

59

August 24, 2006

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

AUG25'06 AM10:27 BOARD

Re: Comments on Proposed Rule Part 708a (Conversions to Mutual Savings Banks)

Dear Ms. Rupp:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on the National Credit Union Administration's (NCUA) proposed rule regarding conversion of insured credit unions to mutual savings banks (MSBs). The California and Nevada Credit Union Leagues (Leagues) are the largest state trade associations for credit unions in the United States, serving the interests of more than 450 member credit unions and their 9 million members.

We would like to commend NCUA on taking action to revise its current conversion rules contained in Part 708a, and applaud NCUA's well-researched proposal. Our comments regarding several provisions of the proposal, which follow, are founded on two beliefs. First, we strongly believe that credit union members have the right to receive full disclosure regarding the legal and economic aspects—and potential consequences—of a conversion of their credit union to a MSB. In addition, we feel that members should be provided the opportunity to freely debate with directors and officers of their credit union, as well as with other members, the decision to convert.

Board of Directors' Approval and Members' Opportunity to Comment (§708a.3)

The Leagues welcome the proposed rule's provision that permits members to comment prior to a board's vote considering conversion. It is obvious that since members ultimately decide whether or not a credit union will convert, obtaining their input early in the decision-making process may help prevent the board from engaging in action that the membership does not welcome. It is our opinion that to move forward on a conversion vote without first obtaining member input is a harmful, "top-down" approach contrary to the reality that credit union members are owners, and falls well outside the board's "general direction and control" authority.

We support the 30-day timing of this provision, as well as the requirement to provide notice in a general circulation newspaper, at branch offices and service centers, and on the credit union's website. Further, we suggest that NCUA also require this notice be mailed or delivered to each member, without any other mailing (as is required for the 90-, 60-, and 30-day notices and disclosures), subject to the same 30-day timing. This would greatly

60

increase the likelihood that all members are informed that the board is considering a proposal to convert their credit union into a bank.

Disclosures and Communications to Members (§708a.4)

We wholeheartedly agree with NCUA that members should be given sufficient time to thoughtfully consider and debate the decision to convert before being provided a ballot. We feel the inclusion of a ballot with the 90-day and 60-day notices is at odds with this approach, as it places pressure on members to vote (i.e., to get it “out of the way”) before they have had an opportunity to learn about all facets of the proposed conversion. We therefore support the proposal’s requirement to include the ballot only in the 30-day notice.

The Leagues find the proposal’s expanded disclosure requirements regarding potential changes to loan and savings rates—and potential profits by officers and directors—to be sound, appropriate, and altogether necessary in order for members to make a truly informed decision. We appreciate NCUA’s fact-based, irrefutable approach to disclosing to members these fundamental differences between credit unions and banks.

While we support the option provided in the proposal for delivering member-to-member conversion-related materials (i.e., the member requesting delivery of materials agrees to reimburse for reasonable expenses, and provides appropriate advance payment), we hesitate to “hard code” in the regulation the amounts considered reasonable at 50 cents and \$200. Instead, we suggest that the determination of reasonableness be left to each credit union to decide. However, we do agree with the proposal’s timing provisions regarding member-to-member communication, as well as the related resolution procedure for disputed communication.

The Leagues believe that while there may be value in exploring the use of this method of member-to-member communication for situations other than conversions, there are still a number of staffing, procedural, and other credit union administrative issues that need to be evaluated before adopting it for routine communication. Accordingly, we feel the subject should be pursued outside of this rulemaking process.

Finally, on the issue of electronic voting, the fact that no other federal financial institution regulator currently permits electronic voting—combined with potential security obstacles and questions regarding verifiability that may be raised—lead us to the conclusion that the time is currently not right to implement it. We respectfully suggest that NCUA postpone considering electronic voting until such time as the contentious issue of appropriate conversion disclosures is behind us.

August 24, 2006

61

Guidelines (§708a.13)—Incentives and Use of Prize Raffles

Credit unions sometimes use raffles as incentives for greater participation in fundraisers, product rollouts, and other events. While we support their use in those situations, we believe that the use of incentives to encourage voting in a conversion situation tends to mask the serious nature of what is taking place. More importantly, we believe that the use of incentives has a detrimental effect on the fairness of the vote. It is common knowledge that in contest settings, many consumers believe that making a purchase from the company sponsoring the contest increases their chances of winning (see, for example, Senate Report 102-102, detailing witness statements during hearings on “Deceptive Mailings and Sweepstakes Promotions”). Similarly, while there is not a “purchase” involved in a conversion situation, many members are likely to believe that their chances of winning are increased by voting in accordance with the wishes of the credit union’s board and management—in other words, by casting a vote in favor of conversion. Therefore, we oppose the use of raffles as incentives *to vote*, specifically.

Closing, the California and Nevada Credit Union Leagues thank the NCUA for the opportunity to express our views on the proposed changes. We enthusiastically support the agency’s actions to protect members’ rights while still preserving charter choice for our members’ credit unions.

Sincerely,



Robert Cheney
President/CEO
California and Nevada Credit Union Leagues