Cooperative
Credit Union Association
Delaware • Massachusetts • New Hampshire • Rhode Island

Creating Cooperative Power

August 7, 2017

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

Cooperative Credit Union Association, Inc. Comments on Notice of Proposed Rulemaking on Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions
RIN 3133-AE73

BY EMAIL ONLY

Dear Mr. Poliquin:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. ("Association"), please accept this letter relative to the National Credit Union Administration's request for comments on its Notice of Proposed Rulemaking on Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions ("proposed rule"). The Association is the state trade association representing credit unions located in the states of Delaware, Massachusetts, New Hampshire and Rhode Island, serving approximately 195 credit unions which further serve approximately 3.8 million consumer members.

The NCUA Board has approved a proposed rule that revises the procedures a federal credit union ("FCU") must follow to merge voluntarily with another credit union. The rule revises and clarifies the contents and format of the existing required member notice; requires merging FCUs to disclose all merger-related financial arrangements for covered persons; increases the minimum member notice period; provides procedures to allow reasonable member-to-member communications regarding the proposed merger; and makes conforming amendments regarding termination of insurance when the surviving credit union is not an FCU.

In addition, the definition of "merger-related financial arrangement" would be expanded to include compensation arrangements with management and certain highly-compensated employees rather than solely senior management officials or directors.

The Association welcomes this opportunity to provide input on this issue. In preparation for the development of the present comment letter, to foster a local consensus, and in order to assist in providing thoughtful, detailed comments, the Association conducted a survey of all credit union members in order to assess what the local impact of any change to the current rules surrounding voluntary mergers will be, as well as to elicit a better understanding of how our local credit unions are and will approach this issue.

The Association broadly supports regulatory policies that permit credit unions to merge on a voluntary basis, with a credit union's board and its members having a say in determining the merging credit union's best interest. As a general principle, the Association is of the position that the NCUA should not substitute its judgment for the informed decision of a credit union's management, board, and members to merge. While the NCUA has a role as the regulator and insurer in the merger, it should not interfere in the decision of two credit unions to voluntarily merge.

I. Overview

The reasons behind the decision to voluntarily merge a credit union are various. Reasons to do so vary from a struggling small credit union deciding to merge into a financially healthy credit union, therefore preserving credit union access for the merging credit unions members, to credit union members initiating and making the decision to merge because they will have increased access to products and services. No two mergers are ever the same. Because no two mergers are the same, each involving unique operations, fields of memberships, combinations of asset sizes, geographical considerations, and individual histories, any merger rule should be sufficiently flexible to accommodate all situations and business needs of the merging partners.

An amended merger rule should not increase the burden for either credit union in a merger situation. Credit unions have significantly benefitted from NCUA's recent efforts to reduce regulatory burden. Absent a compelling reason or the mandate to satisfy the requirements of a new law, an update to a regulation should not add additional burdensome requirements for credit unions.

The concerns expressed by member credit unions are that this proposal creates inappropriate opportunities for individuals to be involved in a business decision by the credit union. There is concern that this will set precedent for other business decisions that may in the future be required to involve members through an onerous process. Business decisions historically have been the responsibility of the institution's management team and its Board of Directors, and subject to a member vote.

In addition, the benefits of a merger may become lost on members in the sea of excess disclosures, communications, etc. The proposed rule presents the very real threat of inciting unnecessary, unwarranted, and potentially divisive member reactions to what should be a business decision, followed by a robust regulatory approval process. The NCUA already has the ability to address discrepancies and issues on an individual basis. Much of the proposed information is not necessary for the agency in carrying out its regulatory duties.

Another major concern is the effect this proposed rule will have on the timing of a merger. In many instances, mergers are occurring because the merging institution is in desperate need of help. Expanding

what is required to be disclosed, who is covered, and when and how meeting notices are provided and meetings held, will inevitably slow a process that very often should happen relatively quickly to avoid harming members.

A merger rule should not be prohibitive, as the premise upon which credit unions function is to serve the needs of their members and with their interests in mind. The credit union's board of directors is elected by the membership and represents the membership. Many of these changes strip the board of the right to make decisions on behalf of the membership. A merger decision, which is often very difficult to make, is done in the best interest of the members. Any procedure which would lengthen the time it takes to facilitate and complete a merger should not be adopted.

