Massachusetts
Credit Unions

Creating Cooperative Power

JOINT COMMITTEE ON FINANCIAL SERVICES
PUBLIC HEARING
OCTOBER 26, 2021

STATEMENT IN OPPOSITION

HOUSE 1159
AN ACT ENHANCING THE MISSION OF CREDIT UNIONS AND PROMOTING FAIR COMPETITION AMONG FINANCIAL INSTITUTIONS

The Cooperative Credit Union Association, Inc. ("Association") is the state credit union trade association, serving approximately 160 state and federally-chartered, not-for-profit financial cooperatives owned by over 3 million consumers as members. On average, one in three Massachusetts consumers are credit union members. Furthermore, the industry employs over 7,500 full and part-time employees. As not for profit cooperatives, over 2,000 volunteer directors further serve credit unions who deliver $310 million in member benefits annually.[1]

On behalf of the Massachusetts credit union movement, the Association strongly opposes the adoption of state legislation, such as House 1159, that impairs the active supervisory role of the credit union state regulator and the longstanding application of the Community Reinvestment Act, divides and curtails credit union membership, and imposes redundant requirements on credit unions. Credit unions also note and object to the overtones of the bill which suggest that credit unions are not in compliance with state law or regulation and that credit unions are operating

[1] As of June 2021, credit union member benefits include higher yield on savings: $56.5 million; lower fees: $13.6 million; lower loan rates: $240.3 million; and savings to nonmembers: $121.1 million (by impact of credit union presence in the marketplace). CUNA Research and Statistics.

unfairly. In essence, this bill is a simple attempt to discredit the hard work of local credit unions, increase their regulatory requirements, and claim an even larger share of the marketplace exclusively for banks.

I. Overview

The general thrust of the proposed bill pending before the Committee is to amend various aspects of credit union law and others to raise barriers to credit union member governance and the delivery of credit union service to members and the footprint of credit unions in the local financial services marketplace. The ultimate result of such action is to achieve less choice in financial services for consumers by limiting credit unions and the voice of their member owners. The measure addresses credit union member voting, membership policies, and the Massachusetts Community Reinvestment Act ("CRA"), each concept of which has been submitted to this Committee in previous sessions through legislative proposals in one fashion or another. Similar versions introduced consistently in previous sessions received study order reports from this Committee.[2]

II. Community Reinvestment Act-Section 1 of House 1159

Section 1 of House 1159 relates to the application of the state's Community Reinvestment Act ("CRA") provisions to state chartered credit unions found in M.G.L. c.167, s.14. It attempts to

[2] For the 2015-2016 session, House 921 was reported into a study order under House 4111; for the 2017-2018 session, House 564 was reported into a study order under House 4778; and for the 2019-2020 session, House 1065 was reported into a study order under House 5160.

override the authority of the Massachusetts Division of Banks and Loan Agencies ("Division") to consider the nature of credit unions and foreign credit unions, defined in statute as an out-of-state, state chartered credit unions[3], in applying CRA and promulgating implementing regulations.[4]

Since its inception, Massachusetts, whose efforts predate the federal CRA statute, has applied and examined for state-chartered credit union CRA performance and compliance through enforcement by the Division even though credit unions were not found to engage in redlining practices.[5] All state chartered credit unions are subject to its provisions and a review of public evaluation ratings reveals that all Massachusetts credit unions have strong Satisfactory, High Satisfactory or Outstanding CRA performance ratings. Many of the credit unions with the highest of ratings have been consecutively earned during the regular examination process and are located within the gateway communities of Athol, Brockton, Chelsea, Fairhaven, Fall River, Fitchburg, Holyoke, and Lowell.[6] Moreover, according to government data, Massachusetts credit unions approved 56.4% of total mortgage loan applications from low-to-moderate income

