

*Testimony of*

Edward L. Yingling

*On Behalf of the*

AMERICAN **BANKERS** ASSOCIATION

*Before the*

Subcommittee on Financial Institutions and Consumer Credit

*Of the*

Committee on Financial Services

United States House of Representatives

May 11, 2006



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Mr. Chairman and members of the Subcommittee, my name is Edward L. Yingling. I am President and CEO of the American Bankers Association (ABA). ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

Thank you for the opportunity to present the views of the ABA on the issue of the ability of credit unions to choose the charter most appropriate to their current and future lines of business. The current conversion process is totally out of balance, with the balance tilted to those groups that oppose any conversion from a credit union for any reason. The Credit Union Charter Choice Act (H.R. 3206), introduced by Congressman Patrick McHenry with Representatives Gillmor, Johnson, King and Towns as original cosponsors, takes important steps to try to restore the necessary balance – a balance that Congress sought to achieve when it enacted the conversion provisions of the Credit Union Membership Access Act of 1998 (CUMAA).

Many credit unions today have determined that it is in their interests to branch out into banking activities and exercise broader banking powers. Unless the mission and the credit union charter are to be dramatically distorted to accommodate these credit unions, a fair and workable path for credit union conversion to mutual banking charters must be clearly established. That path is not workable today.

Despite clear Congressional intent, the National Credit Union Administration (NCUA) has implemented rules that make it extremely difficult for credit unions to consider converting to a mutual

savings bank charter. Moreover, there now is an organized group that opposes **any** conversion, regardless of its merits and the express intent of the elected Board of Directors of the credit union. This group has little or no connection to any particular credit union wishing to convert. The result is wide-scale confusion among credit union members.

The ABA believes that balance once again needs to be restored to the credit union conversion process. The process must be straightforward and predictable, while providing credit union members with the information they need to make an informed decision. We commend the efforts of Congressman McHenry and support the goals and objectives of his proposed legislation.

The existence of charter options is particularly important now as many credit unions have strayed from the central purpose of their charter—serving people of modest means—and are now focused on pursuing lines of business identical to mutual savings banks and commercial banks. We must never forget that credit unions were established for the specific purpose to serve people of modest means. This is not a parenthetical duty; it is their legal focus and mission. This is why credit unions have their special federal privileges. But with these privileges, there also come limitations. Distinct from traditional credit unions, a new-breed of credit unions has emerged that wants to serve a broad customer base, to do complex business lending, and to offer asset management services targeted at wealthier customers. Fortunately, there are other charters, such as a mutual savings bank charter, that provide greater flexibility with the effective and experienced supervision of traditional banking regulators, while at the same time preserving the mutual-member focus that credit unions find desirable. Unfortunately, the current skewed process makes it difficult for any conversion to take place and denies credit union customers the expanded products and services that would be available prudently under a bank charter.

In my statement today, I would like to make three points:

- **The mutual savings bank charter may be a more appropriate option today for some credit unions,** particularly for those that want to expand service to broader customer bases and offer business and commercial real estate financing.
  
- **Balance must be restored in the credit union conversion process.** Today, the power is skewed to those groups that oppose any conversion, and NCUA, in particular,

has a history of impeding conversion through misleading and confusing disclosures. The Credit Union Charter Choice Act would help to restore the balance that Congress intended and customers need.

- **As credit unions evolve and seek new lines of business, it is even more critical that a straightforward and predictable conversion process is in place.** It is clear that some credit unions are evolving. They want to serve a broader customer base, to do more complex business and commercial real estate lending, and to offer insurance and brokerage services.

The choice before Congress is either to destroy the basic concept and mission of credit unions by amending the law to expand the credit union charter beyond recognition and prudential bounds, or instead, facilitate the conversion of expansive credit unions to mutual savings banks. We believe this second option to be more consistent with preserving the traditional role of credit unions and maintaining a safe and well supervised financial system.

I will discuss these points in more detail.

