

February, 22, 2008

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

Re: Advanced Notice of Proposed Rulemaking Proposed to Part 708a and Part 708b of NCUA Rules and Regulations

Dear Ms. Rupp:

On behalf of the management and Board of FORUM Credit Union, I would like to take this opportunity to comment on the proposed changes to Part 708a and Part 708b of NCUA's Rules and Regulations that would impact mergers and charter conversions found in the recently issued Advance Notice of Proposed Rulemaking (ANPR).

FORUM Credit Union is committed to the credit union philosophy and endeavors to put that philosophy into action each day as we make our members' best interests the focal point of each and every decision we make as a credit union. Our efforts to meet their service needs, while maintaining our long term viability as a safe and sound institution, are always conducted in a manner totally transparent to our membership – who is, without question, the foundation of a member-owned, not-for-profit financial cooperative.

While we remain totally committed to this fundamental principle of full disclosure and to the right of the membership to be fully informed relative to all issues related to governance of their credit union (including mergers and conversions), we are not at all persuaded that additional changes and revisions to the current regulations are warranted to the extent as those being considered in the recently issued ANPR. Although we certainly recognize that such "full disclosure" issues are important and are indeed fundamental to the very nature of credit unions, it is likewise important that the agency recognize that Part 708 has been thoroughly reviewed, revised and amended on at least three separate occasions since 2003 with the most recent revision taking effect in 2006. Because these revisions have been implemented by NCUA and are being complied with by federally insured credit unions who have adapted to this series of substantive regulatory changes, we are quite convinced the regulations currently in place are adequate and provide a proper working mechanism to protect member interests in transactions involving fundamental changes in the ownership, governance and/or structure of their credit union.

In previous correspondence to NCUA on this subject, we have commented that FORUM Credit Union believes credit unions would be better served if the agency were to provide *general guidance* and *best practices* about the conversion process, rather than continuing to impose layer after layer of additional regulations in addition to those already in place. We continue to believe such an approach would best serve credit unions.

As an example, NCUA currently has in place an extensive and comprehensive *Credit Union Merger and Conversion Manual* to assist credit unions who are or may be considering a merger. The guidance contained in this *Manual* is well structured, extremely beneficial and could easily be updated to include recommended best practices for any of the various merger scenarios presented in the ANPR that are not already addressed in the *Credit Union Merger and Conversion Manual*. Therefore, in lieu of additional burdensome regulation, we would recommend the agency add to this existing publication or create a similar manual to assist credit unions in additional aspects of the conversion process. As stated before, the current regulation provides sufficient safeguards to ensure full disclosure and transparency in the process.

While we remain convinced the present regulations are working effectively and question the need for another round of changes to the current regulation, it appears from reading the ANPR that the agency feels inclined to consider placing another layer of regulation in this area. If this is indeed the case, we believe that the following aspects of the ANPR proposal must be addressed as the most troubling from a credit union perspective.

***Credit Union Merger or Conversion into a
Financial Institution Other than an MSB***

As stated above, we question the need to provide additional regulation in this specific area. First, it seems that excessive regulation in this area could have an adverse impact on voluntary mergers between credit unions. As the long term financial viability of some credit unions and their ability to continue to provide effective and efficient financial service to their members makes a voluntary merger at times a strategic option that must be considered, it is imperative that NCUA make voluntary mergers easier to consummate rather than harder.

With the considerable restrictions already in place which make it impossible for some credit unions with unlike fields of membership to merge, it would be extremely unfortunate if additional regulation were to make such voluntary mergers even more difficult. As a safety and soundness regulator, NCUA should certainly recognize the advantage in enabling credit unions that foresee long term financial, management or member service difficulties to have the opportunity to enter into a voluntary merger before deteriorating into a troubled situation which might pose potential risk to the share insurance fund. Any regulation that will make voluntary mergers more burdensome between credit unions, when agreed to by both Boards in their respective fiduciary roles and fully disclosed to the members with a fair and impartial affirmative vote in accordance with existing regulations, will likely have a chilling effect on what is one of the best business options for strategic minded credit unions who wish to grow and

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diversify under the credit union charter rather than looking to grow through conversion to some other type of banking charter.

It appears to us that, with this proposal, NCUA is proposing to create a new standard, rather than regulating by the exception. There may on occasion be an isolated instance where the agency might need to intervene to ensure that member rights are properly protected and fiduciary duties are appropriately carried out in the case of a merger or conversion; however, a single instance (or even a small handful of such situations) does not require the overreaction of another regulatory overlay. With the agency's extensive safety and soundness authority coupled with its recently enacted enforcement authority in matters related to credit union bylaws, it would seem that a small handful of isolated instances of member rights violations or fiduciary impropriety could adequately be dealt with through the supervisory oversight process, rather than with far reaching additional rulemaking that might have unintended consequences, particularly as it relates to the crucial issue of necessary voluntary mergers among credit unions.

