

REPORT

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**Review of the Provisions  
and the Operation of the  
*Credit Unions Act***

**OCTOBER 2013**

Financial and Consumer  
Services Commission

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**FINANCIAL INSTITUTIONS DIVISION**

Legislative Assembly of New Brunswick  
706 Queen Street  
Fredericton, New Brunswick E3B 1C5

Members of the Legislative Assembly,

I wish to table the Report on the Review of the Provisions and the Operation of the *Credit Unions Act* prepared by the Financial and Consumer Services Commission, pursuant to section 290.1 of the *Act*.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Troy Lifford', with a stylized flourish at the end.

The Honourable Troy Lifford  
Minister of Justice

Section 290.1 of the *Credit Unions Act* stipulates the following:

290.1(1) A review of the provisions and the operation of this *Act* shall be completed by the Commission every five years after October 31, 2008.

290.1(1.1) When the Commission has completed a review, it shall prepare a report on the review and shall file it with the Minister.

290.1(2) When the Minister receives a report under this section, the Minister shall

(a) if the Legislature is in session when the report is completed, lay the report before the Legislative Assembly, or

(b) if the Legislature is not in session when the report is completed, lay the report before the Legislative Assembly within 15 days after the commencement of the next session.

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## INTERPRETATION

In this document:

“Credit union” also includes a *caisse populaire*.

“Atlantic Central” is one of the two federations in New Brunswick to which credit unions must belong.

“Office” means the *Office de Stabilisation de la Fédération des Caisses Populaires Acadiennes Limitée*.

“Corporation” means the New Brunswick Credit Union Deposit Insurance Corporation.

“Fédération” means the *Fédération des Caisses Populaires Acadiennes Limitée*, one of the two federations in New Brunswick to which credit unions must belong.

“Risk Management Agency” refers to the Brunswick Credit Union Stabilization Board Limited.

“Superintendent” means the Superintendent of Credit Unions, Financial and Consumer Services Commission.

## **EXECUTIVE SUMMARY**

The *Credit Unions Act* stipulates that a review of the provisions and the operation of the *Act* is to be completed every five years, with a report to be tabled in the Legislative Assembly. Consultation took place with the key stakeholders between February 2012 and March 2013 and was the source of the documentation used in drafting this report. Such consultation is essential to identify appropriate policies and priorities for consideration. However, the tabling of the report is not a commitment by the government to amend the *Credit Unions Act* or its regulations. The stakeholders will be invited to take part in any developments in that regard.

This report brings together the content of the written submissions received during the consultations with the following New Brunswick credit union stakeholders: the *Fédération des Caisses Populaires Acadiennes Limitée*, Atlantic Central, the *Office de Stabilisation de la Fédération des Caisses Populaires Acadiennes Limitée*, Risk Management Agency (Brunswick Credit Union Stabilization Board Limited), and the New Brunswick Credit Union Deposit Insurance Corporation.

Four major topics were identified following the consultation exercise: credit union equity, increased powers of a federation, increased powers of credit unions, and amendments to deposit insurance provisions. There are other important issues as well. Several concerns were raised about matters involving the incorporation of credit unions, confidentiality of information, members' rights, administration of the *Act*, and various clarifications. In addition, several proposals were submitted regarding governance of credit unions, the *Fédération*, the stabilization boards, and the Corporation.

### **Credit union equity**

The new international standards applicable to federal financial institutions such as banks use a complex methodology to calculate the minimum level of equity that financial institutions are required to maintain. The new standards take into account the risks specific to each financial institution. Adapting these standards for credit unions is a key issue in the review of the *Credit Unions Act*.

### **Powers of a federation**

Proposals were made regarding powers of a federation, with a view to clarifying and increasing these powers. Lending and other activities similar to those carried on by credit unions give rise to issues in terms of capitalization, deposit insurance, liquidity and inspections of a federation.

## **Powers of credit unions**

Clarification of the powers of credit unions, and specifically the power to engage in certain activities, either directly or through subsidiaries or arrangements with third parties (networking), would be beneficial. Furthermore, when comparing the provisions governing credit unions in other provinces, additions are to be considered in order to eliminate possible restrictions. Lastly, some of the proposed provisions would provide greater flexibility in terms of permissible activities, either with the approval of the Superintendent of Credit Unions of the Financial and Consumer Services Commission or by regulation.

## **Amending the deposit insurance provisions**

For purposes of rationalization and to acknowledge that there are two separate networks, it was proposed that the Corporation's responsibilities be transferred to the two stabilization boards. This change would result in the elimination of the Corporation and the introduction of correlative provisions. The Corporation's responsibility to replenish stabilization funds was questioned, as was the stabilization boards' obligation to make good on shortfalls in credit union equity. It was also proposed that the minimum amount required to be maintained in stabilization funds be dictated directly by the *Act*, i.e., 1.75% of the total assets of the member credit unions. It was also recommended that the calculation be based on a network's deposits, not on its total assets, as is currently the case. In addition, efforts are already under way in Atlantic Canada to harmonize the requirements for liquidity funds of the *Fédération* and Atlantic Central.

Before desirable amendments to the *Act* are made, discussions must be held with the stakeholders. Such on-going dialogue is the way to promote a prosperous future for the credit unions.



## BACKGROUND

The *Credit Unions Act* governs the business activities of credit unions. The purpose of credit unions is to provide a comprehensive range of financial services that meet the needs of their members. These include receiving deposits from and operating chequing services for their members, and making loans to their members. There are 25 credit unions/*caisses populaires* in New Brunswick serving 250,000 members. Total deposits exceed \$3.4 billion. These financial institutions are therefore a major factor in New Brunswick's economic vitality.

