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Kirk Kordeleski
President and
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*VIA FEDERAL EXPRESS*

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

Re: *Advanced Notice of Proposed Rulemaking Proposed to Part 708a and Part 708b of NCUA Rules and Regulations*

Dear Ms. Rupp:

On behalf of the management and Board of Bethpage Federal Credit Union, I would like to take this opportunity to comment on the proposed changes to Part 708a and Part 708b of NCUA's Rules and Regulations that would impact mergers and charter conversions found in the recently issued Advance Notice of Proposed Rulemaking (ANPR).

We are totally committed to the fundamental credit union principle of full disclosure and to the right of the membership to be fully informed relative to all issues related to governance of their credit union (including mergers and conversions); however, we are not persuaded that additional changes and revisions to the current regulations are warranted to the extent as those being considered in the recently issued ANPR. While such issues are certainly important to credit union members, it is likewise important to note that significant amendments to Part 708 have been implemented by NCUA over the past five years and are being complied with by federally insured credit unions who have adapted to this series of substantive regulatory changes. Therefore, we believe that the regulations currently in place are more than adequate and provide a proper working mechanism to protect member interests in transactions involving fundamental changes in the ownership, governance and/or structure of credit unions.

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While we feel that the present regulations are working effectively and question the need for another round of changes to the current regulation, if it is the agency's intention to promulgate another layer of regulation in this area, then we believe certain aspects of the ANPR proposal are the most troubling from a credit union perspective and should be considered carefully before action is taken.

First, we question the need to provide additional regulation in the area of credit union merger or conversion into a financial institution other than a mutual savings bank. Based on our reading of the proposal we are convinced that excessive regulation in this area could have an adverse impact on voluntary mergers between credit unions. This would likely result in unintended safety and soundness issues. Therefore, we believe it is imperative that NCUA work to make the voluntary merger process easier rather than harder.

A number of regulations currently exist that make it virtually impossible for some credit unions with dissimilar fields of membership to merge. It would be extremely unfortunate if additional regulation were to make such voluntary mergers even more difficult. As a safety and soundness regulator, NCUA should recognize the advantage in enabling credit unions that foresee long term financial, management or member service difficulties to have the opportunity to enter into a voluntary merger before deteriorating into a troubled situation which might pose potential risk to the share insurance fund. It is our belief that any regulation that will intentionally or unintentionally make voluntary mergers more burdensome between credit unions, when agreed to by both Boards in their respective fiduciary roles and fully disclosed to the members with a fair and impartial affirmative vote in accordance with existing regulations, will likely have a negative effect on one of the most necessary business options for strategic minded credit unions who are focused on their long term viability.

We recognize that, on occasion, there may be an occasional instance where the agency might need to intervene to ensure that member rights are properly protected and fiduciary duties are appropriately carried out in the case of a merger or conversion; however, we should be careful not to overreact to a very small number of such situations. We feel that the agency's extensive safety and soundness authority, coupled with its recently enacted enforcement authority in matters related to credit union bylaws, is more than sufficient to deal with the very limited number of isolated instances where member rights violations or fiduciary impropriety have been identified.

A publication of some form of acceptable best practices and general guidelines, rather than promulgating another burdensome rule, would likely satisfy these limited areas of concern without potentially adverse consequences.

The ANPR also purports a need for a regulation to address the fiduciary duty credit union directors owe to members and the need for additional regulatory provisions to

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guard against insider enrichment, and we would like to offer the following comments on the fiduciary duty of credit union directors.

The ANPR includes the possibility of an additional regulation to prescribe the specific "standard of care" a director owes the credit union in cases where the structure or ownership of the credit union is at issue. We do not see any legitimate basis for NCUA to draft its own definition of fiduciary duty in this specific area when statute and regulation have clearly assigned the appropriate responsibilities and liabilities of fiduciaries. Because it is basically impossible to codify every responsibility of a fiduciary in every situation, we are not supportive of any attempt to promulgate additional regulation designed to assign a specific standard of care for specific transactions or decisions credit union officials may enter into.

The Federal Credit Union Act makes it abundantly clear that a credit union's board of directors has a fiduciary duty to act in the best interests of its members and while we agree that decisions affecting the ownership or structure of the credit union are indeed of crucial importance, we must question why NCUA has determined that the issue of conversion or merger constitutes the only instance where an additional promulgated written standard of care is required.