If voluntary credit union mergers were to be specifically excluded, we recognize there may be some who would find value in NCUA providing workable and fair guidelines governing the specific area of credit union conversions when the continuing institution may be some charter type other than a credit union. As a credit union committed to its charter, FORUM Credit Union cannot imagine a situation in which we would pursue such an option; however, we could see some advantage for those who might be interested in having clear definition of what would be involved in such a process. However, we remain convinced that such guidance can best be provided through a set of conversion best practices and general guidelines rather than through issuing a specific rule that will most likely be complex, cumbersome, rigid and bring potential unintended consequences of a spillover which could deny some credit union officials what their fiduciary judgment finds to be a necessary strategic business option.

Management Duties

The ANPR seeks comment on two issues associated with the duties of credit union management. They are the potential need for a regulation to address the fiduciary duty credit union directors owe to members and the need for additional regulatory provisions to guard against insider enrichment. We would like to respectfully offer the following comments on the fiduciary duty of credit union directors.

The ANPR contemplates an additional regulation to prescribe the specific "standard of care" a director owes the credit union in cases where the structure or ownership of the credit union is at issue. Statute, regulation, case law and recognized business practice have for decades clearly assigned the appropriate responsibilities and liabilities of fiduciaries. Therefore, we see no reason for NCUA to improve on this long recognized standard by drafting its own definition as if credit union fiduciaries are less committed than their brethren in other industries and not aware of their considerable fiduciary responsibilities unless spelled out for them by their regulator or insurer. As it is basically impossible to codify every responsibility of a fiduciary in every situation, we are not

supportive of any attempt to set forth additional regulation designed to assign a specific standard of care for specific transactions or decisions into which credit union officials might enter.

The Federal Credit Union Act makes it abundantly clear that a credit union's board of directors has a fiduciary duty to act in the best interests of its members and we agree that decisions affecting the ownership or structure of the credit union are indeed of crucial importance. Therefore, we question why NCUA has determined that the issue of conversion or merger constitutes the only instance where an additional promulgated written standard of care is required.

The fiduciary duty owed to the credit union membership encompasses a wide array of issues critical to the long term viability and safety and soundness of the credit union. We do not think it appropriate to single out one particular issue as requiring a higher standard of care or an additional fiduciary duty than other responsibilities associated with the management of the credit union. Each credit union is unique and each has its own set of issues. For some credit unions, asset liability management is a pressing concern; for others it may be the need to closely monitor expenses and third party relationships. There are perhaps hundreds of areas of fiduciary focus in every credit union.

If an additional standard of care can be justified for issues related to conversions or mergers where the ownership and structure of the credit union may be impacted, it would not be much of a stretch for the agency to subsequently determine that separate standards of care should be defined for other management responsibilities as well. This would result in a patchwork approach with a multitude of separate "standards of care" or, worse yet, a single written credit union-specific standard of care that is intended to be applied to all fiduciary duties. We see such an approach as impractical, problematic and confusing. Directors and management should not be given mixed signals about their fiduciary role to the credit union. Simply put, every decision is important and the duty of care to the credit union should be the same regardless of the issue.

Rather than attempting to define in writing a director's fiduciary responsibility in every possible scenario, we believe NCUA would be well served to issue general guidelines about the importance of recognizing one's fiduciary responsibilities associated with credit union management. Included in the guidelines could perhaps be examples and resources where directors and managers could seek additional training and understanding about their fiduciary roles. However, any attempt to codify this standard of care is predestined to be either incomplete or, more likely, the first in a series of many such incomplete attempts.

Member's Right to Equity

The ANPR states that the NCUA Board is seeking comment regarding whether a merger dividend should be required in a credit union merger or whether the board should be required to consider a merger dividend as part of its due diligence, make its own conclusion regarding such a dividend and then justify its decision to the membership.

As true credit union believers, we do not question that the equity of the credit union belongs to the member. However, it is important to realize that a myriad of issues are considered and evaluated whenever two credit unions agree to merge. In most cases, a merger is contemplated as a way to provide the member with enhanced service opportunities. In other cases, mergers are considered as a way to achieve the benefits of economies of scale or as a means to stave off potential safety and soundness issues. In every case, the circumstances will be unique to the credit unions involved and a merger dividend may or may not be appropriate depending on the dynamics of the arrangement.