## **I. The Mutual Savings Bank Charter May Be a More Appropriate Option for Some Credit Unions**

Boards of directors of financial institutions have many options for charters. It gives them the ability to select the charter that best meets its future business plans and needs of its customers. All charters have different rights and responsibilities that need to be carefully weighed.

Congress envisioned that credit unions would play a special role in today's financial marketplace in meeting the financial needs of people of modest means. Congressman Bill Thomas, Chairman of the House Ways and Means Committee, reiterated this fundamental responsibility in a recent hearing:

I am going to interpret the tax preferred structure as meaning servicing those who are unable, either through the structure that is present or geography, to get their

basic financial needs met. Today, that means low-income, minorities, racial, women, and so on; and not some “modest means” that can’t be defined.<sup>1</sup>

In order to make sure that the federal subsidy is focused on the right people, there are additional limitations on the credit union charter, including restrictions on business lending and field of membership. Moreover, the cooperative, mutual structure of credit unions means that they raise capital through retained earnings; they cannot raise capital from outside investors. Such a capital structure is fundamental to the credit union charter and is an integral part of the original credit union philosophy: a close-knit group where members’ savings support other members’ borrowing.

Congress reemphasized the need for different charters during the debate on CUMAA. For example, Senator Craig Thomas (R-WY) commented: “As with every other federally chartered organization or institution, Federal credit unions must serve within that niche that is prescribed for them by law. I have told my friends in the credit unions that there are certain advantages to the way they are structured, certain advantages go to them as being cooperatives and being member-owned. On the other hand, there have to be, then, some limitations to the kind of things they can do.”<sup>2</sup> As Senator John Kerry (D-MA) stated from the Senate floor, credit unions “were never intended to be simply alternative, tax-exempt commercial banks.”<sup>3</sup> And speaking from the Senate floor during the debate on the Credit Union Membership Access Act, Senator Robert Bennett (R-UT) commented that his support for an amendment to limit credit union business lending “would send the public policy message that says: We want credit unions to remain in their traditional niche in the financial services area.”<sup>4</sup>

Recognizing that different charters enable different approaches to serving customers, Congress also made the way clear for credit unions to choose a new charter if they wanted to pursue activities that extended beyond the bounds of the traditional credit union charter.

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<sup>1</sup> Review of Credit Union Tax Exemption, Hearing before The Committee on Ways and Means, U.S. House of Representatives, November 3, 2005, pp. 190.

<sup>2</sup> Congressional Record, July 28, 1998, S 9019.

<sup>3</sup> Congressional Record, July 28, 1998, S 9095.

<sup>4</sup> Congressional Record, July 28, 1998, S 9013.

### ***Mutual Savings Bank Charter Option***

Mutual savings banks, on the other hand, have the flexibility to define their customer base more broadly, pursue greater business lending, and, through the creation of a mutual holding company, raise outside capital to support growth. However, with this expanded scope of activities available under this charter, comes the enhanced and experienced supervision of federal banking regulators. Mutual savings banks do not consider this to be inappropriate. Rather, mutual savings banks have done exceedingly well in meeting the needs of their customers and communities. These savings banks include those credit unions that have converted to a mutual savings bank charter. For converting credit unions, the new business and customer service opportunities more than pay for the tax obligation and the more rigorous supervision program they take on.

With respect to ownership and control and the rights of members, mutual savings banks and credit unions are basically similar. Credit union members and the depositors at federal mutual savings banks have —

- The right to vote
- The right to amend bylaws
- The right to nominate and elect directors
- The right to request special meetings
- The right to communicate with other members
- The right to inspect the corporate books
- The right to share pro rata in the assets following liquidation.

### ***Credit Unions That Have Converted are Strong, Profitable and Growing***

Nearly thirty credit unions have converted to a mutual savings bank charter in the last 10 years.<sup>5</sup> As mutual savings banks, these institutions can continue to serve their existing markets — and seek new ones — while preserving the mutual structure, providing competitive loan and savings rates, and expanding the quality and variety of services they offer. The members, after conversion, continue to have the same mutuality rights as they had before conversion.

