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CREDIT UNION REGULATION AT A CROSSROADS:
A CONVERSATION WITH FORMER NCUA BOARD MEMBER TODD M. HARPER

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FIRESIDE CONVERSATION:

TODD M. HARPER
Former Board Member, National Credit Union Administration (NCUA)

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KLEIN: Good morning. I'm Aaron Klein, the Miriam K. Carliner Chair and Senior Fellow in Economic Studies here at the Brookings Institution. It's my pleasure to join and welcome all of you as we discuss the future of financial regulation as it refers to credit unions. Though I think today's conversation is incredibly timely. A little fact behind the scenes, this was in the works for a while as part of our ongoing series on the future of financial regulation, as we were looking through different things. And then all of a sudden, the world blew up as it relates to credit unions. The National Credit Union Administration is a three-member board of regulators. It's unusual. Many regulators in finance go from single-agency heads to three-member, five-member or seven-member boards.

There's even in the past been boards as large as nine. This one is the only one, I believe, that currently has three members. And Donald Trump chose to fire two of the Democratic members. And we will discuss that in great detail, as one of those two, Todd Harper, is going to join us here. Todd served. At the NCUA as a board member starting in 2019 when he was appointed by President Donald Trump at the time. President Trump appointed him as the Democratic commissioner at the time. Todd served through that term, served through the Biden administration where he was elevated to the chair of NCUA. That's a presidentially determined position without Senate confirmation where he became the 12th chair. In the history of NCUA, and NCUA is incredibly important, almost one out of every two Americans, over 140 million Americans have a credit union account. I do, it's my primary financial institution. And these credit unions are where people keep their lifeblood, their nest egg.

They are meant to serve a non-profit mission to provide financial services and access to those people who share a common bond. And their growth has been exceptional, not just in the U.S., but globally. And so often the NCUA sometimes is focused on people think credit unions are small entities, which most of them are. We're up to over 140 million people, one in two Americans almost, has a credit union account. And these are separately regulated and separately insured from bank accounts, and NCUA does both. They are the regulator. And the insurer. So, when Todd became the 12th chairman in this organization's history, it was an incredibly important position, one that he served with distinction, one he came before Brookings several times to discuss his agenda.
As it so happened, when President Trump came, he appointed his own chair, which is his prerogative, but then, only a couple weeks ago, fired the two Democratic nominees leaving the agency with only

one head. So, this is a critical moment. In the history of NCUA and broader in financial regulation, and I can think of nobody right now more qualified or on the front line of what's going on in financial regulations than Mr. Todd Harper. So, with that, can people please join me in welcoming him to the stage? We're gonna sit down and have a conversation about what's on and then open it up to the audience for a little bit. Todd, thank you for joining us again at Brookings. Happy to be here, always a pleasure. So, what happened?

HARPER: What happened? Well, a little over two weeks ago, I was actually—my partner has been sick quite a bit, and he was in the hospital. And at 7:30 or so at night, I got a call from my fellow board member, Tanya Otsuka. And Tanya said, have you checked your email? And I said, no, why? And she said, well, I just got an email from the White House saying that I have been fired. And so, I looked at my email, at both my personal and my work email, and there was nothing there. It just so happens that that night, I also had a sleep study scheduled, and so I went down to the sleep study at the hospital, turned off my phones, and went to sleep. And when I woke up in the morning, my phone didn't work anymore. I went home, and my computer didn't work anymore, and I had a conversation with someone and indirectly learned that I had been, uh... Let go by the administration but had no email.

KLEIN: So, you are confirmed –

HARPER: Confirmed.

KLEIN: -- to a six-year term

HARPER: -- that runs until April 10th, 2027.

KLEIN: So, you're in a presidentially appointed Senate-confirmed position.

HARPER: Correct.

KLEIN: They turned off your phone and email without telling you, so you just woke up the next morning no access to anything.

HARPER: No access to anything. And it took them two days to find the email. They had sent it to the wrong email address at the NCUA. I can't make this stuff up. It is the first time ever that an NCUA board member, I should say board members, because it's both board member Otsuka and I, have been removed while within their term. And it's unlawful and it's unprecedented. And so, she and I have decided to bring suit and have our place stored on the NCUA board.

KLEIN: And now your court case, the judge just scheduled briefings and hearings for the end of next month.

HARPER: No, actually not at the end of next month. Briefings actually are due, I believe it's May 7th or 8th, about a week, and then we actually have until the 12th to respond. And then the NCUA board meeting is set for May 22nd, and there are going to be important policy issues discussed at that meeting. Admittedly, the meeting is going to have two issues on it. One, the state of the share insurance fund, which is a traditional quarterly briefing. Then the second is the agency's downsizing effort. Well, there are important policy questions to discuss there, even though these are briefings. How are we gonna restructure the agency? What should the normal operating level be set at for the share-insurance fund? After all, if you have fewer examiners and fewer people, there're gonna be fewer exams and there're going to be greater risk, and we should have a higher normal operating level. We won't have an ability to discuss that, and the only time board members can discuss that. Is at a board table, because under the Sunshine Act, if two of us meet together, that's a board meeting and we have to declare a meeting.

KLEIN: Right, so I want to hold aside some of those issues, because three-member board is an unusual thing and conflicts a lot with the Sunshine Act, but I want to get back to a more fundamental question. You decided to sue the president of the United States for unlawful termination. That's not an easy choice.

HARPER: No.

KLEIN: Particularly when you're unemployed. And I'm guessing the unemployment benefits, if they can't figure out the email address to send you to. Tell me about your decision to sue, to restore your position and board member Otsaka's.