II. Compensation Disclosures Should Not Be Expanded

Covered Person Definition

The proposed rule requires merging FCUs to disclose to members any increase in compensation or benefits that any "covered person" will receive. The proposed rule would expand the definition of a "covered person" to include the credit union's chief executive officer or manager, the four most highly compensated employees other than the CEO/manager, and any member of the board of directors or supervisory committee.

The Association cannot in good faith support this expansion, especially as it will apply to small and mid-size credit unions. In smaller credit unions, including four employees in addition to the CEO is excessive. The Association is of the position that it is NCUA's responsibility to evaluate proposed changes in compensation and benefits as part of the merger application review. Unacceptable proposals can be rejected. Creating a rule that compensation must be disclosed to members at the time of a merger proposal, but not in the regular course of credit union business, presupposes that there is a tendency for abuse. Such a presumption does a disservice to the majority of credit union professionals involved in mergers who simply want to do what is best for the membership and the organization to which they have dedicated much of their time.

This particular concern of small and mid-size credit unions is an important one, as it is often these very credit unions that are involved in voluntary merger situations. In larger credit unions, the pay scales are generally higher, especially at the senior management level. Also, in states where board compensation is allowed, there may be a situation where a small credit union that has the authority to compensate its board chooses not to, merging with a credit union that does compensate its board. In both of these instances, the result will be an increase in compensation in the normal course of business, rather than a payment to entice a merger.

If there are cases of abuse, as the NCUA has stated exist, the agency should address those situations through the merger application approval process. The NCUA does have the power to refuse to approve any merger where they believe there may be inappropriate practices taking place. It is the Association's position that the NCUA already has the authority to request additional information from the credit union in a merger

situation. It is our position that this direct interaction is the most appropriate way to address instances of abuse.

The Association offers that should any final rule contain an expanded definition of a "covered person," that the agency consider placing thresholds or wage increase percentages on compensation that must be disclosed. Such thresholds or percentages must take into consideration asset size, field of membership, and operations.

Other Compensation Disclosure

Current regulations require that members of a converting or merging credit union be made aware of any compensation or other benefits that senior management and directors may receive as a result of a merger. Any increase of 15% or more of the official's current compensation, or $10,000, must be disclosed. The proposed rule would increase the amount of what must be disclosed to include 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 board of directors of both credit unions. The definition would also include all future compensation or benefits that would not be received but for the merger, regardless of the amount.

The Association does not support this expansion. Responses received from members stated that the 24 month lookback period is excessive and unnecessary. Similar responses were received regarding future compensation. The Association believes that should a lookback period be maintained in a final rule, 12 months would be a sufficient look-back period, especially if a final rule incorporates a de minimis exemption, threshold, or wage increase percentage.

In addition, there is no stated time restriction governing regulatory review of future compensation. The proposed rule is also 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 there could be many reasons for an increase in compensation after the merger.

The Association is of the position that any compensation required to be disclosed must be directly related to the decision to merger and as a direct result of the merger. Regular raises, bonuses, or other similar compensation, should not be included in the analysis.

Disclosing compensation data to the general public is complicated. Much of the general public is uneducated about the factors behind compensation in industries other than their own. The lack of understanding creates strife among those outside the credit union, which does a disservice to membership and the mission of the credit union.

Regarding the issue of whether benefits should be treated the same as compensation under the proposed rule, the Association is of the opinion that benefits normally provided to employees in the regular course of business should not be included in required disclosures. Benefits outside of these, such as extreme benefits, supplemental executive retirement plans, so-called "golden parachutes" could be treated the same as compensation in the rule and therefore be required to be disclosed. Such benefits must only be disclosed, however, if they directly relate to the merger.

Of the types of benefits that members had strong consensus on for disclosure purposes, retirement benefits are generally considered to be well within the purview of disclosure, as long as they are directly related to the merger. Strong consensus was also seen on loans, to include loan exceptions, investments, and insurance. For insurance benefits, members agreed that only split dollar insurance, not term or whole life insurance, could be disclosed, if directly related to the merger.

It is imperative that the NCUA treat each merger situation on its face and with the relevant facts for that particular situation in hand.

NCUA should continue to review compensation and benefits in the context of the regulatory merger application review. These items should be measured each individually, as appropriate for each category.

