

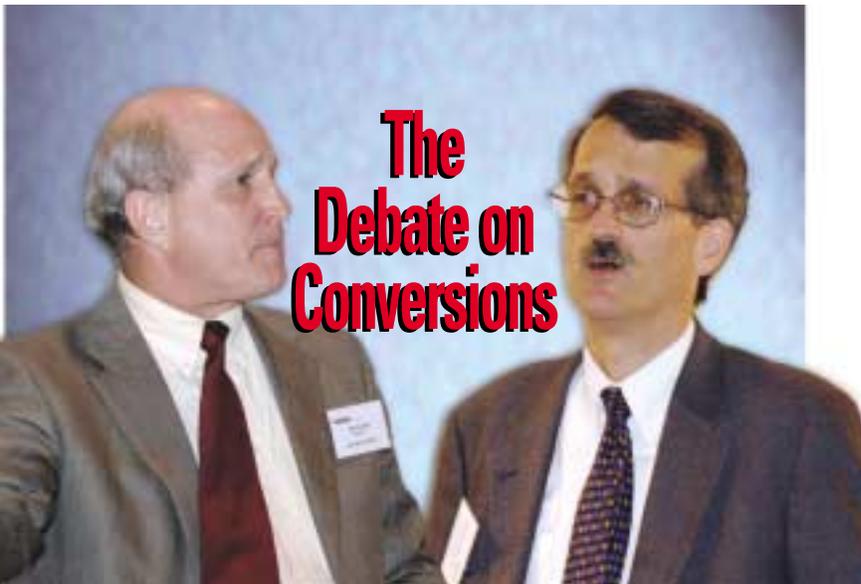


Credit Union National Association

# CREDIT UNION NewsWatch

LEGISLATION, REGULATION, AND INNOVATION FROM THE CREDIT UNION NATIONAL ASSOCIATION

JULY 18, 2005



## The Debate on Conversions

Jim Blaine (left), president/CEO of State Employees CU in Raleigh, N.C., and conversion attorney Richard Garabedian, partner in the Washington, D.C. law firm of Luse Gorman Pomerenk & Schick, during a July 11 debate about conversions. (CUNA graphic)

In a fine example of a part representing the whole, a recent debate between a credit union CEO and a conversion attorney staked out the arguments being volleyed nationwide for and against credit union conversions.

Jim Blaine, president/CEO of State Employees CU, Raleigh, N.C., is passionate that credit union boards and management must remember they are “stewards of the members’ money.” He says the only motivating factors behind credit union charter changes are “increasing greed” and “fiduciary looting.”

Making his points at an event hosted

by the Metropolitan Area CU Management Association in Arlington, Va., this month, Blaine pointed out that the tax and regulatory burdens associated with a thrift charter take away any benefits that could come from giving up the credit union charter.

The converted institutions face a 40% tax on profits, huge compliance and disclosure burdens, and accountability to outside investors who expect returns, Blaine said.

Richard Garabedian, partner in the law firm of Luse Gorman Pomerenk & Schick, countered >>

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## Mica Knocks Effort to Cut NCUA Conversion Authority

CUNA President/CEO Dan Mica criticized a new bill to strip NCUA of parts of its authority regarding credit union charter conversions, calling it “imprudent” and noting it goes against the “ownership society” principle that President George W. Bush emphasizes.

“This is all about money and unjust enrichment,” Mica said of the controversy surrounding NCUA authority over charter conversions.

Referring the Credit Union Charter Choice Act (H.R. 3206), introduced July 12 by Rep. Patrick McHenry (R-N.C.) and Rep. Edolphus Towns (D-N.Y.), Mica said, “This legislation would imprudently erode regulatory oversight so that management and directors, who have everything to gain, could more effortlessly slip their hands into the wallets of credit unions’ consumer/member owners—who have everything to lose.”

Mica added, “Clearly, this is no example of an ‘ownership society’ that President Bush emphasizes, in which ownership interests are never taken away without just compensation.”

“In an environment in which >>

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# >> Legislative Affairs

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## The Debate on Conversions

that institutions must change with the market. The Washington, D.C.-based conversion lawyer said if obstacles arise that prevent an institution from following its business plan, then it might consider converting its charter.