We see such an approach as impractical, problematic and confusing. Directors and management should not be given mixed signals about their fiduciary role to the credit union. Simply put, every decision is important and the duty of care to the credit union should be the same regardless of the issue.

In lieu of promulgating an additional regulation prescribing a separate standard of care for directors in conversion situations, we again believe NCUA would be better served to issue acceptable best practices and general guidelines about the importance of recognizing one's fiduciary responsibilities associated with credit union management.

Also, the ANPR poses the question as to whether a merger dividend should be required in a credit union merger or whether the board should be required to consider a merger dividend as part of its due diligence, make its own conclusion regarding such a dividend and then justify its decision to the membership.

Let us be clear. We do not question that the equity of the credit union belongs to the member. However, it is also important to realize that whenever two credit unions agree to merge there are a host of issues that must be considered and evaluated. Often, a merger is contemplated as a way to provide the member with enhanced service opportunities. In other cases, mergers are viewed as a way to achieve the benefits of economies of scale or as a means to avoid potential safety and soundness issues. Regardless of the reasons for merger, it is safe to assume that the circumstances will be unique to the individual credit unions involved and a merger dividend may or may not be appropriate depending on the dynamics of the arrangement.

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To mandate a merger dividend as a means to protect the member's equity on its face may appear to be a popular regulatory requirement, but such a requirement is not practical and unfortunately places a one-size fits all standard on all merging credit unions regardless of the circumstances surrounding the merger including circumstances that could potentially result in a safety and soundness concern. For these reasons we believe such decisions should be left to the credit union to decide and therefore we must strongly object to any regulation requiring a merging credit union to issue a merger dividend.

Let us state that we fully support the fundamental right of a member to vote, in accordance with the Federal Credit Union Act, to make changes to their charter or account insurance. A decision to pursue conversion to another type of financial institution should never be entered into lightly and, should another charter option ever be pursued by a credit union, members should be fully informed about the conversion process in a manner that is transparent, factual and neutral in its approach.

Bethpage Federal Credit Union is committed to the credit union charter and has no intention to convert to any other charter type. However, as currently drafted, it appears that the proposed changes in the ANPR would go well beyond NCUA's statutory and regulatory role to ensure that the conversion process is conducted in fair and impartial manner when a credit union does elect to pursue conversion.

The ANPR proposes that converting credit unions include a statement that **"NCUA has not endorsed the transaction"** in their disclosures. We believe such a statement, while well-intentioned, actually infers negativity and could influence, perhaps unintentionally, the member's vote. Particularly troubling is that, if applied to credit union mergers into other credit unions, such a requirement could unduly influence the membership vote in a voluntary merger that might result in a stronger credit union with better services for those very members. NCUA's role in the conversion process should be limited to its determination as to whether disclosures meets the statutory and regulatory requirements, approve or disapprove the disclosure statements and ensure that the elections are free of fraud or impropriety. To go beyond this role of supervising the transparency and accuracy of the conversion process is to move the regulator into the realm of the members' responsibility as the owners of the credit union.

Also, the ANPR states that NCUA is considering prohibiting credit union management from obtaining interim voting tallies from the election teller; prohibiting credit union management from obtaining lists of members who have not voted from the election teller; prohibiting credit union employees from soliciting members to vote; and prohibiting credit union employees from completing member ballots or otherwise handling ballots.

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No one would question that members should have the reasonable assurance that the voting process is fair and free of undue and outside influence. In fact, over the years NCUA has effectively used its existing regulations to disapprove credit union membership votes when improprieties were involved which brought the fairness of the election into question. Given this fact and lacking anything that would indicate otherwise, we are not persuaded that sufficient evidence of election fraud, mishandling or error has been demonstrated to justify the need for additional regulation in this regard. In light of this fact, additional regulation does not seem to be needed, in our opinion.

Likewise, the proposed prohibition against employees of the credit union from encouraging members to vote seems counter to the agency's ongoing efforts to ensure that the membership is fully informed in situations where the ownership or structure of the credit union may be changed. The failure to recognize a member's right to vote merely because they happen to be employed with the credit union should not in and of itself deny them their individual right to participate in the voting process, which includes promoting or speaking about a particular cause or issue.

As always, thank you in advance for your consideration of our thoughts and comments on the proposed changes. I would be happy to discuss any of our positions and concerns at your convenience.

Sincerely,

Kirk Kordeleski
President and Chief Executive Officer