

110TH CONGRESS
2D SESSION

S. 2957

To modernize credit union net worth standards, advance credit union efforts to promote economic growth, and modify credit union regulatory standards and reduce burdens, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 1, 2008

Mr. LIEBERMAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To modernize credit union net worth standards, advance credit union efforts to promote economic growth, and modify credit union regulatory standards and reduce burdens, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Credit Union Regu-
5 latory Improvements Act of 2008”.

TITLE I—CAPITAL MODERNIZATION

SEC. 101. AMENDMENTS TO NET WORTH CATEGORIES.

(a) IN GENERAL.—Section 216(c)(1) of the Federal Credit Union Act (12 U.S.C. 1790d(c)(1)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking “7 percent” and inserting “5.25 percent”; and

(B) by striking clause (ii) and inserting the following:

“(ii) it has a risk-based net worth ratio of not less than 10 percent.”;

(2) in subparagraph (B)—

(A) in clause (i), by striking “6 percent” and inserting “4.25 percent”; and

(B) by striking clause (ii) and inserting the following:

“(ii) it has a risk-based net worth ratio of not less than 8 percent.”;

(3) in subparagraph (C)—

(A) in clause (i), by striking “6 percent” and inserting “4.25 percent”; and

(B) by striking clause (ii) and inserting the following:

1 “(ii) it has a risk-based net worth
2 ratio of less than 8 percent.”; and

3 (4) by striking subparagraph (D) and inserting
4 the following:

5 “(D) SIGNIFICANTLY UNDERCAPITAL-
6 IZED.—An insured credit union is ‘significantly
7 undercapitalized’ if—

8 “(i) the credit union has a net worth
9 ratio of less than 3.25 percent;

10 “(ii) the credit union has a net worth
11 ratio of less than 4.25 percent and ei-
12 ther—

13 “(I) fails to submit an acceptable
14 net worth restoration plan within the
15 time allowed under subsection (f); or

16 “(II) materially fails to imple-
17 ment a net worth restoration plan ap-
18 proved by the Board; or

19 “(iii) the credit union has a risk-based
20 net worth ratio of less than 6 percent.”.

21 (b) RELEVANT CAPITAL MEASURES.—Section
22 216(c)(2) of the Federal Credit Union Act (12 U.S.C.
23 1790d(c)(2)) is amended by striking “leverage limit” each
24 place such term appears and inserting “relevant capital
25 measures”.

1 (c) ADJUSTMENT BY FEDERAL DEPOSIT INSURANCE
 2 CORPORATION.—Section 216(c)(2)(A) of the Federal
 3 Credit Union Act (12 U.S.C. 1790d(c)(2)(A)) is amend-
 4 ed—

5 (1) by striking “Federal banking agencies in-
 6 crease or decrease” and inserting “Federal Deposit
 7 Insurance Corporation increases or decreases one
 8 of”; and

9 (2) by striking “level” the first place such term
 10 appears and inserting “levels”.

11 (d) ADJUSTING NET WORTH LEVELS.—Section
 12 216(c)(2)(A) of the Federal Credit Union Act (12 U.S.C.
 13 1790d(c)(2)(A)) is amended by striking “not more than
 14 the difference between the required minimum level most
 15 recently established by the Federal banking agencies and
 16 4 percent of total assets (with respect to institutions regu-
 17 lated by those agencies)” and inserting “the increase or
 18 decrease made by the Federal Deposit Insurance Corpora-
 19 tion”.

20 (e) CONSULTATION WITH FEDERAL DEPOSIT INSUR-
 21 ANCE CORPORATION.—Section 216(c)(2)(B)(i) of the
 22 Federal Credit Union Act (12 U.S.C. 1790d(c)(2)(B)(i))
 23 is amended by striking “Federal banking agencies” and
 24 inserting “Federal Deposit Insurance Corporation”.

