LAW OFFICES

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August 23, 2006

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

Re: Notice of Proposed Rule Making
With Regard to 12 CFR Part 708a

Dear Madam/Sir:

Reference is made to the above captioned notice of proposed rule making and request for comments. As you are aware, this firm has done most of the Credit Union-to-Mutual Thrift Conversions over the last several years. Our broad experience in conversions of both large and small credit unions, state charters as well as federal charters, and charter conversions that lead to the formation of a mutual holding company, in a second step process, gives us a unique insight into the conversion process. We are writing this letter in the spirit of trying to assist the NCUA in understanding its role in the charter conversion process, as well as in an effort to be constructive with regard to the proposed amendments to Part 708a.

It is clear to us that the NCUA continues to exceed its statutory authority with regard to the regulation of charter conversions from a credit union to a mutual thrift institution. Congress, in 1998, in adopting the Credit Union Membership Access Act (CUMAA) reduced the role of the NCUA to overseeing the vote to be taken in the conversion process. This oversight role goes to the fairness of the process (*i.e.*, policies and procedures adopted in connection with the vote) as well as the review of disclosures utilized. Congress very carefully and deliberately, we believe, limited the role of the NCUA because it perceived past abuses when the NCUA actually had the authority to grant or deny a converting credit union the right to convert to another type of charter. Specifically, Congress stated that any rules adopted by the NCUA must 1) be consistent with the charter conversion rules promulgated by other financial regulators and 2) be no more or less restrictive than the rules applicable to charter conversions of other financial institutions.

In an effort to try to justify the expansion of its rule making authority in this area, we believe the NCUA has misconstrued what Congress meant by the adoption of 'rules that are no more or less restrictive than the rules applicable to charter conversions of other financial institutions'. For example, when a thrift institution in mutual form converts to a stock thrift institution, that is not a charter conversion in the sense intended by Congress. The OTS has held

that a conversion of a thrift institution from a mutual to a stock is merely an amendment of an existing charter to authorize a class of equity securities, as well as the adoption of corporate governance procedures that go along with the governance of the stock institution. As we pointed out in numerous comment letters to previous expansions of rule making authority in this area by the NCUA, we believe the NCUA has no legal authority to adopt most of the rules that they have adopted in this area. In this proposed rule, it appears that the staff of the NCUA has tried to justify its rule making authority by making reference to rules governing stock institutions, rules of the Farm Credit Administration, not a banking regulator, and by implication, the rules of the SEC, also not a banking regulator. We believe the justification made in the proposal for the expansion of the rules is not supported by statute and must be rejected. We also believe that if the rules were challenged in court, the NCUA would be in the position of having its rule making authority set aside by the courts, as not being supported by law. In that light, we would suggest the NCUA rethink its position with regard to additional rule making in this area and abide by the laws that are on the books. If it wants to expand its rule making authority in the area of charter conversions, it should do what every other agency has to do (*i.e.* go to the Congress and ask for a change in the law). We believe this ""ultra vires" attitude is hurting the agency not only in the charter conversion area but in the field of membership area and the other areas in which the NCUA has been challenged successfully in its rule making authority. The NCUA has had to backtrack several times lately on the orders of Federal judges.

With regard to the specific amendments proposed by the NCUA we have the following comments:

**Section 708a.1 – Definitions**

We believe that the definition of clear and conspicuous is fine except for the fact that we believe the NCUA misuses the requirement in the regulation itself. In other words, it highlights any possible negotiation aspects of a conversion proposal. The NCUA should also clarify whether other text that appears in the disclosure material, such as the benefits of the conversion or certain voting instructions, can appear in a clear and conspicuous manner. The NCUA should also define what it means by "headings." Typically, a heading is a line of text serving to indicate what the passage below it is all about. The NCUA, however, in past conversion transactions has taken a broader interpretation of what constitutes text and/or a heading for purposes of applying its clear and conspicuous standard.

**Section 708a.3 – Board of Directors Approval and Members' Opportunity to Comment**

This new proposed requirement raises a new threshold for conversions that have been previously adopted by a few states. We had experience with this in a state chartered conversion in the State of Michigan. As we understand it, the idea is to give each individual member the opportunity, should he or she wish, to comment on a proposal by the board of directors to consider a conversion and to convey concerns or ideas that the particular member would ask the board of directors to consider in connection with a conversion plan. The NCUA, however, has proposed a rule that does more than that.