He said for a credit union those obstacles can include field of membership restrictions, the need for additional capital, and product opportunities, such as business and mortgage lending.

Garabedian added that if artificial enrichment was a motivator, more credit unions would have already converted. He acknowledged that some incentive programs are established for management and directors, but claimed nobody gets special treatment during a credit union conversion. "When the institution is raising capital, members are given equal opportunity to buy," Garabedian said.

Calling charter conversions the most important issue facing credit unions in the last 25 years, Blaine said members should be given "full and fair" disclosure, including access to a converting credit union's three-year business plan. Garabedian questioned whether too

much information might "overload" and "confuse" members in the details. He argued against disclosing business plans.

Blaine called several recent conversion voting processes the "Jim Jones type of management, which asks the credit union members to come and drink the cool-aid." He continued that credit unions were created as the "antithesis" of banks.

"A credit union switching to a bank is like practicing 40 years as a doctor and then deciding to become a disease," said Blaine.

The Blaine-Garabedian debate was clearly a microcosm of what is happening on the national scene. CUNA President/CEO Dan Mica has lambasted a newly proposed bill to strip NCUA of some of its authority regarding conversion applications, while the bill's supporters claim it provides "needed flexibility."

NCUA Chairman JoAnn Johnson staunchly defends her agency's approach to recent conversion applications insisting that members have a right to full and adequate disclosure. But detractors, including some federal lawmakers, have accused the agency of haggling over paperwork. 🏠

## Payroll Deduction OK'd for CULAC Donations

Any credit union employee who is a member of that cooperative and wants to make regular contributions to the Credit Union Legislative Action Council (CULAC) will soon be able to do so through payroll deductions.

The Federal Election Commission (FEC) voted 5 to 1 Thursday to allow certain corporate members of trade associations to use payroll deductions to raise contributions for their association's federal Political Action Committees (PACs). Under the new rule, credit union member/owners would be covered.

CUNA supported the proposed rule change which will go into effect 30 days after being published in the Federal Register.

Under the old rules, payroll deduction could only be used as a fundraising tool for CULAC for employees of either CUNA or a state league. Credit unions were prohibited from offering the automatic deductions to members.

Trey Hawkins, CUNA's political director, noted that a credit union must first give CULAC permission to solicit its members before instituting a payroll deduction program.

The FEC rule is expected to be published within a week. 🏠

## Two More Join CURIA

The Credit Union Regulatory Improvements Act (CURIA, H.R. 2317) attracted two new co-sponsors last week, Reps. Rick Renzi (R-Ariz.) and Peter King (R-N.Y.).

Their names bring the total number of CURIA co-sponsors to 76, surpassing the number of 69 who supported last year's version of CURIA.

In an educational video produced by CUNA on "Why Support CURIA," the bill's chief sponsor, Rep. Ed Royce (R-Calif.), tells credit unions they should aim for around 100 co-sponsors.

"I wouldn't want to put a specific

number on it," Rep. Royce said when asked how many co-sponsors are needed to see the bill passed, "but I would think if you had in excess of 100 members, you'd be in pretty good shape."

Two key provisions of the bill, supported by CUNA, would implement a risk-based capital approach and raise the current threshold on credit unions' member business lending.

Use the resource link to learn more about CURIA and to view the complete list of co-sponsors. 🏠

**CURIA, H.R. 2317**

[http://www.cuna.org/initiatives/member/curia\\_video.html](http://www.cuna.org/initiatives/member/curia_video.html)

## CURIA Co-Sponsors Count



For a complete list of co-sponsor names, visit CUNA's website at <http://capwiz.com/cuna/issues/bills>

## Community CU Sues NCUA Over Conversion Decision

Community CU of Plano, Texas, filed suit Friday against the NCUA after the agency ruled July 11 the credit union's conversion voting process was invalid and that a new vote must be taken.

Community has been trying to convert to a mutual savings bank, but NCUA had ruled its first two mailings were invalid because of disclosure placement problems. Community went ahead anyway, changed and sent out its third mailing and held a membership vote.

The suit seeks an immediate ruling by the U.S. District Court overturning NCUA's decision and ordering the return of the \$10 million deposit held by NCUA.

