United States Senate Committee on Banking, Housing, and Urban Affairs Nominations Hearing, September 30, 2021

Responses to the Questions for the Record

Questions for The Honorable Todd M. Harper, of Virginia, to be a Member of the National Credit Union Administration, from Chairman Sherrod Brown:

1) *Where have you excelled in past positions in attracting, hiring, and promoting people of color in positions in your organization/s? Where might there be room for improvement?*

Response:

During my time as a Board Member and Chairman of the NCUA, I have prioritized supporting the agency's diversity programs and initiatives, which include — but are not limited to — attracting, hiring, and promoting people of color.

Since I joined the NCUA Board in 2019, the percentage of people of color in five out of six employee grade-level categories (CU-04 through executives) has increased. This change resulted from placing a greater focus and intentionality on diverse recruitment efforts and broader outreach to diverse talent. In 2020, two out of every five new NCUA hires were people of color.

Throughout my tenure as an NCUA Board member and Chairman, I have set the tone for diverse selections by hiring and promoting the most highly qualified applicants into the executive ranks. For example, my first hiring selection was a female of color who serves as the agency's Chief of Staff. Most recently, I selected a person of color to serve as the director of the NCUA's Office of Minority and Women Inclusion.

At a broader level, the NCUA continues to increase awareness of potential employment opportunities among pools of diverse talent through recruitment and outreach. These efforts focus on groups with less-than-expected participation in the workforce (per Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act) and individuals with disabilities (per Executive Order 13548).

Each year, the NCUA's Office of Minority and Women Inclusion and Office of Human Resources participates in recruitment and outreach events that include historically black colleges and other minority serving institutions, organizations that serve individuals with disabilities, and veterans' events. Virtual recruitment outreach events the NCUA attended in 2020 include:

- Howard University, Bowie State University, and George Washington University's fall virtual career fairs for women and students of color;
- the Accounting and Financial Women's Alliance Women Who Count National Conference;
- Prospanica Conference and Career Expo; and

- the National Black MBA Association Career Expo.

The NCUA uses multiple outreach and job networking tools to reach top talent in diverse populations. For example, our most frequently advertised position is our entry-level credit union examiner position. Our qualification requirements for this position provide a broad set of opportunities to bring in diverse talent because of the many ways that individuals can qualify. We also conduct extensive outreach to recent graduates by posting our positions to hundreds of universities and colleges across the country. Lastly, we partnered with Montel Williams to develop a video to increase outreach and attract veterans and military spouses to apply to NCUA positions. This video highlights a diverse group of our veterans at the NCUA who explain how they transitioned from the military to the NCUA. All of our vacancy announcements include this video.

I firmly believe that advancing diversity, equity, inclusion, and belonging is a journey rather than a destination. This work does not end when certain milestones are achieved, but continuously evolves and progresses. While the NCUA will continue to expand outreach to bring more people of color into its talent pool, we must also move forward with our work to increase retention and create an inclusive culture where all employees feel a sense of belonging.

Special emphasis programs and events are a first step toward achieving this goal. Initiatives that take this work further — such as employee resource groups, mentoring, and leadership development programs — also have my full support. I regularly participate in such programs and encourage all employees, from those just entering the workforce to our senior executives, to participate in these special emphasis opportunities.

If confirmed for a full term on the NCUA Board, I would continue improving each of these initiatives. I would also enhance existing mentoring and leadership development and expand the reach and the effectiveness of the agency's recruitment program.

2) *What specific measures will you use to evaluate the success of National Credit Union Administration in understanding and addressing the needs of Black, Indigenous and people of color (BIPOC)? And, will you keep Congress apprised, as appropriate, on the progress being made on these measures?*

Response:

To ensure the agency remains focused on understanding and addressing the needs of Black, Indigenous and people of color, I meet regularly with the heads of both the Office of Human Resources and the Office of Minority Women and Inclusion to review our progress and efforts to make even more progress. If confirmed for a full term on the NCUA Board, I am committed to keeping Congress apprised on the NCUA's progress in these areas on a regular basis, as appropriate or as requested.

