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August 4, 2017

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

Re: Request for Comments on Bylaws; Bank Conversions and Mergers; and Voluntary
Mergers of Federally Insured Credit Unions
RIN 3133-AE73

Dear Mr. Poliquin,

The Ohio Credit Union League (OCUL) welcomes the opportunity to submit comments regarding the National Credit Union Administration's (NCUA) proposed changes to rules governing voluntary mergers.

OCUL represents Ohio's 287 credit unions and their nearly 3 million members. Ohio is home to 155 federally-chartered and insured credit unions, 81 state-chartered, federally-insured credit unions, and 54 state-chartered, privately-insured credit unions. Industry consolidation continues to be a trend across the Credit Union Movement. We applaud the agency's willingness to modernize rules governing mergers, and we ask NCUA to implement any new rules with appreciation of the likely burden suggested changes will have on Ohio's credit unions.

The Proposed Rule Should Not Apply to State-Chartered Credit Unions

The dual-charter system is recognized in 47 states and provides choice as to whom will serve as their institution's prudential regulator. In Ohio, that ratio leans to the federal-charter from a credit union number standpoint, while the majority of assets are held by state-chartered credit unions. The dual-chartering system nourishes greater diversity of credit unions and reflects the specific needs of their unique membership.

The proposal to include state-chartered, federally-insured credit unions diminishes state supervisors' ability to effectively manage voluntary mergers in their respective marketplaces. Should the NCUA rules be adopted, state-chartered credit unions would be forced to respond to separate rules governing mergers. In Ohio, the Ohio Division of Financial Institutions, a well-respected regulatory entity, should be responsible for overseeing voluntary mergers of state credit unions. We ask NCUA to not subject state-charter credit unions to the voluntary merger rule.

Credit Union Philosophy Encourages Member Involvement

As member-owned financial institutions, it is always in the best interest of credit unions to be transparent about credit union business. In this structure the voice of the member is represented by an elected board, whose mission is to direct the operation of the credit union in a manner that meets members' needs. This approach has worked well, including in relation to communication



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regarding mergers. OCUL struggles to find justification for significant changes to this part of the merger process. We believe any perceived benefits of NCUA's proposed changes to member involvement, particularly involving member-to-member communication, will likely be outweighed by added cost, complexity, and confusion.

The proposed rules aim to increase transparency, while making it easier for members to have an increased presence in the merger process, via a longer notice, member-to-member communication, and updated disclosures. While NCUA's intent is admirable, increased disclosure and notifications will not translate into significant member involvement in most instances.

NCUA must consider the complexities of the timing requirements, particularly for member-communications. The administration of the communication would be borne by the credit union at the cost of the member, with distribution no later than 15 days before the member vote. NCUA noted the timing requirements may be problematic and in juxtaposition with other timing requirements in the rule; we share this concern.

The parameters surrounding the member-to-member communication is not clear. Distribution of the member-to-member communication may be difficult, particularly for those members who do not consent to electronic communications. Mailing communications is costly and time consuming.

Financial Disclosures and Transparency are Admirable Goals, Already Achieved

We believe transparency should be the cornerstone for any merger, including information on who will benefit financially from a merger. This flows from credit unions' unique structure as not-for-profit, member-owned, financial cooperatives. OCUL supports NCUA's current approach in requiring disclosures within senior management who receive a material increase in compensation.

OCUL urges NCUA to maintain the current definition of a "Covered Person," which applies to senior management and the board of directors. NCUA has requested comment on whether "Covered Person" should include the following groups: 1. The Chief Executive Officer (CEO), the 4 most highly-compensated employees other than the CEO, and any member of the Board of Directors or Supervisory Committee; 2. The ten most highly compensated employees; or 3. All employees. The ten mostly highly compensated employees, as an alternative, is not feasible, as on average, a credit union retains only eight staff. Disclosure of financial arrangements for all employees would be over-inclusive and an additional compliance burden.

OCUL does not see material benefit in NCUA's proposed change to expand "Covered Person" to include the CEO, the board of directions, and the 4 most highly compensated staff in comparison to the present definition, which OCUL considers sufficient for NCUA oversight, transparency, and disclosure purposes.

We do not agree that the disclosure of all merger-related financial arrangements will simplify compliance. The removal of a semi-subjective determination in regards to whether an increase is



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material or not, regarding the value of added benefits outside of a salary, will not alleviate the compliance burdens of compiling all merger-related financial arrangements.

