CREDIT UNION ASSOCIATION OF THE DAKOTAS

July 31, 2017

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

RE: Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide feedback to the National Credit Union Administration (NCUA) regarding the proposed rulemaking to amend rules relating to voluntary mergers of federally insured credit unions. To provide a brief background, the Credit Union Association of the Dakotas represents 67 state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over $6 billion and who have more than 450,000 members.

CUAD concurs with NCUA's observation that "credit unions are experiencing a period of significant consolidation." *82 FR 26605*. The NCUA board cites to several reasons for the increase in merger activity, including – "the desire to provide members with additional products or services, the difficulty in identifying successors for long-serving senior management or volunteers, or the need for additional staff resources." *Id*. CUAD agrees with these reasons, but also notes that increasing regulatory burden and the cost of compliance is also brought up in conversation among credit unions.

CUAD completely agrees that voluntary mergers must be in the members' best interest and any potential conflicts of interest need to be vetted out. In light of the overwhelming regulatory burden that our credit unions face, CUAD is concerned that portions of this proposed rulemaking would increase this burden and not be in the best interest of credit unions and their members.

With regard to NCUA's proposed definition of "covered persons," CUAD is concerned that this definition does not account for the number of small credit unions that are run with minimal staff. Instead this appears to be an attempt at a one-size-fits-all approach. The current regulation regarding voluntary mergers defines, "Senior management official means the chief executive

officer (who may hold the title of president or treasurer/manager), any assistant chief executive officer, and the chief financial officer." *12 CFR 708b.2*

The NCUA proposes to expand the scope of this definition by replacing it with "covered person" which would be defined as "the chief executive officer or manager (or a person acting in a similar capacity); 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." *82 FR 26613*

Between North Dakota and South Dakota there are 77 state and federally chartered credit unions. Based on Call Report Data from the March 2017 cycle, 34 credit unions report that they have five or fewer full time employees, and 5 credit unions report no full time employees, only part time employees.

The definition of "merger-related financial arrangement" is proposed to be expanded to mean, "any increase in compensation or benefits that any covered person of a merging credit union has received during the 24 months prior to the date of the approval of the merger plan by the boards of directors of both credit unions. It also means any increase in compensation or benefits that any covered person of a merging credit union will receive in the future because of the merger. This definition includes all direct and indirect compensation, such as salary, bonuses, deferred compensation, early payout of retirement benefits, increased insurance benefits, or any other financial rewards or benefits." *82 FR 26613*

CUAD is concerned for the privacy of credit union staff when "any" increase in compensation or benefits will be reported to the membership. CUAD requests that the NCUA find a balance between privacy for the employee and transparency to the membership. Perhaps only increases over a certain threshold are reported to the membership and any increase is only reported to the NCUA.

The proposed rule would also require that as part of the merger package both the merging and continuing credit union submit board minutes to NCUA that reference the merger during the 24 months preceding the date of approval of the merger plan by the boards of directors of both credit unions. §1756 of the Federal Credit Union Act (FCU Act) requires that Federal credit unions shall be under the supervision of the Board, and shall make financial reports to it as and when it may require, but at least annually. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Board. Since access to board minutes is already mandated by the FCU Act, it appears that the NCUA board may direct the merging credit unions to submit the relevant minutes in the merger package.

The proposed rule seeks to amend requirements regarding notice and procedures governing the member vote when the merging credit union is a FCU. Members need advance notice when there

is a merger to be able to research, form a decision and cast a vote – CUAD completely understands and supports the need for advance notice. Current regulations, specifically 12 CFR 708b.106(a), require "When the merging credit union is a federal credit union, the members must (1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of NCUA approval, or by mail ballot, received no later than the date and time announced for the annual meeting or the special meeting called for that purpose."