To require a merger dividend as a means to protect the member's equity is certainly well-intentioned and perhaps could even be considered noble. However, such a requirement is not practical and places a one-size fits all standard on all merging credit unions regardless of the circumstances surrounding the merger. Moreover, there are certainly circumstances in which requiring a merger dividend could potentially result in a safety and soundness concern. We believe such decisions, absent a statute requiring them to do so, should be rightly left to the credit unions and their democratically elected officials. Therefore, we strongly object to any regulation requiring a merging credit union to issue a merger dividend.

Communications to Members: Improper or Misleading Communications to Members

We fully support the fundamental right of a member to vote, in accordance with the Federal Credit Union Act, to make changes to their charter or account insurance. As stated in previous comment letters on similar proposals, it is our position that a decision to pursue conversion to another type of financial institution should never be entered into lightly and, should another charter option ever be pursued by a credit union, members should be fully informed about the conversion process in a manner that is transparent, actual and neutral in its approach.

Because the decision to convert or not to convert has significant consequences for the membership, the role of the regulator should be to ensure that statutory requirements governing conversions are complied with, notice and disclosure requirements are properly adhered to and elections are without taint. However, as currently drafted, it appears that the proposed changes in the ANPR would go well beyond the scope of NCUA's appropriate statutory and regulatory role in the conversion process.

Although we see no situation in which FORUM Credit Union would be making such disclosures for a charter change, we are concerned that any disclosure requirement to contain a statement that "NCUA has not endorsed the transaction" infers negativity and could influence, perhaps unintentionally, the member's vote. If this requirement were applied to credit union mergers, it could unduly influence the membership vote in a merger that might result in a stronger credit union with better services for those very members. It is not NCUA's role to endorse or not to endorse actions by credit union members through the democratic process. NCUA should make a determination as to whether the disclosures meet the statutory/regulatory requirements, approve or

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disapprove the disclosure statements and ensure elections are free of fraud or impropriety.

Member Voting: Right to Request a Recount and Use of Interim Tallies

The ANPR states that NCUA is considering prohibiting credit union management from obtaining interim voting tallies from the election teller; prohibiting credit union management from obtaining lists of members who have not voted from the election teller; prohibiting credit union employees from soliciting members to vote; and prohibiting credit union employees from completing member ballots or otherwise handling ballots.

We believe members should have the reasonable assurance that the voting process is one that is free of taint and predicated on principles of fairness and integrity. We believe that current regulations afford NCUA appropriate authority to monitor the voting process on the issues addressed in this ANPR and we are not convinced that sufficient evidence of election fraud, mishandling or error has been demonstrated to justify the need for additional regulation in this regard. In fact, NCUA has used its existing regulations to disapprove credit union membership votes when improprieties were involved which brought the fairness of the election into question. In light of this fact, additional regulation would not seem to be needed.

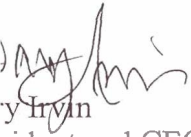
Specifically, we are concerned that by allowing a member the right to request a recount as contemplated in the ANPR could potentially permit a disgruntled member to delay a decision resulting in additional costs and frustration. A single member should not be allowed to request a recount. If such a procedure is going to be permitted a minimum number or percentage of the membership should be required in order to request a recount.

We also question the rationale behind the proposal in the ANPR that would prohibit employees of the credit union from encouraging members to vote. This seems to be counter to the agency's ongoing efforts to ensure that the membership is fully informed in situations where the ownership or structure of the credit union may be changed. It is important to recognize that most credit union employees are also members of the credit union and their employment status should not deny them their individual right to participate in the voting process, which includes promoting or speaking about a particular cause or issue.

Conversely, the proposal does not seem to place similar limitations on those that might oppose the conversion or merger. In our view, any effort to promote voting by the membership should be encouraged. As regulator, NCUA should take all steps to avoid partiality or bias toward a particular issue or outcome. Although FORUM Credit Union has no intention to pursue conversion to a mutual savings bank and is committed to the credit union philosophy upon which our credit union has been built and served its members for decades, in our view the ANPR, as currently contemplated, is unnecessary and seems to be designed to bring the Agency's influence to bear in support of those opposed to a conversion or merger. This does not seem to be the proper role of the regulator.

always, thank you in advance for your consideration of our thoughts and
proposed changes. I would be happy to discuss any of our positions at
your convenience. FORUM Credit Union does indeed acknowledge and accept
the challenging responsibilities and diligent efforts, as a safety and soundness
regulator, to protect and defend America's credit unions and their members.

Sincerely,



Gregory Irvin
President and CEO
FORUM Credit Union

Board Members:
Chairman, JoAnn Johnson
Vice Chairman, Rodney Hood
Board Member, Gigi Hyland