NAFCU's 2018 Regulatory Compliance Seminar
Regulatory Update

PRESENTED BY:

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Washington Watchdog

National Association of Federally-Insured Credit Unions | **nafcu.org**

NAFCU's Advocacy Principles

1. GROWTH

NAFCU supports a regulatory environment that allows credit unions to grow.

2. REGULATORY RELIEF

NAFCU supports appropriate, tailored regulation for credit unions and relief from growing regulatory burdens.

3. FAIR PLAYING FIELD

NAFCU supports a fair playing field for all credit unions.

4. TRANSPARENCY

Transparency NAFCU supports government transparency and accountability.

5. STRONG NCUA

NAFCU supports a strong, independent NCUA as the primary regulator for credit unions.

The Administration

President Donald Trump outlined four key agenda items to accomplish his first year:

1. Regulatory Relief from Dodd-Frank
2. Healthcare Reform
3. Tax Reform
4. GSE Reform

Tax Reform = completed.

Regulatory Relief = Major bill completed (S. 2155)

Key Meetings with the Administration

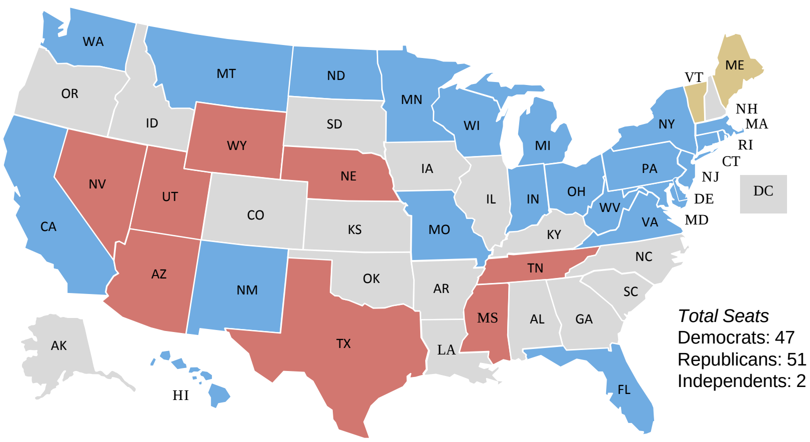
The past year, NAFCU has been very engaged with Congress, the Trump Administration, and federal agencies. Key meetings include:

- President Donald Trump
- Steven Mnuchin, Secretary of the Treasury
- Craig Phillips, Advisor to the Secretary of the Treasury
- Acting Director Mick Mulvaney, CFPB
- Director Ken Blanco, FinCEN
- Ben Carson, HUD Secretary
- Linda McMahon, SBA Administrator
- Chairman Ajit Pai, FCC
- Director Mel Watt, FHFA

Legislative Landscape

States with Senate elections, 2018

Democrat incumbent · Independent incumbent · Republican incumbent



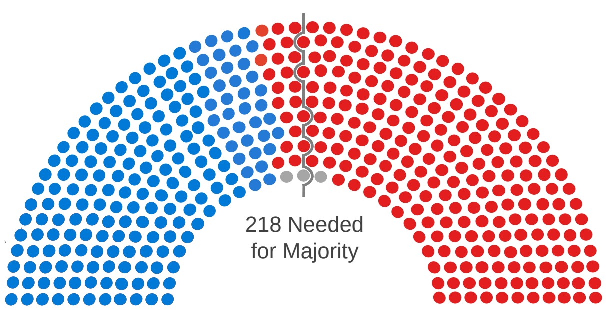
Analysis

- Democrats will be defending **25 seats** in 2018, while Republicans are defending only **eight**
- Of the eight Republican seats, just **Nevada, held by freshman Sen. Dean Heller**, is in a state won by Democrats in the 2012 or 2016 presidential elections
- This means **Republicans are likely to hold onto their majority**
- Democrats will likely be on defense in **North Dakota** (a state Romney won by 20 points and Trump won by 36) and **West Virginia** (a state Romney won by 27 points and Trump won by 42)
- Other states Democrats will have to work hard to hold onto include **Indiana**, **Missouri**, and **Montana**

