipton | X | | | Ms. Sinema | | X | |
| Mr. Williams | X | | | Mrs. Beatty | | X | |
| Mr. Poliquin | X | | | Mr. Heck | | X | |
| Mrs. Love | X | | | Mr. Vargas | | X | |
| Mr. Hill | X | | | Mr. Gottheimer | | X | |
| Mr. Emmer | X | | | Mr. Gonzalez (TX) | | X | |
| Mr. Zeidin | X | | | Mr. Crist | | X | |
| Mr. Trott | X | | | Mr. Kihuen | | X | |
| Mr. Loudermilk | X | | | | | | |
| Mr. Mooney (WV) | X | | | | | | |
| Mr. MacArthur | X | | | | | | |
| Mr. Davidson | X | | | | | | |
| Mr. Budd | | | | | | | |
| Mr. Kustoff (TN) | X | | | | | | |
| Ms. Tenney | X | | | | | | |
| Mr. Hollingsworth | X | | | | | | |

Record vote no. FC-131

| Representative | Yea | Nay | Present | Representative | Yea | Nay | Present |
|-------------------------|-----|-----|---------|---------------------------------|-----|-----|---------|
| Mr. Hensarling | | X | | Ms. Maxine Waters (CA) | X | | |
| Mr. McHenry | | X | | Mrs. Carolyn B. Maloney (NY) .. | X | | |
| Mr. King | | X | | Ms. Velázquez | X | | |
| Mr. Royce (CA) | | X | | Mr. Sherman | X | | |
| Mr. Lucas | | X | | Mr. Meeks | X | | |
| Mr. Pearce | | X | | Mr. Capuano | X | | |
| Mr. Posey | | X | | Mr. Clay | X | | |
| Mr. Luetkemeyer | | X | | Mr. Lynch | X | | |
| Mr. Huizenga | | X | | Mr. David Scott (GA) | X | | |
| Mr. Duffy | | X | | Mr. Al Green (TX) | X | | |
| Mr. Stivers | | X | | Mr. Cleaver | X | | |
| Mr. Hultgren | | X | | Ms. Moore | X | | |
| Mr. Ross | | X | | Mr. Ellison | X | | |
| Mr. Pittenger | | | | Mr. Perlmutter | X | | |
| Mrs. Wagner | | X | | Mr. Himes | X | | |
| Mr. Barr | | X | | Mr. Foster | X | | |
| Mr. Rothfus | | X | | Mr. Kildee | X | | |
| Mr. Messer | | X | | Mr. Delaney | X | | |
| Mr. Tipton | | X | | Ms. Sinema | X | | |
| Mr. Williams | | X | | Mrs. Beatty | X | | |
| Mr. Poliquin | | X | | Mr. Heck | X | | |
| Mrs. Love | | X | | Mr. Vargas | X | | |
| Mr. Hill | | X | | Mr. Gottheimer | | X | |
| Mr. Emmer | | X | | Mr. Gonzalez (TX) | X | | |
| Mr. Zeldin | | X | | Mr. Crist | X | | |
| Mr. Trott | | X | | Mr. Kihuen | X | | |
| Mr. Loudermilk | | X | | | | | |
| Mr. Mooney (WV) | | X | | | | | |
| Mr. MacArthur | | X | | | | | |
| Mr. Davidson | | X | | | | | |
| Mr. Budd | | | | | | | |
| Mr. Kustoff (TN) | | X | | | | | |
| Ms. Tenney | | X | | | | | |
| Mr. Hollingsworth | | X | | | | | |

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 4464 will repeal the National Credit Union Administration's Risk-Based Capital final rule (published at 80 Fed. Reg. 66626 (October 29, 2015)).

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 26, 2018.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4464, the Common Sense Credit Union Capital Relief Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4464—Common Sense Credit Union Capital Relief Act of 2017

Summary: H.R. 4464 would prevent a rule issued by the National Credit Union Administration (NCUA) from going into effect. That rule would make changes to NCUA's capital requirements for credit unions. Such changes can affect the probability that a credit union fails and must be resolved by the Share Insurance Fund (SIF). As a result, CBO estimates that enacting the bill would increase net direct spending by \$50 million over the 2018–2027 period.

Because enacting H.R. 4464 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 4464 would not increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4464 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Additional fees levied by the NCUA on credit unions would increase the cost of an existing private-sector mandate as defined in UMRA. However, CBO estimates that those costs would fall below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 4464 is shown in the following table. The costs of this legislation fall within budget function 370 (advancement of commerce).

| | By fiscal year, in millions of dollars— | | | | | | | | | | | |
|--|---|------|------|------|------|------|------|------|------|------|-----------|-----------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2018–2022 | 2018–2027 |
| INCREASES IN DIRECT SPENDING | | | | | | | | | | | | |
| Increased Costs to the NCUA to Resolve Failed Credit Unions. | | | | | | | | | | | | |
| Estimated Budget Authority | 0 | 14 | 10 | 10 | 6 | 2 | 2 | 2 | 2 | 2 | 40 | 50 |
| Estimated Outlays | 0 | 14 | 10 | 10 | 6 | 2 | 2 | 2 | 2 | 2 | 40 | 50 |

Basis of estimate: Enacting H.R. 4464 would reduce the amount of capital that certain credit unions would be required to hold and would change how credit unions account for the risk profile of their assets to federal regulators. Enacting the bill would permit credit unions to hold less capital than they will be required to hold under the rule, which becomes effective in January 2019. Reducing the amount of capital credit unions hold increases the probability that a credit union could fail and also increases the federal cost of resolving credit union failures. Failed credit unions are resolved through the SIF, which is administered by the NCUA. That spending is recorded in the budget as direct spending.

