August 25, 2006

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

Re: Comments on Proposed Rule Part 708a: Conversion of Insured Credit Unions to Mutual Savings Banks

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to offer comments on the National Credit Union Administration's (NCUA) proposal to amend its rules regarding the conversion of insured credit unions to mutual savings banks or mutual savings associations.

Summary of ICBA's Position

ICBA believes that the proposed rules are another attempt by the NCUA to obstruct the right of a credit union to convert to a mutual institution. The proposed rules are not consistent with rules promulgated by other financial regulators and exceed NCUA's statutory authority under the Credit Union Membership Access Act (CUMAA) to "oversee" conversions. ICBA continues to believe that NCUA's existing "boxed" disclosures are slanted and misleading and objects to NCUA's proposed changes to those disclosures. The proposal to require the board of a converting credit union to notify its members prior to a meeting is a costly and burdensome requirement and is inconsistent with the rules of other financial regulators. Similarly, the proposed requirements for communications between members

[1]*The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than $876 billion in assets $692 billion in deposits, and more than $589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

will impose unnecessary obstacles to credit unions trying to convert to mutual savings banks and should be withdrawn.

Background and Proposal

CUMAA, passed in 1998, contains several provisions that apply to the conversion of credit unions to mutual savings banks. The statute requires that a majority of directors must approve a credit union's proposal to convert to a mutual institution and requires a credit union to provide members with notice of the vote 90 days, 60 days, and again 30 days before the vote. CUMAA further requires that NCUA adopt rules governing credit union conversions, but also specifies that these rules must be: (1) consistent with the charter conversion rules promulgated by other financial regulators, including the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC); and (2) be no more or less restrictive than rules applicable to charter conversions of other financial institutions.

In the eight years since the passage of CUMAA, the NCUA has amended its conversion rules three times to address various issues related to conversions. Under the current proposal, the NCUA would:

- Require a converting credit union to give advance notice to members that the board intends to vote on a conversion proposal;
- Clarify that credit union directors may vote in favor of a conversion proposal only if they have determined the conversion is in the best interests of the members;
- Change the "boxed" disclosures that a credit union must provide to its members;
- After the board has approved a conversion, require that a credit union must distribute information from a member at the request and expense of the member; and
- Grant members who request it access to the books and records of a converting credit union under the same terms and conditions that a state-chartered for-profit corporation in the state in which the federal credit union is located must grant access to similar records to its shareholders.

ICBA's Position

ICBA believes that the proposed rules are simply another attempt by the NCUA to obstruct the right of a credit union to convert to a mutual institution and are not consistent with the rules promulgated by other financial regulators, particularly state and federal banking regulators. NCUA maintains that the purpose of the proposal is only to ensure that members make an informed decision on a conversion proposal. To justify that the proposal is consistent with other the rules of other regulators, NCUA cites examples of similar requirements imposed by state credit union regulators but conspicuously avoids comparisons with OCC and OTS charter conversion requirements or state banking conversion requirements.

Advance Notice of Board meetings. The NCUA's proposed requirement that the board of a converting credit union notify its members of its intent to hold a meeting to consider a conversion is a good example of a costly and burdensome requirement that is inconsistent with the rules of other financial regulators. Under the proposal, not only must the board publish a

notice of the rule 30 days before the meeting, it must review all member comments about the proposal and if the credit union maintains a website, it must post member comments on the website in a clear and conspicuous fashion.

Neither the OCC nor the OTS require the boards of converting banks to notify their members 30 days in advance of a board meeting to consider a mutual to stock conversion, a charter conversion, or a merger nor require that member comments be posted on a bank's website. Most state corporate or banking agencies do not require such a notice for state-chartered corporations or banks considering a merger or sale of assets. Not only is such a requirement unprecedented, it would impose needless burdens on any credit union board considering a conversion and would undermine the board's authority to make appropriate decisions on behalf of the credit union, contrary to all tenets of corporate law. A notice requirement also would severely impair the ability of a board to act quickly and decisively on a conversion proposal where a delay could be potentially disadvantageous to the membership. Moreover, the notice would allow anti-conversion zealots to confuse the rank-and-file members with misleading information.

NCUA claims that there is precedent for such a notice requirement. In Michigan and Vermont, a state credit union's board of directors must send written notice to each member at least 30 days before the board votes on a plan of conversion from a credit union. However, the NCUA does not discuss the experiences of converting credit unions in Michigan and Vermont. We understand that in the case of one Michigan state-chartered credit union, anti-conversion members misused the information from the notice and misleadingly argued that most members opposed the conversion; the plan of conversion was subsequently approved by over 60% of the members voting.