The NCUA takes a multi-faceted approach to understanding and addressing the needs of our BIPOC employees, and metrics are the cornerstone for quantitatively measuring progress towards the agency's goals and objectives. As such, the NCUA has invested in standing up advanced analytical capabilities for disseminating key workforce metrics tracking diversity and inclusion data to key stakeholders across the agency. Dashboards allowing leaders to view the latest demographic composition of their office are available at the click of a link. Two slices of data closely monitored at the agency are the percentage of employees who identify as a minority and the percentage of employees by race and national origin category. In addition, OMWI publishes a dashboard on a quarterly basis with demographic information for all employees to access. The agency also incorporates demographic information in the agency's OMWI Annual Report to Congress.[1]

To supplement the quantitative perspective, the agency's employee resource groups provide valuable qualitative feedback from BIPOC employees. Senior leadership sponsorship of these groups provides direct access for this community to communicate their needs to agency decision makers. Presidents of each employee resource group also serve as representatives on the NCUA's Culture, Diversity and Inclusion Council, tasked with assessing the organizational culture and providing recommendations to enhance diversity, equity, inclusion, and belonging for all employees.

Most recently, the NCUA completed a culture climate study to assess the agency's culture and make improvements to drive diversity, equity, inclusion, and belonging. The agency also continues embarking on further studies to promote these principles.

3) *What is your plan for creating an inclusive working environment for employees within your office?*

Response:

My plan for creating an inclusive work environment goes back to one of my early mentors, Pat Neale. Pat once had a poster in her cubicle that read: "When Differences End, Understanding Begins." When Pat died, I got that poster, which hangs in my office to remind me of acting on this goal every day.

Later, during my time on Capitol Hill, I also learned about the importance of using public policy to advance diversity, equity, and inclusion from lawmakers like Congresswoman Maxine Waters and Congressman Barney Frank. They showed me how to advance diversity and inclusion to a broader scale, which is what I strive to achieve as a Board Member at the NCUA. By shining a light on diversity and inclusion, we can create better workplaces, a more responsive government, and a credit union system that works for everyone.

If confirmed for a full term on the NCUA Board, one of my priorities will be to foster an inclusive working environment for employees throughout the agency. The NCUA's efforts to create an inclusive workplace is well-established, as outlined in both the NCUA's 2018–2022 Strategic Plan and in the NCUA's 2018–2022 Diversity and Inclusion Strategic Plan. I would work to update these plans with the goal of continuing to cultivate an inclusive workplace where

[1] *See* https://www.ncua.gov/about/diversity-inclusion/reports-congress.

employees' unique talents, skills, and perspectives are valued and leveraged. Progress toward this goal will result in stronger organizational performance.

Since establishing these goals, the NCUA has developed several initiatives to support inclusion within the workplace, including:

- **Employee Resource Groups,** which continuously contribute in meaningful ways to foster a more inclusive work environment for all employees. These groups help connect employees by providing resources, coordinating special presentations and events, and creating a support system to help address barriers and obstacles that group members might face. There are 269 members in the NCUA's seven employee resource groups, representing 23.4 percent of NCUA employees in 2020. This figure is more than double the industry benchmark of 10 percent employee participation in ERGs within an organization.

  Open to all employees, the NCUA's employee resource groups are:

  - **APIC**: Asian Pacific Islander Connection (Asian and Pacific Islander employees and allies);
  - **CULTURA**: Creating Unity, Learning to Understand, Recognizing All (Hispanic and Latinx employees and allies);
  - **MPower**: Mobility, power, and empowerment (Employees with disabilities and allies);
  - **NCUA PRIDE**: People Recognizing Individual Differences Equally (LGBTQ+ employees and allies);
  - **SWAN**: Supporting Women At NCUA (Female employees and allies);
  - **Umoja**: Unity (Black and African American employees and allies); and
  - **VANS**: Veterans At NCUA Serving (Veterans, military family members and allies).

- **VIBE**, which is an ongoing campaign to create a stronger sense of belonging by encouraging all employees to make a conscious and deliberate effort to adopt inclusive behaviors and habits. VIBE launched in early 2018 and includes a speaker series, leadership panel discussions, special events, newsletters, and more. The VIBE initiative focuses on four specific behaviors that cultivate an inclusive culture among the agency's employees:

  - **V**alue differences,
  - **I**ntentionally include,
  - **B**reak biases, and
  - **E**mbrace change.

- **OMWI Talks**, which are facilitated discussions for NCUA employees to discuss sensitive diversity and inclusion-related topics. OMWI Talks create a safe space for employees to have conversations about differences, broaden awareness and understanding of others, learn how to leverage diversity to achieve better outcomes, and foster greater inclusion and belonging. These discussions give employees opportunities to analyze and discuss complex topics and learn how to manage challenges that may affect them and their colleagues in the workplace environment.