[3] M.G.L. c. 171, s.1: "Foreign credit union", a credit union organized under the laws of another state in the United States.
[4] M.G.L. c. 171, s.8C requires that a foreign credit union may establish and maintain a new branch in the commonwealth and shall operate under the supervision of the commissioner and in accordance with all applicable laws governing Massachusetts credit unions, including all rules and regulations promulgated thereunder.
[5] It is well established that the Community Reinvestment Act was enacted to eliminate redlining, a practice of denying services to certain geographic areas considered as higher risk of default due to economic and social conditions.
[6] Outstanding rating: 1; High satisfactory rating: 9; Satisfactory rating: 45; Needs Improvement: 0. Division of Banks.

borrowers.[7] Today, community reinvestment has become more integrated into the business model of credit unions. Serving their communities is the core of their business, loans and investments that perform, and not simply a regulatory obligation.

By law, all credit unions subject to CRA compliance must define an assessment area(s). The Division evaluates the institution's record of helping to meet community credit needs within their assessment area(s). When this Legislature enacted CRA, it balanced the public policy needs to assess the record of meeting the credit needs of its entire membership, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, with the diverse membership classifications of credit unions. It did not repeal or exempt the application of CRA to credit unions. Rather, it granted appropriate authority to the Division to not only apply CRA to credit unions, but also to tailor rules to ensure that all credit unions could be fairly evaluated under the law. For example, Massachusetts-chartered credit unions whose membership by-law provisions are not based on residence may use their membership as the assessment area. 209 C.M.R. 46.41(6).

The Association submits that such a distinction is appropriate, within the confines of the statute and reasonable. Such framework permits all state-chartered credit unions to be evaluated uniformly, on an equal peer basis, which ultimately minimizes public confusion. Furthermore,

[7] Uniquely credit unions, local collaborative efforts continue to create innovative partnerships to meet the mortgage needs of low-to-moderate income members. Recently launched is the Community Mortgage Alliance, a partnership between Digital Federal Credit Union, Marlborough and Jeanne D'Arc Credit Union, Lowell. The purpose of this joint endeavor is to make mortgage loans available to consumers in Worcester and Lowell who do not meet secondary market underwriting guidelines.

the Association notes that credit unions are not the only entities subject to a flexible application of CRA. See 209 C.M.R. 46.41(6)(institutions serving military personnel); 209 C.M.R. 46.41(3)(wholesale or limited purpose institutions); 209 C.M.R. 43.22 (3)(affiliate lending). Moreover, the Association dismisses the requirements proposed by the bill which suggest that the assessment areas of credit unions are insufficient and must be redrawn in certain areas.[8] The Association does not dispute that assessment areas are a central concept of the CRA regulation. Federal rules set the basis for several technical criteria to delineate assessment areas for all entities. To begin, the geographic location of assessment areas must consist generally of one or more metropolitan statistical areas (MSAs); metropolitan divisions; or one or more contiguous political subdivisions, such as counties, cities, or towns. Assessment areas must also include the institution's main office, its branches, and its deposit-taking ATMs, as well as surrounding geographies in which the credit union has originated or purchased a substantial portion of its loans.

The Association also points out that a credit union's delineation of its assessment area is not subjective. To help verify compliance with these requirements, regulators often use maps that include relevant demographic information, which can be useful in several ways to both regulators and credit unions. Maps are used to depict an institution's lending activity, thus ensuring that the delineated assessment area(s) includes the geographies in which the credit

[8] A plain reading of the first paragraph of Section 1 of House 1159 seeks to mandate an expanded assessment area and CRA compliance based upon the eligibility of "a" person "living in a geographic area…throughout the entire geographic area." Such a standard is overbroad and a disconnect with the purpose of and existing CRA requirements.

union has originated or purchased a substantial portion of its loans. If loans are extended *outside* the assessment area(s), institutions have the flexibility to adjust assessment area(s) to include the areas where significant lending is occurring, consistent with the regulatory requirements. Finally, the factors that influence the designation of an assessment area, such as income and demographic information, can change over time. The regulatory process also allows institutions to adjust their assessment areas wherever necessary and are reviewed during the course of an examination to ensure that the assessment area has been adequately adjusted. It is in the best interests of all financial institutions subject to CRA to maintain an assessment area that reflects their lending footprint within statutory and regulatory provisions.

