August 7, 2017

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

Re: NCUA's Proposed Rule: Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions

Dear Secretary Poliquin:

On behalf of Xceed Financial Federal Credit Union ("Xceed"), I am writing to express our opposition to the National Credit Union Administration's (NCUA) proposed rule on "Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions."

While NCUA's desire to promote radical transparency is commendable, we have not seen evidence that a lack of material disclosure in merger transactions is widespread, or that NCUA's current authority is inadequate to achieve the desired level of transparency in a given merger transaction. Xceed has successfully consummated several mutually-beneficial mergers in recent years, so we have significant experience with the existing regulatory framework for mergers. Our view is that the current rules support a consolidation process that consistently places the needs of members first, and that there is no need to trade a well-functioning set of merger rules for a regime that scrutinizes non-material aspects of the merger transaction.

NCUA already has discretionary authority to apply special requirements demanding more expansive disclosure of merger-related financial arrangements, and to require credit unions to provide greater advance notice to members before a merger vote is called. Thus, we consider the proposed rule an unwarranted regulatory burden.

The proposed member-to-member communication procedures are also cost-prohibitive, logistically challenging, and may invite unnecessary reputational risk. Among other unwarranted impositions, the proposed requirement that NCUA and credit unions arbitrate the validity of member comments places a time-consuming and unnecessary burden on the process. Current merger rules already provide an adequate means for member communication since members are free to discuss the merits or costs of the merger at the special meeting, which is preceded by detailed advance notice to members containing important information about the merger.

Concerning the proposed definition of "covered person," we believe that employees exercising supervisory or management control are the only ones that should fall within the scope of the disclosure rules for merger-related financial arrangements. The current rule already adequately reflects this important distinction. By contrast, the proposed rule would unnecessarily create an arbitrary coverage threshold that does not distinguish between decision-makers and regular employees.

As to “merger-related financial arrangements,” the current definition is sufficient and balances the need for disclosure with appropriate limits on scope and materiality. In contrast, the proposed definition would constitute regulatory burden by mandating comprehensive evaluation of all compensation received by covered persons over a 24-month look back period. Not only does this requirement call for the careful review of all indirect compensation that a covered employee may have received prior to the merger, it also requires forward estimates given NCUA's intent to evaluate prospective increases in compensation because of a merger. These additional burdens are completely unnecessary. Disclosing non-merger-related increases in compensation and benefits would provide no value to members and could create privacy concerns for credit union employees, trigger competitive disadvantages, and cost both time and money for credit unions. We would also note that the proposed rule presents significant challenges in terms of calculating indirect benefits.

Finally, in regard to notices to members, we believe that the proposed requirement to send members written notice of the meeting to vote on the merger at least 45 days in advance is unnecessary. NCUA may, when necessary, extend the current timeframe in order to achieve its intended goals by using its existing, discretionary authority – a far more sensible option than extending the notice timeframes for all mergers without exception.

In conclusion, Xceed strongly believes that the proposed rule would add significant new burdens aimed at resolving presumed or hypothetical problems that may or may not be widespread. Thus, Xceed requests the NCUA withdraw the proposed rule and in instead use its discretionary authority to address the narrow circumstances where enhanced transparency and communication could be beneficial. Thank you for allowing Xceed the opportunity to comment on this proposed regulation.

Sincerely,

Teresa Freeborn
President and Chief Executive

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