AUGUST 6, 2017

Re: Proposed Rules: Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions(12CFR Parts 701, 708a and 708b) (the Proposal)

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

Dear Mr. Poliquin,

Following, and attached, are comments and recommendations in response to NCUA's proposed merger regulations. Observations offered here support these now proposed regulations. They are presented along with suggested additional safeguards of member-owner rights and interest in voluntary merger actions. This response is the result of extensive collaboration with members and supporters of the Committee for Cornerstone Independence and legal counsel representation of the Committee's recent appeal of the NCUA decision that approved the merger transfer of Cornerstone FCU into Belco Community CU. Comments are offered as disappointment and dissatisfaction from member-owners of this recently merged, but nevertheless strong, historically growing and well run CU. It is contended that the needless and unfair demise of this CU was due to the highly inadequate voluntary merger regulations in place along with a lack of agency oversight that failed to protect basic member fiduciary rights and interests.

I am a thirty-six year member of a CU (Cornerstone) that I can only characterize as progressive and highly responsive to its members and community prior to its merger decision. Cornerstone represented the sole remaining locally owned and operated financial institution in the region. Local decisions, based on meeting local member and community expectations, backed the CU's continuous growth, earned trust and strong capitalization. It was recently rated a leader among all regional financial institutions and ranked #1 in a prominently featured survey of those same institutions.

NCUA has detailed rules, regulations and provides diligent oversight in virtually every aspect of CU operations, but as it relates to the protection of member interests related to voluntary mergers much more is yet to be accomplished. Our Committee contends that the current absence of meaningful regulation and oversight that these proposed regulations attempt to address, favors the self-interest of current institutional leadership to the detriment of member-owners' rights to quality fiduciary representation. Current conditions perpetuate opportunities ripe to exploit inherent member vulnerabilities, namely, the lack of time, knowledge and expertise to make an informed member choice related to ownership transfer.

Countless personal and member documented experiences addressing the above contention have been identified during this recent merger process and subsequent exhaustive appeals to NCUA. Some actual examples include:

- Announcement of the proposed merger only after the signed merger agreement with no prior member knowledge or opportunity for input.
- Presentation to members of only one-sided, pro-merger marketing information (" a bright

future awaits") absent any meaningful indications of due diligence, or comparative performance, service, fee or rate information.

- Board and strong CEO adversarial positions taken against any effort to establish dialogue, distribute any fact-based information to members or to consider enhanced due process suggestions.
- Cornerstone Board and NCUA denial of numerous requests that the voting process be extended to allow better information sharing with the total membership to effect an informed choice. This denial resulted despite assertions that members already had the choice to join Belco at any time because of an existing charter eligibility overlap.
- NCUA extending written approval of the merger in advance of the membership vote potentially influencing the subsequent actual vote.
- Insufficient time and due process afforded members to become adequately informed of the validity of CU leadership merit claims and/or competing positions to the proposed merger. This included a limited 10 days to inform a membership base of alternative merger considerations combined with denied access to member contact information with which to reach those members.
- No current regulatory provision for a member to change a vote or accept valid proxy delivered votes prior to or at the special merger meeting.
- No current regulatory provisions related to the comportment of the special merger meeting which allowed CU officials to deny access to all non-members including member representatives, legal counsel, the public, press, and/or the recording of such event while at the same time admitting non-member "guest" participants from the merging CU.
- Repeated written denials of requests that NCUA attend the special merger meeting or take a more active role in the merger process given reported irregularities and identified concerns.

Untold cost, effort and appeals to CU leadership and the NCUA have failed to effect a change in the outcome of Cornerstone's member-ownership transfer. This final merger outcome exists despite the fact that a better informed, limited membership voted 5:1 in favor of remaining an independent Cornerstone and against the merger.

I trust that our correspondence will assist your voluntary merger rule-making efforts to specifically:

- Strengthen fiduciary accountability on the part of member-elected officials.
- Provide for improved member-focused NCUA agency oversight and guidance.
- Promote member informed choices and ultimately,
- Protect the interest of member-owners.

