

Will Taxation Lead to a Credit Union Charter Trap?

Taxation fears are once again permeating the thoughts of credit union leaders.

For example, NAFCU President/CEO Fred Becker told CU Times that, if credit unions were to be taxed, "they couldn't continue to exist. They have no means to raise capital and the corporate tax rate is arduous; and, taxing revenue that has been put aside as capital raises safety and soundness concerns."

In the same article, former NCUA Chairman Dennis Dollar said taxation will cause a "wholesale abandonment of the credit union charter" because the bank charter will be "considerably more appealing."

However, if taxation is inevitable, you can bet the NCUA and CU trades will be fighting to prevent a "wholesale abandonment of the credit union charter." There's a mountain of evidence since 2004 of a conspiracy to slow conversions. The self-interest of the regulator and the trades is manifold and overwhelmingly transparent.

Hence, as part of a "taxation compromise" with legislators, charter choice could be lost or made too costly to consider. The NCUA and credit union trades will rationalize the deal by boasting that "the consumer was rescued" and NCUSIF "devastation" prevented.

The American Bankers Association was quoted as saying it will drop its objections to alternative capital and business lending expansion, seemingly a victorious "compromise" for credit unions, in exchange for taxation. But once you are taxed, ABA has what it wants; why would it need to defend your right to convert? Meanwhile, ideological critics, empowered by NCUA's inscrutable regulations, will argue that, with the new powers obtained by the "taxation compromise," any future conversions can only be motivated by greed.

However, alternative capital structures for credit unions are untested; the jury is still out regarding NCUA's ability to properly supervise business lending; the risks related to the interdependency of the NCUSIF remain as high as the assessments; and poor consumer awareness persists; all combining to hamper the competitiveness of progressive credit unions. It could take a lifetime to work through these and other charter handicaps.

With preservation of a reasonable path to a bank charter, as mandated by HR-1151, even those who want to remain credit unions will benefit from charter choice. Obviously, if the entire industry is trapped, legacy advocates will be less pressured to improve things. Despite a huge investment and a lot of drum-beating, charter modernization for credit unions has been elusive. The same half-dozen reasons to convert exist today as did 12 years ago, and now these problems are being magnified by the high cost of NCUA assessments.

Recently, a new wave of credit unions has invested a great deal of time and money studying charter conversions. The education is helping to eliminate the fear and misinformation about what is probably the greatest opportunity for credit unions since share draft accounts. For many credit unions, it is now

clear the bank charter is considerably more appealing. Despite any new powers which may be gained by the industry, the bank charter option will be still attractive after taxation.

If it's worth spending money to study the conversion option, it's worth making sure the option is there when you need it, instead of allowing it to be regulated out of existence by NCUA. Otherwise, once taxation hits, credit unions may be trapped forever in a slow growth, systemically impaired charter. It will be too late to escape.

So, who will argue to protect the conversion option for credit unions that want to consider it? Not the credit union trade associations; certainly not the NCUA; and, not even the ABA. There's only one group – a single-issue lobbying organization – standing up for your legal rights.

Formed in 2004, after NCUA started its post HR-1151 illegal assault on conversions, the Coalition for Credit Union Charter Options (CCUCO) (www.ccuco.org), an education and advocacy group, has been a clarion voice. It represents the interests of all credit unions that want to preserve charter choice under reasonable rules and at a reasonable cost.

CCUCO members recognized years ago that the national and state trade associations face irreconcilable conflicts attempting simultaneously to represent the needs of large and small credit unions, as well as credit union management teams who have divergent ideologies. Charter conversion is not a viable option for everyone. But by supporting targeted lobbying efforts, those who could benefit from it can diminish the risk of being locked into regulatory or legislative directives with long-term adverse consequences.

CCUCO is the only party fighting to preserve charter choice. But it is no longer alone as a credit union lobby group. Nationwide, credit unions are now hiring their own lobbyists. For example, a controversy-stained credit union group from NC spent \$600,000 last year on lobbyists – \$1 million in 2009. Boeing CU is leading a group which paid \$210,000 to lobby presumably for alternative capital, and Pentagon FCU dropped \$260,000 on a big name firm. Also, Callahan's Chip Filson is busy trying to separate NCUA from the NCUSIF; he also wants credit unions to have the option to be FDIC insured.

Whatever your credit union's short-term business imperatives, don't end up trapped in the long run. Investing in the CCUCO and preserving the right convert makes good business sense.

Alan D. Theriault is President of CU Financial Services, a nationwide advisory firm helping credit unions determine the feasibility of a conversion to a mutual savings bank. He can be reached at 800-649-2741 or atheriault@cufinancial.com