

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

RIN 3313-AF10

Combination Transactions with Non-Credit Unions; Credit Union Asset Acquisitions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to adopt new Subpart D of Part 708a of its regulations. This will clarify and make transparent the procedures and requirements currently in place related to combination transactions. Combination transactions include those where a federally insured credit union (FICU) proposes to assume liabilities from a non-credit union, including a bank. They also include a FICU's merger or consolidation with a non-credit union entity. Further, the proposed rule clarifies the scope of section 741.8 of the NCUA's regulations, which currently requires the NCUA to grant approval before a FICU may purchase loans or assume an assignment of deposits, shares, or liabilities from any institution that is not insured by the National Credit Union Share Insurance Fund (NCUSIF).

DATES: Comments must be received by [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**). Please note that the NCUA is now accepting electronic comments only through the Federal eRulemaking portal, Regulations.gov:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (703) 518-6319. Use the subject line “[Your name] Comments on Combination Transactions” on the transmission cover sheet.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: All public comments are available on the agency’s website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6540 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314, or by telephone at (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Background

II. Legal Authority

III. Summary of the Proposed Rule

IV. Section-by-Section Analysis

V. Regulatory Procedures

I. Background

The NCUA has historically seen a relatively small but consistent number of applications from FICUs seeking to engage in merger or purchase and assumption transactions with banks or other types of financial institutions. As the table below shows, the number of these transactions the NCUA approved each year¹ was small and fairly constant from 2013 to 2017 with a modest uptick in 2018 and 2019.

¹ The numbers reported in this table are based on the date of the NCUA's approval of the transaction, not the closing date. Accordingly, other publicly reported data may have slightly different figures by year, if they track by transaction close date.

NCUA-approved transactions between FICUs and other types of institutions for calendar years 2013-2019 are as follows. None of these transactions involve the purchase of, or operation under, a bank’s charter.

	Transactions that include all of a non-FICU’s assets and liabilities	Transactions that include part of a non-FICU’s assets and liabilities²
2020	0 approved, 9 pending	0 approved 8 pending
2019	11	4
2018	7	1
2017	3	1
2016	2	4
2015	2	1
2014	1	1
2013	2	3

Because these transactions occur in relatively small numbers, the Board has not previously promulgated a detailed rule addressing them.³ Even with the increase over the past two years, these transactions still constitute only a small fraction of merger and acquisition transactions involving banks.⁴ Nevertheless, because of a desire to add even more transparency, and the questions the

² These are transactions where the non-FICU remains in business, such as when a FICU acquires the loans and deposits of only certain branches of a bank.

³ The NCUA’s only regulation on point states that the NCUA’s approval is required before an FICU can purchase loans or assume liabilities or deposits of a noninsured credit union or another type of financial institution. 12 CFR 741.8.

⁴ See Robert Klinger, “The So-Called Rise of Credit Union Buyers” (Sept. 24, 2019), <https://bankbclp.com/2019/09/the-so-called-rise-of-credit-union-buyers>.

NCUA has received recently from FICUs, the Board believes it would be beneficial to clarify the processes and requirements related to FICU applications for these transactions. This increased transparency will assist FICUs seeking to engage in these transactions to meet the NCUA's requirements.

The experience the NCUA has gained in recent years while considering each of these transactions on a case-by-case basis informs this rulemaking. This experience has allowed the agency to identify the various issues most frequently presented in these transactions and develop processes for considering these applications. Accordingly, the Board has determined to formalize some of these requirements in this rulemaking.