Sincerely,

David G. Keffer

David G. Keffer, chair
Laura Beaver, Liz Settle, Lennie Searer, Don Failor, Roger Mansfield
The Committee for Cornerstone Independence

Attachment

July 31, 2017

VIA ELECTRONIC MAIL: kefferl@line.com

Committee for Cornerstone Independence
c/o Mr. David Keffer
426 North Street
McSherrystown, PA 17344

RE: Proposed Rules: Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions (12 CFR Parts 701, 708a and 708b) (the "Proposal")

Dear Mr. Keffer:

The purpose of this correspondence is to provide the Committee for Cornerstone Independence ("Committee") pursuant to the Committee's request, comments to the Proposal, as set forth below.

We are submitting this comment letter in response to the National Credit Union Administration's ("NCUA") proposed revisions to the procedures a federal credit union ("FCU") must follow to merge voluntarily with another credit union. Specifically, while we support the increased transparency and notice requirements afforded pursuant to the proposed new voluntary merger rules, and we view the rules, taken as a whole, as a substantial step forward in protecting the interests of the of a merging FCU in a voluntary merger context, we believe more must be done to protect the interests ofsuch.

In particular, we have identified five (5) potential improvements to the Proposal worthy of the NCUA's consideration:

1. The Proposal should require the merging credit union to disclose to the NCUA and its any actual or apparent conflicts of interest arising from transactions, understandings or arrangements between "covered persons" and the acquiring credit union;

2. The Proposal should require the member/owners notice to contain the following additional disclosures:

    i. A statement of the minimum number of votes required to approve the merger assuming the presence of a quorum;

    ii. A statement of whether and how a member/owner may change his or her ballot prior to the vote;

iii. A description of the background of the merger, including key events and factors expressly considered by the board of directors of the merging FCU in determining that the merger is in the best interests of the of the merging FCU;

iv. A statement identifying the merging FCU's collective reserves/retained earnings which member/owners will forfeit in approving the merger; and

v. Financial disclosures prepared by an independent third-party (CPA) to calculate the aforementioned collective reserves/retained earnings;

3. The Proposal should clarify that NCUA approval before the member/owners vote be identified as "preliminary" and/or "subject to member/owners vote" and not allowed to be used by parties to a merger to unduly influence the member/owners vote;

4. The Proposal should also provide "public" notice of the proposed merger to allow local community interest to comment on the merger; and

5. The Proposal should require the bylaws of an FCU to provide a means by which a previously delivered ballot can be revoked and a new ballot submitted.

Additionally, we believe the NCUA should adopt rules establishing a framework pursuant to which a member/owner may challenge the determination of the board that the merger is in the best interests of the member/owners, as well as the compliance by the merging FCU with the NCUA's voluntary merger rules.

Introduction

As the NCUA recognized in its Proposal, credit unions are experiencing a period of significant consolidation, much of which is occurring through voluntary mergers. There are any number of legitimate reasons why a merger might be in the best interests of the member/owners of the merging FCU. The NCUA identified several such reasons in its Proposal. That said, we believe, and the NCUA's Proposal clearly supports this belief, that there are currently inadequate safeguards in place to ensure that member/owners of the merging FCU are adequately advised of the circumstances surrounding the merger, or the impact of the merger on the member/owners, in order to enable them to make an informed decision as to whether or not to support the merger. There are two primary safeguards to ensuring the fairness of the merger to the member/owners - adequate disclosure and oversight.

Disclosure. The current voluntary merger rules require very little affirmative disclosure to member/owners. The Proposal would substantially alleviate concerns over inadequate disclosure, and we generally support the amendments. However, we believe additional disclosure would be appropriate, particularly in the areas of background of the merger and conflicts of interest. Requiring such additional disclosure would not only serve to ensure that the

board of directors of the merging FCU engaged in a deliberative process in approving the merger, and did so on a reasonably informed basis, but would also provide information critical to determining whether the board discharged its fiduciary duty to the member/owners.