- **NCUA's Culture, Diversity, and Inclusion Council**, which includes employee representatives at all levels (executives, supervisors, and non-supervisors from multiple grade levels) and a diverse spectrum of functional areas (such as the agency's examination program, legal, human resources, and technology). In addition, members are comprised of a cross-section of the agency's staff representing different types of diversity (including race, ethnicity, gender, age, sexual orientation, disability, veteran status, and experience). A National Treasury Employees Union representative is also a member. Additionally, the council includes up to eight presidents of the agency's employee resource groups.

  In 2020, the agency embarked on a significant effort to assess the culture of the agency with the deployment of a culture climate survey covering all staff within the agency. The NCUA designed the survey with guidance from the council's representatives. The majority of the NCUA's staff (59 percent) responded to the survey. These survey results were combined with results from subsequent focus groups to provide an assessment of employee perceptions of the NCUA's culture. In the near future, the council will present a set of recommendations to the agency's senior leadership to guide the agency in addressing issues within the agency's culture.

- **Special Emphasis Program events**, which are a significant component of the NCUA's efforts to build inclusion and understanding within the agency's workplaces. The agency's Office of Minority and Women Inclusion hosts events featuring a guest speaker who provides a range of experiences and insights into how to be more intentionally inclusive in the workplace. These recurring events include observances of:

  - National Black History Month (February);
  - National Women's History Month (March);
  - Asian and Pacific Islander Heritage Month (May);
  - LGBTQ+ Pride Month (June);
  - Hispanic Heritage Month (September 15 – October 15);
  - National Disability Employment Awareness Month (October);
  - Veterans Day (November 11); and
  - Native American Heritage Month (November).

If confirmed for a full term on the NCUA Board, I would continue to grow the agency's employee resource groups, advance the agency's VIBE initiative, participate in and conduct OMWI Talks and special emphasis program events, and work with my fellow Board members to implement the recommendations made by the Culture, Diversity, and Inclusion Council.

4) *In the bipartisan appropriations package last December, we authorized an Emergency Capital Investment Program to help low- and moderate-income community financial*

institutions – like minority depository institution (MDI) and community development financial institution (CDFI) credit unions — to serve their members. If confirmed, will you commit to making sure that these credit unions can take full advantage of the program?

Response:

Yes, I commit to ensuring that eligible credit unions take full advantage of the program.

The NCUA's outreach on the Emergency Capital Investment Program is part of the agency's broader mission to support expanded access to insured, affordable financial services in low- and moderate-income communities. It is also consistent with the mission of the Federal Credit Union Act in meeting the credit and savings needs of consumer members, including those of modest means.

The NCUA has strongly encouraged eligible credit unions to, "step in and step up" to participate in this program. During 2021, the agency conducted outreach to the credit union industry through briefings, written communications, and webinars to discuss the Emergency Capital Investment Program and highlight the key features and benefits of the program. The outreach generated significant interest in the program with approximately 90 credit unions applying for funding (representing 44 percent of all Emergency Capital Investment Program applicants) totaling $3.1 billion (representing 34 percent of the total appropriation).

On September 24, 2021, I spearheaded the NCUA Board's approval of a proposed rule to amend the definition of "grandfathered secondary capital" in the NCUA's approved subordinated debt rules to include any secondary capital issued to the U.S. government or one of its subdivisions, irrespective of when it is issued. This proposed change would benefit eligible low-income credit unions by allowing them to accept secondary capital investments beyond January 1, 2022, under the Emergency Capital Investment Program, without the need to reapply to the NCUA for regulatory capital treatment.

Questions for The Honorable Todd M. Harper, of Virginia, to be a Member of the National Credit Union Administration, from Ranking Member Patrick Toomey:

Congressional Oversight

1) *Please provide your philosophy on how NCUA will approach and respond to Congressional information requests (both for documentary information and oral testimony), if you are confirmed.*

Response:

If confirmed for a full term on the NCUA Board, I would continue to quickly and transparently respond to information requests from Congress. The agency will confirm receipt within one business day and work with requestors to identify the best way to address their particular request.

2) *If confirmed, do you intend to respond to information requests differently depending on who is making the Congressional information request (whether it's the chair of the Congressional committee, the ranking member, or another member of Congress)? Please answer "yes" or "no." If your answer is "yes," please explain.*

Response:

No.

3) *Will you commit that, if confirmed, you will respond in a timely manner and fully comply with all information requests from me? Please answer "yes" or "no." If your answer is "no," please explain.*

Response:

Yes.

