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America's Credit Unions™

August 7, 2017

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

RE: Comments on Voluntary Mergers of Federally Insured Credit Unions RIN 3133-AE73

Dear Mr. Poliquin,

The Georgia Credit Union League (GCUL) appreciates the opportunity to respond to the request for comments on the proposal Re: Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions. As a matter of background, GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL supports more than 114 Georgia credit unions that serve over 2 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed requests for comments such as this.

NCUA recently proposed a rule that alters the procedures that a federal credit union (FCU) must follow to voluntarily merge with another credit union. The changes primarily affect four important areas: 1. The Contents and Forms of the member notice; 2. The disclosures for merger-related financial arrangements for covered persons; 3. Increases to the notice period for a merger; and 4. Member-to-member communications regarding a merger.

As general background information GCUL supports regulatory procedures that permit credit unions to merge on a voluntary basis. We believe that a credit union's board and members should determine what is in the best interest of the credit union. No two mergers are ever the same. A merger should be the business decision of the two participating credit unions and NCUA should not create additional hurdles unless there are safety and soundness issues. We believe that any merger rule should consider that credit unions are unique in their operations, field of members, asset sizes, geographical locations, and individual histories. Therefore, any merger rule should be flexible to accommodate these differences.

Recently, NCUA has tried to reduce credit union's regulatory burdens and we ask that this rule be treated in the same manner. An amended merger rule should not increase the burden for the merging or acquiring credit union. GCUL members have concerns that this rule does not consider the regulatory burden this change creates for credit unions.

Disclosure of Merger Related Financial Arrangements

Definition of Covered Person:

The proposed §708b.2 expands the definition from Senior Management and the Board of Directors to include the four (4) most highly-compensated employees other than CEO or Manager, and any member of the Board of Directors or Supervisory Committee. GCUL is concerned that this definition does not account for the number of small credit unions that operate with minimal staff. Instead this appears to be an attempt at a one-size-fits-all approach. In smaller shops this may include positions other than management. With no asset size- threshold proposed, this provision could lead to the disclosure of all the employees of some modest sized credit unions. For example, as of December 31, 2016, Georgia had 114 credit unions; seventy (70) credit unions had assets of $ 50 million or below. Of those, 47 credit unions reported five (5) or fewer full time equivalent employees. Further if we looked at four (4) or fewer full time equivalent employees, 37 credit unions would have had to disclose on all employees. This change will lead to over disclosure. What if one of these employees' information has been made public and they are not retained by the surviving credit union? It could be detrimental to that employee. GCUL believes that the definition should remain the same as in the current rule. However, we support and believe that it is prudent to have additional disclosure of a highly-compensated person who was receiving a material increase in their salary as a sole consequence of the merger.

Merger related Financial Arrangement (and when disclosure is triggered):

Under the current rule, the definition of a merger-related financial arrangement includes a trigger that only requires disclosure if the compensation of a covered person is considered to be a "material increase." A "material increase" is defined as an increase that exceeds the greater of 15 percent or $10,000.00. The proposal eliminates monetary thresholds and a substitute of "all increases in compensation or benefits that a covered person has received during the 24 months prior to the date of the approval of the merger plan by the boards of both credit unions." This includes all future compensation or benefits that would be received due to the merger taking place, regardless of the amount. NCUA is explicitly reserving the right to review any future compensation paid to a covered person of the merging FCU by the continuing credit union. The rule will expand the interpretation of "compensation" to include all compensation or benefits received in connection with a merger including early payout of pension benefits and increased insurance coverage. GCUL is concerned for the privacy of credit union staff when "any" increase in compensation or benefits will be reported to the membership. We respectfully request that NCUA find a balance between privacy for the employee and transparency to the membership.

We understand NCUA's concern of increased compensation and full disclosure; but we think it is reasonable that a de minimis standard should be retained that could incorporate routine increases in compensation that are not related to the merger.

In addition, a de minimis rule would aid smaller credit unions that are merging into medium sized credit unions. For instance, a medium size credit union's benefit package is probably larger than the smaller credit union. Without this de minimis rule this increased compensation would be required to be

disclosed and members, without being given proper context, may misunderstand the increase and the members may not vote for the merger. This merger may be in the best interest of the membership but due to this disclosure the merger may not be approved. One option for NCUA to consider would be that increases over a certain threshold (the de minimis amount) are reported to the membership and **any increase** is only reported to the NCUA.

We understand NCUA's concerns that by allowing any amount, there are those who may try and circumvent this requirement. Nevertheless, we believe that there are enough supervisory checks in place to deal with any abuses.