During the process of developing this new regulatory language, the Board has determined that § 741.8 of the NCUA's regulations also needs to be revised to update its scope and improve its clarity. The Board is proposing to apply § 741.8 to all asset purchases, not only loan purchases and liability assumptions. The Board adopted the regulatory language currently in § 741.8 primarily to address concerns about loan purchases from institutions not insured by the NCUSIF; at the time it believed that encompassing all assets would be unnecessarily burdensome.⁵ In the course of reviewing combination transactions with non-FICUs, however, agency staff have occasionally identified non-loan assets that are problematic, either because they are impermissible for FICUs or because they would pose undue risk to the FICU. In light of this experience, and the potential for risk to the FICU or the NCUSIF, the Board proposes to extend the scope of § 741.8 to all assets purchased from entities other than FICUs. When impermissible assets are identified, the FICU

⁵ 56 FR 35808, 35809 (July 29, 1991).

proposing the transaction must explain how the parties to the transaction plan to exclude the assets from the purchase transaction.

II. Legal Authority

Section 205 of the Federal Credit Union Act (FCU Act) permits FICUs to engage in merger and purchase and assumption transactions with other types of financial institutions, as follows:

- (1) Except as provided in paragraph 2⁶, no insured credit union shall, without the prior approval of the Board –
 - (A) merge or consolidate with any noninsured credit union or institution;
 - (B) assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;⁷
 - (C) transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or
 - (D) convert into a noninsured credit union or institution.⁸

In granting or withholding this approval, the Board must consider six factors, which are:

- (1) The history, financial condition, and management policies of the credit union;

⁶ This paragraph, added to the Act in 1998, governs the process for FICUs to convert to mutual savings banks.

⁷ The FCU Act defines a “noninsured credit union” as a credit union not insured by the NCUSIF. 12 U.S.C. 1752(1). The NCUA interprets the similar phrase “noninsured credit union or institution” to mean one not insured by the NCUSIF.

⁸ 12 U.S.C. 1785(b)(1).

- (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) Whether the credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.⁹

Under the authority of this section, the NCUA has already issued detailed regulations governing the merger of a FICU into a bank other than a mutual savings bank¹⁰ and conversion of a FICU into a noninsured credit union.¹¹ The Board has delegated some authority to approve and disapprove certain combination transactions to Regional Directors and the Director of the Office of National Examinations and Supervision.¹²

III. Summary of the Proposed Rule

The proposed rule adds new Subpart D to Part 708a. The new subpart specifies the basic requirements applicable to the above-referenced combination transactions between a FICU and another type of financial institution. All transactions require NCUA approval, and state-chartered

⁹ Id. 1785(c).

¹⁰ 12 CFR part 708a, subpart C.

¹¹ Id. part 708b, subparts B-C.

¹² The Board has delegated approval and disapproval authority to Regional Directors and the Director of the Office of National Examinations and Supervision for transactions in which both 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. 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, the Director of the Office of Examination and Insurance must concur. NCUA Delegations of Authority, SUP 24.

FICUs must also obtain their state regulator’s approval. The proposed rule also includes provisions ensuring that the directors of a FICU proposing a combination transaction understand the nature and ramifications of the proposed transaction. Finally, the proposed rule amends § 741.8 of the NCUA’s regulations. The proposed amendments to § 741.8 make the regulation’s provisions applicable to all asset purchases and list the other NCUA regulations that apply to each particular type of transaction.

Section-by-Section Summary

708a.401, Definitions

This section defines several terms used in Subpart D. The term “combination transaction” includes several of the types of transactions authorized by Section 205(b)(1) of the FCU Act including the following: (1) a merger or consolidation with anon-credit union; (2) the assumption of liabilities from anon-credit union; or (3) the transfer of assets to anon-credit union in consideration of the assumption of certain of its liabilities. The use of the distinct term “combination transaction” differentiates these transactions from other types of transactions such as mergers between FICUs, mergers between FICUs and noninsured credit unions, FICU conversions to banks, and FICU purchases of loans that are not part of a merger or consolidation.¹³

¹³ New Subpart D does not address the 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

The Board has determined to exclude mergers where one party is a FICU and one party is a noninsured credit union from the definition of combination transaction because part 708b of the NCUA's regulations already addresses these mergers.