HARPER: Otsuka’s. So, first, I'm technically a reapployed annuitant, so I do make some money under a federal pension. I came back, so, I am not totally without means at the moment, but I am relying more on my savings, certainly, these days, to maintain my lifestyle. But in terms of the decision… Aaron, taking on the United States president is not an easy decision. And in many ways, it was a decision more difficult than coming out of the closet. And I say that because when you come out of a closet, you think about it for years. You have this internal debate, like, you know, what's it going to mean for my career? What's this going to be for my lifestyle? Am I going to threatened? And you have a lot of time to think about that. Here, we had a week to think about it and whether to bring the case. And the more I thought about it, the more I said it had to be done. And Tanya reached the same conclusion. So, a week after our purported firings, we met with our lawyers. We have pro bono attorneys, and we began working on the case and had the case filed in less than a week.

KLEIN: Right, so, as I understand the law here, there's a question about what a presidential appointment and a committed term is. Right? And this goes back all the way to Franklin Delano Roosevelt, who tried to fire a couple members of the Federal Trade Commission that he inherited from Hoover, right? Because he didn't like their politics. There's no question of cause, nobody saying you did something or she did something wrong.

HARPER: No, in fact, Aaron, the email said, more or less said, your position as an NCAA board member is hereby terminated. Thank you for your service. That's all. So, there was no mention of cause whatsoever.

KLEIN: Uh... And the Supreme Court found in this well-known case Humphreys v. Executor, Humphreys Executor, uh... term appointments could not be removable for cause, particularly for multi-member board.

HARPER: Without cause.

KLEIN: Without cause, right? And again, this came up when we were in Congress together, we worked on different pieces of legislation. There was this desire to have single agency heads. And we did that with the Federal Housing Finance Agency signed under law by President Bush. We did that with the Consumer Financial Protection Bureau signed into law by President Obama. And, in both cases, the Supreme Court chipped away at those two agencies, finding a logic that has always escaped me—I'm just an economist who often pretends to know something about the law—that there was something in the Constitution about executive power that was different in a multi-member bipartisan board than in a single agency head. I have a difficult time explaining it. You can ask, I think Justice Kavanaugh and Justice Roberts who wrote the decisions on this, this was their logic. But now we're talking about a multi-member board where they're firing the two Democratic commissioners leaving the one Republican, it's a single agency head right now. Correct. How in the world, right, if your case, if you're not restored? What in the word then does that mean for financial regulation and these ideas of bipartisan boards?

HARPER: Well, first of all, it chips away at the notion that we should have regulatory experts who are there over a period of time who build up knowledge with respect to how the agency is run and the policies, and that they are rolling on a regular basis, if you will, on and off the board every six years or so. So, it chips away at this whole notion that Congress set up the independence of the agencies. It also, you know, Aaron, you and I are old enough to remember the savings and loan crisis. And one of the things during the savings-and-loan crisis that we saw was the Reagan administration did not want to tell Congress the size of the problem and hit it. To his credit, George Bush said that, no, we needed to know it.

And the Reagan's administration hit it because they had the power through the Office of Management and Budget to control whether and up to the Hill on testimony. It's one of the reasons why independent regulators, like the NCUA and in the financial space, got the ability to send up its testimony without going through an interagency review. It also means, quite frankly, greater risks for... Big policy swings, it undermines what is the whole concept of a board. And there's one other thing I want to add, and this is a very important thing about our case. When Congress created the NCUA, federal credit unions have been around since 1934. They bounced around from different agencies for a while, for a while, or even at the FDIC. But in 1970, Congress created NCUA with a single administrator that was removable by the president under statute, as well as by an advisory board, and the advisory board chair was removable under the statute. In 1978, Congress revisited that and said, no, it would be better to have a board. It created a three-member board, and it removed the language that's saying the president could remove us.

And as a key part of our case, there is clear congressional intent that they did not want the president to interfere with board terms, because we have to make important decisions that affect the economy, that affect 142 million Americans who use credit unions, and we don't necessarily want to have politics come into play. We want expert advice.

KLEIN: Right, I want to get back to this point that you just made about sweeping things under the rug and hiding bad news. Because, you know, I think everybody here at one moment in their life has made the decision to sit on some bad news, and one of the great lessons I've learned in life is, you, know, bad news doesn't get better with age. You know, often the cover-up is worse than the crime.

HARPER: Once the wine is spoiled, it doesn't improve. It becomes vinegar.

KLEIN: It just doesn't get better. Again, it's tough to take your medicine. It's tough, to say we have a problem. And you see this in financial regulation where problems metastasize non-linearly. Subprime mortgages were contained. We kept being told they were contained, we kept being told the banking industry was fine, in part because you don't want to create a panic, which I get, right, but... In part, you're trying to think, well, we'll work out the problem, we will grow our way out. And there's a big distinction that's unique in financial regulation to other parts of the economy, which is that equity in credit unions is from their members. Equity in banks is to their ownership or shareholders, and could be their members if it's a bank mutual.

HARPER: It's not unheard of.

KLEIN: Debt and liability is the public. This is what is unique about the situation of deposit insurance, right? And so, as equity goes to zero, right, they have less and less to lose and they're willing to be riskier and riskier and create greater and greater losses. This was one of the big takeaways from the savings and loan crisis.

HARPER: Correct.

