Cooperative
Credit Union Association

Creating Cooperative Power

March 31, 2020

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

RE: Cooperative Credit Union Association, Inc. Comments on Combination Transactions, RIN 3313–AF10

BY ELECTRONIC DELIVERY ONLY: www.regulations.gov

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 Board's ("NCUA") proposal on mergers and consolidations of federally-insured credit unions with non-credit union financial entities ("proposal"). The Association is the state trade association representing credit unions located in the states of Delaware, Massachusetts, New Hampshire, New Jersey and Rhode Island, serving approximately 200 credit unions which further serve over 3.6 million consumer members.

In preparation for the development of this comment letter, the Association recently solicited the views of its members. This letter incorporates feedback received through the member survey and other direct comments regarding the proposal on mergers and consolidations of federally-insured credit unions with non-credit union financial entities.

Overview:

The Association is pleased to report that our members generally support the proposal.

The world has changed dramatically since NCUA issued the proposal for comments in January. During the interim period, the agency's efforts to focus and respond to a wide range of topics related to the impact of the novel Coronavirus on credit unions and their members to promote public confidence, economic activity and stability is also supported.

In light of these developments, the Association believes that this proposal is an important tool in helping to maintain financial services for small business and consumer customers of non-credit union entities in some areas of the country that find themselves seeking combinations with credit unions as a result of changes in the economy, including the economic impact of the pandemic.

While this proposal largely codifies existing procedures, it also sets forth a regulatory framework that will increase the transparency of NCUA's approval process for such combinations.

For the most part, the Association supports the proposal, which if approved, would detail the process for combination transactions in a new Subpart D to 12 CFR 708a and would make associated changes to 12 CFR 741.8. This letter provides comments on a limited number of provisions in the proposal that could benefit from clarifications or modifications.

Specific Comments:

1. **Definitions**

A. "Combination Transactions"

The Association believes that the NCUA's summary of the proposal contains a useful footnote to the definition of "combination transactions."

> New Subpart D does not address requirements for FICU purchases of loan assets from institutions that are not FICUs when the proposed purchase is not part of a merger or consolidation. Section 205(b)(1) of the Act does not include authority to purchase assets, such as loans, other than as part of a merger or consolidation. A merger or consolidation generally means that at least one entity's charter is extinguished in the transaction. Accordingly, FICUs seeking to purchase loans from entities other than FICUs, where the other entity is not merging or consolidating with the FICU, must do so under other authorities. For FISCUs, state law or regulation may permit these purchases. For FCUs, this authority would be the NCUA's eligible obligations rule, 12 CFR 701.23. Generally, if an FCU is purchasing loans from an entity other than a FICU, the eligible obligations rule requires the borrower to be a member of the purchasing credit union before the purchase is made. Id. Just as in the deposit context, the NCUA has historically interpreted this provision to mean that the borrower must have taken some affirmative action to join the FCU before the transaction closes. Purchases of student loans or mortgages to complete a pool of loans for sale on the secondary market are exempt from the membership requirement. The eligible obligations rule also allows FCUs to purchase eligible obligations from FICUs ''without regard to whether they are obligations of its members.'' Id. 701.23(a)(2)(i). 85 FR 5337 (Jan. 30, 2020)

The Association suggests that it would be most helpful for stakeholders and would promote clarity regarding NCUA's intent and scope of the proposal, if the final rule's definition of "combination transactions" includes this explanation.

B. "Financial Institution"

Proposed Subpart D provides some definitions, but it does not specifically define the term "financial institution." While that term is defined in federal banking law, from a practical standpoint, the concept of a financial institution continues to evolve in the marketplace. In 12 CFR 741.8, which the agency is amending under the proposal, a "financial-type institution" is referenced in subsection (a)(2) to include "depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders." Including a similar definition or cross reference could be further useful in clarifying the scope of the rule.

2. Timing for NCUA Response

The NCUA specifically seeks comments on whether a timeline for the agency's review of a complete application should be included in the final rule. In the unanimous view of our member respondents, the Association strongly recommends that a final rule include a timeframe for the agency's decision. A period of 30 days is recommended as reasonable, with an additional period of up to 60 days in unusual circumstances, with a rationale provided by NCUA.[1]

Please note that members also expressed concern on a related issue: the open-ended nature of NCUA's authority to seek additional information from the applicant credit union, beyond the detailed information listed in the proposal. The Association requests that the final rule clearly state that the agency will only request additional information it determines to be essential in making a decision on an application, and that NCUA will not arbitrarily extend the application process with requests for more data that is not detailed in the rule.

3. Delegation of Approval Authority

The discussion of the proposal notes that approval for applications has been delegated to Regional Directors and the Director of the Office of National Examinations and Supervision when the fair market value of the acquired shares or deposits and the fair market value of the purchased loans and other assets are each less than $500 million. The Director of the Office of Examination and Insurance must agree if the fair market value of the acquired shares or deposits and the fair market value of the purchased loans and other assets are each greater than $100 million.

