Conversion of Credit Union Charter to Mutual Savings Bank Charter: Current Legal Process and Congressional Response

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Summary

There are several statutory requirements imposed by the Credit Union Membership Access Act (CUMAA) for converting a federal credit union to a mutual savings bank. In addition, the National Credit Union Administration (NCUA), the federal agency that charters and supervises federal credit unions, has issued regulations requiring significant disclosures by a federal credit union attempting to convert its charter to a mutual savings bank. Some of these disclosures are considered by critics to be speculative in nature, such as whether the directors of the converted institution intend later to convert to a stock-issuing entity, thereby possibly enriching themselves. Others believe that this kind of information is at the heart of the conversion process and should be disclosed. H.R. 3206, 109th Congress, was introduced to limit the kinds of disclosures required, in particular disclosures of a speculative nature. On May 11, 2006, the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit held hearings on the bill. On December 14, 2006, the NCUA approved final rules governing conversions of credit unions to mutual savings banks or mutual savings associations.

This report will be updated as needed.

Section 202 of the Credit Union Membership Access Act (CUMAA)[1] amended the provision of the Federal Credit Union Act[2] concerning conversion[3] of insured federal credit unions[4] to mutual savings banks.[5] This 1998 amendment added subsection (b)(2) to 12 U.S.C. section 1785 to set out the requirements for converting an insured credit union to a mutual savings bank.

These requirements are several. An insured credit union may convert to a mutual savings bank or savings association, if the savings association is in mutual form, without the prior approval of the National Credit Union Administration Board (Board) so long as it meets the requirements and procedures governing banks and savings associations.[6] The National Credit Union Administration (NCUA) is the federal agency that charters and supervises federal credit unions and insures savings in federal and most state-chartered credit unions. A proposal for conversion must be approved by a majority of the directors of the insured credit union and by a majority of the members of the insured credit union who vote on the proposal.[7] An insured credit union proposing to convert to a mutual savings bank or savings association must submit notice of its intent to convert to each of its eligible voting members 90, 60, and 30 days before the date of the member vote on the conversion.[8] Upon completion of the conversion, the credit union is no longer subject to the provisions of the Federal Credit Union Act.[9]

The Board may require an insured credit union proposing to convert to a mutual savings bank to submit a notice to the Board of its intent to convert during the 90-day period before the date of the completion of the conversion.[10]

Directors and senior management officials of an insured credit union are prohibited from receiving any economic benefit in connection with the conversion except director fees and compensation and other benefits in the ordinary course of business.[11]

NCUA is required to issue rules applicable to charter conversions which are consistent with rules issued by other financial regulators. These rules shall be no more or less restrictive than applicable to charter conversions by other financial institutions.[12] NCUA issued rules to comply with this requirement.[13]

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[1] P.L. 105-219, 112 Stat. 913 (1998).

[2] 12 U.S.C. §§ 1751 *et seq*.

[3] 12 U.S.C. § 1785(b).

[4] A federal credit union is defined as "a cooperative association organized in accordance with the provisions of this chapter [chapter 14 of title 12 of the United States Code] for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes." 12 U.S.C. § 1752(1).

[5] A mutual savings bank is defined as "a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers." 12 U.S.C. § 1813(f).

[6] 12 U.S.C. § 1785(b)(2)(A).

[7] 12 U.S.C. § 1785(b)(2)(B).

[8] 12 U.S.C. § 1785(b)(2)(C).

[9] 12 U.S.C. § 1785(b)(2)(E).

[10] 12 U.S.C. § 1785(b)(2)(D).

[11] 12 U.S.C. § 1785(b)(2)(F).

[12] 12 U.S.C. § 1785(b)(2)(G)(i).

[13] 63 Fed Reg. 65,532 (Nov. 27, 1998); 64 Fed. Reg. 28,733 (May 27, 1999).

NCUA later stated that it became concerned that "many credit union members do not appreciate the effect that a conversion may have on their ownership interests in the credit union and voting power in the MSB" [mutual savings bank].[14] In February 2004 NCUA amended its rule on credit union conversions, 12 C.F.R. Part 708a, "to require a converting credit union to disclose additional information to its members to better educate them regarding the conversion."[15] Among the requirements of the amended rule are the following: 1. The vote on the conversion proposal must be by secret ballot and conducted by an independent entity. 2. A converting credit union must enclose with each written communication sent to its members concerning the conversion disclosures of ownership and control, expenses and their effect on rates and services, possibility of subsequent conversion to a stock institution (which may allow executives of the institution to profit by obtaining stock in excess of that available to the institution's members), and costs of the conversion. 3. A federally-insured state chartered credit union must include in its notice to NCUA a statement as to whether the state law under which it is chartered allows it to convert to a mutual savings bank. It will remain subject to any state law requirements more stringent than the regulation, including any internal governance requirements. 4. A converting credit union must be careful to make certain that its member list is accurate and complete. 5. A converting credit union must be careful to conduct its special meeting concerning conversion in a manner which will accommodate all members wishing to attend.

There is some concern that the NCUA may have overreached its authority in Regulation 708a when it required such disclosures as an explanation of any foreseeable stock related benefits associated with a subsequent conversion to a stock institution. Some believe that this kind of disclosure, including the disclosing of future plans for selling stock to the public, is an issue for the banking regulators, rather than NCUA, to oversee. Others believe that the possible later sale of the converted credit union as a stock-issuing organization is the major issue in converting a credit union to a mutual savings bank. They argue that, if the directors of the converting credit union intend that the organization later convert to a stock-issuing entity, thereby perhaps enriching these directors, the directors should disclose this intention.[16]

H.R. 3206, 109th Congress, was introduced July 12, 2005, and referred to the Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit. On May 11, 2006, the Subcommittee held hearings on the bill. The bill would have amended the Federal Credit Union Act concerning conversion of a credit union charter to a mutual savings bank charter. It would have limited the kinds of disclosures required to be made by a converting credit union. The bill would have prohibited a converting credit union from being required to provide any information or statements that are speculative concerning future operations, governance, or form of organization of the financial institution resulting from the conversion or which may occur after completion of the conversion; are inaccurate concerning a proposed conversion of the converting credit union or the application for a mutual savings bank or savings association charter filed in connection with the conversion; conflict with regulations of other financial regulators related to the subsequent conversion of the resulting institution from mutual to stock form; distort the impact of conversion on the members of the credit union; or are attributable to the Board or state the Board's position on conversions.

[14] 70 Fed. Reg. 4005 (Jan. 28, 2005).

[15] *Id.*

[16] CREDIT UNION JOURNAL, vol. 9, no. 38, p. 1 (Sept. 26, 2005).

The bill would also have required that the vote on the conversion would be by secret ballot and that the converting credit union would appoint an independent inspector of elections to receive and tally votes cast on the conversion proposal. Unless there were fraud or reckless disregard for fairness during the voting process affecting the outcome of the vote, the Board would have been prohibited from having further review or approval authority over the conversion process following the submission and review of the certification of the results of the membership vote.

On December 14, 2006, the National Credit Union Administration approved final rules governing conversions of credit unions to mutual savings banks or mutual savings associations, despite claims by some commentators that NCUA did not have the authority to provide oversight of those transactions.[17] The rules cover many issues, including notice to members and disclosures.

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[17] DAILY REPORT FOR EXECUTIVES (BNA), A-20 (Dec. 15, 2006).