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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Mergers or Conversions of Federally-Insured Credit Unions to Non Credit Union Status: NCUA Approval

AGENCY: National Credit Union Administration (NCUA). ACTION: Final rule.

SUMMARY: The final rule applies to any credit union that is insured by the National Credit Union Share Insurance Fund (NCUSIF) and that proposes to merge into or convert to any non credit union institution. The rule imposes new substantive requirements. The purposes of these requirements are to ensure that such transactions take place only pursuant to an informed vote of the credit union's members/owners, to prevent self-dealing and other abuses by individuals involved in the transactions and to ensure that these transactions do not present safety and soundness risks to the NCUSIF and the credit union system. State chartered NCUSIF insured credit unions may, on a case-by-case basis, obtain a waiver from NCUA's rules if state laws and procedures are determined to adequately address these concerns.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION:

Background

In June 1994, the NCUA requested comments on proposed changes to part 708 of its regulations. At that time, part 708 only addressed situations where an NCUSIF insured credit union dropped NCUSIF insurance, either through a merger into a non NCUSIF insured credit union or through a voluntary termination or conversion of insurance. It did not cover the merger or conversion of a credit union into a non credit union institution. The Federal Credit Union Act, however, vests the NCUA Board with the responsibility to regulate such mergers or conversions. 12 U.S.C. 1785(b). The proposed changes to part 708 clarified that NCUA approval requirements apply to *all* mergers and conversions where the continuing institution is not insured by NCUSIF. 59 FR 33702 (June 30, 1994).

The proposal was in response to abuses that had occurred with bank and thrift conversions, some isolated instances in the credit union system, and recent solicitations by outside consultants and attorneys to federally insured credit unions for conversion to non credit union charters. The solicitations often appeared motivated by benefits to the attorneys, consultants and insiders, rather than the members. The amendment was deemed necessary "to provide NCUA with clear authority to prevent abuses in connection with conversions of insured status." 59 FR 33702. The comments to the proposal were generally positive and consistently stressed that the members need to be properly informed and that the NCUA needs to ensure that safety and soundness and members' interests are protected.

On September 16, 1994, the NCUA Board issued an interim final rule and request for further comment. The rule was effective upon publication on September 23, 1994. 59 FR 48790. The new rule, part 708a, established that the NCUA Board must approve any merger or conversion of a federally-insured credit union to any non credit union institution, including preapproval of any notices to members that are sent out in connection with the merger or conversion. At the same time, the Board requested further comment on a number of issues related to the application and approval process.

Summary of Comments and Discussion of Issues

In the June 1994, proposal, the NCUA Board requested comment on the general issue of NCUA regulation in this area and on the specific issue of uniform member notice. In the interim rule, comment was requested on a number of

issues that the Board felt required further consideration and review. The NCUA received 16 comments on the proposed rule: 10 from credit unions; 4 from credit union trade groups; 1 from a bank trade group; and 1 from a credit union league. The NCUA received 19 comments on the interim rule: 6 from federal credit unions; 6 from federally insured state chartered credit unions (FISCUs); 3 from credit union trade groups; 2 from bank trade groups; and 2 from state regulators. The following is a combined summary of the comments received on the proposed rule and the interim final rule.

1. NCUA Oversight

In the proposed rule, 14 commenters addressed the issue of NCUA oversight. Twelve expressed general support for NCUA oversight and two expressed general opposition. The supportive commenters cited the following benefits of NCUA regulation: Eliminate confusion, prevent unnecessary litigation, protect the members from potential abuse, assure that the members know the advantages and disadvantages of any proposal, protect the assets and integrity of the NCUSIF and assure that financial benefits to insiders are fully disclosed. The two negative commenters were a bank trade group and a state chartered credit union. The bank trade group characterized the proposal as an overreaction by NCUA to a few isolated examples.

The issue of NCUA's jurisdiction over mergers or conversions by federally-insured state credit unions (FISCUs) was raised by 5 commenters on the interim rule. The five consisted of the professional group that represents state credit union supervisors (the National Association of State Credit Union Supervisors, or NASCUS), two FISCUs and two state regulators. All strongly opposed any NCUA regulation of mergers or conversions of FISCUs.

NASCUS made the point that only seven of the 48 states which charter credit unions allow them to merge with other financial institutions and only four states allow credit unions to convert into another form of financial institution. NASCUS' comment also recognized, however, that several states have statutes that are silent on the issue. It is those states which cause the Board the most concern. Without specific