KLEIN: And this is why keeping information and data current is so important. It's also why I'm very nervous about the direction of NCUA at the moment. One of the things that you did was you required credit unions to disclose how much they charge overdraft, just like banks. So, banks over a certain size put out their overdraft data. Researchers like me use this data and we see some issues. We see some trends. We see institutions that have done nothing, that are unprofitable on everything they do except overdraft.

And you ask yourself, is that a safe and sound financial institution? You ask yourself in a credit union, is meeting the members the mission of its membership? All you did was put this data in the public. There's no rule, there's no regulation, unless I'm missing something, you just print the data. When the chairmanship switched, one of the very first things he did was hide the data. Why are you hiding data? That doesn't strike me as a move towards a transfer. That strikes me as the exact way that you end up in these much larger problems where you're hiding the data. You know, what's going on?

HARPER: So, I've always viewed transparency as sunshine. And a little sunshine is good for you. Certainly, too much sunshine may cause skin cancer. So, you have to be careful in what you actually show. But in the data, just to sort of clarify, the federal banking regulators back in 2015 began requiring financial institutions with more than a billion dollars in assets to report their overdraft and NSF fees together as one lump sum on the call report data. The NCUA did not do that. And when I was chairman, I made a decision that we would begin doing that. And so, with the 2024 cycle, we began to collect that data for a billion dollar plus credit unions. So that there can be comparability. And an important thing for me is the Federal Financial Institution's Examination Council exists to create greater uniformity and regulation between the regulators, because you don't want to have a race to the bottom. And certainly, having comparable data between banks and credit unions is an important thing. Credit unions are owned by their members.

They should be doing right by their members. What do we know about overdraft fees? They often fall on the underserved. The very people who credit unions under the statute are supposed to be working to help people of modest means with their savings and credit needs. So, we made this decision. What we found is of the $444 billion-plus credit unions—I knew you were going to bring this, so I brought the number up here—43 charged no NSF fees. 23 charge no overdraft fees, and 10 of those charge no overdraft and NSF fees. I think those are, you know, some very interesting numbers. You see that certainly close to 400 are charging some type of fee. Those fees together were more than about $4 billion, if I remember correctly on the number. But the release of that information, here's the real kicker, Aaron. The credit union system makes up 10 Percent of the banking system.

We have 2.3 trillion dollars compared to the 23 trillion dollars that are in the banking system. But the financial health network had to do, recalibrated its study. And on recalibrating its study, it said that credit unions brought in 47% or so of the overdraft in NSF fees. After we made that information public, they admitted that they had underestimated the size. That's a huge problem for credit unions, who should be serving people of modest means. And it undermines their position that they are people helping people.

KLEIN: It is a massive problem as it relates your credit unions. You mentioned NSF fees 19 of the 20 largest financial institutions I think have eliminated that in the banking side and yet their data showed the single largest credit union made $25 per member and NSF fees. It made $50 in NSF and overdraft combined, right? That's about, you know just to give you a comparison Bank of America makes about $2 in overdraft and NSSF revenue and Navy Federal makes 50. That's a pretty big difference.

HARPER: And Aaron, for me, if you become over-reliant on fees, first of all, there's a concentration risk issue there for you. But second, you're getting lazy. What are credit unions supposed to be doing? They're supposed to making loans. Loans are hard things to make. It's easier to make a fee than it is to make a loan.

KLEIN: Well and beyond that I want to get to this policy this broader policy point because you mentioned the financial health network yeah right there was another study by the CFPB that estimated overdraft at 15 billion yeah and then there was this other study out there from Moebs who had a 30 billion dollar a year estimate And, you know, as somebody who wants to research this, well, that's a pretty big difference. It's a huge difference. And you want to use the accurate number, right? And I looked into the methodology between the two. Very hard to figure out Moeb's methodology because they're a private for-profit company and they have plenty of incentives to give a big number and maybe sell their services. I looked at the Bureau, and the Bureau's core assumption was that credit unions were over drafting similar to banks.

And they had very little data to support that assumption because they didn't have access to the data. I'll get into, I won't even ask you to go into how you share data between regulatory organizations, but, and I was like, that just, maybe, but I don't know. And then the state of California put out a requirement and the state at California data showed credit unions way more. And I'm thinking, wait a second, there's a gap. So, it turns out that policy makers at the consumer regulatory you were writing the overdraft reg. Had themselves underestimated the magnitude of the problem because they didn't have access to the right data and they made some assumptions that seemed reasonable. Why would you think credit unions who are nonprofits targeting people of modest means would be doing, in the case of the largest credit union versus one of the biggest banks, right? 25 times as much overdraft per their member. And their entire estimate of 15, right, on their own methodology is now closer to 20. Big difference in policy thing, and big difference in concentration, because it doesn't affect all institutions the same. And that's a huge regulatory question, right? If somebody snapped their fingers and overdraft went away, either from a consumer regulation or a technology, right. This could create huge problems in the viability of the institution, which translate into the insurance element.

HARPER: Correct.

KLEIN: For which a failure of a very large credit union relative to the size of the insurance fund could be an issue.

HARPER: It could very much be an issue. And certainly, one of the things we found is I released a research note back in January when I was still chairman. And that research note found that of the billion dollars plus credit unions, you roughly had 2 to 5 percent was where the norm was for total revenue received from overdraft and NSF fees for total income. But for some institutions, it as high as 18.5%.

KLEIN: More than three times.