Oversight. Other than the review of the merger package by the NCUA, whose focus (as stated in the Proposal) is to ensure that the proposed merger meets the field of member/ownership and safety and soundness requirements, there is very little oversight of a proposed credit union merger by objective third parties in order to ensure that the merger is in the best interests of the merging FCU's member/owners.

In the for-profit context, capital markets and market participants ensure that a bank or bank holding company merger is fair to the merging entity and its shareholders. Fairness opinions are obtained from financial advisors and proxy statements and/or registration statements contain robust disclosure regarding the background of the merger, the reasons for the merger, interests of management in the merger, the prospective financial impact of the merger, etc. The disclosure document delivered to shareholders typically runs in excess of 100 pages.

There is also an active plaintiffs' bar, which often announce their investigation of whether the directors of the merging entity may have breached their fiduciary duty in approving the merger, and whether the disclosure to shareholders of the merging entity complies with applicable rules and is sufficient to enable an investor to make a reasonably informed decision on the proposed merger. At times, a class-action lawsuit is filed, the results of which is often more robust disclosure in the proxy statement concerning the background of the merger and actual or apparent conflicts of interest. Sufficient safeguards are present such that the federal bank regulatory agencies (Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and Board of Governors of the Federal Reserve System) are free to focus their review on safety and soundness issues, impact on the Deposit Insurance Fund and compliance concerns.

Member/owners of merging FCUs, most of whom are consumers, do not enjoy the same protections. Rather, the review by the NCUA and the voluntary merger rules are the primary (perhaps only) protections afforded member/owners. A robust framework ensuring adequate disclosure to member/owners, and a mechanism for enabling member/owners to challenge a proposed merger, are needed to ensure that member/owners' interests are protected in the voluntary mergercontext.

Comment

I. We support, as proposed, the amendments to 12 CFR § 708b.2, particularly the new definition of "covered person" and the revised definition of "merger-related financial arrangement".

We agree with the NCUA that it is critically important that member/owners of a merging FCU be advised, in a clear manner, the compensation paid or to be paid to its principal executive officer, its four most highly compensated employees, and each of the member/owners of its board

of directors in connection with a proposed merger. As noted by the NCUA, such individuals have the ability to exert substantial influence on credit union decisions and the member/owners of the merging FCU have the right to know if such persons receive increased compensation in connection with the proposed merger. Further, the revisions to the definition of"merger-related financial arrangement" is sufficiently broad to capture all such compensation and the definition of "covered person" is sufficiently specific to cover those individuals most likely to influence a merger decision and most likely to be compensated as a result of a merger. The 24-month lookback is appropriate in light of the amount of time merger discussions may continue prior to approval by the credit union boards, and ensures full disclosure will be made to the NCUA and the merging FCU's member/owners.

2. We support, as proposed, the amendments to 12 CFR § 708b.104 requiring the inclusion in the merger package of the board minutes for both the merging and continuing credit union that reference the merger during the 24 months prior to the date of approval of the merger plan, as well as certification to the NCUA that there are no merger-related financial arrangements other than those disclosed in the merger notice.

As discussed in the Introduction above, the NCUA serves a unique role in the voluntary merger process. Requiring the submission of the board minutes enables the NCUA to carry out its duty and ensures that the disclosure to member/owners is accurate and complete.

3. We support, as proposed, the amendment to Appendix A to Part 701 to require the member/owners notice be mailed at least 45 days but no more than 90 days prior to a meeting to vote on a merger. We recommend an additional modification to Appendix A to Part 701 to provide a procedure for revoking a prior ballot and submitting a new ballot in place thereof.