Partisan Breakdown

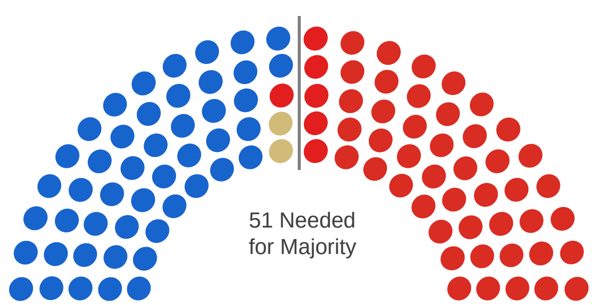
Party control of the 115th Congress (2017-2019)

Democrat · Republican · Independent (caucusing with Dems)



193-236 (6 vacant)

Republican House Majority



47-2-51

Republican Senate Majority

- House and Senate both potentially in play for November 2018 midterms

Sources: Cook Political Report, 2017.

Tailored Regulation/Regulatory Relief

S. 2155 – The Economic Growth, Regulatory Relief and Consumer Protection Act

- NAFCU-backed bill to provide regulatory relief for credit unions
- Includes some MBL, QM and HMDA relief. Also includes NCUA Budget transparency, online banking relief.

- **Signed into law on May 24, 2018 by President Donald Trump**
- **In June, NAFCU delivered to Acting Director Mulvaney a list of recommended regulatory actions in light of these changes. Bureau expects to issue guidance later this summer.**

S. 488 – JOBS and Investor Confidence Act (JOBS 3.0 bill)

- NAFCU worked with HSFC Chairman Jeb Hensarling post S. 2155 to secure additional relief
- JOBS Act represents bipartisan compromise between Chairman Hensarling and Ranking Member Maxine Waters
- Title XVII includes NAFCU language to delay NCUA's RBC rule from January 1, 2019 to January 1, 2021

- **Passed House 406-4 on July 17, 2018**
- **Awaits action in Senate**

Tailored Regulation/Regulatory Relief

S. 2155 – The Economic Growth, Regulatory Relief, and Consumer Protection Act - enacted May 24, 2018.

NAFCU's S. 2155 Analysis: https://www.nafcu.org/newsroom/nafcu-updates-s-2155-summary-guide-cus

MBL Cap:
- Provides credit unions relief from the arbitrary credit union member business lending cap by not counting non-owner occupied 1-4 family home loans towards the cap.

Qualified Mortgages:
- Creates a new QM category for credit unions with less than $10 billion in assets that hold mortgage loans in portfolio

HMDA:
- Exempts credit unions that originate less than 500 closed-end mortgages or less than 500 open-end lines of credit in two preceding calendar years from certain HMDA reporting.

TRID:
- Intended to provide an exception to the required 3-day waiting period for disclosures if lender extends second offer with lower APR. Amended the wrong section of TILA.

Online Banking:
- Permits credit unions to record personal information from and make a copy of a driver's license or personal ID for opening an account or obtaining services online. Must delete copies after use.

Tax Reform

- On December 22, 2017, President Donald Trump signed the "Tax Cuts and Jobs Act" into law
- **Credit union tax exemption was preserved**

Bankers have ratcheted up their attacks both in DC and in the states.

Tax Reform

- **<u>Mortgage-Interest Deduction</u>**
  - Preserves the mortgage-interest deduction, with a reduced cap of $750,000 for newly purchased homes.
- **<u>Banking Provisions</u>**
  - Eliminates the tax deduction for FDIC premiums for institutions with more than $50 billion in assets.
  - Reduced corporate tax rate from 35% to 21% - effectively narrowing the competitive gap between credit unions and banks.
- **<u>HELOCs</u>**
  - Limits the deductibility of interest paid on some home equity loans/lines of credit for loans.
    - Eliminates the deduction of "home equity" debt and limits total "acquisition" debt to $750,000.

Regulatory Landscape

Treasury

- The Treasury has taken the lead on planning and implementing President Trump's regulatory reform agenda – identifying laws, regulations, guidance, and other requirements that harm to financial system.
- These efforts include several reports related to Trump's executive order on "Core Principles for Regulating the United States Financial System."

