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August 28, 2006

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

*Sent via email*

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

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) appreciates this opportunity to provide comments on the notice of proposed rulemaking published by the National Credit Union Administration (NCUA) related to conversions of insured credit unions to mutual savings banks.

The PCUA is a statewide trade association that represents almost eighty-five percent (85%) of the approximately six-hundred-twenty-nine (629) credit unions located within the Commonwealth of Pennsylvania. To respond to this request for comments, the PCUA consulted with its Regulatory Review Committee. The Committee consists of twelve (12) credit union CEOs who lead the management teams of Pennsylvania federal and state-chartered credit unions. Members of the Committees also represent credit unions of all asset sizes. The comments contained in this letter reflect the comments of the Committee and the PCUA staff.

***General Comments:***

As noted in the proposed rule, the revisions are primarily intended to improve the information available to members and the board of directors as they consider a possible conversion.

Our group commends NCUA for its thorough review and consideration of this important issue to members. We generally agree with the overall approach taken by the NCUA to ensure that members are provided notice and an opportunity to voice their concerns related to the conversion of their credit union to a mutual savings bank. Members of our Committee support the revised disclosures, revised voting procedures, procedures to facilitate communications among members, and procedures for members to provide their comments to directors before the credit union board votes on a conversion plan.

In addition, we note that the proposed revisions are consistent with the *Policy Statement on Credit Union Conversions* adopted by the PCUA Board of Directors in August of 2005. The Policy Statement provides, in part:

The Association recognizes that credit union boards of directors, management, and members have choices regarding the structure of their institution.

Notwithstanding their right to choose, the Board of Directors of a credit union owes a fiduciary duty to the membership. Any decision to convert from the credit union charter must be demonstrably in the best interest of the membership. No conversion is demonstrably in the best interests of the membership absent full and fair disclosure of the impact that a conversion would have on the ownership and economic interests of the members. In addition any member or group of members that oppose the conversion must be afforded an opportunity to present their position to the entire membership.

A copy of PCUA's Policy Statement is attached for your reference.

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

***Advance notice of board meeting to consider conversion proposal.***

The revisions add a new requirement that the credit union's board of directors must publish public notice of its intent to hold a board meeting for purposes of voting on a conversion proposal. The purpose of this requirement is to allow members to get involved early in the process so that they have an opportunity to interact with the board of directors before the directors formally commit to a conversion. The proposal requires publication of the notice in a local area newspaper, on the credit union's website, and in the credit union's office(s).

NCUA requested comments regarding other communication channels for publishing the new advance notice to members. Many credit unions publish newsletters that are sent to their membership. Our Committee recommends that this publication requirement also state that the notice must be included in any publication prepared by or sent on behalf of the credit union to its general membership, such as newsletters.

***708a.4: Disclosures and communications to members.***

***Required box disclosure: loan and savings rates:***

We applaud NCUA for engaging the services of Datatrac Corporation to gather and analyze data on the historic loan and savings rates. The study supports what our members knew: the historic consumer loan and savings rates offered by credit unions are better for members than those same rates offered by banks of all types.

In addition to more favorable rates on loan and savings accounts, it is our belief that credit unions also charge fewer and lower fees to their members for products and services. Accordingly, in a credit union

conversion to a bank, members will not only experience adverse changes in loan and savings rates, but are also likely to experience more and higher fees for their financial products and services.

We realize that the Datatrac Corporation study may not have gathered or analyzed historic data related to fees for financial products and services. If the study did address fees and our members' beliefs are correct, we suggest that language be added to the box on loan and savings rates to include notice that members may experience more and higher fees on their financial products and services. If the data is not available to support this statement, PCUA and its members recommend that NCUA commission a study on this aspect of credit union products and services as well.

**708a.12: Member access to books and records:**

The proposal contains a new provision stating that members may request access to the books and records of a converting credit union for purposes such as facilitating contact with other members about the conversion or obtaining copies of documents related to the due diligence performed by the credit union's board of directors. The proposal further states that the federal credit union will grant access 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 its shareholders.

In summary, Pennsylvania law provides that every shareholder of a Pennsylvania for-profit corporation shall have access, for any "proper purpose," to the share register, books and records of account, and records of proceedings of the incorporators, shareholders and directors. A "proper purpose" is a purpose reasonably related to the interest of the person as a shareholder.<sup>1</sup>

Pennsylvania case law has broadly defined "books and records of account" to include:

- cash receipts and disbursements, accounts receivable and payable ledgers, financial reports, checkbooks, books of original entry, bank reconciliations, Federal and State tax returns;<sup>2</sup>
- stock (share) register, minute book, records pertaining to production of goods and material, contracts relating to sale or purchases of assets, books and records relating to attempts to compromise corporate tax liens, books and records showing declaration and payment of dividends;<sup>3</sup> and
- directors' minutes and proxy statements, which were no longer required to be kept confidential.<sup>4</sup>

In consideration of the above list of "books and records of account" that must be made available to shareholders of for-profit corporations for inspection, we request that NCUA specify in the regulation exactly what "books and records of account" must be made available to members in the context of a credit union conversions. It is the opinion of some of our members that Pennsylvania's law is too vague and could be applied too broadly when applied to credit union records.

