Written Testimony of America's Mutual Banks

Hearing before the
House Financial Services Subcommittees on
Capital Markets and Government Sponsored Enterprises and
Financial Institutions and Consumer Credit

On
H.R. 1697, The Communities First Act

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America's Mutual Banks ("AMB") appreciates the opportunity to provide this testimony to the House Financial Services Subcommittees on Capital Markets and Government Sponsored Enterprises and Financial Institutions and Consumer Credit on H.R. 1697, The Communities First Act. AMB is a coalition of state- and federally-chartered mutual financial institutions, including mutual holding companies with no public stockholders, located throughout the United States. AMB was formed for the purpose of advocating for issues unique to mutual savings institutions. We are composed of persons and institutions that are committed to the preservation and advancement of mutuality as a viable business model for FDIC-insured depository institutions. We join Congress and cooperative financial institutions throughout the world in participating in the United Nation's recognition of 2012 as the "Year of Cooperatives" in celebrating cooperative financial institutions and how they have made the world a better place. Our goal is to be the voice to promote in the U.S. the virtues of the mutual agenda among Federal and State legislators, regulators and other policymakers. Another major goal is to educate legislators, regulators and other stakeholders on the unique attributes of the mutual form of ownership. We strive to preserve a mutual institution's freedom of choice with respect to Federal or State charter and form of corporate charter. Most importantly, AMB operates on the basis of inclusivity and represents the interests of mutuals regardless of charter, location or size.

Mutual institutions are truly community institutions and AMB applauds the efforts of the Committee to reduce the regulatory burden on community institutions. Any success in this regard can only make our institutions stronger and more responsive to meeting the needs of the communities we serve. In order to better understand AMB's members and the manner in which we are community focused and driven, we offer the following:

What is a mutual bank?

Mutual banks have been serving the nation's consumers since the early 1800's. There are a number of different types of mutual bank charters. The most prevalent are savings and loan associations and savings banks. The first mutual savings bank in the U.S. was chartered in Boston in 1816. Mutual banks are characterized as community institutions. Mutual banks were created to be perpetual institutions serving the communities in which they are located. Mutuals have no direct ownership. Mutual banks have no stockholders or other direct owners. Rather, the depositors of a mutual bank, often called "members", have an inchoate interest in the net worth of the institution. This interest cannot be bought or sold. Mutuals were created to promote savings among their members. Some, such as savings and loan associations, are chartered to promote home ownership as well.

How many mutual banks are there in the United States?

Today, there are 577 mutual banks located in 44 states. The states with the most mutual banks are Massachusetts (111), Illinois (50), Ohio (47) and Pennsylvania (46). At December 31, 2010, mutual banks had total assets of $209 billion. The median mutual bank had assets of $190.6 million. The prevalent mutual charter is the Federal mutual savings charter.

How strong are mutual banks?

Mutual banks are among the strongest in the country. The average Tier 1 capital ratio (a barometer of capital strength and safety) for all mutual banks was 12.36% and the average risk based capital ratio was 25.30%. The FDIC considers a bank to be "well capitalized" (the highest ratio for safety and soundness) if a bank's Tier 1 capital ratio is at or above 6% and its risk-based capital ratio is at or above 10%. Since February 2007, over 350 financial institutions with over $600 billion in total assets have failed. Of those failed institutions, only 12 were mutual institutions with total assets of approximately $2 billion.

Did mutual banks cause the last financial crisis?

Absolutely not. Mutual banks generally stick to providing the basic banking services required by a community. That is, mutuals provide checking and savings products and make home loans, other consumer loans and loans for local businesses. Mutuals generally do not engage in those activities recognized as causing the financial crisis that began in the Fall of 2008.

What are the challenges, post Dodd-Frank Act, that are peculiar to mutual savings institutions?

AMB appreciates the intent of the Communities First Act ("CFA") to reduce the regulatory burden imposed on community banks. However, in many cases, legislation and regulations do not take into account the mutual form of ownership. AMB has recognized several instances in which this is the case. For instance, the TARP program failed initially to provide a mechanism for non-stock companies such as mutuals to participate. Similarly, the Treasury's Small Business Lending Fund failed to take into account mutuality and provided no manner in which mutuals could participate for the benefit of small businesses in their communities. AMB has also identified several instances following the passage of the Dodd Frank Wall Street Reform and Consumer Protection Act and implementing regulations, which fail to recognize the unique attributes of mutual institutions. Such instances include: the new supervisory landscape does not provide a process by which mutuals can be acclimated to the new rules and supervisory policies of the OCC, Federal Reserve Board and FDIC; recent regulations of the Federal Reserve will all but eliminate the public mutual holding company as a viable vehicle to raise capital; comprehensive rules and guidelines adopted by the regulatory authorities for disclosure and regulation of incentive compensation do not recognize the inability of mutuals to use stock-based forms of compensation; continuing structural limitations prevent multiple combinations of mutual savings institutions; the absence of a mutual national bank charter eliminates an important choice for mutuals; the difficulties of conforming with the OCC national bank culture; heightened capital requirements will be imposed without taking into account the limitations on mutuals ability to raise capital and the significantly reduced risk profile of mutuals; the absence of any specific exemption from the jurisdiction of the Bureau of Consumer Financial Protection with respect to the member/depositor relationship; the assimilation by the Federal Reserve of the Savings and Loan Holding Company Act and the weakening of the provisions prohibiting third party control of mutual savings institutions; the decline of the dual system for state- and federally-charted mutuals; the peculiar impact on mutuals of the phasing out of the government-sponsored entities from the secondary mortgage market; and the absence of development of creative capital instruments for mutuals such as mutual capital certificates, paired options/shares and subordinated debt.

AMB respectfully requests that the CFA be modified to address some of these issues. For instance, AMB supports the establishment of a mutually chartered national bank. Early versions of the Dodd Frank Act included such a provision, which unfortunately was eliminated in the final bill. In addition, AMB supports legislation that would establish alternative capital instruments for mutuals. Such instruments would qualify as Tier 1 capital and would allow a mutual to increase its capital strength while not relinquishing its mutual form and culture. Lastly, AMB supports the continued viability of the mutual holding company structure and opposes a recently adopted regulation by the Federal Reserve which would require an MHC to seek and obtain the approval of members prior to any waiver of dividends by the MHC. AMB believes that this requirement will effectively eliminate the MHC as a viable structure for mutuals. A copy of AMB's comment letter to the Federal Reserve is attached for your convenience.

Again, America's Mutual Banks appreciates this opportunity to provide these comments to the Committees.