1 **SEC. 102. AMENDMENTS RELATING TO RISK-BASED NET**
2 **WORTH REQUIREMENTS.**

3 Section 216(d) of the Federal Credit Union Act (12
4 U.S.C. 1790d(d)) is amended—

5 (1) in paragraph (1)—

6 (A) by striking “that are complex, as de-
7 fined by the Board”; and

8 (B) by inserting “, as defined by the
9 Board” before the period at the end;

10 (2) by striking paragraph (2) and inserting the
11 following:

12 “(2) STANDARD.—The Board shall design the
13 risk-based net worth requirement to take account of
14 any material risks, as defined by the Board, applica-
15 ble to insured credit unions that are taken account
16 of by comparable standards applicable to institutions
17 insured by the Federal Deposit Insurance Corpora-
18 tion.”; and

19 (3) in the subsection heading, by striking “FOR
20 COMPLEX CREDIT UNIONS”.

21 **SEC. 103. TREATMENT BASED ON OTHER CRITERIA.**

22 Section 216(h)(2) of the Federal Credit Union Act
23 (12 U.S.C. 1790d(h)(2)) is amended by inserting “, except
24 to reclassify an insured credit union into the next lower
25 net worth category, based on interest rate risk, to the ex-
26 tent that any such reclassification by a delegatee may be

1 reviewed by the Board,” after “to reclassify an insured
2 credit union into a lower net worth category”.

3 **SEC. 104. DEFINITIONS RELATING TO NET WORTH.**

4 (a) **SECONDARY CAPITAL ACCOUNTS FOR PURPOSES**
5 **OF DETERMINING NET WORTH.**—Section 216(o)(2)(B) of
6 the Federal Credit Union Act (12 U.S.C. 1790d(o)(2)(B))
7 is amended by inserting “, subject to limitations set by
8 the Board to address the safe and sound use of secondary
9 capital to carry out the purpose of this section,” after
10 “secondary capital accounts”.

11 (b) **NET WORTH RATIO.**—Section 216(o)(3) of the
12 Federal Credit Union Act (12 U.S.C. 1790d(o)(3)) is
13 amended—

14 (1) by inserting “minus its deposit in the
15 Fund,” after “net worth of the credit union”; and

16 (2) by inserting “minus its deposit in the
17 Fund” after “total assets of the credit union”.

18 (c) **RISK-BASED NET WORTH RATIO.**—Section
19 216(o) of the Federal Credit Union Act (12 U.S.C.
20 1790d(o)) is amended by adding at the end the following
21 new paragraph:

22 “(5) **RISK-BASED NET WORTH RATIO.**—The
23 term ‘risk-based net worth ratio’ means, with respect
24 to any credit union, the ratio of the net worth of the
25 credit union, plus any loan loss reserves (subject to

1 limitations established by the Board) and minus the
 2 credit union's deposit in the Fund, to the risk assets
 3 of the credit union, as defined by the Board.”.

4 **SEC. 105. AMENDMENTS RELATING TO NET WORTH RES-**
 5 **TORATION PLANS.**

6 (a) TEMPORARY WAIVER OF NET WORTH RESTORA-
 7 TION PLAN REQUIREMENT IN RESPONSE TO DISAS-
 8 TERS.—Subsection 216(f)(1) of the Federal Credit Union
 9 Act (12 U.S.C. 1790d(f)(1)) is amended by striking “Each
 10 insured credit union” and inserting “Except as deter-
 11 mined by the Board in the case of a credit union that
 12 becomes or remains no less than undercapitalized due to
 13 the impact of a major natural or man-made disaster, each
 14 insured credit union”.

15 (b) NET WORTH RESTORATION REQUIREMENT FOR
 16 CREDIT UNIONS THAT ARE NOT WELL CAPITALIZED.—
 17 Section 216(e) of the Federal Credit Union Act (12 U.S.C.
 18 1790d(e)) is amended to read as follows:

19 “(e) NET WORTH RESTORATION PLAN REQUIRE-
 20 MENT APPLICABLE TO CREDIT UNIONS THAT ARE NOT
 21 WELL CAPITALIZED.—The Board may require an insured
 22 credit union that is not well capitalized to submit a net
 23 worth restoration plan, as required under subsection (f),
 24 if—

1 “(1) material safety and soundness concerns
 2 caused the credit union to become less than well cap-
 3 italized; and

4 “(2) the safety and soundness concerns remain
 5 unresolved.”.