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<sup>1</sup> 15 Pa. C.S.A. § 1508(b). Similarly, Pennsylvania law provides members of Pennsylvania non-profit corporations access to the membership register, books and records of account, and records of proceedings of the members, directors and any other body. 15 Pa. C.S.A. § 5508(b).

<sup>2</sup> *Reilly v. Coppertech, Inc.*, 19 Pa. D&C.3d 348 (1981).

<sup>3</sup> *Ginsburg v. Redmond Finishing Co., Inc.*, 8 Pa. D&C.3d 756 (1978).

<sup>4</sup> *Susquehanna Corp. v. General Refractories Co.*, 250 F.Supp. 797, 10 Fed.R.Serv.2d (E.D.Pa. Feb 14, 1966)(No. Civ. 39616), affirmed in part, reversed in part 356 F.2d 985 (3<sup>rd</sup> Cir. (Pa.) Mar. 20, 1966)(No. 15787, 15791).

Ms. Mary Rupp  
Secretary of the Board

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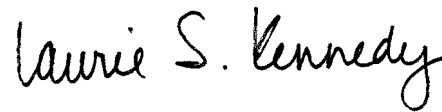
In addition, our members suggest that this provision of the regulation require that the access to the books and records of account must be related to the "proper purpose" of obtaining information related to the proposed credit union conversion. This regulation should not be construed as an invitation to conduct a general fishing expedition for confidential credit union information. As many of our members are community chartered credit unions, virtually anyone located within the community field of membership could request access to the credit union's books and account of records by establishing a small share account, including individuals who may not have a proper purpose for requesting access.

Our Committee is clearly concerned about providing personal and confidential information about members to other members. Even the disclosure of the members' name and addresses could lead to complaints, and possibly lawsuits, under the financial privacy regulations and policies. Our group also opposes access to books and records of account such as personnel records and information, cash receipts and disbursement records (since these could contain confidential and/or personal information), accounts receivable and payable ledgers (since these could be construed to be member loan and share records), checkbooks (since these would include disbursement to members), and contracts relating to the sale or purchase of assets (since these are generally unrelated to a proposed conversion).<sup>5</sup>

Our group agrees with granting access to all records and minutes of meetings related to a proposed credit union conversion to a mutual savings bank.

Thank you again for this opportunity to comment on behalf of Pennsylvania credit unions. Please feel free to contact me or any of the PCUA staff at 1-800-932-0661 if you have any questions or if you would like to discuss our comments.

Sincerely,



Laurie S. Kennedy  
Associate Counsel

LSK:llb

Attachment

cc: Association Board  
Regulatory Review Committee  
J. McCormack  
R. Wargo  
M. Dunn, CUNA

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<sup>5</sup> It is noted that the Pennsylvania Supreme Court has protected confidential information from disclosure to members of Pennsylvania non-profit corporations. *Lewis v. Pennsylvania Bar Association*, 549 Pa. 471, 701 A.2d 551 (Pa. Oct. 20, 1997)(No. 0164 M.D. 1997, 0173 M.D. 1997).

# **PENNSYLVANIA CREDIT UNION ASSOCIATION**

## **POLICY STATEMENT**

### **CREDIT UNION CONVERSIONS**

The mission of the Pennsylvania Credit Union Association is to provide leadership to promote credit unions and their unique philosophy. Consistent with that mission, the Association Board of Directors has adopted this policy statement regarding credit union charter conversions.

The Association strongly believes that the credit union charter is the charter of choice to serve the credit and other financial needs of individuals, especially those of modest means, through a cooperative structure.

In consideration of the history of credit union charter conversions, the Association views the initial conversion of a credit union to a mutual savings bank as an interim step to becoming a stock institution. Accordingly, the Association believes that conversions are inconsistent with the credit union philosophy, in which the financial well-being of the members is paramount.

The Association recognizes that credit union boards of directors, management, and members have choices regarding the structure of their institution.

Notwithstanding their right to choose, the Board of Directors of a credit union owes a fiduciary duty to the membership. Any decision to convert from the credit union charter must be demonstrably in the best interest of the membership. No conversion is demonstrably in the best interests of the membership absent full and fair disclosure of the impact that a conversion would have on the ownership and economic interests of the members. In addition any member or group of members that oppose the conversion must be afforded an opportunity to present their position to the entire membership.

The Association is committed to taking action that promotes and preserves the credit union charter as the charter of choice. Such actions include, but are not limited to, advocating net worth reform, ensuring that credit union powers and delivery channels keep pace with the marketplace, and raising public awareness of the value of credit unions.