Regulatory Look Back/Look Forward:
The Proposal seeks to clarify that NCUA can look back up to 24-months prior to the date of approval of the merger plans by the boards of both credit unions to determine if there has been any compensation that may be related to the merger. It also will allow NCUA to have a look forward period as well. We believe in the look back case that a 12-month period would suffice. As far as looking forward, we believe that NCUA should not have a look forward period as there could be many reasons for an individual to be given an increase after a merger. NCUA could eliminate the risk by reviewing contracts of the employees involved.

Member-to-Member Communication

This provision would provide for member-to member communication similar to the procedure adopted by NCUA for conversions from a credit union to a bank charter. We can appreciate NCUA trying to be consistent in its rules, as one "credit union" will no longer exist. However, in the instance of a merger, both credit unions are merging into a similar entity. Therefore, we see no need for this option that gives a member the right to cause a disruption to the merger process.

In addition, the administration of the communication would be by the credit union at the cost of the member requesting the communication, with distribution no later than 15 days before the member vote of the proposed merger. If NCUA decides to maintain this as an option; please reconsider the timing requirements and the methods of communication (by website and email.)

Furthermore, the credit union cannot address false, misleading or inflammatory remarks as that is left to a regional director (or ONES director). We believe NCUA should provide flexibility as provided by other regulators in regard to addressing false, misleading and inflammatory remarks. Contrast this with the rule for Federal Savings Associations 12 CFR 144.8 which allows the financial institution, and not the regulator, to determine whether a member-to-member communication should be distributed.

NCUA Merger Approval Procedural Changes

There are numerous provisions that together make the merger process a more onerous one for both credit unions involved. There are items NCUA is requiring that could be provided for in the application itself. Some of our concerns are detailed below:

- Voting timelines do not sync up with the bylaw timelines for notice of a meeting. This, coupled with the 15-day advance member-to-member requirement, creates a timeline that is essentially unworkable. The timelines must all harmonize to ensure a smooth merger process.
- The proposed §708b.105 amends the current merger disclosure provisions to require submission of the previous 24 months' board minutes that reference the merger. NCUA states that by submitting the board minutes it would help NCUA understand "the types of alternatives considered by the credit unions in addition to the merger proposal." NCUA, as the regulator, has access to a credit union's books and records, including board minutes. Should specific facts or events so warrant, NCUA may require submission of additional information. Using that approach is more targeted supervision than an overly broad requirement that all mergers submit the minutes going back 24 months.

<u>The Changes to NCUA Rule 708b Should Not Be Made Applicable to FISCUs</u>

NCUA also requests specific comments on whether the proposed rule should also apply to merging federally insured state chartered credit unions (FISCUs). GCUL believes that rulemaking regarding mergers of federally insured state chartered credit unions is best accomplished by state supervisory agencies. In our opinion, merger decisions of state chartered credit unions are a credit union governance issue and business decision, as opposed to an insurance matter. In Georgia, as I am sure in other states, the state supervisors are best suited to tailor merger rules for stated chartered credit unions. Therefore, GCUL is opposed to expanding this proposed rule to federally insured state chartered credit unions.

In addition, pursuant to §708b.101(b), (entitled: Mergers Generally), a federally-insured credit union must already have the prior written approval of the NCUA before merging with any other credit union. That existing oversight and approval authorization is sufficient. FISCUs that are merging with or into another credit union should continue to follow merger-related state law requirements established by their prudential regulator and the existing NCUA Rule 708b provisions that apply to them.

<u>Other Merger Issues</u>

One additional area of concern, that is not addressed in the proposal, but has surfaced in Georgia, is when there is a merger between two credit unions with differing types of fields of membership. We believe that NCUA should establish a process that eliminates the need for a possible conversion before the merger can proceed. NCUA should find a reasonable way to facilitate those mergers when there is no desire to retain the merged credit union's field of membership (FOM.) Currently, the process first requires that the charter change be approved so that both credit unions have compatible fields of membership and then the merger follows. NCUA could simplify this process by not requiring the additional steps and stating the merged credit union can change its FOM and approve the merger in one step.

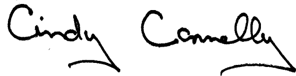
Conclusion

GCUL member credit unions agree that members of a merging credit union should be given enough information to make an informed decision. And we appreciate NCUA's efforts to create more transparency in the process by which the membership of a merging credit union votes to approve a merger. However, we do not support requirements that would place an undue burden on credit unions in the merger approval process or generate disclosure of immaterial or irrelevant information to the merging credit union membership.

Credit unions already have experienced a flood of rulemaking since the financial crisis and recession, which, has fueled many of the mergers that are the subject of this proposed rulemaking. All regulatory requirements on credit unions should be narrowly tailored to accomplish their purpose, but not add to the already overwhelming compliance and regulatory burden borne by credit unions every day.

GCUL appreciates the opportunity to present comments on behalf of Georgia's credit unions. Thank you for your consideration. If you have questions about our comments, please contact Cindy Connelly or Selina Gambrell at (770) 476-9625.

Respectfully submitted,



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