While the Proposal would allow sufficient time to member/owners to review the member/owners notice, consider the terms of the merger, ask questions of management and forward their own communication, if desired, it does not provide a procedure for revoking a prior ballot as a result of subsequent member/owner communications or debate either prior to or at the meeting at which the vote is to take place. The ability to revoke a previously submitted ballot is a critical right of member/owners who may submit their ballot promptly after receiving the initial member/owner notice, but prior to the receipt of member/owner-to-member/owner communications, and who subsequently change their mind in light of new information.

4. We generally support the amendments to 12 CFR § 708b.106, with modifications, as more fully described below.

Advance Notice of Member/owners Vote (12 CFR § 708b.106(a))

We support, as proposed, the requirement that member/owners receive the member/owners notice at least 45 calendar days, but no more than 90 days, prior to the meeting, as proposed. As discussed above, we believe this provides sufficient time for member/owners to

analyze the transaction, discuss any concerns with management and other member/owners, determine whether or not to submit a member/owner-to-member/owner communication and, ultimately, make a decision whether or not to approve the transaction.

Advance notice should also be afforded to the general public at least forty-five (45) days prior to the meeting so as to elicit local community interest which may impact the vote and/or NCUA review of the proposed merger.

Contents of Member/owners Notice (12 CFR § 708b.l 06(b)).

We support the more robust itemized disclosure requirements, as proposed, particularly the summary of reasons for the decision whether the member/owners of the merging FCU will receive a share adjustment in the transaction and the detailed description of all merger-related financial arrangements. However, for the reasons provided below, we believe member/owners would benefit from the following additional disclosures.

- Statement of the Number of Votes Required to A1wrove the Merger

The merger notice should state the number of member/owners required to meet the requirements of a quorum and, assuming a quorum, the minimum number of shares necessary to approve the merger. The intention of this provision would be to make clear to member/owners that their vote is meaningful. For example, the presence of just fifteen (I 5) member/owners constitutes a quorum under the NCUA's bylaws for FCUs (Appendix A to Part 701) and, pursuant to current 12 CFR § 708b.106(b) and proposed 12 CFR § 708b.106(h), approval of the merger requires merely a majority of the member/owners who vote on the proposal. Therefore, it is possible that it would take as few as eight (8) member/owners to approve a merger. This should be made clear to member/owners to ensure that member/owners understand the importance of their vote.

- Statement of Right to Change Ballot Prior to Vote/Meaningful Meeting Participation

The merger notice should include a statement of whether a member/owners may revoke a previously submitted ballot and, if so, the procedure by which such right can be exercised by the member/owners. If a member/owner may not revoke a previously submitted ballot, this should be clearly stated, together with the deadline for submitting a member/owner-to-member/owner communication and a statement that member/owners who oppose the vote have until such deadline to provide a communication, and that such communication may influence such member/owners's ultimate decision. Therefore, member/owners can be advised as to the finality of the ballot, which may influence when they submit their ballot.

Additionally, the member/owners meeting should be a meaningful opportunity for a discussion of the benefits and detriments of the merger. Multiple meetings with participation by counsel to member/owners and interested local community members should be encouraged.

- Description of the Background of the Merger

While the rule, as proposed, would retain the requirement of the current rule that the merger notice include a statement of the reasons for the proposed merger, generally, we believe that the board of directors of the merging FCU should be required to state the basis on which the board determined that the merger is in the best interests of the member/owners. Certain items should be required to be specifically addressed. Those items would include a list of factors that were considered by the board in arriving at the decision to merge, generally, and, specifically, to merge with the proposed acquiring credit union. Additionally, a description of the prospective benefits and disadvantages to the member/owners resulting from the merger should be included to ensure that the board of the merging FCU considered such benefits and disadvantages and to communicate the same to the member/owners of the merging FCU. This would serve to ensure that the directors have engaged in a deliberative process in arriving at its decision to merge the FCU, and enable meaningful debate and consideration by the member/owners.