Under the rule, Credit Unions will be required to have a ratio of risk-weighted assets to capital of 10 percent. Under H.R. 4464, that ratio would be 7 percent, the ratio in place before the rule was finalized. The rule sets the level of capital credit unions must hold and also requires credit unions to account for the risk profile of their assets in a way that is commensurate with the way that banks must account for their risk profile. Under the bill, credit unions would return to using a measure of risk called the net worth ratio that was primarily intended to capture interest rate risk.

CBO's baseline projection for the SIF's gross cost is \$1.2 billion over the 2018–2027 period. Using information from the NCUA, CBO estimates that enacting the bill would increase those gross SIF costs by about one-third (or about \$400 million) over the 2018–2027 period.¹ CBO expects those costs would increase because

¹ See National Credit Union Administration, Risk-Based Capital Final Rule Impact Summary (October 2015), <https://go.usa.gov/xnHtm> (PDF, 128 KB).

failed credit unions would have less capital, and as a result, costs to the SIF to resolve them would increase. However, the NCUA has the authority to collect premiums and fees from insured institutions to offset its costs; those premiums and fees are recorded as offsets to direct spending. Because of the time it would take for the NCUA to set its assessments to recoup those costs, CBO expects that there would be a one-year delay in collecting premiums and fees from credit unions. As a result of that lag, CBO estimates that enacting the bill would lead to a net increase in direct spending of \$50 million over the 2018–2027 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4464, THE COMMON SENSE CREDIT UNION CAPITAL RELIEF ACT OF 2017, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON DECEMBER 13, 2017

| | By fiscal year, in millions of dollars— | | | | | | | | | | | |
|--------------------------------------|---|------|------|------|------|------|------|------|------|------|-----------|-----------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2018–2022 | 2018–2027 |
| | NET INCREASE IN THE DEFICIT | | | | | | | | | | | |
| Statutory Pay-As-You-Go Impact | 0 | 14 | 10 | 10 | 6 | 2 | 2 | 2 | 2 | 2 | 40 | 50 |

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 4464 would not increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

Mandates: H.R. 4464 contains no intergovernmental mandates as defined in UMRA.

Additional fees assessed by the NCUA to offset the costs associated with implementing the bill would increase the cost of an existing mandate on federally chartered credit unions required to pay those fees. CBO estimates that the additional cost of the mandate would total \$19 million in 2020 and would remain below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation) in subsequent years.

Estimate prepared by: Federal costs: Sarah Puro; Mandates: Rachel Austin.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee states that the bill requires no directed rulemakings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 4464 as the “Common Sense Credit Union Capital Relief Act of 2017.”

Section 2. Repeal

This section repeals the National Credit Union Administration’s “Risk-Based Capital” final rule (published at 80 Fed. Reg. 66626 (October 29, 2015)).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 4464 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives.

MINORITY VIEWS

H.R. 4464 would repeal the final rule on risk-based capital that was promulgated by the National Credit Union Administration (NCUA) in October 2015 and takes effect on January 1, 2019.¹

That rule was the culmination of a multi-year rulemaking process that involved considerable study and input from stakeholders. NCUA's Board explained that the rule satisfies several legal requirements that it is required to fulfill. According to NCUA, nearly 75 percent of all credit unions are exempt from the rule, and only one percent of credit unions are likely to have to make adjustments to come into compliance with the rule. While the bill would repeal the final rule, it would not make any changes to the underlying statutes that the rule addresses, meaning the statutory rulemaking requirement remains.

NCUA's risk-based capital rule has been closely scrutinized by the Committee in terms of how the agency proposed and then finalized the rule. For example, on October 6, 2015, Members of our Committee wrote a bipartisan letter to former NCUA Chairman Debbie Matz, urging the agency to voluntarily undertake the study and report proposed by a bipartisan bill introduced in the 114th Congress,² before finalizing the risk-based capital rule. Chairman Matz replied on October 8, 2015, that NCUA had already closely studied each of the factors mentioned in the study under the proposed bill, but she still committed to issuing a report to the Committee. In November 2015, NCUA submitted to the Committee a 220-page report entitled, "Report to the House Financial Services Committee on the Final Risk-Based Capital Rule," that was also published on NCUA's website.³ In this report, NCUA laid out the statutory authority for the rulemaking along with the extensive analysis and engagement with stakeholders in crafting and finalizing the proposal. NCUA emphasized that, "The Federal Credit Union Act requires the NCUA Board to prescribe, by regulation, a system of prompt corrective action that is: '*consistent with*' section 216 of the Federal Credit Union Act; and '*comparable*' to the system of prompt connective action prescribed in the Federal Deposit Insurance Act. . . . Because of the statutory requirement for NCUA's prompt corrective action system to be comparable—and the fact that credit unions are exposed to credit risk like all depository financial institutions—NCUA's general approach was to defer

¹ <https://www.federalregister.gov/documents/2015/10/29/2015-26790/risk-based-capital> and <https://www.ncua.gov/About/Pages/board-actions/bulletins/2015/october/BAB20151015.aspx>.