The *Act* provides for agencies and structures to ensure the use of sound financial and business practices and the stability of the credit unions. The credit unions belong to one of two federations, i.e., the *Fédération* or Atlantic Central.

Atlantic Central was created on January 1, 2011, with the merger of the credit union centrals from the Maritime Provinces (excluding la *Fédération*). It is regulated by the Province of Nova Scotia and its members also include credit unions in Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. The federations create economies of scale for the services they provide to their member institutions and manage their regulatory liquidity.

In addition to belonging to these federations, the credit unions are subject to the authority of the stabilization boards, one of which operates in relation to member institutions of the *Fédération*, and the other, to the New Brunswick institutions belonging to Atlantic Central, i.e., the *Office* and Risk Management Agency, respectively. Among its responsibilities, each stabilization board is required to maintain a stabilization fund to provide financial assistance to its member credit unions. The boards also conduct regular inspections of their member institutions.

The *Act* also provides an additional layer of protection for credit union members through the Corporation. This Crown Corporation insures eligible deposits up to \$250,000. Lastly, with the exception of the Corporation, the Superintendent can intervene at every level, and sits on the Board of Directors of the stabilization boards and the Corporation.

Credit unions have been operating in New Brunswick since the 1930s and have contributed to the well-being of the province's residents since that time. Legislative oversight is one of the elements promoting their growth by striking a balance between protection for taxpayers and depositors and the competitiveness of these institutions. Periodic and systematic reviews of the provisions of the *Credit Unions Act* are prudent, given the constant changes in the financial services sector.

## PROCESS

The following organizations contributed to this report: the *Fédération*, Atlantic Central, the *Office*, Risk Management Agency, and the Corporation. In March 2012, these stakeholders were invited to present written submissions concerning enhancements to the *Credit Unions Act*. The submissions were received in October 2012 by the Credit Unions, Co-operatives and Trust Companies and Examinations Branch, and were circulated among the stakeholders. A summary was prepared. The Branch reviewed the submissions carefully and conducted preliminary research on topics requiring closer study. Individual meetings were held with the stakeholders on February 4, 5, and 8, 2013, and they had until the end of February 2013 to make changes to their submissions (see Appendix 1 for the list of activities).

This report brings together the content of the stakeholders' written submissions. Some of the proposals contain elements that could conflict with statutes other than the *Credit Unions Act*. Those proposals are included in this report nonetheless.

Since the *Fédération* and the *Office* made a joint submission, the report refers to four stakeholders. The phrase "the 2013 review" will be used in referring to the process described here.

The tabling of this report is not a commitment by the government to amend the *Credit Unions Act*. The consultations that formed the basis for this report are nevertheless crucial to identify appropriate policies and priorities for consideration. The stakeholders will be invited to take part in any developments in that regard.

## FOUR MAJOR ISSUES

### Credit union equity

Credit unions in New Brunswick are required to maintain a level of equity in an amount not less than 5% of their total assets. Equity as defined in the *Act* refers to shares and retained earnings. This minimum equity requirement serves to protect credit unions against potential losses that could jeopardize their financial viability.

Canadian banks also have equity requirements, known as “capital adequacy.” On January 1, 2013, the Office of the Superintendent of Financial Institutions Canada (OSFI) issued its new Capital Adequacy Requirement Guidelines for federal financial institutions. The guidelines reflect changes to the international rules commonly referred to as Basel III. Federal financial institutions have until 2019 to implement the regulatory changes required by OSFI.

Basel III is to be considered with regard to the safeguarding of deposits and the competitiveness of credit unions. This methodology is used to calculate capital requirements in relation to the specific risks faced by each financial institution.

Canadian provincial authorities in charge of regulating credit unions have reviewed the applicability of Basel III to these entities.<sup>1</sup> This process resulted in a number of principles whereby Basel III would serve as a model to determine quality and quantity of capital, with OSFI’s Guidelines applicable to risk weighting of assets in capital ratio calculations. These risks include credit risk, operational risk and market risk. These principles reflect the unique structure of credit unions which, for example, hold investments with centrals and whose shares are not permanent. The provinces will each have to determine how these principles can be implemented in their jurisdictions.

During the 2013 review, two stakeholders mentioned the need to amend the regulatory equity requirement for credit unions in New Brunswick in order to align it with banking standards. However, one option was presented whereby credit unions could follow a plan for building equity according to a schedule that would prepare them for compliance with the Basel III model within the same time frame as the banks, i.e., by 2019. This plan would not be set out in the *Act* but imposed by the stabilization board. Amendments to the *Act* could then be made to confirm the standards. In addition, one recommendation called for amendments to be made earlier so

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<sup>1</sup> *Transitioning to an Industry Standard Capital Adequacy Requirement*, Position paper prepared for the Credit Union/Caisse Populaire Deposit Protection Agencies and Regulators; A. Michael Andrews and Associates Limited, Ottawa, June 12, 2012.

that patronage refunds would be prohibited if the minimum amount of equity and retained earnings as a percentage of assets is not maintained. In other words, the minimum level of equity would include restrictions not only in terms of total equity, but also a minimum level of retained earnings.

Regulatory equity in credit unions is an important issue in connection with global standards. The complexity of the Basel III standards, the unique structure of New Brunswick's credit unions, and the timetable for making adjustments are some of the challenges of this question.

