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One League, One Focus - Your Success!

August 23, 2006

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

AUG24'06 PM 2:15 BOARD

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

Dear Ms. Rupp:

The Wisconsin Credit Union League, serving 270 credit unions and over two million members, appreciates the opportunity to provide the following comments regarding the NCUA's proposed Rule Part 708a: Conversion of Insured Credit Unions to Mutual Savings Banks. Although we believe that credit union members have the full right to decide the future of their financial institutions, we also believe that, because of its not-for-profit cooperative nature and concomitant tax exemption, the credit union charter currently provides the most beneficial governance structure and economic benefit to credit union members.

We further believe that although there may be perceived operational advantages to the management of a credit union if it converts to a bank charter, it is the members to whom directors and managers owe their fiduciary responsibilities. It is therefore the responsibility of credit union managers and directors, in most cases, to preserve the benefits that a credit union offers its members.

Our comments in this letter, therefore, are offered primarily in support of our strong belief that if and when a conversion option arises, a credit union's board and management are obligated to act in the best interests of the members, to fully inform members of their legal rights and the economic consequences of their choice, to provide a fair opportunity for members opposed to a conversion to share their views with other members, and to disclose any economic or other benefit to management and directors that is not available on an equal basis to members.

Fiduciary obligation to members

Credit unions are owned by their members and therefore the fiduciary obligation of a credit union's management and board is to those members. We support the proposed language in § 708a.3, requiring a board to make a determination, after thoughtful examination of all factors, that a charter conversion is in the best interests of the members. This provision

informs or clarifies that the fiduciary obligation of directors is to the members. We also support the requirement that members be notified prior to a meeting to consider a conversion vote, so that members have the opportunity to express their opinions of what their best interests are before a board vote. And we support the language of § 708a.5, requiring a certification signed by each director who supports the conversion attesting his/her belief that the proposed conversion is in the best interests of the members. This requirement accomplishes two goals: a) it reminds directors that any decision to convert must be made with the best interests of the members in mind; and b) it provides evidence of each board member's role in the process, which may be of value to members who later wish to pursue an action against a director who they believe breached his/her fiduciary obligation to those members by supporting a conversion.

Fully informed members

It is axiomatic that owners of an institution who are asked to change its very nature are entitled to be fully informed of the consequences of their vote. We therefore support the proposed language in §§ 708a.3 and 708a.4 to that effect. We believe the new boxed disclosures are stated clearly and provide excellent information to members. In particular, we support the language disclosing the likelihood that interest rates will go up and dividends will go down. Providing pro-conversion facts about increased capitalization for the institution, etc., is only half the story; members must also know that each of them will be affected personally by such factors as the rate consequences or access to fewer consumer loan products. We also believe the requirement that ballots not be sent until the 30 day notice goes out, so that voters have access to any pertinent information from both supporters and opponents before they vote, is essential. And we support the provision requiring a clear statement of what a "yes" vote or a "no" vote means.

Although it is tempting to suggest adding language permitting other methods of communication about the conversion vote, such as statement stuffers or home banking screens, we believe care must be taken not to tilt communication channels even further in favor of the conversion proponents. "Fully informed" means that members get both sides of any conversion argument equally. The goal should be for any method of communication with members to be equally accessible by both sides. This applies also to the cost of communication. Though under the proposal opponents would be able to post opinions on the credit union's website free of charge, and the flat fee for sending emails is reasonable, the cost for opponents to mail their views could be out of reach. We suggest providing that members who oppose conversion in good faith be permitted the right (with some screening, e.g., after a finding of the NCUA Regional Director that a communication is "proper") to send mail to other members at no or only a nominal cost. In the interest of "fully informing" members, the credit union should pay for dissemination of information on both sides of any controversy.

Care should be taken to fully inform members of credit unions considering conversion that they really are giving up the one member/one vote governance model they currently enjoy. It is misleading to tell them that will not change under a mutual thrift charter even if the thrift states an intention not to base voting rights on account levels. The use of proxy rights will cause a significant change because even if a particular member does not agree to turn over his/her proxy to management, other bank customers are likely to do so and the individual member's vote will be significantly diluted. We suggest that the voting rights disclosure required to be boxed under the current regulation, enhanced with information about proxy voting, be included also as a boxed disclosure in the proposed regulation.

To be “fully informed,” members should also have access to books and records of the credit union at least to the extent that shareholders of a corporation do. After all, members are owners. It is hard to argue that they do not have access rights at least equal to shareholders. We agree with the proposed language of § 708a.12 on this issue.

We believe that permitting prizes or raffle opportunities to members who vote – even when provided to members who vote against as well as for a conversion – undermines the integrity and significance of the question at issue. A conversion is a very serious issue; members who vote should do so because they have considered the pros and cons and reached a decision, either for or against. They should not vote, or be encouraged to vote, just for the sake of a prize or a raffle chance.

Disclosures of benefits to directors and management

Members are accustomed to trusting that the directors they have elected and the management hired by those directors are acting in the members’ best interest. Part of the challenge of fully informing members during a conversion process is providing enough information so they can decide for themselves if the directors and management are doing so in this case. The area of executive compensation, stock incentives and options, and other benefits that banks can offer directors and managers tends to be esoteric and confusing. It is therefore essential that, given the likelihood that a conversion to a mutual thrift means a further conversion to a stock bank down the line, the explanations to members of the benefits that directors and management will be able to vote for themselves after conversion is explained clearly and in plain English. Just because those benefits will be available is not necessarily evidence that the directors and managers are supporting conversion for their own aggrandizement at the expense of the members. But members should be able to make that decision for themselves, which they can do only with a full and understandable explanation of all the facts. We therefore support the continued requirement for a boxed disclosure on this issue, but urge that, like the current regulation, the proposed one include the capitalization of the key language.

We commend the NCUA’s work in proposing a regulation that is well-researched and well-considered in balancing the interests of members and conversion proponents. We appreciate the agency’s efforts in providing a conversion process that fully and fairly informs board members and management as well as member-owners of credit unions of the issues and facts to be considered in deciding which charter best serves the interests of the members. Thank you for your work and for your consideration of our comments.

Sincerely,


Brett A. Thompson
President & CEO
The Wisconsin Credit Union League