



**Submitted Statement
of
Camden R. Fine
President and CEO
Independent Community Bankers of America**

**On behalf of
Independent Community Bankers of America
Washington, DC**

“H.R. 3206, Credit Union Charter Choice Act”

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**United States House of Representatives
Committee on Financial Services, Subcommittee on
Financial Institutions and Consumer Credit**

The Independent Community Bankers of America¹ is pleased to submit this statement regarding H.R. 3206, the Credit Union Charter Choice Act. We commend Rep. Patrick McHenry for taking a leadership role on this issue and appreciate Chairman Bachus's willingness to hold this hearing.

Summary

ICBA strongly supports the right of a financial institution to choose the type of type of charter under which it operates. Recent actions by the National Credit Union Administration are nothing more than attempts to obstruct the right of a credit union to convert to a mutual savings bank. Credit unions should be free to convert and not be intimidated by an agency that seems to be intent on placing obstacles in front of institutions that seek to convert their charters.

The McHenry bill seeks to prevent NCUA from improperly blocking credit union conversions by limiting the agency's ability to require biased information to be included in a disclosure to credit union members. It would list the information that would be included, such as the reasons the credit union's board are considering conversion and a "brief statement of the material effects of the conversion..." The notice could not be "speculative with respect to the future operations, governance, or form of organization ... that will result from the conversion..."² Thus; the bill addresses NCUA actions taken during the first half of last year. However, ICBA believes that, given NCUA actions taken since then, it may be necessary to further restrict the agency's role in the conversion process.

Credit Unions Should be Able to Convert

Financial institutions' ability to choose their charter is one of the key strengths of our nation's diverse economy. Unlike other countries, we do not have a one-size-fits-all financial system. Our depository institutions have the ability to choose a national or state charter, as well as the ability to choose the type of charter. Each of these charters has their advantages and limitations, though all must meet safety and soundness and consumer protection standards.

For years, the credit union industry has been attempting to retain its advantages – its tax exemption and its exemption from the Community Reinvestment Act –

¹ The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace. For more information, visit ICBA's website at www.icba.org.

² Section 2(a)

while systematically breaking down its limitations – especially limits on lending powers and the field of membership.

Despite these efforts, a number of credit unions decided that they could better serve their customers if they operated under a mutual bank charter. As a representative of mutual banking institutions in thirty-five states, ICBA strongly supports the right of a financial institution to choose this charter. It is an option that all mutual institutions should be able to adopt without undue interference—it is a community charter that reflects the historical roots and community values of our nation.

The fact that some credit unions have determined that a mutual bank charter is the best for their circumstances, despite the fact that they had to give up their tax and regulatory advantages, speaks volumes about its viability.

NCUA Has Improperly Blocked Conversions

Unfortunately, credit unions that are seeking to convert to another charter type face an unusual circumstance – a regulator intent on thwarting their business plans. **Last year, in order to successfully convert their charters, two Texas credit unions had to hire lobbyists to make their case in Congress and law firms to take their cases before the Federal courts.** The issue centered on how they had folded disclosure documents required by the NCUA. The actual content of the disclosures were not at issue. Only after a federal magistrate determined that the NCUA had no justification for blocking the conversions did the NCUA relent and settle the case.

Requiring credit unions that wish to convert undergo this sort of process makes no sense at all. Banks and thrifts frequently change charters without the aid of Washington lobbyists and high-powered litigation counsel. They simply follow the appropriate regulatory and internal corporate procedures. The chartering authority that they are exiting may not be pleased, but they do not interfere with individual transactions.

ICBA believes that NCUA is exceeding its authority under Credit Union Membership Access Act (CUMAA) to oversee conversions by insured credit unions. Section 202 of CUMAA limits NCUA's role in conversions to overseeing the "methods by which the member vote was taken or the procedures applicable to the member vote."³ Congress did not intend for the NCUA to review and monitor information presented to credit union members concerning the vote or to insure that certain information concerning the vote is disclosed to the member in a certain manner. Instead, Congress wanted the NCUA to oversee the actual vote to make sure that it was conducted fairly. The converting credit union's new regulator would have ample authority to determine whether or not the proper disclosures were made.

³ 12 U.S.C. 1785(b)(2)(G)(ii)

NCUA's action and restrictions violate the CUMAA requirement that any rules that are promulgated cannot be any more restrictive than those applicable to charter conversions by other financial institutions. We know of no instance of a banking agency imposing the kinds of rules NCUA has imposed or taking this type of action against an institution seeking to change its charter and its primary regulator.

For example, the Office of Thrift Supervision rules on converting from a mutual to a stock form of ownership do not require an independent entity experienced in conducting corporate elections to conduct the conversion vote.⁴ NCUA's requirement to have a third party teller responsible for all phases of the voting process is a costly requirement and one that will discourage credit unions from converting. The OTS rules also do not require that an updated, itemized account of the conversion costs be included in boldface in each and every written communication that is sent to a member.

