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Student Loan Assets: Sales, Mergers and Acquisitions NCHELP/EFC Summer Legal Conference

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I. What is Student Loan M&A?

- A. Loan Portfolio Sale
- B. Sale of securitization residuals
- C. Acquisition of servicing rights
- D. Acquisition of an origination platform
- E. Merger with or acquisition of another student loan company

II. Typical Transaction Steps

1. Seller/Target decides to sell/merge, hires a financial advisor
2. Potential Bidders are contacted
3. Confidentiality/Non-Disclosure Agreements
4. Due diligence commences
5. Exclusivity Agreement
6. Signing of an APA/SPA/Merger Agreement
7. Consents and other conditions precedent are obtained
8. Purchaser obtains financing (if applicable)
9. Closing
10. Post-Closing Transition Services
11. Purchase Price Adjustment

III. Key Diligence Items

A. Authority

1. Board Consent
2. Shareholder Vote?
3. Governmental Authorizations

B. Seller/Target Organizational Structure

C. Will there be a sale of substantially all the assets of the seller?

1. Change of control covenants triggered?
2. Purchase price escrow/holdback
3. Successor liability

III. Key Diligence Items

D. Review of material contracts (including financing documents, servicing contracts, loan guarantees/insurance, general corporate contracts).

Key issues:

1. Restrictions on assignment
2. Change of control triggers
3. Material ongoing obligations (e.g., repurchases, indemnities, second disbursements)
4. Termination and deconversion fees

III. Key Diligence Items

E. Governmental/Regulatory Approvals

1. H-S-R
2. DOE
3. State licensing requirements
4. Other Regulatory

F. Data tape

G. Litigation

H. Employment Contracts/Employee Benefit Plans

IV. Loan Portfolio Sale

- A. Are the loans encumbered? If yes, will debt be assumed or repaid at closing?
- B. If newly originated, are the loans fully disbursed?
- C. Who is the servicer?
 - 1. Will servicer be retained? If so, is consent required?
 - 2. If servicer is not retained, what is the timing and cost of deconversion?
- D. If FFELP Loans, is buyer must be an eligible lender under the Higher Education Act.

IV. Loan Portfolio Sale

E. Key representations and warranties.

1. Good title
2. Due authorization
3. No conflicts
4. Accuracy of data tape
5. Satisfaction of eligibility criteria
6. Borrower benefits
7. Custody
8. Compliance with law and Guarantor requirements

IV. Loan Portfolio Sale

- F. Covenants between signing and closing/Conditions to Closing
 - 1. Obtain necessary consents
 - 2. Delivery of promissory notes and other loan files to Purchaser or its Custodian
 - 3. No impairment
 - 4. If applicable, cooperation in servicing transfer

IV. Loan Portfolio Sale

G. Remedies for breach

1. Repurchase Obligation

2. Indemnities

a. Length of survival (in-school, deferment, forbearance)

b. Tipping basket

c. Cap?

d. Purchase Price holdback/escrow

3. Breach of Contract

IV. Loan Portfolio Sale

H. Key Post-Closing Covenants

1. Seller to forward collections
2. Notices to obligors
3. Seller to forward communication
4. Maintenance of confidentiality of borrower information (Graham-Leach-Bliley)
5. Reg AB/Dodd-Frank reporting requirements

V. Sale of securitization residuals

- A. Are the residuals certificated? If not, alternatives include:
 1. Acquire equity in SPV
 2. Assignment of contractual payment rights
 3. Direct Payment from Trustee

- B. Change of control trigger? Can residuals be separated from the owner of the student loans?

V. Sale of securitization residuals

- C. Transfer restrictions (tax, securities laws, opinion requirements, etc.)
- D. Need representation and warranty as to compliance with indenture and other securitization documents
- E. Covenants between signing and closing
 1. Comply with securitization documents
 2. No amendments without purchaser's consent

VI. Acquisition of Servicing Rights

- A. Anti-assignment provisions in servicing agreement?
 1. If serviced loans are financed, will likely require consent of the lender
 2. If serviced loans are securitized, will likely require satisfaction of rating agency condition and potentially bondholder consent
 3. Subservicing workaround
 4. Acquire equity in the Servicer
- B. Deconversion fees and costs
- C. Software licenses

VI. Acquisition of Servicing Rights

D. Timing/Transfer of Files and Custody

E. For FFELP, does acquirer satisfy DOE requirements for third party servicers?

F. Transfer of employees

1. Incentives
2. Benefit Plans
3. Employment Contracts

VII. Acquisition of Origination Platform

A. Consumer lending law compliance

1. Usury
2. Licensing
3. TILA and other disclosures
4. Dodd-Frank/CFPA

VII. Acquisition of Origination Platform

B. Bank fronting arrangement?

1. Transfer restrictions
2. Indemnity obligations
3. Term

C. Transition Issues

1. Applications in process at closing
2. Outstanding disbursement obligations
3. Employees
4. Marketing

VII. Acquisition of Origination Platform

D. IP

1. Use of Seller's name/trademarks
2. Copyrights and marketing materials
3. Web site
4. Software
5. Customer Lists

E. Non-Compete

VIII. Merger with or acquisition of a student loan company

- A. Unlike an asset sale, liabilities are assumed
- B. Scope of diligence is broader:
 1. Review of all of target's material contracts
 2. Contingent Liabilities
 - a. Loan repurchase and indemnities
 - b. Litigation
 - c. Taxes
 - d. Employees Benefits
 - e. Guaranties/Indemnities
 - f. Real Property/Environmental

VIII. Merger with or acquisition of a student loan company

- C. Change of Control triggers in securitizations and other financings
 - 1. Affirmative requirements to assume servicing or administration
 - 2. Negative covenants
 - a. Rating Agency Conditions
 - b. Trustee Consent
 - c. Bondholder Consent

IX. Other Considerations

- A. Financing contingencies.
- B. Competing Proposals.

X. Discover/Student Loan Corp. Merger

A. Three transactions in one

1. Sallie Mae acquires certain FFELP securitization residuals, servicing and administration
2. Citibank acquires assets not sought to be acquired by Sallie Mae or Discover
3. Remaining SLC merges into a subsidiary of Discover Bank
 - a. Private Loan securitization residuals
 - b. Private Loan servicing
 - c. Origination platform
 - d. Employees

B. SLC was 80% owned by Citibank. Established independent committee of directors

X. Discover/Student Loan Corp. Merger

- C. Public company—Proxy and stockholder approval
- D. Unique Servicing Structure for FFELP securitizations
 - C. SLC remains master servicer
 - D. Sallie Mae is sub-servicer
 - E. Citibank (South Dakota) is sub-sub-servicer
- E. Common Depositor for FFELP and Private securitizations

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