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<sup>5</sup> This total includes 6 credit unions that were merged into an existing mutual savings bank.

Moreover, these former credit unions are thriving. *The success of the conversions is easily observed as the median annualized asset growth rate since their conversions is 21 percent.* The fact that these converted credit unions pay taxes under the savings bank charter and are subject to more rigorous bank regulation has not hampered their success in meeting customer needs. Moreover, mutual savings banks remain member-focused.

Herb Moltzan, CEO of BUCS Federal Bank, which converted to a mutual savings bank charter in March 1998, confirmed the value to customers of their bank conversion. He wrote that after the conversion “we were able to add services with no changes to our rate and fee philosophy and were, in fact, so successful that we grew rapidly and needed to raise additional capital.”<sup>6</sup>

Charter choice gives financial institutions the ability to select the charter that best meets their future business plans and the needs of their customers. For credit unions that want to go beyond their legal mandate while retaining their mutual structure — the choice is a mutual savings bank charter.

I would note that this door should swing both ways. While credit union to bank charter conversions have attracted a lot of attention, there have been several mutual savings banks that have converted to credit union charters, including Wisconsin-based Employees' Mutual Saving Building & Loan Association to EMSBLA CU in 1997 and New York-based Eastman Savings & Loan to ESL FCU in 1996. These institutions made their decisions based upon what they believed best met the future needs of their customers. Neither their regulators nor the banking industry blocked their right to choose this charter.

## **II. Balance Needs to Be Restored in the Conversion Process**

The Credit Union Charter Choice Act (H.R. 3206) would help to restore the balance that Congress intended. This bill reaffirms that credit union members have the right to choose the charter that best fits their financial needs, if a majority of voting members believes the change is in their best interest. The bill would amend the Federal Credit Union Act to enable credit unions to speak freely to members, the general public, and the media regarding any conversion to a mutual savings institution, and prevent the National Credit Union Administration (NCUA) from requiring any notice that contains statements or information that is speculative, including assertions of possible future options of the converted financial institution that may or may not ever be exercised and that are beyond the

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<sup>6</sup> Op-ed in *Credit Union Times* on July 13, 2005.

responsibility or competence of the NCUA. Restoring balance is critical, as the NCUA has skewed the process heavily against conversions. H.R. 3206 will make the process fairer – by limiting the NCUA’s ability to exploit supervision of the conversion process to insert itself into the conversion debate of a particular credit union or stifle the ability of elected credit union officials to communicate with their members.

The decision of a credit union to convert its charter is extremely important. To make an informed decision, members need to have sufficient information on the merits of the proposed charter conversion. That information must be neither false nor misleading. Congress acted in 1998 to ensure that members are adequately informed, that appropriate disclosures are made (consistent with disclosures required by banking regulations), that voting requirements are reasonable, and that there are safeguards against insider abuse.<sup>7</sup> In spite of these statutory standards and in clear disregard of Congressional intent, NCUA rulemaking and procedure continue to impede the process and add confusion instead of clarity, speculation rather than factual information.

## **NCUA has a History of Impeding Conversions, Subverting the Democratic Process**

### ***Overtured Voting Rule***

Prior to the enactment of the Credit Union Membership Access Act (CUMAA), NCUA required a majority of all credit union members to vote in favor of a conversion, not just a majority of members voting. Under NCUA regulations, if a member did not exercise his or her right to vote, NCUA treated this as a “no vote.” This rule established a hurdle that made conversions extremely difficult for smaller credit unions, effectively impossible for larger ones. Under a one-shareholder/one-vote rule, few companies in America would be able to get a majority of persons to respond to an organizational question. With voter turnout rates in our public elections often below 50 percent, how many electoral contests would be nullified by such a standard? Congress in 1998 decided that such a

