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Sent: Wednesday, April 30, 2008 10:21 AM

To: _Regulatory Comments

Subject: Ohio Credit Union League Comments on Advance Notice of Proposed Rulemaking for Parts 708a and 708b



OHIO CREDIT
UNION LEAGUE

April 30, 2008

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

Re: Comments on Advance Notice of Proposed Rulemaking for Parts 708a and
708b, Credit Union Corporate Governance Issues

Dear Ms. Rupp:

On behalf of the Ohio Credit Union League (OCUL), this letter responds to the National Credit Union Administration Board's (NCUA) Advance Notice of Proposed Rulemaking (ANPR) issued in January seeking comments on issues regarding the regulation of mergers, conversions to other types of financial institutions, and

terminations of federal share insurance. The Ohio Credit Union League is a credit union trade association representing the interests of Ohio's federal and state credit unions and its 2.6 million members.

The comments reflected in this letter represent the recommendations of the Ohio Credit Union League. We appreciate the opportunity to provide suggestions and feedback prior to the consideration of any rules as proposed.

OCUL respectfully objects to NCUA's attempt to issue broad, all encompassing rules that address a very small handful of credit union conversions/mergers involving highly charged member controversies regarding processes used (namely objections to timing and content of member communications and voting methods). While OCUL appreciates the intent of the proposed new rules, OCUL feels the ANPR may actually have the opposite effect in 1) outlining a regulatory roadmap for credit union directors to follow to convert or merge, and 2) circumventing state laws or other legal recourses that members currently possess.

Overall, OCUL does not support any attempt to regulate fiduciary duties...as this should not be the focus of NCUA. Fiduciary duties are already well established in state laws and any attempt to redefine fiduciary duties may very well subject credit unions to litigation and disparate applications of the standard. NCUA regulations are currently sufficient and any attempt to expand or broaden the current regulations would be at the least burdensome and at the most restrictive. NCUA's overriding focal points should be on credit union safety and soundness and regulatory relief, rather the promulgation of more and more rules that have besieged the credit union industry over the past several years.

Background

Specifically, NCUA is considering whether to issue regulations (none currently) to govern the merger or conversion of a federally insured credit union (FICU) into or a FICU's conversion to a financial institution other than a mutual savings bank (MSB), primarily with the intent to protect members' ownership rights, focusing on the following types of transactions:

- A merger of a FICU in another FICU;
- Merger of a FICU into a privately insured credit union (PICU);
- Conversion of a federally insured state credit union (FISCU) into a PICU;
- Merger of FICU into a financial institution other than a mutual savings bank;

and

- Conversion of a FICU into a financial institution other than a MSB.

In its ANPR, NCUA states, “While these transactions are legally permissible, member ownership can be extinguished or diluted and members may have lesser voting rights or be deprived of the security of federal share insurance.” NCUA proposes to establish a broad regulatory framework rather than the case-by-case process it uses now. Along this same venue, NCUA requests input on whether uniform federal standard/rules should be adopted concerning:

- FICU fiduciary duties and a “standard of care” for directors when making decisions regarding the above transactions.
- Rules to help protect members from credit union officials’ intentions to receive “insider enrichment.”
- Rules to govern communications to members during conversion or merger transactions.
- Rules prohibiting various member voting practices in conversion or merger transactions.

OCUL’s Opposition to New Rules or Guidelines

OCUL does not support and urges NCUA to not promulgate any new rules as proposed in NCUA’s ANPR. Our reasoning is outlined below:

Over-regulation

Credit unions’ primary role of providing financial services to meet the economic needs of individuals and their communities has shifted dramatically. Credit unions are being buried under a deepening avalanche of regulatory burdens that shifts credit unions’ priorities to internal processes (primarily compliance)...and away from member service initiatives.

Current new regulatory endeavors (to name a few) include BSA/OFAC, DoD lending rules, FACTA rules, re-regulation of FCU bylaws, RESPA rules (current), Regulation Z open and closed-end regulations, due diligence, CAMEL modifications, Pandemic/disaster recovery regulations, succession planning requirements, NCUA’s Outreach Task Force proposal, nontraditional mortgage/subprime lending guidelines, and much more.

While not all new credit union regulations have been issued by NCUA, OCUL feels the ANPR recommendations for regulations have no bottom-line benefits and are unnecessary now and in the foreseeable future.

Fiduciary Standards/"Duty of Care"

We do not support any new rules or guidelines as suggested in the ANPR. At the forefront of the proposal is to issue broad new rules relating to fiduciary standards that directors should follow, namely defining directors' "duty of care." Issuing a host of broad new regulations in this area is paramount to micromanaging internal credit union governance roles, and is outside the primary safety and soundness directive and role of the NCUA. OCUL supports "Standard of Care" as they may be addressed in state statutes and federal and local judicial decisions that act to iron out differences of opinion as they pertain to proper notice, communications, voting, etc. If NCUA is concerned about voting standards and procedures, it should look to other federal agencies for guidance such as the National Labor Relations Board.

Directors' intentions and direct actions must be supervised by its members and voted upon accordingly. By allowing members to take whatever action they deem necessary (including legal) to ensure the process is in line with state fiduciary standards.

NCUA's involvement in defining "duty of care" is an overreaction to what OCUL believes is a very limited (and highly publicized) number of abuses at this time. Credit unions and their members should be permitted to govern their own affairs. NCUA's involvement in this democratic process is clearly outside the scope of its safety and soundness mandate.

Private Insurance Option

OCUL objects to any additional rules that inhibit, constrain, or hinder the smooth transition of a credit union converting from Federal to private insurance (and vice versa). Very detailed rules are currently in place regarding sufficient notice of any proposed change, mandated disclosures (including credit union signage and opening account disclosures), and required member voting measures.

Insider Enrichment, Misleading Member Communications, Member Voting, Equity Rights

OCUL feels that there have been only limited abuses in the insider enrichment, misleading member communications and member voting issues discussed in the ANPR. Absent any evidence of rampant abuse, credit unions and their members should be allowed to police themselves in regards to proper/improper practices

that occur throughout the process. Directors should also be reminded that violating state laws or conducting questionable merger/conversion transactions can subject them to member actions, lawsuits, bad press, expulsion, and more. Issuing broad, national limitations in rule format that fit every varied transaction is not supported by OCUL.

Conclusion

While the Ohio Credit Union League appreciates the National Credit Union Administration's efforts to improve FICU corporate governance issues as recommended in the ANPR, OCUL urges NCUA to not focus its energies on the promulgation of any new rules in this area. Instead, NCUA should direct its attention to *regulatory relief* that is urgently needed at the federal level. OCUL feels that attempting to chisel out fiduciary duty regulations would not only be one more added burden, but create more issues of fiduciary uncertainty that NCUA would feel obligated to address further in yet additional rules down the road.

The OCUL supports credit union autonomy and self-governance, leaving each credit union and its members with the power to decide the type of institution that best serves its needs. Very limited serious governance abuses have occurred in the recent past. It is best to leave these issues to state laws/rules and court decisions to give oversight to dealing with problems, versus the interjection of credit union regulator mandates that fall outside its primary roles of examination and safety and soundness.

NCUA already has some authority to deal with governance issues appropriately, namely various sections (identified in the ANPR) of the Federal Credit Union Act and Parts 708a and 708b of NCUA Rules and Regulations.

Thank you for the opportunity to comment on these very important issues. The Ohio Credit Union League is open to provide additional input or comments if requested. If so, please contact me at (800) 486-2917 ext. 232 or dshoup@ohiocul.org.

Respectfully submitted,



David J. Shoup

Director of Regulatory Advocacy/Compliance