CORNING CREDIT UNION

Gary A. Grinnell, President and Chief Executive Officer

August 2, 2017

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

Re: Proposed Merger Rule

Dear Mr. Poliquin:

On behalf of the Board and Management of Corning Federal Credit Union, I would like to take this opportunity to comment on the National Credit Union Administration's recent proposed merger rule.

By way of background, Corning Federal Credit Union is a $1.4 billion asset institution, serving more than 103,000 members. Our charter is multiple common bond, and as such we currently have numerous select employee groups (SEGs) and associational groups within our field of membership. We also serve several underserved areas in our geographic markets in New York, North Carolina, and Pennsylvania. We have completed several mergers in our history, with the most recent being the mergers of the former American Community FCU in Chambersburg, PA (2012) and the former Grove Community FCU in Greencastle, PA (2014).

We thank the NCUA Board for the opportunity to comment on these proposed changes. Although we welcome NCUA's desire to modernize the voluntary merger process, we are concerned that many of the proposed changes reflect a regulatory overreach, presenting unnecessary roadblocks for healthy credit unions to find voluntary merger partners. We believe these changes will help to degrade the safety and soundness of some smaller credit unions, lead to an increase in emergency and involuntary mergers, and ultimately result in losses to the NCUSIF.

NCUA has proposed several changes to the current rule, 12 CFR Parts 701, 708a, and 708b. Specifically, it would revise and clarify the contents and format of the member notice, require merging credit unions to disclose all merger-related financial arrangements for "covered persons," change the definition of "covered persons," change the member notice period, establish procedures allowing for member-to-member communications regarding the merger, and make conforming amendments to NCUA regulations governing termination of federal share insurance in the case when the continuing credit union is not an FCU.

Below we comment on what we feel are the most disruptive and potentially damaging of these proposed changes.

Disclosure of Member Opposition to Proposed Merger

NCUA has proposed a new set of procedures allowing for member-to-member communications prior to a member vote on a proposed voluntary merger. This proposal would require FCUs to inform members of their ability to provide opinions on the merger in writing within 30 calendar days of receipt of the member notice, and would require the credit union to distribute such opinions to all members, at the credit union's cost, no later than 15 days prior to the scheduled vote.

We are very concerned by this provision of NCUA's proposed changes to the merger rule. It is a clear example of regulator overreach, in that its purpose seems to be aimed at fixing a problem that doesn't exist, with a "solution" that creates more issues than it solves. Today, any member with concerns about a proposed merger already has access to sufficient and appropriate channels to make his opinions known. Specifically, the purpose of the special or annual member meeting where the merger vote is held is to allow members a forum in which to share diverse opinions and engage in open discussion with their peers. By its very nature, the current process is democratic and does not favor the opinions of any individual member over those of any other. Within the open meeting format, the most extreme, outlying opinions can be shared, but also debated and disputed by more rational, reasoned voices to the betterment of the entire membership.

However, under the proposed new guidelines, one member, providing he meets the 30-day notification window, would be automatically granted top billing over all other voices, regardless of the validity or veracity of his arguments. Disgruntled members, such as those turned down for a loan, former employees dismissed for cause, or those having a personal disagreement with a current employee, would now have a member-funded and regulator-mandated vehicle for launching a personal vendetta against the credit union. As with NCUA's overly broad proposal for modifying merger-related financial compensation disclosures (see below), this proposed change would inject unnecessary and costly controversy into a merger vote, a seemingly unintended consequence.

During an era of heightened social media activity and abuse across our nation's commercial, political, and social spheres, we have all witnessed the dangers of baseless, extreme views going "viral." Today, individuals with personal agendas and murky conflicts of interest have the nearly unfettered power to influence and disrupt legitimate activities, regardless of motivation. Likewise, under NCUA's proposed member-to-member communication procedures, the most extreme and dubious points of view among a credit union's diverse membership would be offered a platform to air their grievances, while the more rational and reasoned voices would have no opportunity to refute such claims and offer counter-arguments in favor of the merger.

Moreover, the proposed timing of these new member-to-member communication procedures fits very poorly with both the current notification requirements for annual meetings and special meetings, as well as NCUA's proposed extended notification timelines (see below). For example, if a credit union chooses to notify its members of the merger vote close to the proposed 45-day minimum threshold, and a member decides to use all his allowed 30 calendar days to submit his opinion, then the credit union would have exactly zero calendar days to receive, review, and mail (or email) the member's comments out to the membership at large, while still meeting the required 15-day notification window. As a result, in many cases merger votes would be delayed, burdening credit unions with significant, additional costs and perhaps jeopardizing the voluntary merger completely.