6 (c) BOARD ACTION MAY INCLUDE ORDER TO CREDIT
 7 UNION.—Section 216(i)(1)(B) of the Federal Credit
 8 Union Act (12 U.S.C. 1790d(i)(1)(B)) is amended—

9 (1) by inserting “order the credit union to” be-
 10 fore “take such other action”; and

11 (2) by inserting “, in the discretion of the
 12 Board,” after “as the Board”.

13 (d) SUBSTITUTION OF 90 CALENDAR DAYS.—Section
 14 216(i)(3)(A) of the Federal Credit Union Act (12 U.S.C.
 15 1790d(i)(3)(A)) is amended—

16 (1) by striking “calendar quarter” and insert-
 17 ing “90-calendar day period”; and

18 (2) by inserting “first” after “the date on
 19 which the credit union”.

20 (e) CLARIFICATION OF COORDINATION REQUIRE-
 21 MENT.—Section 216(l)(3)(A)(ii) of the Federal Credit
 22 Union Act (12 U.S.C. 1790d(l)(3)(A)(ii)) is amended by
 23 inserting before the semicolon at the end “, if the Board
 24 determines that such action by the official will carry out
 25 the purpose of this section”.

1 **TITLE II—ECONOMIC GROWTH**

2 **SEC. 201. LIMITS ON MEMBER BUSINESS LOANS.**

3 Section 107A(a) of the Federal Credit Union Act (12
4 U.S.C. 1757a(a)) is amended by striking “the lesser
5 of—” and all that follows through the end of the sub-
6 section and inserting “20 percent of the total assets of
7 the credit union.”.

8 **SEC. 202. DEFINITION OF MEMBER BUSINESS LOAN.**

9 Section 107A(c)(1)(B)(iii) of the Federal Credit
10 Union Act (12 U.S.C. 1757a(c)(1)(B)(iii)) is amended by
11 striking “\$50,000” and inserting “an amount, not to ex-
12 ceed \$100,000, that the Board shall prescribe by regula-
13 tion”.

14 **SEC. 203. RESTRICTION ON MEMBER BUSINESS LOANS.**

15 Section 216(g)(2) of the Federal Credit Union Act
16 (12 U.S.C. 1790d(g)(2)) is amended by striking “until
17 such time as the credit union becomes adequately capital-
18 ized” and inserting “unless otherwise approved by the
19 Board”.

20 **SEC. 204. MEMBER BUSINESS LOAN EXCLUSION FOR LOANS** 21 **TO NONPROFIT RELIGIOUS ORGANIZATIONS.**

22 Section 107A(a) of the Federal Credit Union Act (12
23 U.S.C. 1757a(a)) is amended by inserting “, excluding
24 loans made to nonprofit religious organizations,” after
25 “total amount of such loans”.

1 **SEC. 205. CREDIT UNIONS AUTHORIZED TO LEASE SPACE**
2 **IN BUILDINGS IN CREDIT UNION OFFICES IN**
3 **UNDERSERVED AREAS.**

4 Section 107 of the Federal Credit Union Act (12
5 U.S.C. 1757) is amended—

6 (1) in paragraph (16), by striking “and” at the
7 end;

8 (2) by redesignating paragraph (17) as para-
9 graph (18); and

10 (3) by inserting after paragraph (16) the fol-
11 lowing:

12 “(17) with regard to any building purchased or
13 constructed by the credit union for a credit union of-
14 fice or credit union operations in an underserved
15 area, to lease office space in such building that is
16 separate and clearly distinct from any office or oper-
17 ation of the credit union to any business enterprise,
18 subject to such regulations as the Board may pre-
19 scribe, taking into account the safety and soundness
20 of the credit union; and”.

21 **SEC. 206. AMENDMENTS RELATING TO CREDIT UNION**
22 **SERVICE TO UNDERSERVED AREAS.**

23 Section 109(c)(2) of the Federal Credit Union Act
24 (12 U.S.C. 1759(c)(2)) is amended—

1 (1) in the matter preceding subparagraph (A),
2 by striking “the field of membership category of
3 which is described in subsection (b)(2),”;

4 (2) by striking subparagraph (A) and inserting
5 the following:

6 “(A) the Board determines, at any time
7 after August 7, 1998, that the local community,
8 neighborhood, or rural district is an under-
9 served area; and”; and

10 (3) in subparagraph (B), by inserting “not later
11 than 2 years after having an underserved area added
12 to the credit union’s charter,” before “the credit
13 union”.

