



OHIO CREDIT  
UNION LEAGUE

VIA E-MAIL TO: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)

August 28, 2006

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

RE: NCUA Proposal on Conversions  
12 CFR Part 708a Conversion of Insured Credit Unions to Mutual Savings Bank

Dear Secretary Rupp:

The Ohio Credit Union League, the trade association for credit unions in Ohio, with approximately 500 credit unions and 3 million credit union members in Ohio, appreciates the opportunity to provide comments on the National Credit Union Administration's (NCUA) proposed rules on conversions of credit unions to Mutual Savings Banks or Mutual Savings Associations ("Mutual").

NCUA has proposed these amendments with the intent to primarily improve the information available to a credit union's members and its board of directors as they consider a possible conversion. Included in these proposed amendments are the following:

- The proposal requires a converting credit union to give advance notice to members that the board intends to vote on a conversion proposal and establishes procedures for members to share their views with directors before they adopt the proposal.
- The proposal clarifies 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 and requires the board of directors submit a certification to NCUA of its support for the conversion proposal and plan.
- The "boxed" disclosures that a credit union must provide to its members are simplified and the current delivery requirements changed.
- Under the proposal, the member ballot must be sent only with the 30-day notice.

- Board of directors would be required to set a voting record date not less than one hundred twenty days before the board notifies the members it is considering adopting a conversion proposal.
- After the board has approved an MSB conversion proposal and upon the request of a member, the proposal requires a credit union to disseminate information from that requestor to other members at the requestor's expense.
- Members of federally-chartered credit unions ("FCUs") may request and be granted access to the books and records of a converting credit union.
- The proposal requires the NCUA Regional Director to make a determination to approve or disapprove the methods and procedures for the membership vote within thirty calendar days of the receipt of the credit union's certification of the member vote and permits any credit union dissatisfied with the determination to appeal to the NCUA Board for a final agency determination.
- A credit union would be required to complete a conversion within one year of the date of receipt of final approval from NCUA of the methods and procedures of the vote.
- The voting guidelines are modified to include information on the use of voting incentives such as raffles.

In reviewing NCUA's proposals, the Ohio Credit Union League ("League") agrees with NCUA's intent to provide adequate disclosures and information necessary for the credit union members to make an informed decision. However, it is important that the procedural requirements not be so burdensome and arduous that the final determination is based on procedure and not on an informed decision by the member. While this proposal does not appear to be overly burdensome, the League will provide comments on the provisions contained within the proposed regulations.

NCUA's proposal specifically requests comment in eight (8) areas which the League will respond to as follows:

## **1. Communication Channels**

The proposal requires the credit union board to publish a public notice in a local area newspaper, on the credit union's website and in the credit union's offices indicating its intent to hold a board meeting for purposes of voting on a conversion proposal. The Board requests comments on whether other communication channels be used in addition to or in lieu of these channels?

*As stated above, the League believes that timely and adequate disclosures and information is essential to credit union members in making an informed decision on the future of the credit union and his/ her access to future affordable financial services. The proposal to include information on the potential conversion of the credit union to a Mutual to the members by public notice as well as through a posting in the credit union and on the credit union website should be required. However,*

*the League also suggests that the membership should receive a direct communication on this issue as well. The credit union could easily comply with these requirements by a statement stuffer, a newsletter article, a direct mailing, or an e-mail to those who have authorized the use of e-mail and e-statements. The League believes that this will assure that the credit union members will be able to have this information available to them.*

## **2. Rates, Fees and Service Levels After Conversion**

The proposal is retaining disclosure language that, after conversion, a member may experience adverse changes in rates. The Board invites comments on changes in this area.

*NCUA has stated that credit union members must be made aware that a conversion to a Mutual may result in less advantageous rates and has proposed the following disclaimer:*

*RATES ON LOANS AND SAVINGS. If your credit union converts to a bank, you may experience adverse changes in your loan and savings rates. Available historic data indicates that, for most loan products, credit unions on average charge lower rates than banks. For most savings products, credit unions on average pay higher rates than banks.*

*NCUA bases that information on studies conducted by the Fiscal and Economic Research Center at the University of Wisconsin-Whitewater, and its own analysis of its Datatrak data. The League agrees with a disclosure of this type but suggests that NCUA clarify the disclosure and include data based on actual "prior conversions" and subsequent historical information. While the disclosure references "available historic data ..." it does not state whether this applies to credit unions that have converted to Mutuals and subsequently for stock banks or a comparison between rates at credit unions and banks, in general.*

## **3. Compensation for Directors and Management After Conversion**

The NCUA specifically invites comments on the changes in compensation for directors and management that have occurred in credit unions that have converted to banks and also the form of NCUA's proposed disclosure.

*NCUA is also concerned that credit union members may not be aware that directors and management may benefit monetarily from a conversion of a credit union to a Mutual to a stock issuing bank or holding company structure. Therefore NCUA has proposed the following disclosure:*

*POTENTIAL PROFITS BY OFFICERS AND DIRECTORS. Conversion to a mutual savings bank is often the first step in a two-step process to convert to a stock-issuing bank or holding company structure. In such a scenario, the officers and directors of the institution often profit by obtaining stock in excess of that available to other members.*

*The League supports NCUA's efforts to make the credit union membership aware of this process. However, the League suggests that it also include a statement and information based on historical facts on this process of conversion to substantiate these statements. NCUA's research has indicated that this benefit to directors and management of a credit union has and does occur and disclosure should reference such facts or references..*

#### **4. Cost and Payment by Member for Communication**

NCUA requests comment on whether the amount of advance payment required from a member requesting to send a communication to other members is reasonable.

