



Michigan Bankers Association

Memo

To: House Financial Services Committee Members
From: John Llewellyn, Vice President Government Relations
David Worthams, Policy Director
Patricia Herndon, Advocacy Director
Date: 11/3/15
Re: House Bills 5018 – 5022, the MCUA Modernization Act

Thank you for the opportunity to share with you the opinions of the Michigan Bankers Association of elements of House Bills 5018 – 5022.

ITEMS THAT ARE POSITIVES FOR BOTH CREDIT UNIONS AND BANKS:

Michigan banks faces many of the same issues that you have heard about from the Michigan Credit Union League (MCUL). Issues of extensive oversight, maintaining adequate capital, providing strong customer service, and protecting Michigan consumers are just a few of the issues that we work together to address. While most of these issues lie within the federal realm, there are some that can be addressed through amendment to both the Michigan Credit Union Act of 2003 (MCUA) and the Michigan Banking Code of 1999. Be advised that changes to the Banking Code require a 2/3 vote in both chambers.

Indeed, there are proposed changes to the MCUA that may be fitting to include in the banking code. Examples of these are:

1. Updating all references to the Office of Financial and Insurance (OFIR) services to the Department of Insurance and Financial Services (DIFS) and changes Commissioner to Director.
2. Creation of a segregated fund for the fees charged to banks charged for regular examination;
3. Allow institutions a chance to divest themselves of an investment that was once permitted but has become impermissible under the standards of safety and soundness;
4. Allowing an institution to close a branch in an emergency situation without having to give notice to DIFS prior to the closing (both credit union and bank branches should be treated the same under Michigan statute);
5. Use of the loan promotion raffle in addition to the savings promotion raffle.

The aforementioned items do indeed bring positive powers to both types of financial institutions. We respectfully request that you treat us the same as our credit union brethren.

ITEMS OF CONCERN THAT CAN BE ADDRESSED BY AMENDMENT/SUBSTITUTE:

There are issues that we believe could be addressed by amending the language of the bills, not to strike the powers the credit union is seeking, but placing common sense limits on the proposed changes. We do not wish to delay the bills from progressing through the legislative process and to that end, we urge you to consider and adopt the following amendments to the various bills in the MCUA package, rather than to simply vote "No" on the bills:

1. Delegation of Powers to CEO

HB 5017 - Amend P.15, ln 10, after "BOARD" by inserting a comma and "AND APPROVED BY THE DIRECTOR,"

2. Expanding field of membership to businesses

HB 5017 - Amend P.22, ln 16, by striking out all of subsection (3) and inserting:

"(3) A DOMESTIC CREDIT UNION MAY NOT ACCEPT A LEGAL ENTITY AS A MEMBER OF A DOMESTIC CREDIT UNION UNLESS IT IS DIRECTED TO BY ITS BYLAWS AND APPROVED BY THE DIRECTOR."

3. Expanding field of membership to estates

HB 5017 - Amend P.22, ln 26, after "OF," by striking "OR ELIGIBLE FOR MEMBERSHIP IN,"

4. Allowing loans to credit union officers

HB 5017 - Amend P.41, ln 1, after "DIRECTOR" by striking "NOT";

HB 5017 - Amend P.41, ln 1, after "IMPOSE" by striking "ANY"

HB 5017 - Amend P.41, ln 4, after "UNION" by striking the balance of the subsection.

5. Amending Credit Union Bylaws:

Amend HB 5018, P.3, ln 26 by striking all of subsection 6 and inserting:

"(6) A DOMESTIC CREDIT UNION THAT AMENDS ITS BYLAWS MUST FILE THE AMENDMENT WITH THE DIRECTOR. THE DIRECTOR SHALL NOT CHARGE A FEE FOR REVIEWING AND APPROVING OR DISAPPROVING OF AN AMENDMENT FOR THE PURPOSE OF SECTION 303."