### **Powers of a federation**

The powers and purposes of a federation are set out in the *Credit Unions Act* and are very broad in scope. Among other things, a federation must manage deposits made by its credit unions, provide them with services, and in general promote the welfare of credit unions. These provisions are mostly intended for the incorporation and framework of the *Fédération*, and not Atlantic Central which is an entity incorporated under the Nova Scotia *Credit Union Act*.

One stakeholder recommended that the New Brunswick *Act* include certain powers of federations that exist in other jurisdictions. In addition, a measure was proposed to allow the *Fédération* to engage in certain activities, even if they fall outside those activities that are expressly permitted or do not form part of its purposes, if they are deemed to be in the public interest and approved by the Superintendent.

In other jurisdictions, federations can engage in the same activities as their member credit unions, including, in certain instances, transactions with the public. In addition, the authority to undertake certain activities is either set out in legislation or is prescribed. One stakeholder's proposal would see federations entering into agreements on behalf of credit unions for all external services. See Appendix 2 for a list of the additional powers of federations that some stakeholders consider desirable in this context.

Some of the *Fédération's* current activities, such as the management of mortgages and commercial loan funds, are similar to those carried on by credit unions. However, unlike credit unions, the *Fédération* is not subject to capitalization requirements. The *Fédération* also has several subsidiaries, exposing it to additional risks. One stakeholder recommended that a provision be added to the *Act* to adopt a regulation on the minimum level of equity required in a federation, or a requirement whereby the federation would have to submit its capital objectives specifying the minimum level of capital it has to maintain. It was also suggested in that regard that the OSFI requirements for credit co-operative associations at the federal level

be taken into account. If the *Fédération* were to take deposits from the public, the issue of deposit insurance and other considerations such as liquidity, equity requirements and the scope of inspections would have to be considered.

The above considerations suggest a variety of mechanisms for ensuring certainty and flexibility in terms of the ability of federations to engage in certain activities. Such mechanisms could include approval by the Superintendent or references to prescribed activities. In addition to a review of legislation in other provinces, the *Bank Act* and the *Trust and Loan Companies Act* will have to be studied. Were the *Fédération* to expand the range of its activities, there would have to be an adequate legal framework to ensure its efforts are prudent.

### **Powers of credit unions**

The current *Act* states that credit unions can, among other things, receive deposits from and operate chequing services for their members, and make loans to their members. The business that a credit union may undertake directly is subject to specific restrictions in subsection 18(3) of the *Act*:

- (a) engage in the provision of real estate brokerage services,
- (b) except as authorized under the *Pre-Arranged Funeral Services Act*, execute the office of executor, administrator, guardian of a minor's estate or committee of a mentally incompetent person or provide services of a fiduciary nature commonly provided by a trust company,
- (c) issue securities on behalf of another person or otherwise carry on the business of a securities dealer, or
- (d) carry on the business of an insurance company or otherwise act as an insurer, agent, broker or adjuster as defined in the *Insurance Act*.

Furthermore, section 20 of the *Act* reads as follows:

Except as provided by or under this Act, no credit union shall, directly or indirectly, through a subsidiary or otherwise, deal in goods, wares and merchandise or engage in any trade or other business.

In addition to providing their own services, credit unions may, through an arrangement with a financial institution or any prescribed type of body corporate, provide the service or services offered by that financial institution or that other body corporate, subject to the *Networking Regulation*. The Regulation lists these financial institutions as follows:

- (a) a bank,
- (b) an insurance company,
- (c) a loan or trust company,
- (d) a credit union,
- (e) a federation,
- (f) Credit Union Central of Canada, and
- (g) *Confédération Desjardins* and any successor to it.

These bodies corporate are listed as follows:

- (a) a factoring corporation;
- (b) an information services corporation;
- (c) an investment counselling and portfolio management corporation;
- (d) an income tax corporation;
- (e) a loan and investment corporation;
- (f) a mutual fund corporation;
- (g) a mutual fund distribution corporation;
- (h) a real property brokerage corporation;
- (i) a securities dealer;
- (j) a body corporate that engages in two or more of the businesses or activities carried on by the bodies corporate referred to in paragraphs (a) to (i).

A credit union may only enter into an arrangement with an insurance company if it is an affiliated life insurance company or if it is in relation to an authorized type of insurance or personal accident insurance for its members. The following are authorized types of insurance:

- (a) credit or charge card-related insurance;
- (b) creditor's disability insurance;
- (c) creditor's life insurance;
- (d) creditor's loss of employment insurance;
- (e) creditor's vehicle inventory insurance;
- (f) export credit insurance;
- (g) group life savings insurance;
- (h) mortgage insurance;
- (i) travel insurance.

No arrangements may be entered into without the written approval of a stabilization board.

A credit union could also engage indirectly in the activities of some of these financial institutions or any prescribed bodies corporate through subsidiaries. However, it is highly unlikely that credit unions would engage in some of the above activities. A federation would be in a better position in terms of economies of scale, expertise, and financial resources to engage in certain activities that would benefit credit unions as a whole and their members.

Most of the stakeholders who were consulted for the 2013 review of the *Act* indicated that the powers of credit unions should be expanded to include or specify other business activities. Comments spanned a continuum of no restrictions to harmonizing with other jurisdictions. For example, it was proposed that credit unions be allowed to engage in certain activities, even if they are not expressly permitted activities or if these activities fall outside the credit unions' purposes, providing the activities in question are deemed to be in the public interest and approved by the Superintendent. With regard to other jurisdictions, let us first consider Nova Scotia, which for networking arrangement purposes does not refer to a list of financial institutions or prescribed bodies corporate, but rather authorized types of insurance.