Community CU's certification had said

that 25,774 of the 36,042 members who voted on the proposal—about 71.5%—had voted in favor of the conversion.

NCUA Regional Director Jane A. Walters said in a letter last week to Community CU's attorney that the credit union had failed to provide members with required disclosure materials in compliance with NCUA regulations in two mailings to members and then failed to remedy the situation satisfactorily after NCUA notified the credit union.

Walters' letter said there was a significant change in voting patterns between the first two mailings, which NCUA invalidated because disclosures were displaced backwards, and the third mailing. "Specifically, after the first two mail-

ings, in which CCU failed to present the boxed disclosures as agreed, approximately 72.5% of members voting on the proposal voted in favor of converting," wrote Walters. "After the third mailing, in which CCU presented the boxed disclosures in a prominent and conspicuous manner in conformity with its agreement with NCUA, approximately 52.1% of voting members voted against converting.

The letter noted the credit union tried to "trivialize the disclosure violation as an irrelevant folding issue or a simple misunderstanding."

Walters told the credit union it could appeal the decision to the NCUA Board.

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### Mica Knocks Effort to Cut NCUA Conversion Authority

billionaire CEOs are being sentenced to long prison stays for defrauding their company's investors, now is not the time to dismantle regulatory oversight of the transformation of credit unions," he continued.

Mica pointed out that CUNA's recently adopted policy on conversions makes it abundantly clear conversion is a decision that must be driven by a credit union's members, based on what is best for the members.

The bill immediately was hailed by the American Bankers Association, America's Community Bankers, and the Independent Community Bankers of America.

 **CUNA Principles on CU-to-Bank Conversions**  
[http://www.cuna.org/initiatives/conversion\\_principles.html](http://www.cuna.org/initiatives/conversion_principles.html)

## About the CU Charter Choice Act



Rep. Patrick McHenry (R-N.C.)

*The McHenry-Towns bill, called the Credit Union Charter Choice Act (H.R. 3206), would make the following changes to NCUA charter conversion authority:*

The bill would restrict the agency from regulating contents of a notice of a proposed conversion with a few exceptions. Those exceptions would allow NCUA to require:

- ▶ The date of a membership vote;
- ▶ The date by which ballots must be received;
- ▶ A brief statement of why the directors are converting and the board's recommendation to the members; and
- ▶ A brief statement about the effects of the conversion on the credit union, including any differences in powers between a credit union and a mutual savings bank or savings association.

The bill would prohibit the NCUA

from requiring any information in a disclosure notice that would:

- ▶ Speculate about the future operations, governance or form of organization of the financial institution that will result from the conversion or may occur after the completion of the conversion;
- ▶ Distort the impact of conversion on the credit union members;
- ▶ Be attributable to the NCUA Board or state the Board's position on conversions; and
- ▶ Be inaccurate with respect to a proposed conversion to the converting credit union or the application for a mutual savings bank or savings association charter filed in connection with the conversion.

The agency also would be prohibited from requiring a conversion notice to include any statement that conflicts with regulations of other financial regulators, including the director of the Office of Thrift Supervision, related to the subsequent conversion of the resulting financial institution from mutual to stock form. ■



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# >> Regulatory Affairs

## NCUA: Recognize Member Motions at CU Meetings

The NCUA Board during its June 30 meeting asked for comments on a revised proposal to amend federal credit union bylaws, specifically seeking remarks on a provision to require any member's motion to be recognized at a credit union's annual meeting or a special meeting.

"This is especially important in meetings where the board of directors is pro-



posing a conversion to a mutual savings bank charter," noted Board Member Debbie Matz at the agency meeting.

In another proposed change aimed at ensuring all credit union members are embraced by a voting process, NCUA would require that paper ballots are mailed to all members even when conducting an election by electronic means.

Also at the monthly meeting, the NCUA Board voted to request comments to identify outdated, unnecessary or bur-

densome regulatory requirements on federal credit unions. A periodic review is required of all the financial regulators under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPA).

