



**MEMBER OWNED**

9122 S. Kedzie Avenue • Evergreen Park, IL 60805  
Phone: 708.857.7070 Fax: 708.529.4960  
[www.sdcu.org](http://www.sdcu.org)

August 7, 2017

**Filed via [regcomments@ncua.gov](mailto:regcomments@ncua.gov)**

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

**Re: Notice of Proposed Rulemaking on Voluntary Mergers of Federally Insured Credit Unions; RIN 3133-AE73**

Dear Mr. Poliquin:

This letter is in response to the National Credit Union Administration Board's Notice of Proposed Rulemaking issued in May that, if adopted, would result in greater regulation of voluntary mergers of federally insured credit unions. I appreciate the opportunity to share my views on the proposal.

I support the Board's objective to ensure voluntary mergers are in the best interests of credit union members, follow a democratic process, and do not unfairly enrich the officials of a merging credit union. Gaps in the current rule that allow unfair benefits in a merger for some credit union officials should be corrected in a manner that focuses on regulatory deficiencies but without creating needless new requirements for other mergers that do not provide wrongful rewards to officials of the merging credit union.

However, I believe the proposal goes too far in several areas, which will make it more difficult for voluntary mergers that are undertaken only to achieve legitimate purposes, such as to provide more services to members, or to achieve economies of scale in terms of operations. I respectfully request that the Board consider these concerns, addressed below, and revise the proposal before adopting it in final form to avoid imposing requirements on positive mergers that should be encouraged.



SAVINGS FEDERALLY INSURED UP TO \$250,000

### **The Final Rule Should Focus On Federal Credit Unions**

The NCUA has asked for comments on whether the proposal should apply to state chartered, federally insured credit unions. In my view, the application of the changes to state chartered, federally insured credit unions result is unnecessary and would undermine the authority of state regulators to set requirements for the institutions they charter. As the agency noted, a federally insured credit union must currently receive written approval from the NCUA before a merger involving that credit union can place. This present authority should be sufficient for the NCUA, working with the state regulator, to ensure there is no plan to unjustly enrich officials as part of a merger arrangement. Moreover, if the continuing credit union is a federal credit union, the NCUA will be able to require that credit union to refrain from offering any unfair incentives to the officials of a state chartered credit union. Rather than imposing new rules on state chartered credit unions, in my view the NCUA should direct new merger requirements to federal credit unions, while working collaboratively with state regulators to help eliminate wrongful merger incentives at any credit union.

If the Board does include state credit unions under the final revisions, here are some additional comments and concerns that I ask the Board to address.

### **Employees Covered for Disclosure of Merger-Related Financial Arrangements**

The NCUA proposal would impose requirements for disclosure of merger-related financial arrangements on the chief executive officer and the four most highly compensated employees other than the CEO, the board of directors, and the supervisory committee. This is reasonable and should be adopted, but there does not appear to be any need to go beyond this group for disclosure purposes.

### **“Merger-Related Financial Arrangement”**

The proposal would revise the definition of a “merger-related financial arrangement” 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.

This definition goes well beyond “merger-related” and would include all compensation to covered officials for two years before a merger. This seems to be much too broad, too long a time period, and needs to be more specific in order that only benefits or compensation for the purpose of inducing a merger are covered. Higher salaries or other benefits may be incidental to a merger because the continuing credit union has more resources. However, the payment of such compensation would not conflict with the best interests of the credit unions’ members if it is merely reflective of the ability of the continuing credit union to provide higher compensation and covered officials’ compensation is proportionate to their duties and roles at the continuing credit union.

Rather than a definition that is too broad that would apply in every merger, the definition should refer to excessive compensation and benefits only provided to bring about a merger. The time frame for review should generally be one year, unless the agency has substantiated reasons to believe unjust compensation was paid or promised to effect a merger outside of that time period. I agree that unfair and unjust compensation and benefits provided in the future solely for a past merger should be covered.

### **Board Minutes That Refer to the Merger**

The proposal would require the merger package submitted to NCUA to include the board minutes of both credit unions referencing the merger for two years before the board's approve it. This requirement seems extreme for a routine application. While the agency is entitled to review minutes if provision for unjust compensation or benefits is suspected, this should not be required of every merger application submitted to the agency.

Rather, I agree both boards should certify that unjust or unfair compensation or benefits were not offered or will not be received as part of the merger arrangement. This would be far more effective than having to comb through two years' worth of minutes for every merger application.

### **Membership Approval and Communications**

While the proposed 45-90 days' notice period to the members prior to the merger vote seems generally reasonable, there should be flexibility for a credit union to use a notice period of no more than seven days, as currently permitted for federal credit union special meetings.

The proposal includes some changes to the contents of the member disclosures. I do not generally have a problem with the proposed revisions. However, while I agree merger-related compensation to covered officials should be disclosed, the disclosure should be based on a much more tailored definition of "merger-related financial arrangement" as discussed on page 2.

The proposal adds requirements that credit unions share member communications regarding a proposed merger with other members by mail or email. The process outlined, particularly as it relates to review of inappropriate material, seems too cumbersome and costly, especially since it is far from certain whether receiving members will actually read the information. Inviting members to attend and raise concerns during the membership meeting to consider a merger proposal seems to be sufficient to ensure any concerns or controversy about the merger can be aired and sufficiently addressed.

The proposal would require a majority vote of the entire membership of the merging credit union to approve the merger, rather than a majority of those voting under current requirements. Given the uncertainty of how many members would attend the meeting to vote on the merger, this requirement seems excessive and should not be included in the final rule.

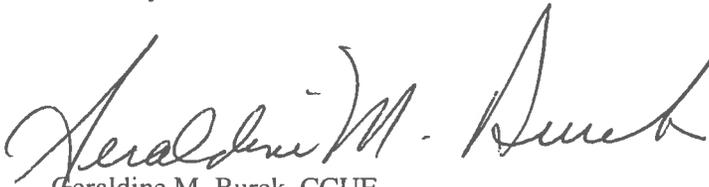
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### **Conclusion**

I agree with the NCUA Board's view that a merger between two credit unions should not include compensation or benefits for the covered officials of the merging credit union that is in conflict with the best interests of the credit unions' members. As indicated above, I support some of the changes the agency is proposing to address this issue. However, in my view the rule should be focused on federal credit unions, the definition of "merged-related financial arrangement" be substantially revised and other changes made regarding board minutes, member communications, and membership approval before the rule is adopted in final form.

This is an important proposal. Thank you for your consideration of my concerns.

Sincerely,

A handwritten signature in cursive script, reading "Geraldine M. Burek". The signature is written in black ink and is positioned above the typed name and title.

Geraldine M. Burek, CCUE  
President/CEO  
South Division Credit Union