Board Minutes

The proposed rule requires both the merging and the continuing credit union to submit board minutes to NCUA that reference the merger during the 24 months preceding the date of approval of the merger plan by the boards of directors.

Significantly more than half of the Association's members stated that they did not support this provision as it is an additional and unnecessary regulatory and administrative burden. Credit union minutes are already available for examiner review at any time. Such minutes can be requested by the NCUA during the merger application process. In addition, credit unions already submit minutes as part of the merger package to serve as confirmation of the board of directors' approval to merge.

III. Member Notice Requirements Should Not Be Changed

Timeline

The current NCUA Federal Credit Union Bylaws set timelines for member notice of a meeting. Notice for an Annual Meeting must be provided at least 30 days, but not more than 75 days, before the annual meeting. Notice for a Special Meeting must be provided at least 7 days before the meeting. The proposed rule includes a change to the timing requirements for member notice of an annual meeting or special meeting at which a merger is to be voted on. The member meeting notice must be mailed at least 45 days, but no more than 90 days, before the meeting to vote on the merger, regardless of whether it is an annual or special meeting.

The majority of members agreed that timelines for meeting notices should be kept consistent for all purposes. The Association suggests that the 30/75 day schedule is appropriate and should be applied to meetings called for the purposes of a merger.

Net Worth Disclosure

The proposed rule seeks to revise the content of the notice that must be provided to members in the case of a merger. The proposal requires that member notice inform members about the net worth of the merging FCU relative to the net worth of the continuing credit union, and whether any of the merging FCU's net worth will be returned to members of the merging FCU in the transaction. The NCUA emphasizes that this disclosure is not to be read as requiring or encouraging share adjustments.

The Association's member credit unions are steadfast in their commitment to the member-owned concept of a credit union. However, expanding the content of a meeting notice to include data on net worth goes beyond the scope of "notice." Such information could be made available online or in person at the credit union, and also shared with members at the meeting. However, requiring these calculations be made on the notice is unnecessary and administratively more burdensome on both credit unions.

Each credit union should be left to determine what is the best information to provide to its members. Strict, prescriptive provisions are unhelpful to the membership.

Member-to-Member Communication

The proposed rule establishes a new procedure that allows for member-to-member communications in advance of a member vote on a proposed merger. FCUs would be required to inform members that if they wish to provide their opinions about the proposed merger to other members, they can submit those opinions in writing to the FCU within 30 days of receipt of the notice, and the FCU will forward those opinions to other members.

The majority of members did not support this procedure as it is burdensome and unmanageable. Many suggested that the marketplace already is set up for these types of conversations to exist without the necessity of a prescriptive requirement. In addition, members face no credit union-created obstacles for communicating with each other.

The credit union should not be required to distribute individual opinions to all members. One can conceive of a situation in which a disgruntled member takes the opportunity to express his negative views on the credit union as a whole or a particular individual within the credit union, disguised as comments on the proposed merger. A credit union in that situation should be required to conduct an analysis in the first place of the comments to determine whether they relate to the merger, nor then disseminate such comments solely because they were received as a result of the proposed merger.

Association members encourage dialogue amongst members and do not take issue with the concept of discussing the merger, but rather with the means required in this proposal. However, should the Board move forward with this provision, the Association suggests that the time measurement should be based on the date of the annual/special meeting as opposed to "receipt of notice."

IV. Application of Rule Across Charters

The Association raises the issue that the proposed rule in its current form only applies to federal credit unions. It is the position of the Association that any final merger rule should not apply to state-chartered credit unions. Section 708b.101(b), requires that a federally-insured credit union must receive prior written approval from the NCUA before merging with another credit union. This existing authority is for NCUA to ensure that mergers are safe and sound. Member rights at state-chartered credit unions should be protected by state laws and state regulators.

V. Conclusion

The Association expresses its appreciation to the NCUA for seeking stakeholder input into this subject, and requests that the NCUA consider the implications its proposed rule will have.

Thank you for your consideration of these views. The Association appreciates the opportunity to provide input and I remain available to address any questions or concerns at pgentile@ccua.org that you or your staff may have at your convenience.

Sincerely,

Paul C. Gentile
President/CEO

PCG/mabc/kb