

**FIRST ENTERTAINMENT
CREDIT UNION**

APR26'10 PM 2:58 BOARD ✓

www.firstent.org

April 23, 2010

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

Re: First Entertainment Credit Union Comments on Notice of Proposed Rulemaking
(Fiduciary Duties at Federal Credit Unions; Mergers and Conversions of Insured Credit
Unions)

Dear Ms. Rupp:

On behalf of First Entertainment Credit Union, I appreciate the opportunity to comment to the members of the NCUA Board about proposed rules amending 12 CFR 701, 708a, and 708b concerning the fiduciary responsibilities of federal credit union directors, procedures for insured credit unions merging into banks, certain procedures for insured credit union mergers with other credit unions, and deposit insurance conversions. First Entertainment is an \$800 million in assets, 57,000 member California-chartered, federally insured credit union headquartered in Hollywood, CA.

The Board of Directors and Management of First Entertainment believe that every member of this credit union benefits from being a member. Our credit union exists to serve our members and we have a long, proud history of doing the job for which we were chartered. In addition, First Entertainment strives to incorporate financial services industry best practices in the areas of governance, business practices, and community involvement. Consistent with California law, as a cooperative the credit union conducts its business for the mutual benefit and general welfare of its members with the earnings, savings, benefits or services of the credit union being distributed to its members as patrons. We welcome members from all income levels, financial situations, and stages of life that choose to join.

First Entertainment Opposes the NCUA Board's Proposed Rules

According to information provided by NCUA, "This proposed rulemaking has four parts. First, a new §701.4 addresses the duties of federal credit union directors in managing the affairs of their credit unions. Second, revisions to part 708a address issues related to credit union conversions to mutual savings banks. Third, a new subpart to part 708a sets forth the procedures for merging a credit union into a bank. Finally, revisions to the existing provisions of part 708b address issues related to credit union mergers with other credit unions and the termination of federal deposit insurance."

The NCUA Board also contends that it is now proposing these additional rules to better protect member rights and ownership interests – an objective that we believe the proposed regulations distort rather than improve. First Entertainment has significant concerns regarding the appropriateness of the proposed regulations and urges the NCUA Board not to adopt them as presented. Additionally, First Entertainment would entreat the NCUA Board to repeal and revise existing regulations in these areas by modernizing, streamlining, and simplifying the governance and strategic structural changes contemplated in parts 701, 708a, and 708b. Unfortunately, these newly proposed rules are merely the most recent step in a multi-year process where the NCUA Board's rules have unduly encumbered several significant strategic options that are statutorily provided to credit union boards, management, and members.

Although First Entertainment has no immediate plans to engage in any of the contemplated strategic moves – mergers with credit unions and/or banks, conversion to the mutual savings bank charter, or conversion to non-federal deposit insurance – we adamantly believe that these strategic options should be available to the credit union with uncomplicated rules and at reasonable costs. The current NCUA Board regulations are the complete opposite – purposely complicated and costly – and the proposed additional rules just make the situation worse.

Federal Charter Becomes Less Strategically Desirable Option

The California credit union charter is currently serving First Entertainment well. However, the credit union would like to retain the federal credit union charter option's availability in the future should we determine that a strategic change was needed. Streamlined access to the federal charter is particularly important to many state chartered credit unions that operate under state credit union acts that do not provide a clear statutory path for mergers with or conversions to mutual savings banks and commercial banks. Unfortunately, the federal credit union act and accompanying bylaws have already become anachronistic and burdensome as a direct result of misguided NCUA Board regulatory changes promulgated since 2005.

The currently proposed changes to parts 701.33 and 701.4 would make the federal charter even less desirable. The NCUA Board proposal's so-called efforts to protect member rights and ownership interests instead undermine federal credit union governance stability and impede implementing strategic options by inappropriately over-endowing the individual member. The NCUA Board's rules promote the flawed concept that credit union member ownership interest is more like an individual stockholder at a for-profit corporation rather than that of a customer-depositor at a federally insured cooperatively-owned mutual financial institution.

Also, imposing the NCUA Board's own interpretation of a uniform standard of care on federal credit union directors is poor public policy and an insult to each state's historic leadership in this area of corporate governance. Considering the NCUA Board's awful track record impeding the very types of strategic structural changes covered by these proposed regulations, it is no surprise that there are many within the credit union industry that are alarmed by the proposed rules. The NCUA Board's intimidation of federal credit union boards to behave in ideologically correct ways is said by some industry pundits to be the real reason for the changes to parts 701, 708a, and 708b.