14 **SEC. 207. UNDERSERVED AREA DEFINED.**

15 Section 101 of the Federal Credit Union Act (12
16 U.S.C. 1752) is amended—

17 (1) in paragraph (8), by striking “and” at the
18 end;

19 (2) in paragraph (9), by striking the period at
20 the end and inserting “; and”; and

21 (3) by adding at the end the following new
22 paragraph:

23 “(10) the term ‘underserved area’ means a geo-
24 graphic area consisting of one or more population

1 census tracts, that encompass or are located with-
 2 in—

3 “(A) an investment area designated under
 4 section 103(16) of the Community Development
 5 Banking and Financial Institutions Act of
 6 1994; or

7 “(B) a low income community, as defined
 8 in section 45D(e) of the Internal Revenue Code
 9 of 1986.”.

10 **TITLE III—REGULATORY** 11 **MODIFICATIONS**

12 **SEC. 301. INVESTMENTS IN SECURITIES BY FEDERAL CRED-** 13 **IT UNIONS.**

14 (a) IN GENERAL.—Section 107 of the Federal Credit
 15 Union Act (12 U.S.C. 1757) is amended—

16 (1) by striking “A Federal credit union” and
 17 inserting the following:

18 “(a) IN GENERAL.—A Federal credit union”; and

19 (2) by adding at the end the following:

20 “(b) INVESTMENT FOR THE CREDIT UNION’S OWN
 21 ACCOUNT.—

22 “(1) IN GENERAL.—In addition to the invest-
 23 ments authorized by subsection (a), a Federal credit
 24 union may purchase and hold for its own account
 25 such investment securities of investment grade as

1 the Board may authorize by regulation, subject to
2 such limitations and restrictions as the Board may
3 prescribe in such regulations.

4 “(2) PERCENTAGE LIMITATIONS.—

5 “(A) SINGLE OBLIGOR.—In no event may
6 the total amount of investment securities of any
7 single obligor or maker held by a Federal credit
8 union for the credit union’s own account exceed
9 at any time an amount equal to 10 percent of
10 the net worth of the credit union.

11 “(B) AGGREGATE INVESTMENTS.—In no
12 event may the aggregate amount of investment
13 securities held by a Federal credit union for the
14 credit union’s own account exceed at any time
15 an amount equal to 10 percent of the assets of
16 the credit union.

17 “(3) INVESTMENT SECURITY DEFINED.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, the term ‘investment security’
20 means marketable obligations evidencing the in-
21 debtedness of any person in the form of bonds,
22 notes, or debentures and other instruments
23 commonly referred to as investment securities.

1 “(B) FURTHER DEFINITION BY BOARD.—

2 The Board may, by regulation, further define
3 the term ‘investment security’.

4 “(4) INVESTMENT GRADE DEFINED.—The term
5 ‘investment grade’ means, with respect to an invest-
6 ment security purchased by a credit union for its
7 own account, an investment security that at the time
8 of such purchase is rated in one of the 4 highest rat-
9 ing categories by at least 1 nationally recognized
10 statistical rating organization.

11 “(5) CLARIFICATION OF PROHIBITION ON
12 STOCK OWNERSHIP.—No provision of this subsection
13 shall be construed as authorizing a Federal credit
14 union to purchase shares of stock of any corporation
15 for the credit union’s own account, except as other-
16 wise permitted by law.”.

17 (b) CLERICAL AMENDMENTS.—The Federal Credit
18 Union Act is amended—

19 (1) in section 101(5) (12 U.S.C. 1751(5)), by
20 striking “section 107(13)” and inserting “section
21 107(a)(13)”;

22 (2) in section 114(a) (12 U.S.C. 1764(a)), by
23 striking “section 107(5)” and inserting “section
24 107(a)(5)”.