HARPER: More than 3 times. There's another point that I kind of want to get to that I didn't raise earlier and that is in making this decision to hide the information from the public on overdraft fees, the chairman said we'll collect the information through the examination process and then we'll aggregate it and then we'll make it public at that point in time. So, we'll no longer know individual institutions one by one, but we'll get some aggregate sense. But that's going to be on a lagging basis, because you do an exam and it takes, you know, a year to get through your examination cycle. So, we're never going to have really up-to-current data on that. And my question is, is if that information was publicly available before... Can it really be shielded from the supervisory examination exemption?
How can you make a case under FOIA that it is? And so, I'm hoping that somebody will be asking those questions going forward.

KLEIN: Well, that's a very good set of criteria. I mean, the state of California is still requiring it. Yeah, it is. For state-chartered institutions, which then creates a regulatory thing. But like, again, what's the point of hiding all this? Now, I will tell you this --

HARPER: I'll tell you what the point of hiding all of this, I mean, you look at the California case. There's a credit union outside of San Diego collected $18 million in overdraft fees at that credit union. It primarily serves Marine troops, young recruits. It's at a military base. And it paid its CEO in excess of, I believe, I know it was more than 10. I believe it was close to 12 or 13 million dollars. So, an individual running a non-for-profit institution making 12 million dollars while the recruits are paying 18 million dollars, that's the example of a principal agent problem. The principal, you know, may be the member, but their agent is the people who run the credit union, and they're enriching themselves instead of helping the credit union and the members.

KLEIN: You just made me sick to my stomach.

HARPER: I'm sorry.

KLEIN: Thinking about that, and it makes me even more sad that the regulator who's supposed to be in charge in this is now working to shield them. What is this going to do? One of the reasons they went on overdraft were several of the large trade associations made hiding this data very important. They said putting out this information creates a reputational risk, right? It's like, oh, you know, yeah, maybe if you're making $18 million off of over drafting enlisted personnel and paying the CEO of Frontwave Credit Union $12 million, you're going to have a reputational risk. KPBS, the San Diego affiliate, did a story on this. Maybe you should have reputation. I thought banking was a reputation-based business.

These same trade groups for years have been pushing that the CFPB, the consumer regulator, should be a board. They have been talking about boards are better than single agency heads, bipartisan boards, bipartisan boards. Look, there's a theory behind that. As a regulatory scholar, there is a reasonable argument to be made that bipartisan boards have advantages to single agency head and single agency heads have advantages to bipartisan boards and two honest intellectuals can, in my opinion, legitimately disagree on what the right solution is there. What the wrong thing is, is favoring whatever is the political expedience based on who's in office right now. That's just an intellectual principled thing. These groups, I'm assuming, who've been saying a single agency head is a real problem, we need an independent board, they're rushing to your defense, right?

HARPER: No, they've not been rushing to our defense. Now, admittedly, some like Inclusive, which represents community development credit unions have taken a very strong stand that they are concerned the two-thirds of the board has been swept away and this is an unlawful action. But America's credit unions have basically said well we're gonna wait and see what happens. So, they're saying we need to have on one side a multi-member board at CFPB but now over here at the NCUA it's just okay that we can run it with one member because they're getting what they want.

KLEIN: And they'll be okay if that one member is you again or me again in a future Democratic administration?

HARPER: Somehow, I think that I doubt that necessarily. I'm also, just, Aaron, from my practical experience, I said this story at my first confirmation hearing and when I was confirmed for a partial term: My mom was a teacher union president, my dad was the superintendent of schools. And before they fell in love and got married, my mom's a Democrat, my dad's a Republican. They negotiated across the table from one another. And I learned bipartisanship early on in my life once they got married. I was the age of seven and I got to see how good policy making, good household financial decisions get made when you have more voices at the table and you can debate. And certainly, one thing I would say of the NCUA board, we over the last several years have been an extremely collegial body. In fact, three of the years in which I led the NCUA as chairman, I had two Republicans and one Democrat and we passed important reforms such as finally bringing up to speed the CAMELS rating system by adding the S. We stood alone from the regulators and didn't have it. We also put in place finally risk-based capital standards as well as an off-ramp for risk- based capital standards equivalent to the off- ramp that community banks have for themselves. We put in place important reforms with respect to information security and cybersecurity reforms. So those are boards of things that we worked on and were able to come to consensus and agree on. And perhaps most importantly, we, for me at least, is we got to an agreement to say that for the emergency capital investment program, credit unions could accept that money that was coming from Treasury, $2.2 billion dollars into the credit union system on a 30-year basis, not just a 15-year basis under our rules. Again, it shows that a multi-member, you know, board where even the chairman is in the minority can get to agreement and through consensus.

KLEIN: I wanna talk about your experience being a minority chairman, but before I do, I wanna get back to this point. There's one person there today. And that person, depending on the outcome of the lawsuit is gonna make some, have to make some choices. What does that mean for the, and we got this question online because you can hashtag #FutureofFINREG up there. You can submit questions on. They said, what does it mean if I'm a credit union right now? And I'm dealing with the NCUA single agency head, right? Alone on a board. Like, what does that mean legally or what does it mean if I'm a credit union, for the policies that are gonna be made while there's one member, not a quorum, how should the credit unions today watching this approach the reality of the situation they've been put in with a regulator which may or may not be legally constructed?

