April 30, 2008

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

Dear Ms. Rupp:

We appreciate the opportunity to comment on the proposed regulations regarding mergers, conversions, and insurance termination. The management of Wings Financial would like to again point out that NCUA's actions appear to be focused on protecting the Agency from losing credit unions to alternative business models in order to protect against losing the regulatory oversight and the insurance deposits of those organizations. This strategy or focus by the NCUA is inappropriate and unworkable due to the dual role of the NCUA as both regulator and insurer.

NCUA states that the primary focus of this ANPR is protection of member interests in transactions where members have a great deal at stake because the transactions involve fundamental changes in their ownership or the structure of their credit union, including, in some cases, termination of a credit union charter or termination of NCUSIF insurance. The Agency continually reinforces the need for protection of member interests, full and fair disclosure, and transparency. These mandates, however, seem only to apply to a narrow band of activities (i.e., when Agency interests are at stake). It is the opinion of Wings' management that the reason the Agency is proposing additional regulation is that the Agency has already crossed a line and stepped beyond the role of Regulator and into the realm of business management. The Agency also knows that any challenge to its authority will require expensive litigation or an act of Congress.

The NCUA, as a regulator of financial institutions (credit unions), must be independent and objective in order to ensure the safety and soundness of insured credit unions. It seems to Wings' management, however, that the NCUA Board and its staff have lost sight of their duty to be objective, and have adopted a strategy focusing not on safety and soundness, but rather industry containment/NCUA preservation. The NCUA also seems to have appointed itself as the individual credit union member/consumer representative when such role benefits the NCUA, but not necessarily the individual credit union. Wings' management does not believe a regulator should be directly representing members, especially in governance decisions. Members interested in their organization have the impetus to protect their interests and are able to represent

themselves. Members who might challenge governance decisions can do so at both the organization level and in the court system. Regulator interests and focus should be to ensure safe and sound operations at the organizational level - not representation at the member level.

Additional comments regarding:
Credit Union Merger or Conversion into a Financial Institution Other than an MSB.
Wings' management believes the Agency has already overstepped congressional authority with currently issued regulations and procedures restricting the opportunity for credit unions to choose alternative business models. Existing regulations go beyond oversight of voting processes and now have the effect of managing the voting process. Existing requirements mislead members and appear to be designed to inflame emotions in a manner that helps ensure a negative vote. We believe that additional regulations would have the effect of further assuring a negative vote and placing more restrictions on business model choice.

Regulating/controlling "insider enrichment"
It is the opinion of Wings' management that personal enrichment to the detriment of members can take many forms. For example, a credit union that grows capital to extreme levels while maintaining uncompetitive rates may be taking advantage of members – especially if operating costs are unusually high while compensation packages are at or above market. Similarly, failing to entertain alternatives that bring quantifiable/demonstrated benefit to members in order to maintain executive employment or volunteer perquisites would be considered by Wings' management to be insider enrichment. Nevertheless, we do not believe these matters should fall under regulatory oversight unless there is a direct impact on safety and soundness. Such matters are under the overall control of credit union members (using pre-existing corporate governance principles from bylaws and common law judicial decisions) who may seek remedy from courts if they believe they have been or are being injured.

Member Right to Equity.
It should be no surprise that Wings leadership believes this issue is not one to regulate but should be left to the judgment of boards of directors and management.
The longstanding question about ownership of credit union equity comes about in part because the Act gives little attention to the unwinding of credit unions or to business model alternatives. Who really owns the equity of a credit union? What is the appropriate or most fair method of assigning ownership? Do the members of modern credit unions know or care about equity ownership? Do members of most progressive credit unions participate in governance or even know they have an equity stake?

All long-standing members help build capital through deposit, loan, transaction, and service activities. Credit unions, however, are encouraged/forced to return excess capital primarily through dividends. [We understand that loan rebates are also an option but are less common.] In dividend distributions the members who benefit most are those who have most money on deposit on a date-of-record. The members who benefit are typically high net worth depositors. These may be members who joined the

organization and made deposits recently, while members who had significant sums on deposit for years but used/pulled the funds just prior to the date-of-record, often see little benefit. Similarly members who made significant contributions to capital through loan payments, fees, and service use may not get any return of excess capital. The allowable methods for distribution of capital don't favor what Wings' management necessarily characterizes as long-standing members, i.e., those responsible for capital accumulation. The equity of any credit union therefore belongs (according to allowable methods) to that approximately ten percent of members who hold 90% of typical deposits at any particular point in time- whether they be long-standing members or someone who walked in yesterday because rates were attractive. [We know that a rebate/dividend can be calculated on a look-back basis but also understand the complexity of such a calculation and the limitations of most CU systems.]

There seems to be a disconnect in the CU industry as those who favor/mandate distribution of excess capital to a concentrated handful of high deposit members also seem vehemently opposed to business models where voting rights and control are based on deposit levels rather than one per member.

