



National Credit Union Administration
Office of the Secretary of the Board

June 9, 2022

SENT VIA EMAIL AND FEDEX

XXXX
XXXX

XXXX
XXXX

XXXX
XXXX

RE: XXXX Supervisory Review Committee Appeal Decision (SRC-01-22)

Dear XXXX and XXXX,

I am writing to inform you that the NCUA's Supervisory Review Committee ("SRC") has made a final decision to deny your appeal and uphold the determination made by the XXXX Regional Director in the denial of XXXX application to purchase substantially all of the assets and liabilities of XXXX. We further explain our decision below.

XXXX filed a notice of appeal to the SRC with the NCUA Board Secretary, pursuant to 12 C.F.R. § 746.107, in a letter dated April 20, 2022. Your letter included the following statement of appeal:

"XXXX ("XXXX") welcomes the opportunity to appeal to the National Credit Union Administration's ("NCUA") Supervisory Review Committee ("SRC"), pursuant to 12 C.F.R. § 746.107, the XXXX Regional Director's April 1, 2022 Denial (the "Denial," at Ex. A) of XXXX Application to purchase substantially all the assets and liabilities of XXXX ("XXXX")."

Authority to Request SRC Review

The NCUA's regulations allow a credit union to request SRC review after receiving a written decision issued by a program office in response to a request for reconsideration. *See* 12 C.F.R. § 746.105. The SRC must receive the request for review within 30 days of the credit union receiving the written decision by the appropriate program office on reconsideration, and the matter for review must be a "material supervisory determination," as defined by the rule.

Specifically, a material supervisory determination means any written decision by a program office that may significantly affect the capital, earnings, operating flexibility, or that may otherwise affect the nature or level of supervisory oversight of an insured credit union. *See* 12 C.F.R. § 746.103.

The XXXX Regional Director issued a letter denying XXXX application to purchase XXXX on April 1, 2022. This denial may significantly affect the capital, earnings, operating flexibility or may otherwise affect the nature or level of supervisory oversight of XXXX; thus, it meets the definition of a material supervisory determination. Your appeal was timely filed with the NCUA Secretary of the Board on April 26, 2022. Accordingly, your appeal meets the regulatory requirements and qualifies for SRC review.

Background and Timeline

XXXX is a XXXX state-chartered credit union headquartered in XXXX, XXXX with assets of XXXX as of March 2021 (increased to XXXX in September 2021). XXXX is a XXXX XXXX-chartered community bank headquartered in XXXX (assets stable at XXXX in September 2021).

Date	Activity
April 21, 2021	NCUA received XXXX purchase application package. Process was started to initiate required memorandum of understanding (“MOU”) with relevant regulatory authorities.
April 26, 2021	NCUA Southern Region staff met with representatives from XXXX, including General Counsel XXXX and consultant to discuss the application and NCUA’s review process.
May 6, 2021	MOU with relevant regulatory authorities finalized.
June 7-22, 2021	Virtual review of XXXX purchase application by NCUA XXXX Region review team.
September 2, 2021	XXXX Region issued deferral letter and distributed it to XXXX, prior to the October 31, 2021 deadline XXXX and XXXX had agreed to in the contract.
September 9, 2021	NCUA XXXX Regional Director (“RD”) met with XXXX senior executives and managers to review the deferral letter, and related safety and soundness concerns.
November 19, 2021	NCUA received XXXX written response to the September 9, 2021 NCUA deferral letter.
December 16, 2021	NCUA acknowledged receipt of XXXX November 19, 2021 reply to the deferral letter and requested updated XXXX financial information through November 30, 2021.