First it proposed to adopt in regulatory form what is already the law with regard to the duty of directors in a credit union to exercise their fiduciary duty in making decisions affecting the credit union and its members. It has been our experience in every case in which we have been involved that the board of directors of a credit union carefully reviewed, after significant study and deliberation, whether a charter conversion is in the members' best interest. We have had situations not only where a board has determined that a charter conversion was in the member's best interest, but also situations where they have determined otherwise.

We believe the NCUA is setting up a scenario that if an institution eventually intends to convert to the stock form of ownership, that the board of directors of a converting credit union can successfully be accused of a conflict-of-interest, because they voted on a conversion to a mutual thrift that may "down the road" eventually involve a situation where they receive stock compensation or directors fees or both that they cannot receive as a credit union. Under that scenario, any board of directors that votes on a credit union merger where it is a surviving credit union and has a state charter that allows directors to receive directors' fees would have a conflict-of-interest because their director's fees may be increased if the credit union expands. In other words, any change in the business of a credit union could somehow benefit directors. That's not the proper corporate standard.

We believe it would be better to state that the board of directors should consider primarily the interest of the members, which they now do and which is the applicable legal standard of conduct, and the benefits to the credit union, which they now do, and that any consideration with regard to compensation must be tertiary to the board's decision making process. At the same time, we believe it is important for a board of directors to know that such alternate compensation for management and employees is available in another type of charter, and stock compensation may be beneficial for competitive purposes to acquire the best people to fill positions at the financial institution. We note that there is no evidence whatsoever that the board of directors of any converting credit union has been improperly motivated in its decision making process. In fact, we have provided the NCUA with substantial evidence to the contrary on numerous occasions. Accordingly, this proposed regulation will only serve to provide conversion opponents with specious arguments that because a board sought to understand stock compensation, they were automatically improperly motivated.

With regard to the requirement to provide advance notice of a board meeting to consider adopting a plan of conversion, we believe this regulation would be a violation of the Federal Credit Union Act. As you are aware, the statute requires that the board of directors of a credit union adopt a plan of conversion and send out three notices to its members. Proposed Section 708a.3, which would require a credit union to issue a public notice regarding the charter change that must be posted on its web site and in its offices, is tantamount to requiring a forth notice to be sent to members. (The NCUA regulations clearly state that posting information on a web site is considered a written communication sent to members.) Accordingly, we believe that Section 708a.3 is illegal in its present form.

Notwithstanding the apparent illegality of the proposed amendment, requiring that a board of directors solicit comments from members and post those comments on its web site is

contrary to NUCA's stated objectives. The NCUA continuously asserts on Capitol Hill and in its regulations that the need for additional regulations and its dogmatic enforcement of its existing regulations are necessary to ensure that members of a converting credit union are properly and fully informed as to the effects of a charter conversion. In addition, the NCUA has claimed that the charter conversion process is too complex and that members are being overwhelmed with information, using this recent argument to justify its need to adopt the NCUA-required "box disclosure" language. The NCUA is now proposing that credit unions provide its members with more information (but not necessarily accurate information), in the form of opinions and comments received from members who have not been completely informed as to the effects of a charter change. This is circuitous reasoning and completely absurd. Moreover, we do not understand how requiring a credit union to post member comments on its web site will serve to better inform the membership about the effects of a charter change, who will all be receiving a complete package of information following adoption of a plan of conversion by the credit union's board and regulatory approval of the conversion materials. Rather, the amendments proposed by the NCUA, and in particular the process outlined in Section 708a.3, will only serve to significantly increase the costs for converting credit unions, incite, agitate and confuse members, and generate substantial litigation, while doing nothing to help better inform credit union members.

Furthermore, the NCUA's rationale behind this change, that it will help the directors in fulfilling their fiduciary duties by understanding the desires of its member-owners and that members will have more time to become informed, is completely without merit for several reasons. First, the requirement that a credit union's board of directors publish advance notice of its intent to adopt a plan of conversion and solicit member comments (which will be based on partial information) directly undermines the duty of a board of directors. The members of a credit union elect their board of directors to study and make all types of business decisions on behalf of the members and the credit union, and when it involves a significant transaction such as a charter change or a merger, to submit the matter to a vote of the members. As you are aware, it is the members who have to ultimately approve the charter change, not the credit union board of directors. Thus, they have the ability to comment on the board's proposal by voting yes or no. An "opinion poll" of members does not relieve a board of directors of its fiduciary duty.