Amend HB 5018, P.9, ln 2 by striking all of subsection (4) and inserting:

"(4) AN AMENDMENT TO THE BYLAWS OF A DOMESTIC CREDIT UNION IS NOT EFFECTIVE UNLESS THE AMENDMENT IS SUBMITTED TO THE DIRECTOR FOR REVIEW AND APPROVED BY THE DIRECTOR UNDER SECTION 201(6)."

6. Venture Capital Full Order Codification

Amend HB 5019, p3, ln 25 by inserting:

"(IV) ANY VENTURE CAPITAL FUND ESTABLISHED OR FUNDING BY THE CREDIT UNION SERVICES ORGANIZATION AGREES TO PROVIDE AN AMOUNT EQUAL TO AT LEAST FIFTY-ONE PERCENT OF ITS AVAILABLE FUNDS TO MEMBER SMALL BUSINESSES HAVING THEIR PRINCIPAL OFFICERS WITHIN THIS STATE AND HAVING EITHER MORE THAN ONE-HALF OF THEIR ASSETS WITHIN THIS STATE OR MORE THAN ONE-HALF OF THEIR EMPLOYEES EMPLOYED WITHIN THIS STATE

(V) AN OFFICER OR DIRECTOR OF A DOMESTIC CREDIT UNION WITH AN OWNERSHIP INTEREST OR AN INVESTMENT IN A CREDIT UNION SERVICE ORGANIZATION SHALL NOT HOLD AN EQUITY POSITION IN ANY SMALL BUSINESS FINANCED BY THE CREDIT UNION SERVICES ORGANIZATION UNDER THIS ADDITIONAL INVESTMENT AUTHORITY

(VI) THE INVESTING DOMESTIC CREDIT UNION MUST DO ALL OF THE FOLLOWING:

(1) FULFILL ALL PROVISIONS OF THIS SECTION 401(2)(GG) AND 407(3) THROUGH 407(7) OF THE MICHIGAN CREDIT UNION ACT;