As presented, this is a complex approval process that the Association believes could be streamlined. It also runs counter to the goal that applications be addressed in a timely manner.

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[1] One member respondent suggested a ninety (90) day limit and another up to one hundred and eighty (180) days. Another highlighted the operational necessity for a specified timeframe. During a transaction within the last year, the member found that it was impossible to work with a core provider to set a conversion date without having a timeline for approval. Additionally, the inability to convert the acquired institution to the survivor's core provider could create unnecessary inefficiencies and operating difficulties which could be minimized.

The Association suggests that NCUA continue to delegate approval authority to Regional Directors and allow, but not require them, to consult with the other agency offices as needed within the timeframe for approval.

4. Assessment Factors

The factors the NCUA has listed in the proposal to review applications reflect the directives of the Federal Credit Union Act. However, it appears that two factors, the convenience and needs of members, and how the transaction fits the credit union's mission, are duplicative. The Association suggests that these factors are not separate or distinguishable, and if included, should be consolidated. In essence, it is the position of the Association that the convenience and needs of members are the mission of credit unions.[2]

5. Elements of the Application

The proposal details the information that the application must include which is comprised of a list of focused data sets. The proposal does not specifically address an overall cost/benefit analysis. The addition of this analysis, included as an option, provides credit unions with an opportunity to supplement their petition. This tool could more effectively highlight the overarching issue of the impact of the proposed combination on current and prospective members. Such an analysis, rather than responding to a segmented listing of factors, could be useful to the credit union's board of directors in evaluating the combination and could address the concerns the proposal has identified for NCUA's review. In addition, it is recommended that the list of bank shareholders should be limited to holders of more than a certain percent of shares, such as five percent (5%) or more.

The proposal also requires that the application include certifications from the acquiring credit union's board of directors regarding several statements that demonstrate their approval and understanding of the proposed combination. The Association questions whether such statements and certifications, which appear redundant and overlapping, are necessary. Capable boards of directors should be allowed to exercise their fiduciary duties to assess and determine whether they approve a proposed business combination under their own processes and procedures as long as appropriate due diligence can be demonstrated to NCUA.

The application further seeks to certify that any deposits involved in the combination are eligible for National Credit Union Share Insurance Fund coverage and that depositors are within the field-of-membership of a credit union. While state regulators can provide a certified statement for state credit unions, and low income-designated credit unions may hold deposits from sources

[2] One member respondent noted that by including subjective, non-safety and soundness considerations as factors may render the process vague and subject the application review to unnecessary delay. By definition, an acquisition of assets or an actual merger results in more credit union members and expanded service. Another respondent suggested that conflicts of interests should also be reviewed.

beyond the membership, the certification requirements regarding membership are burdensome, if not impossible, especially for credit unions that do not have a low-income designation.[3] Credit unions are aware of requirements that they must meet field-of-membership standards and should be able to address membership issues generally in the application without having to meet special certification requirements.

6. Other Issues

Member respondents unanimously agreed on the scope of the proposal and that it should apply to the purchase of all assets from a non-NCUSIF insured institution.

In addition, the Association also seeks to direct the NCUA's attention to the impact of transactions on the current credit union member business loan cap. While this issue may not arise in every application, some combination transactions could result in a credit union exceeding its member business loan cap. As part of the approval process, the agency should allow sufficient time for a credit union to transition into compliance with the MBL cap following a combination transaction. It is recommended that NCUA allow at least a one (1) year transition period. More importantly, violation of the cap at the time of the combination should not be grounds for denial. This approach, which could vary on a case by case basis, will promote stability and continued access to credit union service, during any implementation period without the economic disruption and lack of public confidence that divestiture can yield.

With respect to the role of state credit union and bank regulators, one member respondent noted that the proposal appears to be a one-size fits all solution that significantly oversteps the state banking departments role as the primary regulator for state-chartered institutions. It is important that the proposal clearly state that when a combination takes place at the state level, then state law is controlling.

Conclusion

The Association generally supports this proposal as timely in the face of changing economic conditions across the nation and indeed around the world. It is agreed that the proposal, if adopted, will promote clarity in the process for approving combination transactions. The Association respectfully requests that the Board consider the suggestions set forth in this comment letter to improve the proposal even further.

Thank you for the opportunity to share our member's views on the proposal. If you have any questions about the recommendations set forth in this comment letter or require further information, then please do not hesitate to contact me.

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[3] Members responded that it is unclear how a credit union would immediately be able to demonstrate to the satisfaction of examiners that all deposits will qualify for coverage. It is also not practically possible to demonstrate that all depositors have consented to become members of a federal credit union. Any depositor is always free to terminate their relationship with any financial institution, at any time, and for any reason.

Sincerely,

Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.

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