

Temporary Corporate Credit Union Stabilization Fund

Proposed Amendments to the Federal Credit Union Act

This document contains a brief discussion of the proposed statutory amendments, followed by the draft statutory text.

Discussion of proposed amendments.

This draft legislation would add a new §217 in the Federal Credit Union Act to create a “Temporary Corporate Credit Union Stabilization Fund” to be administered by the NCUA Board. The Board would use the Stabilization Fund to pay expenses associated with the ongoing problems in the Corporate Credit Union System. The primary purpose of this new Stabilization Fund is to spread over multiple years the costs to insured credit unions associated with the corporate credit union stabilization effort.

The Stabilization Fund may borrow money from the Treasury on a revolving basis. The draft legislation takes the current \$100 million borrowing authority for the Insurance Fund (§203(d)(1) of the Act), increases that amount to \$6 billion, and then provides that the maximum amount that the Stabilization Fund and the Insurance Fund, combined, may borrow is limited to this \$6 billion in the aggregate at any one time. The Stabilization Fund must repay the Treasury, with interest, all amounts borrowed, but the Fund has discretion as to the timing of each repayment and the amount of principal included with each repayment. The Fund would make assessments on federally-insured credit unions as it determined necessary to make each repayment. The Board must close the Stabilization Fund down seven years after the initial borrowing.

In preparing this draft text, we looked at other statutes creating trust funds, such as the Agricultural Disaster Relief Trust Fund, Asbestos Trust Fund, and Black Lung Disability Trust Fund.

A brief Section-by-Section analysis of the draft statute follows.

§217(a). Establishment of the Stabilization Fund.

This subsection establishes the Fund and establishes the Board as responsible for administering the Fund. The Board has the same administrative powers over the Stabilization Fund as the Board has over the Insurance Fund.

§217(b). Expenditures from the Fund. This subsection limits the authority of the Board to make payments out of the Stabilization Fund to payments the Board could otherwise make from the NCUSIF, such as loans, cash assistance payments, payments to purchase assets, or payments to establish accounts, including capital accounts. The subsection further requires such expenditures be connected to “the conservatorship,

liquidation, or threatened conservatorship or liquidation, of a corporate credit union,” and requires that the Board certify that, absent the existence of the Stabilization Fund, the Board would have made the identical payment from the NCUSIF. These provisions are intended to ensure that the activities of the Fund are restricted to resolving problems in the corporate credit union system, and not used for other purposes, such as for dealing with natural person credit union problems. These restrictions will also ensure that any assessments made on behalf of the Stabilization Fund are not illegal as ex post facto assessments, since they would be assessments that the NCUSIF would otherwise have the authority to make -- and insured credit unions to pay.

§217(c). Authority to Borrow. This subsection states that the Stabilization Fund will be funded by borrowings from the Secretary of the Treasury. The maximum outstanding amount of all borrowings from the Treasury by the Stabilization and the National Credit Union Share Insurance Fund, combined, is limited to the amount provided for in §203(d)(1) of the Act, which should be increased from \$100 million to \$6 billion. The Board must, within 7 years, repay all advances with interest, but the Board has discretion to determine the timing and principal amount of each repayment. The interest rate is a variable rate. The rate is based on treasury obligations of average maturities of 12 months, and the rate reset occurs every 12 months. The Board, with the prior concurrence of the Secretary of the Treasury, may extend the final date for repayment. If there is an extension, the Secretary must also concur in the terms and conditions of the delayed repayment.

§217(d). Assessments to Repay Advance. This subsection provides that at least ninety days before each repayment the Board will assess a special premium on all insured credit unions as necessary to fund that particular repayment. The premium calculation mirrors that of a NCUSIF premium calculation, and insured credit unions that fail to make timely payment of a Stabilization Fund assessment will be subject to the same special procedures and penalties as credit unions that fail to make a timely Insurance Fund premium payment. Insured credit unions that are no longer federally-insured at the time of an assessment because they terminate their insurance or convert from it before the assessment date are not liable to pay the assessment.

§217(e). Distributions from Insurance Fund. This subsection suspends the payment by the Insurance Fund of any annual dividends to insured credit unions while the Stabilization Fund has any outstanding advances from the Treasury. Instead, the Insurance Fund must pay the entire dividend to the Stabilization Fund. The Stabilization Fund will use the dividend proceeds to assist it in meeting its future repayments to the Treasury. If the distribution exceeds the amount of all treasury advances and associated interest, the excess amounts will be returned to the Insurance Fund when the Stabilization Fund closes.

§217(f) Investment of Stabilization Fund Assets. This subsection provides that money in the Fund, when not being used by the Board, will be invested as directed by the Secretary of the Treasury.

§217(g) Reports. This subsection requires the Board make annual reports to Congress on the status of the Stabilization Fund. Section 217(f) also acknowledges that the Stabilization Fund may operate at a deficit since the Fund has authority to incur expenses up to its borrowing authority without collecting corresponding revenue until future periods.

§217(h) Closing of Stabilization Fund. This subsection requires the Board close the Stabilization Fund within 90 days following the seventh anniversary of the initial advance, subject to any extension of the final repayment date approved under subsection (c)(3) . Any remaining assets in the Fund after final repayment will be distributed to the NCUSIF.

Conforming Amendment to §203(d)(1) -- Section 203(d)(1) currently provides that the Insurance Fund may borrow from the Treasury subject to the following limit:

If, in the judgment of the Board, a loan to the fund is required at any time for carrying out the purposes of this title, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate \$100,000,000 outstanding at any one time.

