

112TH CONGRESS
2D SESSION

H. R. 4217

To support and promote community financial institutions in the mutual form,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2012

Mr. GRIMM (for himself and Mr. KING of New York) introduced the following
bill; which was referred to the Committee on Financial Services

A BILL

To support and promote community financial institutions
in the mutual form, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mutual Community
5 Bank Competitive Equality Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Mutual financial institutions have been an
9 integral part of the American banking landscape for
10 almost 200 years.

1 (2) Such institutions operate for the purpose of
2 serving the local depositors and borrowers and the
3 communities in which they operate.

4 (3) Mutual banks play a critical role in encour-
5 aging thrift, providing home loans and loans for
6 small businesses.

7 (4) Mutual banks are among the strongest fi-
8 nancial institutions in the country and are charac-
9 terized by high capital ratios and conservative, com-
10 munity-focused management.

11 (5) Congress deems it necessary to provide for
12 the support and continued development of these vital
13 community financial institutions.

14 **SEC. 3. MUTUAL NATIONAL BANKS AUTHORIZED.**

15 Chapter one of title XII of the Revised Statutes of
16 the United States (12 U.S.C. 21 et seq.) is amended by
17 inserting after section 5133 the following new section:

18 **“SEC. 5133A. MUTUAL NATIONAL BANKS.**

19 “(a) IN GENERAL.—Notwithstanding the section des-
20 ignated the ‘Third’ of section 5134, in order to provide
21 mutual institutions for the deposit of funds, the extension
22 of credit, and provision of other services, the Comptroller
23 of the Currency may charter mutual national banks either
24 de novo or through a conversion of any insured depository
25 institution or any State mutual bank or credit union, sub-

1 ject to regulations prescribed by the Comptroller of the
2 Currency in accordance with this section. The powers con-
3 ferred by this section are intended to provide for the cre-
4 ation and maintenance of mutual national banks as bodies
5 corporate existing in perpetuity for the benefit of their de-
6 positors and the communities in which they operate.

7 “(b) REGULATIONS.—

8 “(1) REGULATIONS OF THE COMPTROLLER.—

9 The Comptroller of the Currency is authorized to
10 prescribe appropriate regulations for the organiza-
11 tion, incorporation, governance, conversion, examina-
12 tion, operation, supervision, and regulation of mu-
13 tual national banks.

14 “(2) APPLICABILITY OF CAPITAL STOCK RE-

15 QUIREMENTS.—The Comptroller of the Currency
16 shall prescribe regulations regarding appropriate
17 capital substitutes for the requirements of this title
18 with respect to capital stock, and limitations im-
19 posed on national banks under this title based on
20 capital stock, as such requirements shall apply to
21 mutual national banks.

22 “(c) DE NOVO CHARTERS.—

23 “(1) The Comptroller of the Currency is au-
24 thorized to issue a certificate of authority to com-
25 mence the business of banking to a mutual national

1 bank in accordance with the requirements set forth
2 in section 5169, provided that references to ‘capital
3 stock’ shall mean ‘pledged accounts, nonwithdraw-
4 able investment certificates, or similar instruments’
5 by the incorporators.

6 “(2) Upon the issuance of the certificate re-
7 quired by paragraph (1), the mutual national bank
8 shall become a body corporate and the incorporators
9 shall become the first board of directors, with the
10 power and authority to manage the affairs of the
11 bank as herein set forth.

12 “(d) CONVERSIONS.—

13 “(1) CONVERSION OF A MUTUAL DEPOSITORY
14 TO A MUTUAL NATIONAL BANK.—Subject to such
15 regulations as the Comptroller of the Currency may
16 prescribe, any mutual depository may convert to a
17 mutual national bank by filing with the Comptroller
18 of the Currency a notice of its election to convert on
19 a specified date that is not earlier than 30 days
20 after the date on which the notice is filed, and the
21 mutual depository shall be converted to a mutual na-
22 tional bank charter on the date specified in the no-
23 tice.

24 “(2) CONVERSION TO STOCK NATIONAL
25 BANK.—Subject to such regulations as the Comp-

1 troller of the Currency may prescribe for the protec-
2 tion of depositors' rights and for any other purpose
3 the Comptroller of the Currency may consider ap-
4 propriate, any national bank that is organized in the
5 mutual form under subsection (a) may reorganize on
6 an equitable basis as a stock national bank.