The agency is requesting comment on rules that address directors, officers and employees, as well as the rules of procedure. Comments are due to the agency 90 days after the proposals are published in the Federal Register. 🏠

**CUNA Regulatory Advocacy**  
[http://www.cuna.org/reg\\_advocacy](http://www.cuna.org/reg_advocacy)

## RegFlex and Capital on NCUA Agenda

The NCUA may issue two important proposals soon: One to lower the RegFlex qualifying net worth ratio, and another to provide an additional capital option for low-income designated credit unions.

Chairman JoAnn Johnson said the NCUA Board would consider the two proposals at its July 21 monthly meeting. They are the result of the agency's Summit on Credit Union Capital in 2004.

The first proposal would lower the RegFlex qualifying net worth ratio to 7% from 9%, which would bring an additional 462 credit—or more than 70% of the total number—under the program. RegFlex allows well-capitalized, well-managed credit unions to earn flexibility and exemptions from a number of regulations.

"If we agree that 7% leverage is an unnecessarily high ratio for 'well capitalized'

status under a system of risk-based prompt corrective action, then we should not set the bar even higher for RegFlex," said Johnson.

The second proposal would allow well-managed, highly-rated low-income credit unions to release the portion of a secondary capital account that no longer counts as net worth. 🏠

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## Compliance Challenge Tackles BSA

"BSA"—it doesn't just stand for Boy Scouts of America anymore. Far from it, says this month's Compliance Challenge from CUNA.

The acronym now refers first and foremost to the Bank Secrecy Act. Combine BSA with some AML—anti-money laundering—issues, and you have one of the most difficult compliance issues currently facing credit unions.

"How many people in your credit union can correctly answer what 'BSA' stands for?" asks this month's challenge, "After the next round of examinations, I think that people will stop saying BSA stands for the 'Bank Security

Act' or 'Boy Scouts of America.'"

The challenge poses 13 questions about some tricky situations credit

union managers and staff can come up against trying to fulfill reporting requirements of the BSA.

Included in the July Compliance Challenge is an introduction containing clear definitions for six common acronyms that seem to pepper conversations every day: BSA, AML,

FCC, RESPA, EGRPA, and GAC. Affiliated credit unions can access the challenge on CUNA's website.



**The Compliance Challenge**  
<http://www.cuna.org/compliance>

## ▶ Seeking CU Comment...

These issues are open for comment by the general public. Credit unions are asked to submit a copy of their comments to CUNA:

### Bylaw Revisions

Agency: NCUA  
Due date: 90 days after publication in the Federal Register

### Fidelity Bonds and Insurance Coverage for FCUs

Agency: NCUA  
Due date: July 25

### Sales of Nondeposit Investments

Agency: NCUA  
Due date: July 25

### EGRPA Review: Rules Regarding

Directors/Officers/Employees and Rules of Procedure  
Agency: NCUA  
Due date: Oct. 5

**CUNA Comment Calls**  
[http://www.cuna.org/reg\\_advocacy](http://www.cuna.org/reg_advocacy)



# >> Notes Bearing Interest

## CUNA Advocacy Policies Accessible Online

CUNA-affiliated credit unions now can readily access an online listing of governmental affairs policies that set the direction of the national trade association's advocacy program.

The "Compendium of CUNA Policies on Legislative and Regulatory Issues" is a compilation of 60 policies—starting with "Annual Membership Fee" and concluding with "World Affairs." A new policy on evaluating predatory lending legislative proposals and a revised policy on conversions to mutual banks, which were adopted by the CUNA Board at its June

meeting, are included.

In addition, the 2001 Renaissance Commission Vision Statements are included in an appendix, as well as a statement of principles guiding how CUNA's leadership adopts policy on legislative and regulatory issues.

"These policies are intended to be broad enough to allow CUNA to respond to emerging political issues," explained Juri Valdov, president/CEO of



Juri Valdov

Northwest FCU, Herndon, Va., and chairman of CUNA's Governmental Affairs Committee.

"New or amended policies typically are adopted because of legislative or regulatory developments, but changes are also made because credit unions ask us to revisit an issue," he said. "We certainly welcome input from any credit union, either through the league or by contacting CUNA's board or senior staff directly." 📧

📄 **Compendium of CUNA Policies on Legislative and Regulatory Issues**  
<http://www.cuna.org/member/download/compendium.pdf>

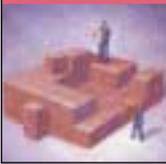
## CUNA Board Elections

For more information about the CUNA Board and updates on special elections, visit CUNA's website.

