

August 25, 2006

Mary Rupp, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Dear Ms. Rupp:

The North Carolina Credit Union League (NCCUL) appreciates the opportunity to provide comments to the National Credit Union Administration (NCUA) on Proposed Rule 12 C.F.R. Part 708a, Conversion of Insured Credit Unions to Mutual Savings Banks. NCCUL represents 120 North Carolina credit unions that serve over 2.8 million members.

NCCUL believes the detailed changes proposed in Part 708a bring much needed guidance and a heightened level of transparency to the conversion process. We are specifically pleased to see NCUA (1) offer procedural changes that will help members better understand the conversion process, (2) offer new and enhance existing disclosure requirements, and (3) reaffirm the responsibilities, including fiduciary, of the credit union's board.

Below we have provided feedback on the three areas outlined above and on additional items upon which the NCUA has requested comment. These comments reflect the position articulated in the *Statement on Conversions* developed by the NCCUL Conversion Task Force and adopted by the NCCUL Board of Directors on September 6, 2005.

**Procedural Changes Allow Greater Opportunity to Educate Membership & Board**

The proposal offers a number of changes which would have the net effect of producing a more informed board and membership. These alterations would ultimately put the board and membership in a better position to vote for or against a conversion. The provisions particularly important in accomplishing this end are contained in:

*708a.3, Advanced notice of board meeting to consider conversion proposal.* NCCUL supports this requirement and agrees with NCUA's assertion that involving the credit union members early in the process provides board members with the greatest possible opportunity to get feedback from the members that they represent.

In regard to 708a.3(a)(1), we find publishing the information in a local newspaper to be an insufficient means of communicating with the membership. Credit unions routinely communicate with members via newsletters, statement stuffers and other direct mail pieces. Sending each member a notice that the board of directors intends to vote on a proposal to convert would ensure the membership was informed and would not present an undue burden to the credit union.

*708a.4(a)(b), Delivery of ballots to members.* Not sending the ballot to members with the 90 and 60 day notices, but instead sending the ballot only in the last mailing (the 30 day notice), again creates an environment where the member is in the best possible position to make an informed decision about the future of their credit union. The proposed system puts the member in a position to vote after having considered the pros and cons of conversion and after hearing the full cycle of debate over the 90 day period following the board's announcement of intention to convert.

*708a.4(f), Member communications with other members.* While involved, the steps outlined for member-to-member communications represent a significant improvement in the effort to strike a balance in the conversion process. This balance occurs by allowing a credit union's communication channels to be used to present not only the view of the board and management, but also the views of rank and file members. Under the current rules, these rank and file members lack practical access to communicate effectively with the entire membership.

With regard to the specific procedures governing member-to-member communications, NCCUL would encourage NCUA to give members the opportunity to have their comments included in the 60 and 30 day notices. Allowing for member comments in the 30 and 60 day notices would ensure that every member received the comments and, by using a communications vehicle that is already part of the conversion process, would do so with little administrative burden on the credit union. The word counts of these comments could be limited if necessary.

In addition, NCCUL supports 708a.4(f)(5) that specifically authorizes the Regional Director to determine the suitability of the member communication. Member communications should be held to the same standard of being "accurate and not misleading" that NCUA maintains when reviewing conversion communications from a credit union to its members.

### **Changes to the Disclosure Requirements Provide Clarity**

Credit union conversion to a mutual savings bank should always be a transparent process for everyone, with measured oversight to ensure fully informed decisions based on fair, objective and honest information. The information communicated in disclosures and the manner in which the information is sent is vital to achieving the aforementioned end. We believe NCUA's proposal improves the flow of accurate information in a simple and straightforward manner. NCCUL finds the following items to be particularly important and necessary in the proposed regulations:

*708a.4(c)(1)Member Voting Rights.* NCCUL supports the retention of the current regulatory language on member voting rights. NCCUL believes that one member-one vote is a concept central to the democratic control and ownership of credit unions. It is a practice that prevents excessive influence from being concentrated in the hands of a few account holders and ensures that a credit union operates in the best interests of all its members. While voting rights still may exist in a mutual savings bank, this disclosure is important in advising members that the concept and practice of one member-one vote may not exist in the new mutual structure.

708a.4(d)(1), *Required boxed disclosures.* NCCUL supports the proposed changes to the required boxed disclosures and offers the following comments on specific portions of that disclosure:

**Loss of Credit Union Membership.** We support this as a simple, but important addition to the regulations that provides each member with a clear understanding of the outcome of a vote “FOR” conversion and a vote “AGAINST” conversion.

