June 15, 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 Chairman Hood:

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the procedures and requirements related to combination transactions with non-credit unions.

The NCUA Board proposes to add subpart D to part 708a of its regulation that is 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. Combination transactions also include a federally insured credit union merger or consolidation with a non-credit union entity.

**Approval Required for Combination Transactions (Section 708a.402)**

This section requires NCUA’s advance approval of combination transactions. Federally insured state-chartered credit unions must obtain their state regulator’s approval in addition to the NCUA’s approval.

Also, this section recites the statutory factors the NCUA must weigh in its consideration of a combination transaction application. The first four of the six statutory factors relate to safety and soundness and the last two factors on the list 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. Hence, the NCUA reserves the right to object to a transaction, or portions of the transaction, even absent safety and soundness concerns.
It is important that a credit union consider the potential impact that a combination transaction will have on the existing and new membership. We recommend that the NCUA carefully consider the potential impact on new and existing credit union members before making its decision regarding these assessment factors. This may require direct communication between NCUA and the applying credit union to understand what the potential transaction may mean for new and existing members.

The proposed rule does not impose a limit on the length of time that NCUA may take to consider a combination transaction. A specified timeline is helpful to credit unions for planning purposes as it relates to these transactions.

HCUA strongly urges NCUA to adopt a specified timeframe in considering combination transactions. Timing is of utmost importance in a merger or other combination transactions, including those with non-credit union entities. 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. It is important to maintain parity. We recommend NCUA adopt a 60-day timeframe to respond to a combination transaction application.

Submission to the NCUA (Section 708a.403)

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

Among other elements, an applying credit union must provide basic information about the transaction that enables NCUA staff to evaluate it. This information includes:

- 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, including analysis to support the proposed transaction;
- The balance sheet and income statement for both institutions;
- A delinquent loan summary;
- Analysis of the adequacy of the credit union’s allowance for land 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.
HCUA agrees that it is important for the agency to have enough information to make an informed decision regarding a combination transaction. However, we have concern with the proposed requirement for the applying credit union to list the bank’s assets that would be impermissible for the credit union to hold and a plan for excluding such assets. Rather than require the applying credit union to specify how it will exclude such assets at the outset, it would be preferable to allow the credit union to (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.

If the NCUA considers such an approach, HCUA suggests providing the applying credit union with twelve months to remedy or dispose of the assets.

**Federal Credit Union Membership (Section 708a.405)**

This section reiterates the two-step process for joining a federal credit union. The first step is determining that a potential member falls within the federal credit union’s field of membership. The second step is how the potential member becomes an actual member. NCUA has generally required that to become a member of the federal credit union the other entity’s customer must affirmatively act through an authoritative vote or individual consent before closing of the 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.

The proposed requirement to obtain an affirmative act – whether an authoritative vote or individual consent - will be an extremely burdensome task and will likely cause the transaction to fail. This requirement will create a huge challenge for the applying credit union. HCUA suggests that NCUA allow an opt-out option that would allow the applying credit union to inform all bank customers that they will become members of the credit union unless they take action to opt out.

**Loan & Asset Purchase Transactions (Section 741.8)**

NCUA’s 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 type of transaction. The proposal also adds a paragraph (d) to enumerate the statutory factors the NCUA must consider when evaluating transactions. The loan and asset purchase transactions addressed in Section 741.8, which are authorized by the investment and eligible obligations authority of the Federal Credit Union Act, do not currently require analysis of these factors.
In this section, the NCUA proposes to completely restructure subsection (c) of Section 741.8. As it relates to the purchases of loans, proposed new subsection (c) provides in new paragraph (c)(4):

(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.

NCUA Rule 701.23 addresses the purchase, sale and pledge of eligible assets by federal credit unions. Subject to a limited exception for certain well capitalized federal credit unions, it limits the purchase of loans to loans of members. The proposed change in the rule introduces a new substantive restraint that will adversely impact the existing operational engagement of many federally insured credit union’s in loan pool investment programs expressly approved by NCUA under Section 741.8(c) in its current form.