4) *Will you commit that, if confirmed, you will make yourself and any other NCUA employee expeditiously available to provide oral testimony (including but not limited to briefings, hearings, and transcribed interviews) to the Committee on any matter within its jurisdiction, upon the request of either the Chairman or Ranking Member? Please answer "yes" or "no." If your answer is "no," please explain why.*

Response:

Under the Federal Credit Union Act, the NCUA Chairman is the spokesman for the Board and represents the Board and the agency. As such, if confirmed for a full term on the NCUA Board, I commit to making myself available, consistent with scheduling availability and other duties. I will also work with the Committee regarding the availability of other senior leadership at the agency.

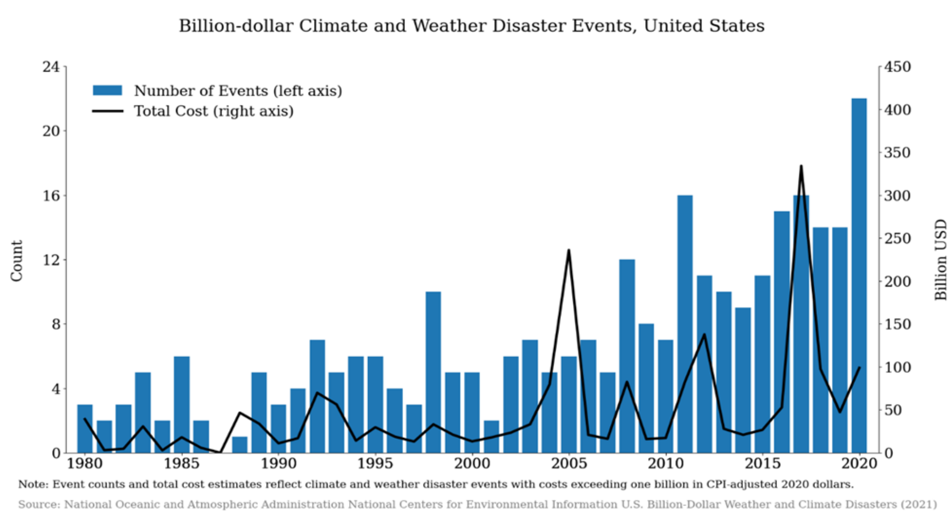
Climate Change

5) *In September 27, 2021, answers to questions for the record,*[2] *you noted that "[s]pecific supervisory policies and examination strategies addressing climate vulnerability will be considered as we continue to study the effects of climate change on credit unions and the credit union system." However, in August 2021, you told an NCUA group tasked with studying financial climate risk that "the data about rising sea levels and extreme weather events, as well as climate financial risks, are clear."*

    a. *What specific "data about…climate financial risks" were you referencing?*

Response:

Climate change is an emerging threat to the financial stability of the United States. Globally and within the United States, climate-related impacts in the form of warming temperatures, rising sea levels, droughts, wildfires, intensifying storms, and other climate-related events are already imposing significant costs upon the public and the economy. In 2020, the U.S. experienced 22 extreme events causing $96 billion in property damage.[3] The last year was not unique. In fact, the increase in extreme weather events last year is part of a long-running trend. As illustrated in the chart below, the frequency and cost of weather-related catastrophic events have been rising over the past 20 years.



[2] NCUA, *Responses to the Questions for the Record: United States Senate Committee on Banking, Housing, and Urban Affairs "Oversight of Regulators: Does our Financial System Work for Everyone?" Hearing, August 3, 2021*, prepared on Sep. 27, 2021.
[3] NOAA National Centers for Environmental Information (Billion-Dollar Disasters: Calculating the Costs).

b. *How does the "data about…climate financial risks" compare quantitatively to other risks facing credit unions, such as ordinary business cycles and existing weather-related risks?*

Response:

Through its examinations and supervision, the NCUA aims to consider all material risks to the credit unions it insures and regulates. Climate-related financial risk is one of many risks and that risk may differ from credit union to credit union depending on its location, composition of its loan portfolio, and other factors.

The quantified economic impacts of transition and physical risks must be linked to changes in the values of financial sector assets and liabilities — to measure credit, liquidity, and other risks to financial institutions or sectors. Many of these linkages may be familiar — with links between losses in income and credit losses, for example, potentially following patterns similar to typical relationships used in financial modeling.

However, the dynamic patterns of the economic impacts of climate risks may differ sizably from those of typical business cycle shocks. These differences may require research including the development of multiple modeling approaches. Other risks, such as certain operational and legal risks, may be more difficult to quantify, necessitating a qualitative evaluation.