Second, a credit union seeking a charter change is required to send out disclosure materials to <u>all</u> members at least 90 days in advance of the special meeting, giving all members ample time to read the materials and, if they desire, to seek additional information. Moreover, it is unclear to us how the opinions of a relatively small percentage of members who have been given 30 days (and in most cases substantially less) to review summary information regarding the charter change will assist the board of directors or help inform the membership on the merits of a charter change. In all likelihood, the only thing that will result from this requirement is an abundance of misinformation (both for and against the conversion) from members who are not fully informed, which will ultimately taint the entire voting process before it even begins, and may engender a lot of litigation.

We believe, through experience, that most of the letters received by a credit union will be from members opposed to the conversion. In fact, the experience in one Michigan state-

chartered credit union case[1] was as follows: out of over 97,000 members, comments were received from a little over 350 members (many of them consisting of multiple signatures on a single letter). Most comments asked questions and raised issues that were later answered when the members received the full packet of conversion documents. Additionally, when members were contacted to answer their questions, most of them were satisfied with the explanation. If the board of directors relied on the comments that were submitted prior to adoption of the plan by the board of directors, one could argue that there was no way that the majority of the votes would ever be cast in favor of the conversion proposal and that the board violated its fiduciary duty by adopting a plan of conversion. Nevertheless when the votes were tallied, in excess of 60% of the members voting, voted in favor of the conversion. Accordingly, we believe the effect of the NCUA proposed rule will be to distort the true nature of the conversion process and to impugn the character and integrity of the board of directors should it decide to move forward. The anti-conversion zealots will misuse this information (which is likely to represent a very small percentage of the membership) to improperly taut that members are against the conversion and that the board should not have approved a plan of conversion in the face of these outstanding and unanswered negative comments – thus incorrectly implying to members that the board is violating its fiduciary duty.

Additionally, the NCUA's proposed solution for handling "improper" member comments received in response to a board of director's pre-adoption notice, as well as requiring distribution of member communications following adoption of a plan of conversion, is wholly inadequate and is bound to result in substantial litigation. For example, what happens if a member posting is put on the credit union's web site or sent to credit union members that the NCUA or the OTS subsequently deems improper; is the voting process now tainted because the NCUA required the credit union to post or send out incorrect or incomplete information that was not prepared by the credit union or cleared with its regulators? Moreover, a credit union should not be responsible for correcting or vetting comments submitted by members, which will involve substantial legal time and expense. Finally, in the event that a credit union challenges a member comment or communication to other members as improper, incomplete or misleading and submits it to the NCUA (and the OTS who is also responsible for approving the voting methods and procedures) with its proposed revisions, what happens if the parties cannot agree? Is the credit union's only recourse litigation?

As you can see, the process proposed by the NCUA regarding the handling of member comments (which will be based on limited information) and written solicitations during the conversion process is likely to result in substantial misinformation being disseminated to the members, member confusion as to fact vs. fiction, uncertainty in the voting process, increased costs to credit unions and its members, and a substantial likelihood of litigation, with no benefit or additional relevant information being provided to members.

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[1] The State of Michigan has a similar advance notice requirement and comment period as being proposed by the NCUA, absent the web site posting requirement.

Assuming for a moment that the NCUA includes this "opinion poll" and posting requirement in its final regulations, we believe that the NCUA would need to provide additional guidance on what a credit union must do to comply with the regulation, particularly in light of the NCUA's actions in the two Texas conversion cases which involved the folding of a piece of paper. For example, do the comments need to be put in any particular order; how long must they remain on the web site (are the comments meaningful after the board adopts a plan of conversion); does the credit union have the right to respond to comments on its web site and in what manner may it respond; is the credit union responsible for any misinformation, pro or con, which results from the postings; and are there any privacy concerns that need to be addressed when posting member comments on a web site? These are just some of the issues that we believe need to be addressed in order for a credit union to be able to reasonably comply with this type of requirement.

Finally, should the NCUA insist on going forward with this advance notice and comment period requirement, we would suggest that the credit union simply be required to notify its members in anyway that it sees fit that it is considering the adoption of the plan of conversion and invite comments and questions to be sent to the board for its consideration, without any requirement for posting member comments. This eliminates many of the issues that we have raised above, although we still believe the process as envisioned by the Congress does not provide for, or otherwise require, a specific type of communication to the membership other than that previously allowed by the NCUA before its December 2005 legal opinion changed the process, wherein the members could be contacted any time and allow the board of directors to either indicate their intention to adopt a plan of conversion or the fact that they have in fact adopted a plan of conversion.