The term "credit union" means any credit union insured by the NCUSIF, so the rule generally applies to both federally insured state-chartered credit unions (FISCUs) and federal credit unions (FCUs).¹⁴ The rule text in the proposal uses this term and definition to be consistent with the rest of Part 708a, but it has the same meaning as FICU as used in other parts of the NCUA's regulations.

The term "non-credit union" means any institution that is not an FCU or a state credit union (whether or not federally insured), as those terms are defined in the FCU Act. Most of the combination transactions contemplated under this proposal have been between FICUs and other depository institutions, such as banks. In a few cases, however, FICUs have proposed a transaction with a non-depository financial company, such as a mortgage bank. The plain language of the FCU Act does not limit the types of institutions with which FICUs can combine, but allows transactions with any "noninsured credit union or institution."¹⁵ Accordingly, as long as such acquisitions comply with all other legal standards and limitations, there is no legal bar to, for example, a combination transaction between a FICU and a mortgage bank.

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).

¹⁴ Section 708a.405 of the proposed rule applies to FCUs only, because it addresses FCU membership requirements. The state supervisory agencies, not the NCUA, determine membership eligibility and status for state-chartered credit unions.

¹⁵ 12 U.S.C. 1785(b)(1)(A)-(D).

The Board invites comments on the terms it proposes to use to address the transactions and the parties to these transactions under Section 205(b) of the FCU Act. The Board particularly solicits comments regarding the comprehensiveness and scope of the various terms, and whether commenters would recommend alternative, or additional, defined terms.

708a.402, Approval Required for Combination Transactions

Paragraph (a) of this section requires the NCUA's advance approval of combination transactions, and it requires a FICU proposing a combination transaction to submit its request to the Regional Director. FISCUs must obtain the advance approval of their state regulator in addition to the NCUA's approval.

Paragraph (b) of this section recites the statutory factors the NCUA must weigh in its consideration of a combination transaction application. While the first four of the six statutory factors relate to safety and soundness, the list also includes other considerations. In particular, the last two factors on the list require the NCUA to consider the proposed transaction's effect on FICU members and potential FICU members and whether the proposed transaction is in keeping with the FICU's mission. Accordingly, the NCUA reserves the right to object to a transaction, or portions of a transaction, even absent safety and soundness concerns.

Paragraph (c) of this section clarifies that the FICU's board of directors must vote to approve a proposed combination transaction before the FICU submits its application package. While board of

directors' votes are a common practice in these transactions, the NCUA believes that an explicit requirement will ensure that FICU management continues to keep the FICU's directors informed. In similar circumstances, the FICU-to-FICU merger rule in part 708b requires a vote of the board of directors of the continuing credit union.¹⁶ The Board believes a proposed transaction with an institution other than a FICU should receive at least the same level of review from a credit union's board of directors as a proposed merger with a FICU.

The proposal does not impose a limit on the length of time the NCUA may take to consider combination transactions. While the agency continues to gain experience with these transactions, it may be preferable to approach each transaction without a deadline that could impede the NCUA's full understanding of the transaction's potential consequences. In this regard, the Board notes there is also no deadline for agency action in the FICU-to-FICU merger rule. Because, however, the Board is also aware that a specified timeline can be helpful for planning purposes, the Board seeks comment on whether there should be a deadline for agency action after receipt of a complete application package and, if so, what would be the appropriate period for agency action.

The Board also invites comment on the other requirements for approval of a combination transaction. In particular, the Board asks commenters to consider whether the proposed requirements provide sufficient detail for applicants to understand the process and the criteria by which the NCUA evaluates applications.

¹⁶ 12 CFR 708b.104(a)(2). Additionally, the other rules promulgated under the authority of section 205 of the FCU Act require board of directors' votes. 12 CFR 708a.103, 303 (board of credit union converting to bank); 12 CFR 708b.202(a) (board of directors of FICU converting to noninsured status).

708a.403, Submission to the NCUA

This section highlights critical elements of the application package. In particular, it addresses requirements related to features that distinguish FICUs from other types of financial institutions. These features include FICU membership, permissible powers, and the duties of FICU boards.