📄 <http://www.cuna.org/cuna>

Credit Unions <small>(Class is based on number of members as of December 31, 2004)</small>	Class	District 1 Connecticut Maine Mass. N. Hampshire New Jersey New York Pennsylvania Rhode Island Vermont Puerto Rico Virgin Islands	District 2 Delaware D.C. Indiana Kentucky Maryland Ohio Virginia W. Virginia	District 3 Alabama Arkansas Florida Georgia Louisiana Mississippi N. Carolina S. Carolina Tennessee	District 4 Illinois Iowa Michigan Minnesota Missouri Wisconsin	District 5 Arizona Colorado Kansas Montana Nebraska New Mexico North Dakota Oklahoma S. Dakota Texas Utah Wyoming	District 6 Alaska California Hawaii Idaho Nevada Oregon Washington Am. Samoa Guam
Up to 15,999 Members	Class A	2007 Diana Roberts	2006 Vacant. Special election planned.	2005 Sandy Lingerfelt* (I)	2007 Pat Wesenberg	2005 Mary Shipe* (I)	2006 Don Larsen
16,000 to 58,999 Members	Class B	2005 Joseph Poerio John Prumo (I)	2007 William A. Herring	2006 Laida Garcia	2005 Bohdan Watral Allan McMorris(I)	2006 Kris Mecham	2007 Grace Mayo
At Least 59,000 Members	Class C	2006 Patrick Calhoun	2005 Juri Valdov* (I)	2007 Tom Dorety	2006 Paul Parish	2007 Harriet May	2005 Richard Ghysels* (I)
Leagues	Class D	2007 John Murphy	2007 Vacant. Special election planned.	2005 Mike Mercer*	2005 David Adams Brett Thompson	2006 Dick Enswailer	2006 Gene Poitras

\* *Uncontested* (I) = *Incumbent*



# >> System Solutions

## Yield Curve Tops List of Insights

A flattening of the yield curve—caused by higher short-term rates and lower long-term rates—tops the list of insights in the recently released *CUNA 2005/2006 CU Environmental Scan (E-Scan)*. The Top 10 E-Scan Insights identifies the key trends and inferences significantly affecting credit unions in the coming years.

According to *E-Scan* analysts, the Top 10 are:

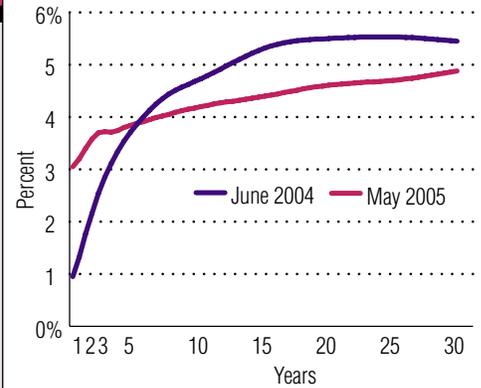
1. The flattening yield curve will have negative consequences for most credit unions' earnings and capital.
2. Rising interest rates will reduce loan demand.
3. Security breaches and fraud will increase, threatening consumer confidence in financial institutions.
4. Bank interest groups will continue

their fight to tax credit unions through well-funded, well-coordinated attacks.

5. Low- to moderate-income and new-immigrant consumers need the financial services, education, and counseling that credit unions can provide.
6. The demand for highly skilled, educated workers will soon exceed supply.
7. The CU Regulatory Improvements Act is a high priority for credit unions and should be the focal point of lobbying efforts at all levels.
8. With the expected decline in real estate lending, look beyond the traditional mortgage market for growth opportunities.
9. Merchant acceptance and incentives will lead to greater consumer use

### Treasury Yield Curve

(May 2005 & June 2004)



Source: CUNA Economics & Statistics

of contactless payment devices.

10. Aging baby boomers will transition from saving for retirement to living in retirement.

For more information or to order *E-Scan* resources, visit CUNA's website, or call 800-356-8010, press 3. Mention stock number 26657. 🏠

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