1 **SEC. 302. AUTHORITY OF NCUA TO ESTABLISH LONGER MA-**
 2 **TURITIES FOR CERTAIN CREDIT UNION**
 3 **LOANS.**

4 Section 107(a)(5) of the Federal Credit Union Act
 5 (12 U.S.C. 1757(5)), as so designated by this Act, is
 6 amended in the matter preceding subparagraph (A), by
 7 striking “except as otherwise provided herein” and insert-
 8 ing “or any longer maturity as the Board may allow, by
 9 regulation”.

10 **SEC. 303. INCREASE IN LENDING AND INVESTMENT LIMITS**
 11 **IN CREDIT UNION SERVICE ORGANIZATIONS.**

12 (a) LENDING.—Section 107(a)(5)(D) of the Federal
 13 Credit Union Act (12 U.S.C. 1757(5)(D)), as so des-
 14 ignated by this Act, is amended—

15 (1) by striking “shall not exceed 1 per centum
 16 of the paid-in” and inserting “shall not exceed 2
 17 percent of the total paid-in”; and

18 (2) by inserting “, except that the percentage
 19 limitation on any such loans by any credit union
 20 may be reduced by order of the Board when the
 21 Board determines such reduction is appropriate to
 22 preserve the safety and soundness of the credit
 23 union” before the period at the end.

24 (b) INVESTING.—Section 107(a)(7)(I) of the Federal
 25 Credit Union Act (12 U.S.C. 1757(7)(I)), as so designated
 26 by this Act, is amended—

1 (1) by striking “up to 1 per centum of the total
2 paid” and inserting “up to 2 percent of the total
3 paid”; and

4 (2) by inserting “, and such approval authority
5 includes the authority to reduce the percentage limi-
6 tation on any such investment by any credit union
7 if the Board determines that such reduction is ap-
8 propriate to preserve the safety and soundness of
9 the credit union” after “with the approval of the
10 Board”.

11 **SEC. 304. VOLUNTARY MERGERS INVOLVING MULTIPLE**
12 **COMMON-BOND CREDIT UNIONS.**

13 Section 109(d)(2) of the Federal Credit Union Act
14 (12 U.S.C. 1759(d)(2)) is amended by striking subpara-
15 graph (C) and inserting the following:

16 “(C) any group transferred in connection
17 with a voluntary merger of any such Federal
18 credit union with another insured credit union,
19 as approved by the Board on or after August
20 7, 1998, in accordance with guidelines and reg-
21 ulations issued under section 120.”.

1 **SEC. 305. CONVERSIONS OF CERTAIN CREDIT UNIONS TO A**
 2 **COMMUNITY CHARTER.**

3 Section 109(g) of the Federal Credit Union Act (12
 4 U.S.C. 1759(g)) is amended by adding at the end the fol-
 5 lowing:

6 “(3) CRITERIA FOR CONTINUED MEMBERSHIP
 7 OF CERTAIN MEMBER GROUPS IN COMMUNITY CHAR-
 8 TER CONVERSIONS.—In the case of a voluntary con-
 9 version of a credit union described in paragraph (1)
 10 or (2) of subsection (b) into a community credit
 11 union described in subsection (b)(3), the Board shall
 12 prescribe, by regulation, the criteria under which the
 13 Board may determine that a member group or other
 14 portion of a credit union’s existing membership, that
 15 is located outside of the well-defined local commu-
 16 nity, neighborhood, or rural district that shall con-
 17 stitute the community charter, can be satisfactorily
 18 served by the credit union and remain within the
 19 community credit union’s field of membership per-
 20 mitting new members to be added from such
 21 groups.”.

22 **SEC. 306. CREDIT UNION GOVERNANCE.**

23 (a) EXPULSION OF MEMBERS FOR JUST CAUSE.—
 24 Section 118(b) of the Federal Credit Union Act (12
 25 U.S.C. 1764(b)) is amended to read as follows:

1 “(b) POLICY AND ACTIONS OF BOARDS OF DIREC-
2 TORS OF FEDERAL CREDIT UNIONS.—

3 “(1) EXPULSION OF MEMBERS FOR NON-
4 PARTICIPATION OR FOR JUST CAUSE.—The board of
5 directors of a Federal credit union may, by majority
6 vote of a quorum of directors, adopt and enforce a
7 policy with respect to expulsion from membership,
8 by a majority vote of such board of directors, based
9 on just cause, including disruption of credit union
10 operations, or on nonparticipation by a member in
11 the affairs of the credit union.

