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August 7, 2017

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

RE: Voluntary Mergers of Federally Insured Credit Unions

Dear Secretary Poliquin:

On behalf of Financial Center First Credit Union, I am writing to you regarding the National Credit Union Administration's (NCUA) proposed rule on "Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions." The credit union industry has long embraced a culture of transparency and openness which has resulted in careful and deliberate planning in advance of any decision to initiate a merger. Voluntary mergers are not entered into lightly, but are the result of much research, work, and desire on both sides of the transaction. Financial Center First Credit Union was the surviving credit union in a 2013 merger with Horizon One Federal Credit Union. This merger was the result of years of discussion, research, and consultation and has benefited the members and employees of both credit unions.

We would be remiss if we did not acknowledge that the credit union industry's culture of transparency and openness leads to numerous "voluntary mergers" which prevent subsequent involuntary mergers. Credit union examiners and managers often work together to acknowledge the inevitable merger of a declining credit union and enter into a "voluntary merger" in order to protect the remaining capital of the merging credit union and the share insurance fund. Additional regulatory burden on merging credit unions will result in a chilling effect on these "voluntary mergers" and will ultimately cause losses to the share insurance fund and all federally insured credit unions.

The NCUA already exercises its discretionary authority to demand more expansive disclosure of merger-related financial arrangements, as well as require credit unions to provide additional time for members to consider the merger before a vote is called. Given NCUA's ability to use existing authorities to apply special requirements, we do not see the need to fundamentally rewrite the merger rules. Additional regulatory burden for credit unions must be avoided.

FISCUs

The Proposed Rule-Making requests comments on whether the proposed rule should also apply to merging FISCUs. Financial Center First Credit Union is a FISCU (chartered in Indiana) and is therefore subject to Indiana laws and the approval of a state regulator for potential mergers. This state oversight, along with a director's fiduciary duty to the credit union, is adequate oversight and means for rectification of potential threats to the surviving credit union's safety and soundness or member interests. A duplication of member notification and disclosure

requirements would place an undue burden on FISCUs and delay mergers that are in the best interests of the merging credit union's members and the share insurance fund.

Covered Persons and Merger-Related Financial Arrangements
The proposed rule seeks to expand the definition of "covered person" to include the chief executive officer (CEO) plus the four most highly compensated employees. In a small merging credit union, this definition will include employees such as branch managers, assistant managers, and even tellers. These employees have daily interactions with members and have a privacy interest in not having their salary or other employment benefits disclosed. In addition, these employees may be covered by collective bargaining agreements which forbid such disclosures.

The proposed expanded definition of "merger-related financial arrangement" increases the impact on these employees. By requiring the disclosure of all increases in compensation or benefits for the 24 months prior, the NCUA is inviting additional litigation from these employees. This disclosure will demonstrate differences in salaries between similarly situated employees, benefits information which could disclose family status, differences in annual raises between employees, even the amount an employee is contributing to a retirement plan. This depth of disclosure will create disharmony and litigation from employees and is the definition of undue hardship for the merging credit union. It will have a chilling effect on mergers as managers and boards of merging credit unions consider the possible consequences of these disclosures.

In order to minimize the impact of the rule but obtain the additional definition that the NCUA is seeking, the 24 month look back period could be added to the current merger-related financial arrangement definition. Thus, only an increase in benefit greater than 15% or $10,000 need to be disclosed. This would eliminate the need to disclose annual pay raises or minimal changes in benefits and would also remove the risk that the salaries of branch managers or tellers would be disclosed (other than in extreme cases, in which case, disclosure would be appropriate). Calculating the 15%/$10,000 is much less a burden on the merging credit union than the possibilities described above.

Approval of Merger Proposal by Members: Member-to-Member Communications
The proposed rule-making notes "a significant disparity between the high number of members voting to approve the proposed merger by mailed ballot compared to the low number of members voting to approve the merger in person at a member meeting" and concludes that this is a result of the member debate resulting in more "no" votes. Instead, this is evidence that the member meeting is effective as-is and does not need the cumbersome updates included in the proposed rule. Members who are supportive of the merger see no need to express their views publicly and submit their ballot in advance, while members who are uncertain or disagree with the merger take this opportunity to be heard and to obtain more information.

The member-to-member communication plan in the proposed rule will be overwhelming for merging credit unions to administer. The timelines for response, publication, and appeals to the Regional Director will often result in the member meeting needing to be rescheduled. This will result in additional mailing fees for the merging credit union. The current requirement for a member meeting is sufficient to allow members to communicate and be heard. If additional opportunities for member-to-member communication must be added, it would be preferable to require an additional member meeting rather than require the merging credit union to administer the publication of member communications. Both member meetings could be announced in one

mailing and would not create questions of timing or appeal which would delay the final member vote.

Thank you very much for the opportunity to comment on this proposed regulation. While Financial Center First Credit Union strongly values transparent and meaningful discussion regarding merger transactions, the proposed rule would add significant new burdens aimed at resolving presumed or hypothetical problems that may or may not be widespread. NCUA should withdraw the proposed rule and instead use its discretionary authority to address the narrow circumstances where enhanced transparency and communication could be necessary. If I can be a source of any further information on this comment letter, please do not hesitate to contact me at jrue@fcfcu.com or by phone at (317) 916-7700.

Sincerely,

Jennifer Rue
Vice President Enterprise Risk Management