Frankly, we question NCUA's motivation for proposing this burdensome, onerous, and redundant new channel for member-to-member communication. The perception is that NCUA is attempting to sabotage all voluntary merger activity, by providing the most extreme and dishonest voices an elevated and costly platform to question the validity of a well-considered and in many cases necessary merger transaction. We urge NCUA to reconsider these proposed procedures, as they would allow disgruntled members an unequal and unchecked opportunity to block a merger, and would certainly burden credit unions and their members with significant and unnecessary red tape and additional cost.

Advanced Notice of Compensation

The current rule requires advance notification to members prior to a merger vote of any "material increase in compensation," defined as any payments over 15% or $10,000, whichever is greater, to senior management or directors of a participating credit union. Although it can be debated as to whether this is the "right" threshold, as compensation ranges vary greatly among different employers depending on factors such as geographic markets, institution size, and job responsibilities, on balance we feel the current threshold presents a reasonable level to trigger required disclosures and discourage "golden parachute" payments to involved officials.

For this reason, we struggle to understand why NCUA has proposed eliminating this threshold entirely, in favor of requiring disclosure of *all* merger-related increases in compensation or benefits that a "covered person" has received from 24 months prior to the merger date, through the actual merger and beyond, in perpetuity.

The proposed 24-month look-back provision would necessitate a comprehensive evaluation and painstaking review of all bonuses and benefits that a covered employee has received prior to the merger. Additionally, it would require a credit union to estimate all future compensation and benefits to be received by covered persons. It would be exceedingly difficult and potentially misleading for a credit union to provide a hypothetical range of future compensation or valuation of benefits based on the outcome of numerous and variable conditions.

In the supplementary information included with its proposed rule, NCUA admits this change "may result in merging credit unions reporting more information to members." Indeed, this will almost certainly be the case.

Most voluntary mergers are not between equals. Typically, a smaller credit union seeks out a merger with a larger credit union because it is struggling to sustain its operations in the face of insufficient resources, inadequate economies of scale, and an inability to offer competitive products and services to its members. Such a credit union may not be able to offer competitive salaries and benefits to its employees. On the other hand, larger, healthier credit unions are generally able to offer a higher pay scale and more generous package of benefits than their smaller peers. In fact, they often have no choice but to offer such robust employment packages to attract good employees and remain competitive with leading employers in their markets. Upon completion of a merger between two such credit unions, the transferring employees of the merging credit union will be offered the continuing credit union's standard compensation and benefit packages as befitting their roles and positions. Simply by the nature of the two merging organizations, these packages will often be more beneficial and more in line with local market forces than what the employees received under their previous employer.

Under the proposed rule, any such increase in compensation and benefits would trigger an automatic disclosure to the membership, even if the increase is marginal in size and even if it reflects the normal course of business for any new employee joining the continuing credit union.

This is problematic for three reasons: one, it would add to the volume of disclosures provided to members, increasing the likelihood that members would not read and adequately digest all information provided prior to the vote. Two, it would open the door to members misinterpreting the motives of the two credit unions, as a case of a larger credit union seeking to "buy" the smaller institution through its pay and benefits program. Three, it would offer a disgruntled member a convenient excuse to oppose the merger on baseless grounds.

We strongly recommend against any change in the current rule for advanced notice of compensation.

Definition of "Covered Persons"

NCUA also proposes expanding the definition of "covered persons" beyond the current "senior management officials or directors" to "the chief executive officer or manager, the four most highly compensated employees other than the chief executive officer or manager, and any member of the board of directors or the supervisory committee."

As with the proposed expansion of the reporting threshold of compensation and benefits, we see this expansion of the definition of covered persons as an egregious example of regulatory overreach. Under the new definition, "covered persons" may now include non-management personnel, who may have little or no decision-making authority within the organization, and likely have no say or direct involvement in the merger negotiations. In today's employment market, certain specialized and highly-skilled non-management roles, such as commercial loan officers, investment advisors, tax accountants, and IT professionals, command above-average salaries and compensation. Staff with such highly-valued skills and expertise may command comparable or even higher levels of compensation than even the most senior levels of management at a credit union. It would add little value to the members' decision-making process to include such staff within the definition of "covered persons" for the purpose of disclosing merger-related increases in compensation and benefits, when such increases are more likely driven by competitive market pressures rather than any nefarious purpose. In fact, such disclosures of increased compensation for non-management personnel may violate employer-employee confidentiality and engender unneeded and disruptive controversy where none is warranted.

For the above reasons, we recommend leaving the definition of "covered person" for disclosure of merger-related financial arrangements as is. If other commenters suggest that some change in this definition is warranted, we suggest, in the interest of further clarity and reduced confusion, replacing the term "senior management" with "employees with the titles of senior vice-president or 'chief'- level and above."

