CAROLINAS
CREDIT UNION LEAGUE

North Carolina
323 West Jones Street, Suite 200
Raleigh, North Carolina 27603

South Carolina
Post Office Box 1787
Columbia, South Carolina 29202

August 7, 2017

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

Re: Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally-Insured Credit Unions

Dear Mr. Poliquin:

The Carolinas Credit Union League (CCUL), a trade association representing the interests of 140 credit unions in North and South Carolina, appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposed rule to amend its voluntary merger regulations. CCUL understands that credit unions are more than financial institutions, they are community institutions built on a philosophy of people helping people. With that in mind, CCUL works to protect and advocate for credit unions that provide financial services to their member-owners.

Credit unions value the views of their member-owners and support efforts to ensure they are aware of any changes that could impact the credit union's safety and soundness. CCUL concurs with NCUA that transparency, clarity, and adequate information are essential prerequisites in a voluntary merger. How we get there is the issue. CCUL submits the following comments on the agency's proposed voluntary merger rule.

Merger-Related Financial Arrangements

NCUA §708b.2 defines "merger-related financial arrangement" as a material increase in compensation or benefits that any board member or senior management official of a merging credit union may receive in connection with a merger transaction.[1] NCUA is proposing to expand the scope of the definition of "merger-related financial arrangement" to include compensation arrangement with management and certain highly compensated employees rather than just senior management officials.[2] The agency's analysis of some recent voluntary mergers involving smaller credit unions revealed the term "senior management official" is under-inclusive, because the term fails to capture some individuals who perform significant managerial duties. NCUA is proposing to delete the words "senior management official" and replace them with "covered persons." The proposed rule defines "covered persons" as the CEO or manager and the next four (4) most highly compensated individuals.[3]

CCUL agrees that the proposed definition of covered persons provides clarity and ensures the disclosure of those individuals who perform significant managerial duties. However, CCUL argues the proposed rule as written actually casts a wider net than necessary and would unintentionally require the disclosure of non-management employees' compensation, especially in the case of small credit unions.

The proposed rule also significantly expands the scope of compensation. Currently, a merging credit union must disclose any material increase in compensation. A material increase is defined as 15% or $10,000 increase in compensation. Under the proposed rule, a merging federal credit union must disclose any increase in compensation for the previous twenty-four (24) months preceding the approval of the merger plan by the boards of the merging credit unions.

[1] NCUA Part 708b.2
[2] 82 Fed. Reg. 26606 (June 8, 2017)
[3] Id. At 26613

CCUL agrees with NCUA that there must be transparency when disclosing compensation, but the proposal as written is overly burdensome. CCUL considers the current rule on disclosing compensation sufficient for the following reasons.

- NCUA must approve the merger plan, which includes a compensation provision. If there are any concerns about the compensation disclosure, NCUA already has the authority to require the merging credit union to provide additional details.
- The examination process includes an examiner review of board minutes, enabling NCUA to monitor all discussions concerning the merger, including those related to compensation. This means the 24-month historical look-back period is unnecessary.
- Disclosing any increase in compensation for the 24-month look-back period may confuse the membership as to typical compensation increases and those directly related to the merger.
- The proposed rule does not consider that when a small credit union merges into a larger credit union, there quite often is compensation disparity due to economies of scale. It is in the best interests of both credit unions to adjust compensation of the merging credit union's employees to align comparably with compensation of the surviving credit unions' employees. Requiring disclosure of these types of adjustments in compensation would only serve to confuse the membership.

Member-to-Member Communications

NCUA §708b.106 delineates the process for membership approval of the merger. The proposed rule adds to the process a requirement that the merging credit union establish procedures for reasonable member-to-member communication in advance of the merger.[4] While this new process is transparent and well-intended, in practice it would be burdensome and potentially problematic. This new requirement provides a public vehicle for members with varied interests to inject negative comments that may not be factual into discussion of the planned merger.

NCUA rightly anticipated the potential problem with member-to-member communication and created a process by which a credit union may submit any message it deems inappropriate to the regional director for review. If the regional director determines the content is inappropriate, the merging credit union does not have to forward the message onto the membership. However, the rule is silent on procedure should the regional director deem the message inappropriate. Does the merging credit union or the regional director notify the member that their message was rejected?

One can assume that if the regional director rejects the message, it most likely originated with a disgruntled member whose response to the rejection will be further frustration. CCUL recommends that if NCUA retains member-to-member communication in the final rule, the regional director of the merging credit union must communicate with a member the rejection of a message deemed inappropriate and the reason for the regional director's decision.

Federally-Insured State-Chartered Credit Unions (FISCUs)

In the preamble of the proposed rule, NCUA requests comments on whether the proposed rule should also apply to FISCUs. The approval of a merger is a governance issue, not a safety and soundness issue, and therefore a matter for state regulators. When two state-chartered credit unions merge, NCUA's role is that of insurer, and its responsibility is to ensure the surviving credit union is sufficiently capitalized and managed to absorb the merging credit union without posing a risk to the share insurance fund. It is the state regulator's responsibility to decide whether a board decision to merge is in the best interest of the credit unions and their membership. State regulators in the Carolinas have the authority to investigate

[4] 82 Fed. Reg. 26614 (June 8, 2017)

and gather pertinent financial and compensation information in the course of reviewing a merger proposal.[5]

In the absence of any clear and compelling connection between the activity being regulated and risk to the share insurance fund, NCUA should defer to state law. CCUL notes that nowhere in the preamble does the agency delineate any NCUSIF risk that would compel the extension of this merger rule to FISCUs. CCUL asserts that state-adopted merger rules applicable to state-chartered credit unions should be maintained and continue to be recognized by NCUA.

Conclusion

Thank you for the opportunity to comment on this proposed rule. The goal of clear and transparent communication in a voluntary merger is welcomed. However, the burden associated with the proposal as written outweighs any perceived benefits.

Sincerely,

Jeanne Couchois
VP Compliance and Regulatory Counsel

[5] SC Code of Regulations §15-47 and 04 NCAC 06C.206