The NCUA's internal working group is focused on developing in-house expertise on climate-related financial risks and their implications for credit unions, credit union members, and the Share Insurance Fund. How best to measure and model those risks is a component of that effort.

c. *What specific climate-related supervisory policies and examination strategies is the NCUA considering or planning to consider?*

Response:

The NCUA's Climate Financial Risks Working Group is assessing the NCUA's current regulatory framework and whether it is sufficient for addressing climate risk to credit unions. To this end, the group is currently reviewing the seven risk indicators — credit risk, interest rate risk, liquidity risk, transaction risk, compliance risk, strategic risk, and reputation risk — and examiner review procedures for compliance with the Flood Disaster Protection Act and disaster preparedness planning. Once complete, the group may present recommendations for revisions to examination scoping, risk assessments, review procedures, and corrective actions.

d. *How is the NCUA's Climate Financial Risks Working Group (Working Group) structured? Please describe how many members there are; how they are chosen; how meetings are organized and how often they occur; decisions are reached, and what deliverables and work products are underway as well as associated timelines.*

***Response*:**

The working group is composed of 11 staff members from across the agency. Members were drawn from all credit union supervisory-related areas of the NCUA that have a perspective on climate financial risk, including the agency's three regional offices, the Office of Examination and Insurance, the Office of the Chief Economist, the Office of National Examinations Supervision, the Office of Consumer Financial Protection, the Office of Credit Union Resources and Expansion, the Office of General Counsel, and the Office of External Affairs and Communications. The group's composition was developed in consultation with the Office of the Executive Director. The NCUA's Climate Financial Risks Working Group held its first meeting on August 19, 2021. Meetings occur as frequently as needed.

The group is still in its initial study phase. Preliminary efforts are aimed at developing internal expertise on the financial risks associated with climate change and their implications for credit unions, credit union members, and the National Credit Union Share Insurance Fund. The working group is also taking stock of the agency's existing regulatory tools, policies, and examination procedures and assessing whether the current risk-monitoring framework is sufficient for capturing and addressing climate-related financial risks. A separate workstream will consider how to model and estimate risks to the National Credit Union Share Insurance Fund. The goal of this broad approach is to establish the infrastructure necessary to ensure that the credit union system and Share Insurance Fund remain resilient to climate-related financial risks.

Currently planned deliverables and work products include a request for information from credit unions and other stakeholders to determine whether and how climate change factors into credit unions' risk-monitoring framework, business strategy, and product offerings. The group is also considering recommendations for revisions to examination scoping, risk assessments, review procedures, and corrective actions if deficiencies are identified relating to the seven risk indicators, the Flood Disaster Protection Act, and disaster preparedness planning. The working group aims to complete both projects within the next several months.

e. Does the NCUA have specific policies and procedures governing the Working Group to ensure their analysis remains free from political interference? If so, please submit copies of all of these materials.

***Response*:**

The NCUA is an independent agency, and it approaches issues through fact finding.

The working group is comprised of seasoned federal employees who have each taken the constitutional oath all federal employees take upon entering federal service. Each of the working group's members is committed to the core mission of the NCUA and regularly demonstrates the hallmarks of public service: stewardship of public trust and commitment to the public good.

f. How long will the Working Group operate?

Response:

No timeline has been determined.

g. In order to provide greater transparency, will you commit to making the Working Group's findings public?

Response:

Yes, to the extent possible, the agency will make such findings public at an appropriate time. Material involving supervisory information about a specific institution or privileged and confidential information will be excluded.

h. As the NCUA and other bank regulators analyze this issue, do you commit to follow the data, as it relates to credit unions, no matter where it leads?

Response:

Yes.

6) *Climate models are ill-suited to predicting financial risk due to their uncertainties and complexities, and the fact that climate models have a time horizon of decades or longer. In fact, one recent paper by a group of climate researchers found that current climate models cannot provide financially meaningful information.*[4] *In addition, the international Financial Stability Board issued a report in July 2021 acknowledging that the difficulty in modeling climate risks and lack of reliable historical data create greater uncertainty in assessing financial institutions' exposures to climate risks than other risks.*[5] *However, in a March meeting of the Financial Stability Oversight Council (FSOC), you stated that FSOC "should focus on the financial risks related to climate change" and NCUA "needs to manage that risk within our regulatory and supervisory frameworks." Given the uncertainty of both climate models and actual risks to financial institutions, on what basis do you believe FSOC involvement is warranted or regulatory action is supportable?*

Response:

While the *Nature Climate Change* article you cite does indicate concerns about existing models and tools, it also describes climate change as a very significant threat and recognizes that the

