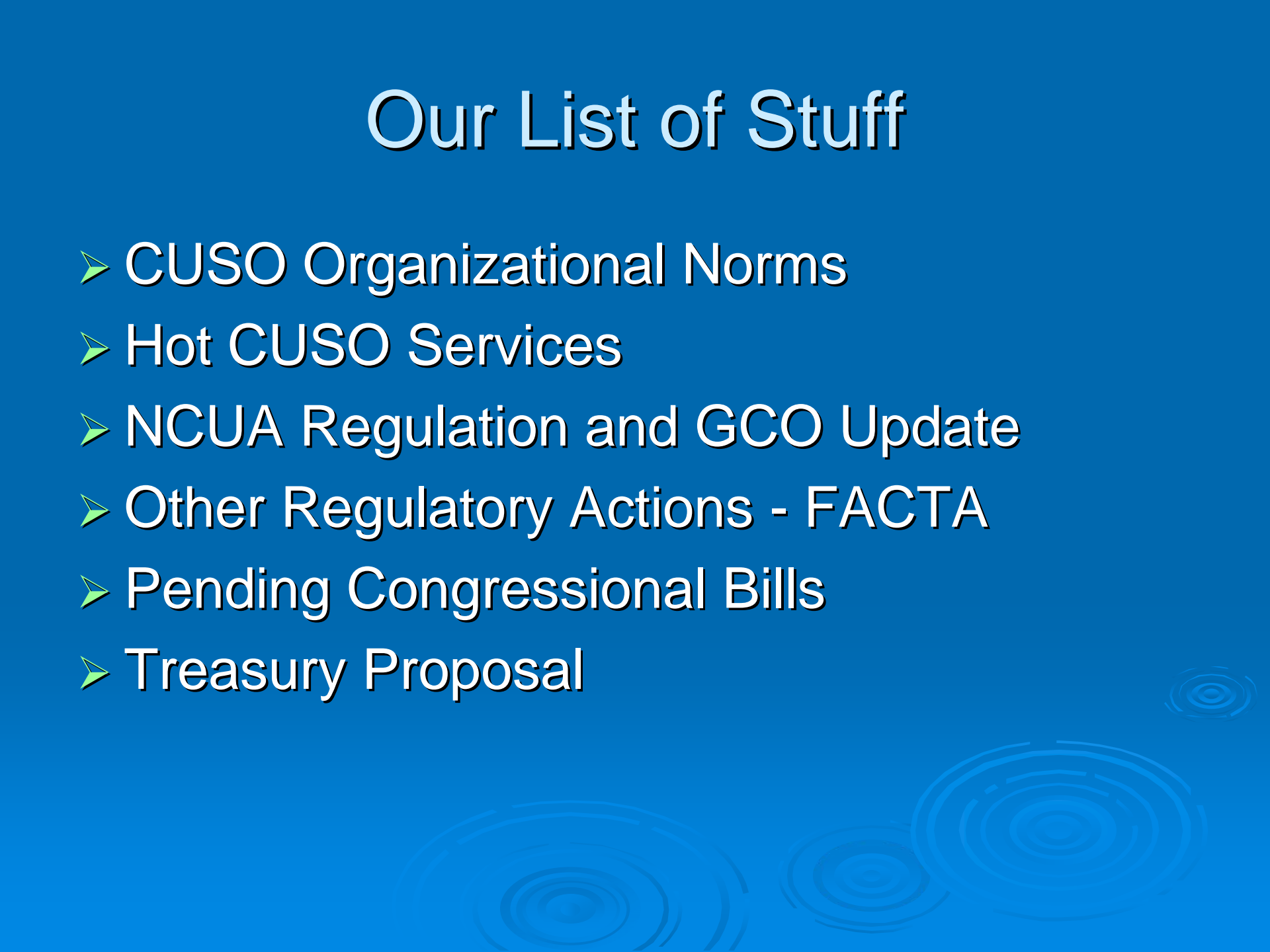


# CUSO 101 and Other Stuff You Should Know

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# Our List of Stuff

- CUSO Organizational Norms
  - Hot CUSO Services
  - NCUA Regulation and GCO Update
  - Other Regulatory Actions - FACTA
  - Pending Congressional Bills
  - Treasury Proposal
- 

# CUSO Organizational Norms



# CUSO Norms

- Entity Selection
  - LLC vs. C- Corp
- Board Make-Up
  - CU Staff vs. CU Board
  - Number on Board

# CUSO Norms

## ➤ Owners

- One or more tiers
  - Investment level, control, profit sharing
- Non-credit union owners

