PENNSYLVANIA CREDIT UNION ASSOCIATION

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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: Comments on Proposed Rule to Amend the Procedures for Voluntary Mergers of Federally Chartered Credit Unions; RIN 3133-AE73

Dear Mr. Poliquin:

On behalf of its member credit unions, the Pennsylvania Credit Union Association (PCUA) submits these comments on the National Credit Union Administration (NCUA) Proposed Rule to Amend the Procedures for Voluntary Mergers of Federally Chartered Credit Unions (the Proposed Rule)[1].

The Proposed Rule intends to add transparency and clarity to the voluntary merger process to ensure that federal credit union members have the necessary information to make an informed decision regarding a proposed merger. While this is an important part of the merger process, it is not clear that the proposed changes to the current voluntary merger rule (the Current Rule)[2] accomplish this goal. Nor is it clear from the commentary to the Proposed Rule that the Current Rule does not already accomplish this goal. Further, the regulatory burden of these proposed changes will create additional expense to credit unions which is something credit unions cannot afford.

The Federal Credit Union Act gives the NCUA Board the power to prescribe rules and regulations for the administration of the Act, including the procedures for merger of a federal credit union[3]. This power is not open ended, but is intended to maintain the safety and soundness of the member accounts of the merging federal credit union. Therefore, the NCUA Board's powers to prescribe rules regarding merger of a federal credit union should focus on the safety and soundness of member accounts. Any additional rules or procedures would be an unnecessary regulatory burden and would inject the regulator into the governance of the credit union.

[1] 82 FR 26605 (June 8, 2017)
[2] 12 CFR 708b
[3] 12 U.S.C. 1766

Under the Current Rule, the two credit unions must prepare a merger plan, the NCUA reviews the plan, and then approves or denies the merger. If approved by the NCUA, the members of the merging credit union vote on the merger. The primary focus of the Proposed Rule is the member approval process. The Proposed Rule summarily, without direct evidence, presumes that the Current Rule is not sufficient to ensure the safety and soundness of the merging credit union's member accounts. This presumption is based on anecdotal commentary that in some cases disclosures made to members voting to approve a merger may not have presented all the facts about a merger nor given the members enough time to contemplate the decision to merge. PCUA is concerned the NCUA is making broad sweeping rule changes based on a few unfortunate circumstances.

As set forth in the summary of the Proposed Rule, there are four proposed changes to the Current Rule: (1) changes to the contents of the notice to members provided prior to a vote; (2) additional disclosure requirements regarding "merger-related financial arrangements" for "covered persons"; (3) increase in the minimum member notice period; and (4) the addition of procedures for member to member communications regarding the merger. PCUA will address these individually.

I. Changes to the Contents of the Notice to Members

At the heart of transparency is the intent to properly communicate information to credit union members to enable the members to make an informed decision when called upon. The Proposed Rule seeks to clarify what information should be submitted to credit union members as part of the Notice of the Member Vote to approve the merger. With the exception of the member-to-member communication and the changes to two definitions which are addressed later in this letter, PCUA does not object to these clarifications. The changes address more the format of the disclosure than the substance.

II. Additional Disclosure Requirements Regarding Merger-Related Financial Arrangements for Covered Persons

The Current Rule requires that any merger-related financial arrangement received by a board member or senior management official, which includes the CEO, Manager, President or CFO, must be disclosed to credit union members as part of the Notice of the Member Vote. The Proposed Rule seeks to replace the use of the defined term "senior management official" with a new definition of a "covered person" and to extend the scope of the definition of "merger-related financial arrangements."

a. Covered Person

The Current Rule requires disclosure of material financial gain by the board members of the merging credit union to reveal any potential conflicts of interest present within the group of people assessing the decision to merge. Additionally, the Current Rule extends the disclosure of material financial gains beyond the board of directors to "senior management officials" which is defined as the CEO, Manager, President or CFO. In theory, a person with a financial gain directly associated with a merger will be more likely to persuade the board of directors, who are

the decision makers, to vote in favor or the merger. It makes sense to ensure board members of the merging credit union, and those with influence over the Board, are disclosing any financial gain related to a merger.