7 “(3) CONVERSION TO STATE BANKS.—Any na-
8 tional mutual bank may convert to a State bank
9 charter in accordance with regulations prescribed by
10 the Comptroller of the Currency and applicable
11 State law.

12 “(e) TERMINATING MUTUALITY.—If a mutual na-
13 tional bank elects to terminate mutuality, it must do so
14 by—

15 “(1) liquidating; or

16 “(2) converting on an equitable basis to a na-
17 tional banking association operating in stock form.

18 “(f) STATUS AND RIGHTS OF MEMBERS.—

19 “(1) IN GENERAL.—In general, the status of a
20 member is primarily that of a depositor and second-
21 arily that of a holder of an inchoate right to partici-
22 pate in the equity of a mutual national bank upon
23 a liquidation or conversion in accordance with regu-
24 lations prescribed by the Comptroller of the Cur-
25 rency.

1 “(2) MANDATORY RIGHTS.—Each member of a
2 mutual national bank shall have the following rights:

3 “(A) Such rights as may be agreed upon,
4 by contract, between the member and the mu-
5 tual national bank.

6 “(B) In the event the board of directors, in
7 its sole discretion, determines a conversion of a
8 mutual national bank to a national banking as-
9 sociation operating in stock form is in the best
10 interests of the community in which the bank
11 operates, then the members as of a record date
12 set by the board of directors shall have the first
13 right to subscribe for and purchase stock in the
14 converted bank, on an equitable basis based on
15 the amount of the deposit held by such member
16 as of the record date.

17 “(C) In the event—

18 “(i) the board of directors, in its sole
19 discretion, determines a liquidation of the
20 mutual national bank is in the best inter-
21 ests of the community in which the bank
22 operates, and such board of directors has
23 adopted a plan of liquidation in accordance
24 with regulations proscribed by the Comp-
25 troller of the Currency, and the Comp-

1 troller of the Currency has approved if
2 such plan; or

3 “(ii) if for any other reason the bank
4 is liquidated by operation of law,
5 then the members as of the date of liquidation
6 shall have the right to have credited to their ac-
7 counts, on a pro rata basis, any residual assets
8 left after the payment of all liabilities and ex-
9 penses, including expenses of liquidation of the
10 mutual national bank.

11 “(g) MANAGEMENT OF THE BANK.—The board of di-
12 rectors shall have the entire management and control of
13 the affairs of the mutual national bank. No depositor or
14 borrower shall have the right to vote on any matter relat-
15 ing to the mutual national bank. Any voting rights of
16 members prior to a conversion to a mutual national bank
17 shall be extinguished upon a conversion to a mutual na-
18 tional bank.

19 “(h) MUTUAL HOLDING COMPANY FORMATION.—A
20 mutual national bank may reorganize into the mutual
21 holding company form of organization in accordance with
22 regulations promulgated by the Comptroller of the Cur-
23 rency.

24 “(i) DEFINITIONS.—For purposes of this section, the
25 following definitions shall apply:

1 “(1) INSURED DEPOSITORY INSTITUTION.—The
2 term ‘insured depository institution’ has the same
3 meaning as in section 3 of the Federal Deposit In-
4 surance Act.

5 “(2) MUTUAL NATIONAL BANK.—The term
6 ‘mutual national bank’ means a national banking as-
7 sociation that operates in mutual form and is char-
8 tered by the Comptroller of the Currency under this
9 section.

10 “(3) MUTUAL DEPOSITORY.—The term ‘mutual
11 depository’ means a depository institution that is or-
12 ganized in nonstock form, including a Federal non-
13 stock depository and any form of nonstock deposi-
14 tory provided for under State law, the deposits of
15 which are insured by an instrumentality of the Fed-
16 eral Government.

17 “(4) MUTUALITY.—The term ‘mutuality’ means
18 the quality of being an insured depository institution
19 organized under a Federal or State law providing for
20 the organization of nonstock depository institutions,
21 or a holding company organized under a Federal or
22 State law providing for the organization of nonstock
23 entities that control one or more depository institu-
24 tions.

1 “(5) MEMBER.—The term ‘member’ means
2 each insured account holder in a mutual depository’s
3 savings, demand, or other authorized depository ac-
4 counts and each insured account holder in such an
5 account in a depository subsidiary of a mutual bank
6 holding company. The board of directors may adopt
7 a bylaw setting a minimum dollar threshold to qual-
8 ify as a member up to \$1,000.

