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NCUA Proposed Rule Governing Credit Union Acquisitions of Community Banks

Executive Summary

The National Credit Union Administration is proposing to create a new rule that would prescribe the procedures for federally-insured credit union ("FICU") acquisitions of banks and would create new, explicit requirements on all assets acquired from a bank. **NCUA is accepting comments until March 30, 2020**. To comment, visit www.regulations.gov and follow the instructions for submission.

Background

Currently, NCUA regulations stipulate the process for a credit union conversion to a mutual savings bank (Section 708a Subpart A) and the merger of a credit union into a bank (Section 708a Subpart C), but there is no explicit requirements or restrictions on credit union acquisitions of banks. NCUA is proposing a new Subpart D to Section 708a to account for this omission.

Additionally, NCUA is proposing to expand the list of acquired assets that are subject to additional disclosure and limitations. Current section 741.8 of NCUA regulations set requirements and limitations only on loans acquired from banks. This proposal would expand those requirements to extend to all assets, not just loans.

Section-by-Section Summary

NCUA approval required for acquisitions of banks

Before seeking approval from the appropriate regulator(s), the proposed rule would require a FICU to conduct a vote of its board of directors. Upon affirmative vote of the board, the FICU would then be required to seek and obtain approval from NCUA (and state regulators, if a state-chartered FICU) by demonstrating compliance with a series of six statutory factors.[1]

Newly required information about the acquisition

Aside from the statutory requirements described above, the acquiring credit union must explain how the credit union intends to obtain credit union membership for the customers of the acquired bank. Additionally, the credit union must submit financial disclosures, such as:

[1] (1) The history, financial condition, and management policies of the credit union; (2) The adequacy of the credit union's reserves; (3) The economic advisability of the transaction; (4) The general character and fitness of the credit union's management; (5) The convenience and needs of the members to be served by the credit union; and (6) How the transaction fits into the credit union's purpose as a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

- a balance sheet and income statement for each institution;
- a combined financial statement showing the transaction's potential impact on the credit union's net worth;
- a summary of the credit union's due diligence assessment process for the proposed transaction (including analysis to support the proposed transaction price);
- a delinquent loan summary for any assets involved in the transaction;
- an analysis of the adequacy of the credit union's allowance for loan lease losses;
- a list of the bank's assets that would be impermissible for a credit union to hold and explanation of the plan to dispose of those assets; and
- a list of bank shareholders.

Finally, each director of the credit union's board must attest that he or she does not have a pecuniary or personal interest in the transaction and certify that credit union management explained how the transaction would benefit the current members of the FICU as well as the prospective members.

Federal share insurance required for assumption of deposits

Given that NCUA generally requires all deposits at a FICU to be insured, proposed Section 708a.404 would require the acquiring credit union to demonstrate that acquired deposits will qualify for coverage up to the applicable limits under the National Credit Union Share Insurance Fund immediately upon the transaction close.

Field of membership eligibility and customer consent

Federal credit unions ("FCU") that do not have a low-income designation must demonstrate (1) that the depositors are within its field of membership ("FOM") and (2) that the customers of the acquired bank have taken action to become members of the FCU.

Eligibility. Under the first prong of the requirement, the FCU must confirm that each customer of the acquired bank is within the FCU's FOM. The proposed rule explicitly states that a FCU may not acquire the loans of a customer that is outside the FCU's FOM.

Consent to FCU membership. After establishing eligibility, a FCU is then required to demonstrate that the customers within a FOM have consented to become members of the FCU. The preamble to the proposal reiterates NCUA's long held position that this consent must be demonstrated through an authoritative vote or individual consent before the closing of the acquisition.

In the case of a vote, the bank's regulator prescribes the process whereby the vote of a certain percentage of customers will demonstrate affirmative approval for all affected customers and thereby meet NCUA's consent requirement. The preamble explains that this approach is analogous to a FICU-FICU merger transaction, where a majority vote of the whole allows the transaction to proceed without an affirmative act by each individual.

Additional restrictions on acquisition of assets other than loans

In addition to prescribing regulations upon acquisition of loan assets, as is currently the case, the proposed rule would extend the requirement for notice to NCUA to all acquired assets, including fixed assets or others that have statutory limitations.[2] The proposal would also require FICUs to demonstrate the transaction's adherence to the six statutory factors discussed above.[3]

[2] Section 741.8 requires FICUs to receive approval from NCUA before purchasing loans or assuming an assignment of deposits, shares, or liabilities from a bank. The proposed rule would add a new subsection that requires similar notice and approval for purchases of assets other than loans.

[3] *Supra* note 1.