BCFP

- Acting Director Mulvaney's term expired on June 22, 2018. Leandra English, former Director Cordray's nomination resigned in July and officially dropped her lawsuit.
- President Trump nominated Kathleen Kraninger, Associate Director of OMB, in May. On Aug. 23, 2018, Senate Banking voted to advance Kraninger's confirmation to a floor vote. Mulvaney can continue until she is confirmed. If nomination rejected, withdrawn, or returned by Senate, clock restarts again – another 210 days – potentially into 2019.

NCUA

- Chairman McWatters and Board Member Metsger are the only two on the board. Metsger's term has expired. President Trump nominated Rodney Hood to the Board.

BCFP – Director Who?

Background:

- Former Director Richard Cordray left on November 24, 2017 and entered the Ohio governor's race.
- President Trump named current OMB Director Mick Mulvaney as Acting Director following Cordray's departure. Meanwhile, Cordray named his chief of staff, Leandra English as Deputy Director.
    - English filed suit in D.C. District Court against Trump and Mulvaney → the case proceeded to D.C. Circuit Court of Appeals → oral argument was held on April 12, 2018.
- In early July, Leandra English officially resigned and dropped her lawsuit because President Trump nominated Kathleen Kraninger as the next Director of the Bureau.
- Confirmation hearing held and her nomination advanced out of committee. Now waiting for full Senate vote to be scheduled.
- Significant rulemakings and meetings on hold until Kraninger is confirmed.

Regulatory Landscape - BCFP

- Acting Director Mulvaney has been quick to initiate several of his own acts, including:
    - 30-day hiring freeze (expired), hold on new enforcement cases, and payments made from the civil penalty fund;
    - Suspension of collection of consumer personal information due to concerns about data security (data collection has resumed);
    - Review of more than 100 pending enforcement cases; and
    - Naming of political personnel to serve as advisors alongside career staff.
    - Reevaluating the payday rulemaking – may stop the final rule from taking effect.
    - Following the letter of the law – MLA enforcement.

Regulatory Landscape - BCFP

- Acting Director Mulvaney has turned the tide at the BCFP. He froze the Bureau's collection of personal information (which has since resumed), stepped back from several legal fights, reviewed numerous pending enforcement actions, and is reviewing the efficiency and effectiveness of the agency's processes and procedures through a series of 12 Requests for Information (RFI):

Civil Investigative Demands	Administrative Adjudications
Enforcement Processes	Supervision Program
External Engagements	Consumer Complaint Information
Rulemaking Processes	Adopted Regulations
Inherited Regulations	Guidance and Implementation
Financial Education	Consumer Inquiries

- NAFCU met with Acting Director Mulvaney in February.

Regulatory Landscape - NCUA

- President Trump named NCUA Board Member J. Mark McWatters the agency's new Chairman.
- Since Chairman Matz's departure in April 2015, the NCUA Board has functioned with only two members.
  - o Since there are only two members, in order for a rule or action to pass, the FCU Act requires the Board to be unanimous (i.e. both members have to agree on everything).
- Board Member Metsger's term ended on August 2, 2017.
- On June 18, 2018, President Trump nominated Rodney Hood to the Board (served previously from 2005-2009).

FOM Lawsuit

The Bankers are at it again!!

- The ABA sued the NCUA over its new rule on community chartered credit union expansion. The ABA challenged four aspects of the NCUA's rule.
  - o On March 29, 2018, the Court held that NCUA lost the following challenges:
    - ➢ Any portion of a Combined Statistical Area (no more than 2.5 million people) is automatically part of a local community
    - ➢ The population limit for rural districts increased to 1 million people.
  - o NCUA and ABA have appealed the ruling.
- Approximately 48 credit unions are directly impacted and will have to revert back to their prior FOM. NCUA may promulgate a new rule to fix the aspects of the rule that the court took issue with.
  - o NCUA also finalized the FOM II rule at its June Board meeting.

NAFCU urged NCUA to grandfather already-approved fields of membership and has asked the agency to issue a new rulemaking to help credit unions grow and expand.

