



California
CREDIT UNION LEAGUE

NEVADA
CREDIT UNION LEAGUE

April 28, 2008

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

Re: Comments on Advance Notice of Proposed Rulemaking for Parts 708a and 708b, Credit Union Corporate Governance Issues

Dear Ms. Rupp:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on the National Credit Union Administration Board's Advance Notice of Proposed Rulemaking (ANPR) seeking comment on issues regarding the regulation of mergers, conversions to another type of financial institution, and terminations of federal share insurance. By way of background, the California and Nevada Credit Union Leagues (the Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

Background

The primary focus of the ANPR is protection of member interests in transactions where members have a great deal at stake because the transactions involve fundamental changes in their ownership or the structure of their credit union, including, in some cases, termination of a credit union charter or federal account insurance. The ANPR focuses on six types of transactions:

- a merger of a federally insured credit union (FICU) into another FICU;
- merger of a FICU into a privately insured credit union (PICU);
- conversion of a federally insured state credit union (FISCU) into a PICU;
- conversion of a FICU into a mutual savings bank (MSB);
- merger of a FICU into a financial institution other than MSB; and
- conversion of a FICU into a financial institution other than an MSB.

NCUA believes that these transactions raise various issues that its current regulations may not adequately address. In particular, the Board has raised concerns as to whether members' interests are sufficiently protected in the following areas:

- *Management Duties.* Whether the lack of well-articulated federal standards addressing the fiduciary duty credit union directors owe to members has resulted in confusion as to what standard applies. In addition, whether additional regulatory provisions are needed to guard against insider enrichment.
- *Member Right to Equity.* Whether unequal net worth ratios among merging credit unions results in unfair treatment of members and, if so, how to deal with the issue.
- *Communications to Members.* Whether regulation is required to ensure that communications to members regarding mergers and conversions are accurate, sufficiently comprehensive, and not misleading.
- *Member Voting.* Whether abuses in member voting for mergers and conversions justify additional regulations.

The Leagues' Position

The Leagues have generally been supportive of NCUA's efforts to ensure that member interests—and the NCUSIF—are adequately protected in conversion and merger transactions, including the agency's 2006 changes to Part 708a (Conversions to Mutual Savings Banks) designed to improve the information available to members and the board of directors as they consider a possible conversion. We also recognize NCUA's legal authority to regulate these transactions under the Federal Credit Union Act. However, we believe it is currently unwise and unnecessary to develop such in-depth and complex rules in order to address transactions the agency itself admits have taken place only "a handful" of times. In addition, we think that the issuance of such a rule may have the unintended result of encouraging these transactions which, as NCUA has noted, are rarely in the best interests of members. Therefore, we feel that NCUA should continue to address these transactions on a case-by-case basis, rather than through a potentially cumbersome and inflexible regulation.

However, the Leagues do understand and appreciate the need for an appropriate and uniform standard regarding the scope of fiduciary duties of federal credit union board members. We are of the opinion that if the fiduciary duty is addressed properly, the other concerns raised in the ANPR would not need to be addressed by new rules. Therefore, instead of a regulatory approach, we would like to suggest that *guidelines* be developed to address this issue, and would welcome the opportunity to work with NCUA to help develop this guidance. We do strongly believe that any new standard—whether it takes the form of regulations or guidelines—should not grant any new authority to examiners to intrude into or micromanage credit union

operations based on a fiduciary duty standard. Finally, we also recognize that carefully and narrowly crafted *guidance* regarding communications with the members of a target credit union in a “hostile” merger situation may be appropriate, and we would be open to discuss this issue further with NCUA.

In closing, I would like to thank the NCUA for the opportunity to comment on the very important issues raised in this ANPR. We look forward to the opportunity to work with the agency to address some of the key issues we’ve discussed as part of a guidelines process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Cheney', with a long horizontal flourish extending to the right.

Bill Cheney
President/CEO
California and Nevada Credit Union Leagues