The authorized types of insurance are mostly the same in New Brunswick and in Nova Scotia. While the Nova Scotia regulation is less explicit about networking, it contains detailed provisions about subsidiaries, i.e., subsidiaries that are in the same business as prescribed bodies corporate in New Brunswick, but with the following additions: a financial leasing company, a foreign financial institution, a real property company, a management service company, an insurance brokerage and an auto leasing company.

Nova Scotia places restrictions on subsidiaries, whose investment may not exceed 5% of a credit union's total assets, unless it is a trust or loan company. The Superintendent of that province could approve a subsidiary "carrying on any other business activity reasonably ancillary to the business of the credit union." It is conceivable that restrictions could also apply in New Brunswick, subject to the conditions that a stabilization board could impose, given that it has to approve the investment policy of each credit union.

The provisions of Newfoundland and Labrador's *Credit Union Regulations* are similar to the above Nova Scotia provisions. In addition, the Newfoundland and Labrador *Credit Union Act* states that a credit union may sell life insurance products at its branches either through an affiliate, by contractual arrangement or in the capacity of a licensed agent or broker. Note that this is permitted in New Brunswick only if there is an arrangement with a credit union-affiliated life insurance company. (See Appendix 3 for a comparison of networking activities for New

Brunswick, permissible subsidiaries, and other permissible activities in Nova Scotia and in Newfoundland and Labrador.)

Other jurisdictions specify financial services or ancillary services that credit unions may provide (see Appendix 4).

One stakeholder said it would be desirable for the *Act* to be amended to allow credit unions to offer their services to non-members, mainly as opposed to exclusively to their members, and to allow syndicated loans among credit unions and/or other entities. In a context where a federation would set up any desirable subsidiary and it would enter into service agreements with external service providers, credit unions would act as agents for the federation or its subsidiaries with regard to any agreement entered into with the federation, subject to the approval of the stabilization board.

It should be noted that credit unions in New Brunswick already have the necessary powers, either through subsidiaries or through networking arrangements, to engage in a multitude of services comparable to those permitted in other jurisdictions. Additional services or additional bodies corporate for networking arrangement purposes are noted in the comparative review of provincial statutes. However, certain business activities are subject to restrictions under other statutes, such as securities legislation and insurance legislation, such that an in-depth study on the subject would be required.

To give credit unions a certain amount of flexibility in their ability to carry on certain business activities, other jurisdictions use various mechanisms, e.g., approval by the Superintendent or references to prescribed activities. Where the legislation specifically mentions a service, the ability to engage in it is certain. However, such lists cannot be exhaustive, given the constant changes in the financial services sector. Such a list must not serve to create a restrictive framework. Thus far, New Brunswick's *Act* has favoured a broad approach to the powers of credit unions, as it declares that the purpose of a credit union is to provide a comprehensive range of financial services to meet the needs of its members.

### **Deposit insurance provisions**

For the 2013 review, the stakeholders submitted recommendations either seeking to enhance the governance of existing organizations or calling for the restructuring of the deposit insurance system which, depending on the option chosen, would be fairly large in scope. Preventing duplication in the roles and responsibilities of the various players was also discussed.



The Corporation as it currently stands does not have a supervisory role, hindering its access to information about credit union problems and performance. Its role consists of three responsibilities. First, it has to make payment to depositors of eligible deposits should a credit union be liquidated. Second, it has to determine the sufficiency of the stabilization funds. Lastly, the Corporation provides financial assistance to stabilization boards as required by the *Act*. The Corporation may only request information that is directly related to those purposes. To rectify this, it was recommended that there be an amendment whereby a representative, or the Chairperson or his or her designate, of each of the two stabilization boards would sit on the Corporation's Board of Directors.

There was no consensus among the stakeholders regarding the voting rights of these new directors. One stakeholder even said that such an expanded Board of Directors would not be able to operate harmoniously, given the potential conflicts of interest for these new directors. The directors would be subject to the authority of the different regulatory levels by virtue of their duties on the stabilization boards. It was proposed that conflict-of-interest directives be issued for the benefit of directors appointed by stabilization boards. It was also proposed that the Corporation's Board of Directors appoint one of its members or a senior officer to the governing body of each stabilization board as a non-voting director and that conflict-of-interest guidelines be provided.

A more radical recommendation that would not only eliminate the challenges in sharing information between the organizations but could also recognize two separate deposit insurance protection funds—the *Fédération* member institutions' and Atlantic Central member institutions'—was put forward. To achieve this, the Corporation would be eliminated and its responsibilities would be transferred to each stabilization board, particularly in regards to deposit insurance. In this context, the deposit insurance fund would be divided into two separate accounts, each being held by the appropriate stabilization board. In this case, there would be no financial liability between the two networks.

It was also proposed that the Board of Directors of each stabilization board consist of four directors appointed by the Minister, three directors elected by the credit union members, and the Superintendent.

Another general recommendation submitted for the 2013 review called for provisions to recognize and ensure two separate systems. It should be noted that two separate deposit insurance accounts could be created without abolishing the Corporation. The establishment of two deposit insurance accounts was also addressed in a separate recommendation.