Share Insurance Fund Distributions

- In September 2017, NCUA Board voted to raise the normal operating level (NOL) of the Share Insurance Fund (SIF) from 1.30% to 1.39% and approved merging the Temporary Corporate Credit Union Stabilization Fund (TCCUSF) with the SIF.
  - The action included no guarantee or formal plan for the NOL to return to its normal level of 1.30 percent, only potential "periodic reviews."
- NAFCU is continuing to push for all Stabilization Fund monies to be returned to credit unions.
- NCUA approved a distribution of $736M; dividends were paid in July.
  - The increase in the NOL from 1.30 to 1.39 percent resulted in the agency retaining nearly $1B in the SIF.

Capital Reform

- **Credit unions deserve at least parity to bank capital rules and NAFCU is fighting!**
- **Supplemental Capital**
  - NAFCU has urged NCUA to move forward with a supplemental capital rulemaking.
  - Treasury supports granting credit unions access to supplemental capital.
  - No movement from NCUA yet. In March 2017, NCUA's EGRPA report to Congress endorsed supplemental capital legislation. In his October 2, 2018 testimony to Senate Banking Committee, McWatters said alternative capital is a priority.
- **Risk-Based Capital**
  - During its August Board meeting, the NCUA proposed a 1-year delay of the rule and an amendment to the definition of "complex" credit union.
  - NAFCU has developed a list of proposed amendments to the RBC Rule. Among other things, NAFCU wants to increase the net-worth ratio and recalibrate risk-weights.
- **Reps. Bill Posey and Denny Heck Introduce Bipartisan RBC-Delay Bill, H.R. 5288**
  - Delay RBC effective date to Jan. 1, 2021.
  - House has passed delay language 3 times as part of larger packages.

Payday Alternative Loans

- On May 24, 2018, the NCUA Board issued a proposal to expand the agency's payday alternative loan (PAL) rule. NAFCU has long pressed for additional mechanisms for credit unions to provide sensible small dollar loans.
- The proposal would not change or replace the existing PAL rule, but would provide an alternative PALs II option, which differs in four key areas, summarized below.

Features	PALs I (current rule)	PALs II
Minimum Membership	One month minimum membership requirement.	No minimum length of membership requirement.
Loan amount	The principal of the loan is not less than $200 or more than $1000.	PALs II loan can be made in amounts up to $2000. No minimum loan amount.
Loan Term	Six month maximum loan term. Minimum loan term of one month.	Twelve month maximum loan term. Minimum loan term of one month.
Number of Loans in Loan Period	The FCU cannot make more than three PAL loans in any rolling six-month period to any one borrower and makes no more than one PAL loan at a time to a borrower.	FCU only permitted to make one loan at a time to any one borrower, but would be able to make additional loans to that borrower with no time restrictions, provided there is only one loan outstanding at a time to that borrower.

Bylaws Modernization

- In March 2018, the NCUA issued an ANPR to streamline, clarify, and improve the standard FCU bylaws. The NCUA Board proposed several changes to provide increased flexibility and reduce overall regulatory burden.
- NAFCU submitted comments in May and made several recommendations for each of the five areas in which the NCUA requested comment:
  - Amendment Process
  - Limitation of Service and Expulsion
  - Recruitment and Development of Directors
  - Member Attendance at Meetings
  - Removing Overlaps with Regulations

Other Agencies

Americans with Disabilities Act (ADA)

NAFCU is fighting frivolous ADA litigation on all fronts.
To date, NAFCU has submitted sixteen amicus briefs in federal district and appeals courts to support credit unions' motions to dismiss these meritless ADA cases.

Federal courts have granted credit unions' motions to dismiss in seven cases because the plaintiff was not a member or in the field of membership. The decisions have been cited by courts dismissing cases in Virginia, Ohio, and Georgia. NAFCU is awaiting decisions in cases in New Jersey, Texas, Florida, and the Fourth Circuit Court of Appeals.

Regulatory

- Urged the DOJ to proposed a rule to clarify the act's standards and protect credit unions from undue burdens. NAFCU has also met with DOJ.
- Sent a letter to the California law firm responsible for threatening credit unions, demanding that the law firm stop its meritless ADA lawsuits.

Legislative

- Supported the ADA Education and Reform Act of 2017 (H.R. 620) which passed the House by vote of 225-192 on Feb 15, 2018.
    - Gives businesses time to come into compliance before proceeding on a lawsuit.