**708a.4 – Disclosures and Communication to Members.**

Under Section 708a.4 of the proposed regulation, the NCUA is proposing to limit member voting on a plan of conversion to the last 30 days of the process. As the NCUA should be aware, member participation in connection with charter conversion votes, or any credit union vote for that matter, is not high historically. The goal of the NCUA should be to increase and encourage membership participation in the conversion vote. Limiting a member's ability to vote to only the 30 day period preceding the special meeting will only discourage or reduce membership participation. We cannot understand why the NCUA would not want to encourage credit union members to participate in the conversion vote by providing them as much time to vote as possible. The members of our firm have had considerable experience with votes on charter conversions, proxy contests, elections, etc. Limiting the window of opportunity for members to vote will only cause frustration and disinterest among the members, particularly when you are sending them the same notice three times, and possibly four times if the proposed regulation is adopted. We believe that permitting a ballot only to be included with the last mailing will make it more likely that many members will just ignore the third mailing and not vote.

With regard to the NCUA required "box disclosure" (which we continue to believe is false, misleading and contrary to law notwithstanding the proposed revisions), the proposed

amendment would require that the box disclosure be placed on a single piece of paper, with the back side of that piece of paper blank. The regulation would also require that this piece of paper be placed so that the member will see the text after reading the credit union's cover letter but before reading any other part of the member notice. The NCUA believes that this will lessen member confusion and increase the probability that members will read this disclosure. As the NCUA is well aware, we, the OTS, members of Congress and converting credit unions have expressed concern over the misleading and speculative nature of the NCUA required box disclosure. Moreover, in the recent Texas conversions, the OTS (the other federal regulator charged with approving the methods and procedures of the membership vote) stated that it believed the credit union's response was necessary to correct required regulatory disclosure that was potentially misleading.[2] To separate these documents would add to, not lessen, member confusion. Your proposed regulation requiring that the box disclosure be placed "so that the member will see the text after reading the credit union's cover letter but before reading any other part of the member notice" is unworkable. All a credit union can do is to instruct its printer/mail house to assemble the document in a particular order in the envelope, and even then it would be unreasonable to require more than a 'best efforts' standard. More importantly, the credit union has no way to control the way a particular member will open the envelope, or which documents will be read or seen first by a member, making compliance with this part of the regulation an impossibility.

Additionally, the NCUA's proposed change to the box disclosure regarding savings and loan rates on average is completely inappropriate and prejudicial to a converting credit union. This disclosure implies the credit union's current pricing is more favorable than competition and its future pricing will be less favorable than competition. As you are aware, savings and loan rates vary by product line, area of the country, size of relative financial institutions and other factors. It is not an absolute fact that every credit union charges less in loans and pays more in savings than every thrift institution. Accordingly, to require such a speculative statement, particularly under the heading "IMPORTANT REGULATORY DISCLOSURE ABOUT YOUR VOTE," that may or not may be true with respect to a particular credit union, is misleading, far from impartial and, we believe, must be solely for the purpose of influencing a vote against conversions.

Similarly, requiring converting credit unions to overemphasize the fact that stock compensation may be available to directors, officers and employees in the future is inappropriate and an obvious attempt to incite discontent among the membership. This disclosure is required even when a converting credit union has indicated that it has no current intentions to convert to a stock institution, making the disclosures even less meaningful to members. Moreover, while directors and senior management may receive stock compensation in a second step (*i.e.,* a mutual holding company conversion), these issues are disclosed to members at that time and are subject to a separate vote by the members of the mutual thrift. Being regulated by the OTS does not diminish the protection of the members of the financial institution. We note that a credit union,

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[2] See OTS Order No. 2005-23, dated June 29, 2005 approving Community Credit Union's methods and procedures for the member vote, which found the Box Disclosure to be misleading.

contrary to the NCUA's mission to criticize what it believes is unfair compensation, does not permit members to affect in anyway the compensation of the management of a credit union. That information is not made public and no regulations provide for a way for the members to find out what the compensation is, challenge the compensation or otherwise communicate with other members with regard to the compensation. Stock compensation merely substitutes what otherwise would be a cash performance type compensation arrangement for a stock arrangement. Accordingly, we continue to object to the box disclosure required by the NCUA which improperly and unfairly sets forth the position of the NCUA, a federal government agency that is supposed to be impartial in the process, and which continues to contain incomplete, speculative and false and misleading information.