12 “(2) WRITTEN NOTICE OF POLICY TO MEM-
13 BERS.—If a policy described in paragraph (1) is
14 adopted, written notice of the policy as adopted and
15 the effective date of such policy shall be provided
16 to—

17 “(A) each existing member of the credit
18 union, not later than 30 days prior to the effec-
19 tive date of such policy; and

20 “(B) each new member prior to or upon
21 applying for membership.”.

22 (b) TERM LIMITS AUTHORIZED FOR BOARD MEM-
23 BERS OF FEDERAL CREDIT UNIONS.—Section 111(a) of
24 the Federal Credit Union Act (12 U.S.C. 1761(a)) is
25 amended by adding at the end the following: “The bylaws

1 of a Federal credit union may limit the number of con-
 2 secutive terms that any person may serve on the board
 3 of directors of such credit union.”.

4 **SEC. 307. PROVIDING THE NATIONAL CREDIT UNION AD-**
 5 **MINISTRATION WITH GREATER FLEXIBILITY**
 6 **IN RESPONDING TO MARKET CONDITIONS.**

7 Section 107(a)(5)(A)(vi)(I) of the Federal Credit
 8 Union Act (12 U.S.C. 1757(5)(A)(vi)(I)), as so designated
 9 by this Act, is amended by striking “six-month period and
 10 that prevailing interest rate levels” and inserting “6-
 11 month period or that prevailing interest rate levels”.

12 **SEC. 308. CREDIT UNION CONVERSION VOTING REQUIRE-**
 13 **MENTS.**

14 Section 205(b)(2) of the Federal Credit Union Act
 15 (12 U.S.C. 1785(b)(2)(B)) is amended—

16 (1) by redesignating subparagraphs (E), (F),
 17 and (G) as subparagraphs (F), (G), and (H), respec-
 18 tively;

19 (2) by inserting after subparagraph (D) the fol-
 20 lowing:

21 “(E) CONVERSION VOTING REQUIRE-
 22 MENTS.—

23 “(i) IN GENERAL.—Approval of a pro-
 24 posal for conversion in an election set by a
 25 majority of the directors of an insured

1 credit union under subparagraph (B) shall
 2 be by the affirmative vote of a majority of
 3 the members of the insured credit union
 4 who vote on the proposal, in a vote in
 5 which at least 30 percent of the credit
 6 union membership participates.

7 “(ii) SPECIAL MEMBERSHIP MEET-
 8 ING.—An insured credit union which pro-
 9 vides notices to its members under sub-
 10 paragraph (C) of a proposed conversion
 11 shall—

12 “(I) hold a special meeting of the
 13 membership to provide information re-
 14 garding the proposal at least 30 days
 15 before making any ballots available to
 16 its members; and

17 “(II) include a notice of such
 18 meeting in the notices provided under
 19 subparagraph (C).

20 “(iii) PROHIBITION ON INCENTIVES.—
 21 An insured credit union proposing to con-
 22 vert under subparagraph (A)—

23 “(I) is expressly prohibited from
 24 using or providing any incentive in
 25 any form of prize raffles, contests,

1 giveaways, or other voting incentives
2 in connection with the member vote
3 on conversion; and

4 “(II) may make no mention of
5 any incentive in the notices to mem-
6 bers or in other materials that it
7 sends or otherwise communicates to
8 members pursuant to subparagraph
9 (C).”; and

10 (3) in subparagraph (B), by striking the ulti-
11 mate sentence.

12 **SEC. 309. EXEMPTION FROM PRE-MERGER NOTIFICATION**
13 **REQUIREMENT OF THE CLAYTON ACT.**

14 Section 7A(c)(7) of the Clayton Act (15 U.S.C.
15 18a(c)(7)) is amended by inserting “section 205(b)(3) of
16 the Federal Credit Union Act (12 U.S.C. 1785(b)(3)),”
17 before “or section 3”.

○