Except for Quebec, whose system is somewhat similar, New Brunswick is currently the only province whose deposit insurance corporation is not responsible for regulating credit unions. This situation is confusing for the public and stakeholders alike. It also causes operational difficulties due to the stakeholders' overlapping responsibilities.

Other proposals support the concept of separate systems. For example, one proposal called for clarifications with respect to the minimum amount to be established, which could be different for each stabilization fund. Another proposal called for clarifications concerning possible levies for the Corporation, which could be different for each network.

Should there be an in-depth restructuring, there are many other considerations. Governmental authority to determine deposit insurance coverage and define what constitutes eligible deposits would be preserved. The government would also have the authority, either through the Minister, the Superintendent, or through another mechanism, to determine the sufficiency of the stabilization funds. The membership of the boards of directors of the stabilization boards could include senior government officials, which is currently the case for the Corporation's Board of Directors. The Corporation's status as an agent of the Crown could not be vested in the stabilization boards, whose names would also have to change to reflect their new role. The Superintendent's authority would not change.

The current requirement that the Corporation replenish stabilization funds to make up for shortfalls was the subject of a recommendation by a stakeholder. However, such a measure would definitely require amendments if the Corporation were to be eliminated. If the Corporation is not abolished, it is recommended that replenishment be at the discretion of the Corporation and that a business plan be submitted for the Corporation's approval when the fund balance is less than the minimum amount required by the *Act*.

Regarding the funds required at various levels, it was proposed that the stabilization boards not be obligated to provide financial assistance to credit unions that do not have the equity required by the *Act*. The current *Act* requires that a stabilization board transfer funds so that a credit union's equity does not fall below 5% of its assets, which provides transparency in terms of the actual stabilization fund balance. The only exceptions are in the case of a growing credit union or a credit union that is to be liquidated, amalgamated or incorporated. In the first instance, with assets increasing rapidly, even though equity cannot be maintained at 5%, it was proposed that the exemption be cancelled and that the stabilization board be required to contribute to the credit union's growth without delay.

Under the scenario where only credit unions would receive mandatory financial assistance should they be unable to meet their minimum capital requirements, it should be noted that the credit unions are subject to the authority of the stabilization boards. In the case of the stabilization boards versus the Corporation, the latter does not have direct authority over the boards, such that mandatory financial assistance could be seen as inappropriate.

The stabilization boards exercise their authority through orders that are stayed if the orders are appealed, or through interim orders that apply as soon as the orders are issued and become permanent if appeals are not filed within legislated time limits. Before taking such measures, the stabilization board makes recommendations following regular inspections. Follow-up is carried out to ensure that the credit unions are taking the necessary corrective actions. It was proposed that, in addition to these regulatory measures, a voluntary compliance program be added, modeled on the one in place in Nova Scotia and Newfoundland and Labrador.

Finally, with regard to the regulatory minimum amount to be maintained by the stabilization boards, it was proposed that this amount be set out directly in the *Act*, namely 1.75% of the total assets of the board's member credit unions. The current *Act* provides instead for a determination every three years by the Corporation following a review by an independent expert with accounting or actuarial qualifications. It was also proposed that the minimum amount in a stabilization fund be based on the total amount of deposits held by the credit unions. It is currently calculated based on the credit unions' assets.

Liquidity management is another requirement for ensuring sound credit union management. The *General Regulation* under the *Act* currently stipulates that credit unions have to maintain liquid assets in an amount not less than 10% of their liabilities, with 80% of this amount to be maintained in the liquidity fund established by the federation to which they belong. Since 2011, Atlantic Central has been responsible for the liquidity of 10 New Brunswick member credit unions. The latter transfer their regulatory liquidity at levels set in New Brunswick, whereas the other member credit unions follow slightly different requirements, since they are governed by statute in Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. Several discussions led to questions about what the trigger level between liquidity and insolvency would be, the use of Atlantic Central's liquidity fund as regards to its origin and access to it in the event of a liquidity crisis. In addition, co-operative efforts were undertaken with the *Fédération* to harmonize the liquidity requirements.

Based on the amendments proposed during the 2013 review, there is an opportunity to strengthen the administration of the deposit insurance system for credit unions in New

Brunswick. The various functions could be allocated so as to prevent duplication, and certain responsibilities could be reconsidered to optimize the use of stakeholders' financial resources.

## **OTHER STAKEHOLDER PROPOSALS**

Other recommendations from stakeholders are summarized below for quick reference. The recommendations are grouped together by subject: incorporation of credit unions, confidentiality, members' rights, governance, administration of the *Act*, networking of services, and various clarifications.

### **Incorporation of credit unions**

Lower the minimum age from 19 to 18 for any individual who may apply for incorporation of a credit union.

Amend to require paid-up capital of not less than \$500,000, or an amount set by the Minister.

Amend to require that the Superintendent ascertain the source of the paid-up capital.

Rescind the provisions that permit credit union membership to be limited to groups with bond of association.

Rescind the requirement whereby the words "Credit Union" or "*Caisse populaire*" must be part of a business name.

### **Confidentiality**

Add confidentiality clauses in general.

Amend so that personal addresses contained in the register of directors, officers, and committee members and in the members' registry are confidential.

Amend to require that members, officers, and directors be made aware of the provisions of the *Act* stipulating that registers containing their addresses and occupations may be consulted.

Add confidentiality as a duty for credit union directors.

Add confidentiality as a duty for credit union employees.

Rescind or amend the obligation to make the members' register available at any meeting of the members.

