

August 14, 2006

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-342

Re: Proposed Rule Part 708a

Dear Ms. Rupp:

In response to the proposed regulation, Part 708a the following concerns are expressed on behalf of the Board of Directors of America First Federal Credit Union.

First, we find that the requirement to notify the members before the board of directors has voted on the conversion issue, to be overly restrictive when compared to the conversion process of other financial institutions. We also find it contrary to the fiduciary duties of the directors and may in fact cause unintended consequences in other areas of credit union operation.

In the NCUA discussion part 708a.12, we feel that the longstanding opinion of NCUA to follow state regulation if federal regulations are silent should remain an opinion and not be part of any new regulation considering the power of banker influence in state legislation in Utah.

Also in 708a.10, the restriction of a one-year deadline that would require the process to start over is unreasonable. Surely, a reasonable extension period of six months should be available upon approval of the regional office. We also find that the restriction which allows a ballot to be delivered only in the third notice to be counter to the intent of having as many members as possible participate in the decision.

It would be the hope of America First that in light of these concerns that the NCUA would work to provide additional guidance or best practices for this conversion process instead of additional regulations.

To enlarge our discussion of the areas of most concern we give the following additional information.

CUMAA requires that NCUA adopt rules governing MSB conversions. These rules must be consistent with the charter conversion rules promulgated by other financial regulators and be no more or less restrictive than rules applicable to charter conversions of other financial institutions. The requirement to give advance notice to members that the Board of Directors intends to vote on a conversion proposal and to establish procedures for members to share their views with directors before they adopt the proposal is certainly more restrictive than any requirement of any other financial institutions. Precedents cited by NCUA for early notice are all based on credit unions not other financial institutions.

The directors and officers of a credit union have a fiduciary duty to act in the best interests of the credit union members. The FCUA specifically provides that the board may take adverse action against institutions-affiliated parties, including directors, of a federally-insured credit union, if they have committed or engaged in any act, omission, or practice, which constitutes a breach of such party's fiduciary duty and by reason of such action the interests of the insured credit union's members have been or could have been damaged. Will members be held to the same standard to consider all of the members of the credit union and not just their own self-interests in a conversion decision? If not, might the board make a decision based on member input that is not in the best interest of all credit union members? Can the

board then claim they acted in the best interest of the members and relieve themselves of their duty? Does an individual member have the knowledge and experience to give, other than a personal feeling, direction on what is beneficial to all credit union members? Is it reasonable to assume that an individual member will take the time to gain the knowledge to make such a determination for all credit union members?

The fact that current regulation allows for the conversion of a credit union to a MSB, certainly would suggest that there are reasons that under their fiduciary duty the board would vote for conversion even if all members would prefer to remain a credit union. It would therefore, seem that even if the board had this input from members, the decision should be made on experience and facts and not on what would please or not please some members. The members in turn can accept or reject the board's proposal by their vote. If the board has the duty and responsibility to do what is in the best interest of all the members as a fiduciary, the feelings of a few members should not be used on the decision.

If a member is asked to give input prior to such a strategic decision might members then expect to give input prior to a vote on a new branch or how much to pay on share dividends?

NCUA's discussion on Part 708a.12 states that "NCUA's, longstanding opinion is that the internal governance of federal credit unions, to the extent a matter is not addressed in federal statutes, regulations, or bylaws, should be determined by reference to the law governing for-profit corporations in the state in which the federal credit union is located." This statement is made in reference to member access to books and records of the converting credit union. In the state of Utah with credit unions having many bankers as members and with the control that the bankers have in legislative issues, there is a great concern that this could have many unintended consequences.

Part 708a.10 requires the credit union to complete the conversion within one year of the date of receipt of NCUA approval under 708a.8. This requirement seems unreasonable in light of the requirement that if the conversion takes over a year the credit union must start over at the voting process. What would be the sense of starting over and having the additional expense if a few additional months would make the first attempt successful? It would seem to be a better business decision all around if the proposal stated that if the conversion requires more than a year, that the regional director could grant an extension of an additional six months. Is there really a concern if it takes 18 months?

Part 708a.4 requires that a ballot be sent only with the 30-day notice. Would it not be in the best interest of all members if more members voted? To restrict voting seems to be counterproductive to the whole process of having input from the members.

The topic of conversion to a MSB has been a part of America First's strategic planning meetings for the last three years. Discussions have resulted in renewed commitment to the credit union structure as long as it is in the best interest of the members. We hope that you will receive our comments as support for keeping the charter and its regulations as favorable as possible while allowing for the most possibilities in the future.

Sincerely,

Rex Rollo
Executive Vice President/CFO