RBFCU

August 4, 2017

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 (RIN: 3133-AE73)

Dear Mr. Poliquin,

On behalf of Randolph-Brooks Federal Credit Union (RBFCU), this letter is being submitted in response to the National Credit Union Administration's (NCUA) proposed rule on "Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions." We greatly appreciate the opportunity to comment.

Introduction

Credit union mergers and conversions are governed by Parts 708a and 708b of NCUA's regulations, which implement Section 205 of the Federal Credit Union Act (FCU Act). The regulation requires federal credit unions (FCUs) to seek prior, written approval from the NCUA Board before merger or consolidation with another credit union. Regarding merger related disclosures, NCUA's findings suggest greater transparency in the merger process will improve members' access to more complete information. Accordingly, NCUA seeks to implement new rules addressing, among other things, the timing and content of the notice provided to members of the merging FCU.

Merger Process: Voluntary Mergers

Credit unions are well recognized for their adherence to service and their dedication to members. It is in this spirit that credit union fiduciaries operate and carry out their day-to-day functions. As such, the member's interest is a central priority in all decisions entered into by a credit union, whether the decision is made by senior management or the Board. Regarding the decision to merge, the member's interest remains at the forefront of the credit union's thought process; additionally, fiduciaries must contemplate other critical factors including value maintenance and innovation, operational and team integration, cultural alignment, and future leadership and governance. If a merger is successful, it is the product of meticulous due diligence, careful planning, and intense research by both parties of the transaction, and the merger is based on its merits. Accordingly, when mergers are executed properly, members will benefit from a host of new initiatives such as new and more compelling products, new technologies, economies of scale, and additional branch locations. For these reasons, voluntary mergers are beneficial to the overall growth and sustainability of the credit union industry.

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Merger Process: Involuntary Mergers

Unlike voluntary mergers, involuntary mergers have no member vote or disclosure requirement and pose risk to the National Credit Union Share Insurance Fund (NCUSIF) if the fund must cover losses of a troubled credit union. Involuntary mergers may occur as a result of poor CAMEL ratings, deteriorating financial condition, consistently declining net worth, and/or declining membership. In these scenarios, the troubled credit union has poor negotiating leverage, fewer potential partners, and limited options due to time constraints. With this in mind, it is in the best interest of NCUA to create an environment which promotes well-planned voluntary mergers when the opportunities exist. Allowing credit unions to negotiate a workable and satisfactory set of merger terms, without unnecessary regulatory burden, will aid in the expansion and continued overall health of the credit union industry.

Compensation: Additional Disclosures

As stated above, an environment which does not stifle healthy mergers is crucial to the continual growth and development of the credit union industry. Under the proposed rule, the new requirements will have the undesirable effect of creating an unfriendly merger environment through its imposition of significant new impediments. If enacted, merging FCUs must disclose any increase in compensation or benefits which "covered persons" will receive because of the merger. This includes the credit union's chief executive officer or manager; the four most highly compensated employees other than the chief executive officer or manager; and any member of the board of directors or supervisory committee. Additionally, the proposed rule requires a comprehensive evaluation of all compensation received by covered persons during the new 24-month look back period.

In conjunction, these requirements necessitate scrupulous review of all bonuses and benefits which a covered employee has received prior to the merger and will require forward estimates given NCUA's intent to evaluate prospective increases in compensation because of a merger. When reviewing the history of credit union mergers, merging credit unions are typically smaller than the continuing credit union and have fewer resources for salaries and benefits. Accordingly, it is within reason for an executive or employee to receive a salary or benefits increase when he or she moves to a corresponding position at a larger institution. This difference in compensation can be a result of many elements including the continuing credit union's financial strength, their strategic position in the marketplace, or their new fields of membership. However, members may misconstrue this information and believe the salary increases are unwarranted, which may lead them to advocate against a healthy merger.

NCUA Oversight

NCUA's mission is to provide a safe and sound credit union system which promotes confidence in the national system of cooperative credit and protects the NCUSIF. Under current 12 CFR § 708b.105(b), NCUA has the authority to approve a merger proposal "subject to any other specific requirements as it may prescribe to fulfill the intended purposes of the proposed merger." Recently, the credit union industry has witnessed an emerging trend of healthy credit unions being sold well below their value. In these cases, senior executives and board members are being offered large monetary incentives including golden parachute exit plans, and the sale is not necessarily in the best interest of the members. Accordingly, RBFCU believes NCUA should use its authority to require the disclosure of these commitments in the merger package. By doing so, NCUA will have the ability to determine whether the commitments to senior management and the Board are out of line, and this will ensure the merger is not abusive to the members.

Forum for Discussion

The proposed member-to-member communications is unnecessary to facilitate exchange of member opinions. Credit union members currently have the opportunity to comment and discuss the terms of the proposed merger, and credit unions have facilitated such exchanges in the past without the weight of prescriptive regulation. Establishing and monitoring an email exchange to support member-to-member communications will impose significant operational expenses. Accordingly, the proposed merger rule will add to regulatory costs and be an additional impediment to the merger process.

Conclusion

The essence of a credit union is best understood through an examination of its structure. As member owned, not-for-profit financial cooperatives directed by volunteer boards, credit unions root themselves in communities and dedicate their resources to improve the economic well-being and quality of life for the citizens they serve. The merger process is one tool which aids in the growth of the credit union industry and allows these cooperatives to better serve their communities; however, RBFCU recognizes all mergers may not in the best interest of members. As such, we believe NCUA should remain privy to review of merger terms and compensation arrangements for key executives; however, these disclosures should be limited to the NCUA. RBFCU does not advocate for this review to extend to the membership for the reasons stated above. In closing, we would like to thank you for the opportunity to comment on this regulation which we feel is very important to our credit union and the industry.

Sincerely,

Robert Zearfoss
Executive Vice President, Chief Financial Officer
Randolph-Brooks Federal Credit Union