Approved February 8, 1983
Date

MINUTES OF THE Senate COMMITTEE ON Commercial and Financial Institutions.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on February 3, 1983 in room 529-S of the Capitol.

All members were present except:

Senators Harder and Reilly - Excused

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bruce Kinzie, Revisor's Office

Conferees appearing before the committee:

Marvin Umholtz, Kansas Credit Union League

The minutes of February 2 were approved.

The meeting began with testimony in support of SB 74 by Marvin Umholtz, Kansas Credit Union League. He introduced John Rucker of the Kansas State Department of Credit Unions who attended to assist him if necessary. Mr. Umholtz stated that SB 74 is a clean up bill intended to make sure that the Administrator of the Kansas State Department of Credit Unions can appoint the insurers of credit union shares as receivers of a credit union found to be insolvent. (See Attachment I). Sen. Pomeroy asked if the intent of lines 56 to 60 was to impose a limit of three choices. Mr. Umholtz answered that this was not the intent and that he was willing to add language to mean any qualified person. Short committee discussion followed regarding how many credit unions are in trouble at this time. Mr. Umholtz told the committee there is no percentage information available to him regarding these credit unions because of the confidentiality of this information. There being no further questions, the hearing on SB 74 was concluded.

Mr. Umholtz began his testimony in support of SB 75 which is a response to the Federal Depository Institutions Act of 1982 and codifies in the Kansas Credit Union Act certain language taken from the regulations of the National Credit Union Administration. He reviewed the five purposes of the bill with the committee. (See Attachment II). He went through the bill section by section and answered questions from the committee about each section. Sen. Pomeroy questioned the wording on line 49 in Section I regarding "joint tenancy shareholders". He stated that the word "shareholders" should read "share accounts" to make it refer to accounts and not to persons. Section 2 included most of the changes and was the subject of most of the committee questions. Sen. Pomeroy asked what amount the typical board of directors would set for late fees and if there is anything that would prohibit the board of directors to change the amount of late fees after a person had taken out a loan. Mr. Umholtz answered that the fees would be based on the cost of collections and that the Truth-in-Lending regulation would not prohibit raising the late fees but that he feels the credit unions would not abuse this. Sen. Karr asked if the credit unions could differentiate charges from person to person. Mr. Umholtz answered that this could not be done and that any difference would depend on the class of loan only. Sen. Pomeroy pointed out that it is possible that late fees could be waived by a manager, and this would relate to Sen. Karr's question. The chairman noted that this is being done now under the UCCC. Further discussion involved the content of line 99. Staff explained that it was taken from the Garn Act and that its placement there may not correspond with the state Credit Union Act. The lack of clarity exists because it is not known to what it relates in the Garn Act. The chairman asked if it could be placed elsewhere in the bill. Mr. Umholtz and staff agreed to do further research on it. After Mr. Umholtz briefly reviewed the remaining three sections of the bill, the hearing on SB 75 was concluded, and it was taken under advisement.

The next meeting will be held on February 8.

The meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2/3/83	Lonnie Smith	Topeka	Budget
2/3/83	JOHN RUCKER	Topeka	KSOCU
	Tom Wilder	Topeka	KSLL

Testimony of the

KANSAS CREDIT UNION LEAGUE

on

SB 74

CU Administrator Authority to Appoint Share Insurer as Receiver

Presented to the

SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

February 3, 1983

by

Marvin C. Umholtz

Governmental Affairs Director

Attachment I

Mr. Chairman, Members of the Committee:

I am Marvin Umholtz, Governmental Affairs Director for the Kansas Credit Union League (KCUL). Our association represents over 90% of the credit unions in Kansas, both state and federally chartered. Credit unions are member-owned cooperative financial institutions. Kansas credit unions serve over 400,000 members.

I am appearing before the Committee today to ask for a favorable for passage recommendation on SB 74, the receiver appointment authority bill.

The measure essentially does three things:

1. Page 1, lines 0030 - 0031:
   Technical change designed to cross reference K.S.A. 17-2209. The generic "officer of the board" replaces "president." Under K.S.A. 17-2209, the chief elected "executive officer" of the board may be titled either "chairperson" or "president."

2. Page 2, starting line 0056 - 0059:
   This addition of language is included in order to provide the Administrator of the Kansas State Department of Credit Unions with the necessary authority to appoint the insurers of credit union shares as receivers of a credit union found to be insolvent.

In Kansas, the shares of the members of state chartered credit unions are insured to $100,000 by either the National Credit Union Administration (NCUA) Share Insurance Fund or the State Credit Union Share Insurance Corporation (SCUSIC), a corporation chartered under specific Tennessee law to insure the shares of Tennessee credit unions and those in other states.

The current statutes give the CU Administrator the authority to appoint a receiver. KCUL legal counsel has provided an opinion that any natural person is eligible to act as a receiver or "trustee" but that Kansas law would appear to preclude the CU Administrator from appointing corporations as receiver unless specifically authorized (see K.S.A. 59-1701, 59-1707, 59-1708, 17-2002, 17-2013 and others). This amendment is being offered as a matter of preventative law.

Because of the share insurer's special relationship with each insured credit union, with the Kansas CU regulator, and the fact that share insurers are specialists in dealing with problem situations, they are usually the most qualified receiver available.

