



August 3, 2017

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

Re: Notice of Proposed Rulemaking for Voluntary Mergers of Federally Insured Credit Unions

Dear Mr. Poliquin:

I am writing on behalf of the Board of Directors, management and staff of Coastal Federal Credit Union. Headquartered in Raleigh, North Carolina, Coastal proudly serves over 230,000 members. We appreciate the opportunity to provide our thoughts and concerns regarding the NCUA's proposed rule on voluntary mergers of federally insured credit unions.

Although the concern addressed by the proposed voluntary merger rule is clear and not without merit that " ... some prospective merger partners may be seeking to influence the merging credit union by offering financial incentives to management and certain highly compensated employees to support the merger that the Board believes should be disclosed to members.", we believe the proposed rule in its current form goes too far and should be withdrawn by the NCUA Board -or at a minimum be significantly revised and put out for additional comment before moving forward.

The proposed rule seems excessive in nature and most likely to foment unjustified suspicion of ethically motivated and well-designed merger plans. The proposed potentially misleading classification and disclosure requirements for elements of "merger related" financial arrangements (MRFAs) that may not be merger related at all is but one example of such excess in our view. Another example is what appears to be the improper extension of credit union-to-bank conversion member communication standards to voluntary credit union mergers. The presentation of surplus information seems likely to cloud rather than enhance the member disclosure process. Perhaps well intentioned, it is our view that the requirement for more elaborate and lengthy disclosures will have the counter effect of discouraging and confusing member review resulting in less member clarity regarding the merger transaction and not more.

This proposal fails to give proper weight to the reality that often voluntary mergers involve the union of a weak, and often weakening, credit union with a more viable partner. In such circumstances, a fairly negotiated voluntary merger is in the best interests of all parties (members of both credit unions and the NCUSIF) at a time that the merging credit union's net worth is still manageable and before regulator / insurer intervention is required. Good faith voluntary mergers need not be tainted by the suspicion that immaterial and unwarranted disclosure can produce.

At Coastal, we firmly support the full and accurate disclosure of all pertinent and relevant facts in merger transactions. However, we believe that NCUA should address suspected instances of improper financial inducements and abuses on a case by case basis rather than through broad brush regulation of

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the voluntary merger process. Regulatory interventions of this nature in the marketplace should remedy well documented abusive trends and not simply react to anecdotal examples of improper conduct. NCUA already has the regulatory flexibility to ferret out the bad actors under the current merger rules. Prudent utilization of the prerogatives afforded within existing authority is far superior to the highly prescriptive approach offered in the proposal. For these reasons, we believe the NCUA Board should withdraw the current proposal. However, if the Board is convinced that a change in the merger disclosure rules is justified at this time we would recommend serious revisions to the current draft. Among the changes we believe are necessary include, but are not limited to, the following.

#### *Merger Related Financial Arrangements (MRFAs)*

##### Covered Person

We understand the basis for the proposed transition from “senior management official” to “covered person.” It is our belief that those individuals who most appropriately should be included in the definition of “covered person” are (1) volunteers, (2) the CEO and (3) at times (depending on level of responsibility and involvement), other senior management. We caution, however, against unnecessary rigidity in defining a “covered person” since, for example, a definition that may be appropriate to a \$250 million credit union would very likely be inappropriate for a \$50 million operation.

We are strongly opposed to any requirement for disclosure of MRFAs for all employees regardless of management responsibility or level of influence. The excessive nature of such a provision is obvious on its face. For instance, there is no value to members in a disclosure that “rank and file” employees’ total compensation will increase simply by virtue of movement from the merging credit union’s compensation scale to the one utilized by the continuing credit union. The imposition of such an overreaching disclosure requirement offers very little insight in helping a member evaluate the merits of a proposed merger and represents an unreasonable intrusion into the privacy of employees that were not influential in the merger process and, therefore, incapable of the unjust enrichment the proposed rule targets.

##### Definition of Merger Related Financial Arrangement

At Coastal, we think the proposal should abandon the attempt to redefine a merger-related financial arrangement. The provision of more, but potentially inaccurate, information to members does not necessarily enhance clarity. To the contrary, such material could be misleading and confusing. This could generate distrust and controversy where none is merited.