## ➤ Voting

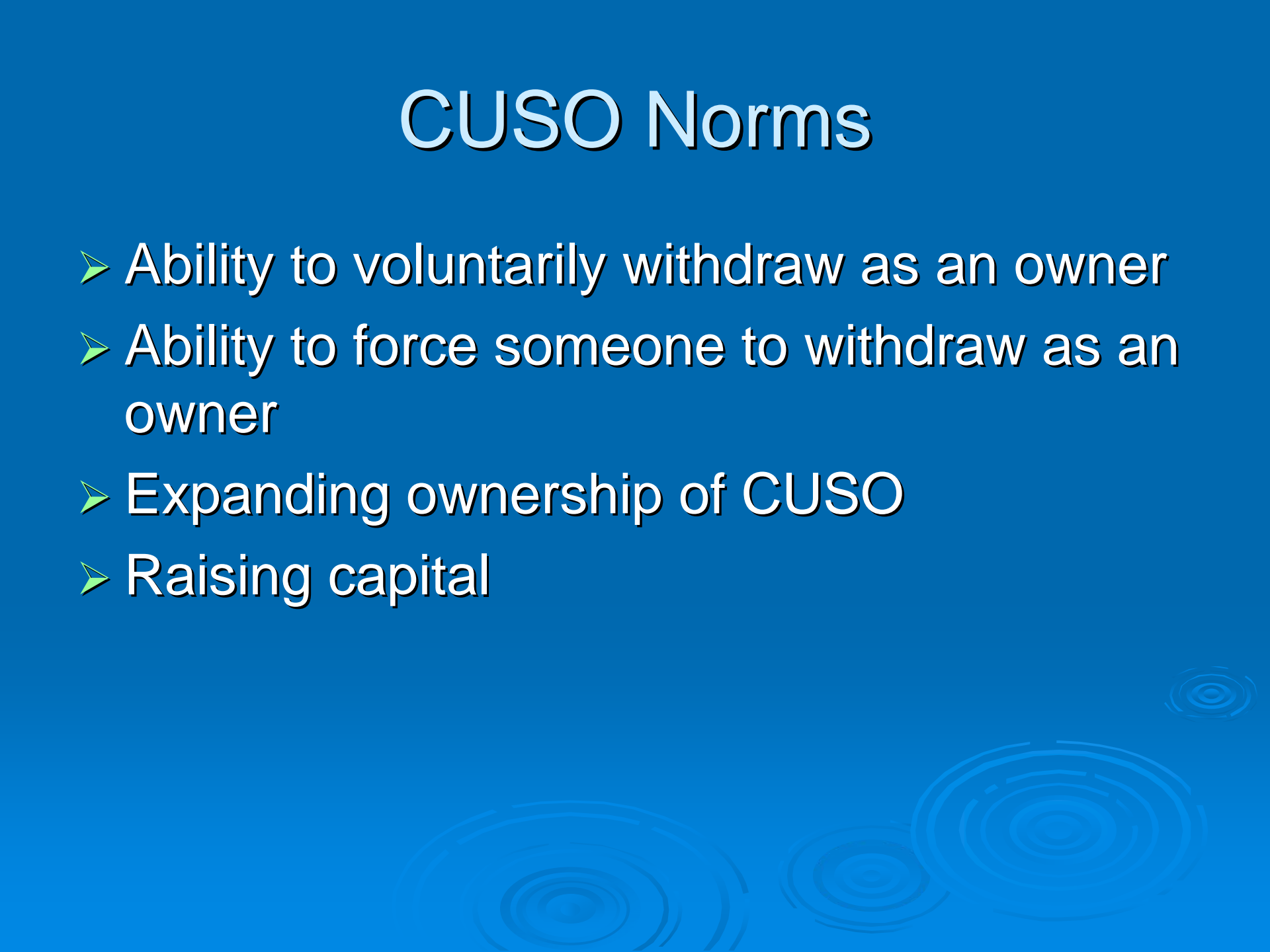
- Weighted voting
- Managers vs. owners
- Simple majority vs. super majority vs. unanimous

# CUSO Norms

## ➤ Profit – Loss

- By Investment
- By Patronage
- By Tiered Pricing of Fees
- UBIT considerations

# CUSO Norms

- Ability to voluntarily withdraw as an owner
  - Ability to force someone to withdraw as an owner
  - Expanding ownership of CUSO
  - Raising capital
- 