NCUA has not adequately explained why it is necessary that the proposed disclosures be a series of dire warnings of possible higher fees, higher loan rates, loss of voting control, and executives profiting from stock options at the expense of members. None of these disclosure requirements permit a converting credit union to list the benefits that can occur to a member upon a conversion such as additional products and services. NCUA concedes that often the disclosure information is overwhelming and that all it is doing is trying to further inform credit union members. But instead of informing credit union members, NCUA appears to be frightening them into voting against a conversion.

For instance, the disclosure that executives typically profit from conversions by obtaining stock far in excess of that available to the members is not only misleading but an effort to play on the fears and emotions of credit union members that credit union executives are conspiring against them in an effort to enrich themselves. Similarly, the requirement that the converting credit union disclose an updated and itemized list of its conversion expenses every time it sends a written communication to its members is onerous and unjustified. The warning that additional post conversion expenses may result in higher fees or higher loan rates is another example of NCUA intimidating the credit union members into voting against a conversion.

⁴ See 12 CFR Sec. 563b.240. The rules do require the submission to the OTS of an opinion of counsel that the meeting was conducted in compliance with all applicable state or federal laws and regulations.

These disclosure requirements are an attempt by the NCUA to obstruct the right of a credit union to convert to a mutual institution. The NCUA appears to believe that, in every case, mutuality is the first step in a corporate transformation that eventually results in a stock charter and that credit union members must be warned of this in a conversion. The mutual charter remains a vigorous, competitive, and innovative option for hundreds of banks in the United States who are very content with their choice of charter and have no desire to change it.

NCUA's Power Over Conversions Should be Limited

Under CUMAA, NCUA's oversight role is to be shared with, and verified by the Federal or State regulatory agency that would have jurisdiction over the institution after the conversion.⁵ Once the conversion is complete, CUMAA says that the provisions of the Federal Credit Union Act no longer apply.⁶ All of the federal banking regulators have adopted regulations that are applicable to conversions of institutions. In most instances, the federal agency that will supervise the surviving entity following the conversion and that receives the conversion application is the agency that reviews the disclosures to determine if inaccurate or misleading information was communicated during the conversion process. Therefore, when a credit union intends to convert to a federal savings association charter or a savings bank, the agency that receives the application and that will supervise the resulting financial institution is the one that should review the adequacy of disclosures. **The NCUA's role should be limited to monitoring the voting process.**

Instead of concentrating on the disclosures of converting credit unions that would only affect a dozen or so conversions every year, the NCUA should focus on improving the transparency and quality of the disclosures routinely given by federal credit unions. For example, credit unions should be required to file a Form 990 like other not-for-profit organizations, disclosing the compensation of their highest-paid senior managers. This would assist both credit union members with voting on slates of directors and potential members who are choosing a credit union. It would certainly have much greater overall impact than the proposed required disclosures for converting credit unions.

H.R. 3206 Should be Strengthened

H.R. 3206 addresses the problems that were apparent when it was introduced. By eliminating speculative and inflammatory "disclosures" and requiring the NCUA to approve a conversion "unless the Board determines that the conversion is being made to circumvent a pending supervisory action," the bill would have reduced the need for the converting credit unions in Texas to incur extraordinary lobbying and litigation expenses.

⁵ 12 U.S.C. 1785(b)(2)(G)(ii)

⁶ 12 U.S.C. 1785(b)(2)(E)

However, the NCUA is adjusting its tactics. Recently, Dearborn Federal Credit Union withdrew its application to convert to a mutual bank as opponents of the application began to publicly agitate against it, and NCUA prohibited the credit union from responding to any of the charges unless each response included the speculative and inflammatory disclosures it had already made. NCUA also posed a long series of “questions” about the application documents, making clear that a vote on the conversion would take place only after opponents had ample time to poison the well.

Obviously, the **NCUA was not chastened by its embarrassing loss in the Texas conversion cases. Instead, it will take earlier and more subtle – but just as effective – steps to block any conversion.** Simply raising the lobbying and litigation costs may be enough in some instances. Bureaucratic delay will be just as effective in others. And, courts generally give agencies very wide latitude in interpreting their own statutes and in following their own procedures.

Therefore, **ICBA recommends that Congress consider taking additional action to that contemplated in H.R. 3206, including removing NCUA’s veto power over a conversion. This would provide treatment comparable to thrift and bank conversions.** The Office of Thrift Supervision cannot block a Federal savings and loan association from converting to a state savings bank. Similarly, a state banking commissioner cannot stop a state bank from obtaining a national bank charter. ICBA believes that the law should not require both the NCUA and the new regulator to approve the conversion. NCUA should also not have the ability to veto a credit union conversion to a mutual bank charter.

Conclusion

ICBA commends Rep. McHenry for introducing H.R. 3206 and Chairman Bachus for holding a hearing on this important issue. **This legislation is necessary to enforce the nation’s commitment to providing a choice of charters for depository institutions while maintaining safety and soundness and consumer protection standards.** The National Credit Union Administration has repeatedly thrown up unjustifiable roadblocks against credit unions seeking the right to select the charter type that enables them to best serve their customers. In fact, since H.R. 3206 was drafted, NCUA has further hardened its stance. Therefore, ICBA recommends further strengthening of the bill to circumscribe NCUA’s role in the conversion process.