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National Association of Federally-Insured Credit Unions

September 29, 2017

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

RE: Emergency Mergers – Chartering and Field of Membership (RIN 3133-AE76)

Dear Mr. Poliquin:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing in regard to the National Credit Union Administration's (NCUA) proposed rule to amend its Chartering and Field of Membership Manual to redefine "in danger of insolvency" for purposes of an emergency merger. NAFCU and its member credit unions support the NCUA's efforts to modernize the emergency merger forecasting procedures to better identify credit unions in danger of insolvency and to preserve services to their members and member assets. NAFCU requests increased transparency as the NCUA begins to follow this new timeline for determining "in danger of insolvency" and during the merger process as well as a more streamlined procedure for the merger of smaller institutions.

General Comments

Section 205(h) of the *Federal Credit Union Act* (FCU Act) provides the NCUA Board with the authority to allow a credit union that is either insolvent or in danger of insolvency to merge with another credit union. The Board may only approve a merger if it finds that: (1) an emergency requiring expeditious action exists; (2) no other reasonable alternatives are available; and (3) the action is in the public interest. If these conditions are met, the Board may approve an emergency merger without considering common bond or other legal constraints, including obtaining the approval of the members of the merging credit union. The NCUA must first, however, determine that a credit union is either insolvent or in danger of insolvency.

The FCU Act does not define "in danger of insolvency," so in 2009 the NCUA proposed a definition to establish an objective standard to determine when a credit union is in danger of insolvency. This definition was finalized in 2010 and has remained the definition since then. The NCUA Board has determined, based on its experiences in applying the current definition and

quantitative data such as Call Reports, that it is now appropriate to update the current definition. The new proposed definition would lengthen by six months the forecast horizons for two of the three net worth categories that a credit union is required to fall into over a period of time to be considered "in danger of insolvency." The proposed rule would also create a fourth net worth category to include credit unions that have been granted or received assistance under Section 208 of the FCU Act in the 15 months prior to a determination that the credit union is in danger of insolvency.

NAFCU generally supports the proposed rule to create a more forward looking evaluation of credit unions that may need an emergency merger. The NCUA's evaluation of Call Reports and other internal data shows that a credit union's net worth declines the most in the quarters leading up to an emergency merger. Better forecasting will allow the NCUA to help those troubled credit unions find a merger partner and salvage their members' assets. This proposal is a positive step in the modernization of the emergency merger process, but more remains to be done in terms of increasing transparency throughout and streamlining the merger process for smaller institutions so that both the merging credit union and the continuing credit union experience a seamless transition.

Increased Transparency and Streamlined Process

NAFCU approves of the NCUA's efforts to help troubled credit unions merge with willing and healthy merger partners. The best way to ensure this happens in a timely and efficient manner is to most accurately predict when a credit union is likely to become insolvent. As part of this process, prospective merger partners should be fully apprised of important information regarding the selection process and should also have the opportunity to make their case for the merger. Additionally, the NCUA should provide prospective merger partners with a written explanation of the reasons for its decision. This would help increase transparency in the entire emergency merger process and help guide future emergency mergers.

The NCUA should also take steps to create a more streamlined emergency merger process for smaller credit unions. Since the NCUA's 2009 proposal, not much has been done to improve the unnecessarily burdensome process for acquiring smaller institutions. A smaller credit union has fewer resources, which ends up frustrating the merger process. Even with this proposed rule to increase the forecast horizons in an effort to save the merging credit union's assets and member services, there may still be delays in the actual emergency merger process. The NCUA should make every effort to alleviate these potential issues to ensure the smoothest emergency merger transition process.

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Conclusion

NAFCU supports the NCUA's proposed amendments to its Chartering and Field of Membership Manual regarding emergency mergers and appreciates the opportunity to provide comments on the proposed rule. If you have any questions or concerns, please do not hesitate to contact me at akossachev@nafcu.org or (703) 842-2212.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Kossachev". The signature is fluid and cursive, with the first name "Ann" and last name "Kossachev" clearly distinguishable.

Ann Kossachev
Regulatory Affairs Counsel