XXXX NCUA Supervisory Review Committee Appeal Decision (SRC-01-22)

June 9, 2022

Page 3

December 17, 2021	NCUA XXXX Region staff and ONES met with representatives from XXXX to answer questions related to NCUA's December 16, 2021 request for updated information.
January 11, 2022	XXXX submitted updated information in response to NCUA's December 16, 2021 request for updated information.
January 18, 2022	NCUA advised XXXX that the XXXX Region is still reviewing the information XXXX submitted on November 19, 2021, and January 11, 2022.
February 2, 2022	XXXX RD advised XXXX Counsel that he intended to seek Office of Examination and Insurance ("E&I") concurrence to deny the bank acquisition.
February 10, 2022	XXXX RD XXXX, at the request of XXXX General Counsel ("GC") met with GC and XXXX Outside Counsel regarding reasons for the proposed denial. XXXX requested that XXXX RD suspend review of the bank application to provide XXXX an opportunity to discuss with the bank.
February 17, 2022	NCUA received email from XXXX GC requesting additional time for XXXX to meet with the bank and discuss options.
March 3, 2022	Senior XXXX representatives requested a meeting with NCUA to discuss the purchase application and NCUA's continued safety and soundness concerns. XXXX RD advised XXXX executive team the NCUA had completed its review and did not need additional information from XXXX.
March 3, 2022	XXXX GC requested, and XXXX RD agreed, to have NCUA's Regional Lending Specialists ("RLS") re-review the XXXX report as XXXX believed it addressed NCUA's concerns.
March 4, 2022	The RLS team convened and re-reviewed the XXXX report and its appendices the following week.
March 16, 2022	NCUA received email from XXXX GC asking if additional information was needed and advising that XXXX was working on a video to be shared with NCUA. XXXX RD responded that the Region's recommendation had been forwarded to E&I for concurrence, and that XXXX should expect to receive a formal written decision the week of March 28, 2022.

March 29, 2022	XXXX RD advised XXXX GC of NCUA's decision to deny XXXX purchase application.
April 1, 2022	XXXX RD issued written denial letter to XXXX with appeal rights to SRC.
April 26, 2022	XXXX appealed XXXX Region determination to SRC.
May 2, 2022	NCUA Board Secretary appointed SRC Panel to consider appeal.
May 10, 2022	SRC requested additional documentation from XXXX.
May 25, 2022	SRC received additional documentation from XXXX.
June 2-3, 2022	SRC discovered "locked" documents within the documentation requested from XXXX and requested "unlocked" documents from XXXX. SRC received all "unlocked" XXXX documents on June 3, 2022.

SRC Considerations and Conclusions

Pursuant to §741.104(a) of the NCUA's regulations, as the reviewing authority, the SRC is charged with making an independent decision regarding whether a material supervisory determination by the program office subject to appeal is appropriate. The SRC gives no deference to the legal or factual conclusions of the program office. However, the burden of showing an error rests solely with the insured credit union.

Upon your request for review, the SRC conducted an independent review of the full record in this case, including the XXXX Region's documents, XXXX appeal submission, and the supplemental documents provided by XXXX in response to the SRC's request.

The SRC notes that, while XXXX complied in submitting supplemental documentation to the SRC, upon review of that supplemental documentation, the SRC found some of the information useful, but overall XXXX failed to satisfactorily fulfill the SRC's request and to meet the credit union's burden of showing error.

Ultimately, based upon the SRC's review of the full record, the SRC found the XXXX Region's decision to deny the request reasonably justified and found no compelling reasons to reverse the decision of the XXXX Region.

Specifically, the SRC cites the following issues as the primary reasons for denying your appeal:

1. Capital Position – The SRC shared a common concern with size of the bank purchase combined with significantly expanding your market. The subordinated debt XXXX acquired bolsters its capital position. However, it is the SRC's position that the bank purchase and change in operations will place significant stress on XXXX capital position.
2. Capital Policy – XXXX recently approved capital policy, submitted per our request, failed to meet the SRC's expectations. XXXX addressed most, if not all,

of the items in 702.303 of the NCUA's regulations in your plan. Nevertheless, XXXX five-page policy falls well short of the guidance outlined in 702.303(a) which is as follows:

- a) *General requirements. The extent and sophistication of a covered credit union's governance over its capital planning and analysis process must align with the extent and sophistication of that process. The process must be consistent with the financial condition, size, complexity, risk profile, scope of operations, and level of capital of the covered credit union. The ultimate responsibility for governance over a covered credit union's capital planning and analysis process rests with the credit union's board of directors. Senior management must establish a comprehensive, integrated, and effective process that fits into the broader risk management of the credit union. Senior management responsible for capital planning and analysis must provide regular reports on capital planning and analysis to the credit union's board of directors (or a designated committee of the board).*

The SRC found XXXX policy lacks the complexity and sophistication commensurate with your current or proposed expanded operations. XXXX policy should be expanded to thoroughly address all issues outlined in the regulation. Additionally, the policy should be reviewed to ensure it meets all regulatory timeframes.

3. Capital Plan - There are several mandatory elements of an acceptable capital plan that address how credit unions will maintain sufficient capital under expected and unfavorable conditions. On page 18 of your appeal letter, Item C, reads "XXXX, In Any Event, Has Produced a New, "Top Down" Stress Test for This Appeal". However, exhibit M of the appeal letter includes the stress test results effective March 31, 2021, previously submitted to NCUA on July 2, 2021.

Item number seven of the SRC's document request list specifically requested "The top down stress test referred to on page 18 of the Appeal Letter." Results from a new top down stress test were not provided. Instead, comments on this particular request focused on the December 2021 hiring of XXXX first VP of Capital Planning and Stress Testing and an updated March 31, 2022 stress test that staff is working on. While the SRC acknowledges these improvements, failure to provide the requested information contributed to the SRC's decision to uphold the Region's initial denial.

4. Credit Risk – XXXX failed to provide loan level data and analytics for the XXXX portfolio. While XXXX provided data on loans over \$250,000, it failed to include the information specifically requested by the SRC. It is unclear if XXXX or XXXX lacks the ability to provide the requested data; XXXX simply failed to provide the requested information without any explanation. Importantly, the failure of XXXX to provide this information raises concerns about the overall XXXX portfolio and XXXX ongoing management of the portfolio. As a result, there is a lack of financial data needed for a thorough analysis regarding the proposed acquisition of the XXXX loan portfolio by XXXX. Furthermore, the overall summary data provided for XXXX commercial loan portfolio showed several categories of elevated risk (Moderate to High). XXXX did provide to the SRC the XXXX Portfolio Analysis which provided detailed information

regarding XXXX loan portfolio. The analysis indicated a migration to a higher risk profile.

In light of these concerns, the SRC agrees with the conclusions the XXXX Region reached with respect to governance concerns with the loan data. Specifically, as summarized in the XXXX Region's April 1, 2022 letter:

"... when data was obtained by XXXX in response to our requests, there were problematic data gaps regarding the XXXX commercial loan portfolio. This impedes robust risk analysis necessary to support XXXX decision to enter into a transaction material to its operations and its balance sheet (and systemically important to the NCUSIF), and to negotiate a substantial purchase price before having the appropriate data available to analyze XXXX in detail."

For all of the above reasons, the SRC affirms the determination of the XXXX Regional Director and denies your appeal.

Pursuant to the NCUA's regulations, 12 C.F.R. §746.109, you may appeal this decision to the NCUA Board within 30 calendar days of receiving this letter. Such appeals must follow the requirements established in the regulation and must be filed in writing with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. Please refer to the regulation for additional information.

Sincerely,

Digitally signed by MELANE

MELANE CONYERS- CONYERS-AUSBROOKS

AUSBROOKS

Date: 2022.06.09 17:45:44-04'00'

Melane Conyers-Ausbrooks
NCUA Supervisory Review Committee Chair

Enclosure: NCUA SRC XXXX Document Request

cc: XXXX, XXXX Chief Risk Officer and General Counsel
XXXX, XXXX Vice President of Government Affairs