



Gerard Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Via email: regcomments@ncua.gov

Dear Mr. Poliquin,

Thank you for the opportunity to provide comment on the proposed rulemaking surrounding Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions. Following are our comments:

Covered Persons

In regards to the definition of covered person, we concur that it should be defined as anyone in a position to influence a merger decision and transparency about the financial gains of 'insiders' is an important factor for members to consider when making a decision to either approve or reject a merger. Having said that, in some mergers, those who would be considered covered persons under the proposed definition have immediate family members employed by either the merging or surviving institution and in many cases, those family members receive financial benefits as a result of the merger. In those cases where a covered person has an immediate family member employed by either the surviving or merging credit union, the definition should be expanded to include the immediate family members as covered persons as well as their financial gain as this would influence the decision to merge and the terms of the merger. In general terms, anyone in a position to influence the merger should be considered a covered person.

Merger Related Compensation

The disclosure of compensation received by covered persons in exchange for merging a credit union is vital to the transparency needed by members in order to approve or reject a merger. We support the disclosure of all compensation tied to the merger.

Changes to compensation leading up to the merger are comparatively easy to identify. On the other hand, changes that do not occur until after the closing of the merger may be more difficult to identify and in some cases, post-merger compensation agreements are not reduced to writing prior to the merger closing in order to avoid disclosure and are instead 'hand shake' deals. If these were reduced to writing prior to the merger and disclosed to members as merger related compensation, they would potentially have an effect on the approval of a merger.



In order to ensure transparency, we encourage the Board to ensure that the rule requires disclosure of merger related compensation of covered persons. The disclosure should make transparent the type of compensation and the magnitude of the compensation. It should go a step further and allow for the claw back of any compensation not disclosed at the time of the merger.

We do not feel that it is necessary to disclose non-discriminatory benefits paid to all employees of the merging credit union as long as they are in line with those provided to the employees of the continuing credit union.

Record Date

Though the regulations have not specifically addressed a record date to vote on a proposed merger, it would be appropriate if they did. Allowing for a record date would potentially prevent a situation where a party either opposing or supporting a merger could affect the results by 'stuffing the ballot box' with members who joined only with the intent of voting on the merger. We recommend that the record date be no more than six months prior to the merger vote.

Submission of Merger Proposal to NCUA

We agree that 24 months of board minutes for both the continuing and merging credit union as background for their merger packages is sufficient. We do however see a need to change the boards' certifications that the merger related financial arrangements are disclosed to members of the merging credit union. In some instances 'handshake deals' are made between CEOs and the boards are unaware of them. For this reason, both CEOs also need to attest as to the completeness of the disclosures.

Timing Requirements for Member Notice

The seven days currently allowed for special meetings is not appropriate notice for a member meeting to vote on a merger. The effect of a merger of a smaller credit union into a larger credit union is the members' loss of control of their financial institution as well as loss of control of the capital that they have contributed to via their patronage of their cooperative. Their ownership interest in their capital is meaningful and they should be given the opportunity to make a well-informed decision as to its disposition and should also have the opportunity to be informed of opposing points of view. For these reasons, we recommend that the members of the merging credit union have a minimum of 60 days notice prior to the merger meeting.

We understand that some credit unions may reach a point where they begin to realize operational risks by delaying beyond the recommended 45 days. Still, the value of their capital and the members' years of loyalty to the credit union require a contemplative process in deciding if they should end their cooperative and forfeit control of their capital.

Contents of Member Notice

For many credit union members receiving a Member Notice, it will be their first opportunity to view themselves as not just customers of their credit union but also as owners. While it is important to present the changes that will occur in their role as customers, it is also crucial to present the changes that will occur in their role as owners.

In their role as customers, merging credit union members should be informed of any changes in the branch and ATM locations that they use. They should also be informed of changes in the digital channels that they utilize including online and mobile. It is also likely that fees will change and that the events that will trigger when a fee is charged will also change. These need to be communicated to the merging credit union's members. These members should also be informed as to whether they would already likely be eligible for membership in the continuing credit union were it not for the merger as it is ultimately the member's decision as to where they choose to conduct their financial business.

In their role as owners, merging credit union members should be informed of the change in their situation. The following points should be covered in the disclosure:

- As the capital in their credit union will become part of the continuing credit union and will no longer be in their control they should be provided with an estimate of both the book and fair value of that capital,
- The number of other credit unions that their board solicited for merger discussions and the general reasons as to why other credit unions were not selected,
- Other options that the board considered that would have monetized the members' ownership interest and the reasons that the board decided to merge rather than to monetize and pay out the value of the members' capital, and
- The estimated value of merger related benefits and compensation that were and/or will be paid out to covered persons, the estimated value of share adjustments that will be paid out in total to the merging credit union's members and a ratio of these amounts to the estimated fair value of the merging credit union.



Member-to-Member Communications

We are in agreement with the changes that the Board is contemplating in regards to member-to-member communications. We would, however, remind the Board that in a contested merger that it is more likely than not that members would choose to use social media to communicate among themselves for various reasons rather than utilizing their credit union as a conduit for their communications.

Again, thank you for the opportunity to provide comments on this important regulatory proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Miller", written in a cursive style.

Brad Miller
SVP/CFO Kitsap Credit Union