Indiana Credit Union League

The association of Indiana credit unions

March 27, 2020

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

Re: Combination Transactions with Non-Credit Unions; RIN 3133–AF10

Dear Mr. Poliquin:

The Indiana Credit Union League (ICUL) appreciates the opportunity to submit comments on the National Credit Union Administration's Proposed Rulemaking for Combination Transactions with Non-Credit Unions. The ICUL member credit unions represent 99% of assets and members of Indiana's credit unions, with those memberships totaling more than 2.6 million consumers.

The NCUA Board issued a proposal to adopt new Subpart D of Part 708a intended to "clarify and make transparent the procedures and requirements related to combination transactions." Combination transactions include those where a federally insured credit union proposes to assume liabilities from a non-credit union, including a bank; they also include a credit union's merger or consolidation with a non-credit union entity.

The proposal is intended to basically codify current requirements and practices related to combination transactions with non-credit unions. We believe that it is important for credit unions to understand the process and expectations of NCUA related to these transactions.

Much of the proposed rule is based on statutory requirements and additional steps that NCUA has been utilizing in evaluating these transactions. We support much of the proposed rule but do believe that several parts of the proposal that are not statutory in nature should be reevaluated.

Section 708a.402 requires NCUA's advance approval of combination transactions, and it requires a federal credit union proposing a combination transaction to submit its request to the Regional Director. Federally insured state-chartered credit unions must obtain the advance approval of their state regulator in addition to the NCUA's approval.

In this section is a list of the statutory factors NCUA must weigh in its consideration of a combination transaction application. Four of the six statutory factors relate to safety and soundness. The remaining two factors require the NCUA to consider the proposed transaction's effect on credit union members and potential credit union members and whether the proposed transaction is in keeping with the credit union's mission. While we understand that these factors are all statutory, we are concerned with the subjectivity of the last two. We would assume and expect that NCUA would give the credit union every opportunity to help NCUA fully understand the potential impact on new and existing credit union members before NCUA makes a decision regarding these assessment factors.

We are concerned that the proposed rule does not establish a limit on the length of time the NCUA may take to consider a combination transaction. We urge the agency to adopt a specified timeframe, which is critical for planning purposes. We recommend the NCUA apply an approach consistent with that of the Federal Deposit Insurance Corporation (FDIC), which maintains an established timeframe of generally 60 days to respond to combination transaction applications. NCUA is concerned that an established timeframe may create impediments to the NCUA's ability to fully understand the transaction's potential consequences. We strongly believe that not

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having a timeframe for review will place credit unions at a disadvantage with other non-credit union bidders in these transactions.

Section 708a.403 highlights critical elements of the application package. Among other elements, the applying credit union must provide basic information about the transaction that enables NCUA staff to evaluate it. This information includes:

- The balance sheet and income statements for both institutions;
- A combined financial statement showing the transaction's potential impact on the credit union's net worth;
- Information about the credit union's due diligence assessment of the proposed transaction;
- A delinquent loan summary;
- Analysis of the adequacy of the credit union's allowance for loan and lease losses; and
- A list of the other institution's assets that would be impermissible for the credit union to hold under the Federal Credit Union Act or state law, with the plan for excluding these assets.

Our concern is with the last item listed above addressing assets of the institution that would be impermissible for the credit union to hold. The proposal would require the credit union to develop a plan for excluding these assets. We believe that this requirement should be modified to require the credit union to develop a plan that would (1) specify how it will exclude such assets, or (2) hold the assets for a specified period of time in order to either make them permissible or dispose of them. We encourage NCUA to add this option with a minimum of 12 months as the timeframe to dispose of the assets if that is necessary.

Section 708a.405 addresses the two-step process for customers joining a credit union: (1) determining that a potential member falls within the FCU's field of membership, and (2) how the potential member becomes an actual member.

In the commentary, NCUA states that it has "generally required that to become a member of a credit union the other entity's customer must affirmatively act through an authoritative vote or individual consent before the closing of a combination transaction. In the case of a vote, the other entity's regulator, charter and bylaws must permit such a process, whereby the vote of a certain percentage of customers will demonstrate affirmative approval for all affected customers and thereby meet the requirement to subscribe to credit union membership." We do not support this approach. The decision to sell the non-credit union entity generally requires an affirmative vote by a majority percentage of the shareholders. Most of the customers of these entities are not the shareholders. In fact, in some case a shareholder may not even be a customer of the entity.

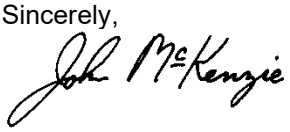
We are concerned that the requirement of an affirmative vote of customers will result in otherwise sound transactions not being completed since either this type of vote is not within the bylaws or regulatory options, or the logistics to complete the vote adds too much time to completing the transaction. We encourage NCUA instead allow an opt-out. In this approach, the applying credit union would inform all institution customers that they will become members of the credit union unless they take action to opt-out. We believe that this would accomplish the objective of affirmative consent NCUA is looking for. An opt-out would also greatly reduce the compliance burden associated with an affirmative act, as included in the proposal. An opt-out would also eliminate any uneven playing field between state and federal charters where the state regulator provides additional time for the applying credit union to obtain the consent of the bank's customers.

Additionally, we ask NCUA to consider if an affirmative act (vote or opt-out) by the customers is even necessary. In a credit union merger, the vote of the membership is required, and makes sense since the members are the owners. As stated above, the owners of the non-credit union entity are the ones required to affirmatively approve the transactions. Most of the customers are not shareholders, and as such, do not have a say in whether or not the entity will be sold. As with a credit union merger, is not the vote of the owners an affirmative act on behalf of all of the customers who chose to have an account with the entity under the control of the owners, and subject to all decisions made by the owners? We recommend that NCUA consider eliminating this requirement all together.

We appreciate the opportunity to comment on the proposed rule. We agree that having the process for credit union combinations with non-credit unions spelled out in the regulations is important to ensure credit unions

understand what is required. We ask NCUA to consider the recommended changes we discussed above. If you have any questions about our letter, please do not hesitate to give me a call at (317) 594-5320.

Sincerely,



John McKenzie
President, Indiana Credit Union League