ARBOR
FINANCIAL CREDIT UNION

August 4, 2017

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

Submitted via email to: regcomments@ncua.gov

Re: Comments on **NCUA Proposed Rule (Bylaws: Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions) 12 CFR Parts 701, 708a and 708b**

Dear Mr. Poliquin:

This comment letter is in regard to the proposed rule by the National Credit Union Administration (NCUA) to revise the procedures a credit union will be required to follow when voluntarily merging with another institution. The NCUA also seeks comment on the applicability of certain provisions of the proposed rule to Federally Insured State Chartered Credit Unions (FISCUs). The views below are the views of Arbor Financial Credit Union in response to the proposed rule. Arbor Financial Credit Union is a state chartered credit union located in Kalamazoo, Michigan with $512 million in total assets and over 37,000 members (as of 3/31/17).

The industry as a whole is experiencing significant consolidation by which the vast majority is through voluntary mergers. Increased regulatory burden, improved operational efficiency, and a desire to offer members enhanced technology and additional products and services to better serve them, are the primary driving forces for the merger activity. Although mainly induced because of regulatory burden, we do concur with the NCUA Board that this trend is likely to continue in the near future.

We appreciate the attempt by the NCUA via the proposed rule to create more transparency and to protect the interest of all credit union membership. After all, we have the best interest of our members in mind too. However, this proposed rule, in our opinion, goes too far. We believe it is overreaching, creates an unnecessary additional burden on credit unions with little benefit to our membership, and may ultimately discourage mergers when they are a vital part of a credit unions ability to adapt, grow, and evolve. The proposed rule, one could argue, ultimately ends up hurting the very membership we are here to serve by preventing them access to enhanced technology and valuable products and services that could be the result from a merger.

There have been over 200 mergers each year in the past five years and in the vast majority of cases, there have been no conflicts of interest that would warrant such drastic changes to the existing policy. We would encourage the NCUA to deal directly with the very few credit unions found to have issue rather than creating a broad, overreaching, and unnecessary rule to be applied to the entire industry.

The NCUA's own commentary on the proposed rule states "while many merging FCUs make good faith efforts to comply with the requirements of part 708b, the Board is aware of a few recent mergers where merging FCUs...potentially evade the disclosure requirement of voluntary merger rules." Arbor Financial Credit Union respectfully asks that you withdraw the proposed rule and utilize the existing framework through the required merger package submitted to the NCUA to address any of the above mentioned concerns on evading the disclosure requirement of voluntary merger rules.

To reiterate, we believe, the proposed rule will place additional unnecessary regulatory burdens on credit unions, stifle a credit union's ability to adopt enhanced technology, restrict growth of products and services for members, and ultimately prevent credit union members from having the latest and greatest available to them by efficiently maximizing two merging credit unions economies of scale. As stated above, the proposed rule may deter more business appropriate mergers than intended. Below we provide specific concerns with the proposed rule.

<u>Requirement to disclose merger-related arrangements:</u>

The proposed rule would require the CEO or manager and the 4 most highly compensated employees, other than the CEO or manager, to disclose their compensation. The majority of voluntary mergers involve smaller asset sized credit unions (most are under $50 million and many are below $10 million) into larger institutions. The change will require what one would hope to be unintended consequences. Since the vast majority of smaller credit unions also have a small employee base, a credit union with 5 or fewer employees would require the disclosure of actual salaries of everyone down to tellers and non-exempt administrative personnel. This would seem to be a violation of employee confidentiality and something they didn't sign up for. Such exposure to their compensation wouldn't be related to the best interest of members. Instead, it would be more of a distraction to the proposed merger and related benefits of the enhanced technology and new product and service offering.

As part of the many duties and obligations under the law pertaining to board members, they are to hire and provide oversight over the CEO. Board members inherently have a fiduciary responsibility to the credit union. However, the proposal seems to place much of this responsibility for CEO and senior management compensation up for the general membership to review and approve. This seems to unnecessarily place a responsibility on general members of which they likely lack the experience or knowledge of the industry to appropriately act on. In addition, this seems to ultimately remove the responsibility of the board who is voted on by the membership.