NCUA is eligible to be conservator of a federally insured state chartered credit union under the authority of Title I of the Depository Institutions Act of 1982 (DIA). Under this law, the NCUA can even appoint itself as conservator over the objection of the state regulator. (DIA sections 131 and 132 codified in 12 U.S.C. 1786.)

Tennessee law gives SCUSIC the authority to act as receiver of member credit unions. Tennessee Code Annotated (T.C.A.) 45-4-1104

> "The corporation may: ...(5) Upon the written direction of the commissioner of banking of the state of Tennessee, or of the appropriate supervisory authority of any credit union which becomes a member under section 45-4-1107(c) hereof, assume control of the property and business of any member credit union and operate the credit union in accordance with any recommendation he may offer; (6) Assist in the merger, consolidation or liquidation of credit unions..."

In summary, the only apparent roadblock to having SCUSIC eligible to serve as receiver of an insured credit union is that the Kansas CU Administrator appears to lack the authority to appoint SCUSIC as receiver unless this amendment is made to K.S.A. 17-2230.

3. Page 2, line 0059 - 0060:

"Such receiver shall follow the liquidation procedure set out herein."

And: line 0067 - 0068:

"as provided in this section."

Although not a substantive change in state law, this language is designed to draw the receiver's attention to the fact that it is Kansas policy and law to liquidate an insolvent credit union according to this statute (see subsection (c) on page 3). This becomes particularly significant since the recent Interpretive Ruling and Policy Statement by NCUA in which they changed their liquidation payout priorities such that their insurance fund is in the same priority position as general creditors. (See IRPS 82-2 attached.)

NCUA, without giving notice or opportunity for comment, reversed years of liquidation procedure with this interpretation. Our national association is currently challenging NCUA in court on this issue.

Lastly, as a precautionary measure, this bill's affect date is "publication in the Kansas Register."

I have included as attachments:

1. State Credit Union Share Insurance Corporation; Year-end 1982 Information

2. NCUA IRPS 82-2; Federal Register Vol. 47, No. 82 4-28-82

Thank you for this opportunity to appear before the Committee in support of SB 74. I stand ready for questions at the direction of the chair.

STATE CREDIT UNION SHARE INSURANCE CORPORATION
(SCUSIC)
Year-end 1982 Information

Assets:	$12.4 million	
Insurance in Effect:	$900 million +	
Assets to Insured Risk Ratio:	1.35% or $1.35 per $100	
Number of Credit Unions Insured:	Tennessee	315
	Missouri	49
	Kansas	86
	Total	450
Greatest Risk Concentration:	14%	

SCUSIC Investments:

Group Distribution (par value)

Group	Amount (000)	% of Total	Average Weighted Yield
U.S. Treasury	$ 5,550	56.92 %	11.38 %
Government Agency	3,050	31.28 %	12.46 %
Mortgage Backed-			
GNMA	700	7.18 %	11.68 %
FHLMC	450	4.62 %	10.25 %
TOTAL	$ 9,750	100.00 %	11.69 %

Kansas CU Administrator Authorities:	Certify to insure credit union shares in Kansas (K.S.A. 17-2252) Suspend or revoke certification (K.S.A. 17-2253) Approve agents of SCUSIC (K.S.A. 17-2256) Examine SCUSIC (K.S.A. 17-2257) Other (K.S.A. 17-2250 et seq.)
Corporate Structure:	Statutory Creation (T.C.A. 45-4-1101)
Regulation:	Tennessee Banking Commissioner (T.C.A. 45-4-1111) Commissioner also regulates Tennessee chartered credit unions.
Examinations:	At least annually; jointly examined by CU regulators from Tennessee, Missouri and Kansas.

Waukesha County. N½ Sec. 2, and NE¼ Sec. 3, T. 7 N., R. 17 E; SE¼ Sec. 34, and S½ Sec. 35, T. 8 N, R. 17 E.

(Secs. 8 and 9, 37 Stat. 318, as amended, secs. 105 and 106, 71 Stat. 32, 33; (7 U.S.C. 161, 162, 150dd, 150ee); 37 FR 28464, 28477, as amended; 38 FR 19141)

Done at Washington, D.C., this 22d day of April 1982.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-11595 Filed 4-27-82; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Delegations of Authority; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; correction.

SUMMARY: This document corrects the legal citation and text in final regulations, published November 19, 1981 (46 FR 56775), implementing the revised delegations of authority of the powers and duties of service officers as it relates to the General Counsel.

EFFECTIVE DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: Eloise Rosas, General Attorney, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633-2517.

SUPPLEMENTARY INFORMATION: The last sentence in 8 CFR 103.1(e) is corrected because the regulation it cites, 28 CFR 16.23(b)(2)(iii), has been replaced by 28 CFR 16.24, and the authority of the General Counsel is limited to production and disclosure within the confines of federal proceedings only.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

In § 103.1, paragraph (e) is corrected to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(e) *General Counsel.* The General Counsel advises on legal matters, the Commissioner and his staff, the Attorney General, the Associate Attorney General, the Solicitor General, and other officers of the Department of Justice, and other officers of other Departments of the Government. The General Counsel prepares legislative reports, and assists in litigation, including the preparation of activities of the regional counsels and the appellate trial attorneys. Acting through the regional counsels, the General Counsel oversees the professional activities of all Service attorneys assigned to field offices. The General Counsel makes recommendations to the Associate Attorney General, or other designated Department of Justice officials, on all personnel matters involving Service attorneys, including attorney discipline, which require the final action or approval of the Associate Attorney General, or other designated Department of Justice officials. The General Counsel is authorized to perform the functions conferred upon the Commissioner with respect to the production or disclosure in federal proceedings as provided in 28 CFR 16.24(a).