9 “(6) MEMBERSHIP RIGHTS.—The term ‘mem-
10 bership rights’ means the rights of each member
11 under this section.

12 “(j) CONFORMING REFERENCES.—Unless otherwise
13 provided by the Comptroller of the Currency—

14 “(1) any reference in any Federal law to a na-
15 tional bank operating in stock form, including a ref-
16 erence to the term ‘national banking association’,
17 ‘member bank’, ‘national bank’, ‘national associa-
18 tion’, ‘bank’, ‘insured bank’, ‘insured depository in-
19 stitution’, or ‘depository institution’, shall be deemed
20 to refer also to a mutual national bank;

21 “(2) any reference in any Federal law to the
22 term ‘board of directors’, ‘director’, or ‘directors’ of
23 a national bank operating in stock form shall be
24 deemed to refer also to the board of a mutual na-
25 tional bank; and

1 “(3) any terms in Federal law that may apply
2 only to a national bank operating in stock form, in-
3 cluding the terms ‘stock’, ‘shares’, ‘shares of stock’,
4 ‘capital stock’, ‘common stock’, ‘stock certificate’,
5 ‘stock certificates’, ‘certificates representing shares
6 of stock’, ‘stock dividend’, ‘transferable stock’, ‘each
7 class of stock’, ‘cumulate such shares’, ‘par value’,
8 ‘preferred stock’ shall not apply to a mutual national
9 bank, unless the Comptroller of the Currency deter-
10 mines that the context requires otherwise.”.

11 **SEC. 4. MUTUAL INVESTMENT CERTIFICATES AUTHORIZED.**

12 Section 38(c)(1) of the Federal Deposit Insurance
13 Act (12 U.S.C. § 1831o(c)(1)) is hereby amended by delet-
14 ing “subparagraph (B)(ii)” in paragraph “(A)” and in-
15 serting “subparagraph (B)(ii) and paragraph (C)” and by
16 adding at the end of subparagraph (B)(ii) the following:

17 “(C)(i) Notwithstanding any other provi-
18 sion of law, a mutual depository, as defined in
19 (12 U.S.C. 5133A(h)(3)), is authorized to issue
20 Mutual Investment Certificates, which shall be
21 included as Tier 1 capital for purposes of any
22 capital standards issued by an appropriate Fed-
23 eral banking agency, provided that such certifi-
24 cates must be—

1 “(I) nonvoting, except that the issuing
2 mutual depository institution may permit
3 voting in the event that—

4 “(aa) the mutual depository insti-
5 tution fails to pay dividends for a
6 minimum of three consecutive divi-
7 dend periods, and then the holders of
8 the class or classes of Mutual Invest-
9 ment Certificates granted such voting
10 rights, and voting as a single class,
11 with one vote for each outstanding
12 certificate, may elect by a majority
13 vote a maximum of one-third of the
14 institution’s board of directors, the di-
15 rectors so elected to serve until the
16 next annual meeting of the institution
17 succeeding the payment of all current
18 and past dividends;

19 “(bb) any merger, consolidation,
20 or reorganization (except in a super-
21 visory case) is sought to be author-
22 ized, where the issuing institution is
23 not the survivor, provided that the
24 regulatory capital of the resulting in-
25 stitution available for payment of any

1 class of Mutual Investment Certifi-
2 cates on liquidation is less than the
3 regulatory capital available for such
4 class prior to the merger, consolida-
5 tion, or reorganization;

6 “(cc) any action is sought to be
7 authorized which would create any
8 class of Mutual Investment Certifi-
9 cates having a preference or priority
10 over an outstanding class or classes of
11 Mutual Investment Certificates;

12 “(dd) any action is sought to be
13 authorized which would adversely
14 change the specific terms of any class
15 of Mutual Investment Certificates;

16 “(ee) action is sought to be au-
17 thorized which would increase the
18 number of a class of Mutual Invest-
19 ment Certificates, or the number of a
20 class of Mutual Investment Certifi-
21 cates ranking prior to or on parity
22 with another class of Mutual Invest-
23 ment Certificates; or

24 “(ff) action is sought which
25 would authorize the issuance of an ad-

1 ditional class or classes of Mutual In-
2 vestment Certificates without the in-
3 stitution having met specific financial
4 standards;

5 “(II) redeemable at the sole discretion
6 of the Board of Directors of the mutual
7 depository; and

8 “(III) provide that any dividends paid
9 must be non-cumulative.