[4] Nature Climate Change, *Business risk and the emergence of climate analytics*, https://www.nature.com/articles/s41558-020-00984-6.epdf, Feb. 2021.
[5] Financial Stability Board, *Availability of data with which to monitor and assess climate-related risks to financial stability*, https://www.fsb.org/wp-content/uploads/P070721-3.pdf, Jul. 2021.

problem is systemic. Moreover, it does not suggest that the problematic nature of existing models warrants inaction. For example, for business, it asserts that:

> *"…there are opportunities for effective integration of existing climate information that are aligned with the motivations already discussed; first, to genuinely assess risk for the purpose of minimizing vulnerability (including to an investment); second, to utilize such assessments in the building of resilience; third, to meet the requirements of regulators who require such risks to be assess; and fourth, given the emergence of CSPs [Climate Service Providers], to assess the vulnerability of an entity to analysis undertaken by others."*[6]

According to the National Oceanic and Atmospheric Administration, there were a record-breaking 22 separate billion-dollar weather and climate disasters in the United States in 2020.[7] These hurricanes, severe storms, drought, and wildfires caused a combined $95 billion in damages. Going forward, extreme weather events like these will have implications for regulated and insured financial institutions. The risks they pose to financial institutions are real and well documented.

In addition to the physical risks due to damages from the frequency and intensity of storms, drought, and wildfires, there are also transition risks that arise as economies shift to a less carbon-reliant economy. The physical and transition risks associated with climate change will manifest themselves in traditional risk categories such as credit risk, market risk, operational risk, liquidity risk, and to a lesser extent legal and reputational risks. Based on the foregoing, FSOC involvement is warranted and regulatory action is supportable.

7) *In the March 2021 FSOC meeting you went on to state that: "Most credit unions focus on mortgage, auto, and small business lending. Over time, climate change will affect the value of collateral like homes and commercial properties, especially in areas affected by extreme weather, and vehicles, as we transition to electric and hybrids." The risk associated with consumers moving from one source of energy to another is not much different than the risks financial institutions face when consumer purchasing habits change from new inventions, cause some businesses to be created and others to be destroyed. Placing restrictions or costly regulatory burdens on credit unions' ability to offer auto lending, mortgage lending, and small business lending to deal with one category of risk may significantly harm individuals seeking to purchase low-cost vehicles, families looking to buy a home, and small businesses owners and entrepreneurs trying to remain competitive. This is particularly true for low-income consumers, who are impacted the most by greater restrictions and increased costs of credit.*

    a. *Do you intend to target auto lending, mortgage lending, and small business lending for climate-related supervisory or regulatory tools?*

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[6] Nature Climate Change, *Business risk and the emergence of climate analytics*, https://www.nature.com/articles/s41558-020-00984-6.epdf, Feb. 2021.
[7] Data is from the NOAA National Centers for Environmental Information (Billion-Dollar Disasters: Calculating the Costs).

Response:

No. If confirmed for a full term on the NCUA Board, my goal is to ensure that our regulated institutions remain resilient against all material risks, including the risks to collateral held for security for a loan that is subject to risks posed by climate change and the increase in climate-related natural disasters. In our oversight, the NCUA should evaluate whether credit unions are addressing those risks through insurance or other risk-mitigation techniques.

b. What auto lending, mortgage lending, and small business lending climate-related supervisory policies and examination strategies is the NCUA considering?

Response:

No specific policies are currently under consideration. As the prudential regulator and insurer for credit unions, the agency must assess ways in which climate change poses financial risk to federally insured credit unions and the Share Insurance Fund.

c. Has the NCUA studied the potentially harmful effects of climate-related lending restrictions on credit unions, low-income consumers, families, and small businesses?

Response:

The NCUA does not have any intention of implementing climate-related lending restrictions. Hence, we have not studied their potential effects. The agency is aware that the adverse effects of climate change may be felt more acutely by financially vulnerable communities and that these communities will have a difficult time recovering from a climate disaster or adapting to climate change.

8) In 2019, the FSOC unanimously approved guidance to implement an activities-based approach for identifying potential risks to financial stability. Under this approach, FSOC works with entities to mitigate systemic risk via "off-ramps," and designates individual entities as systemically important only as a last resort. The Chairman of the NCUA has a statutory seat on the FSOC. If confirmed, would you seek to preserve the FSOC's current approach to designation?

Response:

The FSOC is not actively considering a change to the existing Guidance on Nonbank Designations, which was published in December 2019. To the extent the FSOC decides to make changes to the "activities-based approach" or other elements of the Guidance, if confirmed for a full term on the NCUA Board, I will carefully consider changes in accordance with the Council's statutory responsibilities.