* * * * *

(Sec. 103, 66 Stat. (8 U.S.C. 1103))

Dated: April 22, 1982.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 82-11528 Filed 4-27-82; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-0400]

Membership of State Banking Institutions in the Federal Reserve System; Technical Amendment

AGENCY: Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: Section 208.8(d), footnote 6a of Regulation H (12 CFR 208.8(d) is amended to conform a citation in the footnote with regulatory changes adopted by the Board.

EFFECTIVE DATE: April 22, 1982.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Beverly A. Belcamino, Attorney (202/452-3623), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In 1979, the Board revised its regulations dealing with the foreign operations of member banks (Regulations M, 12 CFR Part 213) and foreign investment by bank holding companies (sections 225.4(f) of Regulation Y, 12 CFR 225.4(f)). These regulations have been combined in a comprehensive regulations entitled "International Banking Operations" and designated as Regulation K (12 CFR Part 211).

Section 208.8(d), footnote 6a continues to cite Regulation M in reference to a definition that presently appears in § 211.3(b) of Regulation K (12 CFR 211.3). Consequently the Board has amended footnote 6a to conform with this regulatory change. Because this amendment is technical in nature, the Board for good cause finds that the notice, public procedure, and deferral of effective date provisions of 5 U.S.C. 553 (b) and (d) with regard to this action are unnecessary and contrary to the public interest.

List of Subjects in 12 CFR Part 208

Banks, banking; Federal reserve system; Reporting requirements; Securities.

Pursuant to its authority under section 9 of the Federal Reserve Act (12 U.S.C. 321-338), the Board amends Regulation H by revising footnote 6a to read as follows:

[6a] As defined, "standby letter of credit" would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not "guaranty" payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation K.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors, April 22, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-11489 Filed 4-27-82; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Interpretive Ruling and Policy Statement; Payout Priorities of an Involuntarily Liquidating Federal Credit Union

AGENCY: National Credit Union Administration.

ACTION: Statement of interpretation and policy.

SUMMARY: Under the Bankruptcy Reform Act of 1978 the NCUA Board is no longer constrained to payout along lines provided under Federal bankruptcy laws. Instead, the Board can rely on its own statutory authority in establishing the payout priorities for involuntarily liquidating Federal credit unions. This document sets forth the Administration's position with respect to the priority of payments made to creditors of involuntarily liquidated Federal credit unions.

EFFECTIVE DATE: June 25, 1982.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Steven R. Bisker, Senior Attorney, at the above address. Telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: The NCUA's policy on involuntary liquidation payout priorities is contained in its former manual, *Liquidation and Payout Procedure Under Title II, Federal Credit Union Act*, August/1975, NCUA 9700. Page 15 of that manual provides the following order of payouts:

"a. Secured creditors [it is clarified in later paragraphs that secured creditors are satisfied up to the value of their collateral before priority comes into play];

b. Costs and expenses of liquidation;

c. Wages due employees of the FCU;

d. Costs and expenses incurred by creditors in successfully opposing release of the FCU from certain debts;

e. Taxes legally due and owing to the United States or any State or subdivision thereof;

f. Debts owing and due to the United States, including NCUA;

g. General creditors and secured creditors to the extent that their claims exceed their security interest; and

h. Members to the extent of uninsured shares and the NCUSIF."

The priority of payments was established, for the most part, based upon the "old" Bankruptcy Act. Up until the enactment of the Bankruptcy Reform Act of 1978 ("Bankruptcy Code") it was not clear as to whether or not a Federal credit union involuntarily liquidation was subject to the Federal bankruptcy laws. This issue was clarified in section 109(b)(2) of the Bankruptcy Code wherein credit unions (both Federal and State) are specifically excluded from liquidation under the Federal Bankruptcy Code because they are institutions for which an alternate provision is made for their liquidation under various State or Federal regulatory laws.

The applicable provision of Federal law relating to the liquidation and payout of a Federal credit union is section 207(a)(2) of the FCU Act (12 U.S.C. 1787(a)(2). *See also*, section 207(a)(3) and section 120(b)(4) of the FCU Act (12 U.S.C. 1787(a)(3) and 1766(b)(4)). Section 207(a)(2) states in pertinent part that:

> * * * The Board [NCUA Board] as such liquidating agent shall pay to itself for its own account such portion of the amounts realized from such liquidation as it shall be entitled to receive on account of its subrogation to the claims of members, and it shall pay to members and other creditors the net amounts available for distribution to them * * *

In light of the new Bankruptcy Code, the NCUA Board is no longer constrained to payout along the lines provided under that law. Instead, it is now clear that the Board can rely on the authorities cited above in establishing the payout priorities for involuntarily liquidating Federal credit unions. In a recent General Accounting Office report it was suggested that the order of payout be adjusted such that the National Credit Union Share Insurance Fund, the source of the funds used in the initial payout by the Board to insured credit union members, would not continue to absorb as much of the losses as it has up to this point.

The Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), parts of which Title II of the FCU Act was fashioned after, contains a similar provision to section 207(a)(2). *See*, 12 U.S.C. 1821(d). The courts have interpreted that provision as entitling the Federal Deposit Insurance Corporation, after it has paid depositors their insured deposits, to share pro rata in the assets of a liquidating bank with depositors having deposits in excess of insured amounts, and other creditors, based on the respective amount of their claims. Applying that interpretation to section 207(a)(2), the current payout priority would be changed and the NCUSIF, uninsured members, general (unsecured) creditors, and secured creditors, to the extent that their claims exceed their security interest, would take ratably. It is the intent of the NCUA Board, in approving the publication of this interpretive ruling, to make such a change to the payout priority.

Rather than categorize separate classes of unsecured creditors as was previously done, the Board will not treat all such creditors the same, except where Federal law (statutory or common law) provides certain creditors with a preference in priority. It is the Board's policy that unless this payout priority is otherwise preempted or modified by Federal law, it shall be the one in effect for Federal credit unions.

It should be noted that certain monies owed by a Federal credit union to third parties would fall outside the payout priorities and, therefore, such monies would be paid out before any payments were made under the priority schedule. Principally, this would include monies received by an FCU on behalf of a third party, for example, monies received upon the sale of money orders and travelers' checks. These funds were never intended to become part of the FCU's general funds. Instead, a trust relationship is established between the third party and the FCU.

This change in NCUA policy will also affect the liquidation payout of federally insured state chartered credit unions. As provided in section 207(d) of the FCU Act (12 U.S.C. 1787(d)):

> * * * In the case of any other closed insured credit union, the Board shall not make any payment to any member until the right of the Board to be subrogated to the rights of such member on the same basis as provided in the case of a closed Federal credit union shall have been recognized * * *. The rights of members and other creditors of any state-chartered credit union shall be determined in accordance with applicable provisions of State law.

The Board interprets this section as requiring that the Board receive the same payout priority for its subrogation rights for federally insured state credit unions as it does for Federal credit unions. However, depending upon state law the rights of members (essentially only uninsured members) and creditors may be different than that described in this ruling for uninsured members and creditors of FCU's. In no event will state law apply where the rights provided to members and creditors cause them to receive a higher priority vis-a-vis the NCUSIF than is noted in this ruling.

Lastly, the Board recognizes that many lenders have previously made loans or extended lines of credit based upon the former payout priority. To the extent that such loans were consumated, or advances under a line or credit were made, before the effective date of this ruling, such creditors will have the same priority as existed before this ruling, in the event of a liquidation and payout. However, in the event that a new advance is made after the effective date of this ruling, the entire loan balance (not simply the new advance) will be subject to this ruling.

IRPS 82–2

The payout priority for the liabilities of an involuntarily liquidating Federal credit union is as follows:

First. Secured creditors up to the value of their collateral.

Second. Costs and expenses of liquidation.

Third. Unsecured creditors, secured creditors to the extent that their claims exceed their security interest, members to the extent of uninsured shares, and the National Credit Union Administration Share Insurance Fund.

By the National Credit Union Administration Board on April 21, 1982.

Beatrix D. Fields,

Acting Secretary of the Board.

[FR Doc. 82-11526 Filed 4-27-82; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This Amendment revises the National Aeronautics and Space Administration's Small Business Policy (14 CFR Part 1204, Subpart 4), by establishing a separate office of Small and Disadvantaged Business Utilization which is responsible for the development, supervision and coordination of the NASA Small Business Program.

DATE: April 28, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene D. Rosen, (202) 755-2288.

SUPPLEMENTARY INFORMATION: The Small Business Act of 1953 (15 U.S.C. 644) as amended by Pub. L. 95-507, Section 221, requires that each Federal agency having procurement powers establish an office known as "Office of Small and Disadvantaged Business Utilization." This office reports directly to the Deputy Administrator and is responsible for the administration of those programs designed to assist small business, disadvantaged business firms (minority business), women's business enterprise, and labor surplus area firms.

Since this action is administrative in nature and does not affect the existing regulations, notice and public procedures are not required.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings, facilities, and real estate, Government contracts, Government procurement, Intergovernmental relations, Security measures, Small businesses.

14 CFR Part 1204 is amended by revising Subpart 4 to read as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

* * * * *

Subpart 4—Small Business Policy

Sec.

1204.400 Scope of subpart.
1204.401 Policy.
1204.402 Responsibility.
1204.403 General requirements.

Authority: Small Business Act of 1953 (15 U.S.C. 637) as amended by Pub. L. 95-507, Section 221.

Subpart 4—Small Business Policy

§ 1204.400 Scope of subpart.

This subpart establishes the small business policy and program of the National Aeronautics and Space Administration (NASA).

§ 1204.401 Policy.

(a) Consistent with the requirements of the Small Business Act (15 U.S.C. 631-650), as amended, and the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(b)(5)), it is the policy of NASA to place a fair proportion of its total purchases and contracts with small business concerns.

