

May 28, 2010

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

RE: 12 CFR Parts 701, 708a, and 708b Fiduciary Duties at Federal Credit Unions;  
Mergers and Conversions of Insured Credit Unions

Dear Ms. Rupp,

The Georgia Credit Union League (GCUL) appreciates the opportunity to comment on NCUA's proposal to clarify the fiduciary duties and responsibilities of federal credit union directors, and add new provisions for insured credit union conversions and mergers. As a matter of background, GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL serves approximately 164 credit unions that have nearly 1.8 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed regulations such as this.

GCUL commends the Agency's efforts to clarify the fiduciary duties of federal credit union directors, and to protect the rights of credit union members during a conversion or merger. We support several provisions contained within the proposal. However, others cause a number of significant concerns. Those concerns are discussed in the following paragraphs.

### **Fiduciary Duties**

Under the proposal, the federal credit union board of directors may delegate operational functions, but not the responsibility for these operations. Additionally, the proposal calls for directors to:

- Carry out their duties in good faith, in a manner reasonably believed to be in the best interest of the membership, and with care that an ordinarily prudent person would provide in a similar situation. "Good faith" would require that a director disclose material facts to other directors or to members who may vote on a particular interest. This duty of care would also require directors to inform themselves of all material information reasonably available to them prior to making a decision.

- Administer the credit union affairs fairly and impartially, without discrimination for or against a specific member.
- Understand the balance sheet and income statement and ask, as appropriate, questions of management and auditors. This understanding would need to be achieved within three months after election or appointment to the board of directors.
- Direct the credit union's operations in accordance with applicable law and sound business practices.

We believe these portions of the proposal have room for improvement. In particular, we would suggest the Agency consider adopting an approach to state fiduciary duty law similar to the OCC's policy regarding state corporate law's application to national banks. Under 12 C.F.R. § 7.2000, OCC has clarified that a national bank's corporate governance is controlled by "*applicable Federal banking statutes and regulations, and safe and sound operation*" but is otherwise controlled by state corporate law. We feel this is a better approach because the proposal creates a regulation that is applicable to federal credit unions primarily premised on deposit insurance provisions of the FCUA established by FIRREA, which would be redundant with existing state law fiduciary duties.

Similarly, we believe the proposed requirement regarding the attainment of an understanding of basic financial concepts and practices within three months of election or appointment to the board of directors is a vague one at best; and one that is not necessary. As proposed, the guidance leaves room for various interpretations. For instance, does the Agency propose a uniform course of study? What is deemed to be qualified education? How will NCUA enforce this requirement? Will this be interpreted differently from examiner to examiner? Will NCUA take an active role in the curriculum development?

As directors, credit union board members are elected from among the membership by their peers. Many times, these volunteers come from professional and educational backgrounds that do not require this type of training. However, a lack of this type of training does not prevent them from making well-informed and very sound decisions on behalf of the credit union. In fact, many credit union boards create educational requirements for themselves. We would encourage the Agency to remove the educational requirement from the proposal. With rare exceptions, credit union boards have historically done a fair job of handling educational training within the context of self-imposed educational requirements. We believe it should remain that way.

### **No Indemnification for Fundamental Rights Decisions**

In the proposed rule, a credit union may not indemnify its officers, directors or employees for grossly negligent, reckless, or willful misconduct on decisions that affect the fundamental rights of its members. In an era that finds it difficult to identify individuals willing to serve in a volunteer capacity, the imposition of this portion of the proposal would only serve to increase that challenge. We believe this action would lead to the unintended consequences of discouraging qualified individuals from running for election to the credit union's board of

directors as well as placing federally-chartered credit unions at a competitive disadvantage to state-chartered credit unions. Additionally, it should be noted that misconduct that is “grossly negligent, reckless or willful” is likely to be defined in many different ways. For these reasons, we encourage the Agency to remove this from the final rules that are adopted.

Thank you for the opportunity to comment on the proposed clarification of the fiduciary duties and responsibilities of federal credit union directors, and new provisions for insured credit union conversions and mergers. If you have questions about our comments, please contact Cindy Connelly or me at (770) 476-9625.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Ellis". The signature is fluid and cursive, with the first name "Richard" and last name "Ellis" clearly distinguishable.

Richard Ellis  
Vice President/Compliance Services  
Georgia Credit Union League