HARPER: So, first of all, I want to assure everybody that their money is safe at a federally insured credit union. That has not changed. And the board can – not the board, the agency can continue to do its essential functions, such as conducting examinations. Just yesterday, the agency placed into liquidation a credit union that had gotten into trouble. But if there are credit unions of a larger size, those would require board votes. And if there's a real question out there, if it requires a board vote, what can happen? And so there might be some institutions where it's more slowly to get resolved, which could compound a problem over time. In addition, rulemaking comes to a grinding halt because you really need a board to vote. Essential actions are not necessarily rulemaking. And then even more importantly for me, right now in this living moment, the agency is going through a downsizing process. I voted for that downsizing process at a closed board meeting. We’re going to be losing a significant number of staff, we're going to have to be reorganizing the agency. We're going to have fewer examiners. Fewer examiners mean less frequent exams. Less frequent exams means greater risk to the share insurance fund. We need to be taking a look at where the normal operating level is and perhaps setting it at a higher level, letting the interest build up as opposed to refunding that money to credit unions because there are these greater risks. Aaron, I kid you not when I say this, but there are nine credit unions that are CAMELS Code 4 and 5 that are above $500 million in assets.

KLEIN: Which is large for a credit union.

HARPER: Those are large for credit unions. There are another 69 credit unions that are CAMELS Code 3 that are about $500 million in assets, together that group is I want to say it's about $112 billion. These are the credit unions we need to spend more time at and look at closely. And we need the eyes there. And I want make sure that we put the right policies in the right places so that we can see it, which is one of the reasons why I'm seeking to get on the board and make sure that we do the right thing.

KLEIN: So just for the folks here who aren't deep in the weeds on this, CAMELS is like the grading system for how well a bank or credit union is structured. One or two, you're a good student, everything's awesome, right? Three –

HARPER: You got some material problems.

KLEIN: You know, yeah, come in for tutoring, come in for some extra work, right. Four or five is, four is like, you know, you could fail. And five is like buddy, we got to talk about an alternative.

HARPER: Five is you’re dead, you just don’t know it yet.

KLEIN: Right, you're in the walking dead. You know, and we can debate how these things are scored and whether there's great inflation. I put out an academic paper that said all CAMELS should be made public, just like when you walk into a restaurant, in some states you see a letter grade, right? And you walk in, you see C or D, do you wanna eat there? I don’t know.

HARPER: Aaron, I disagree with you on that. I don't think the CAMELS should be public, but do you know what I think should be public? Is a credit union’s and a bank's score on consumer financial protection. In the bank side of the world, banking regulators conduct a separate exam for consumer financial protection. We should know, consumers should know as to whether or not, am I going to an

A performing or a B performing restaurant? Because I've got to tell you, my favorite Vietnamese restaurants, once I saw it had been written up several times for roach infestation, I stopped going to it. And so, I think that the consumer score should be revealed. Unfortunately, on the credit union side, one of the things that we were working towards was creating separate consumer compliance exams with separate scores for credit unions. That has stopped dead in its tracks because two board members have been unlawfully fired.

KLEIN: Yeah, so there's a real set of problems going on in the credit union space that are gonna be structurally challenging to address without a lawful board. You talked about an experience where you were chairman and the other two were Republicans, which I think was what, the majority of the Biden administration?

HARPER: It was three out of the four years.

KLEIN: And this, and now you waited patiently as chairman. You lost, you talked about some votes, the three of you came to, but my recollection is you lost some votes. And now the shoe's on the other foot, two Democrats are going to be in for a while, the president can pick the chairman. So, when the president took you down as chairman, and that was totally within his means, this seems like a bit of an asymmetry here. That when Democrats are in charge and Republicans have the majority, hey, that's just the rules of the game, we'll wait our turn. And now, when the shoe's on the other foot, it starts to me to explain, why did they fire the NCUM? Why didn't they fire the CFTC, or why didn't the fire, you know, the FDIC? Why didn't they fire people at the Fed? The Fed are nonpartisan, right?

HARPER: We're a nonpartisan board, I mean, we may have our political makeup.

KLEIN: Well, you have a thing in law about how many people can be of one party. The Fed does not have that. And so... But people know, right? And there have been threats from Trump. So, it seems to me like, why did he fire the NCUA first? The answer seems to be, to me at least, there was a Democratic majority. And they didn't want to deal with losing votes.

HARPER: I also think, Aaron, I mean you've seen the two FTC Democrats were dismissed by the administration. That's directly where Humphrey's Executor falls from. We of course have some case law. There was a case back in the 1990s called Clinton v. Swan that was heard at the DC Circuit which imputed Humphrey's Executor in a way to the NCUA, also noted the legislative history that I spoke about earlier. I think they're chipping away so that they can get to the Federal Reserve Board. And if you get to Federal Reserve board and start removing individuals, that affects monetary policy and there are great risks to the economy. And the Fed was set aside as independent for good reason. So, I think they're using us as test cases.

KLEIN: So, you think I think that this is part of a broader strategy to eliminate, and then let's live in their world for a second. Let's live a world where whoever is in the White House. Can control all federal regulation. As you point out, it's to their benefit to say the system is fine even when they're problems because you don't want to own the problem.

HARPER: Well, you also, though, it's at greater risk for the industry that there are going to be huge swings between administrations on how rules are done. And it's important for credit unions and banks to have some form of stability and predictability. They don't need to be rebuilding systems every four years when a new administration comes in. Overall, that's problematic.

KLEIN: Let's talk about what the rules are in place. What were the rules that you saw in the credit union space that you were going to work on to fix?

HARPER: Well, certainly one item that was on our rulemaking agenda that I wanted to see fixed was executive pay. Currently, state-chartered credit unions, because they have to file I-990s, we do see and know what their executive pays are. I believe the rule is the top 20 people above 150,000 and what they're paid on these not-for-profits. Credit unions, however, do not have access to executive pay. Well, if a bank --

KLEIN: Federal credit unions.