NCUA is also seeking comment on whether health care, retirement, and other benefits offered on a nondiscriminatory basis to all employees of the credit union should continue to be disclosed as merger-related financial arrangements. We feel strongly that such benefits should not be included within the criteria for merger-related financial arrangements, and the operative phrase here is "nondiscriminatory basis." The very fact that such benefits are offered to all employees equally, both those working at the continuing credit union pre-merger, and those joining from the merging credit union, makes the disclosure of such unnecessary and irrelevant to the merger transaction. As we argue above, disclosing such non-material and standard changes in employee benefits would only add to the volume of paperwork members would need to review, and is more likely to be ignored prior to the merger vote.

Timing of Member Notification

NCUA also seeks specific comments regarding its proposal to increase the timing of member notification of an annual meeting or special meeting at which a merger vote will be held to "at least 45 days, but no more than 90 days, before the meeting to vote on the merger."

We feel this timing is problematic for several reasons. One, it conflicts with the timelines mandated under current FCU Bylaws, namely that notice of an annual meeting must be at least 30 days, but not more than 75 days before the annual meeting, and that notices for special meetings must be delivered at least 7 days before the meeting. The inherent conflict between the proposed requirements and these existing rules would serve to further constrict the credit unions' ability to negotiate a complex merger timeline.

Additionally, as NCUA itself notes in the supplementary information included with the proposed rule, under certain circumstances 45 days may be too long to successfully consummate a merger, depending on the health status of the merging credit union. Any regulation that erodes the ability for two credit unions to merge voluntarily, and needlessly sets the stage for an involuntary or emergency merger, may negatively impact the NCUSIF to the detriment of all credit unions and their members.

For these reasons, we urge NCUA to forgo its proposed timing for member notifications of a voluntary merger vote, in favor of maintaining the current notification timelines for annual meetings and special meetings, as documented in the FCU Bylaws.

A Missed Opportunity

Overall, we are surprised that NCUA, in its effort to modernize and revise the current rules for voluntary mergers, has not taken this opportunity to reduce bureaucracy, streamline regulations, and assist good-faith credit unions in consummating voluntary mergers in a more efficient and less financially burdensome way. The industry has experienced a sustained and significant trend of consolidation for decades, with an average of one merger per business day over the past fifteen years. This trend is expected to continue, if not accelerate, as at least one industry expert predicts the number of credit unions may drop to just 4,000 by 2020.

By and large, credit unions choose to merge following a deliberate and thoughtful decision process. A successful merger depends upon a clear-eyed assessment of the compatibility of the two credit unions, a process which may take years to accomplish. The length of the merger process demands a commitment of significant resources, and rewards rigorous discipline and diligence from both partners. In addition, credit union boards take time to consider the impact a merger has on service, culture, and management, all while balancing the concerns of members of both credit unions involved in the transaction.

With this as backdrop, it is imperative for NCUA to review the current process for approval of mergers, and consider cutting red tape in several areas. For one, NCUA has a highly restrictive view toward the definition of “in danger of insolvency” for emergency mergers. In most cases, by the time a credit union reaches a level of insolvency where NCUA will allow a healthier credit union to step in, the merger will present a litany of operational and financial challenges precluding the identification of a strong and willing partner. Depending on the size of the credit unions involved, a merger with a partner “in danger of insolvency” may impose a significant and negative impact on the safety and soundness of the continuing credit union.

In the supplemental information included with its recently approved final rule on field of membership, NCUA indicated it will “consider alternative approaches to define the ‘danger of insolvency’ prerequisite for an emergency merger of unlike common bonds.” We urge NCUA to act on this promise and seek to relieve the regulatory burden in this area in the near future.

In the case of voluntary mergers, the existing rules are also highly restrictive. For instance, multiple common bond credit unions cannot merge with community credit unions, regardless of whether there are sound strategic and market-driven reasons to do so. This is another case of NCUA placing all credit unions in the same box, with little regard for the merits or challenges of a particular merger opportunity. These arbitrary rules are not what is best for credit unions, nor for our members.

Unfortunately, NCUA’s proposed changes do nothing to address these inefficiencies, and in fact add new, onerous disclosure requirements that will slow the process down even further.

We urge NCUA to consider expanding the rules for both voluntary and emergency mergers, for the benefit of our members and protection of the Share Insurance Fund.

Conclusion

Thank you again for your consideration of our comments and those of others in the credit union industry as you finalize the new merger rules. In the recent past, NCUA officials have expressed a strong desire to modernize these rules with the objective of providing regulatory relief and in making the Federal charter more competitive in today’s financial services climate. Although this latest proposal on voluntary mergers seems to be a step in the wrong direction, we remain optimistic NCUA will continue to seek productive ways to balance the need for prudent oversight and fair disclosure with the avoidance of unnecessary and burdensome controversy and costs that would negatively impact the Share Insurance Fund and the future of the credit union movement.

Should you have any questions or require additional information in support of the recommendations made herein, please feel free to contact me at 607-962-3144, ext. 5292.

Sincerely,

Gary Grinnell
President and Chief Executive Officer

cc: The Honorable J. Mark McWatters, Chairman
The Honorable Richard Metsger, Board Member