9) *FSOC's 2019 guidance also established that, before the FSOC uses its authority under Section 120 of the Dodd-Frank Act to issue nonbinding recommendations to a primary financial regulatory agency, it will ascertain whether the agency expects to perform a cost-benefit analysis. In cases where the agency would not, the FSOC will conduct its own cost-benefit analysis. This commitment is critical given the importance of engaging in analytical rigor when developing regulatory standards. Do you commit to retain the cost-benefit analysis requirement if confirmed?*

Response:

Under Section 120, the Dodd-Frank Wall Street Reform and Consumer Protection Act mandates that a recommended activity or practice "shall take cost to long-term economic growth into account." Such a requirement is prudent and, if confirmed for a full term on the NCUA Board, I would commit to ensuring that the requirement is retained.

Consumer Compliance Rating

10) *At the September 30, 2021, Senate Banking Committee hearing, you indicated in response to questions that the NCUA does not conduct and assign a separate consumer compliance rating for credit unions.*

    a. *At the hearing you also mentioned NCUA has been increasing its fair lending program and is conducting targeted risk-focused reviews. What are the criteria for selecting credit unions for these risk-focused consumer compliance reviews?*

Response:

The NCUA does not assign a separate consumer compliance numerical rating during risk-focused examinations of federal credit unions. Instead, our examiners determine the level of overall compliance risk — along with six other areas of risk — a credit union presents.[8] In determining a credit union's level (low/medium/high) and directionality (increasing/decreasing/unchanged) of compliance risk, the NCUA's examiners follow the same principle-based framework as the other federal banking agencies defined by the Federal Financial Institutions Examination Council's (FFIEC) Uniform Interagency Consumer Compliance Rating System.

The compliance risk rating assigned by examiners encompasses all laws as well as compliance with exam reports, prudent ethical standards, contractual obligations, and exposure to litigation. Compliance risk can blend into operational risk, transaction risk, and even legal risk, increasing the difficulty of identifying this risk. So, while we do determine a credit union's overall level of compliance risk, it covers a broad universe of compliance risk.

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[8] The other areas of risk include credit risk, interest rate risk, liquidity risk, transaction risk, strategic risk and reputation risk.

The NCUA's fair lending program has evolved over the last decade. Most notably, prior to the creation of the Office of Consumer Financial Protection — originally established as the Office of Consumer Protection — the agency's fair lending program was implemented by each regional office, with potentially conflicting policies and procedures. When the NCUA created the Office of Consumer Financial Protection, the fair lending program was centralized into one office for consistency and a more efficient use of agency resources. Under this centralized framework, the NCUA utilizes the FFIEC's Interagency Fair Lending Examination Procedures.

During the last decade, the NCUA has assumed a more proactive role in fair lending oversight and referred its first ever cases of potential fair lending discrimination to the U.S. Department of Justice. In 2020, the NCUA increased the number of onsite fair lending examinations from 25 to 30. The NCUA continues to perform at least 40 offsite supervision contacts.

The agency selects credit unions for fair lending examinations and supervision contacts based on a variety of factors. They include results of reviews of HMDA data, observations during regular safety and soundness examinations, information from consumer complaints, and credit union size. In addition to those examinations and contacts, the agency generally reviews some aspect of fair lending in all regular safety and soundness examinations. For example, throughout 2021 NCUA examiners have reviewed specific aspects of each credit union's fair lending policies and procedures during each risk-focused examination to help establish a fair lending baseline or health check. Together with other consumer lending information, the agency will be better equipped to scope fair lending examinations, conduct necessary training, and provide outreach to the industry going forward.

b. *Based on NCUA's 2021 Annual Performance Plan, NCUA has conducted less than the targeted 30 fair lending examinations per year since 2018.*[9] *This suggests that NCUA has found extremely low consumer compliance risks, considering less than 0.56% (30 credit unions out of 5,300) were targeted for these reviews. How does this justify rolling out an entirely new consumer compliance rating system?*

Response:

Prior to 2020, the agency met its annual performance plan goal of 25 onsite fair lending examinations and at least 40 offsite fair lending supervision contacts. Starting in 2020, the NCUA increased the number of fair lending examinations from 25 to 30. The number of fair lending examinations performed is not related to findings. Since 2017, the NCUA has referred nine credit unions to the U.S. Department of Justice for suspected fair lending violations, as required by the Equal Credit Opportunity Act. The agency continuously monitors credit unions, reviewing available data and other information, to inform our fair lending review areas and selection of credit unions for onsite and offsite examination.