# Hot and Slightly Warm CUSO Services





# Hot CUSO Services

- Youth market
  - Zopa
  - Young and Free
  - Brass Media
- X-Calibur Card
- High integration of operational functions among credit unions

# Hot CUSO Services

- IT Support
  - Disaster Recovery / Business Continuity
  - Lending
    - Credit Card Lending
    - Mortgage Lending
    - Business Lending
    - Student Lending
    - Indirect Lending
- 

# Hot CUSO Services

- Insurance
  - P & C
  - Title
- Investment Advisory Services
- Charitable Foundations

# NCUA Regulatory and GCO Update



# Proposed CUSO Reg Changes

- New Pre-Approved & Clarified Services
  - Credit Card Loan Origination
  - Payroll Processing
  - Real Estate Settlement Services
  - Purchase and sale of non-performing loans
  - Referral and processing of declined CU loans
  - Employee leasing services
  - Business consulting and consultant services
  - CUSO may buy and sell loan participations

# Proposed CUSO Reg Changes

- Check cashing and money services – expand to persons eligible for membership
- Require FISCU's
  - Provide NCUA access to books and records
  - Have an attorney opinion

# Proposed CUSO Reg Changes

- Restrict investment by but CU's that are less than adequately capitalized
- Change in CUSO Reg amendment procedures
- Consolidated CUSO audit for majority owner

# NCUA Regulatory Update

- Evaluating Third Party Relationships Letter 07-CU –13, December 2007
  - Risk Assessment and Planning
  - Due Diligence
  - Risk Measurement, Monitoring and Control



# NCUA GCO Update

- Reclassification of construction loan to a “regular” member business loan 3/17/08, 08-0132

# Other Regulatory Action

Sharing Information Between the  
Credit Union and CUSO FACTA  
Affiliate Rule



# Information Sharing Rules

- Gramm-Leach-Bliley Act
  - NCUA Part 716
  - FTC Part 313
- Fair Credit Reporting Act
- Fair and Accurate Credit Transactions Act

# Gramm-Leach-Bliley

- Credit Union can share with CUSO as an affiliate
- CUSO can share with credit union owner if credit union owner owns at least 25% of CUSO as an affiliate
- Service provider exception could also apply

# Fair Credit Reporting Act

- Information covered is information bearing on credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living.

# Fair Credit Reporting Act

- A credit union may report to affiliates and non-affiliates third party information based on the credit union's experience with the member
- A credit union may report to affiliates and non-affiliates information from other sources only if the member is given an opt-out notice and does not opt-out

# Fair and Accurate Credit Transactions Act

- Compliance required by October 1
- Does not prevent the disclosure of information but does control the use of information among affiliates, the “look but don’t touch rule”

# Fair and Accurate Credit Transactions Act

- CUSO may not use **eligibility information** to make **solicitations** to a member about the CUSO's product and services unless the member is given an opt out notice and does not to opt out



# Fair and Accurate Credit Transactions Act

## ➤ Does not apply to:

- Solicitations to a member with whom the credit union / CUSO has a **pre-existing business relationship**
- Services for another affiliate subject to certain conditions
- Responses to a communication **initiated by a member**
- Solicitations **authorized or requested** by the member

# Eligibility Information

- Information that would be considered a consumer report, i.e. transaction information that bears upon credit
- Does not include aggregate or blind data without personal identifiers such as account numbers, names and addresses

# Pre-Existing Relationship

- Ongoing financial contract (loan, deposits, etc.)
- Within 18 months after the financial relationship ends
- Within 3 months after an inquiry or application by the member (must be related to the inquiry)

# Solicitations

- Does not include information sent to membership at large
- Includes telemarketing, direct mail, email that is directed to particular members based on eligibility information received from an affiliate, i.e. targeted marketing

# No Solicitation

- If credit union uses its own member info to market the CUSO's products
- If credit union uses its service provider to market the CUSO's products and the CUSO does not communicate with the service provider regarding the use of the info

# Options to Use CU Member Info for CUSO Solicitations

- CUSO does the solicitation after an opt out notice has been given and not acted on
- CU does the solicitation for the CUSO
  - CUSO must give CU selection criteria and CU selects the recipients
  - CUSO cannot select the recipients
  - CU's name must be on the solicitation
- CU's service provider does the solicitation as above under CU's control

# Use of Eligibility Information by a Service Provider

- CU controls access to the use of the information
- CU controls the terms and conditions of access and use of info
- CU sets policies and procedures to ensure that terms and conditions are followed
- CU is identified on the marketing pieces
- CUSO does not directly use the info to solicit