(b) In carrying out the NASA procurement program, the primary consideration shall be that of securing contract performance, including obtaining deliveries of required items or services at the time, in the quantity and of the quality prescribed. In the area of research and development contracts, the general policy of NASA is to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the interest of the civilian space program that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small business firms.

§ 1204.402 Responsibility.

(a) *Office of Small and Disadvantaged Business Utilization.* The Director, Office of Small and Disadvantaged Business Utilization, NASA Headquarters, is responsible for the development, supervision and coordination of the NASA Small Business Program. The Director is also responsible for formulating policy and procedures relating to small business, and representing NASA before other government agencies on matters primarily affecting small business.

(b) *NASA field installations.* The head of each NASA field installation will designate a qualified individual in the procurement office as a "small business specialist," to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program, or secure assistance in submitting bids or proposals as well as performance of contracts. Where the head of a field installation considers that the volume of procurement at the installation does not warrant a full-time small business specialist, he/she may assign such duties to qualified procurement personnel on a part-time basis. NASA field installations shall establish and maintain liaison with the Small Business Administration representative or the appropriate Small Business Administration Regional Office in matters relating to field procurement activities.

§ 1204.403 General requirements.

(a) All proposed procurement transactions in excess of $2,500 shall be examined by small business specialists prior to issuance of bids or requests for proposals to determine suitability for small business participation or set-aside.

(b) The appropriate office of the Small Business Administration shall be informed of proposed procurements estimated to exceed $10,000.

(c) Bidders' list shall be maintained on a current basis and reviewed to assure that small business firms are given an equitable opportunity to participate in those procurements suitable for performance by such firms.

(d) NASA small business personnel shall acquire descriptive data, brochures, or other information concerning small business firms which appear competent to perform research and development work in fields in which NASA is interested and furnish such information to technical personnel. The Small Business Advisor at Headquarters and the small business specialists at NASA field installations shall assist and consult with NASA technical personnel in the analysis of such information, in arranging field inspection of facilities in making appointments for technical personnel with representatives of small business firms, and obtaining from other agencies appraisals of work performed by such firms.

(e) In accordance with Pub. L. 95-507, NASA will require contractors having

Testimony of the

KANSAS CREDIT UNION LEAGUE

on

SB 75

Conforming State Credit Union Statutes
to Certain Federal Laws and Regulations

Presented to the

SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

by

Marvin C. Umholtz

Governmental Affairs Director

February 3, 1983

Attachment II

Mr. Chairman, Members of the Committee:

I am Marvin Umholtz, Governmental Affairs Director for the Kansas Credit Union League (KCUL). Our association represents 217 credit unions in Kansas, both state and federally chartered. These credit unions serve over 400,000 members.

I appear before this Committee today to urge a "favorable for passage" recommendation for SB 75. This measure adds to the credit union act language similar to certain recent amendments to the Federal Credit Union Act made by the Depository Institutions Act of 1982. Additionally the bill codifies in the Kansas Credit Union Act certain language taken from regulations of the National Credit Union Administration (NCUA).

Essentially this bill:

1. "boiler plates" CU Invididual Retirement Account (IRA) authority in state law;
2. increases officer and employee borrowing limits from $5,000 to $10,000 before special board approval procedures are required;
3. adds board policy authority for setting loan late charges, notwithstanding UCCC limits;
4. clarifies board authority to set member expulsion policies; and
5. reduces charter conversion voting requirements.

Not all of the changes made to the federal act by the DIA are being requested in this bill. In some cases, the Kansas CU Act already provided the practices authorized by the DIA and in others KCUL made a determination that the changes were not necessary for state charters at this time. None of these amendments have been granted under the CU Administrator's federal conformity authority (K.S.A. 17-2244). The DIA did not become law until mid-October, 1982. The housekeeping nature of

most of the amendments was determined by KCUL to not require "special ord action prior to Legislative consideration.

A section by section discussion of the bill follows:

SECTION 1. Amending K.S.A. 1982 Supp. 17-2213.

The new language on page 2, lines 0055 through 0078 is simply a "boiler plating" of the current NCUA regulations governing federal credit unions acting as trustees and custodians of IRA and Keogh pension plans. The language in subsection (d) of this section reads almost exactly as 12 C.F.R. Sec. 724.1 and 724.2. In this wording, "credit union" replaces the federal regulation's reference to "federal credit union" and the words "United States" are added twice on line 0066.

The addition of this language would provide a clear roadmap for state chartered CU's wishing to serve their members as custodians and trustees of IRA's. Credit unions currently offering IRA's are doing so under the authority of the IRS tax code. (26 C.F.R. Sec. 1.401-12(n).)

SECTION 2. Amending K.S.A. 17-2216.

There are essentially three separate concepts in this section.

1. On page 3, lines 0084 - 0088, language has been added to give state chartered credit unions the authority to establish late charges for delinquent loans if the credit union's bylaws so provide, notwithstanding the limits to such charges imposed by K.S.A. 16a-2-502 of the Uniform Consumer Credit Code (UCCC). The NCUA Board provided this authority to federally chartered credit unions this past year.