[9] NCUA, *2021 Annual Performance Plan*, https://www.ncua.gov/files/agenda-items/AG20210114Item7b.pdf, Jan. 2021.

The NCUA's fair lending examination program is a separate subset of consumer compliance oversight. The agency continues to utilize the same rating system parameters for general consumer compliance, but indicators from our current limited consumer compliance reviews suggest the NCUA should be conducting more in-depth consumer compliance examinations to ensure credit unions provide members with required protections. The enhanced consumer compliance exam program the agency is developing is intended to start with those large credit unions soon to transition to the Consumer Financial Protection Bureau for oversight of consumer financial protection laws and regulations. This enhanced examination program will educate those credit unions on what their obligations will be when supervised by the Consumer Financial Protection Bureau.

c. *Please describe how you plan on implementing this ratings system, including estimated time, cost, and organizational changes needed to implement the ratings system?*

Response:

For clarity, what the agency is studying is the efficacy of an enhanced consumer compliance examination program, which would review in more detail a credit union's ability to effectively adhere to required consumer financial protection laws and regulations. The NCUA currently anticipates completing that study — including any costs and resources needed to implement such a program — and receiving recommendations in 2022. Any material changes to the agency's program, including implementing a separate compliance rating and necessary resources would require Board approval.

NCUA's Enterprise Risk Management System

11) *In a March 19, 2021, letter to my office in response to a March 1, 2021, letter requesting information on the NCUA's enterprise risk management system (i.e., MERIT) and other items, you mentioned your current plan was to fully deploy the system in 2021. Can you provide an update as to those plans?*

Response:

For clarification, MERIT is not the NCUA's enterprise risk management system. Instead, MERIT is the NCUA's new examination tool, configured using a governance, risk, and compliance platform. Examiners will use the tool to document a credit union's examination scope, findings, and final report.

As noted in March, the NCUA will fully deploy MERIT to all NCUA examiners and state regulators in 2021. Training began in August and will conclude in November. Examiners will start using the tool to conduct examinations immediately after training. Credit unions may also use the tool to provide examination documents, respond to findings, and view examination reports.

The agency and I have worked to inform credit unions about this change and what to expect through website updates, a letter to credit unions on the Implementation of Modernized Systems, and a webinar on September 8, 2021, on the NCUA's Modernized Examination Tools. On-demand training is also available for credit unions.

NCUA Board Member Appointments

12) *According to the Federal Credit Union Act (FCUA), Board members shall not be appointed to succeed themselves except that "members appointed to fill unexpired terms may be reappointed for a full six-year term." Ms. Deborah Matz, your predecessor on the NCUA Board, was appointed to fill a six-year term. That term ended in April 2015, and Ms. Matz remained a board member in a holdover status. She voluntarily left the NCUA Board in 2016. You were nominated for this open seat in February 2019, and confirmed in April 2019 to fill the six-year term that began when Ms. Matz's term expired. Please explain:*

    a. *How is your appointment permissible given the FCUA's prohibition on board members being appointed to succeed themselves?*

Response:

My appoint is permissible pursuant to Section 102(c) of the Federal Credit Union Act (12 U.S.C. §1751) which states, "future members appointed to fill unexpired terms may be reappointed for a full six-year term."

    b. *How was the term you were appointed to, which was vacant because Ms. Matz's six-year term had expired, an "unexpired term"?*

Response:

I was appointed to fill the remaining time on a term, which ran through April 10, 2021, so my original appointment in 2019 was to that unexpired term.

    c. *Has NCUA legal counsel offered any opinions on the definition of "unexpired term" in the FCUA? If so, please share with the Committee.*

Response:

Not that I am aware of.

    d. *In the context of the FCUA, how does NCUA define "unexpired term"?*

Response:

This has been a question for the White House.

e. In the context of the FCUA, how does NCUA define "expired term"?

Response:

This has been a question for the White House.

f. Are there any other examples of NCUA Board members being re-appointed after completing their terms when they replaced a holdover board member and not a member who left their six-year term early?

Response:

Not that I am aware of.

Answering Questions for the Record

13) Please describe with particularity the process by which you answered these questions for the record, including identifying who assisted you in answering these questions along with a brief description of their assistance.

Response:

Initially, I reviewed each of these questions and developed an outline for the answers reflecting my knowledge and views. Appropriate policy and program offices within the agency then reviewed those initial answers, supplemented the material as requested, and ensured accuracy in the responses. The material was subsequently compiled into one document for final review by the Office of the General Counsel and the Office of External Affairs and Communications, my staff, and me.