Also, additional disclosures regarding the financial status of the merging FCU should be required. Specifically, a statement should be included identifying the merging FCU's collective reserves/retained earnings which member/owners will forfeit in approving the merger which should be prepared by an independent third-party (Certified Public Accountant). This point is particularly illustrated by the recent merger of Cornerstone with BELCO Federal Credit Union in which member/owners were stripped of their collective reserves/retained earnings by virtue of the merger. Such collective reserves/retained earnings became BELCO's asset upon merger.[1]

Additionally, the merging FCU should be required to describe the events that led to the ultimate decision to merge, including any negotiations, transactions or material contacts between the merging FCU or its representatives and the acquiring credit union or its representatives. Such information should cover, at a minimum, any such events occurring during the 24 months preceding the approval of the merger by both credit unions' boards.

Finally, the merging FCU should not be allowed to reference any "pre-merger" approval by the NCUA or such should be identified by NCUA as "preliminary" or "subject to member/owner vote" in any materials submitted to member/owners to the merging FCU so as not to unduly influence the vote.

- Interests of Certain Persons in the Merger

In addition to the "merger-related financial arrangements" required to be disclosed of covered persons, there may be other financial interests in the merger that are not contemplated by the proposed definition of"merger-related financial arrangements" that might impact a covered person's decision to support the merger. Therefore, the merging FCU should be required to describe any other substantial interest in the transaction inuring, directly or indirectly, to the

---

[1] Cornerstone member owners always had the right to join BELCO, pre-merger, for no cost whatsoever, but as a result of the merger, each Cornerstone member owner forfeited approximately $1,000.00 in each respective share of Cornerstone's collective reserves/retained earnings.

benefit of a covered person or a member/owner of his or her immediate family. Such interests would include any material agreement, arrangement or understanding and any actual or apparent conflict of interest between a covered person or a member/owner of his or her immediate family and the acquiring credit union.

Additional Documents (12 CFR § 708b.106(c))

We support, as proposed, the requirement that the notice be accompanied by current financial statements of both credit unions, a consolidated financial statement of the continuing credit union, additional information or explanatory material and a ballot for the merger proposal one which make clear that the choice is to approve the merger or to disapprove the merger and remain an independent FCU..

Member/owner-to-Member/owner Communications (12 CFR § 708b.106(d))

We support, as proposed, the procedure established by proposed 12 CFR § 708b.106(d) regarding member/owner-to-member/owner communications with two clarifications. First, the merging FCU should be required, upon request, to provide an estimate of expenses to be incurred in mailing the requested communication. Second, the requesting member/owners or member/owners should be required to reimburse the merging FCU for reasonable expenses incurred in mailing the communication, not to exceed the lesser of the actual out-of-pocket costs of mailing and the estimate plus ten percent (10%).

Additional Procedures Governing Member/owner-to-Member/owner Communications (]2CFR § 708b.106(e)).

We support, as proposed, the requirements established by proposed 12 CFR § 708b. l 06(e) regarding the procedure to be followed for disseminating member/owners communications to other member/owners, the optional statement of the merging FCU, and the process by which a merging FCU may object to the dissemination of the communication to the regional director of the NCUA. The process proposed provides sufficient oversight by the NCUA to ensure the propriety of the communication.

Consultation with Regional Director Regarding Improper Member/owner Communications (12 CFR § 708b.l06(t))

We support, as proposed, the procedural requirements established by proposed 12 CFR § 708b.l 06(t).

Clear and Conspicuous Disclosures Required(] 2 CFR § 708b.l 06(g))

We support, as proposed, the plain language disclosure requirements established by proposed 12 CFR § 708b.106(g).

Thank you for your consideration of the foregoing.

Respectfully submitted,

By: _____
Bruce J. Warshawsky, Esquire
Cunningham, Chernicoff & Warshawsky, P.C.
2320 North Second Street
Harrisburg, PA 17110

By: _____
Kenneth J. Rollins, Esquire
Pillar+ Aught
4201 East Park Circle
Harrisburg, PA 17110

F:\Hom \BJW\OOCS\KEFFERDA VIDIL073117 V2.wpd