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

Dale Verderano Comments on Advanced Notice of Proposed Rulemaking for Parts 708a and 708b

Dear Ms. Rupp:

Matadors Community Credit Union appreciates the opportunity to comment on the proposed revisions to the National Credit Union Administration's Rules and Regulations Part 708a and 708b.

As I was preparing my comment, I read the comment submitted by SAFE Credit Union – Henry Wirz 2-11-08. After reading his comments, I feel there are some areas where I agree with Mr. Wirz and I will identify them in my comments.

Also, Rick Heldebrant – 3-7-08 regarding merger dividends, Marquette University – Gregory Naples 2-21-08 regarding conversions, and Visions Federal Credit Union – Frank Berrish 2-28-08 regarding conversions and current rulemaking.

Since the others have written their comments and have explained their positions well, I will not repeat the comment only to say that I agree.

However, I would like to provide an overall statement of what I and other CEO's that I have spoke with feel about NCUA's over excessive rulemaking that really does harm to credit unions.

I think it is necessary to start by addressing the significant conflict of interest that NCUA has in issuing new rules on this subject and the other rules it has already established in reducing the ability of credit unions to convert to a MSB.

It is very apparent that NCUA is doing everything in its power to prevent credit unions from discontinuing their NCUA insurance. If a federally insured credit union converted to a MSB the NCUA would lose the income that would be generated by the insurance deposit. This is a huge conflict of interest.

NCUA is seeking comment on whether issuing rules to govern credit union mergers or conversions into a financial institution other than an MSB would be beneficial for credit union members. We feel any new rules would not benefit credit union members and feel the rules NCUA has already established has caused monetary harm to credit unions that have already converted or attempted to convert. NCUA rules have required credit unions that wish to convert to a MSB to disclose to members information that give the appearance that members are losing something and that insiders will gain enrichment. However, NCUA's rule will not tell the member that they (NCUA) have an interest in keeping the credit union from converting because they would lose income from the insurance fund.

NCUA has a very large budget and if credit unions started to convert to an MSB, or leave the NCUA insurance fund, NCUA would eventually shrink and then perhaps congress would merge the NCUA into the FDIC. This possibility encourages NCUA to come up with more restrictive rules to prevent credit unions to convert to an MSB even though the credit union membership agrees on the conversion. NCUA's rules are making it financially impossible for a credit union to convert. For those credit unions that have attempted to convert to a MSB, the costs already have gone up hundreds of thousands of dollars in postage alone not counting legal expenses.

I would like to include Henry Wirz's comment and recommendation below because I agree with his position:

Mr. Wirz's Comment
Address concerns regarding the loss of federal deposit insurance.
"I believe that federal deposit insurance is the best deposit insurance solution for members. But I respect the right of states and credit unions in those states that allow private insurance to make that choice. NCUA again has a conflict of interest given that half of their operating budget is paid for by the federal deposit insurance fund. NCUA should remove that conflict of interest. Any credit union that converts to private insurance or merges into a credit union with private insurance must be required to fully disclose the benefits and risks of such a change".

Mr. Wirz's Recommendation
I would recommend that NCUA make the following changes;
"NCUA should eliminate the conflict of interest with regard to federal deposit insurance. The best way to do that is to have the cost of examination fully paid for by fees assessed to Federal credit unions and federally insured state chartered credit unions. The overhead transfer from the insurance fund to pay for NCUA's safety and soundness examination and the agency operating costs is both unfair and a conflict of interest".

The NCUA should not make it difficult for a FICU to convert to a MSB or merge into any type of financial institution. In fact, the Act specifically addresses FICU to MSB conversions. 12 U.S.C. 1785(b)(2). A FICU may convert to an MSB without the prior approval of the NCUA Board, 12 U.S.C. 1785(b)(2)(A). The Act requires NCUA's regulations to be consistent with rules promulgated by other federal financial regulators

and must be no more or less restrictive than those applicable to charter conversions by other financial institutions. 12 U.S.C. 1785(b)(2)(G)(i).