Finally, taking the disclosures regarding changes in ownership rights and costs of the conversion out of the required box disclosure and requiring them to be placed in the three notices in a "clear and conspicuous" manner, does not make these disclosures or the NCUA's intent behind these required disclosure any less unfair or inappropriate. All it does is turn these notices into additional "box disclosures."

**Member Communication with Other Members**

Requiring that a credit union postpone its 30 day mailing in order to be able to forward a member communication to other members violates the federal statute that requires a vote to be held 90 days after the first mailing. Putting aside the illegality of this proposed amendment for now, we have the following comments with regard to the specifics.

The advance payment proposal is unfair to the credit union and puts it in a position that it will have to collect the difference between what is actually spent and the advance payment from an individual member or members, not knowing whether that debt is in fact collectible. We understand from financial printers and mailing houses that the amount proposed by the NCUA for advance payment is unrealistic, *i.e.*, $.50 times the number of eligible voters and would not cover the anticipated printing and mailing costs.

Furthermore, as stated above, we believe that the NUCA's proposed solution for handling "improper" member communications is wholly inadequate and is bound to result in substantial litigation and costs to credit unions and their members. While we do not believe that it is appropriate for the NCUA (particularly in the charter conversion process only) to require credit unions to facilitate member communications, to the extent that the NCUA adopts this requirement it must establish procedures that will ensure the truthfulness and fairness of these communications, including advertisements and public statements by conversion opponents, be they members or otherwise, that would meet the standards if they were mailed to members in accordance with the proposed regulation. The NCUA should intercede where appropriate and make such practices by conversion opponents illegal to the same extent that they are not permitted to be followed by a credit union and its board of directors. We also believe that the alternative proposed by the NCUA to require the member to deliver mailing materials to the credit union that are already packaged and sealed and meet the criteria set forth by the regulation including the affixing of the required postage would be preferable to the institution having to use

its own personnel to arrange for printing and mailing. The credit union would then simply attach the address label and mail the materials. However, the communication must be viewed by the credit union ahead of time and if the credit union has a problem with it, it should be able to object.

Lastly, requiring a credit union to reschedule it special meeting during the last 30 days creates many logistical issues, such as the availability of the meeting hall and all of the participants involved in the process. Also, the meeting date, place and time is typically contained on numerous documents, which would necessitate reprinting and add additional costs to an already expense process.

**Certification Requirement**

We have no objection to the directors certifying that they have read the application and they support it. However, we do believe that the applicability of 18 U.S.C. 1001 to the conversion generally to the submission to the NCUA is an incorrect reading of the statute. For example, an employee or director of a converting credit union may provide an inadvertent statement that omits a material fact in connection with a conversion. This in itself is not a crime, but is subject to correction. If that type of statement is made directly to the NCUA, then, of course 18 U.S.C. 1001 would apply. We believe the standard should also be applied under 18 U.S.C. 1001 to protest letters filed with the NCUA and communications with the NCUA staff and board members by persons opposing the conversion, and records should be kept of those conversations and subject to the Freedom of Information Act request if made.

**708a.8 – Oversight of the Methods and Procedures of Membership Vote**

The proposed amendments to regulation 708.8 extends the time for the regional Director to act on the methods and procedures of the members' vote on the conversion by 20 days and creates a mandatory appeal of the Regional Director's disapproval of the methods and procedures applicable to the membership vote. It requires the credit union seeking to convert to appeal that disapproval to the full NCUA board to obtain a "final agency decision." This is nothing but a delaying tactic (after the already additional 20 days added to the time for the Regional Director to act) and is contrary to requirements of the Administrative Procedure Act ("APA"). Section 702 of the APA provides that each converting credit union has a right to judicial review of any NCUA action by which it is adversely affected or aggrieved or by which it suffers a legal wrong.

In essence what used to be a 10-day process for a decision on the vote is being extended to close to 120 days without any valid justification. First, the Regional Director and Washington staff of the NCUA is well informed about the methods and procedures utilized in any particular vote prior to the initiation of the review as a result of the filings made earlier in the process. The Regional Director's action on the vote is conducted in lock step with the Washington office. Therefore, there is no reason to believe anything will change in the appeal process, other than to delay the credit union's proceeding to U.S. District Court for judicial review.