## **Members' rights**

Amend so that only the Board of Directors can approve payment of patronage refunds to members. Members' approval currently required by the *Act* would be eliminated.

Rescind the provisions allowing members to appoint a beneficiary in whom the members' interest vests on their death.

Amend so that removal of a member is entirely up to the management of a credit union. Another proposal recommended that the Board of Directors be able to delegate the power to revoke the membership of a member and be able to limit the member's right of appeal from such revocation in specific circumstances. It was also proposed that there be a provision allowing credit unions to suspend a member's services.

Add provisions whereby joint accounts are accounts with survivor's rights and holders can vote if they have the requisite number of shares. The current *Act* is silent on these issues, such that the credit unions have to resolve these matters themselves.

Add the option of voting by ballot in the branches or by another means that would be prescribed in the by-laws.

Amend so that the minimum number of members needed to call an extraordinary meeting is increased or is expressed as a minimum percentage of the membership. The current minimum number is 25 members, and the by-laws can provide for any percentage or other minimum number.

Amend so that topics that can be discussed at a meeting called at the request of members be limited. It was proposed that topics be limited to non-operational issues or issues that come under the members' authority. The current *Act* does not set such limits.

Increase the maximum amount that can be withdrawn from the account of a deceased member. The maximum amount is currently \$5,000. It was proposed that this amount be increased to \$25,000. Another proposal was that the maximum amount be specified in a policy approved by the Superintendent or the stabilization board.

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Amend the provisions concerning inactive accounts. Currently, when a deposit account contains less than \$300 and no transactions have occurred on the account for two years, the credit union can transfer the funds into a special account. It was proposed that there be no minimum amount and that these funds be transferred to the appropriate stabilization board, which would execute refunds. It was also proposed that the minimum amount be increased, ideally to \$1,000. Finally, it was recommended that the minimum amount be specified in a policy approved by the Superintendent or the stabilization board.

Amend so that a minor can become a member without parental or a guardian's permission and the credit union has legal recourse against this person.

## **Governance**

Enhance the responsibilities of the boards of directors of credit unions. The current *Act* sets out very general responsibilities in Section 83: exercise the powers of the credit union directly or indirectly through the employees and agents of the credit union and direct the management of the business and affairs of the credit union. It was proposed by a stakeholder that the *Bank Act* be consulted with a view to adding the obligation for the board of directors of a credit union to establish two committees—one which would be responsible for mechanisms for identifying and resolving conflicts of interest and for measures to limit the use of confidential information; the other would be responsible to establish mechanisms for communicating to clients information that must be disclosed under the *Act*, and for complaint review procedures.

Enhance the responsibilities of the Audit Committee. The Board of Directors of a credit union is responsible for establishing an audit committee whose duties and powers are established in the *General Regulation* under the *Act*. It was proposed that the *Bank Act* be consulted with a view to adding the obligation that the Audit Committee be responsible for requiring that management establish appropriate internal control mechanisms; reviewing, assessing and approving these mechanisms; and meeting with the chief internal auditor, officer, or employee performing similar duties and with management to discuss the effectiveness of the internal control mechanisms it has established. Another stakeholder proposed the addition of the following duties: (a) review the organization and independence of the internal auditor, including the auditor's objectives, work plan, and any problems having arisen during the audit exercise; (b) review the recommendations made by the internal auditor concerning improvements to accounting and internal control practices, and management's response to these recommendations; (c) ensure that the directors and officers comply with disclosure requirements for material contracts; (d) review all of the Superintendent's or stabilization

board's reports on the business of the credit union or any other report cited by the board, and oversee implementation of the recommendations; and (e) review or develop the credit union's policies.

Add a training requirement for directors of the Corporation and the stabilization boards, with the requirement to be established by the Board of Directors, subject to the approval of the Superintendent.

Amend so that a federation and its member credit unions are authorized to propose candidates to the Minister responsible for appointing the directors of stabilization boards from this pool of candidates.

Add provisions for indemnification of the directors of stabilization boards and the Corporation, similar to that provided to credit union directors.

Amend to allow directors of the federation or credit union to set their compensation themselves, it being agreed, however, that any changes be supported by external market studies showing that the compensation in question is reasonable.

Amend so that directors' compensation is determined by a policy of the Board of Directors and is disclosed to the members at the annual meeting, subject to their approval with respect to the total annual amount.

Amend to allow the federation to establish in its by-laws the mechanism for electing its directors.

Impose additional restrictions on the qualifications required to become a director of the *Fédération* or credit union.

Add the provision that a director of the *Fédération* or credit union shall no longer be a director if he or she misses a certain number of meetings.

Add the provision that the Board of Directors of the *Fédération* or credit union has the authority to relieve a director of his or her duties in specific circumstances.

Eliminate the limit of nine consecutive years of service as a director and specify that the maximum term for directors will be set out in the by-laws, subject to mandatory training for

directors. The current *Act* stipulates that a director may not serve for more than nine consecutive years and has to wait one year before standing again.

Add a provision whereby a request to extend the number of consecutive years of service as a director could be submitted to the stabilization board, with the option of appealing to the Superintendent.

Amend so training is compulsory for directors of a credit union, subject to an exemption by the Superintendent.

Amend to require directors to take part in a stabilization board-approved training program on the sound operating practices of credit unions.

Add a provision whereby the spouse or dependent child of the employee of a credit union, federation, or stabilization board cannot be a director of a credit union.

Add a provision whereby an employee of the Corporation cannot be a director of a credit union.