HARPER: Federal credit unions do not share and do not report.

KLEIN: They're the only non-profits?

HARPER: Well, churches, churches too.

KLEIN: Brookings is a non-profit.

HARPER: Yeah, but Brookings needs to report. You file an I-990.

KLEIN: I'm not in the top 20. That's okay.

HARPER: Yeah, that's okay. I've certainly have never been in the top 20 myself.

KLEIN: But you know what all these regulators important to note that the political people are some of the lowest compensated staff because the career folks are on a different --

HARPER: Oh, I wouldn't, I'll go a step further in that, Aaron, not only am I lower compensated, but because I'm a reapployed annuitant, I was working for less than half of my salary because of my pension overall. So, I was doing it for...

KLEIN: For the mission?

HARPER: I was doing it for the mission, for the credit unions. My father started a credit union. His father started the credit union, my mother was a secret shopper at her credit union I've been a credit union member for 35 years. To me, the credit union system is incredibly important and powerful for bringing people of modest means up. And what I worry about is that there are some enriching themselves and that we need to have executive pay. Second rule that we were working on right now that's dead in its tracks: credit union, at least federal credit union board members, may not be compensated financially. They have to be volunteers. And, but they can get certain, like they can travel to conferences. One of the things we had the trades come to us and say is, we would like to see compensation for dependent care while a board member is serving on doing board duties. That makes a lot of sense. That rule is dead in its tracks. That's pretty much a common-sense rule to go forward. Uh... You know, it, why are we stopping these things? Why are we stopping these discussions on things? Also, too, you know, we had, you know certainly the normal operating level we announced that was going to be looked at this year to see where that where it was set. The normal operating level is the level of fund and reserves that you hold in the share insurance fund, the equivalent of the deposit insurance fund on the bank side. How much needs to be held in order to control for risk? Those are important policy questions and all of those are dead. In the tracks right now.

KLEIN: So, you gave a passionate conversation just now about why you care about the mission of credit unions. You know, here I am, lifelong Maryland, I can't get to your passion on credit unions, but the nearest I can come is my passion for Maryland. And, you know, I go to these stadiums and there's this, you know, credit union stadium here, credit union stadium there. The CIA's credit union bought the naming rights to the Washington football team I grew up a fan of, replacing a Fortune 50 company in FedEx with a tiny credit union that only has one branch in the whole state of Maryland. You know, and you got what we would call Pier 6 up in Baltimore, beautiful music venue. I highly recommend it. Again, credit union naming rights. Like what part of the mission of providing service to low income members does it serve to spend millions of dollars putting up advertising and getting luxury boxes at a stadium? Some of which, Maryland has some of the most beautiful stadiums. Not FedEx. Even my pride can't go that far. Like, what's going on with the mission of credit unions here? Some, not all, not most.

HARPER: No, I mean, and I think you have to make a huge distinction between the credit union that sponsors the softball team or the little league team. I think that those are perfectly permissible and they're ways to build their marketing. And they are marketing within the community. But what is the return on average assets? We don't call it return on investment in the credit union space. We would call it the return on average assets for a large marketing fee. Who gets those box seats? I bet you they're typically not the members. I bet they are typically more the executives of the company and

their families. I've also heard stories about where sometimes mortgage brokers are getting these seats because they're trying to get mortgage broker business.
Well, that could be a RESPA violation. One of the things I had done recently was to ask staff to look at it and what were our procedures and protocols for looking at individual naming rights stadiums for the places that have been named and whether there were RESPA violations happening.

KLEIN: It's a real estate settlement practices act, which basically means there's a bunch of stuff going on that you don't see when you get your mortgage, and it's making sure that there're not kickbacks between that chain of people that will steer you into higher cost mortgage. And you think that's an individual problem, it is. But go back to 2000, the oughts, into the subprime. That is, it can be a systemic problem because you're getting put into a higher rate mortgage that then somebody's making cash off on the side, in exchange I'm kicking you back some tickets.

HARPER: Yep, yeah, absolutely. I also think these naming rights are hurting the credit union movement overall, reputation-wise. I have heard from offices on Capitol Hill. That are saying, what does this have to do with the credit union mission? Why are they doing this? Why aren't they paying higher interest rates on savings? Why aren't they paying lower or charging lower rates on mortgages? That is what credit unions should be doing overall. So, there's an identity crisis out there with credit unions. Big banks like to name stadiums. Do credit unions want to be banks? Um, and I, I,

KLEIN: You want to be a bank, be a bank. Nothing wrong with that.

HARPER: Yeah, right. But, uh, do you, you know, if you're going to be a bank, there should be other changes that happen along the way. Uh, there also needs to be greater regulation, oversight, practices, and watchfulness.

KLEIN: Let me open this up to folks in the audience. We could go on and on and have more comments. First off, ground rule, name who you are and please ask a question.

AUDIENCE MEMBER: Mark Schroeder, a retired federal employee. I'm also the treasurer of a credit union that I don't wish to name at present. It's a fairly small credit union, and it's got a CAMEL rating of four. Tell me what your departure means for us.

HARPER: So, what my departure means for you is that I am deeply concerned that we continue to have the close supervision in institutions that are of lower CAMELS ratings. Um uh need to have more closely supervised and they're put into our divisions as special actions we're seeing a large number of people retiring I'd want to make sure that as the agency reorganizes we make sure there are sufficient resources to turn the CAMELS code four into a three hopefully back into a two and we've certainly seen that happen plenty of times. That's my worry

KLEIN: Ryan. And then we'll get to the man in the back, last row.