*Communication to the credit union members occurs on a regular basis as part of the operations of a credit union. NCUA has proposed a mechanism for members to communicate directly with other members by having the credit union disseminate the information. NCUA recognizes that there is a cost to this that should be borne by the member and requires that the member tenders payment in advance depending on the means of communication. For deliveries of mail, the cost is fifty cents times the number of eligible votes. For deliveries of e-mail, the cost is \$200 regardless of the number of recipients. However, there is no provision for the credit union to collect from the member payment if the cost exceeds fifty cents per vote or \$200, whichever applies. The member should be responsible for reasonable costs and payment in full which most likely could be assessed from his/her account. Therefore, the League suggests that NCUA consider a maximum cost for mail or e-mail taking into account time and materials. This cost should be reasonable so as not to overly discourage the members. The regulation should also provide authority for the credit union to access the funds from the member's account.*

#### **5. Member to Member Communication**

NCUA requests comment on whether the method of member-to-member communication is appropriate. Are there better alternatives for facilitating communication among members?

*NCUA has asked as to what other methods may be appropriate to facilitate member-to-member communication and refers to the respective state law and its application to the credit union. The use of membership lists by other members must be weighed in relation to the requirements of federal and state privacy laws as well as the burden on the credit union in time, resources, and cost.*

*It is the League's suggestion that the credit union, as part of the process of conversion, submit to NCUA for approval, as part of its communication to the NCUA or the respective state regulatory authority, what types of communication it will make available to the members and at what cost.*

*The League proposes that the NCUA set guidelines on what method(s) of communication can be made available and the cost incurred, as stated above.*

#### **6. Consistent Member Communication Policy or Rule**

NCUA requests comments on whether to apply this method to all member communications and not just communications regarding a pending conversion to an MSB.

*The League does not support applying the member communication provision as set forth in this proposal to all member communication from the credit union. While the establishment of the practice may set a precedent for application to other communications, the cost and time to follow such a requirement on all communications would be extremely burdensome on the credit union. Furthermore, if the credit union were submitting inappropriate member communication to NCUA, or the credit union member was appealing or contesting the rejection of communication to NCUA, this process could possibly be burdensome for NCUA as well.*

## **7. Use of Election Ballot**

The current rule requires converting credit unions to accept ballots either by mail or in-person. NCUA is considering amending the rule to permit credit unions, if they wish, to accept member ballots electronically.

*NCUA has proposed the use of electronic ballots in the process. It is the League's position that provided the respective regulatory authority has approved the use of electronic voting by a credit union with the appropriate safeguards and verification procedures, and the credit union permits the use of electronic ballots in its regular course of business, then it should be permitted for those who are set up to participate.*

## **8. Voting Instructions**

NCUA requests comments on the issue of offering incentives to members, such as entry to a prize raffle, to encourage participation in a conversion vote and whether it detracts from the fairness of the vote.

*As stated above, incentives to members such as prizes or raffles to vote must be weighed in relation to the respective state laws as well as the value of the incentive. These incentives in no way should be of such a value that it encourages the member to vote "for" or "against" any proposal. The League believes these incentives should not be allowed, or in the alternative, should be of diminimous value. Voting on the future of an organization, such as a credit union, by its owners and members should be made based on what the member decides on his/ her own rationale and not be swayed or influenced by others or offers of potential gain.*

*The current and proposed rules strive to maintain the integrity of the process including those who are participating in the process. Therefore, any action or proposal that would taint or tarnish the integrity of the process, such as raffles or other games of chance with extravagant prizes or gifts should not be permitted or at the very least highly discouraged.*

Finally, NCUA has proposed that credit union directors may vote on the conversion proposal only if they have determined that the conversion is in the best interests of the members. It is well established that the fiduciary duty of a director includes the duty to act loyally, in good faith, with due care and prudence, and to act in the institution's best interest and that of its members. While fiduciary duty is addressed in the Federal Credit Union Act 12 USC §1786(g)(1) the League suggests that NCUA should consider further addressing the fiduciary duties of credit union directors, or in the alternative, by a separate rule within the proposed conversion rule itself. The

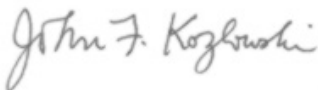
fiduciary duty of credit union directors covers a wide range of subject matter and actions. The importance of making the credit union directors aware of their continuing duty cannot be stressed enough. Therefore, the League believes that further clarification and/or a definition should be considered in this proposal or as a separate rule addressing the fiduciary duties and responsibilities of credit union directors.

In conclusion, the League commends NCUA for its continuing efforts to assure that credit unions, credit union members, and the general public are provided adequate information and disclosures that address the unique structure, ownership, and benefit of credit unions. The importance of educating credit union members and others on the structure and role of credit unions, as well as their mission, is extremely important.

The Ohio Credit Union League respectfully submits the above comments on NCUA's proposed rule on conversions. The League would be willing to provide additional comments or suggestions if so requested.

If you have any questions, comments or if I can be of additional assistance, please do not hesitate to contact me at (614) 336-2894 or (800) 486-2917.

Respectfully submitted,



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General Counsel

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