The Association also reminds this Committee that the substantive provisions of CRA, including assessments areas, are consistently under review at the federal level for banks. Final provisions, including those relating to assessment areas, will be directed, whenever finalized, through the Division for Massachusetts state-chartered credit unions. M.G.L. c.167, s.14.

Moreover, the Association notes that Chapter 338 of the Acts of 2020, the credit union modernization law, modernized and recodified various laws governing credit unions. During its passage, here was no attempt in any legislation or regulation to repeal, curtail or circumvent the application of CRA to state chartered credit unions.

Finally, the application of CRA to foreign credit unions is already set forth in statute, found at M.G.L. c.171, s.8C, and most recently reviewed and validated by this Committee and Legislature

through the passage of Chapter 466 of the Acts of 2014 (regional interstate credit union branching). The application of Massachusetts laws to foreign credit unions seeking to enter the Commonwealth is not only well established in statute but also regulation found at 209 C.M.R. 58.07 (credit union branching-regulatory supervision).

Therefore, the Association suggests that current CRA regulation already robustly and adequately addresses assessment areas and has sufficient checks and balances built in to ensure compliance. Section 1 of the bill is unnecessary. Without compelling evidence of redlining, safety, and soundness risks, needs to improve or substantial noncompliance examinations, weak financial performance, or public complaint issues, there is no overriding reason to change current CRA provisions governing credit unions, nor to duplicate existing statute and regulation.

III. Credit Union Bylaws Sections 2-4 of House 1159

Section 2 of the bill contains a myriad of changes impacting a state-chartered credit union's annual and special member meetings, bylaws, membership policy, as well as the field-of-membership approval process governing changes in members eligible for credit union membership and therefore, access to credit union financial services.

A. Governance Restriction to Annual Meetings

The Association submits that Section 2 of House 1159 is contrary to the member owner, cooperative principles of credit unions and vague as to the nature and meaning of the term

"only." House 1159 divisively separates membership voting into separate classes with separate voting standards for different classes for no valid reason. It mandates that a vote by credit union members for the singular purpose to amend field-of-membership bylaw provisions be held "only" at the annual meeting, in contrast to voting at any other traditional governance opportunity, such as is presently authorized at a special membership meeting. In contrast, for required member approvals, including but not limited to a change in a credit union's location or name, voting may occur at either a special or annual meeting. M.G.L. c.171, s.10.

Mandating that votes be held only at an annual meeting also impairs the advances made for the benefit of members in consideration of their increasing mobility and overrides the decision of a board of directors or of members themselves to determine the optimum time to call a meeting which may or may not coincide with the timing of an annual meeting. For example, current law allows for voting to occur beyond an in-person standard. Voting may also take place on bylaw amendments and other matters by mail ballot, an authority approved by this Committee and Legislature as Chapter 461 of the Acts of 2004. The Association notes that not all business or regulatory issues requiring input or votes occur in line with any credit union's annual meeting and associated advance bylaw notification provisions and therefore rejects these provisions in House 1159.

Furthermore, in 2014, this Committee granted local credit unions the ability to maintain branch offices in our neighboring New England states and New York. Referred to as regional branching authority, it recognized the mobility and need for convenience of credit union members. It also

underscores the need for credit unions to have the flexibility to conduct companion governance opportunities in a timely manner which should include recognition of a more geographically dispersed membership. Credit unions make it a priority to take the pulse of their members' interests and needs, and to engage them to obtain their views when business opportunities arise. Moving backwards in today's world of technological advances by requiring votes to be held "only" at an annual meeting runs contrary to the service and member orientated mission of credit unions as well as statutory intent.