**Rates on Loans and Savings.** NCUA outlines its justification for this disclosure based on Datatrac market research. In a study commissioned by NCCUL and conducted by UNC Economist William Jackson entitled *The Benefits of Credit Unions to North Carolina Consumers of Financial Services*, Dr. Jackson reached similar conclusions in his specific analysis of the credit unions and banks in North Carolina. In the report, Dr. Jackson concluded, “North Carolina credit unions provide financial benefits to their members in at least one of three ways. These are: (1) lower rates on loans (relative to available rates at other financial institutions), (2) higher rates on deposits or (3) lower fees on specific financial products and services.” Dr. Jackson found the sum total of savings derived for North Carolina credit union members from these three sources to be \$336 million in 2003. The conclusions reached by Dr. Jackson support and provide further justification for NCUA’s inclusion of this disclosure.

**Potential Profit by Officers and Directors.** NCCUL supports the language proposed in this section. An analysis, including that provided by NCUA, of credit unions converting to mutual savings banks since 1995 provides meaningful data to support both statements in this disclosure, that (1) “Conversion...is often the first step in a two-step process” and (2) “Officers and directors...often profit by obtaining stock in excess of that available to other members.” NCCUL finds these statements to be accurate and their inclusion to be essential in providing a more complete and balanced picture of the conversion process to members.

708a.4(d)(2), *Delivery of boxed disclosure.* Specifying the placement and appearance of the required boxed disclosure removes ambiguity from the process for the credit union management and board undertaking the conversion. In addition, it creates a situation wherein there is a reasonable likelihood that members receiving the disclosure with the 90, 60 and 30 day mailing will see and read the disclosures.

### **Responsibilities of Credit Union Board in Conversion**

708a.3(c), *Determination by board of directors that conversion is in the best interest of the members.* NCCUL maintains that the equity of the credit union ultimately belongs to its members. As such, the board of directors of the credit union has the fiduciary responsibility to protect this member equity and act in the best interest of the membership. We support the requirement in the section because it reaffirms the obligation of directors to act in the best interests of members when voting to issue a notice of intent to convert.

*Private Right of Action.* In addition to reaffirming the fiduciary responsibility of the credit union board, NCCUL believes NCUA should establish an affirmative event whereby individual credit union members concerned that a board is violating its fiduciary responsibility may seek a private right of action in some type of review process.

#### **Additional Comments on Part 708a**

NCCUL would also like to offer comments on three specific items related to the voting process.

*Electronic Voting in Conversion.* NCCUL sees no reason to limit voting to mail in ballots or the membership meeting. NCCUL supports members having the option to vote electronically as long as this opportunity to vote is consistent with the time table prescribed in the proposed regulations and that the integrity of the process can be verified and maintained. NCUA's May 8, 2002 *Opinion Letter 02-0412* on this issue in regard to voting on conversion to non-federal insurance seems to provide applicable guidance.

*Reporting of Voting Results.* NCCUL believes that the interim reporting of voting results should either be (1) completely prohibited or (2) made available to all interested parties. If a credit union's management has access to early voting results, but the members opposing the conversion do not, the credit union clearly has a strategic advantage in determining how to allocate resources (marketing, public relations, legal, etc.) to influence the final outcome of the vote.

*Voting Incentive.* NCCUL believes that incentives are an inappropriate and unnecessary part of the voting process and, as such, supports a complete ban on incentives in the voting process. In addition, NCCUL is particularly concerned about the proposed language in 708a.13(d)(2). Where other provisions of the proposed regulation provide clarity as to the appropriate means for a credit union to convert to a mutual savings bank, the statement in 708a.13(d)(2) that the "incentive should not be unreasonable in size" is ambiguous and, by introducing a highly subjective standard, invites controversy into the process.

In conclusion, we want to address the assertion by some that these proposed rules are "over-reaching" and "unreasonable." We do recognize the current proposal offers a high degree of specificity and some would say burdensome government regulation. However, given the magnitude of what is being undertaken in the conversion process, NCCUL finds the level of participation and oversight by NCUA in the process to be not only appropriate, but necessary.

We are talking not merely about a new line of business or routine field of membership change. In a conversion, a credit union that is owned by its members is attempting to fundamentally alter the nature of the institution. While NCCUL does not oppose the conversion of a credit union to a mutual savings bank, we do believe that such a transition should take place with the best interests of the members in the forefront.

Given the highly charged environment in which this issue has been considered throughout the credit union movement and in Congress, the NCUA should be commended for issuing regulations which focus so appropriately on providing clarity to credit unions interested in

converting while safeguarding the best interests of credit union members. NCCUL appreciates the opportunity to offer its feedback.

Sincerely,

A handwritten signature in black ink that reads "John F. Radebaugh". The signature is written in a cursive style with a large, stylized initial "J".

John Radebaugh  
President