AUDIENCE MEMBER: Ryan Tracy, a reporter with Capital Account, I'll try two for one, if I may. One, you were just talking about the rules that you were hoping to see. What do you think the new chairman is going to do? What do see as potentially on his agenda besides the reorg? And then also, can you just clarify, is your legal position that you are still employed by NCUA? Because I heard one of the FTC commissioners who was dismissed recently speak, and he talking about how he can't get another job right now because he believes he's still an FTC commissioner.

HARPER: My position is that I was unlawfully removed from the board and our suit asks for reinstatement and I am not doing anything related to off-boarding at the agency until this legal proceeding is resolved. That's the second part of your question. The thing I hate about two-part, double-barrel questions is I can never remember the first part. So, can you give me the first one?

AUDIENCE MEMBER: What do you think the new chairman's going to do besides --

HARPER: That's a very good question. One of the things we were in the midst of considering when I was shut off from the system was the semi-annual agenda. And we were having negotiations between the offices. I can't tell you what's going to happen because that vote was open at the time we were dismissed purportedly. Uh, and so he will have his own set of agenda items. I know that he's looking at a more streamlined, certainly, agenda.

The second thing, though, and I think this is an incredibly important point, Aaron. There is being exerted a greater amount of pressure from the administration that we are going to have to go through the Office of Management, Budgets, Office of Information and Regulatory Affairs for all of our rulemakings, and that there will be a sharing in and amongst the agencies of these rulemakins that OIRA can make decisions about whether things cost too much and require additional cost-benefit analysis than the agency was doing, that is really interfering with the independence of the agency. And because of that, I've seen many fewer rules coming out of the agency overall, and I see it undermining the independence of the NCUA and other financial regulatory agencies like the FDIC, like the OCC, because of this interference in the rulemaking process. Certainly, politics, as Aaron was saying, could make decisions about what rules you to put in place on risk-based capital, and if you're trying to hide a problem, you might not want to do those rules on risk-based capital. Yeah.

KLEIN: No, it strikes me as hysterical that cost-benefit analysis has constantly said, oh, before you do a new reg, you have to do cost-profit. Well, the Treasury's FinCEN, the Financial Crimes Enforcement Network, did a temporary rule to drop the dollar amount that triggers what's called the currency transaction report from $10,000 to $200 in 34 counties in America, which are basically Southern California in El Paso. Now the cost to do one of these FinCEN reports is quantifiable. In fact, FinCEN has an estimate, the Bank Policy Institute has an estimate that's about 10x the size of the official FinCEN. Well, 200 bucks. That's catching everybody who's going to send their mom a Mother's Day present. Mother’s Day is coming up, by the way, public service announcement.

HARPER: You're a very good son. I don't give $200 to my mother.

KLEIN: When you look at remittances, which is an area I looked at as part of Dodd-Frank intently, the number one holiday of the year where people send money back to their family overseas is Christmas. Number two is Mother's Day. The number two remittance day of the year, Mother’s Day. So, they're going to require every non-financial institution, Western Union, money, every person who sends their mom a Mother's Day present is going to get a currency transaction report paid for by the money transmitter under the statement that this has to do with fentanyl and the crisis of fentanyl at the border. Right, right, my personal speculation. That this has to do with providing information to ICE for deportations, personal speculation. What I'm here to say is, what's the cost-benefit of this?

What is the cost of all this extra reporting and quantify the benefit, because Mr. Cost-Benefit, White House OIRA, Treasury is not independent, it's part of the Treasury Department, FinCEN should be reporting this to OIRA. I'd like to see the cost benefit analysis to justify this rule, which shockingly I don't think there is any. Prove me wrong. Right? But when it comes time to do something for consumer protection, to do something about executive compensation, overdraft reporting, oh, we have to go through cost-benefit, we've got to go through cost benefit. It's kind of interesting to me to know when cost- benefit is. Because, again, if you're an intellectual adherent to it, it doesn't matter what the... Prove me the cost- benefit. It should be... It's a tool. Right? Unfortunately, I think it's a tool promulgated for one set of reasons and not for another, and prove me wrong and release the cost benefit of this $200 FINCEN requirement because I'd love to see it. Sir, you have a question in the back.

AUDIENCE MEMBER: Leon Peace, I'm a long-time credit union member, and this is a single-barrel question. In the current political climate, what do you think of or see as the prospects for implementing the taxation of credit unions? It's been a long-time hot issue. The banks, especially community banks, want to just kill them out, right? What do you think that might?

HARPER: Yeah. So, first of all, let me attack that from a safety and soundness side. If credit unions are taxed, I mean, the primary way credit unions build their capital is through retained earnings. They will build retained earnings at a slower rate, and there are potential risks to safety and soundness, because unlike banks, which can go to the equities markets or can go to the debt markets and raise funds, credit unions are. Limited by law from where. So, I see a slowing approach. So that concerns me. And it's a matter for Congress to decide.

Speaking of Congress deciding, I am seeing a weakening in the position on the Hill for credit union taxation. You have seen, for example, it was included in the list of options for what might be ways in which they pay for the tax bill going forward, that they impose some form of taxation. You just saw a law passed in Washington state, which has both a Democratic House and a Democratic Senate that taxes transactions where credit unions inquire banks. Happen. And so, you're seeing start of some rumblings of this don't tax my credit union starting to break away. You're also seeing credit unions that have by recent press reports that have engaged in racial redlining, breaking down some support on the democratic side for the credit unions and not taxing them certainly and certainly wanting to apply the Community Reinvestment Act. On them. You're seeing credit unions at a greater risk, and the fact that America's Credit Unions is not coming out loudly and speaking in favor of Tanya and I being restored onto the NCUA board is also weakening the ACU's position amongst Democrats. So, I see that credit unions are in the most perilous place that they've been on the taxation issue in the 25, 6 years that I've worked on credit union policy issues.