# Opt Out Notice

- GLB – Annually
- FRCA –
- FACTA – Must be renewed every five years



# Pending Congressional Bills



# Pending Congressional Bills

- CURRIA – House Bill xxx
  - CUSO investment raised to 2%
  - MBL limit raised from 12.25% to 20%
  - MBL minimum loan raised to \$100,000
  - NCUA given interest rate setting flexibility
  - 147 co-sponsors

# Credit Union Regulatory Improvements Act of 2007 (“CURRIA”) HR 1537

- Raises CUSO investment limit to **2%**
- Loans
  - Excludes church loans from MBL cap
  - Raises certain maturities from 12 to 15 years
  - More flexibility for NCUA to set usury rate
  - **Increase MBL cap to 20% of total assets**
  - **Excludes loans of \$100,000 or less from cap**
  - **Removes MBL prohibition if below 6% net worth**

# Credit Union Regulatory Improvements Act of 2007 (“CURRIA”) HR 1537

## ➤ Governance

- Kick out a member for cause
- Term limits option for directors

## ➤ Merger

- Remove Clayton Act notification and cost

# Credit Union Regulatory Relief Act of 2008 (“CURRA”) HR 5519

- Raises CUSO investment limit to 3%
- Loans
  - Excludes church loans from MBL cap
  - Excludes MBL's in underserved area from cap
  - Raises certain maturities from 12 to 15 years
  - More flexibility for NCUA to set usury rate
  - Confirms SBA 504 maturity and terms
  - Payday loans to eligible non-members

# Credit Union Regulatory Relief Act of 2008 (“CURRA”)

## ➤ Governance

- Kick out a member for cause
- Term limits option for directors

## ➤ Merger

- Remove Clayton Act notification and cost

# Treasury Proposal for the Regulation of Financial Markets



# Treasury Proposal

- Modernize and make more efficient the regulation of the financial industry
- President's Working Group on Financial Markets
  - Treasury, Federal Reserve, SEC, Commodities Futures Trading Commission
  - Add: OCC, FDIC and OTS



# Treasury Proposal

- Mortgage Origination Commission
  - Fed, OCC, OTS, FDIC, NCUA, Conference of State Bank Supervisors
  - Minimum state licensing requirements
  - Fed sole regulator for mortgage lending laws
  - Clarify enforcement authority including affiliates of depository institutions

# Treasury Proposal

- Elimination of OTS and incorporation into OCC
- Study re which federal regulator should regulate state chartered banks
- Federal Reserve has primary oversight for payment systems

# Treasury Proposal

- Optional Federal Charter for insurance companies
- Continue state insurance option
- Office of National Insurance within Treasury as the regulator of the OFC
- Immediate establishment of Office of Insurance Oversight in Treasury – international regulatory issues, i.e. re-insurance

# Treasury Proposal

- Commodity Future Trading Commission and SEC merged
- Self- regulatory framework for investment advisory business similar to broker/dealers (FINRA)

# Treasury Proposal

- Federal Insured Depository Institution (“FIDI”) Charter for all depository institutions with federal deposit insurance
- Federal Insurance Institution (“FII”) – retail products with some government guarantee
- Federal Financial Services Provider (“FFSP”) for all other types

# Treasury Proposal

- Prudential Financial Regulatory Agency (“PRFA”) – Financial regulation of FIDI’s and FII’s
- Conduct of Business Regulatory Agency (“CBRA”) – Business conduct regulation, including consumer protection
- Federal Reserve – Market stability regulator

# Treasury Proposal

- FIDI consolidates the national bank, federal savings association and federal credit union charter and should be available in all corporate forms, including stock, mutual and cooperative ownership structure
- FIDI goal is to “create a level playing field among all types of depository institutions where competition can take place on an economic basis rather than on the basis of regulatory differences.”

# Treasury Proposal

- FIDI monitors FIDI affiliates and holding companies to protect FIDI
- PFRA's regulation should be based primarily at the FIDI level
- FII addresses inefficiencies in the state based insurance regulatory scheme where insurance products have some government guarantee



# Treasury Proposal

- States would retain clear authority to enact laws and enforce them against state chartered financial service providers

# Action Suggestion

- Contact your Congressman and Senators and encourage your employees and members to do likewise and advocate:
  - Pass regulatory relief for credit unions per CURIA and CURRA
  - CRA not needed for credit unions
  - NCUA should be represented on the President's Working Group on Financial Markets
  - Don't support the demise of credit unions by supporting a common regulator and set of regulations for all financial institutions per Treasury's Report

# Questions

