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August 28, 2006

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

Re: Conversion of Insured Credit Unions to Mutual Savings Banks

Dear Ms. Rupp,

The Georgia Credit Union League (GCUL) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposal to amend to amend its rules regarding the conversion of insured credit unions to mutual savings banks or mutual savings associations (collectively MSBs). GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL serves approximately 188 credit unions that have over 1.7 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed regulations such as this.

Background:

The NCUA is proposing to amend its rules on the conversion of insured credit unions to MSBs. The current conversion rule requires a credit union board wishing to convert to approve a conversion proposal by a majority vote and set a date for a member vote. The members must approve the proposal by the affirmative vote of those members who vote on the proposal.

This proposal clarifies that a credit union's directors may vote in favor of a conversion proposal only if they have determined that the conversion is in the best interests of the members. The directors and officers of a credit union have a fiduciary duty to act in the best interests of the credit union members and a director may be held personally liable for a breach of that fiduciary duty. The NCUA Board believes that credit union directors must faithfully fulfill their fiduciary duties to members by closely examining whether a charter conversion is in the members' best interest by reviewing all aspects of a conversion to an MSB.

The proposal contains several changes to the existing rule on conversions.

Notice and Ballot

- The current rule requires that a notice must be provided to members 90, 60, and 30 days before the vote. The proposal would require that the voting ballot be sent only with the 30-day notice.
- A new requirement is included regarding advance notice to the members of the board's intent to consider a conversion proposal. The credit union's board of directors would be required to publish a public notice indicating its intent to hold a board meeting for purposes of voting on a conversion proposal.
- The board would be required to publish the notice in a local area newspaper and on the credit union's website as well as post a notice in the credit union's offices no later than 30 days before the meeting. The notice will inform members that they may provide comment to the board before it votes to approve the conversion proposal.
- The credit union board would be required to review the member comments before it votes and if the credit union maintains a website, the credit union would also be required to post the comments in a clear and conspicuous fashion.
- The voting ballot would only be required to be sent with the 30-day notice. This provision differs from the current rule, which simply requires the ballot be submitted to members no less than 30 calendar days before the vote. The ballot would set forth the proposal that the members are voting on and inform the members clearly and conspicuously that a vote for the proposal means the credit union will become a bank while a vote against the proposal means that the credit union will remain a credit union.
- The ballot may also indicate whether the board recommends a vote for or against the proposal, but may not contain any other information.

Disclosures

The proposal maintains the current disclosure requirements, namely, that:

- The notices to members must adequately state the purpose and subject matter of the proposal and inform members that they may vote either in person at the meeting or by submission of a written ballot;
- All information communicated to members by the credit union must be accurate and not misleading;
- In addition to disclosing the purpose, subject matter, date, time, and place of the special meeting, the three notices submitted to members must make certain disclosures relating to members' ownership interests and voting rights, as well as a disclosure regarding any conversion-related benefits to officials
- In addition to the disclosures above, the proposed rule would require that the 90-day and 60-day notices state in bold type, in at least 12-point font, that a written ballot will be mailed together with the 30-day notice.
- All three notices would disclose the impact of the qualified thrift lender test on the institution if it converts to an MSB. The disclosure should state, in a manner members can easily understand that, upon conversion to an MSB, an institution's focus may shift from providing a full array of consumer loan products to the more limited financing of mortgages and other qualified thrift investments.

Required Boxed Disclosures

- The NCUA Board is proposing to retain the disclosures required to be offset by borders (“boxed disclosures”), related to the profit potential by directors and senior management and the possibility of changes in rates.
- The proposed boxed disclosure contains a new disclosure in plain language that sets forth the effects of a member voting “FOR” a conversion: That the credit union will become a bank. A vote “AGAINST” the conversion means that the credit union will remain a credit union.
- Additionally, the delivery requirements are amended by requiring these boxed disclosures be delivered on a separate sheet of paper with no other text. The paper would be placed immediately after the credit union’s cover letter and before any other information included with the notice.
- These disclosures would only need to go out to the members with the 90-day, 60-day, and 30-day notices. This is different than the current rule, which requires the credit union provide the boxed disclosures with all written communications to members.