The applying FICU must specify how it plans to make non-credit union customers FICU members. Membership is important because, with limited exceptions, FICUs may only serve members. The Board determined to include this reminder in the regulatory text so that FICUs do not lose sight of the importance of membership, particularly in light of NCUSIF insurance coverage limitations discussed later in this proposal. Even where the FCU Act would permit service to non-members, such as the acceptance of public unit deposits or the acceptance of non-member deposits by low-income designated FICUs, the FICU's goal should always be to make the customers of the other institution members.¹⁷

The applying FICU must provide basic information about the transaction that enables NCUA staff to evaluate it. NCUA Regional Office staff involved in evaluating these transactions have observed that an application often lacks a succinct summary of very basic information. The NCUA's National Supervision and Policy Manual will detail more specific requirements in this regard, but the Board agrees with NCUA staff that the regulation should list the minimum information required to be disclosed in connection with every transaction. This information includes the balance sheet and income statements for both institutions; a combined financial statement showing the transaction's potential impact on the FICU's net worth; information about the FICU's due diligence

¹⁷ The NCUA's Chartering and Field of Membership Manual discusses FCU membership requirements. In addition, the Office of Credit Union Resources and Expansion can provide additional guidance on membership for FCUs.

assessment of the proposed transaction, including analysis to support the proposed transaction price; a delinquent loan summary; analysis of the adequacy of the FICU's allowance for loan and lease losses; and a list of the other institution's assets that would be impermissible for the FICU to hold under the FCU Act or state law, with the plan for excluding these assets.

This section also includes a requirement that each member of the FICU's board of directors that votes in favor of the combination transaction must certify that the FICU's management has explained how the combination transaction will affect the FICU's net worth and balance sheet, as well as how the FICU determined the purchase price. This board member certification must also state that management explained to the board of directors how the transaction would benefit the current members of the FICU as well as the prospective members to be gained in the transaction. Finally, the board member certification mirrors the conflict of interest provision of the FCU bylaws and requires directors to certify that they do not have a personal or pecuniary interest in the transaction.

The Board seeks comment on all aspects of the requirements for combination transaction applications set forth in this section. The Board particularly solicits commenters' views on whether it would be helpful to have more detailed information in the regulation.

708a.404, Insurance of Deposits

Paragraph (a) of this section requires a FICU proposing a combination transaction to demonstrate that any customer deposits it assumes will be insured by the NCUSIF as of the transaction close.

With certain limited exceptions, FICUs do not have authority to hold non-insured deposits. Further,

the NCUA understands that the Federal Deposit Insurance Corporation will not approve a transaction in which a bank transfers customer deposits to a FICU unless it ascertains that the deposits transferred will have immediate NCUSIF coverage. The availability of federal insurance is a critical consideration in determining whether a proposed transaction meets the “convenience and needs of the members.”

Paragraph (b) of this section describes methods by which a FICU proposing a combination transaction can ensure consumer deposits will have NCUSIF coverage. First, a FICU with a low-income designation may hold non-member deposits from any source and they are insured up to applicable limits. FICUs may also hold public unit deposits that are insured up to applicable limits, to the extent permitted by state law for state-chartered FICUs. Also, the state regulator of a state-chartered FICU can provide a statement confirming that the customers of the institution will become members of the FICU, pursuant to state law, at the transaction close. Finally, an FCU that does not have a low-income designation must demonstrate that the depositors are within its field of membership and that they have taken action to become members of the FCU.

708a.405 Federal Credit Union Membership

This section reiterates the two-step process for joining an FCU. The first step, covered in paragraph (a), is determining that a potential member falls within the FCU’s field of membership. The second step, covered in paragraph (b), is how the potential member becomes an actual member.

The NCUA’s long held position has generally required that to become a member of the FCU 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 FCU membership. This approach is analogous to the voting required in FICU-to-FICU merger transactions, where a majority vote of the whole allows the transaction to proceed without an affirmative act by each individual. The Board invites comments on this aspect of the proposed rule.