In addition, it is well known that larger credit unions often offer better salaries and benefit packages, as a result of economies of scale from growth- via organic or merger, than what a smaller asset size (SAS) credit union may be able to offer. As previously stated, larger credit unions are also often able to offer a wider variety of products and services. The disclosure requirement of salaries and benefits without a complete understanding of the context of the potential benefits of a merger may result in members voting against a potential merger solely based on covered persons salary and benefits package rather than the best interest of the institution which is the position of the member-elected board of directors.

24-Month Regulator Lookback Period & Forward Period

The NCUA is proposing a 24-month historical lookback period of all increases in compensation or benefits during the period, regardless of whether that increase was made as a result of a merger. The NCUA cites that this will help "avoid undue hardship on merging FCUs." We believe this is overreaching and do not see how this would uncover potential conflicts of interest in a merger. It is the responsibility of the board of directors of each credit union to fully review any potential merger (on both sides of the transaction) and to ensure it is the right decision for both credit unions to merge. Already, the NCUA has complete access to the board minutes during their examinations of the credit union and can gain insight into the decision making process of a merger.

Finally, there is no stated time period governing the regulatory look-ahead provision of future compensation paid after the merger has taken place. This would lead one to wonder what the remedy might be by the NCUA, if any, if it is determined that compensation paid after a merger must be disclosed. We are unclear as to what purpose this would serve given that the merger is complete at this point.

Proposed Changes to NCUA Rule 708b Should Not Be Applicable to Federally Insured State Chartered Credit Unions (FISCUs)

The NCUA is seeking comment from the industry on whether the proposed rule should also apply to merging FISCUs. In the request the NCUA states:

"Offering financial incentives to management and certain highly compensated employees of a merging credit union to support a merger may present safety and soundness risk, as well as member protection issues, which endanger the continuing credit union regardless of whether the merging credit union is a Federal Credit Union (FCU) or federally insured, state-chartered credit union."

We do not support the extension of any merger related provisions to FISCUs. Pursuant to NCUA's 708b.101 (b) a federally insured credit union must already have prior written approval from the NCUA before merging with another credit union. This requirement is sufficient, particularly given that FISCUs are subject through a thorough merger application and approval process with Michigan's Department of Insurance and Financial Services (DIFS) their prudential regulator. Any additional standards imposed upon a FISCU would be encroachment on supervision of the prudential state regulator.

In addition, here in the state of Michigan, we have one of the most progressive state charters with sixty percent of credit unions chartered under the state. Corporate governance and litigation is dealt with at the state level through state law. If the NCUA were to extend such requirements to FISCUs it would ultimately be co-opting the corporate governance structure under the guise of safety and soundness.

[1] Federal Register Vol. 82, No. 109, Thursday, June 8, 2017, p. 26606

[1] Federal Register Vol. 70, No 14, January 24, 2005, p. 3288

Conclusion

We greatly appreciate the opportunity to comment on the proposed rule. However, we have serious concerns about the rule and its impact on our ability to efficiently run our credit union and to continue to offer the best products and services available in the marketplace and the potential negative impact this rule would disproportionally place on smaller credit unions. Already, small credit unions struggle with the amount of regulatory burden placed on them and a voluntary merger may be one of the best business decisions for their future and the benefit of their members. With the extra burden that would result from this rule one could surmise that the NCUA is now discouraging voluntary mergers.

If credit unions choose to merge as a way to meet member needs and offer more enhanced technology, additional innovative products and services, and additional locations, they should not be discouraged from doing so.

Again, we do not support this proposal. We believe this is a one-size fits all approach to the "recent merger trends" and the issues that the NCUA perceives "some credit unions" have during the merger process. We strongly encourage the NCUA to abandon this proposed rule and instead use the existing merger process already outlined by the regulatory body as a way to vet these potential concerns.

We again thank the NCUA for your willingness to receive feedback on the proposed rule.

Sincerely,

Julie G. Blitchok

Julie Blitchok
President/CEO