Under the current rule, the definition of a merger-related financial arrangement includes a trigger that only requires disclosure if the compensation of a covered person is considered to be a “material increase,” defined as an increase that exceeds the greater of 15 percent or \$10,000.00. If the proposed rule is adopted, the monetary thresholds would be eliminated and substituted with the standard of “all increases in compensation or benefits that a covered person has received during the 24 months prior to the date of the approval of the merger plan by the boards of both credit unions.” This would include all future compensation or benefits that would not be received but for the merger taking place, regardless of the amount. NCUA would explicitly reserve the right to review any future compensation paid to a covered person of the merging FCU by the continuing credit union. The rule also expands the interpretation of “compensation” to include all compensation or benefits received in connection with a merger including early payout of pension benefits and increased insurance coverage. Thus, the proposed rule would cover any compensation charge regardless of reason or materiality.

While we understand NCUA’s concern that increased compensation be disclosed, it seems reasonable, at the very least, that the regulation retain some manner of materiality threshold. As the current rule sufficiently includes such a factor, OCUL supports retention of the existing elements of the current rule for disclosures of merger-related financial arrangements. OCUL also believes that NCUA presently has more than sufficient opportunity and authority to manage outlier situations involving perceived abuse of the process.

Regulatory Look Back/Look Forward Unclear

The proposal seeks to clarify that NCUA can look at increases in compensation or benefits that a covered person has received during the 24 months prior to the date of approval of the merger plan by the boards of both credit unions and further includes a “look forward” clarification indicating that NCUA can look at future compensation or benefits that would not be received but for the merger taking place, regardless of the amount. We believe that 12 months would be a sufficient look-back period, especially if a final rule incorporates a de minimis exemption or materiality threshold.

There is no stated time restriction governing regulatory review of future compensation. In addition, the proposed rule is unclear in what the associated remedy might be if the NCUA determines that compensation should be disclosed. The agency should limit forward-looking review because, as mentioned above, there could be many reasons for an increase in compensation after the merger.

One-page Member Notice Not Feasible

Requiring the exhaustive list of disclosure items to be set forth on one page is not feasible. While we find value in condensing member notices to ensure they are easily readable, we are cognizant of the considerable information that may be a part of the member notice. Credit unions should be provided reasonable latitude in composing effective disclosure communications, and in the vast majority of cases board judgment in concert with regulator review is sufficient.



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We welcome an updated, pre-approved, standardized form to serve as a template for the member notice portion. A standard template would allow the NCUA to ensure the appropriate information is contained in a brief manner throughout a few pages, with the option to provide attachments. This would alleviate NCUA's concerns regarding member notices.

NCUA's Attention to Potential Conflict of Interests Well Taken

There is an inherent concern that certain individuals will be motivated by monetary gains in approving a merger that may pose a conflict of interest. OCUL supports NCUA's concerns and reiterates that transparency is an admirable goal. We agree that disclosure is an essential part of the process.

NCUA itself states abuses to the current voluntary merger rule are minimal. We concur. The proposed rule is an over-reaching solution to a perceived problem. As the democratically-elected leaders of the credit union, the board of directors is rightfully granted the ability to make determinations about the merger. OCUL encourages NCUA to leverage the existing rule framework to preserve the proper balance between credit union autonomy and self-direction and the regulator's proper authority to oversee the integrity of the process. OCUL sees the present rule construct as largely sufficient for NCUA to address the concerns it raises in this rulemaking.

Conclusion

We appreciate the opportunity to comment on the proposed rule changes affecting voluntary mergers of credit unions. On behalf of Ohio's 287 credit unions and their nearly 3 million members, we respectfully request that the NCUA rely primarily on the current rule framework for voluntary mergers to monitor and impact his issue positively. If you have further questions or would like to discuss OCUL's comments in more detail, please feel free to contact us at 800-486-2917.

To summarize our view,

- Ohio-chartered credit unions should not be covered by a revised voluntary merger rule;
- The current voluntary rule framework is largely sufficient to meet member, credit union, and regulator needs; and,
- NCUA already has sufficient rule authority and leverage to impact any merger process where abuse is perceived.

Thank you for your consideration and the opportunity to provide industry feedback.

Respectfully,

Paul L. Mercer
President
Ohio Credit Union League

Miriah Lee
Manager of Policy Impact
Ohio Credit Union League



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