One exception to this limitation of annual meeting "only" member votes is provided in the bill for mergers upon a determination by the Commissioner that the transaction's specified field-of-membership is a necessary component of a merger. Again, House 1159 fails to define the vague term "necessary component." There is no reason for this Legislature to view member meetings for mergers differently than other member meetings which may require changes in fields-of-membership or votes. Member governance is a vital component of the not-for-profit, cooperative structure of credit unions and credit unions should have as many tools as possible to be transparent, to communicate and to be timely to foster modern governance. Such tools include both annual and special member meetings. The bill incorrectly places a priority over the venue and thresholds for member voting over the actual governance choices of members and directors. The Association respectfully reminds this Committee that the Division of Banks, in interpreting state law, has repeatedly stated in guidance that it is inconsistent with the philosophy of a credit

union and M.G.L. c.171 to distinguish between members or rights of members of a credit union in any way.[9]

B. Voting Type, Standard and Timing Limitations

The bill, in an arbitrary manner, seeks to increase voting standards applicable to one specific transaction: a change in field-of-membership. It raises the member voting standard for a select transaction, field-of-membership changes, to 5% of the total number of members of a credit union whether or not they cast a vote or participate in the member meeting process. It also repeats current law by prohibiting proxy voting.

This Legislature recognized the high, three-fourths member voting standard of credit unions over a decade ago and made a decision to modernize state voting standards to those applicable to federal credit unions. It granted a statutory amendment to change it to a majority standard.[10] M.G.L. c.171, s.10. In taking this action, the Legislature declined to link the standard to a specific type of transaction or to retain, in whole or in part, the higher standard. Rather, a majority voting standard now applies consistently to all bylaw amendments, including field-of-membership.

House 1159 expressly neglects to state a rational basis to increase member voting standards selectively for field-of-membership changes. It does, however, suggest a creative attempt to chill

[9] Div. Bks. Reg. Bull. 4.1-104 s.2(D).
[10] Chapter 423 of the Acts of 2008.

consideration and possibly curtail approval of a credit union's proposed field-of-membership expansion by artificially raising voting standards, which has been previously rejected.

Section 2 of House 1159 also mandates an additional limitation on voting by addressing the order of certain member voting and the submission of a regulatory application. Again, the Division of Banks has already addressed this issue in written regulatory guidance providing options for credit union within the regulatory approval process. Regulatory Bulletin, 4.1-104, *Amending By-Laws in Regard to Credit Union Membership,* sets forth options for credit unions to seek regulatory approval of field-of-membership changes. The reason for the promulgation of the regulatory directive is rooted in the importance of a credit unions' common bond bylaw language and clearly articulated by the Division in its guidance:

> "The clarity of the by-law governing membership is vital to a credit union and the Division. Since the governance of a credit union is vested in its membership, there must be certainty as to eligibility to participate in its affairs." Regulatory Bulletin 4.1-104

The Division issued the Bulletin to assist with application procedures necessary to complete the process to amend a membership bylaw and to facilitate an advance approval review and/or process of the bylaw text where appropriate. It did so to allow for communication between the parties, as well as advance review of the accuracy and clarity of any language prior to member notice and votes or public disclosure. Under the Regulatory Bulletin, a credit union may seek the Division's approval by following one of three processes. One of these processes permits a board

vote and submission of proposed field-of-membership language for review to the Division prior to its approval, with comment to the credit union from the Division about the clarity and scope of language submitted. The Regulatory Bulletin also establishes two additional alternative procedures to the standard application process for obtaining the Division's approval to ensure that any field-of-membership language is clearly vetted. Most importantly, under each alternative, such regulatory approval is affirmatively conditioned upon the subsequent compliance with the statutory requirement for a membership vote. Therefore, the Association believes that House 1159 is unduly restrictive by micromanaging the Division's outreach process, its administrative processes developed over decades of implementation intended to provide technical assistance, the process and timing to submit clear bylaw language, and the efficiencies inherent in regulatory applications, for no compelling purpose and is plainly unnecessary in its entirety.

The Association also opposes Section 2 of the bill which contains a restriction on proxy voting. Proxy voting is not authorized for Massachusetts state or federally-chartered credit unions by statute or regulation.[11] Furthermore, this authority has never been sought by not-for-profit, mutual credit unions. The inclusion of such a prohibition in the bill appears to mandate a statutory correction for an activity that is already not allowed.