² H.R. 2769 (114th Congress), the Risk-Based Capital Study Act of 2015, <https://www.congress.gov/bill/114thcongress/house-bill/2769>. The bill was not enacted into law, so NCUA was not required to conduct the study or report.

³ <https://www.ncua.gov/regulation-supervision/Documents/RBC/final-risk-based-capital-rule-report.pdf>.

to the capital treatment used by the other banking agencies and the Basel Committee on Banking Supervision.”

NCUA’s rule updates regulations on prompt corrective action requiring credit unions that take certain risks must hold capital commensurate with those risks. The rule only applies to federally-insured credit unions with assets over \$100 million. At the time the rule was adopted, it was estimated that 76 percent of credit unions would be exempt. Furthermore, among the 24 percent of credit unions covered by the rule, only 1 percent would experience any change in their capital category, based on balance sheets of covered credit unions at the time. Nearly 99 percent of the 1,489 covered credit unions, would continue to be categorized as “well capitalized.”⁴ The rule is set to go into effect on January 1, 2019, which coincides with the full phase-in of risk-based capital rules at federal banking agencies.⁵

When the final rule was adopted, then Chairman Matz explained the rule is tailored to address the high-risk outlier credit unions that pose significant potential risk of losses to NCUA’s Share Insurance Fund (NCUSIF). In the event of losses to NCUSIF, all federally insured credit unions would have to pay to recapitalize the fund. As Dr. Marcus Stanley explained in testimony before the Committee, “This is not just a theoretical danger. During the financial crisis dozens of credit unions failed, and the Federal government was forced to place large ‘wholesale’ credit unions into public conservatorship due to large unexpected losses on subprime mortgage securities.” Dr. Stanley went on to recommend that “Congress work with the NCUA to investigate means of assisting credit unions that are less extreme than simply repealing new risk based capital rules.”⁶

We oppose H.R. 4464 because it would repeal a risk-based capital rule that fulfills a statutory mandate that federally-insured credit unions be held to comparable capital standards as federally-insured banks. Furthermore, this tailored rulemaking was adopted after a thoughtful and deliberative rulemaking process. Rather than a wholesale repeal of the rule, a less drastic policy approach would be to identify any specific problems with the final rule, seek more information, and determine whether any regulatory or legislative changes may be necessary to address them. Furthermore, while credit unions are required to have comparable capital rules that banks have, we believe credit unions should also have a comparable amount of time banks had to adjust to new capital rules.

To that end, Committee Democrats offered a substitute amendment to replace H.R. 4464’s repeal of the risk-based capital rule with a two-year extension, giving the few credit unions that will

⁴ Federally insured credit unions have substantially increased membership, assets, net income, and loans since 2011. Credit union membership has expanded by 16.5 million since 2010, an increase of 18 percent, which now stands at more than 108 million members nationwide. See <https://www.ncua.gov/newsroom/Pages/publications/annual-reports.aspx>.

⁵ <https://www.ncua.gov/About/Pages/board-actions/bulletins/2015/october/BAB20151015.aspx>. For more information about the rule, also see <https://www.ncua.gov/regulation-supervision/Pages/policy-compliance/resource-centers/risk-based-capital.aspx>, <https://www.ncua.gov/newsroom/Pages/speeches/2015/october/Matz-Statement-on-the-Risk-Based-Capital-Final-Rule.aspx>, <https://www.ncua.gov/Legal/Documents/RBC/RBC-Impact-Analysis.pdf>, <https://www.ncua.gov/Legal/Documents/RBC/RBC-Final-Rule-FAQs.pdf>, and <https://www.ncua.gov/About/Documents/Agenda%20Items/AG20151015Item4a.pdf>.

⁶ <https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-mstanley-20171207.pdf>.

have to adjust their balance sheet until 2021 to come into compliance with the rule. The extension would also give NCUA, Congress, and stakeholders additional time to more closely scrutinize various components of the risk-based capital rule, and make administrative or legislative changes as necessary. Unfortunately, Republicans rejected this sensible alternative and continue to insist on completely repealing the rule even though the law requires NCUA to have comparable capital rules as banks have.

For these reasons, we oppose H.R. 4464.

MAXINE WATERS.
NYDIA M. VELÁZQUEZ.
CAROLYN B. MALONEY.
JOYCE BEATTY.
KEITH ELLISON.

