

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Parts 701, 708a and 708b**

**RIN 3133-AE73**

**Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of proposed rulemaking with request for comments.

**SUMMARY:** The NCUA Board (Board) proposes to revise the procedures a federal credit union (FCU) must follow to merge voluntarily with another credit union. The proposed changes: (1) revise and clarify the contents and format of the member notice; (2) require merging FCUs to disclose all merger-related financial arrangements for covered persons; (3) increase the minimum member notice period; and (4) provide procedures to allow reasonable member-to-member communications regarding the proposed merger. The proposed changes also make conforming amendments to NCUA

regulations governing termination of federal share insurance when the continuing credit union is not an FCU.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site: <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Voluntary Mergers of Federally Insured Credit Unions” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- 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:** You can view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies

of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314-3428, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Wirick, Senior Staff Attorney, or Benjamin M. Litchfield, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428 or telephone (703) 518-6540.

## **SUPPLEMENTARY INFORMATION**

- I. Background
- II. Section-by-Section Analysis
- III. Conforming and Clarifying Amendments to Other NCUA Regulations
- IV. Regulatory Procedures

### **I. Background**

Section 205 of the Federal Credit Union Act (FCU Act) prohibits a federally insured credit union (FICU) from merging or consolidating with any other FICU without prior

written approval of the Board.<sup>1</sup> This includes the acquisition, either directly or indirectly, of the assets or liabilities of any other FICU. In granting or withholding approval for a merger, the Board is required to consider the following statutory factors: the history, financial condition, and management policies of the FICU; the adequacy of the FICU's reserves; the economic advisability of the transaction; the general character and fitness of the FICU's management; the convenience and needs of the members to be served by the FICU; and whether the FICU 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.<sup>2</sup>

The Board adopted a voluntary merger rule pursuant to its authority to administer the FCU Act.<sup>3</sup> The voluntary merger rule requires credit unions proposing to merge to submit a merger package that includes a plan summarizing the details of the merger, including any "merger-related financial arrangements," and, for FCUs, proposed disclosures to members.<sup>4</sup> NCUA regional offices or, for corporate credit unions or natural person credit unions with greater than \$10 billion in assets, the Office of National Examinations and Supervision (ONES), review the merger package and, if the proposed merger meets the field of membership and safety and soundness requirements, approve the merger.<sup>5</sup> The voluntary merger rule also requires merging FCUs to inform their

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<sup>1</sup> 12 U.S.C. 1785(b)(3).

<sup>2</sup> 12 U.S.C. 1785(c).

<sup>3</sup> 12 CFR 708b.

<sup>4</sup> 12 CFR 708b.104.

<sup>5</sup> 12 CFR 708b.105.

members about particular aspects of the merger plan and give members the opportunity to vote on the merger.<sup>6</sup>

As with any maturing industry, the Board recognizes that credit unions are experiencing a period of significant consolidation. Much of this consolidation is occurring through voluntary mergers. This increase in merger activity is a natural part of the business lifecycle and can be driven by one or more of several factors including the desire to provide members with additional products or services, the difficulty in identifying successors for long-serving senior management or volunteers, or the need for additional staff resources. As credit unions seek to increase operating efficiencies through enhanced economies of scale and scope, the Board expects this trend to continue.

Some credit unions may find themselves in the position of being a potential merger partner with more than one credit union. In this position, management must appropriately evaluate competing opportunities and consider which merger partner would be in their members' best interests in terms of member philosophy and continued or expanded products or services.<sup>7</sup> Recent merger trends in the credit union industry, however, suggest that some prospective merger partners may be seeking to influence the merging credit union by offering financial incentives to management and certain highly compensated employees to support the merger that the Board believes should be disclosed to members.

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<sup>6</sup> 12 CFR 708b.106.

<sup>7</sup> See 71 FR 77150, 77155 (Dec. 22, 2006). NCUA has previously provided guidance on general duties of FCU directors in Letter to Federal Credit Unions 11-FCU-02 (Feb. 2011).