---

[11] Only votes may be cast by members in person, by mail or by electronic means and joint members and organization members may cast votes by duly delegated agents or parties to the joint account. M.G.L. c.171, s.11(annual meetings; special meetings; notice; voting). No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated for the purpose. 12 U.S.C. s. 1760.

Finally, Section 3 addresses an issue which this Committee has previously addressed as part of last session's credit union modernization law. House 1159 which seeks to require a credit union that has more than 25,000 members to provide its members with the option to vote by electronic means at any annual meeting or special meeting. The Association notes that Section 27 of Chapter 338 of the Acts of 2020 adequately addresses this provision rendering it moot.[12]

C. Membership Verification Policy, Document Retention and Privacy

The last paragraph of Section 2 of this legislation mandates that a credit union maintain a written membership verification policy. The Association points out that this requirement is already addressed by a statutory standard that incorporates, but is higher than, a simple written policy. M.G.L. Chapter 171, section 15 provides that a credit union may designate "an executive committee or a membership officer from among the board… and authorize such committee or officer to approve applications for membership under such conditions as the Board may prescribe." The appointment of a named individual charged with the express responsibility of providing to the board a report of approved or pending applications for membership and related information is the gold standard. Credit union reports are delivered to and discussed where necessary during board or committee meetings, and this specific information is available for

[12] Section 27 provides in pertinent part:
Section 11 of said chapter 171, as so appearing, is hereby amended by striking out the second and third paragraphs and inserting in place thereof the following 2 paragraphs: …A member may vote: … (iii) by electronic means; provided, however, that each credit union shall set forth in its by-laws the method of voting to be used by its members; provided further, that the commissioner may impose conditions or limitations on such voting methods

review during an examination. The Association submits that Section 2 of the bill is simply redundant, already implemented and supervised under state law, and is unnecessary.

Finally, this proposal requires that membership information be retained and segregated. It is the position of the Association that the express retention of actual copies of documents used to verify membership eligibility is excessive. Requiring credit unions to retain nonpublic information on potential and actual members poses unreasonable risk to consumers without a rational administrative purpose. Information used to verify vague terms found in House 1159, such as “work location” or “family relationship,” is nonexistent and raises the sufficiency of documents as well as data privacy concerns. The role of a credit union is to comply with its bylaws provision governing field-of-membership, evaluate potential members and members for eligibility, and establish a consistent process to verify such actions which are open for examiner review. It is not to retain copies of additional nonpublic information as proposed by the bill which will only ultimately serve to increase the regulatory burden on credit unions. The Association estimates that the regulatory burden borne by credit unions already costs each Massachusetts credit union member household approximately $131 per year.[13]

IV. Conclusion

Credit unions express great concerns over House 1159. The credit union landscape does not in any manner need an adjustment to ensure “fair competition” between and amongst financial

[13] Regulatory burden costs, absorbed by Massachusetts credit unions and extended to and paid by members, are a function of higher loan rates, fewer services and products, less access to modern technology, longer wait times for loans, and less convenient service.

institutions by changing credit union member voting or membership processes. The Association firmly believes that the impact of competition amongst financial institutions is healthy and active in the Commonwealth, resulting in a favorable outcome as the ultimate winners are Massachusetts residents. If this Committee seeks to address competitive options, then the Association suggests that Senate 656, Senate 745, House 1108, House 1213 each are vehicles for this purpose in the areas of mergers, charter conversions, purchase and assumption transactions and public funds.

In essence, this bill is a simple attempt to discount local credit unions by proposing statutory changes to correct alleged compliance defalcations, to place a divide amongst their consumer members, to create new regulatory requirements.

The Association appreciates the opportunity to offer comments to the Committee on these important issues, respectfully opposes this measure in its entirety, and remains available to assist whenever possible in the final deliberations on House 1159.