



Office of the President

31 July 2017

Mr. Gerard S. Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: RIN 3133–AE73: NPRM and Request
for Comments - Bylaws; Bank Conversions
and Mergers; and Voluntary Mergers of
Federally Insured Credit Unions

Dear Mr. Poliquin:

In response to the National Credit Union Administration's (NCUA) proposal to revise the procedures for voluntary federal credit union mergers, Navy Federal Credit Union provides the following comments.

Navy Federal Credit Union is the nation's largest natural person credit union with more than \$82 billion in assets and seven million members, and is resolutely committed to serving the needs and improving the financial condition of our members. Navy Federal values the views of its members and supports efforts to ensure they are aware of any changes that could impact their credit union's safety and soundness. We do not believe, however, that the provisions proposed in this Notice of Proposed Rulemaking (NPRM) will provide members whose credit union would merge with a continuing credit union with relevant information to help them to make a more informed choice. In fact, we believe that it is more likely that the additional information may make the disclosures considerably longer than necessary and less likely to be read by members before they vote. Moreover, we believe that the proposed additional requirement to create a forum for member communications could be misused by disgruntled members to undermine the merger for illegitimate reasons.

For these reasons, we do not support this Notice of Proposed Rulemaking. Below are our comments on two provisions of the proposal, which we believe, if implemented in tandem, could unnecessarily interfere with an orderly voluntary merger and undermine the confidence credit union members have in their credit unions.

Disclosure of Information Pertaining to Merger-Related Financial Arrangements

We believe that existing rules are sufficient to protect the safety and soundness of merging credit unions. Presently, merging credit unions must submit a merger plan to NCUA outlining details of the proposed merger, including any “merger-related financial arrangements.” Under the existing compensation regulatory regime, NCUA is then empowered to review any qualifying remuneration awarded as a result of a merger (employee compensation and other benefits) to determine whether the safety and soundness of the involved credit unions might be compromised. Details about qualifying remuneration must also be disclosed to the merging credit union’s members; and advance disclosures must be given to members prior to a vote of any payments over 15% or \$10,000 (whichever is greater) to senior executives in the event of a merger.

The NCUA proposes to expand on the second requirement by requiring merging credit unions to effectively include *any* merger-related compensation in the member disclosure. Additional provisions in the proposal could broaden the number of individuals whose compensation information should be reported by replacing the term “senior management official” with “covered persons,” purportedly to ensure that the compensation and benefits offered to all decision makers (regardless of title) are properly included in the disclosure. The new rule would in effect expand significantly the amount of information disclosed to members, presumably to shed additional light on the merger process.

It seems more likely that the additional information would have the opposite effect. Adding a significant amount of information in a longer disclosure would make it less likely to be read, could sow confusion, and could create the misconception that senior managers of the merging credit union are engaging in excessive profit-taking. Our concern is that what are otherwise normal processes driven by market forces (as we describe below) and the desire of a merging credit union’s leadership to provide for its members’ best interests could be misconstrued or purposely misused for negative purposes.

Credit Union Size and Employee Retention Considerations

Increasing compensation for merging credit union employees is not necessarily done for illegitimate reasons, but is more likely to occur as a result of normal market conditions. In most cases, merging credit unions are likely to be smaller and have compensation programs and operating budgets that are appropriate to their size. Likewise, most continuing credit unions are larger, more complex, and probably more financially sound. As such, they would more likely have better compensation and benefit programs that reflect their size and complexity. Speaking practically, the merging credit union's employees would likely earn more working for the larger credit union as new employees.

For similar reasons, it is perfectly reasonable that managers of the continuing credit union may conclude that it is in their credit union's best interests to retain key members of the merging credit union to transition the new field of membership into the fold. Knowledge of local markets, an understanding of the field of membership, and a strong connection to the community may factor into the decision to retain key employees. Merging information and technical systems may require input from both parties to ensure a smooth transition, making it an attractive option to retain knowledgeable employees. Considered together, the compensation offered to senior managers of a merging credit union would likely rise simply as a reflection of market realities and the perceived value their retention could offer.

Member to Member Communications

NCUA's proposal also includes a provision that establishes procedures to allow for member-to-member communications in advance of a member vote on a proposed merger. As part of the member notice, merging federal credit unions would be required to inform members that they can submit their opinions in writing to the merging credit union, which then must create a forum for distributing these opinions among the credit union's membership. NCUA contends that this proposed change is consistent with bank conversion and merger rules. It is, however, unnecessary in the credit union environment.

When a credit union merges with a bank, merging credit union members stand to forfeit significant rights. No longer member/owners of a cooperative organization, they would simply become customers. In this scenario, it makes sense to facilitate vigorous discussion among the merging credit union's members to address the benefits and pitfalls of such a drastic change. Members of merging credit unions do not, however, require this additional time consuming process to protect their rights, because the rights attendant to credit union members under existing laws and regulations will attach to them under the newly merged and healthier credit union.

Current rules provide for an efficient and streamlined process, and include provisions to ensure a merging credit union's members have the information they need to make an informed voting decision. Requiring a merging credit union to create a member communications forum will likely (and unnecessarily) slow the process down, making it less efficient. Longer timelines will not add value, and the burdens associated with establishing a means of member-to-member communication (and the attendant delays) will far outweigh any perceived benefit resulting from these exchanges. In fact, this provision seems just as likely to get out of control and undermine the confidence that members have in the merging credit union's management team by creating a vehicle for particularly vocal disgruntled members to air perceived grievances.

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Conclusion

For the reasons we have detailed above, Navy Federal does not support this Notice of Proposed Rulemaking. We are not convinced that the inclusion of additional information proposed in this NPRM will help merging credit union's members make a more informed choice, nor do we believe that NCUA has properly considered the unintended consequences that might result from the "member to member communication" provision.

We note current rules have successfully facilitated the vast majority of voluntary mergers, benefitting affected members who receive more competitive rates on loans and savings products (often, because of efficiencies brought about by better economies of scale). We believe that voluntary mergers negotiated in good faith by knowledgeable fiduciaries followed by an informed - but not overly prescriptive - member vote are always preferable. In short, we believe (and our experiences validate) that voluntary mergers benefit members of both the merging and the continuing credit union.

Should you or a member of your staff have additional questions about our comments, please contact me, or my point of contact, Mark Lawton, Senior Vice President, Regulatory Compliance and Public Policy, at (703) 255-8328.

Sincerely,



Cutler Dawson
President/CEO

CD/pm