NCUA has analyzed recent voluntary merger transactions and is seeking comments on revisions to the voluntary merger rule to address these potential conflicts of interest. The proposed revisions address the timing and contents of the notice provided to members of the merging FCU, provide dissenting members with an opportunity to make their views known to the general membership, address the material that must be submitted to NCUA for review, and revise definitions. In addition, the proposed rule reorganizes the current rule to improve readability and clarity. These revisions will help ensure that a merging FCU's member-owners have more complete and accurate information regarding a proposed merger, including disclosure of financial arrangements that could create conflicts of interest for credit union management. The Board is asking for comment on all aspects of the proposed rule.

The Board recognizes that the concerns addressed in the proposed rule may not be limited to mergers where the merging credit union is an FCU. Offering financial incentives to management and certain highly compensated employees of a merging credit union to support a merger may present safety and soundness risks, as well as member protection issues, which endanger the continuing credit union regardless of whether the merging credit union is an FCU or a federally insured, state-chartered credit union (FISCU).

Accordingly, the Board requests specific comments on whether the proposed rule should also apply to merging FISCU.

## **II. Section-by-Section Analysis**

### *Section 708b.2 Definitions*

The Board proposes to require merging FCUs to disclose to members any increase in compensation or benefits that any “covered person” will receive because of a merger. Accordingly, the proposed rule amends § 708b.2 by adding a definition for “covered person,” amending the definition of “merger-related financial arrangement,” and removing the definition of “senior management official.” In addition, the proposed rule adds a definition of “record date” to clarify which members are eligible to vote on a proposed merger.

#### *Covered Person*

The Board is proposing to expand the scope of the definition of “merger-related financial arrangement” to include compensation arrangements with management and certain highly compensated employees rather than just senior management officials or directors. In some recent voluntary mergers involving smaller credit unions, the Board has observed that the current definition of “senior management official” is under-inclusive, failing to capture some individuals who perform significant managerial duties or exert substantial influence on credit union decisions but do not have the title of chief executive officer, assistant chief executive officer, or chief financial officer.

Often, a staff member with another title who is responsible for functional areas such as lending or investments will play a similar role as staff with titles covered under the current rule. The Board believes that members have the right to know about all staff with leadership roles and functions, regardless of title, who receive increased compensation as a result of a merger transaction. Accordingly, the Board is proposing to revise the definition of “merger related financial arrangement” to include payments made to these individuals.

As a result, the Board is proposing to remove the definition of “senior management official” from § 708b.2 and add a definition for “covered person.” The term “covered person” would include the credit union’s chief executive officer or manager; the four most highly compensated employees other than the chief executive officer or manager; and any member of the board of directors or supervisory committee.

The Board seeks specific comments on this approach including whether the number of covered persons should be expanded to include additional employees with management responsibility or who are in a position of influence. For example, NCUA could require disclosure regarding the ten most highly compensated employees to adequately capture merger-related financial arrangements that may occur in mergers involving large, sophisticated credit unions or lower the number to one or two employees for smaller institutions. Alternatively, the Board seeks specific comments on whether credit unions should be required to disclose merger-related financial arrangements for all employees regardless of management responsibility or level of influence. The Board may adjust the



definition of “covered person” in the final rule based on the persuasiveness of the comments.

### *Merger-Related Financial Arrangement*

The Board adopted a definition for “merger-related financial arrangement” in 2010 as part of a rulemaking addressing, among other things, conflicts of interest for senior management officials or directors involved in bank conversions and voluntary mergers.<sup>8</sup>

The definition is part of a disclosure regime designed to ensure that members of a converting or merging credit union are aware of any compensation or other benefits that senior management and directors may receive as a result of a proposed conversion or merger.<sup>9</sup>

The term “merger-related financial arrangement” is defined in the current part 708b as any “material increase in compensation (including indirect compensation, for example, bonuses, deferred compensation, or other financial rewards) or benefits that any board member or senior management official of a merging credit union may receive in connection with a merger transaction.”<sup>10</sup> A material increase means an increase that exceeds 15% of the senior management official or director’s current compensation or \$10,000, whichever is greater.

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<sup>8</sup> 75 FR 81378 (Dec. 28, 2010).

<sup>9</sup> 75 FR at 81384.

