CU Financial Services

Strategic Planning and Implementation Services for Progressive Credit Unions

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November 26, 2003

National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Att: Becky Baker, Secretary to the Board
Re: Proposed Rule with request for Comments Regarding Conversion of Insured Credit Unions to Mutual Savings Banks; 68 Fed. Reg. 56, 509 (October 1, 2003)

Ladies and Gentlemen:

CU Financial Services is a strategic planning firm with experience helping credit unions investigate the merits of the credit union community charter, the mutual bank charter, the stock bank charter, and the mutual holding company charter. We also work with credit unions to expand business lending programs. We help credit unions grow and realize their full potential. We have had a hand in the majority of the two dozen plus credit union conversions to mutual savings banks and the HR-1151 US Senate amendment that ultimately reversed 1995 NCUA rulemaking that was widely viewed as a self-serving attempt to stop credit union conversions to the bank charter.

The proposed rule is another such effort to stop conversions. The rule requires actions that result in an illegal attempt to influence a no vote and make conversion more difficult than Congress intended. Congress, as a matter of public policy, authorized conversion of a credit union to a bank. Considering and undertaking such a conversion is perfectly legal and the NCUA should not be in the business of finding loopholes to complicate, make more difficult, more costly, or which could stop conversions. The Senate Banking committee wanted the process to be simple - similar to rules for banks going from a state charter to a federal charter, or a national charter. NCUA was stripped of its conversion approval authority. The message was loud and clear - converting to a bank is okay for credit unions and NCUA was ordered to facilitate the move, not hamper it.

Statistics

Only 29 of the 9,000 plus credit unions elected the option to convert from a credit union charter. From the list, eight merged with other mutually owned institutions and members are benefiting from a longer list of services and are a part of a stronger and more competitive corporate family. Six have elected to access the corporate flexibility of a mutual holding company (MHC) structure allowing members to benefit from expanded revenue sources and participate in the current credit union and bank consolidation wave. *(The*

MHC structure involves reorganizing the mutual bank into a stock bank, however, the ownership of the stock bank remains under the control of a non-stock holding company which depositors control.) Members of seven voted to convert to a full stock operation; three of these were institutions under $100 million in assets, and all were located in highly competitive metropolitan areas. *(The capital raised in the full stock conversion allows these institutions to better address the highly competitive marketplace which has resulted, in part, by the elimination of credit union overlap protection and NCUA's & states' approval of huge credit union community charters.)*

Conversion Disclosure

The executives of converting credit unions recognize that careful attention to informing the membership is a fundamental part of the conversion process. The conversion disclosures were thoughtful and comprehensive. Striking a balance between producing a reader friendly brochure and a 100 page document that will go into the trash is a challenge, but we are doing it. The disclosure should be broad enough so new strategies could later be explored and executed; after all one of the reasons for leaving the credit union charter is to get rid of the handcuffs, not put on a new set. **The proposed rule demands that the disclosure predicts and commits to an uncertain future. The demand is ridiculous and unreasonable.**

Contrary to a few claims, I believe converting credit unions have done an excellent job of addressing the key issues. Given that over 500,000 disclosure statements have been circulated to members of converting credit unions, the sincere critics are few. However, I've observed that some critics have private agendas and include employees of credit unions who must now compete with a more aggressive former credit union, disgruntled former employees, jilted job applicants, denied loan applicants, CU trade association employees, and consumer activists looking for a cause. For example, during a recent credit union conference, after boldly proclaiming the need for more conversion disclosure, the critic, a credit union CEO, admitted he had never read a disclosure. Thus, the agenda is not always transparent. Frankly, writing a disclosure that would keep everyone happy is probably impossible, definitely unnecessary, and more importantly not required by federal law. Finally, NCUA has reviewed, commented on, and approved all the disclosures statements, so a mechanism is in place for handling issues on a case by case basis.

