August 28, 2006

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

Re: Comments on Proposed Rule Part 708a

Dear Ms. Rupp:

The National Association of State Credit Union Supervisors (NASCUS)[1] appreciates the opportunity to provide comments to the National Credit Union Administration (NCUA) concerning proposed changes to NCUA Rules and Regulations Part 708a Conversion of Insured Credit Unions to Mutual Savings Banks (MSB). NASCUS and its members concur with NCUA that a credit union's membership vote on important issues must be fair and the members must be provided with accurate information to make an informed decision.

NASCUS commends NCUA on its publication of a thoughtfully reasoned and thoroughly documented proposed rule. Reservations regarding the rule discussed in this comment letter not withstanding, the proposed rule clearly explains NCUA's intent and specifically cites all statutory, regulatory, judicial and research authorities relied on in NCUA's decision making process.

Proposed 708a contains many specific provisions regarding communications to and by the membership concerning possible conversion to an MSB as well as provisions regarding the voting process itself. NCUA's efforts to effectuate the proper balance regulating a conversion vote raises many issues for the credit union system: the proper functioning of a board of directors; the rights of membership; appropriate regulatory oversight versus legitimate discretionary business decisions; and where the responsibility lies for protection of members' equity interests. However, from NASCUS' perspective, those issues will most certainly be addressed by comments from industry. Another important aspect of proposed 708a concerns the federal regulation's impact on the existing state law framework. It is this latter issue that NASCUS addresses in these comments.

[1] NASCUS is the professional association of the 48 state and territorial credit union regulatory agencies that charter and supervise the nation's 3,800 state-chartered credit unions.

NCUA specifically sought comment on the "compatibility" analysis of proposed Part 708a. Federal Register June 28, 2006 (Volume 71, Number 124) p. 36948. NASCUS reiterates its concerns that the rulemaking in this case may be overly broad and unnecessarily intrude upon state authority.[2]

Deference to State Laws

- NCUA should make clear that Part 708a does not preempt state laws and regulations governing conversion.

While Congress may have erred in conferring upon the NCUA rule making and oversight authority for the process by which state-chartered credit unions convert to non credit union status, the fact remains that statutory authority for limited NCUA rulemaking exists**.** 12 U.S.C. 1785(b)(2)(G)(ii). NASCUS concurs with NCUA's analysis that the statutory framework in this case provides leeway for NCUA to interpret its Congressional mandate. Federal Register June 28, 2006 (Volume 71, Number 124) p. 36947 (citing Pauley v. BethEnergy Mines, 501 U.S. 680, 1991). By crafting Part 708a and Part 741.208 in a manner that resolves procedural questions for federal credit union conversion to an MSB while respecting state regulatory and statutory authority, NCUA would fulfill its statutory duty under 12 U.S.C. 1785(b)(2)(G)(ii).[3]

NASCUS concedes regulating in this area is complex. At least fourteen states have laws that are silent on the conversion of state credit unions to non credit union status.[4] Of those states, some have interpreted the state law's silence to prohibit conversion to non credit union status, instead requiring a state credit union to convert to federal charter and then proceed with the federal credit union conversion to non credit union status under federal rules. See NC Code Section 54-109.95. In other states, laws and regulations governing conversion to non credit union status differ from NCUA's *existing* rule. See 7 Texas Admin. Code §91.007(b). Furthermore, some states may look to federal rules for guidance with these issues.

The long working partnership between state and federal regulators has helped maintain a safe, sound and viable credit union dual chartering system. There simply must be a better way to ensure real public policy concerns regarding conversion are addressed rather than by a blanket regulation with little, if any, tie to the traditional safety and soundness standard that has served as the benchmark for federal rule making over state-chartered federally insured credit unions.

[2] Most recently, see NASCUS comments on NCUA Proposed Part 708a, October 1, 2004.
[3] NCUA Rules and Regulations part 741.208 incorporates Part 708a by reference into requirements for federally insured state-chartered credit unions. While Part 741.208 is technically not part of the request for public comments, it seems a logical starting point for addressing the appropriate affirmation of state regulatory and statutory authority for federally insured state-chartered credit unions in this area.
[4] *NASCUS Profile: Credit Union Supervisory and State Regulatory Structures* 2005-2006 Edition, Table 7.7.

Resolution

While it may be NCUA's interpretation of the statutory and regulatory framework that proposed 708a does not preempt more restrictive state laws, NASCUS believes that such an informal understanding may not be determinative. The extensive nature of the rule, coupled with various interpretations of the statutory directive, could be used as some for a legal challenge to different state laws on the grounds that NCUA has occupied the field. NCUA should make clear that any state statutory or regulatory scheme is not preempted by 708a. Such an express affirmation of state authority should be content neutral in terms of state law.

Throughout the proposed rule, and in other published documents, NCUA has made clear its concerns regarding the conversion process.[5] NASCUS does not believe that NCUA intends to imply it questions either state regulator concerns with this issue or state regulator commitment to safeguarding the interests of the citizens of their state within their duly authorized powers. Reasonable minds can disagree on how best to ensure these issues are addressed in an appropriate manner. That this is the third revisitation of this issue since 1998 attests to the changing nature of the debate. Therefore, it seems to make little sense to characterize state specific rules in this area as more or less restrictive, but rather simply as different. Whatever the differences, if state law, regulation or policy addresses this issue, there should be no preemption.

In addition to upholding state autonomy, such an accommodation would further support and strengthen the dual chartering system. Often, state regulations, when allowed to operate parallel to their federal counterparts, prove effective and are adopted throughout the system. NASCUS notes provisions in proposed 708a that seem inspired by already effective state conversion rules.[6]

NASCUS appreciates the opportunity to comment on NCUA's Proposed Part 708a. This is a difficult issue with potential implications for the credit union system far beyond the specific conversion debate at hand. NASCUS and its membership share many of NCUA's concerns and commend the agency on its efforts. Please do not hesitate to contact NASCUS if you wish to discuss our comments.

Sincerely,

[signature redacted for electronic publication]

Brian Knight
Vice President, Regulatory Affairs

[5] See NCUA Legal Opinion Letter 05-1019, October 12, 2005, among others.
[6] For example, the "4th notice" requirement implemented by Texas in June 2006. See also Michigan Comp Laws 490.373(1)(a) and (1)(i)(ii) as well as Vermont Stat. Ann. Tit. 8, §35102 (2006).