<sup>10</sup> 12 CFR 708b.2.

This definition covers any compensation, of any sort, that meets the 15% or \$10,000 threshold that a senior management official or director would not otherwise receive if the merging credit union does not merge. Similar in scope to part 750, NCUA's regulation addressing golden parachutes and indemnification payments, this includes compensation paid by the continuing credit union or the merging credit union.<sup>11</sup> In determining whether such compensation exists, NCUA applies a "but for" test to determine whether the senior management official or director would not otherwise receive the compensation but for the merger.

In the years since adopting this definition, the Board has observed that it has often been difficult for merging credit unions to determine if a particular compensation increase meets the 15% or \$10,000 threshold. For example, in some cases, a continuing credit union offers a more robust package of benefits to its executives than the merging credit union, and if a senior management official or director from the merging credit union remains employed at the continuing credit union, they will also receive those benefits. But when these benefits depend on continued employment for an extended period, or are subject to factors that are not yet known, as is the case with many pension plans, comparing these potential future benefits to the thresholds may be difficult.

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<sup>11</sup> The voluntary merger rule is also similar to the golden parachute rule in its definition of "payment." The golden parachute rule defines "payment" as "(1) any direct or indirect transfer of any funds or any asset; (2) any forgiveness of any debt or other obligation; (3) the conferring of any benefit; or (4) any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which the funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on: (i) the determination, after such date, of the liability for the payment of such amount; or (ii) the liquidation, after such date, of the amount of such payment." 12 CFR 750.1(i).

To simplify compliance with the voluntary merger rule and ensure that members have relevant information about the merger, the Board is proposing to redefine “merger-related financial arrangement” to include all increases in compensation or benefits that a covered person has received during the 24 months prior to the date of the approval of the merger plan by the boards of directors of both credit unions. The definition would also include all future compensation or benefits that would not be received but for the merger taking place, regardless of the amount. While this may result in merging credit unions reporting more information to members, the Board believes that the benefits to members from the additional disclosures and the added clarity in the rule outweigh the seemingly relatively minor burdens of any additional reporting requirements. The proposed definition will apply to all increases in compensation and benefits from either the merging or the continuing credit union.

The Board has observed that some merging credit unions attempt to define the term “merger-related financial arrangement” narrowly to only include increases in compensation or benefits made around the same time as the completion of the merger. This interpretation of what constitutes a “merger-related financial arrangement,” however, is inconsistent with NCUA’s interpretation. The current definition of “merger-related financial arrangement” was never intended to only apply to payments that are provided at the same time as the proposed merger. Instead, the definition is broad in scope applying to any increase in compensation or benefits that NCUA determines would not be provided but for the merger regardless of whether that increase is made before or

after the completion of the merger. Accordingly, the Board proposes to clarify the definition to make it unambiguous that the rule applies both retrospectively and prospectively.

Under the current rule, the historical look back period is arguably open-ended provided that NCUA believes that an arrangement is sufficiently merger-related to warrant disclosure. However, it is likely a rare occasion where merger conversations take place more than two years before a merger package is submitted to NCUA for review. Therefore, the Board is proposing to limit the historical look back period to the immediate 24 months preceding the date of approval of the merger plan by the boards of directors of both credit unions. To simplify compliance, the Board is also proposing to require merging FCUs to disclose all increases in compensation or benefits made during the historical look back period regardless of whether that increase was made because of the merger. This will help to avoid undue hardship on merging FCUs. The Board requests comments on this aspect of the proposed rule, including whether the Board should extend or shorten the historical look back period. The Board could adjust the look back period based on the persuasiveness of the comments.

While many merging FCUs make good faith efforts to comply with the requirements of part 708b, the Board is aware of a few recent mergers where merging FCUs were required to disclose severance payments that appeared on their face to be structured as continued employment agreements potentially to evade the disclosure requirements of the voluntary merger rule. The Board seeks to clarify that under both the current voluntary

merger rule and the proposed rule, NCUA reserves the right to review of any future compensation paid to covered persons of the merging FCU by the continuing credit union if there are concerns such compensation was tied to the merger.