- (2) REQUIRE PERIODIC REPORTING MONITORING COMPLIANCE WITH THE CRITERIA ESTABLISHED IN THIS SECTION FOR EACH SMALL BUSINESS EQUITY INTEREST OR VENTURE CAPITAL FUND INVESTMENT.
- (3) ENSURE ACCURATE REPORTING OF THE CREDIT UNION SERVICE ORGANIZATION WITHIN THE NATIONAL CREDIT UNION ADMINISTRATION REPORTING REQUIREMENTS
- (4) ENSURE THE CREDIT UNION SERVICE ORGANIZATION HAS ENACTED AND COMPLIES WITH POLICY GUIDELINES FOR OBLIGATIONS OUTSTANDING, INCLUDING THE ALL OF THE FOLLOWING:
- LIMITS ON THE CREDIT UNION SERVICE ORGANIZATION'S EXPOSURE TO NO MORE THAN FIFTY PERCENT OF ITS TOTAL CAPITAL AND SURPLUS IN ANY OBLIGOR OR GROUP OF INTERRELATED OBLIGATORS;
 - ACCEPTABLE TYPES OF ENTITIES INTO WHICH EQUITY INVESTMENT MAY BE FUNDED;
 - ACCEPTABLE BUSINESS ACTIVITIES OF ENTITIES INTO WHICH INVESTMENTS MAY BE FUNDED;
 - ACCEPTABLE GEOGRAPHIC AREA IN WHICH AN ENTITY'S PRINCIPAL PLACE OF BUSINESS MUST BE LOCATED;
 - ACCEPTABLE CONCENTRATION RISK GUIDELINES, RELATIVE TO NET WORTH, THAT MAY BE INVESTED BY: INDUSTRY, GEOGRAPHIC REGIONS, COLLATERAL, AND ANY OTHER MATERIAL EXPOSURE FACTOR;
 - REQUIRED QUALIFICATIONS AND EXPERIENCE OF PERSONNEL INVOLVED IN MAKING AND ADMINISTERING EQUITY EXPOSURE FACTOR;
 - REQUIRED ORIGINATION AND ONGOING PERIODIC UNDERWRITING ANALYSIS; INCLUDING SPECIFIC DUE DILIGENCE STANDARDS RELATING TO PERIODIC FINANCIAL STATEMENTS, CREDIT REPORTS, TAX DATA, ENVIRONMENTAL IMPACT ASSESSMENTS, INDUSTRY AVERAGE COMPARISONS AND OTHER DATA THAT MAY BE NECESSARY TO ANALYZE THE ENTITY'S HISTORY AND EXPERIENCE.
- (5) FOR THE PURPOSE OF THIS SUBSECTION, THE FOLLOWING DEFINITIONS APPLY:
- (I.) "EQUITY INTERESTS" MEANS LIMITED PARTNERSHIP INTERESTS AND OTHER EQUITY INVESTMENTS IN WHICH LIABILITY IS LIMITED TO THE AMOUNT OF THE INVESTMENT, BUT DOES NOT MEAN GENERAL PARTNERSHIP INTERESTS OR OTHER INTERESTS INVOLVING GENERAL LIABILITY. EQUITY INTERESTS MAY INCLUDE SUBORDINATED OR CONVERTIBLE DEBT.
- (II.) "SMALL BUSINESS" MEANS A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, PROPRIETORSHIP, OR OTHER ENTITY FORMED UNDER THE LAWS OF THE UNITED STATES, OR A STATE, DISTRICT, OR TERRITORY OF THE UNITED STATES, THAT MEETS THE APPROPRIATION UNITED STATES SMALL BUSINESS ADMINISTRATION DEFINITION OF SMALL BUSINESS AND THAT IS PRINCIPALLY ENGAGED IN THE DEVELOPMENT OF EXPLOITATION OF INVENTIONS, TECHNOLOGICAL IMPROVEMENTS, NEW PROCESSES, OR OTHER PRODUCTS NOT PREVIOUSLY GENERALLY AVAILABLE IN THIS STATE OR OTHER INVESTMENTS WHICH PROVIDE AN ECONOMIC BENEFIT TO THIS STATE.
- (III) "VENTURE CAPITAL FUND" MEANS A LIMITED LIABILITY ENTITY FORMED UNDER THE LAWS OF THE UNITED STATES, OR A STATE, DISTRICT, OR TERRITORY OF THE UNITED STATES, WHOSE PRINCIPAL BUSINESS IS OR WILL BE THE MAKING OF INVESTMENTS IN AND THE PROVISION OF SIGNIFICANT MANAGERIAL ASSISTANCE TO BUSINESSES THAT MEET THE UNITED STATES SMALL BUSINESS ADMINISTRATION DEFINITION OF SMALL BUSINESS."

7. Credit Union/CUSO Trust Services

HB 5019, P.4, ln 27 after "SERVICES" by inserting "THAT ARE PROVIDED IN PARTNERSHIP WITH A BANK AUTHORIZED TO EXERCISE TRUST POWERS BASED IN THIS STATE, AS DEFINED BY THE MICHIGAN BANKING CODE, PUBLIC ACT 276 OF 1999, MCL 487.14402".

8. Confidentiality of Examinations Reports Exemption:

HB 5020, P. 3, ln 8 after "DIRECTOR." by inserting:

"(7) THIS SECTION DOES NOT APPLY TO, AND DOES NOT PROHIBIT THE FURNISHING OF INFORMATION OR DOCUMENTS TO THE GOVERNMENT OF THE UNITED STATES, FOREIGN GOVERNMENTS, OTHER STATES, ASSOCIATIONS OR OTHER REGULATORY AGENCIES AND IS NOT APPLICABLE TO DISCLOSURES MADE IN THE PUBLIC INTEREST BY THE DIRECTOR, AT HIS OR HER DISCRETION IN ACCORDANCE WITH SECTION 205."

CONCLUSION

We believe these amendments will allow us to reach a compromise on this legislation that will benefit all parties involved: the credit unions, Michigan banks, and most importantly Michigan consumers.

Thank you for your consideration of this language.