The Agency notes that, in a recent FICU to stock bank merger, the merging FICU returned to its members their equity interest in the credit union plus a premium, and the Agency believes a return of equity can be a fair way to compensate members for the loss of the credit union they own. The board seems concerned about capital being transferred to a new institution where some the merged/purchased credit union members may have less control than other members and may have diluted or no ownership interests. Why is the same care not emphasized in CU to CU mergers? Another disconnect? It appears to Wings' management that when credit unions (often with higher capital levels) are absorbed/purchased by another credit union the members lose both their excess value *and* dilute their voting power without compensation. One might conclude that members of these merged/purchased credit unions would recognize more value if banks were allowed to bid on the deposits/assets of credit unions contemplating merger. This option would allow members of credit unions to recognize real market value. And, similar to a CU to CU merger, allow members to decide whether to stay with the purchasing organization (after collecting a premium on their shares for selling their CU) or to take their business elsewhere. In any case these members would have an opportunity to monetize not only the capital of the merged CU but also additional value based on market value of all assets. Wings' management believes that if the Agency is concerned about ensuring member rights to equity and real market value, the Agency should encourage merging credit unions to seek open market bids to allow members/owners to monetize and maximize value.

In the ANPR the Agency notes "While the decision to convert belongs to members, to make this decision, members must be fully informed as to the reasons for the conversion and be able to consider the advantages and disadvantages." Clearly the opportunity to monetize both capital and the "ongoing concern" value of a credit union is in the best interest of members- who should be fully informed of the advantages and disadvantages and allowed to vote.

If free market choice of business model was allowed by the Agency as Congress intended, members could realize the "institutional value" of capital as their CU opted for an MSB charter and perhaps leverage institutional capital during a stock bank conversion by purchasing shares.

(c) Communications to Members: Improper or Misleading Communications to Members.
Misleading communication should always be challenged. Too often it is what gets left unsaid that is most important (consider the open market bids example above). Current required disclosure notices regarding MSB conversions ring alarm bells pointing to loss of membership, probable reduction in rates, and profit to directors and officers. Members are drawn to the required disclosure with mandatory type size and boxed copy. Members are not similarly drawn to language identifying probable expansion of services, more offices or ATMs, continued ability to vote, or opportunities for stock purchase. Is it misleading to require conversion disclosures that only highlight the potential (and speculative) negative aspects of a possible conversion? Is it not even more misleading when such speculative disclosure is required by a federal regulator? We suggest that the currently required disclosure be eliminated. To the extent that a member or members believe that materials used to vote in a charter change transaction, or any type of transaction for that matter, are so patently false and misleading (notwithstanding regulatory review) so as to cause a vote to be unfair, their recourse should be through the courts, just as it would be for stockholders.

Additional language requiring a notice stating that "NCUA has not endorsed this transaction" appears, again, to be designed to create alarm among members. While an institution should be required to disclose any material effects the charter change would have, further requirements regarding possible changes to service levels are unwarranted. Every consumer has their own definition of convenience and acceptable service levels. A probable/possible reduction in offices, personnel, redundant or outdated services, or other access should not be a merger/conversion disclosure requirement. Does the agency require disclosure that offices may close or services may be reduced in a CU to CU merger? Why not?

Service level changes may be necessary for the financial health of the organization and of great benefit to the overall membership. The suggestion of a need for such notices again supports the idea that NCUA has stepped beyond the role of regulator and into the realm of management.

Regarding unsolicited merger offers being communicated directly to the members of a target credit union: Wings' management believes the Agency should encourage the communication to members of all bona fide merger offers where analysis demonstrates quantifiable and material added value to members. Agency concern should be that members are fairly and fully informed and allowed to vote. Nevertheless, we do not believe additional regulation is needed to manage the process. Failure to act in the best interest of members, especially in a protectionist manner should be considered a breach of fiduciary duties and is best handled through member action and the court system.

(d) Member Voting: Right to Request a Recount and Use of Interim Tallies.
All elections should be conducted in a fair and impartial manner by an independent election teller. Wings' management believes these issues should not be regulated but settled through established processes in the court system. We agree with other comments that if additional regulations are issued the potential for unintended consequences is high.

In summary, the leadership team at Wings Financial FCU believes the Agency has overstepped Congressional intent by taking the authority to "oversee" the vote during an MSB conversion and is instead "managing" the voting process to ensure a negative result. We believe credit unions should have the free market choice to change business models as their board of directors chooses. We believe Agency practices regarding concern for member value and governance decisions are inconsistent and protectionist. We believe that concerned members should turn first to their organization's leadership for dispute resolution and then to the court system.

Thank you for the opportunity to comment.

For the Wings Financial FCU Leadership Team,

Paul V. Parish
President/CEO