Required Boxed Disclosures: Loan and Savings Rates

After engaging in the services of Datatrac Corporation for gathering and analyzing data on historic loan and savings rates and reviewing a study by the Fiscal and Economic Research Center, the NCUA Board determined that members must be made aware that a conversion to an MSB may result in less advantageous rates. Therefore, it is proposing the following disclosure:

RATES ON LOANS AND SAVINGS. If your credit union converts to a bank, you may experience adverse changes in your loan and savings rates. Available historic data indicates that, for most loan products, credit unions on average charge lower rates than banks. For most savings products, credit unions on average pay higher rates than banks.

Proposed Boxed Disclosure: Benefits to Directors and Senior Management

The NCUA Board proposes to modify the boxed disclosures on benefits to directors and senior management to make it less subjective and easier to understand. The proposed disclosure language reads as follows:

POTENTIAL PROFITS BY OFFICERS AND DIRECTORS. Conversion to a mutual savings bank is often the first step in a two-step process to convert to a stock-issuing bank or holding company structure. In such a scenario, the officers and directors of the institution often profit by obtaining stock in excess of that available to other members.

Member Communications with Other Members

- The NCUA Board is proposing to establish a process for a member to communicate directly with other members after a board has approved an MSB conversion proposal to share information and views about the proposal.

- The rule permits members to submit written requests to the credit union requesting dissemination of information to other members at the expense of the member making the request.
- The member communication must be conversion-related and proper. Improper communications include those that are impracticable to deliver, relate to personal gain or grievance, or are otherwise false or misleading with respect to any material fact.
- The credit union would be required to send a communication by mail, or e-mail to those members who have agreed to accept electronic communication from the credit union at the member's request.
- The credit union would also be required to provide members an opportunity to post their opinions on a credit union's Website free-of-charge if the credit union itself posts conversion-related materials.
- Members would be required to deliver their request to communicate with other members within 35 days (five weeks) after the date of the 90-day notice. The credit union would have seven days to deliver the communication to its membership or, in the case of a dispute, to NCUA.
- The member must agree to reimburse the credit union for the reasonable costs of delivering the communication to other members and would be required to provide a credit union with an advance payment toward the reimbursable costs. When a credit union receives an advance payment, it would be required to first deliver the communication, and then work out any details regarding reimbursement of actual costs after delivery.
- The amount of the advance payment depends on how the requestor wants the communication delivered. For deliveries by regular mail, the payment would be fifty cents times the number of eligible voters. For deliveries by e-mail, the payment will be two hundred dollars regardless of the number of recipients.
- The proposed rule would require that the 90-day and 60-day notices include the number of credit union members eligible to vote and how many members agreed to accept electronic communications from the credit union.
- If a credit union believes a communication is not proper, it would be required to forward the communication to the Regional Director within seven days of receipt. The credit union would be required to include with its transmittal letter a statement as to why the credit union believes the communication is not proper and a recommendation for modifying the communication, if possible, to make it proper.
- The Regional Director would respond to the credit union within seven days with a determination on the propriety of the communication. After the Regional Director's review, the credit union must mail or e-mail the material to the members if directed.
- If the credit union cannot forward a member communication to other members before the date they receive the 30-day notice and associated ballot, the proposal requires the credit union to postpone mailing the 30-day notice until members receive the communication and postpone the date of the special meeting by the same number of days.

Notice to NCUA

- Currently, credit unions must notify NCUA of its intent to convert within 90 days of the member vote. The credit union must provide NCUA with copies of the notice and material it has or will send to the members.

- State chartered credit unions must provide certain information about the laws and regulations it intends to follow with regard to the conversion.
- The NCUA Board is proposing to require a credit union board to submit a certification of its support for the conversion proposal and plan signed by each supporting board member.
- The certification would include a statement that each director signing the certification supports the proposed conversion and believes that the proposed conversion is in the best interests of the members of the credit union.
- A description of all materials submitted to the Regional Director would be included with the certification and a statement that these materials are true, correct, current, and complete as of the date of submission as well as an acknowledgment that federal law prohibits any misrepresentations or omissions of material facts in connection with the conversion.
- A credit union can currently request NCUA to make a preliminary determination regarding the intended methods and procedures applicable to the membership vote.
- This proposal expands that right to allow a credit union to also request review of all of its proposed notices, including the public notice it intends to publish before the board of directors votes on a conversion proposal.
- The NCUA Regional Director would make a determination on the request within 30 calendar days unless more time is required to review the submission or obtain additional information.