FCC - Robocalls

- A 2015 FCC order on the Telephone Consumer Protection Act (TCPA) caused frustration and confusion about the ability of financial institutions to market to and contact their members.
- Litigation ensued and NAFCU intervened in a federal lawsuit. In March 2018, the court invalidated most of the FCC order.
- ***What does this mean?***
  - Credit unions can rest easy if they unknowingly call a reassigned number.
  - Most "autodialers" probably safe…until FCC issues a new definition.
- The FCC requested comment on the interpretation of the TCPA following this decision as well as comment on the creation of a reassigned numbers database.
- NAFCU has been very active on this issue, meeting with FCC Commissioners and their staff to discuss TCPA Reform. NAFCU met with FCC Chairman Ajit Pai on May 14, 2018 to discuss next steps now that the lawsuit is resolved.

FinCEN – CDD Rule

- A bureau of the U.S. Treasury established in 1990 to administer the Bank Secrecy Act.
- **New Regulation:** Customer Due Diligence Rule, effective since May 11, 2018.
- **New Director:** Kenneth Blanco
- NAFCU met with FinCEN in April 2018 to discuss SAR & CTR filings, the CDD rule and safe harbors for information sharing.

Dan Berger (L) with Kenneth Blanco

Potential Congressional Changes

- Congress is considering the following new legislation:
  - **Counter Terrorism and Illicit Finance Act (H.R. 6068)**
    - Requiring a report on the usefulness of the CDD rule;
    - Raising CTR and SAR filing thresholds;
    - Expanding the scope of information sharing between financial institutions; and
    - Allowing FinCEN to issue no-action letters.
  - **Financial Reporting Threshold Modernization Act (H.R. 6850)**
    - Raising CTR and SAR filing thresholds – from $10,000 to $30,000 for CTRs, and $5,000 to $10,000 for SARs.

Introduced | Passed House | Passed Senate | To President | Became Law

Treasury Focus on GSE Reform

- In his confirmation hearing, Treasury Secretary Mnuchin endorsed a bipartisan effort on housing finance reform. The Treasury has since taken the lead on finding administrative solutions to reforming the system.
- In December 2017, Treasury and the FHFA agreed to allow the GSEs to each retain $3 billion in capital. The GSEs had to request draws from the Treasury, which drew more attention to the need for comprehensive reform.
- Craig Phillips, Counselor to the Treasury Secretary, has endorsed its proposed rule to establish a risk-based capital requirement for the GSEs. Administration may believe the GSEs need more capital.
- NAFCU released its **Housing Finance Reform Principles** in June 2017.
  - NAFCU supports reform efforts that guarantee credit unions unfettered access to the secondary mortgage market and pricing based on loan quality not volume of loans.
- NAFCU has been working with the administration to find solutions.
  - On January 29, NAFCU met with Craig Phillips to discuss legislative and administrative opportunities for housing finance reform.

FHFA

Credit Scores

- In January 2018, the Federal Housing Finance Agency (FHFA) released an RFI on credit scores to gather feedback on whether the GSEs should change their current approach to include different models.
    - The FHFA has refused to publically release the GSEs' empirical analysis, despite requests from NAFCU and other stakeholders.
    - In July, the FHFA announced it would no longer pursue its credit scoring initiative to focus on implementing the requirements of section 310 of S. 2155.

Capital Requirements

- In May 2018, the FHFA released a proposed rule to establish a risk-based capital framework for the GSEs. Administration was heavily involved in its creation.
- Comment deadline was recently extended from September to November.

Data Security

- NAFCU continues to push for a national data security standard to hold merchants accountable for data breaches.
- Some of our core principles:
    - Requiring entities to be accountable for related costs of data breaches that occur on their end, especially if the breach is caused by that entity's negligence;
    - Requiring all entities that store consumer data to meet standards similar to those imposed on depository institutions under the Gramm-Leach-Bliley Act (GLBA);
    - Informing financial institutions of any compromised personally identifiable information when associated accounts are involved;
- Subcommittee Chairman Blaine Luetkemeyer has taken the lead on legislation. Both HFSC and House Energy & Commerce examining issue.

Questions? Contact us!

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