Full Disclosure and Transparency

The proposed rule is designed to generate the presumption that the conversion is motivated by a desire for more management and director benefits, but says it is designed to achieve full disclosure and transparency, a new concept for credit union management and directors, especially on the subject of compensation and benefits. **The proposed rule may generate some unintended consequences for credit unions that want to remain credit unions.** Consumer and taxation activists would love to know the wages and benefits of credit union managers and directors, so you can expect this proposal to open the door to new pressures to expand the scope of transparency to all credit unions. Several years ago a Utah house bill proposed such a transparency requirement. A round of golf at $250.00, Ritz Carleton accommodations, first class travel reimbursement, travel reimbursement for a "significant other" or family member, director health insurance reimbursement, and rotating board member positions so each director gets a shot at a the single FCU paid position may be reasonable and necessary "compensation", but some politicians and consumer activists may

take exception, especially since the story line is that credit union directors are volunteers and management teams are underpaid. **Like your preacher says: when you point one finger, four are pointed back at you!**

Assault on True Cooperative Principles

The proposed rule and parallel attempts to get federal and state legislation designed to stop conversions represents a blatant attack on the rights of a credit union cooperative to determine its own destiny. Cooperative participation in principle and practice is voluntary. As you know, the vast majority of the credit union members choose not to participate in governance activities or even use the available services. In fact tens of millions of members are carried on the books of credit unions because of the "once a member - always a member" legal interpretation and for feigning political clout. These "members" are often the one time users of a single credit union service, and have contributed in only a minor way to the accumulation of capital - more like a retail store customer than an engaged cooperative member. Members who fully patronize the institution, and care enough to vote, benefit the most from a conversion and generally vote both in favor of conversion, and if applicable, the stock issuance, which requires another vote and a Securities and Exchange Commission approved prospectus. **These faithful participating members should not be penalized by costly and onerous conversion regulations or legislation, which in effect supports the status quo and puts power in the hands of non-participants. This is the impact of the proposed rule and voting quorums.**

For a simple illustration, consider that my wife is a member of a local food cooperative. Members voluntarily meet on order days and to unpack the truck on delivery days. These members can take advantage of order day specials and delivery day bargains. They also can invest and profit from bulk orders and other cooperative initiatives. All members, if they elect, can profit equally from these opportunities. Not a bad deal. Members who fail to participate whether because of schedule conflicts or indifference live with their decisions and may even be removed; why waste the communication effort, like the stamp or phone call. If they refuse to put in the effort or don't have the time, or can't afford to participate, its their choice and / or problem. Perhaps another group is serving them better - or they choose to shop at the supermarket. The group of faithful members should not be forced to reach into their pockets to incur unnecessary costs or to subsidize others whether members or non members; and the trucking company should not be able to profit by having tools to rally non-participants to block a change in the delivery day or even block reorganization into a stock company.

Cooperatives are organizations designed to benefit those individuals that participate and are involved in the capital accumulation. We should oppose laws and policies that in effect turn these organizations into socialistic or charitable organizations. **The subject disclosure proposal and other NCUA efforts have the impact of providing non-participants the tools to block the organizational evolution, and are in direct conflict with federal law and the American Way.** Costly and onerous disclosure and voting requirements, in the end, could reward only the non-participants and the support organizations which become irrelevant after conversion.

Although credit union trade associations and the NCUA may have been involved in the organization of credit unions, they should not be allocated loopholes or legal mechanisms which allow them to interfere with later democratic initiatives. Yet, a few credit union trade organizations publicly vow to do whatever it takes to block credit union conversions, including direct and indirect contact with the membership. Others secretly plan to work behind the scenes *(some without the knowledge of their dues paying members)* to influence members, regulators, regulation, and / or legislation. The conflict is obvious, wrong, and should be prohibited, even punished.

Conclusion

Congress recognized that HR-1151 put handcuffs on credit unions and provided relief by making it legal and easy to convert to a bank. Thus, **the Congressional solution for lack of capital options, loan limits, or other noncompetitive credit union limitations is not new legislation, it's conversion to a bank charter.**

Higher capital requirements than banks, PCA, and the inability to access the capital markets are causing competitive problems for progressive credit unions. For most, stopping growth is not a sound strategy. In addition, investment portfolios and loan concentrations perfectly acceptable for banks are being criticized or are illegal for credit unions. Community minded credit unions are finding that many consumers, business owners, non-profits, and municipalities lack confidence in, misunderstand, or are prohibited from banking at a credit union. Limitations on mergers, limitations on corporate structure innovations, and yes - director compensation prohibitions can have negative ramifications for dynamic institutions.

Throughout the credit union system, leaders are daily acknowledging that systemic problems are present; executives that move to a more supportive charter are doing something about it. They should be applauded, not ridiculed, or subjected to intimidation and false presumptions. Their solution is not to give up and find a new job but rather to find a charter that supports the survival of the institution. The presumptions in the proposed regulation are false, self-serving, and an insult to sincere hard working executives and directors trying to do the best thing for their members, institution, and community. The proposal should be withdrawn.

Sincerely,

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