Section 741.8

Section 741.8 is the implementing regulation for some of the transactions permitted by § 205(b) of the FCU Act. Section 741.8 also addresses loan purchases, as permitted for FCUs under § 107(13) of the FCU Act. The proposal amends paragraph (a) to include purchases of assets other than loans to the list of authorized transactions. The proposal also revises paragraph (c) to delineate the other NCUA regulations that apply to each particular type of transaction. The NCUA's longstanding position is that § 741.8, on its own, is not additional or separate authority, but simply states that the NCUA must approve certain types of transactions that are otherwise permitted by the FCU Act and other NCUA regulations.¹⁸ The revisions to § 741.8(c) will make it clear to FICUs considering a transaction which additional regulations may apply.

The proposal also adds a paragraph (d) to § 741.8 to enumerate the statutory factors the NCUA must consider when evaluating transactions. The FCU Act requires the NCUA to consider these

¹⁸ As stated in a previous rulemaking regarding Part 741.8, "other regulations may limit or otherwise regulate those transactions, for example, the member business lending rule, the fixed asset rule, the eligible obligations rule, and so forth." 70 FR 75723 (Dec. 21, 2005).

factors when evaluating transactions authorized under § 205(b) of the FCU Act. The loan and asset purchase transactions addressed in § 741.8, which are authorized by the investment and eligible obligations authority of the FCU Act, do not currently require analysis of these factors.

Nonetheless, these factors address the two major issues at stake in any transaction: (1) whether it is safe and sound, and (2) whether it helps the credit union serve its members. Accordingly, the Board has determined that it is prudent and appropriate to use these factors in evaluating all transactions under § 741.8.

The Board seeks comment on all aspects of the proposed amendments to § 741.8, including whether additional amendments to § 741.8 would improve transparency or clarity.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.¹⁹ For purposes of this analysis, the Board considers small credit unions to be those having under \$100 million in assets.²⁰ This rule will affect only those FICUs that propose to engage in certain transactions with non-FICUs. The NCUA's records indicate none of the FICUs proposing such transactions from 2013 to the present had less than \$100 million in assets. In fact, the smallest FICU making such a

¹⁹ 5 U.S.C. 603(a).

²⁰ Interpretive Ruling and Policy Statement 15-1, 80 FR 57512 (Sept. 24, 2015).

request had \$258 million in assets. Accordingly, the NCUA certifies the rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)²¹ applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection.

NCUA proposes to add new Subpart D to Part 708a to clarify and make transparent the procedures and requirement currently related to combination transactions with an institution other than a FICU and specifies the basic requirements for these type of transactions. All transactions require NCUA approval, and state-chartered FICUs must also obtain their state regulator's approval. The NCUA estimates there will be approximately 20 transactions under this rule every year. While the NCUA currently requires affected FICUs to submit all of the information required in the rule as part of an application, the NCUA is requesting a new OMB control number to cover information collection requirements proposed by new Subpart D to Part 708a.

Current §741.8 prescribes that a credit union must submit a request to NCUA for approval to purchase assets and assumption of liabilities. This section is being revised to delineate the other NCUA regulations that apply to each particular type of transaction. The information collection

²¹

requirements associated the submission of a request under subpart D will be covered by the new OMB control number. The information collection requirements currently cleared under OMB control number 3133-0169 will continue to address of the reporting requirement outside of those covered by subpart D, with no changes at this time.

This is a request for a new OMB control number to cover the information collection requirements of Subpart D to Part 708a.

OMB Control Number: 3133-NEW

Title of information collection: Combinations of Credit Unions and Other Types of Financial Institutions, Subpart D to Part 708a.

Estimated number of respondents: 20.

Estimated number of responses per respondent: 2.7.

Estimated total annual responses: 54.

Estimated burden per response: 74.37.

Estimated total annual burden: 4,016.

