

August 28, 2006

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

Re: 12 CFR Part 708a. Conversion of
Insured Credit Unions to Mutual
Savings Banks

Dear Ms. Rupp:

Navy Federal Credit Union provides the following remarks in response to the National Credit Union Administration's (NCUA) proposal to amend its rules regarding the conversion of federally insured credit unions to mutual savings banks or mutual savings associations. In previous comments, we encouraged NCUA to fully exercise its broad authority to ensure that credit union members are apprised of all of the possible consequences of converting to a different type of organization. We believe the proposed rule is an additional step in the right direction and offer our comments in the following areas:

Disclosure Content.

Navy Federal supports agency efforts to ensure that affected credit union members have all of the information they need to make a knowledgeable decision about the future of their credit union. We ask, however, that NCUA give careful consideration to the possibility that too much information, particularly information that is prospective in nature, may overwhelm and confuse members and may inadvertently dissuade them from participating in the election process. We strongly urge the agency to consider the consequences of too much, as well as too little information and focus on the quality and understandability of the disclosures. Wherever possible, we recommend that the agency expand on its efforts to draft and issue simple, easy to understand "boilerplate" language (similar to that in the "boxed disclosures") to be used by all credit unions wishing to convert.

Definition of "Clear and Conspicuous."

Navy Federal is concerned that "clear and conspicuous," as defined in this request for comment, may create confusion for individuals attempting to comply with the regulation and may undermine attempts to draw attention to the nature and significance of the disclosed information. In Section 708a.1, the agency proposes to define the term as "*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.*" While it appears that it may have been the agency's intent to ensure that no required text was smaller than 12-point type, the

definition would likely be interpreted to mean that all communication should be at least the size of a "heading." The proposed requirements impose design limitations that may actually impair rather than enhance the usefulness and understandability of the disclosures to credit union members.

We count no less than 11 instances of the NCUA requiring "clear and conspicuous" language in Sections 708a.3 and 708a.4. In Section 708a.3(a)(1), the term is used in connection with posting notices in branch offices. Such notices, prohibited by regulation from having a larger heading to bring attention to its contents, would likely be less effective than one designed to attract members' attention. The requirement for a clear and conspicuous link "at least as large as used for headings" on a credit union's Web site home page would also likely be awkward and incompatible with the design standards of most Web sites. Additionally, the requirement at Section 708a.3(b) to post comments in a clear and conspicuous fashion as defined in Section 708a.1 may even be technically unfeasible.

The proposal would mandate that disclosures required by Section 708a.4(c)(1) through (4) and the segregated disclosures in Section 708a.4(d) meet the clear and conspicuous standard as previously defined. We are unaware of evidence that suggests that such disclosures are more effective than a combination of type sizes, bold letters, and other variations in style. We encourage NCUA and other federal agencies to follow the principles outlined in a speech of Julie Williams, then-acting Comptroller of the Currency, before the Women in Housing and Finance and the Exchequer Club in Washington, DC on January 12, 2005. Ms. Williams proposed that disclosures be thoroughly tested for effectiveness prior to their implementation as regulatory mandates.

We urge NCUA to revise or eliminate its proposed definition of "clear and conspicuous" for purposes of Part 708a. We strongly object to the parameters "bold type," "font at least as large as that used for headings," and "12 point" when various combinations of these kinds of layouts may be much more effective with credit union members. If NCUA believes it is necessary to define "clear and conspicuous" for the purposes of Part 708a, in the absence of thorough testing of proposed disclosures, we recommend using the definition adopted by NCUA for its privacy rule at 12 CFR 716(3)(b). We believe this definition is much better suited to predominately narrative disclosures such as privacy and conversion issues than the proposed definition which would not allow for variations that may prove effective with credit union members.

Board of Director's Notice and Member Opportunity to Comment.

NCUA proposes to require that "no later than 30 days"¹ before a board of directors votes on a proposal to convert, it must publish a notice in a newspaper, or in multiple newspapers that they intend to vote on a conversion. The proposed rule would also require the board to post the notice in the credit union's home and branch offices and on the credit union's Web site in that 30-day timeframe. We do not believe that the 30-day window is large enough and recommend, instead, that the agency require that a board considering conversion publish the appropriate notices 60 days prior to a conversion vote. We believe that the additional time will benefit credit union members

¹ Proposed 12 CFR Part 708a.3. Board of directors' approval and members' opportunity to comment.

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(allowing them more time to examine the board's intentions) and will not adversely impact the conversion process.

Voting by Electronic Ballot.

NCUA asks if it should allow credit union members to cast their ballots electronically. In principle, we do not oppose allowing credit union members to cast their votes by electronic means. We strongly recommend, however, that NCUA employ the most rigorous oversight to discourage voter fraud and that any such proposal be required to conform to the strictest of standards. Any effort to allow members to vote by electronic means should include authentication standards no less strict than those employed by credit unions to allow members to access secure portions of their credit unions' website to transact credit union business online.

