



August 25, 2006

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

RE: Washington Credit Union League
Comments on Proposed Rule part 708a, MSB Conversions

Dear Ms. Rupp,

The Washington Credit Union League is pleased that the National Credit Union Administration (NCUA) has proposed new rules regarding mutual savings bank conversions. As the trade association representing the 138 credit unions chartered in Washington State, the League appreciates the opportunity to comment on these proposed rules.

The Washington Credit Union League supports each credit union's efforts to fulfill its own mission and supports legislation or regulation that facilitates credit union self-determination. However, the League has also reaffirmed its conviction that in virtually all situations, the credit union charter represents the best vehicle yet devised for serving the credit, thrift, and financial service needs of consumers. The League has taken a position: urging all credit unions to make conversion decisions based upon the best interests of the credit union members; endorsing the use of plain language disclosures that fully disclose the pros and cons of conversion to a bank charter; and supporting legislative or regulatory efforts that would penalize the unjust enrichment of credit union directors and management.

General comments

The League agrees with the NCUA's assessment that the proposed rules are squarely within its statutory rulemaking authority. The League is, however, concerned with the repeated references to directors' fiduciary duties to the members of the credit union. As NCUA may be aware, in the recent court case *Save Columbia CU Committee v. Columbia Community Credit Union*, 139 P.3d 386 (2006), the court determined that the board of directors for a state-chartered credit union may not, in fact, have a fiduciary duty to the members of the credit union. The court ruled that the members of the credit union did not have standing to bring a derivative-style suit to enforce the bylaws of the credit union. Whether or not the League or the NCUA agrees with the finding of the

Washington Appellate Court, if a credit union's board of directors does not have a fiduciary duty to the members of a credit union, much of the strength behind these newly proposed rules may be diffused if the NCUA relies heavily on a credit union director's fiduciary duties to credit union members rather than a fiduciary duty to the credit union as an organization.

Specific comments

708a.3 Board of directors' approval and members' opportunity to comment.

The League supports the NCUA's proposal requiring credit unions to publish public notice indicating an intent to hold a board meeting for purpose of voting on a conversion process. Informing members early enough in the process will allow members to speak to the board about their concerns before the conversion wheels are in motion. The League does, however, have a concern regarding the method of publication. The proposed rule states that the board must publish the notice in a local area newspaper, on the credit union's website and in the credit union's offices. The League is concerned that a credit union could interpret "credit union offices" to mean in the employee-only area of the credit union and not displayed in the lobby for members to see. The League would like to suggest that the notice be prominently displayed in the lobby of each branch operated by the credit union.

708a.4 Disclosures and communications to members.

Delivery of the ballot to the members

The League applauds the NCUA's change to the timing of the ballot mailing. The requirement that the ballot be sent out only with the 30 day notice will allow members to be fully educated before voting.

The League also supports the proposed rule requiring the ballot to inform the members that a vote for the proposal means the credit union will become a bank while a vote against the proposal means that the credit union will remain a credit union. Stating this clearly on the ballot will cut down on member confusion and therefore increase the chances that the vote will truly reflect the opinion of the membership.

Member communications with other members

The League agrees with the NCUA's goals for facilitating member communication. Members need a method to communicate their concerns and opinions among themselves.

The League also agrees with the NCUA's method of facilitating that communication. The League would, however, like to raise a few points of concern as follows.

Prepayment amount

The League is concerned that a prepayment of fifty cents per eligible voter for a hard copy mailing is too low. In Washington, a paper mailing typically costs closer to \$1 per member. While it may have a slightly chilling effect to require a larger prepayment from the member wishing to communicate, the larger prepayment will help the credit union avoid extending unsecured loans to members without benefit of proper underwriting procedures.

Additionally, the League is concerned with having a fixed fee imbedded in the regulations. Postage costs rise nearly every year, not to mention other costs such as printing and compiling. The League would like to see the prepayment be more flexible in accommodating changes in the market place. Perhaps it should be some multiplier of the current postage rate. Perhaps it should be the credit union's reasonable estimate of delivery charges.

Delivery method

The League would like to see credit union members have a greater range of choice when it comes to delivering their messages. While both regular mail and email are viable methods of delivery, the League would like to see other options for those members who need to communicate, but have little budget to do so. Suggestions to facilitate such communication are: allow the member to choose to post his or her message on the credit union's website (perhaps within a special 'member communications' area); or allow the member to choose which members receive the mailing (for example only one copy of the communication to each address—no matter the number of members living there). Of course any communication options should be at the member's option, not the credit union's, and should have reasonable costs associated with them.

Application to member communication on issues other than conversion

The League supports using the method of communication among members proposed here by the NCUA. The League would like to see this procedure in place for all communication among members, rather than allowing members of federally chartered credit unions direct access to member names and addresses. Member privacy is paramount, and it is best secured by the credit union itself, rather than by individual members.

708a.6 Membership approval of a proposal to convert.

The League approves of the NCUA's proposal requiring the board of directors to set a date to determine member eligibility to vote. This new requirement will help minimize the number of members who join the credit union simply to vote on the credit union's conversion to a bank charter.

708a.13 Voting guidelines.

While the League approves of innovative methods to encourage member voting, it is hesitant to endorse raffles or giveaways. The League feels that this sort of promotion has a great potential for abuse. The League's main concern is that any raffle advertisements make it completely clear that ANY vote is an entry. Advertisements that read "vote for conversion and enter to win a Ford truck!" (or something similar), would lead many members to believe that they have to vote in favor of conversion in order to be eligible to win the advertised prize.

Additionally, the League is concerned about the secrecy of balloting if a raffle type promotion is used. When a vote is also a raffle entry, how does the member remain anonymous? The League believes that the regulations dealing with voting guidelines should include a requirement for voting to be anonymous, even in the face of a giveaway type promotion.

Thank you for the opportunity to review the proposed rules on conversion.

Mary Sroufe
Regulatory Analyst
Washington Credit Union League