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<sup>7</sup> Section 202 of CUMAA amended the provisions of the Federal Credit Union Act (“Act”) and required NCUA to allow an insured credit union to convert to a mutual savings bank or savings association “subject to the requirements and procedures set forth in the laws and regulations governing mutual savings banks and savings associations” [12 USC 1785(b)(2)(A)]. Further, NCUA was empowered to require an insured credit union that proposed to convert to a mutual savings bank or savings association to submit a notice to the NCUA of its intent to convert during the 90-day period preceding the date of the completion of the conversion [12 USC 1785(b)(2)(D)]. Once the conversion is completed, “the credit union shall no longer be subject to any of the provisions of the [Federal Credit Union Act]” [12 USC 1785(b)(2)(E)].

threshold was too onerous. It changed the requirement for conversions to a simple majority of the members who vote.

### ***Proper Notice to Members***

Congress was also concerned that members be adequately informed. That is why Congress in 1998 required a converting credit union to send three mailings of the ballot and disclosure notices to all members eligible to vote. “The first notice of the proposal shall be given to each member who is eligible to vote, 90 days prior to the date of the vote on conversion. Additional notices must be given to each member eligible to vote, 60 days prior to the vote and again at 30 days prior to the vote.”<sup>8</sup> We believe that in addition to timely notice, credit union members are entitled to proper information in the notice, information that lays out the relevant facts, free from requirements for unsubstantiated speculation on future actions or unfounded assertions of motives.

### ***Safeguards from Insider Abuse***

Anti-conversion advocates would have people believe that credit union conversions to mutual savings bank charters are for insider enrichment. In fact, there is no transfer of net worth to insiders from conversions from a credit union to a mutual savings bank. Furthermore, the compensation of senior management remains a responsibility of the board of directors of the mutual just as it was with the credit union.

To ensure that insider abuse does not occur, Congress put in place safeguards to protect the interests of members of the converting credit union. Section 202 of the Credit Union Membership Access Act “limits the economic compensation of any director or senior management official of an insured credit union that converts to a mutual savings bank or mutual savings association to director fees and compensation and other benefits paid in the ordinary course of business in connection with the conversion from a credit union to a mutual savings bank or mutual savings association.”<sup>9</sup>

Whether a mutual savings association later elects to convert to a stock-based ownership structure—and most converted credit unions have not—is a matter of review for the Office of Thrift Supervision (OTS), not the NCUA. I would note that, if a mutual savings bank decides to issue stock,

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<sup>8</sup> Senate Report, 105-193, p. 9.

<sup>9</sup> Senate Report, 105-193, p. 9.

the Office of Thrift Supervision carefully regulates the process to protect depositors'/members' interest, and that regulatory review has been increased in recent years. Specifically,

- The Office of Thrift Supervision reviews the business plan of the converting institution, overseeing who is eligible to exercise rights to buy stock, and working to ensure no preferential treatment is given to management and insiders.<sup>10</sup>
- The OTS has full authority to delete any provision from the business plan that it views as being either "... inequitable or detrimental to (the institution's) accountholders."<sup>11</sup> Dividends are limited and also subjected to supervisory oversight.<sup>12</sup> No one person or group may purchase a controlling interest in the converted institution.<sup>13</sup>
- Depositors control the fate of their institution. Depositors must approve the business plan (including how the subscription rights will be divided among accountholders, board members and staff),<sup>14</sup> are entitled to subscription rights to purchase stock in the institution,<sup>15</sup> and are kept informed by an extensive process of disclosures that provide ample opportunity for their input.<sup>16</sup>

### ***Conversions No More or Less Restrictive Than Rules Applied to Other Institutions***

Perhaps nowhere has the abuse by NCUA been more blatant and had a more chilling effect on conversions than the onerous rules on disclosures – rules that go well-beyond those that apply in other conversions of financial institutions. These onerous rules are in direct contradiction of the law and clear Congressional intent. In particular, Congress instructed "the NCUA to promulgate rules ... applicable to charter conversions that are consistent with rules promulgated by other financial

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<sup>10</sup> 12 C.F.R. § 563b.115 (2005).

