



REGULATORY INTERPRETATION 2000-RI-11

Date: August 11, 2000

Subject: Eligibility of a Privately Insured Credit Union for Federal Home Loan Bank Membership

Request Summary:

A state-chartered credit union, the accounts of which are insured by the National Credit Union Administration (NCUA) under the terms of the Federal Credit Union Act, has asked whether it may remain a member of a Federal Home Loan Bank (Bank) if it were to replace its federal share insurance with private share insurance.

Background:

A state-chartered credit union is considering terminating its NCUA share insurance and obtaining private share insurance. The credit union has represented that both state law and federal law would permit it to do so, subject to the state regulator's rules and a determination by the state regulator that the use of private share insurance would not present safety and soundness risks to the credit union. The credit union has requested that the Finance Board interpret section 4 of the Federal Home Loan Bank Act (Act), 12 U.S.C. § 1424, under which an "insured credit union" is eligible for Bank membership, to allow the credit union to remain a Bank member if it were to replace its NCUA insurance with private insurance. The legal opinion accompanying the request contends that the requirement for federal insurance applies only at the time that an institution applies to become a member, *i.e.*, that it is not a continuing requirement. The credit union reasons that nothing in the Act requires a member to continue to meet the eligibility requirements in order to maintain its membership. The credit union also cites to section 6(e) of the Act, noting that the grounds for removal of a member do not expressly include failure to maintain federal insurance. Finally, the credit union cites a provision of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1831t, which sets forth certain standards for institutions lacking federal deposit insurance, and concludes that the FDIA Act should be interpreted together with the Act to provide private insurance rights to achieve a "just and reasonable result[]."

Analysis:

Section 4(a)(1) of the Act expressly identifies seven types of business entities that are eligible to be members of a Bank and establishes the criteria that such institutions must meet in order to become members. One entity that is eligible for Bank membership is an "insured depository institution." That term is defined to include an "insured credit union," which in turn is defined as a credit union the member accounts of which are insured by the NCUA. 12 U.S.C. §§ 1422(12)(b) and 1752(7). The legislative history of the amendments that first authorized credit unions and commercial banks to be eligible for Bank membership indicates that the

Congress intentionally restricted eligibility to those credit unions and commercial banks that had obtained federal share or deposit insurance.¹

It is clear, both from the statutory language and its history, that a privately insured credit union is not eligible to become a member of a Bank. In our view, section 4(a) of the Act could not be interpreted to allow an insured credit union (or an insured commercial bank) that surrenders its federal insurance to remain a member of a Bank without undermining the clearly expressed language and intent of the statute. Had Congress intended to do so, it easily could have included privately insured credit unions among those entities that are eligible to become Bank members by referring to them expressly, as the Congress has done for building and loan associations, savings and loan associations, cooperative banks, homestead associations, savings banks and insurance companies, all of which are eligible for membership without regard to federal deposit insurance. Accordingly, an institution that is not among those listed in section 4(a)(1) of the Act can neither become nor remain a member of a Bank.²

If the credit union were to terminate its NCUA insurance, it would cease to be eligible for membership by operation of law. Under sections 2 and 4(a) of the Act, a credit union can only be an “insured depository institution” within the meaning of the Act if it is insured by the NCUA. Nothing in the materials submitted in support of the request warrants a different conclusion. Eligibility for membership and removal from membership are fundamentally different concepts, and the cited FDI Act provision in no way relates to Bank membership requirements. Section 1831t of the FDI Act does not create any rights in any state-chartered credit union, is not inconsistent with the provisions of the Act, and does not vitiate the requirements of the Act. In fact, the purpose of section 1831t is to provide enhanced protections for customers of depository institutions that lack federal deposit insurance.

Conclusion:

A credit union, the shares or accounts of which are not federally insured, does not meet a threshold eligibility requirement for membership in the Bank System under section 4 of the Act. Therefore, a credit union that terminates its federal share or deposit insurance also terminates its Bank membership, by operation of law, effective upon the termination of the federal insurance.

A Regulatory Interpretation is subject to modification or rescission by the Board of Directors of the Finance Board. See 12 C.F.R. part 907.

¹ The legislative history demonstrates that Congress was concerned with the safety and soundness of the Bank System, and in that context chose to restrict Bank System membership to federally insured credit unions and commercial banks. See H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess., 424-25 (1989), *reprinted in* 1989 U.S. Code Cong. & Ad. News 86, 463-64 (“The purpose of this section is to provide for expanded membership in the Banks to include Federally insured commercial banks and credit unions that engage in mortgage lending.”) The companion Senate bill provided that “any credit union whose accounts are insured by the NCUA under the Federal Credit Union Act” would be eligible for Bank System membership. See 135 Cong. Rec. S 4304, 4351 (April 19, 1989).

² The question of whether or not a credit union meets the definition of insured depository institution is clearly distinguishable from the eligibility criteria which, by the terms of the Act, the Finance Board may evaluate on a qualitative basis. See, e.g., 12 U.S.C. §§ 1424(a)(1)(C) (“if such institution makes such home mortgage loans as, *in the judgment of*”) and 1424 (a)(2)(A) (“shall be eligible ... *if*”) (emphasis added). These eligibility requirements may be deemed to apply only to a prospective member at the time of application, because the statutory provision clearly was “directive,” *i.e.* permissive and subject to waiver or interpretation. See 3 N. Singer, *Sutherland Statutory Construction* § 57.01 (5th Ed. 1992). The Act conferred interpretive discretion on the Finance Board.