We ask that NCUA withdraw from its rulemaking the proposed amendment to Section 741.8. In its current form, the section is more than adequate in limiting the ability of credit unions to purchase assets from non-NCUSIF insured entities, without prior NCUA approval.

A real-world example of how the current regime is working can be found in with The Credit Union Loan Source, LLC. By way of illustration, many of our member credit unions participate in The Credit Union Loan Source, LLC (“CULS”) indirect auto loan program (“CULS Auto Program”). CULS is a credit union service organization organized by the three largest credit unions in Georgia and the Georgia Credit Union League.

The CULS Auto Program enables participating credit unions to purchase investment interests in homogenous pools of motor vehicle retail installment sales contracts (“Contracts”), pursuant to the following structure: (i) CULS acquires the Contracts from automobile dealers and then sells 99% of each loan to the National Cooperative Bank (“NCB”) on a daily basis (“Participation Interest”); (ii) the NCB then transfers 100% of its Participation Interest in the loans to the credit union program participants on a monthly basis in one or more pools, in amounts that equal the purchase percentages they have requested; (iii) the loans in the monthly pools are underwritten and originated pursuant to credit guidelines, rate sheets and loan documentation generated and managed by CULS; and (iv) CULS also services the loans and provides each participating credit union with a full array of reports to enable it to effectively monitor program activity.

Since the NCB is FDIC insured, not NCUSIF insured, NCUA approval of credit union participation in the CULS Auto Program was required and obtained under NCUA Rule 741.8(a). The NCUA
and state regulators are provided access to any and all CULS records, documents, staff and processes related to the operation of the CULS Auto Program.

The CULS Auto Program has been successfully operating in Georgia since 2005 and open to funding since 2019 for our member credit unions. It has an excellent track record in helping credit unions manage their assets and liabilities through a prudent diversification of loan portfolios and control of balance sheet risk. It serves credit unions experiencing high liquidity that desire to purchase an interest in a monthly pool of homogeneous automobile loans, irrespective of the borrower’s eligibility for membership in the acquiring credit unions.

NCUA Rule 701.22 dealing with loan participations does not apply to the purchase of an investment interest in a pool of loans and, accordingly, it does not apply to the CULS Auto Program. Because of its inapplicability, NCUA approval of credit union participation in the CULS Auto Program was required and has been obtained under NCUA Rule 741.8(a).

NCUA Rule 741.8 applies to federally insured credit unions. NCUA Rule 701.23 applies to federal credit unions. By bringing Rule 701.23 into the scope of Rule 741.8, NCUA will be subjecting federally insured credit unions to the eligible obligation membership criterion. Since none of the loans in the CULS monthly loan pools are made to members any of the participating credit unions, those federally insured credit union’s will no longer be able to participate in the CULS Auto Program.

Credit Union participation in the CULS Auto Program has received the approval of NCUA, and applicable state credit union regulators, for many years. It has proven to be a well-managed program that has enabled participating federally insured credit unions to earn a reasonable yield on loans with which the credit unions have great operational familiarity. NCUA should preserve the current approval standard embodied in existing Rule 741.8(c), to avoid the imposition of an unnecessary restraint that forces those credit unions to terminate their participation in the program.

We note that proposed new paragraph 741.8(d) enumerates the Federal Credit Union Act Section 205(b) factors NCUA must consider in evaluating loan purchase transactions. Those factors sufficiently address pertinent safety and soundness considerations relating to loan acquisitions in the CULS Auto Program.

Again, we ask that NCUA withdraw from its rulemaking the proposed amendment to Section 741.8, considering that the section as currently written addresses and adequately limits the ability of credit unions to purchase assets from non-NCUSIF insured entities, without prior NCUA approval. We respectfully disagree with the proposed rule in its current form, and believe it to
be an unnecessarily burdensome and arbitrary effort to restrict a legitimate free-market activity, with no tangible safety and soundness benefit.

**Conclusion**

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Brad Douglas
President/CEO