Furthermore, CUMAA already requires that the board of directors of a credit union adopt a plan of conversion and send out three notices to its members. If NCUA's proposal is adopted, it would add a fourth notice requirement, far exceeding the notice requirements imposed on federal or state banks for mergers and charter conversions. Board members will also have to go through a costly and time consuming review of all the comments and post them on the website. This expense does not add to the information provided to the credit union membership, but would needlessly consume resources in time and money. Before contemplating such a burden, the NCUA should clearly demonstrate the utility of the requirement and clearly demonstrate that the benefits would outweigh the costs – something lacking in the current proposal.

The advance notice requirement also undermines the authority of a board of directors. The members of a credit union elect their board of directors to consider 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. The board of directors should not have to seek an "opinion poll" of the members prior to voting on any proposal, particularly one that will eventually be voted on by its members. Under CUMAA, a converting credit union is required to send out disclosure materials to all members at least 90 days in advance of the special meeting, giving all members ample time to read the materials and to vote on the transaction.

Boxed Disclosures. ICBA continues to believe that NCUA's "boxed" disclosures are slanted and misleading.[2] Rather than being neutral with regard to the question of whether to convert, these disclosures resemble the warnings that cigarette manufacturers must place on their packaging warning people not to smoke. The message is very clear—don't vote for conversion since it involves substantial risks to the ownership interests of credit union members.

NCUA is proposing that the boxed disclosures be placed on a single piece of paper with no other text and with the reverse side blank. The paper must be placed immediately after the credit union's cover letter and before any other information included with the notice. However, we agree with the OTS that in certain instances, a converting credit union should have the right to correct the boxed disclosures because they are so misleading.[3] A credit union should be allowed to provide correct information and respond to the misleading disclosures on the front or back of the disclosure sheet or on a separate sheet attached to the disclosure sheet.

Additionally, NCUA's proposed change to the box disclosure regarding savings and loan rates is also prejudicial to a converting credit union. The clear implication of this disclosure is that loan rates will go up and deposit rates will fall if the credit union converts to a mutual savings bank. However, such a supposition is entirely speculative and may not happen at all, depending on the products offered by the resulting mutual savings bank and whether the bank is located in an area of the country where competition is intense. To require such a speculative statement that may or may not be true is misleading and, in our opinion, another example of how NCUA is attempting to thwart credit union conversions.

Requiring converting credit unions to also discuss future stock compensation for directors and officers that may not take place is also inappropriate and another thinly veiled attempt by NCUA to prejudice the vote. The OTS requires that mutual savings banks converting to stock institutions disclose these issues at the time of the second step conversion. We believe that the NCUA should defer to the OTS concerning stock compensation disclosures. It is inappropriate for a converting credit union to speculate at the time of conversion on whether or not directors and officers will receive stock compensation if a second step conversion takes place.

Member Communications 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 is another example of the NCUA imposing unnecessary obstacles to credit unions trying to convert to mutual savings banks. This requirement will significantly delay a conversion vote and seems to be a stalling tactic designed to allow more time for conversion opponents to mobilize their support against the conversion.

However, our biggest concern with this requirement is how the NCUA will ensure that member communications will be truthful and fair. Unless the NCUA sets up a detailed procedure for reviewing such member communications as the SEC does under the proxy rules for publicly held companies, the proposal should be withdrawn. Otherwise, ICBA is concerned that anti-conversion advocates who would be under no regulatory scrutiny and otherwise have no obligation to be truthful, accurate or complete, would send out false and misleading information.

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[2] See ICBA's letter dated October 1,2004 to the NCUA concerning the proposed boxed disclosures.
[3] OTS Order No. 2005-23, dated June 29, 2005, concerning the conversion of Community Credit Union in Texas.

NCUA Is Exceeding its Statutory Authority. ICBA also believes that the NCUA is exceeding its authority under CUMAA when it issues these proposals on credit union conversions. Section 202 of CUMAA limits NCUA's role in conversions to overseeing the "methods by which the member vote was taken or the procedures applicable to the member vote." Congress did not intend for the NCUA to review and monitor every piece of information presented to credit union members concerning the vote. Instead, Congress wanted the NCUA to generally oversee the vote of converting credit unions to make sure that it was conducted fairly.

Conclusion

ICBA appreciates the opportunity to comment on NCUA's proposal to amend its rules regarding the conversion of insured credit unions to mutual savings banks or mutual savings associations. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,

Christopher Cole

Christopher Cole

Regulatory Counsel