<sup>11</sup> 12 C.F.R. § 563b.130 (2005).

<sup>12</sup> 12 C.F.R. § 563b.520 (2005).

<sup>13</sup> 12 C.F.R. § 563b.370 (2005).

<sup>14</sup> 12 C.F.R. § 563b.225 (2005).

<sup>15</sup> 12 C.F.R. § 563b.360 (2005).

<sup>16</sup> 12 C.F.R. § 563b.300-563b.310 (2005).

regulators including the Office of Thrift Supervision and the Office of the Comptroller of the Currency. The rules for charter conversions by insured credit unions must be no more or less restrictive than those rules that apply to charter conversions by other financial institutions.<sup>17</sup> [emphasis added]

Since the enactment of CUMAA, NCUA has interjected itself directly into the conversion debate. It attempts to substitute its judgment for those credit union members under the patronizing proposition that credit union members do not appreciate the effect a conversion may have on their ownership interests and voting rights and that if they did, ipso facto, they would never vote in favor of a conversion.<sup>18</sup>

Rather than improving transparency, however, NCUA's regulations foment confusion, raise unsubstantiated concerns, present subjects outside of the NCUA's jurisdiction, and raise allegations about matters not at issue in the vote. Harold Lowman, chairman of DFCU Financial Federal Credit Union's Board of Directors, in announcing the credit union withdrawal of its application to convert, stated that "the limitations of the process have made it impractical to fully inform members. Further, the result has been unnecessary confusion and concern among our members."

Under the guise of "education" NCUA requires a that "a converting credit union must include a disclosure prepared by NCUA in a prominent place with each written communication it sends to its members regarding the conversion and must take specific steps to ensure that the disclosure is conspicuous to the member."<sup>19</sup> This also applies to web site postings.

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<sup>17</sup> Senate Report, 105-193, p. 9.

<sup>18</sup> In February 2004, NCUA amended part 708a to require a converting credit union to disclose additional information to its members to better educate them regarding the conversion. 69 Federal Register 8548, Feb. 25, 2004.

<sup>19</sup> 70 Fed. Reg. 4005, Jan. 28, 2005.

The National Credit Union Administration, the federal government agency that supervises credit unions, requires [insert name of credit union] to provide the following disclosures.

1. **OWNERSHIP AND CONTROL.** In a credit union, every member has an equal vote in the election of directors and other matters concerning ownership and control. In a mutual savings bank, **ACCOUNT HOLDERS WITH LARGER BALANCES USUALLY HAVE MORE VOTES AND, THUS, GREATER CONTROL.**
2. **EXPENSES AND THEIR EFFECT ON RATES AND SERVICES.** Most credit union directors and committee members serve on a volunteer basis. Directors of a mutual savings bank are compensated. Credit unions are exempt from federal tax and most state taxes. Mutual savings banks pay taxes, including federal income tax. If [insert name of credit union] converts to a mutual savings bank, these **ADDITIONAL EXPENSES MAY CONTRIBUTE TO LOWER SAVINGS RATES, HIGHER LOAN RATES, OR ADDITIONAL FEES FOR SERVICES.**
3. **SUBSEQUENT CONVERSION TO STOCK INSTITUTION.** Conversion to a mutual savings bank is often the first step in a two-step process to convert to a stock-issuing bank or holding company. In a typical conversion to the stock form of ownership, the **EXECUTIVES OF THE INSTITUTION PROFIT BY OBTAINING STOCK FAR IN EXCESS OF THAT AVAILABLE TO THE INSTITUTION'S MEMBERS.**
4. **COSTS OF CONVERSION.** The costs of converting a credit union to a mutual savings bank are paid from the credit union's current and accumulated earnings. Because accumulated earnings are capital and represent members' ownership interests in a credit union, the conversion costs reduce members' ownership interests. As of [insert date], [insert name of credit union] estimates **THE CONVERSION WILL COST [INSERT DOLLAR AMOUNT] IN TOTAL.** That total amount is further broken down as follows: [itemize the costs of all expenses related to the conversion including printing fees, postage fees, advertising, consulting and professional fees, legal fees, staff time, the cost of holding a special meeting, conducting the vote, and any other expenses incurred].