The NCUA invites comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Comments regarding the information collection requirements of this rule should be sent to (1) Dawn Wolfgang, NCUA PRA Clearance Officer, 1775 Duke Street, Suite 6032, Alexandria, VA 22314, or email at PRAComments@ncua.gov and the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.gov.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order to adhere to fundamental federalism principles. The proposed rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has, therefore, determined that this rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of §654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR part 708a

Charter conversions, Credit unions

List of Subjects in 12 CFR part 741

Bank deposit insurance, Credit unions.

By the National Credit Union Administration Board on January 23, 2020.

Gerard Poliquin

Secretary of the Board

For the reasons stated above, the NCUA proposes to amend 12 CFR parts 708a and 741 as follows:

PART 708a BANK CONVERSIONS AND MERGERS

1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 1785(b), and 1785(c).

2. Add new Subpart D to read as follows:

Subpart D – Combinations of Credit Unions and Other Types of Financial Institutions

- 708a.401 Definitions
- 708a.402 Approval Required for Combination Transactions
- 708a.403 Submission to the NCUA
- 708a.404 Assumption of Deposits; Federal Share Insurance Required
- 708a.405 Federal Credit Union Membership

708a.401 Definitions

Combination transaction means any transaction in which a credit union does one or more of the following: merges or consolidates with any non-credit union; assumes liability to pay any deposits in, or similar liabilities of, any non-credit union; or transfers assets to any non-credit union in consideration of the assumption of liabilities for any portion of the member accounts in the insured credit union.

Credit union has the same meaning as insured credit union in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

Non-credit union means any financial institution that is not a Federal credit union or a State credit union, as those terms are defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

Regional director means the director of the NCUA Regional Office for the region where a natural person credit union's main office is located. For corporate credit unions and natural person credit unions with \$10 billion or more in assets at the time of application, *Regional Director* means the Director of NCUA's Office of National Examinations and Supervision.

708a.402 Approval Required for Combination Transactions

- (a) *General.* The NCUA's prior approval is required before a credit union may engage in a combination transaction. A state-chartered credit union must also obtain the prior approval of its State Supervisory Authority to engage in a combination transaction.
- (b) *Factors.* The NCUA will assess each of the below factors in considering applications for combination transactions:
- (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.

(c) *Credit union board of directors.* A credit union proposing a combination transaction must conduct a vote of its board of directors on the proposed transaction before submitting a request under paragraph (a) of this section.

708a.403 Submission to the NCUA

(a) *General.* A credit union proposing a combination transaction must submit its request to the Regional Director.

(b) *Credit union membership.* The request to the NCUA must explain the credit union's plan for obtaining credit union membership for the customers of the non-credit union.

(c) (1) *Information required.* The request to the NCUA must, at a minimum, include the following items:

(A) A balance sheet and income statement for each institution;

(B) A combined financial statement showing the transaction's potential impact on the credit union's net worth;

(C) A summary of the credit union's due diligence assessment process for the proposed transaction, including analysis to support the proposed transaction price;

(D) A delinquent loan summary for any assets involved in the transaction;

(E) An analysis of the adequacy of the credit union's allowance for loan and lease losses;

(F) A list of the other institution's assets that would be impermissible for a credit union to hold under the Act and, for state-chartered credit unions, state law, and an explanation of the plan to dispose of these assets in advance of, or separately from, the transaction; and

(G) A list of bank shareholders.

(2) *Other information.* Notwithstanding subparagraph (1), above, the Regional Director may also request any additional information the Regional Director, in his or her discretion, deems necessary to evaluate the proposed transaction.

(d) *Certification of board of directors.* The request to the Regional Director must include a certification, signed by each member of the credit union's board of directors that voted in favor of the proposed transaction, that contains the following:

- (1) A statement that each director signing the certification supports the proposed combination transaction and believes the proposed combination transaction is in the best interests of the current and potential members of the credit union;
- (2) A statement that credit union management has adequately explained the transaction's expected effect on the credit union's net worth and balance sheet, as well as how the purchase price was determined;
- (3) A description of all materials submitted to the Regional Director with the notice and certification;
- (4) A statement that each director signing the certification had the opportunity to review all relevant facts about the transaction before voting on it; and

- (5) A statement that each director signing the certification, as well as any corporation, partnership or association (other than the credit union) in which the director has a direct or indirect interest, does not have a pecuniary or personal interest in the transaction.