NCUA is now trying to adopt rules that would make it more difficult for a credit union to merge, especially if it were to merge out of the NCUA insurance fund. NCUA should act as a regulator and not an advocate of credit unions. These two roles conflict with each other. Any credit union wishing to convert to a MSB, merge, or undergo any transaction that would take it out of the NCUA insurance fund is subject to harassment by outside agitators and difficult disclosures that are misleading. Current NCUA rules encourage these agitators. Many times the agitators are not affiliated with the membership of the credit union wishing to convert.

As Mr. Wirz said, "The member's interest in the credit union is not an ownership interest"

What exactly do members own? They do not own the equity of the credit union. Members do not have a legal right to any of the assets of the credit union. However, NCUA's disclosures would leave the member with the thought that they do have ownership and they would lose it if they voted to convert or merge. Members have a right to vote, one vote for each member regardless of their shares. As long as the credit union discloses to the member exactly what they would lose and gain in a merger or conversion, the NCUA should not get involved or make it more difficult than what is already outlined in the Act.

Mr. Wirz's Comment
"Provide flexibility, fairness and impose minimal regulatory burden on credit unions whose members choose to pursue any of these transactions. Charter conversions to a mutual savings bank charter are essentially impossible given the hostile climate within the credit union industry and NCUA's apparent opposition to such charter changes. Congress was clear in its intent to allow credit union's to make charter changes to mutual bank charters. I don't disagree that the banking industry helped facilitate the law so that credit unions would disappear. But we lost that fight with Congress. NCUA can't be a regulator and judge in disputes between members and their credit union.

We have a strong legal system. If members have been harmed they can go to court. NCUA should allow the courts to deal with misdealing, misstatements or any other deceptions made by Boards, management or third parties that cause mergers, charter changes or changes to private insurance. If Congress and the state legislatures need to pass laws then NCUA can help lobby for such laws. NCUA has clear conflict—mergers, charter changes and private share insurance all impact NCUA's budget and scope. NCUA has to make sure that it too is acting in the best interest of members, credit unions and the nation."

Prof. Gregory J. Naples's Comment
I also agree with a comment submitted by Prof. Gregory J. Naples, Dept. of Business Law and Accounting, Marquette University. His comment was: "The traditionally-

formed credit union may well serve the interests of some; but, given the economics of the marketplace today NCUA attempts to disrupt the natural evolution of credit unions opting for alternative forms of organization is an unwarranted interference in this process fraught with the very real possibility of significant legal challenge"

Summary

The NCUA should not develop any new rule making on mergers or conversions. They should rescind any previous rulemaking that does not comply with the 1998 Credit Union Membership Access Act (CUMAA). The NCUA should disclose to the membership of credit unions wishing to convert or merge to a non NCUA insurance fund, their conflict of interest, and details of this conflict. The NCUA should do everything in its power to prevent any outside agitators (those who are not members of the converting credit union) to influence any vote or recommendation to vote for a conversion.

In 1998, the Credit Union Membership Access Act (CUMAA) was signed into law. CUMAA significantly changed the law regarding credit union conversions to Mutual Savings Banks (MSBs) in three ways:

1. It restricted NCUA's authority to regulate credit union conversions by providing that the conversions may take place without NCUA's prior approval.

2. It eased the burden of converting credit unions by only requiring a majority of those voting to approve the conversion, in lieu of the previous super-majority requirement.

3. It required NCUA to draft final charter conversion rules that were consistent with those promulgated by other financial regulators.

NCUA has already exceeded the intent of the 1998 CUMAA Act and the rules are already more complicated. NCUA needs to consider rescinding these rules. If not, this may cause Congress to scrutinize why NCUA is continuing to ignore the 1998 CUMAA Act and has caused monetary harm to credit unions requesting conversion.

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