These disclosures violate and contradict the regulations of other financial regulators, in contravention of CUMAA. This intrusion by the NCUA into the jurisdiction of other federal regulators, with no basis in statute or other applicable authority, is remarkable, in that no bank regulator requires similar disclosures for charter conversion questions involving its supervised institutions. Moreover, the subjective format and tone of the disclosures does little to promote thoughtful consideration of facts by credit union members. The effect of the box, the highlights, the capitalized, bold language, is to achieve one purpose, to encourage credit union members to vote against any conversion proposal, rather than encourage an unbiased, fair review. This is directly inconsistent with the will of Congress that conversion be a viable option.

Furthermore, the mandatory disclosures are themselves misleading. For example, consider the first bullet on ownership and control. As OTS noted in its certification of the Community Credit Union, Plano, Texas, conversion: “While it is true that the standard federal mutual charter provides for one vote for each \$100 (or portion thereof) of deposits up to a maximum of 1000 votes, it is extremely unlikely that even a depositor with 1000 votes will have any semblance of “control” of the institution.” OTS notes that in this particular case with over \$1 billion of deposits, “a single account holder will have less than 1/10,000 of the institution’s voting power.”

Additionally, the bullet is misleading regarding the potential *subsequent* conversion to a stock institution. Sixteen of 23 converted credit unions are still mutuals. The very requirement to discuss any single potential future action—when there are any number of potential future actions that can have an

impact on current credit union members—is speculative and deceptive in itself. Moreover, the OTS wrote in its Community Credit Union certification, the “OTS’s regulations strictly limit the amount of stock any executive may purchase in a conversion. In addition, executives cannot purchase any more stock in the conversion than any other member.”

In short, rather than doing its duty to ensure a fair process, the NCUA has involved itself in the very debate and guaranteed an unfair process. Any credit union that published such a deceptive notice—except under direct mandate from the NCUA—could be vulnerable for providing misleading information to its members.

Bear in mind that the statute requires that the NCUA look to other agencies in order to provide for a comparable process. The report of the U.S. Magistrate Judge in the Community Credit Union conversion suit against NCUA concluded that, “The Administration’s [NCUA’s] newly enacted regulation on disclosure has no counterpart regulation in the OTS.” Thus, NCUA is clearly not following the intent of Congress which mandates that the rules for charter conversions by insured credit unions must be no more or less restrictive than those rules that apply to charter conversions by other financial institutions.

Neither the OTS nor the Comptroller of the Currency (OCC) has such disclosure requirements for conversions of charter types (whether from a credit union or commercial bank to a federal mutual savings association or to or from a national bank charter).<sup>20</sup> Comparing the rules promulgated by NCUA with those of the banking agencies clearly shows that the NCUA – by design – makes it more difficult and less likely for a conversion to take place.

### **NCUA has Considerable Power to Prevent Conversions by Not Certifying the Vote**

Although NCUA is not an unbiased observer – and would suffer financially if a conversion occurs, particularly of a large credit union – it alone determines if any notice to members is accurate and not misleading (12 CFR 708a.7(c)) and can refuse to certify a vote.<sup>21</sup> The credit union could

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<sup>20</sup> See 12 C.F.R. SS 543.8 - .89 and 12 C.F.R. S 5.24(d).