NCUA's Proposed "Boxed Disclosure."

We suggest that the word "majority," and the term "by your credit union's membership" be inserted into the disclosure. We believe that the additions could limit possible misunderstandings and aid in readability. Consequently, Section 1 of the proposed boxed disclosures would read as follows:

LOSS OF CREDIT UNION MEMBERSHIP. A majority vote "FOR" the proposed conversion by your credit union's membership means your credit union will become a mutual savings bank. A majority vote "AGAINST" the proposed conversion means your credit union will remain a credit union.

Regulatory Authority

Navy Federal agrees with NCUA's assertion that it retains authority to govern most regulatory aspects of the conversion process. We are puzzled, therefore, why the agency would defer to state corporations law regarding the rights of federal credit union members to communicate with other members. In our opinion, the Federal Credit Union Act² clearly confers authority to establish standards for this interaction. While one could make a reasonable case that a state chartered-federally insured credit union might defer to the laws of the state for which it was chartered, we are at a loss to understand why NCUA, a regulator charged by federal law to monitor the conversion process, would defer to state law in this sensitive area. We strongly urge the NCUA to more resolutely embrace their regulatory duties in this area and establish clear guidelines to govern the ability of credit union members to communicate with each other, particularly during the conversion process. We recommend that any standards be subject to the full regulatory comment process.

Raffles and other Voting Incentives.

The agency asks if raffles or other incentives to encourage participation in a conversion vote detract from the fairness and orderliness of the voting process or if they might distract voters from the issues

² Federal Credit Union Act. § 1766. The Board may prescribe rules and regulations for the administration of this chapter (including, but not by way of limitation, the merger, consolidation, and dissolution of corporations organized under this chapter). § 1785 (G)(ii) Oversight of member vote.—The member vote concerning charter conversion under this paragraph shall be administered by the Administration ...

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surrounding the conversion. Navy Federal believes that the vote for or against conversion is one of the most important a credit union member/owner can make and that the agency is appropriately exploring avenues to facilitate greater participation. However, we see two issues that lead us to oppose these types of programs.

First, we caution that making use of raffles and prizes may violate existing state gambling laws or other statutes. Before considering this portion of the proposed regulation, we strongly urge the agency to examine possible conflicts. Second, we are not convinced that any effort not narrowly prescribed by NCUA will avoid charges (on either side) of “leading voters.” Using raffles or other types of “give-aways” to encourage participation by a credit union’s membership would almost certainly invite abuse if not closely monitored. In our view, the narrow benefit that might accompany increased participation would likely be offset by the potential for abuse. We urge the agency to avoid this issue altogether and prohibit raffles and other voting incentives.

Advance Payment for Intra-Membership Communication

NCUA asks if the amount of advance payment required from a member requesting to send a communication to other members is reasonable. We do not necessarily object to the proposed amounts, but are concerned that the prospects of a large advance payment may deter credit union members who would otherwise want to voice their opposition to a conversion. Our concern is that a number of credit union members, believing that they are either members of an insignificant group or that their concerns are unusual may not feel it is worth their effort to speak up in defense of their credit union. In those cases, the relative cost of this endeavor may be a mitigating factor in a decision not to comment.

As an alternative, we suggest that NCUA establish rules to allow credit union members to sign a “petition” to form a group to offer their opinions on the conversion. If a prescribed number of members have signed this petition (as determined regulatorily by NCUA after a proper notice and comment period), credit unions would then be required to assume the cost of transmitting their message. Similar to rules adopted by some credit unions to allow a special meeting to be called,³ likeminded members would then have a reasonable cost recourse for contacting the rest of the membership on this important issue.

Regulatory “Burden” on Credit Unions Wishing to Convert

Finally, we suggest that NCUA has inappropriately focused on the “burden” that a credit union wishing to convert must bear when communicating with its members. It is our view that a credit union wishing to convert has an extraordinary duty and, if necessary, must bear an extraordinary burden to ensure that all of the credit union members are aware of the issues relating to a possible conversion. Therefore, beyond simply prescribing communications methods, we recommend that the agency require credit unions wishing to convert establish for regulatory approval that they have

³ NCUA standard Federal Credit Union Bylaws, Article IV, Section 3 allows federal credit unions to adopt procedures to call a special meeting within 30 days of the receipt of a “written request of 25 members or 5% of the members... request, whichever number is larger.” The bylaw also provides that a “request of no more than 750 members may be required to call a special meeting.”

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employed a communications plan that would reasonably reach at least 90% of their credit union members. We believe that compelling a credit union to develop a communications strategy is not inconsistent with steps required by other regulators who require conversion candidates to draft a "business plan" for approval. With so much at stake, we believe that the "burden" of reaching credit union members must be clearly placed on the credit union wishing to convert.

Navy Federal Credit Union appreciates the opportunity to provide remarks in response to the NCUA's request for comments on its conversion rules.

Sincerely,



W. A. Earner
Acting President

WAE/pm