KLEIN: So, yeah, I mean, let's get to that, right, because, like, there's a small credit union in Maryland, where I think actually the former FDIC chair…a small community bank in Maryland. Small community bank of Maryland, the a former FDIC chair, publicly stated was her bank. Massachusetts credit union bought that out of state. Michigan credit unions are buying Florida banks on the other side of the state from where their community retires. When a credit union, when two banks merge, they have to go through Community Reinvestment Act process. When a credit union buys a bank, it doesn't. And then in perpetuity, it doesn' go through the community reinvestment. Correct. Right, well, you know, what's going on with all these credit union bank mergers?

HARPER: Well, so certainly you've seen a large number, and I used to say that it was a small number, but I can no longer deny that they are happening with increasing transactions out there. It is certainly permissible, but you are correct that a credit—a bank— customer that becomes a credit union member is no longer receiving CRA oversight, because Congress has not decided. Now, some states actually in recent years, Aaron, have started to apply. Illinois, New York, have starting to apply, and there were some states that were even further ahead and have had CRA in place for a number of years before that. But also, too, with the acquisition of banks by credit unions, my number one thing is, there was a consumer compliance exam going on for the bank before.There's no comprehensive consumer compliance exam and separate score being done after. Why should the customer be at less protection?

And then there's one more highly important thing. NCUA, unlike the other federal banking agencies, does not have the vendor authority. And we don't have the ability to go in and look at the vendors of credit unions. That puts our system and financial system at greater risk, particularly as we're seeing greater cybersecurity fraud happen out there. And I have said that we should have vendor authority, and you know, the interesting thing is, bankers who become credit union executives. All say together in uniform voice, yes, we want it. It helps us with our due diligence because we can get a summary exam report and understand where the problems may be with this vendor before we enter into a contract or as we are managing the contract overall. Should we be putting our system at greater risk with bank assets coming over to the credit union side? I'm deeply concerned about that.

KLEIN: All right, I see a question there and then up here.

AUDIENCE MEMBER: Hi, my name is Chip Filson.

HARPER: Yup, good to see you, Chip.

AUDIENCE MEMBER: I have a three-part question. The last one's very brief. The first has to do, you were at the agency while DOGE went into, did whatever they do in the agency. What did you see them doing? What did they do? What role did they play in the downsizing recommendations? And related to that, when the firing occurred, Did the legal apparatus at NCUA review the situation and give you a brief or give you support, et cetera. So, DOGE and the legal departments.

HARPER: OK, And you said you had a third part?

AUDIENCE MEMBER: I've got a second part, but that.

HARPER: OK, so that's one part. Okay, so the first part is on DOGE. DOGE came in the week before we received our emails. Neither Tanya nor I met with them. They primarily met with career staff. My understanding is that the chairman only spent a few minutes greeting them at the agency. So, I did not have any interactions with it. Two, with respect to the downsizing efforts. The NCAA board was already underway and, in fact, had actually approved a plan when DOGE came in and was in the process of implementing that downsizing effort. And then the third thing in terms of what legal review was done by the agency, I'm not aware of anything. I have not received any legal counsel from the agency since I've been cut off electronically from the agency. So, I've not seen anything there.

KLEIN: I'm gonna ask you Chip to pick your favorite of your last two because I want to make sure that one other person gets to ask.

AUDIENCE MEMBER: One of the major changes in credit union structure has been the merger of large long-serving successful credit unions and it's getting more dramatic. We had the 10 billion plus DCU and the tech credit union in California, 17 billion and subsequently there's been several more multi-billion-dollar mergers. And the agency has not commented one way or another on this, even when there is a great deal of self-serving coming out. For example, a classic case was where the chairman and CEO of the merged credit union took $12 million of member equity to set up their own private company right from the credit union. And this self-dealing continues to go on and particularly where It appears that... This is part of the succession planning where a person in one case was interviewed for the job and then she apparently proposed that she could bring her old credit union, the new one together. Why hasn't the agency taken a stand on these issues and addressed them?

HARPER: So, Chip, I agree with you. This is of great concern. You know, how big of economies of scale do you really need? One of the most interesting statistics is if you look at a couple of years ago at the call report data is that minority depository institutions averaged less than $200 million in size. I think it was about $182 million in size, yet there were turn on average assets. Was just as strong as billion-dollar-plus institutions, which to me says if you have a mission that is focused highly and you're serving a group well, you don't need these large economies of scale. Second of all, my old boss, Paul Kanjorski, complained about this all the time. When we saw credit, there was that, remember, Chip, back in the late 90s and early 2000s, when we saw credit unions converting from credit unions into a mutual savings bank and then a few years later converting into a stock held institution and the golden parachutes that were being paid out to the people. That was the members' money that was being taken. The members that had been built up over intergenerations was being taken away from them and giving to a few insiders. If I were still on the board, we had a plan to do a look at mergers and we would be looking at these sorts of things, and it's certainly something that I would want to go back and revive once the courts reinstate me onto the board.

KLEIN: Well, we could stay here and keep going through a bunch of questions, but I think we unfortunately are at time. I want to join me in thanking Mr. Harper, not just for his time here today, but for his service and for his passion on this issue.