

October 2, 2012

Federal Credit Unions

Re: Charter Change

Dear Federal Credit Unions:

The Office of General Counsel has received questions on whether NCUA may approve a credit union's request to receive a change in its charter and subsequently merge with another credit union with the same type of field of membership. Based on our review of relevant law, NCUA has the authority to approve such a charter conversion and subsequent merger.

Discussion

The Federal Credit Union Act ("FCUA"), as amended by the Credit Union Membership Access Act ("CUMAA"), permits mergers subject to NCUA approval. NCUA may approve a charter conversion application if the applicant satisfies the criteria for a charter change set forth in the FCUA and NCUA's regulations.

In 1998, the U.S. Supreme Court ruled that the FCUA prohibited the chartering of multiple common-bond credit unions.¹ Later that year, Congress enacted CUMAA, which defined permissible charter types for credit unions and specifically authorized multiple common-bond credit unions.

Following CUMAA's passage, NCUA promulgated a rule implementing the statute's new authorities.² The American Bankers Association ("ABA") subsequently challenged several provisions of the rule, arguing it was too permissive with respect to credit union formation and growth. The district court ultimately ruled against the ABA, concluding that each of the challenged provisions reflected NCUA's reasonable interpretation of the FCUA.³ The ABA then appealed the case to the U.S. Court of Appeals, which reached similar conclusions and upheld the district court's ruling.⁴

Among other things, the ABA challenged the provision in NCUA's rule permitting the voluntary merger of healthy multiple common-bond credit unions containing select employee groups of less than 3,000 members. It argued that this provision violated CUMAA's express mandate that, whenever practicable and reasonable, NCUA should encourage the formation of separately chartered credit unions.

¹ NCUA v. First National Bank & Trust, 522 U.S. 479, 499-501 (1998).

² IRPS 99-1, 63 Fed. Reg. 71,998 (Dec. 30, 1998).

³ ABA v. NCUA, 93 F.Supp.2d 35 (D.D.C. 2000).

⁴ ABA v. NCUA, 271 F.3d 262 (D.C. Cir. 2001).

In denying the ABA's challenge on this issue, the district court found that CUMAA's mandate to encourage separate credit unions likely applied only to the "expansions" of existing credit unions affected by the addition of a single group, and not to mergers of multiple common-bond credit unions consisting of many groups.⁵ On appeal of the issue, the Court of Appeals upheld the district court's ruling and further expounded on why CUMAA's requirements apply only to expansion of multiple common-bond credit unions and not to mergers.⁶

These decisions support NCUA's discretion under the FCUA to approve the voluntary merger of two healthy multiple common-bond credit unions. In addition, NCUA has discretion under the FCUA to approve a change to a credit union's charter to facilitate a voluntary merger with another healthy credit union. The FCUA expressly authorizes NCUA to approve credit union charters and subsequent conversions of those charters.⁷ It also provides NCUA authority to approve the voluntarily merger of credit unions.⁸ Taken together, these statutory provisions provide the authority to NCUA to permit charter conversions to facilitate subsequent mergers.

Sincerely,

Michael J. McKenna
General Counsel

⁵ ABA v. NCUA, 93 F.Supp.2d at 45.

⁶ ABA v. NCUA, 271 F.3d at 272.

⁷ 12 U.S.C. §§ 1759, 1766.

⁸ 12 U.S.C. § 1785; 12 C.F.R. Part 708b