Rather than redefining a MRFA, we suggest a concerted effort to refine the current definition in Part 708b. We also suggest adjusting the definition of a “material increase” in compensation to the greater of 25% or \$25,000.

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Additionally, only merger-related increases in compensation for covered persons should be incorporated in the MRFA definition. Unrelated or coincidental compensation increases should not be required to be included. The “but for” standard of inclusion is overly broad. Increases in compensation for covered persons need not be disclosed if they are attributable only to new participation in the standard compensation system of the continuing credit union. Also, disclosure is unnecessary for the value of post-merger benefits received that are offered to all, or a defined sub-set of, employees and are not newly designed or exclusive benefits for a specific covered person.

In order to enhance disclosure context, MRFA disclosures should be expressed in both dollar and percentage annual increase terms. MRFA calculations and disclosures should differentiate between (1) ongoing / annualized increases and (2) lump-sum / one-time payments.

Regarding the potential for compensation increases that are conditioned on future service and program participation (401k, etc.), we agree with the proposal that such potential only needs to be noted but not quantified.

#### Member-to-Member Communications (MTM)

We consider the proposal’s underlying reasoning regarding MTM to be fundamentally flawed. The inclusion of this provision appears to be predicated on the assumption that credit union facilitated MTM is an adequate substitute for the “rigorous debate that may take place during a member meeting.” In reality, mailed or emailed MTM, as proposed, are neither “rigorous” nor are they legitimate facsimiles of “debate.” We fail to see how MTM that is not interactive “will allow for healthy member debate of a proposed merger prior to a member vote.”

In lieu of the MTM procedures proposed, we suggest an interactive two-tiered communication approach that would separate the current membership merger education and member vote functions into two independent meetings. The first meeting would be devoted to membership education and discussion regarding the proposed merger and its terms. Meeting documentation would then be posted on the merging credit union’s website for all to see and consider. Following a reasonable time for review of the meeting notes, the second meeting would be held and the vote conducted. Assuming this approach would be funded and administered by the merging credit union, the member cost associated with NCUA’s proposed MTM approach would also be eliminated.

If, however, the proposed MTM procedures are retained, we suggest that the “within 30 calendar days of receipt of the notice” allowance for members to forward MTM opinions to the merging credit union be changed to “within 15 calendar days of posting of the notice.” Not only would this wording tighten the process timing reasonably but it would also establish a reference date (date of posting versus date of receipt) that is definitive and verifiable.

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Miscellaneous Observations

- Beyond current basic and fundamental information, we would prefer a less prescriptive and more principles based approach to the Member Notice requirements. Rather than expanding the paper Member Notice, this seems to be an opportunity to allow for a website referral for more detailed financial disclosures and like information. Provision of written versions of the detailed disclosures could be required for those who are unable to access them online. Our core concern is that the changes as proposed are likely to make longer what already can be a tedious document and, in so doing, will diminish member readership of it rather than increase review.
- We do not believe NCUA's proposed voluntary merger rule should be imposed on merging federally insured, state-chartered credit unions. In the absence of significant safety and soundness issues, and as a dual chartering matter, FISCUs should be subject to the voluntary merger rules established by their state supervisory authority.
- We agree with the clarification of a merging credit union Board's authority to establish a record date.

To reiterate, Coastal firmly supports full and accurate disclosure of all material and relevant facts in merger transactions. However, it is our view that NCUA should deal with suspected instances of improper merger-related conduct on a case by case basis rather than craft a one-size-fits-all regulation that will have the effect of discouraging and thwarting safe and sound marketplace driven mergers that have been negotiated in good faith by the fiduciaries of the institutions seeking to merge. We believe that prudent utilization of the prerogatives afforded within existing authority is adequate to address abuses. New regulation is not necessary.

Thank you for seeking our thoughts and opinions. We appreciate the opportunity to offer input. If you have questions or would like to discuss this letter in greater detail, please feel free to contact me directly at [cpurvis@coastalfcu.org](mailto:cpurvis@coastalfcu.org) or 919-420-8182.

Respectfully,



Chuck Purvis  
President/CEO