708a.404 Assumption of Deposits; Federal Share Insurance Required

- (a) *Share insurance required.* A credit union proposing to engage in a combination transaction under this subpart must demonstrate to the NCUA that any customer deposits that the credit union is seeking to assume will qualify for coverage up to applicable limits under the National Credit Union Share Insurance Fund (NCUSIF) immediately upon the transaction close.
- (b) *Qualifications for share insurance.* Deposits that the credit union is seeking to assume qualify for NCUSIF coverage up to applicable limits in any of the following instances:
- (1) The credit union has a low-income designation, as permitted by § 701.34 of this chapter.
 - (2) The deposits are from a public unit or a political subdivision thereof, as those terms are defined in § 745.1 of this chapter.
 - (3) The State Supervisory Authority of a state-chartered credit union provides a written statement confirming, subject to the NCUA's satisfaction, that the depositors will be credit union members at the transaction close under the relevant state law.

- (4) A federal credit union demonstrates, pursuant to § 708a.405 of this subpart, that the depositors are within the federal credit union's field of membership and that the depositors have consented to become members of the federal credit union.

708a.405 Federal Credit Union Membership

Requirements. The following requirements apply to federal credit union membership:

- (a) Eligibility. The federal credit union must confirm that each customer of the non-credit union involved in the proposed transaction is within the federal credit union's field of membership. A federal credit union may not assume the deposits of a customer that is outside the federal credit union's field of membership, except as permitted by § 701.32 of this chapter and § 708a.404(b)(1)-(2) of this part. A federal credit union may not acquire the loans of a customer that is outside the federal credit union's field of membership, except as permitted by § 701.23 of this chapter.
- (b) Consent to federal credit union membership. The federal credit union must confirm that the customers of the non-credit union who are within the federal credit union's field of membership have consented to become members of the federal credit union.

PART 741 – REQUIREMENTS FOR INSURANCE

3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781-1790, and 1790d; 31 U.S.C. 3717.

4. Revise paragraph (a) of § 741.8 to read as follows:

(a) Except as provided in paragraph (b) of this section, any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) must receive approval from the NCUA before purchasing assets, including loans, or assuming an assignment of deposits, shares, or liabilities from:

* * *

5. Revise paragraph (c) of § 741.8 to read as follows:

(c) *General.* A credit union proposing a transaction under paragraph (a) of this section must submit its request to the Regional Director. A credit union must also comply with all requirements of other applicable portions of this chapter, as noted below. A state-chartered federally insured credit union must also comply with any applicable state law or regulations.

(1) For a transaction that is a merger or consolidation with an institution of the type listed in paragraph (a)(2) of this section, the credit union must comply with Subpart D of Part 708a of this chapter.

(2) For a transaction that is a merger or consolidation with an institution of the type listed in paragraph (a)(1) of this section, the credit union must comply with Part 708b of this chapter.

- (3) For assumptions of deposits or other liabilities, not part of a merger or consolidation, from an institution of the type listed in paragraph (a)(2) of this section, the credit union must comply with Subpart D of Part 708a.
- (4) For purchases of loans, not part of a merger or consolidation, from an institution of the type listed in paragraphs (a)(1) and (a)(2) of this section, the credit union must comply with § 701.23 of this chapter.
- (5) For purchase of other assets, not part of a merger or consolidation, from an institution of the type listed in paragraphs (a)(1) and (a)(2) of this section, the credit union must comply with Parts 703 or 721 of this chapter, as applicable.

6. Add new paragraph (d) at the end of § 741.8 to read as follows:

(d) *Factors.* The NCUA will assess each of the below factors in considering applications for transactions under this section:

- (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.