<sup>21</sup> NCUA’s operations are funded through examination/supervision fees and transfers from the National Credit Union Share Insurance Fund (NCUSIF). Moreover, all federally-insured credit unions are required to hold an investment in the NCUSIF equal to one percent of insured deposits. If a credit union converts, they get back their one percent investment. This reduces the size of the insurance fund, though does not increase exposure as the converted credit union would become insured by FDIC, not NCUSIF. It does, however, affect NCUA’s budget, and potentially the level of its supervisory, legal, and administrative staff. For this reason, it is not in the interest of the NCUA to allow credit unions to convert their charters.

undertake a new vote, but the costs of doing so are often so substantial that it would rarely occur. Thus, management will want approval by NCUA of any written communication to members, because of the real fear that NCUA might not certify the vote.

NCUA can also delay conversions by dragging its feet. The management of credit union conversion candidates Lake Michigan Credit Union and DFCU Financial were unable to respond to reporters or provide press information in a timely fashion, as they waited for NCUA approvals during the conversion process. Comments by credit union officers made without prior NCUA approval have reportedly been met with letters from NCUA criticizing the communication. These cases have had a chilling effect on any communication to members. Simply put, these credit unions were held hostage to an agency that drags its feet since it is not generally inclined to support any conversion.

Meanwhile, parties that have a strong vested interest in opposing conversion have little restriction on the timing, frequency, or substance of their communications. This includes organized groups, that may not even be members of the credit union. With the management unable to respond to misinformation in a timely fashion, credit union members are left without adequate information to decide whether opponents' allegations are true.

### **Know When to Hold 'Em, Know When to Fold 'Em**

Nowhere was the NCUA's improper use of its power more apparent than in 2005 when the agency tried to invalidate the conversion of two Texas credit unions, where an overwhelming majority of the members voted for the conversions. All the NCUA mandated disclosures were provided. All of the notice deadlines were set. NCUA's objection was to the way the disclosure statement was *folded*. As Congressman Hinojosa (D-TX) commented in testimony before this Subcommittee on June 9, 2005: "I find it odd that NCUA nullified the vote by [Community Credit Union] members to switch charters based upon how a document was folded, especially since there are no rules, regulations or guidance on how to fold such document." Congressman Frank (D-MA), in a June 16, 2005 letter to JoAnn Johnson, Chairman of NCUA, wrote: "This sees to me a hyper-technical interpretation of your agency's conversion regulations, and that strikes me as an inappropriate basis to invalidate these elections." Many others expressed the same sentiment.

A Texas magistrate agreed that NCUA was being unreasonable regarding the two Texas credit union conversions and stated that parts of NCUA's regulation, adopted earlier in 2005, went beyond the authority of NCUA to regulate conversions from credit unions.

### **III. As Credit Unions Evolve, a Straightforward and Predictable Conversion Process is Critical**

As the credit union industry evolves, a blurring of the line between banks and credit unions has developed. In fact, a new breed of credit union has emerged that does not fulfill the traditional mission of serving people of small means, often focusing on above median-income people and commercial businesses, both of which have many options for financing. The common bond, where people save for and lend to one another, is often forsaken for rapid growth in members. Preserving the values of the traditional credit union charter has been a long-term priority for the Congress. Credit unions that seek greater product and service authority and want greater options to raise capital to support these expanded activities can and should choose a mutual savings bank charter, with the broader authority and experienced bank supervision that comes with it; this is the reason a straightforward, fair, and predictable conversion process is so important.

The evolution of credit unions raises important policy questions. Are new-breed credit unions fulfilling their mandate to serve people of modest means? Do these non-traditional credit unions qualify for their special treatment, despite the fact that they no longer serve the purposes of their charter? If credit unions are not meeting the responsibilities Congress created for their charter, why should Congress give them more authority to expand business lending and other activities through the proposed Credit Union Regulatory Improvement Act to depart even further from their mandate? At what point do some credit unions cease to be the type of institution deserving of preferential treatment?

We would respectfully suggest that the answers all point to a credible, fair, workable process whereby a credit union that wants to exercise bank powers should be able to convert to a bank charter. Without such a process, the only response to today's new breed of credit unions is to allow them to continue to abandon people of modest means while distorting the credit union charter into something unrecognizable by the original authors of the credit union concept.