10 “(ii) Notwithstanding any other provision
11 of law, nonwithdrawable accounts, pledged ac-
12 counts, mutual capital certificates, or similar
13 instruments, authorized as of the date of the
14 enactment of the Mutual Community Bank Eq-
15 uity Act, shall be included as Tier 1 capital for
16 purposes of any capital standards issued by an
17 appropriate Federal banking agency.

18 “(iii) The appropriate Federal banking
19 agencies are hereby authorized to prescribe ap-
20 propriate regulations to implement these provi-
21 sions.”.

22 **SEC. 5. PROTECTION OF MUTUAL DEPOSITORIES.**

23 (a) IN GENERAL.—Subsection (h) of section 10 of the
24 Home Owners’ Loan Act (12 U.S.C. 1467a(h)) is amend-
25 ed—

1 (1) by striking “or” after the semicolon at the
2 end of paragraph (2);

3 (2) by striking the period at the end of para-
4 graph (3) and inserting “; or”; and

5 (3) by inserting after paragraph (3), the fol-
6 lowing new paragraph:

7 “(4) any company or any subsidiary of any
8 company, any director, officer, employee, or person
9 owning, controlling, or holding with the power to
10 vote, or holding proxies representing more than 25
11 percent of the voting shares, of such company or
12 subsidiary, or any director, officer, employee, or per-
13 son acting in concert with such company or sub-
14 sidiary, to hold, solicit, or exercise any proxies in re-
15 spect of a savings association which is a mutual as-
16 sociation, with the view or intention to, directly or
17 indirectly, control or attempt to control the mutual
18 association.”.

19 (b) ENFORCEMENT ACTION.—Subsection (i) of sec-
20 tion 10 of the Home Owners’ Loan Act (12 U.S.C.
21 1467a(i)) is amended by inserting after paragraph (3) the
22 following new paragraph:

23 “(4) CIVIL ACTIONS BY ASSOCIATION.—

24 “(A) EQUITABLE RELIEF.—Any aggrieved
25 mutual savings association may bring a civil ac-

tion in a court of appropriate jurisdiction and may recover such equitable relief, including injunctive relief, and reasonable attorney's fees, as determined by the court for any violation or attempted violation of paragraph (1) or (4) of subsection (h).

“(B) PROXIES NULL AND VOID.—In addition to any damages or relief under paragraph (1), any proxy held or exercised by any party the holding or exercise of which has been determined to be a violation of paragraph (1) or (4) of subsection (h) shall be deemed null and void, as of the inception of such proxy, and shall not be counted for purposes of determining a quorum at any meeting of such aggrieved mutual association.

“(C) STATUTE OF LIMITATION.—

“(i) IN GENERAL.—An action may not be brought under subparagraph (A) after the end of the 180-day period beginning on the later of—

“(I) the date of the discovery of the alleged violation by the aggrieved mutual savings association; or

1 “(II) the date of the enactment
2 of the Mutual Savings Association
3 Preservation Act.

4 “(ii) ‘NO ATTRIBUTION’ RULE.—For
5 purposes of clause (i)(I), the knowledge of
6 the facts and circumstances giving rise to
7 an alleged violation by any party to the
8 violation shall not be attributed to the sav-
9 ings association.”.

10 **SEC. 6. ESTABLISHMENT OF CHARITABLE FOUNDATIONS**
11 **AUTHORIZED.**

12 (a) Any mutual holding company or direct or indirect
13 stock subsidiary of a mutual holding company may con-
14 tribute or issue shares of such stock subsidiary to a chari-
15 table foundation established by the mutual holding com-
16 pany or any direct or indirect stock subsidiary of the mu-
17 tual holding company, provided that—

18 (1) the charitable foundation qualifies as a
19 501(c)(3) organization under the Internal Revenue
20 Code, as amended;

21 (2) the Foundation’s governance complies with
22 regulations adopted by the appropriate Federal
23 banking agency;

24 (3) at the time of the contribution or issuance
25 to the charitable foundation, no direct or indirect

1 stock subsidiary of the mutual holding company, nor
2 any affiliate thereof, has issued shares of common
3 stock to any nonaffiliate of the direct or indirect
4 stock subsidiary of the mutual holding company;