Federal credit unions have the power to assess late charges in Law (12 U.S.C. 1757(10)) and a newly broadened rule. State credit unions are governed by Kansas lending laws (Uniform Consumer Credit Code, real estate lending laws, etc.).

In July, the NCUA Board agreed to allow the following bylaw wording as an option for FCU's:

> "Any member whose loan is delinquent may be required to pay a late charge as determined by the Board of Directors."

By this action, NCUA has placed the authority and the responsibility for determining late charges in the CU's hands. In the past, credit unions used fees infrequently, partly because of restrictions which limited the amount of the fees. The limits created operating problems. Many credit unions rationalized that the simple interest earnings sufficiently compensated them for delinquency administrative costs.

Functional cost analysis, which breaks down expenses according to where they occur, shows that collection is usually more expensive than just the amount of additional interest collected.

The table below outlines the basics of the delinquency charges available to state CU's and other UCCC lenders (K.S.A. 16a-2-502).

Precomputed	Open End
° 5% of the unpaid amount of the installment or $2.50, whichever is less	° The finance charge accumulates in direct relation to the size of the unpaid balance and the period for which it has been outstanding; (ie, no charges beyond contracted daily rate).
° Option to convert loan from precomputed to one in which the finance charge is based on unpaid balances	

Truth-in-Lending (Regulation Z) allows "...Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurence..." to be excluded from the Finance Charge (12 C.F.R. 226.4(c)(2)). The fact that such other charges might be imposed must be disclosed to the consumer (12 C.F.R. 226.6(b)). Most CU loan forms currently in use provide/disclose late payment charges.

2. The new language starting on line 0095 - 0099 is taken from Sec. 513 of the DIA, now codified as 12 U.S.C. 1757(5)(A)(viii). This language specifies that partial prepayment of a mortgage loan may be credited on the next monthly installment due date.

This change clearly permits credit unions to accept prepayments on mortgages in a manner consistent with the requirements of the secondary mortgage markets' institutional investor, particularly FNMA and FHLMC. Institutional investors typically require a seller-servicer of loans sold to them to credit payments only on the due dates called for in the loan notes. This is necessary to simplify the accounting and computing for the vast number of loans handled by those purchasers. Uniformity is also necessitated because the institutional purchasers sell securities backed by the mortgages they purchase on the bond markets where such uniformity is expected.

The language starting on line 0099 is added for clarity. It is a direct "borrowing" of language from the NCUA regulation in this area -- 12 C.F.R. 701.21-6A(b)(3) and 701.21-5(a). State CU's have been making these types of government insured or guaranteed loans under the general lending authority found in K.S.A. 17-2216 (this section) and their incidental powers authority -- K.S.A. 1982 Supp. 17-2204(12).

3. The final change requested by KCUL to this section was inadvertantly left out of the bill in the Revisor's rewrite. The change would be to increase the $5,000 amount found on line 0113 to $10,000.

SUGGESTED AMENDMENT:

On line 0113, strike "$5,000" and insert "$10,000".

Recent NCUA action allows Federal credit unions to provide preferential conditions and terms for loans to employees. This authority was provided in an effort to give FCU's an additional recruitment incentive for employees. KCUL is not asking for preferential loans to employees, but is instead asking that loans to employees be treated in the same manner as loans to officers.

SECTION 3. Amending K.S.A. 17-2216a.

The only change to this section is on line 0131, increasing the dollar amount of loans to CU officers from $5,000 to $10,000 before special approval procedures are required. This change was made to the FCU Act by section 512 of the DIA, now codified as 12 U.S.C. 1757(5)(A)(iv) and (v).

SECTION 4. Amending K.S.A. 17-2219.

The change evidenced in subsection (b) lines 0146-0159 is a codification in state law of the language of section 525 of the DIA (12 U.S.C. 1764). KCUL has substituted the word "may" for the FCU Act's "shall" in line 0157.

The existing expulsion authority of the 2/3 membership vote and the board exclusion authority found in K.S.A. 17-2209 have rarely been used by Kansas CU's. However, with competition and a bad economy putting the squeeze on credit union earnings, we anticipate more activity in this area. This amendment requires official board policies to govern expulsion.

In the cases where CU members maintain a small account over a prolonged period of time and do not otherwise utilize the credit union's services, the administrative burden and expense to the credit union (and its other members) of maintaining the accounts are unwarranted.

SECTION 5. Amending K.S.A. 17-2222.

The substantive amendments to this statute are designed to place in the state law similar authority to that granted to FCU's in section 527 of the DIA, now codified as 12 U.S.C. 1771(a)(1).

The change to federal law allows conversion from federal to state charter based on the affirmative vote of the majority of those members choosing to vote on the proposal rather than a majority of all members as was previously required.

Our current state law allows conversion from state to federal charter based upon the affirmative vote of 2/3 of those members present and voting at a meeting. The suggested changes put the state act in the same status as the federal.

Thank you for this opportunity to appear before the Committee in support of SB 75. This measure is a part of an on-going program of maintaining the quality of statutes affecting state chartered credit unions. I stand ready to address Committee members' questions at the direction of the chair.

Attachments:

1. Highlights of the Depository Institutions Act of 1982; Impact on Credit Unions
2. Excerpt - 26 C.F.R. Sec. 1.401-12(n).