Add a provision whereby members and other professionals of a credit union's firm of accountants cannot be directors of that credit union.

Add a provision whereby the members and other professional advisors of the credit union's legal firm cannot be directors of that credit union.

Add a provision whereby the spouse or dependent child of a person who has a loan at the credit union that is more than three months in arrears cannot be a director of a credit union without the written approval of the other directors.

Add a provision whereby an individual or the spouse or dependent child of a person who has a major interest in a partnership or body corporate that has a loan with the credit union that is more than three months in arrears cannot be a director of a credit union without the written approval of the other directors.

Add a provision whereby the spouse or dependent child of a person who has a loan with the credit union that is more than six months in arrears cannot be a director of a credit union.

Add a provision whereby an individual or the spouse or dependent child of a person who has a major interest in a partnership or body corporate that has a loan with the credit union that is more than six months in arrears cannot be a director of a credit union.



## **Administration of the Act**

Amend so that the operating expenses of the Office of the Superintendent are covered by both systems on a user-pay basis and are not only based on the assets of the two systems. The *General Regulation* under the current *Act* stipulates that expenses are to be proportional to the credit unions' assets.

Make it mandatory to report to the Superintendent any deposit by a member in excess of \$250,000. The *General Regulation* under the current *Act* stipulates that the Superintendent could request a report on the existence of any deposits by a member in excess of \$500,000.

Amend or eliminate the definition of "residential property." The *General Regulation* currently defines "residential property" as consisting of a building that is used as no more than three private dwellings at least one of which is occupied by an owner. This definition is used to calculate the total commercial loans whose amount, among other things, is restricted. This definition differs from that used by the Canada Mortgage and Housing Corporation, the Desjardins computer system, and other jurisdictions. It was also proposed that the definition be included in a policy approved by the Superintendent or the stabilization board.

Add provisions allowing the Superintendent to accept electronic documents.

Amend to stipulate that documents submitted to the Superintendent are not available to the public. The current *Act* permits consultation of annual reports, notices, articles or by-laws of a credit union or the *Fédération*, or any order or declaration by the Superintendent or any order by the Court.

Rescind approval by the Superintendent in connection with the capacity of a credit union to carry on business outside New Brunswick.

Allow credit unions to renovate or expand their facilities without the Superintendent's approval, or to do so below certain limits.

## **Networking**

Eliminate the restriction whereby the agents of an affiliated life insurance company cannot be present on the premises of a credit union for more than 50% of regular business hours.

Amend to ensure the unimpeded flow of information among the credit unions. The *Networking Regulation* currently does not allow credit unions to share information about members with certain components in the same credit union network, which is a disadvantage when it comes to risk management.

Expand the definition of “affiliated life insurance company” to include a subsidiary, broker, or agent more than 50% owned by the affiliated life insurance company.

### **Other additions or clarifications**

Add “creditor group insurance” to Section 19 of the *Act* and add to the list on the matter in the *General Regulation*. This insurance, which is used for risk management purposes, is currently not included in the *Act*.

Amend so that the payments to be made by the Corporation on liquidation of a credit union can be deferred according to the terms of the deposits, at the Corporation’s discretion.

Amend the reference to insurance in the French version. It is not clearly established who the users are in paragraph 198(1)(j) as regards to a stabilization board when it collects and compiles statistics.

Replace the references to generally accepted accounting principles with international standards for financial information. These amendments are necessary following the changes that were made to the Canadian Institute of Chartered Accountants Handbook.

Add “or any other auditor it deems appropriate” to subsection 113(2.1). The current *Act* allows the stabilization board to appoint Services Unis de Vérification et d’Inspection Inc.-United Auditing and Inspection Services Inc. as the auditor for its member credit unions. The proposed addition would allow the stabilization board to appoint any other auditor.

Add minimum requirements concerning notice and guidance on branch closures.

## NEXT STEPS

The review of the *Credit Unions Act* every five years as required by section 290.1 is an opportunity to consider the *Act* in its entirety in a proactive context. The current legislative framework for credit unions is working well. Since its adoption in 1994, the credit unions have continued to demonstrate their progress. As proof, credit unions' total assets are now in excess of \$3.8 billion. With the exception of a single, relatively small credit union that is under voluntary supervision, the credit unions are in good shape. The stabilization funds rank first and second in Canada in terms of capitalization. These are but a few examples showing the merit of the current system. However, the stakeholders suggested a number of possible steps for making it even better, testifying to their desire to reach new heights.

Regulatory capitalization, the powers of credit unions, the powers of a federation, the rationalization of organizations providing deposit protection and solvency oversight to credit unions are some of the most important topics to be considered. To that end, more in-depth research is required, especially to compare relevant provisions in the other jurisdictions. The proposals concerning the incorporation of credit unions, governance, members' rights, administration of the *Act*, confidentiality of information, and various clarifications are also important. The amendments can be assessed against criteria such as impact on risk, improved efficiency, preservation of the democratic process and co-operative principles, competitiveness, and cost.

Before desirable amendments to the *Act* are made, discussions must be held with the stakeholders. Such on-going dialogue is the way to promote a prosperous future for the credit unions.