Proposed Changes Create Chilling Effect

The ability of the NCUA Board to second-guess credit union board member motivations for "willful" decisions and the subsequent denial of indemnification in part 701.33 are chilling. Under the proposed rules, matters affecting the fundamental rights and interests of federal credit union members include charter and share insurance conversions and terminations. The NCUA Board self-empowers itself rather than the member-elected credit union boards of directors to define what is in the members' best interests. And since all decisions that a credit union board makes are expected to be deliberate and "willful," the NCUA Board can punish board members for any decision that the NCUA Board members or senior NCUA staff don't like..

Does the NCUA Board also plan to test federal credit union directors' competence with basic finance and accounting practices and then fire the potentially hundreds of directors that fail the test as implied by proposed part 701.4? Will federal credit union boards have to get the NCUA Board's pre-approval so they select an NCUA sanctioned "competent and reliable" outside consultant, lawyer or accountant as proposed for part 701.4? If First Entertainment was federally chartered, it would be exponentially concerned about these potentially paralyzing part 701.4 rules affecting boards of directors. The net effect of both the current and proposed rules and bylaws affecting federal credit union directors is to make a federal charter conversion extremely undesirable as a strategic option for First Entertainment.

Mergers and Conversions More Complicated and Costly

The net effect of the NCUA Board's proposed changes to parts 708a and 708b reduce the desirability of a credit union's strategic choices to merge with another credit union, merge with a bank, convert to a mutual savings bank charter, or convert to non-federal deposit insurance. The new rules further complicate these structural changes and impose the same huge regulatory hurdles and costs on merging with another credit union or bank and converting deposit insurance that already exist for conversion to the mutual savings bank charter. These proposed changes to parts 708a and 708b apply to all federally insured credit unions regardless of whether state or federal chartered.

The proposed rules also include additional requirements affecting mergers and conversions concerning membership votes, disclosures and communications to members, board of directors' approval, members' opportunity to comment, notice to NCUA, appraisals of credit union members' equity ownership stakes, and merger-related financial arrangements, among other requirements. The deposit insurance conversion section now implements the statutory requirement that at least 20 percent of credit union members must vote on the conversion proposal in order to approve it. As usual, the NCUA Board rules are skewed toward discouraging each of these strategic structural changes.

Timing of Proposed Rules Puzzling

First Entertainment is also puzzled by the NCUA Board's timing with these proposed regulations that appear to be specifically designed to dissuade credit unions from making structural changes during the current corporate credit union stabilization and pending legacy assets resolution environment. After all, the last time that the NCUA Board solicited comments on these subjects was back in January of 2008 – well before the economy went bad and the corporate credit union mess surfaced. These rule changes could have remained on the shelf indefinitely and have no material effect on the current dilemmas facing the NCUA Board and the credit union industry. Why have they surfaced now?

Any credit union that exercised one of the covered strategic options (other than credit union-to-credit union merger) impeded by these proposed rules would also leave behind the future threats to its members' capital represented by the anticipated National Credit Union Share Insurance Fund (NCUSIF) and Temporary Corporate Credit Union Stabilization Fund (TCCUSF) special assessments. It is our opinion that retaining these strategic structural options under truly reasonable regulations and with reasonable costs would go a lot further than these ill-timed proposed rules in ensuring that member rights and ownership interests are better protected. First Entertainment considers the preservation of its members' capital to be an extremely important strategic priority.

Wrong Rules at the Wrong Time

First Entertainment urges the NCUA Board to reject these proposed regulations concerning 12 CFR 701, 708a, and 708b. Although federal chartered credit unions have a greater stake in these proposed rules because the directors duties part is the most egregious, First Entertainment considers a damaged and dangerous federal credit union governance structure to be a risk to the entire industry regardless of charter. Also, creating additional impediments to mergers, share insurance conversions, and charter changes without addressing the real challenges facing the industry is misguided and counterproductive – and ill serves the members of federal and state chartered credit unions alike.

The credit union industry would be better served by the NCUA Board focusing its resources and attention on its supervision and examination role for natural person credit unions and for corporate credit unions, as well as coming up with a truly effective plan to deal with the corporate credit union legacy assets and subsequent insurance premium assessments. The NCUA Board should put these proposed rules affecting 12 CFR 701, 708a, and 708b back on the shelf where they will not threaten to undermine the strategic situation for individual credit unions.

Thank you for the opportunity to present these comments on behalf of our credit union. I would welcome any questions.



Charles Bruen
President/CEO
First Entertainment Credit Union