ATTACHMENT I

Highlights of the DEPOSITORY INSTITUTIONS ACT OF 1982

Effective: October 15, 1982
IMPACT ON CREDIT UNIONS

The Depository Institution Amendments of 1982 (H.R. 6267) is an omnibus financial institutions bill which was passed by the Senate on September 24, 1982, and by the House on October 1, 1982. The President signed the bill Friday, October 15, 1982.

IMPACT: Substantially revises the Federal Credit Union Act to give federal credit unions more flexibility in determining their organizational and operational structure (see Title V); authorizes all federally insured credit unions to offer share drafts to federal, state and local governments; exempts the first $2 million of transaction accounts from monetary reserve requirements; preempts state laws prohibiting the enforcement of due-on-sale clauses and the use of adjustable rate mortgages; and gives NCUA greater flexibility to handle failing and failed federally insured credit unions.

TITLE I - "DEPOSIT INSURANCE FLEXIBILITY ACT"

- Authorizes NCUA to permit a purchase and assumption arrangement between a failing federally insured credit union and any federally insured financial institution. This authority exists without any restrictions as to common bond or geographic area.

- Permits NCUA to act as conservator of federally insured credit unions to enable NCUA to protect credit union assets, credit union members, and the Share Insurance Fund.

TITLE II - "NET WORTH CERTIFICATE ACT"

- Does not apply to credit unions.

TITLE III - "THRIFT INSTITUTIONS RESTRUCTURING ACT"

- Preempts states laws which prohibit lenders from enforcing due-on-sale clauses in mortgage loans upon sale of real estate. Applies to all federal and state chartered credit unions.

TITLE IV - "PROVISIONS RELATING TO NATIONAL AND MEMBER BANKS"

- Amends the Federal Reserve Act to exempt from monetary reserve requirements the first $2 million of reservable liabilities of all depository institutions. This will provide complete exemption for the great majority of credit unions, and reduce the reserve levels of credit unions with more than $2 million in share drafts.

- Authorizes NCUA to remove a management official for a violation of the Depository Institution Management Interlocks Act.

- Amends the civil money penalty provision of the Federal Credit Union Act to give NCUA authority to modify any civil penalty which has been imposed or may be imposed in connection with cease and desist orders.

TITLE V - "AMENDMENTS TO THE FEDERAL CREDIT UNION ACT" (This Title contains 33 sections.)

- Allows federal credit union boards to establish the par value of shares.

- NCUA may permit federal credit unions to offer mortgage loans with maturities over 30 years.

- Federal credit unions may refinance first mortgage loans.

- Federal credit unions may offer share drafts for government funds.

- Federal credit unions may receive telephone and other services from federal agencies and may be permitted to reimburse the agency for the costs of the services.

- Requires board of director approval for any loan or aggregate of loans to any director or member of the supervisory or credit committee exceeding $10,000 (currently $5,000).

- Clarifies that federal credit unions serving federal employees can receive services such as telephone lines and security alarms free of charge or by reimbursement to the U.S. Treasury. This amendment overturns adverse opinions by the U.S. General Accounting Office holding that federal credit unions could not even reimburse the government for services, but had to install separate telephone lines and security systems.

- Authorizes federal credit unions to make deposits in any federally insured, state chartered bank, rather than just state chartered banks located in the same state in which the credit union does business.

- FCU's may charge fees greater than cost for money transfer services.

- Allows federal credit unions to invest in state and local government obligations.

- Makes the credit committee optional in federal credit unions.

- Allows federal credit unions to determine the titles of officers and management.

- Allows the annual meeting to be held at any time during the year.

- Gives NCUA flexibility to design separate rules to govern the operations of corporate credit unions.

- Authorizes a board of directors to adopt a policy of terminating the membership of any member based on inactivity in the affairs of the credit union upon an affirmative vote of 2/3 of the members present at a special meeting called for this purpose.

- Allows approval for conversion from a federal to state charter based on the affirmative vote of the majority of those members choosing to vote on the proposal. Presently, a vote of a majority of all members is required.

Title V also impacts:

- Share insurance coverage, premiums and rebates and CLF borrowing authority.

- CLF investment and lending authority, reserve agent status.

- Authorizes study of compensation of CU board members.

TITLE VI - "PROPERTY, CASUALTY, LIFE INSURANCE ACTIVITIES OF BANK HOLDING COMPANIES"

- This title does not directly affect credit unions.

TITLE VII - "MISCELLANEOUS"

- Permits federally insured credit unions to offer share drafts to federal, state and local government units.

- Exempts student loans from the Truth-in-Lending Act and from state disclosure laws.

- Requires NCUA, FDIC, and FSLIC to conduct separate studies on the feasibility of providing optional insurance above the $100,000 limit, the feasibility of basing premiums on risk, the adequacy of public disclosure of the condition of insured institutions, and the feasibility of combining the three federal insurance agencies. The studies are to be completed and delivered to Congress within 6 months after enactment.

TITLE VIII - "ALTERNATIVE MORTGAGE TRANSACTIONS"

- Permits state-chartered credit unions to offer adjustable rate mortgages in accordance with NCUA regulations.

fund within 120 days after the end of the plan year.

(E) When participations are withdrawn from a common investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind: *Provided*, That all distributions as of any one valuation date must be made on the same basis.