The Proposed Rule seeks to eliminate the definition of "senior management official" and disclose material financial gains of the top four wage-earners of the merging credit union. However, a person's influence over the process is not directly related to an arbitrary salary level. The intent to disclose any potential conflicts of interest should be precise and based on a strong presumption of influence. It should not be haphazardly based on variables that point to a presumption of such influence. The Current Rule uses "senior management official" because this definition more accurately relates to the types of individuals that have influence over the merger decision[4].

Because the board of directors makes the merger decision upon the advice of the senior management team, this is the only group that has influence over the merger process. If this group has not received any financial gain, it is likely there will be no improper influence on the merger decision.

b. Merger-Related Financial Arrangement Definition

The Current Rule requires disclosure of a material increase in compensation of a senior management official or the board of directors if received in connection with a merger transaction. A material increase means an increase that exceeds 15% of the senior management official or director's current compensation or $10,000, whichever is greater.

The Proposed Rule extends to any and all compensation or benefits that a covered person received looking back two years or will receive in the future. This new definition is extremely burdensome and unnecessarily intrusive. The goal of these disclosures is to make sure members are aware of the potential for any conflict of interest among key decision makers that may have had an influence on the merger decision. It is not clear how compensation of any kind received prior to the merger will have any influence on the decision to merge.

A conflict of interest would only arise if a covered person were to receive financial gain as the result of a completed merger. The object of the notice to members is to be precise and to focus on direct financial influence on the process. Therefore, a material financial gain should be disclosed where there is a clear intent to influence the merger decision with material financial incentives.

[4] "Senior management official" is used throughout the NCUA rules and regulations, *see* 12 CFR 701.14, 12 CFR 701.21, 12 CFR 701.23, 12 CFR 701.36, 12 CFR 703, 12 CFR 708a, 12 CFR 712,
12 CFR 721, 12 CFR 723 (where "senior management official" is similarly defined as in the Current Rule for exactly the same conflict of interest concerns.)

III. Increase in Minimum Member Notice Period

Member communication is a key part of the merger process and institutional governance. The Federal Credit Union Bylaws have had the same notice periods for a long time. While a merger is a major decision, it is not necessarily different than many other major decisions made by credit union membership. PCUA believes the notice period for member decisions is adequate and should not be changed.

IV. Member to Member Communications

A basic tenet of organizational governance and decision making is the open discourse and rigorous debate that occur in a meeting where decision makers can truly have the opportunity to hear others and be heard. This is why actions of the members of credit unions must take place in an open member meeting.

The Proposed Rule would provide for a cumbersome, potentially expensive, and time consuming requirement that allows members to communicate in writing through the credit union to other members. This type of exchange cannot take the place of verbal debate that occurs at a meeting. Written member to member communication is not debate. Debate is best left to meetings where a member can give his or her opinion and that opinion can be met with an immediate response.

Because NCUA anticipates the credit union will receive communications from members that could be false, misleading, or come from members who have an ulterior motive for raising an issue, NCUA has proposed a process of review by the regional director. The Proposed Rule permits the credit union to send a communication to the regional director for review prior to distributing it among the membership. However, this process would place the credit union staff and regional director in the position of communication arbiter which could lead to delays and potential lawsuits. The alternative would be to allow communications, even if false and/or misleading, to go to the membership. Neither of these options is acceptable. Therefore, all debate of the issues should be in the open member meeting where falsehoods and misleading statements can be countered immediately.

V. Other Areas of Comment

The Proposed Rule would require credit unions to submit two years of board minutes to the NCUA. The NCUA already has access to all board minutes as part of an examination; therefore, this additional regulatory requirement would be redundant and would not justify the administrative cost associated with it.

The NCUA seeks comment on whether its Proposed Rule should apply to state-chartered credit unions. The Proposed Rule almost exclusively pertains to governance issues related to a member vote on a proposed merger. These types of issues are handled at the state level for state chartered credit unions.

In conclusion, PCUA understands the importance of transparency and communication in relation to the merger of federally chartered credit unions. However, it is not clear that the proposed changes to the voluntary merger rule will lead to greater transparency and better communication. It will lead to undue regulatory burden and expense which is something credit unions cannot afford.

Thank you for the opportunity to comment.

With best regards,

PENNSYLVANIA CREDIT UNION ASSOCIAITON

Patrick C. Conway

Patrick C. Conway
President & CEO

cc: Association Board
Government Relations Committee
Regulatory Review Committee
State Credit Union Advisory Committee