## Appendix 1: Review of the provisions of the *Credit Unions Act* – Activities

<b>Date</b>	<b>Activities</b>
February 2012	Internal planning
March 2012	Start of consultations
April 2012	Extension of the deadline for receipt of stakeholder submissions
June - August 2012	Research – selected topics
September 30, 2012	Receipt of stakeholder submissions
October - November 2012	Review of stakeholder submissions
November - December 2012	Summary of submissions
December 2012 - January 2013	Research – selected topics
February 4, 5, and 8, 2013	Individual meetings with stakeholders
February 2013	Amendments to stakeholder submissions
February - March 2013	Preliminary report
March 2013	Review of amendments to submissions
April 2013	Draft report
May 2013	Draft Memorandum to the Policy and Priorities Committee
June 2013	Translation of draft report
July - August 2013	Internal approval of report
September - October 2013	Printing
November - December 2013	Tabling of report in Legislative Assembly

## **Appendix 2: Proposed activities of a federation, on its own behalf or as agent or signatory to an agreement**

- Enter into agreements on behalf of the credit unions for all services.
- Examine the credit unions' books and accounts.
- Enter into an agreement with the boards of directors of credit unions to monitor, direct, or administer the credit unions' affairs for a set period of time.
- Develop and provide services for the benefit of a credit union's members.
- Assist credit unions with establishing and administering services that they can provide.
- Serve, in the application of this *Act*, as a temporary or provisional administrator of a credit union or as liquidator of a credit union.
- Act as liquidator or receiver for the execution of mortgage-backed bonds of which the credit union is a creditor.
- Make donations in its name and on behalf of credit unions.
- Receive deposits and operate transactional accounts for credit unions and their branches.
- Make loans to the credit unions or other persons.
- Provide sureties to the credit unions or other persons.
- Operate trust accounts.
- Manage credit union investments in connection with amounts included in the liquidity fund.
- Provide all services to the credit unions as approved by the Board of Directors.
- Invest funds on own behalf.
- Provide investment and portfolio management counseling services.

- Provide consulting or other services for the design, development, and implementation of information management systems.
- Design, develop, and market software.
- Provide, subject to the conditions to be established by regulation, special business management or consulting services;
- Promote items and services to the holders of payment, credit, or debit cards issued by it;
- Sell tickets:
  - (i) Including lottery tickets, as a non-profit public service for special events or temporary, special non-commercial activities that are of local, municipal, provincial, or national interest;
  - (ii) Public transit tickets;
  - (iii) For lotteries sponsored by the federal government, a provincial government, or a municipal government, or by any organization of these governments;
- Operate a motor vehicle registration bureau;
- Act as custodian of property;
- Act as agent for the payment of public utility bills, property taxes, etc.
- Operate a post office;
- Hold or manage immovable property or perform any operations in relation thereto;
- Provide computer services in connection with banking activities.

### Appendix 3: Powers of credit unions

New Brunswick: Permissible arrangements	Nova Scotia: Permissible subsidiaries	Newfoundland and Labrador: Permissible subsidiaries	Newfoundland and Labrador: Other permissible activities
<b>FINANCIAL INSTITUTIONS</b>			
(1) a bank under the <i>Bank Act</i> (Canada)	√		
(2) an insurance company that is licensed as an insurer under the <i>Insurance Act</i>	√	√	
(3) a loan or trust company licensed under the <i>Loan and Trust Companies Act</i>	√	√	
(4) a credit union	Not applicable	Not applicable	Not applicable
(5) a federation	Not applicable	Not applicable	Not applicable
(6) Credit Union Central of Canada	Not applicable	Not applicable	Not applicable
(7) <i>Confédération Desjardins</i> and any successor of it.	Not applicable	Not applicable	Not applicable
<b>PRESCRIBED BODIES</b>			
(8) a factoring corporation	√	√	
(9) an information services corporation	√	√	
(10) an investment counselling and portfolio management corporation	√	√	
(11) an income tax corporation	√		
(12) a loan and	√	√	

<b>New Brunswick: Permissible arrangements</b>	<b>Nova Scotia: Permissible subsidiaries</b>	<b>Newfoundland and Labrador: Permissible subsidiaries</b>	<b>Newfoundland and Labrador: Other permissible activities</b>
investment corporation			
(13) a mutual fund corporation			
(14) a mutual fund distribution corporation	√	√	
(15) a real property brokerage corporation	√	√	
(16) a securities dealer	√	√	
	Financial leasing company	√	
	Foreign financial institution	√	
	Real property company	√	
	Management service company	√	
	Auto leasing company		
	Insurance brokerage	Insurance agent or broker	
	Any other reasonably ancillary business activity, subject to approval by the Superintendent	Any other business that the guarantee corporation may approve	
			Provide other financial services, including wealth management, mutual funds, financial planning, and taxation services



New Brunswick: Permissible arrangements	Nova Scotia: Permissible subsidiaries	Newfoundland and Labrador: Permissible subsidiaries	Newfoundland and Labrador: Other permissible activities
			Licensed life insurance agent or broker

#### **Appendix 4: Other credit union services**

Some jurisdictions include the following among permissible financial services and/or ancillary services:

- Provide services to non-members
- Act as trustee under certain circumstances
- Act as financial agent
- Sell tickets, including lottery and public transit tickets
- Provide fax services
- Operate a post office
- Operate a motor vehicle registration office
- Act as agent for the receipt of payment of bills in respect of public utilities, property tax, personal income tax, and similar operations
- Make syndicated loans
- Issue credit cards
- Promote items and services to holders of payment, credit, or debit cards issued by the credit union
- Collect, handle, and communicate information mainly of a financial or economic nature or concerning financial institutions
- Act as custodian of property
- Act as receiver or liquidator
- Lend money to other credit unions