Appendix A to Part 701 of NCUA rules and regulations set forth the model FCU bylaws. Article IV Section 1 discusses notice of meeting requirements. Under current model bylaws, "at least 30 but no more than 75 days before the date of any annual meeting or at least 7 days before the date of any special meeting of the members, the secretary must give written notice to each member…Any meeting of the members, whether annual or special, may be held without prior notice, at any place or time, if all the members entitled to vote, who are not present at the meeting, waive notice in writing, before, during, or after the meeting."

Under the proposed rule, a FCU member must receive at least 45 calendar days, but no more than 90 calendar days, advance written notice of any member meeting called to vote on the merger proposal. CUAD believes it creates unnecessary confusion to have two different timing requirements for potentially the same meeting. If the credit union holds the merger vote at the annual meeting, two timeframes for advance notice would apply. CUAD urges the NCUA to adopt an advance notice time frame for meetings at which a merger vote will occur that is at least consistent with existing timing requirements for annual meetings. However, CUAD echoes NCUA's concerns that in certain circumstances 30 days (or 45 days as NCUA proposes, which CUAD opposes) may be too long. In such instances where there are operational or financial difficulties facing the merging credit union, CUAD recommends that the NCUA include a waiver process wherein the merging credit union can request a shorter timeframe to provide advance notice than what is required in the proposed rule. This request could be submitted at the time of the merger package and set-forth the factors necessitating reduced timeframe.

NCUA proposes to amend the content of the member notice by requiring that credit unions include a statement of the right of members to communicate with other members by mail or email facilitated by the credit union. CUAD is opposed to proposed amendment that requires this mail and email communication to be facilitated by the credit union as it is unnecessary, overly burdensome and has the potential to unnecessarily delay the vote of merging credit unions. Instead the NCUA and credit unions should encourage attendance at the meetings and solicit questions, feedback and constructive discussion at that time and place.

The proposed amendment would require that within 30 calendar days of receiving the advance written notice of any member meeting called to vote on the merger proposal, members may jointly or individually make a written request to the merging credit union that the credit union mail or email a requesting member or members' merger-related communications to other members eligible to vote provided that the member or members agree to reimburse the credit union for reasonable expenses, excluding overhead, of mailing or emailing the communications on behalf of the requesting member(s). The merging credit union must ensure that members receive all merger-

related communications at least 15 calendar days prior to any member meeting called to vote on the merger proposal."

In the preamble to the proposed rule, the NCUA notes that, "Accordingly, the Board encourages members desiring to communicate with other members about the merger to submit their communication as soon as possible during the 30-day period allotted. Similarly, merging FCUs that anticipate a member-to-member communication may want to provide the member notice earlier than 45 days before the vote to avoid having to postpone the vote." *82 FR 26610.* This statement presents a completely unrealistic expectation that credit union members would read and/or pay attention to this "encouragement" and how could a credit union anticipate that one of their members won't send an eleventh hour "communication" that they want shared with the membership. This could force an easily foreseeable postponement of the date of the member vote. If the member vote is required to be postponed due to this member communication – does that start the notice process all over again? This is bound to create unnecessary expense for the credit union. Furthermore, if the member refuses to pay then the credit union will be required to attempt to collect reimbursement from the member. If the credit union requires reimbursement before the communication is shared with the membership, then there will be a delay in sending the communication which circles back around to potentially delaying the vote.

If the member wants to independently share concerns with other members that is fine, but to involve the credit union's staff and resources in passing notes back and forth between members is ineffective and a waste of resources. As noted above CUAD believes the proper forum for debate is the meeting that is called for the purpose of the merger vote.

The NCUA also requests specific comments on whether the proposed rule should also apply to merging federally insured state chartered credit unions. CUAD believes that rulemaking regarding mergers of federally insured state chartered credit unions is best accomplished by the State Credit Union Board. The State Credit Union Board is best suited to tailor merger rules for stated chartered credit unions as they are sometimes more in tune with local issues and concerns, and draft regulations to address these local issues more aptly. Therefore, CUAD is opposed to expanding this proposed rule to federally insured state chartered credit unions.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

Jeffrey Olson
CEO/President

Amy Kleinschmit
VP of Compliance