(F) If for any reason an investment is withdrawn in kind from a common investment fund for the benefit of all participants in the fund at the time of such withdrawal and such investment is not distributed ratably in kind, it must be segregated and administered or realized upon for the benefit ratably of all participants in the common investment fund at the time of withdrawal.

(vii) *Books and records.* (A) The applicant must keep its fiduciary records separate and distinct from other records. All fiduciary records must be so kept and retained for as long as the contents thereof may become material in the administration of any internal revenue law. The fiduciary records must contain full information relative to each account.

(B) The applicant must keep an adequate record of all pending litigation to which it is a party in connection with the exercise of fiduciary powers.

(viii) *Definitions.* For purposes of this subparagraph, subdivision (n)(3)(v), and subparagraph (n)(8) of this section—

(A) The term "account" or "fiduciary account" means a trust described in section 401(a) (including a custodial account described in section 401(f)), a custodial account described in section 403(b)(7), or an individual retirement account described in section 408(a) (including a custodial account described in section 408(h)).

(B) The term "plan administrator" means an administrator as defined in § 1.414(g)–1.

(C) The term "common investment fund" means a trust that satisfies the following requirements:

(*1*) The trust consists of all or part of the assets of several accounts that have been established with the applicant, and

(*2*) The trust is described in section 401(a) and is exempt from tax under section 501(a), or is a trust that is created for the purpose of providing a satisfactory diversification of investments or a reduction of administrative expenses for the participating accounts and that satisfies the requirements of section 408(c).

(D) The term "fiduciary records" means all matters which are written, transcribed, recorded, received or otherwise come into the possession of the applicant and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of the applicant.

(E) The term "qualified public accountant" means a qualified public accountant, as defined in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1023(a)(3)(D), who is independent of the applicant.

(F) The term "net worth" means the amount of the applicant's assets less the amount of its liabilities, as determined in accordance with generally accepted accounting principles.

(*7*) *Special rules*—(i) *Possive trustee.* (A) An applicant that undertakes to act only as a passive trustee may be relieved of one or more of the requirements of this paragraph upon clear and convincing proof that such requirements are not germane, under all the facts and circumstances, to the manner in which the applicant will administer any trust. A trustee is a passive trustee only if under the written trust instrument the trustee has no discretion to direct the investment of the trust funds or any other aspect of the business administration of the trust, but is merely authorized to acquire and hold particular investments specified by the trust instrument. Thus, for example, in the case of an applicant that undertakes merely to acquire and hold the stock of regulated investment companies, the requirements of paragraph (n)(6)(i)(A)(*3*), (i)(D), and (vi) of this section shall not apply and no negative inference shall be drawn from the applicant's failure to demonstrate its experience of competence with respect to the activities described in paragraph (n)(5)(ii) (E) to (H) of this section.

(B) The notice of approval issued to an applicant that is approved by reason of this subdivision shall state that the applicant is authorized to act only as a passive trustee.

(ii) *Federal or State regulation.* Evidence that an applicant is subject to Federal or State regulation with respect to one or more relevant factors shall be given weight in proportion to the extent that such regulatory standards are consonant with the requirements of section 401. Such evidence may be submitted in addition to, or in lieu of, the specific proofs required by this paragraph.

(iii) *Savings account.* (A) An applicant will be approved to act as trustee under this subdivision if the following requirements are satisfied:

(*1*) The applicant is a credit union, industrial loan company, or other financial institution designated by the Commissioner;

(*2*) The investment of the trust assets will be solely in deposits in the applicant;

(*3*) Deposits in the applicant are insured (up to the dollar limit prescribed by applicable law) by an agency or instrumentality of the United States, or by an organization established under a special statute the business of which is limited to insuring deposits in financial institutions and providing related services.

(B) Any applicant that satisfies the requirements of this subdivision is hereby approved, and (notwithstanding subparagraph (2) of this paragraph) is not required to submit a written application. This approval takes effect on the first day after December 22, 1976, on which the applicant satisfies the requirements of this subdivision, and continues in effect for so long as the applicant continues to satisfy those requirements.

(C) If deposits are insured, but not in the manner provided in paragraph (n)(7)(iii)(A)(*3*) of this section, the applicant must submit an application. The application, notwithstanding subparagraph (2) of this paragraph, will be limited to a complete description of the insurance of applicant's deposits. The applicant will be approved if the Commissioner approves of the applicant's insurance.

(iv) *Notification of Commissioner.* The applicant must notify the Commissioner in writing of any change that affects the continuing accuracy of any representation made in the application required by this paragraph, whether the change occurs before or after the applicant receives a notice of approval. The notification must be addressed to the Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224.

(v) *Substitution of trustee.* No applicant will be approved unless the applicant undertakes to act as trustee only under trust instruments which contain a provision to the effect that the grantor is to substitute another trustee upon notification by the Commissioner that such substitution is required because the applicant has failed to comply with the requirements of this paragraph or is not keeping such records, or making such returns, or rendering such statements as are required by forms or regulations.

(*8*) *Procedure and administration*—(i) *Notice of approval.* If the applicant is approved, a written notice of approval will be issued to the applicant. The notice of approval will state the day on which it becomes effective, and (except as otherwise provided therein) will