More importantly, the creation of a mandatory appeal is contrary to the Supreme Court precedent in *Darby v. Cisneros*, 509 U.S. 137, 113 S.Ct. 2539 (1993). In *Darby*, the Court made it clear that there is no requirement to exhaust administrative remedies unless: (1) it is mandated by statute or (2) an agency rule requires an administrative appeal and the ruling being appealed is made inoperative pending that review. 113 S.Ct. at 2548 (emphasis added). The Regional Director's decision is immediately operative and prevents the consummation of the conversion pending the appeal. That makes it a final action under Section 704 of the APA, and, because the credit union is adversely affected by that decision, it is entitled to immediate judicial review on the Regional Director's decision under Section 702 of the APA. In *Darby*, the Court recognized that exhaustion of administrative remedies is distinct from final agency action:

> "The finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury; the exhaustion requirement generally refers to administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate." *Darby* at S.Ct. 2549.

The process established in proposed Regulation 708.8 does not make this distinction. The legislative history of the APA notes that when a party aggrieved by a negative agency decision is required to appeal an agency decision to superior agency authority, that party is stuck in a "repetitious administrative process without recourse. There is a fundamental inconsistency in requiring a person to continue 'exhausting' administrative processes after administrative action has become, and while it remains, effective." S. Rep. No. 752, 79th Cong., 1st Sess., 27 (1945); Administrative Procedure Act: Legislative History 1944-1946, S. Doc. No. 248, 79th Cong., 2d Sess., 213 (1945).

**708a.10 – Completion of Conversion**

We believe the proposal by the NCUA to put a one-year time period on the approval by the NCUA of the member vote is not supported by statute and is arbitrary in nature. Certainly the membership does not turn over in twelve months. A more reasonable period, if legal, would be two years from the date of approval by the NCUA.

**708.12 – Member Access to Books and Records**

We believe the NCUA's goal in providing members access to privileged board information is simply to disrupt the conversion process. The NCUA's requirement that credit unions grant their members access to books and records under the same terms and conditions that state-chartered for-profit corporations grant access to shareholders has no support under the law. In any event, to the extent that a federal credit union would be willing provide members access to the board's privileged books and records, it would seem more appropriate for a federal credit union (which is a type of financial institution) to look to state law governing mutual savings and loan association, savings banks or other types of financial institutions, not for-profit stock

corporations. Even state laws governing non-profit corporations would seem to be more appropriate than for the laws governing for-profit corporations.

Additionally, as we have discussed with the NCUA in the past, releasing confidential board minutes, records and other information is not advisable since a credit union will not be able to control how this information is used, or rather misused. Opponents of charter conversions (members and others), who are under no regulatory scrutiny and otherwise have no obligation to be truthful, accurate or complete, have demonstrated their willingness time and time again to misuse information. As we hope you can appreciate, reviewing written due diligence materials and board meeting minutes in a vacuum, without the benefit of the discussions, questions and dialogue that accompanied the materials and meetings, will almost certainly not present a realistic understanding of the materials or the scope of the board's examination, particularly to those who are not educated on the issues.

Finally, the entire premise of your recommendation undermines the fiduciary duties and responsibilities of a board of directors. By releasing this material, you would be encouraging opponents of charter conversions to see if they could come to a different conclusion based on all or even a minor portion of the information reviewed by a board. This is not the applicable standard in reviewing a board's recommendation to members.

**Conclusion**

As stated throughout this comment letter, we believe the NCUA again is overstepping its bounds as authorized by the Credit Union Membership Access Act and is playing the role of conversion opponent in the guise of "protecting members." We believe the only thing the NCUA is protecting is the exit door through which credit unions that choose to convert to another type of charter must pass. There will come a time, as there is in every financial cycle, when a credit union will need another type of charter for valid business reasons, including financial stability, and the access to that charter, while authorized by the Congress, will be blocked by an agency more interested in self preservation than the continuing success of the institutions under its supervision. We believe that the NCUA's continued impractical and irrational approach to the conversion process can only lead to litigation in the future. The NCUA should reconsider its adoption of these unnecessary and burdensome regulations that do nothing to better inform credit union members about the effects of a charter change and simple further inhibit the opportunities for credit union charter choice.

Thank you for the opportunity to comment on the proposed regulation.

Very truly yours,

Robert L. Freedman, P.C.