**Capital Access for Small Businesses and Jobs Act**

***Summary & Section-by Section***

Summary of H.R. \_\_\_\_, the Capital Access for Small Businesses and Jobs Act:

Since the financial crisis tipped our country into recession, credit unions have stepped up and served as a vital source of capital and market liquidity in local communities. But current law is discouraging credit unions from continuing to grow to meet the needs of small businesses, homebuyers and families.

The objective of this legislation is to:

* Rectify a flaw in the 1998 law that is discouraging manageable asset growth by financially healthy credit unions;
* Ensure credit unions can continue to accept new deposit shares – even during tough economic times when demand for loans and other income-generating services are low;
* Allow credits unions to help keep private sector credit flowing at affordable rates even in recessionary times;
* Provide the credit unions’ regulator, National Credit Union Administration (NCUA), with the same authority and flexibility to adjust capital requirements in response to changes in economic conditions as Congress has provided to federal banking regulators.

The bill achieves these goals by providing the NCUA with the authority to authorize qualified credit unions to access alternative forms of capital. This change will enable credit unions to accept new depositors and keep rates low, providing affordable credit services for the local businesses and families they serve.

*Technical Description:* By law, credit unions must maintain a 7% net worth ratio (retained earnings over total assets) in order to be considered “well capitalized.” Retained earnings are income earned from loans and other member services, and are generally accumulated over time. Total assets include deposits, and thus can increase or decrease over a shorter period of time. Credit unions use retained earnings as their only source for meeting capital requirements, unlike banks which can raise capital in many different ways, including subordinated debt. As a result, credit unions often see an increase in deposits during a recession (thus a growth of total assets), while seeing a decline in retained earnings from member services. This reduces the net worth ratio and makes a healthy credit union appear undercapitalized, when in fact it has significant Tier 1 capital on its books. This is forcing some cooperatives to turn away new depositors or charge higher rates for member services.

The law was never intended to discourage growth of financially healthy credit unions. Mr. King’s bill seeks to rectify this unintended consequence by empowering the NCUA to authorize qualified credit unions to accept additional forms of capital to supplement their retained earnings – ending their unique position as the only depository institutions in the United States without the ability to issue some form of capital to bolster retained earnings. The bill also makes clear that supplemental capital will not alter the cooperative nature of the credit union; it will not give non-members who purchase capital a voting stake.

Capital Access for Small Businesses and Jobs Act Section-by-Section Analysis:

Section 1(1) of the Bill amends section 107 of the Federal Credit Union Act (“FCUA”)(12 U.S.C. § 1757), by adding a new subsection (18), which authorizes federal credit unions to receive payments from members and nonmembers on uninsured non-share capital accounts as further defined under the new section 216(o)(2)(D), discussed below. Such payments shall be subject to such terms, rates, and conditions as may be established by the federal credit union’s board of directors, within the limitations prescribed by the NCUA Board.

Section 1(2)(A) of the Bill amends section 216(b) of the FCUA (12 U.S.C. § 1790d(b)), to make the conforming change necessary to allow credit unions to accept payments on uninsured non-share capital accounts as part of their regulatory capital. Consistent with credit union’s not-for-profit cooperative nature, section 216(b)(ii) would require that credit union “rely predominantly” on retained earnings to build net worth.

Section 1(2)(B) of the bill amends section 216(o)(2) of the FCUA (12 U.S.C. § 1790d(o)(2)), by expanding the definition of “net worth” with a new subparagraph (D). As amended, section 216(o)(2)(D) provides that with respect to any insured credit union other than a low-income credit union, the term “net worth” includes non-share capital accounts as authorized by the NCUA. As amended, non-share capital accounts qualifying as “net worth” under section 216(o)(2)(D) are subject to the following limitations: (i) the accounts must not alter the cooperative nature of the credit union; (ii) the accounts must be uninsured; (iii) the accounts must be subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the National Credit Union Share Insurance Fund; (iv) the accounts must be available to be applied to cover operating losses of the credit union in excess of its retained earnings and, to the extent so applied, will not be replenished; (v) the accounts must be subject to maturity limits as determined by the NCUA Board; and (vi) the accounts may only be offered by a credit union that is determined by the NCUA Board to be sufficiently capitalized and well-managed.