From: John McKenzie [mailto:JohnM@icul.org]
Sent: Monday, April 28, 2008 4:47 PM
To: _Regulatory Comments
Subject: Indiana Credit Union League's Comments on Advance Notice of Proposed Rulemaking for Parts 708a and 708b (Credit Union Corporate Governance Issues)

April 28, 2008

Ms. Mary Rupp

Secretary to the

National Credit Union Administration Board

1775 Duke Street

Alexandria, VA 22314-3428

Re: Comments on Advance Notice of Proposed

Rulemaking for Parts 708a and 708b, Credit

Union Corporate Governance Issues

Dear Ms. Rupp:

The Indiana Credit Union League (ICUL) appreciates the opportunity to comment on the NCUA Advance Notice of Proposed Rulemaking (ANPR) that discusses potential proposed rules dealing with credit union mergers and conversions and several board governance issues. The ICUL represents 189 of Indiana's 209 credit unions with those credit unions' memberships totaling more than two million members.

During a time when credit unions are already operating in an overregulated environment, the economy is presenting significant challenges to the operations of credit unions, and efforts are underway in Congress to reduce the regulatory burden on credit unions, we do not support any new regulations as proposed in the ANPR. It is our position that NCUA should be focusing on how to reduce the regulatory burden—not increase it.

The ANPR addresses six types of merger and/or conversion transactions. We remain in strong support that full disclosure to the members of the credit unions involved in these transactions is very important. However, we feel that existing regulations dealing with mergers, conversions to a mutual savings bank (MSB) and conversions to private share insurance are sufficient to protect the rights of the credit union members. As indicated in our prior comment letters to NCUA, we believe the current rules already require too much in some of these areas. The ANPR discusses the conversion of a credit union into a financial institution other than a MSB and the fact that the current rules and regulations do not address this type of transaction. Our view is that if this type of transaction occurs at any significant frequency that cannot be handled under current regulations, NCUA should address this separately from the other five transactions for which sufficient regulations exist.

The ANPR asks whether or not regulations need to be developed that define the fiduciary duty credit union directors owe to the members of the credit union. These regulations would establish a standard of care that needs to be met by the directors in evaluating merger and conversion opportunities. One of the arguments used is that the standard of care is currently defined by state law, court cases, and standard business practices, and that there are inconsistencies that exist from state to state. The presumption is that a NCUA defined standard of care would override the state law for federally insured credit unions. There is no certainty that this would ultimately be the case. Also, is it NCUA’s responsibility to try to establish regulations every time there exists a discrepancy among state laws or regulations as they apply to credit unions? We do not believe that this is the role of NCUA. It appears in the proposal that NCUA does not have faith in the ability of a credit union’s board of directors to properly evaluate and make recommendations to their members pertaining to mergers or charter conversions. If NCUA were to develop, in conjunction with the credit union industry, guidelines to assist credit union boards to better understand the fiduciary duty expectations credit union boards should be meeting when reviewing these types of transactions, we could support this as long as the guidelines do not become quasi regulations in the minds of the examiners.

The ANPR proposes that consideration be given to regulations that address the allocation of equity to members as part of a merger transaction, particularly, whether or not the regulation should require a merger dividend be paid to the members of the credit union being merged. Not every merger carries the same level of risk to the surviving credit union that may require reserves or undivided earnings to be available after the merger to absorb losses that occur as a result of the merger. Under current regulations, the decision about whether or not to pay a merger dividend is left to the boards of the credit unions involved. We do not agree that new regulations are needed in this area, and would strongly disagree with any proposed regulation that would require or prohibit a merger dividend as an option. In addition, we believe that Statement of Financial Accounting Standards 141- Business Combinations that will be in effect for mergers that occur after January 1, 2009 increases the due diligence required in merger evaluations and will result in a better determination of the adequacy of the net worth being transferred in a merger.

The ANPR proposes that in communications to members regarding credit union to MSB conversions or conversions to private share insurance that disclosures contain the phrase “NCUA has not endorsed this transaction.” We believe that this language, while intended to clarify that NCUA’s approval of the member communication is not an endorsement of the transaction itself, the language used infers a “negative endorsement” to the transaction that could influence members to vote against the proposal. NCUA's role under current regulations is to review the proposed communications to members that address the proposed transaction to ensure that the members are receiving full and complete information needed to make an informed decision, not to take a stance for or against the proposal. The proposed language does represent a stance taken by NCUA which is not appropriate. There already exist sufficient disclosure requirements for these transactions and sufficient oversight by NCUA.

We do not believe NCUA has demonstrated that there have been a sufficient number of situations where voting was not handled correctly to require that formal recount regulations be developed as proposed in the ANPR. NCUA has the authority to monitor the voting process and it would appear NCUA could require a recount in instances where concerns about the voting process are present. Allowing any member to request a recount could potentially allow for disgruntled members to delay a decision or add additional expense to the transaction.

We question NCUA's proposal that the requirement (currently in existence) that an independent third party be required to manage the vote when the credit union is converting to another type of financial institution, be extended to all of the transactions covered by this ANPR. Also proposed is that the credit union management, staff and boards be prohibited from receiving tallies of the vote prior to the conclusion of the voting process. We do not agree with these proposals. NCUA has not demonstrated that there exists a problem that requires new regulations to fix.

In summary, we strongly disagree with the proposals contained in this ANPR. It is our opinion that NCUA's efforts should be focused more on how to reduce the regulatory burden on credit unions, and overall safety and soundness, not on developing new regulations. Credit unions are challenged daily to find sufficient time to manage the regulatory burden that exists, and finding the time and resources to mange compliance is a driving factor in mergers of small- and medium-sized credit unions. There should be a much higher threshold of evidence that problems exist before determining more rules and regulations are needed. Now is the time for less regulation—not more.

Thank you for the opportunity to comment on this proposal.

John McKenzie

President

Indiana Credit Union League

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