The Corporate Credit Union Stabilization Fund statutory amendments require two conforming amendments to §203(d)(1). The first amendment increases the referenced dollar amount from \$100,000,000 to \$6,000,000,000. The second amendment limits the combined borrowing of the Stabilization Fund (as provided for in §217) and the Insurance Fund to this \$6 billion figure. After these two conforming amendments, §203(d)(1) would read as follows:

If, in the judgment of the Board, a loan to the fund or to the Stabilization Fund described in Section 217 of this title is required at any time for carrying out the purposes of this title, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate \$6,000,000,000 outstanding at any one time.

Conforming amendment to §203(c)(3)(A). Section 203(c)(3)(A) provides for a mandatory, year-end distribution to insured credit unions of any excess monies in the Insurance Fund. Section 217(e) modifies this distribution under certain circumstances to divert this distribution to the Stabilization Fund, and so a conforming amendment to §203(c)(3)(A) inserting a cross reference to §217(e) is appropriate.

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Here is the draft statutory text:

§ 217 Temporary Corporate Credit Union Stabilization Fund

To assess insured credit unions for the costs associated with the Corporate Credit Union stabilization effort on an anti-cyclical basis.

(a) **Establishment of Stabilization Fund** -- There is hereby created in the Treasury of the United States a fund to be known as the “Temporary Corporate Credit Union Stabilization Fund.” The Board will administer the Stabilization Fund as prescribed by Section 209 of the Act.

(b) **Expenditures from Fund** -- Money in the Stabilization Fund will be available upon requisition by the Board, without fiscal year limitation, for making payments for the purposes described in Section 203(a) of the Act, subject to the following additional limitations:

(1) All payments other than administrative payments must be connected to the conservatorship, liquidation, or threatened conservatorship or liquidation, of a corporate credit union.

(2) Prior to authorizing each payment the Board must certify that, absent the existence of the Stabilization Fund, the Board would have made the identical payment out of the National Credit Union Share Insurance Fund (Insurance Fund).

(c) **Authority to Borrow** --

(1) In general. The Stabilization Fund is authorized to borrow from the Secretary of the Treasury from time-to-time as deemed necessary by the Board. The maximum outstanding amount of all borrowings from the Treasury by the Stabilization Fund and the National Credit Union Share Insurance Fund, combined, is limited to the amount provided for in §203(d)(1) of the Act, including any authorized increases in that amount.

(2) Repayment of advances.

(A) In general. The advances made under this Section must be repaid by the Stabilization Fund, and interest on such advance must be paid, to the general fund of the Treasury.

(B) Variable rate of interest. The Secretary of the Treasury will make the first rate determination at the time of the first advance under this section and will reset

the rate again for all advances on each anniversary of the first advance. The interest rate will be equal to the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity equal to twelve months.

(3) **Repayment schedule.** The Stabilization Fund will repay the advances on a first-in, first-out basis, with interest on the amount repaid, at times and dates determined by the Board at its discretion. All advances must be repaid no later than the date of the seventh anniversary of the first advance to the Fund, unless the Board extends this final repayment date. The Board must obtain the concurrence of the Secretary of the Treasury on any proposed extension, including the terms and conditions of the extended repayment.

(d) **Assessments to Repay Advance --** At least 90 days prior to each repayment described in subsection (c)(3), the Board will set the amount of the upcoming repayment and determine if the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund might not have sufficient funds to make the repayment, the Board will assess each federally insured credit union a special premium due and payable within 60 days in an aggregate amount calculated to ensure the Stabilization Fund is able to make the repayment. The premium charge for each credit union will be stated as a percentage of its insured shares as represented on the credit union's previous call report. The percentage will be identical for each credit union. Any credit union that fails to make timely payment of the special premium is subject to the procedures and penalties in Sections 202(d), (e), and (f) of this title.

(e) **Distributions from Insurance Fund --** At the end of any calendar year in which the Stabilization Fund has an outstanding advance from the Treasury, the Insurance Fund is prohibited from making the distribution to insured credit unions described Section 202(c)(3) of the Act. In lieu of the distribution described in that section, the Insurance Fund will make a distribution to the Stabilization Fund of the maximum amount possible that does not reduce the Insurance Fund's equity ratio below the normal operating level and does not reduce the Insurance Fund's available assets ratio below 1.0 percent.

(f) **Investment of Stabilization Fund Assets --** The Board will invest such portions of the Stabilization Fund as the Board may determine are not necessary for current operations. The Secretary of the Treasury will direct how the Board will make such investments.

(g) **Reports --** The Board will submit an annual report to Congress on the financial condition and the results of the operation of the Stabilization Fund. The report is due to Congress within 30 days after each anniversary of the first advance made under

subsection (c)(1). Because the Fund will use advances from the Treasury to meet corporate stabilization costs with full repayment of borrowings to Treasury at the Board's discretion not due until seven years from the initial advance, to the extent operating expenses of the Fund exceed income, the financial condition of the Fund may reflect a deficit. With planned and required future repayments, the Board will resolve all deficits prior to termination of the Fund.

(h) **Closing of Stabilization Fund** -- Within 90 days following the seventh anniversary of the initial Stabilization Fund advance, or earlier at the Board's discretion, the Board will distribute any funds, property, or other assets remaining in the Stabilization Fund to the Insurance Fund and will close the Stabilization Fund. If the Board extends the final repayment date as permitted by subsection (c)(3), the mandatory date for closing the fund will be extended by the same number of days.

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Conforming amendment to §203(d)(1).

Section 203(d)(1) of the Act is amended by:

- (1) striking '\$100,000,000' and inserting '\$6,000,000,000', and
- (2) inserting 'or to the Stabilization Fund described in Section 217 of this title' immediately after 'If, in the judgment of the Board, a loan to the fund'.

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Conforming amendment to §202(c)(3)(A).

Section 202(c)(3)(A) of the Act is amended by inserting 'subject to the requirements of Section 217(e) of this title' immediately after 'The Board shall'.