5 (4) the value of the stock so contributed or
6 issued by the direct or indirect stock subsidiary of
7 the mutual holding company, as determined in ac-
8 cordance with subsection (b), shall not exceed more
9 than 10 percent of the insured depository institu-
10 tion's consolidated Tier 1 capital, as of the quarter
11 end prior to the establishment of the charitable
12 foundation;

13 (5) the direct or indirect stock subsidiary of the
14 mutual holding company that contributes or issues
15 the shares to the charitable foundation must reason-
16 ably expect to utilize the tax deduction within the
17 time period proscribed by the Internal Revenue
18 Service for contributions to charitable foundations;
19 and

20 (6) the mutual holding company and each di-
21 rect or indirect stock subsidiary of the mutual hold-
22 ing company will be "well capitalized" under the
23 prompt corrective action regulations immediately fol-
24 lowing the contribution to the charitable foundation.

1 (b) Prior to any contribution or issuance by a direct
 2 or indirect stock subsidiary of the mutual holding com-
 3 pany to a charitable foundation pursuant to subsection
 4 (a), the mutual holding company shall obtain an appraisal,
 5 by an independent appraiser experienced in such matters,
 6 of the pro forma value of the stock so contributed on a
 7 fully converted basis. The value of the stock so contrib-
 8 uted, as determined by the appraiser, shall be limited in
 9 accordance with paragraph (4) of subsection (b).

10 **SEC. 7. DIVIDENDS PAID BY SUBSIDIARIES OF MUTUAL**
 11 **HOLDING COMPANIES.**

12 Section 10(o)(11)(B) of the Home Owners' Loan Act
 13 (12 U.S.C. 1467a(o)(11)(B)) is amended by deleting "or"
 14 at the end of (i), deleting the period at the end of (ii)
 15 and inserting a semicolon at the end thereof, and adding
 16 the following:

17 " (iii) a majority of the board of direc-
 18 tors of the mutual holding company, or a
 19 committee thereof, consists of directors
 20 who are not affiliates of any stock sub-
 21 sidiary of the mutual holding company and
 22 who do not directly or indirectly own any
 23 shares of the stock to which the waiver
 24 would apply, and vote in favor of the waiv-
 25 er of the dividend; or

1 “(iv) an independent corporate com-
 2 mittee consisting of persons who are not
 3 stockholders, affiliates, depositors, bor-
 4 rowers, or members of the mutual holding
 5 company or any stock subsidiary of the
 6 mutual holding company vote in favor of
 7 the waiver of the dividend.”.

8 **SEC. 8. PRESERVING MUTUALITY BYLAWS AUTHORIZED.**

9 (a) The Board of Directors of a mutual depository
 10 may adopt a bylaw to preserve the mutuality of a mutual
 11 depository. Such bylaw provisions may include—

12 (1) supermajority voting requirements, up to 80
 13 percent, by the members to approve a conversion to
 14 stock form;

15 (2) a prohibition against any person from serv-
 16 ing, or nominating a person to serve, on the Board
 17 of Directors of the mutual depository, if such person
 18 or nominee has an intention to propose a conversion
 19 from mutual to stock form;

20 (3) a requirement that any person serving or
 21 nominated to serve on the Board of Directors may
 22 not propose a conversion from mutual to stock form
 23 for a period of time not exceeding five years, as de-
 24 termined by the Board, beginning on the later of the

1 date such bylaw is adopted or such person is elected
 2 to serve on the Board;

3 (4) a prohibition against any member from pro-
 4 posing a conversion to stock form at any annual or
 5 special meeting of members or by the written con-
 6 sent of members; and

7 (5) a violation of one or more of the bylaw pro-
 8 visions adopted to preserve mutuality shall be a
 9 basis for termination as a member of the Board of
 10 Directors.

11 (b) Notwithstanding the foregoing, in no event shall
 12 any bylaw adopted pursuant to section (a) have any force
 13 and effect in the event the mutual depository is not well
 14 capitalized in accordance with the rules established by
 15 such depositories appropriate Federal banking agency.

16 **SEC. 9. APPLICABILITY OF SMALL BANK HOLDING COM-**
 17 **PANY POLICY STATEMENT TO SMALL MU-**
 18 **TUAL HOLDING COMPANY.**

19 The Board of Governors of the Federal Reserve shall
 20 apply its Small Bank Holding Company Policy Statement
 21 to any mutual holding company that would otherwise qual-
 22 ify as a small bank holding company, if it were a bank
 23 holding company.