Membership Approval

- Currently, the credit union board of a converting credit union must certify the results of the member vote to NCUA within ten days of the member vote and certify that the materials actually provided to the members were the same as those previously submitted to NCUA or explain the differences.
- This proposal would require the credit union board to set a date to determine member eligibility to vote.
- The voting date of record must be at least one hundred and twenty days before the credit union board publishes the notice of intent to consider conversion.

NCUA Oversight

- A Regional Director currently must issue a determination to approve or disapprove a credit union's methods and procedures for the membership vote within ten calendar days of the receipt of the credit union's certification of the member vote.
- The NCUA Board is proposing to lengthen this time period to 30 calendar days.
- A credit union dissatisfied with the determination would be permitted to appeal to the NCUA Board for a final agency determination.
- An appeal would be filed within 30 calendar days after receipt of the determination.

Completion of Conversion

The NCUA Board is amending the current rule to require a credit union to complete the conversion transaction within one year of the date of receipt of its approval from NCUA.

Additional Proposed Amendments

- The proposed rule includes a new provision stating that members may request access to the books and records of the converting credit union for purposes such as facilitating contact

with other members about the conversion or obtaining copies of documents related to the due diligence performed by the credit union's board.

- Member access to books and records of state-chartered credit unions is determined by applicable state law.
- A credit union would be required to grant access under the same terms and conditions that a state-chartered for-profit corporation in the credit union's state must grant access to its shareholders.
- Credit unions offering incentives to members, such as entry to a prize raffle, to encourage participation in the conversion vote, must exercise care in the design and execution of such incentives.
 - The proposed voting guidelines state that credit unions should ensure that the incentive comply with all applicable state, federal, and local laws; that the incentive should not be unreasonable in size, and that all materials promoting the incentive to members should make clear that they have an equal opportunity to participate in the incentive program regardless of whether they vote for or against the conversion.
- The proposal also adds two additional definitions in its conversion rule.
 - The proposed definition for the phrase "clear and conspicuous," would be "text that is in bold type in a font at least as large as that used for headings, but in no event smaller than 12 point."
 - The second proposed definition clarifies that the term "regional director" for natural person credit unions means the NCUA director for the region where the credit union's main office is located and for corporate credit unions means the Director, NCUA Office of Corporate Credit Unions.

Summary of GCUL's Position:

We support NCUA's efforts to amend and clarify the process by which a credit union could convert to an MSB. However, because of the unique nature of credit unions that exists due to the cooperative structure, equity ownership by members, and the fiduciary role and duties of the board of directors, it is imperative that the conversion process be disclosed properly and only acted upon by a well-informed membership.

With limited exceptions (which are detailed below), we support the proposed amendments to the rules on the conversion of insured credit unions to MSBs.

- **Proposed Boxed Disclosure: Benefits to Directors and Senior Management**
We suggest the statement reflect a more accurate description of the process and the potential economic opportunity that occurs for the stated officials. Historical data could be used to demonstrate this. In its current form, the statement is too subjective and vague.
- **Member Communications With Other Members**
Although we support the underlying intention of this section, we express concern over the wording that indicates broad access to member information. Because of

the confidential nature of member information, we would suggest NCUA provide additional clarification and guidance detailing the types of member information that would be accessible.

In addition to the proposed methods of member-to-member communication, we would suggest the additional option of a specially called meeting for the purpose of sharing opinions be included.

- **Completion of Conversion**

We express deep reluctance to permit credit unions to offer incentives to members in return for their participation in the conversion vote. Again, while we understand the objective of permitting the use of prizes and raffles to foster a large member/voter turnout, this can be viewed by many as an attempt to buy a vote for conversion. Therefore, we believe the use of prizes and/or raffles should be eliminated, or at a minimum, heavily regulated and monitored by NCUA.

- **Miscellaneous**

If possible, we would encourage NCUA to consider increasing the minimum number of members constituting a quorum (15 in the current FCU bylaws) as it pertains to a special meeting relating to a membership vote on conversion.

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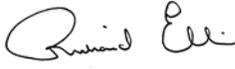
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Thank you for the opportunity to comment on the proposal to amend to the rules regarding the conversion of insured credit unions to mutual savings banks or mutual savings associations. If you have questions about our comments, please contact Cynthia Connelly or me at (770) 476-9625.

Respectfully submitted,



Richard Ellis
Vice President/Credit Union Development
Georgia Credit Union League