



August 25, 2006

Mary Rupp, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428  
(Sent via e-mail)

**RE: Notice of Proposed Rule Making (12 CFR Part 708A)**

Dear Ms. Rupp:

The Board of Directors of the Affinity Federal Credit Union has directed me to respond to the National Credit Union Administration (NCUA) proposed amendments to 12 Code of Federal Regulations Part 708A. This correspondence sets forth the comments of this Credit Union's Board of Directors in supporting the proposed rule making and also encourages NCUA to revise the proposed rule as set forth below.

The Credit Union's Board of Directors (the Board) is concerned over the recent increase in conversions of credit unions to mutual savings banks. The Board believes the proposed NCUA revisions should be adopted since they improve the information available to members and the directors as they consider a possible conversion. In particular, the revised disclosures, revised voting procedures, procedures to facilitate communications among members, and procedures for members to provide their comments to directors before a credit union board votes on a conversion plan should increase the likelihood that members will make an informed decision when they vote in favor of or against the proposed conversion.

The Board recognizes and supports the right of a credit union to change its charter to a bank charter. However, the Board believes that there are few business situations wherein the change to a bank charter would be in the best interest of the members of the credit union. Information independently available concerning recent credit union conversions, as well as the examples contained in the proposed regulation, demonstrates that all too often the conversion is not prompted by the best interest of the membership but the financial interest of the directors and senior management of the converting credit union.

The explanatory material contained in the proposed amendment to Part 708A adequately demonstrates the significant change in ownership rights of members as a result of the conversion

and, most important of all, the loss of the credit union's tax exempt status. It is hard to imagine that credit union members aware of the significant reduction in their ownership rights, and the financial impact to them of the loss of the tax exempt status would vote in favor of a merger except in the most compelling circumstances.

The Board firmly believes that the decision to convert from a credit union to a bank charter belongs with the credit union members and that in the past members have not been adequately informed as to the reasons for the conversion nor have they had an opportunity to consider the pros and cons of the proposed merger. In particular, the Board applauds NCUA's position that a credit union's directors must receive input from credit union members before the directors can even vote to move ahead with the merger proposal. The recent technology improvements concerning web sites and e-mail communication will facilitate credit union members' abilities to provide their input to directors before they vote on adopting a merger proposal.

The Board particularly supports the required "boxed" disclosures which, through their prominent location and clear cut language, drive home the fact that ownership rights and the potential for changes and rates and fees will be the most likely outcome of the conversion and will have a direct impact on all credit union members. Members must see, read, and consider these disclosures before deciding how to vote. The requirement that the disclosures be "boxed" greatly enhances the likelihood that members receiving the technical conversion correspondence from the credit union will, at least, look at the prominent disclosures contained in the boxes, which should alert all members to the fact that the proposed merger will negatively affect their ownership rights in the financial institution and result in negative changes in rates and fees.

#### **ADDITIONAL ITEMS FOR NCUA'S CONSIDERATION.**

The Affinity Federal Credit Union has grown significantly over the past twenty years; it is a large credit union with an extensive field of membership, numerous branch offices, and offers most credit union services. The Board is well aware of the financial considerations in operating a credit union; in particular, the importance of the credit union tax exempt status. Accordingly, the Board believes that while there are certain limited circumstances in which a credit union may wish to convert to a bank charter, these circumstances would be few and far between. As such, the Board encourages NCUA to consider a revision to the proposed rule making for Part 708A to require the credit union to distribute its capital and surplus in a pro rata distribution to credit union members prior to converting to a federal savings bank. This would require the savings bank to be re-capitalized as if it were a "de novo" bank. Requiring the credit union's capital to be distributed to members would eliminate the single greatest incentive for a merger based upon personal financial benefit. There is also precedent for credit unions distributing capital before merging with other credit unions. Routinely, NCUA has required a well-capitalized credit union which was merging into another credit union to distribute capital to its members prior to completing the merger. This is done to protect the capital accumulated by the merged credit union from being diluted as a result of the merger. The Board believes that requiring a distribution of the credit union's capital before it converts to a federal savings bank would be the most effective way of preventing the conversion decision being made based upon the personal financial interest of the directors and senior management of the converting credit union.

The Board also encourages NCUA to seek legislative remedies that would permit regulation which would require that a majority of all of the members of the credit union approve the merger, and not simply a majority of those who vote on the merger proposal.

For the foregoing reasons, the Affinity Federal Credit Union's Board of Directors strongly supports the adoption of the proposed rule making to Part 708A of the National Credit Union Administration Regulations, and further encourages the National Credit Union Administration to adopt the capital distribution requirement described in this letter. I am available to discuss the Board's proposals with you in greater detail at your convenience.

Yours very truly,

John T. Fenton  
President & Chief Executive Officer  
Affinity Federal Credit Union

Richard A. Romano  
Chairman of the Board  
Affinity Federal Credit Union