The Board has also observed that some merging credit unions attempt to define the term “compensation” narrowly to only include those benefits specifically listed in the definition of “merger-related financial arrangement.” This interpretation of what constitutes compensation for purposes of the voluntary merger rule is in error. The list of compensation and benefit arrangements included in the definition of “merger-related financial arrangement” was never intended to be an exhaustive, all-inclusive list.

Accordingly, the Board proposes to clarify the definition to make it unambiguous that the rule applies to all compensation or benefits received in connection with a merger transaction, including early payout of pension benefits and increased insurance coverage.

The proposed revisions also require that the disclosure of merger-related financial arrangements include the amount of the compensation or benefits expressed in dollars, where possible. In several recent mergers, credit unions have argued that expressing the increases as a percentage is sufficient, but this fails to provide adequate context in many cases. The Board agrees, however, that certain types of benefits, such as pension plans contingent on future service and improvements in insurance benefits, are not easily translated into a dollar figure. In these cases, disclosing the existence of the additional compensation will suffice. Also, for items such as pay raises, the Board agrees that it is appropriate to express them as a dollar figure that will be received over the course of a

year instead of as an absolute dollar amount. The Board seeks specific comments on this aspect of the proposed rule including whether health care, retirement, and other benefits offered on a nondiscriminatory basis to all employees of the credit union should continue to be disclosed as merger-related financial arrangements, and if so, how those benefits should be addressed from a disclosure perspective.

#### *Record Date*

The Board is also adding a definition for “record date” to clarify which members are eligible to vote on a proposed merger. For various practical and legal considerations, it is commonplace for the board of directors of a corporation to announce an official date by which a shareholder must be an owner of the company in order to participate in an annual meeting or corporate election. While the Board has always interpreted NCUA’s voluntary merger rule and the FCU Bylaws to permit the directors of an FCU to set a record date, this authority has never been explicitly stated in part 708b. By adopting this definition and making corresponding changes to § 708b.106, the Board is clarifying the authority of the directors of an FCU to set a record date.

#### *Section 708b.105 Submission of Merger Proposal to NCUA*

As part of the merger package, the proposed rule would require both the merging and continuing credit union to submit board minutes to NCUA that reference the merger during the 24 months preceding the date of approval of the merger plan by the boards of

directors of both credit unions. In several recent mergers, review of board minutes has shed light on potential conflicts of interest, including a situation where a credit union chief executive officer voted on a merger proposal that included significant merger-related compensation for himself. The board minutes also provide helpful information on the types of alternatives considered by the credit unions in addition to the merger proposal. The Board seeks comments on this proposed requirement, including whether the time period is the appropriate one.

In addition, the proposed rule would add a requirement that the board of directors of the merging FCU and continuing credit union certify that there are no merger-related financial arrangements other than those disclosed to the members of the merging FCU in the member notice.

*Section 708b.106 Approval of the Merger Proposal by Members*

The Board is also proposing amendments to § 708b.106, which sets out certain member notice requirements and procedures governing the member vote when the merging credit union is an FCU. The proposed rule will require member notices to be mailed at least 45 days, but no more than 90 days, before the meeting to vote on the merger. The proposed rule will also revise the content of the member notice to provide additional information and clarity for members. Furthermore, the proposed rule will establish procedures to allow for reasonable member-to-member communication in advance of a proposed merger.

### *Timing Requirements for Member Notice*

Members of an FCU that is proposing a voluntary merger must have the opportunity to vote on the merger proposal at a meeting.<sup>12</sup> The current voluntary merger rule allows this meeting to be either a special meeting or at the annual meeting if the FCU's regularly scheduled annual meeting will occur within 60 days after NCUA's approval of the proposed merger.<sup>13</sup> Members must receive notice of the meeting as required by the FCU Bylaws.

The FCU Bylaws require that FCUs mail notices of annual meetings at least 30 days, but not more than 75 days, before the annual meeting.<sup>14</sup> In contrast, the FCU Bylaws only require FCUs to mail notices for special meetings at least 7 days before the meeting.<sup>15</sup> Thus, if the merger proposal is to be considered at a special meeting, members may have only a few days advance notice of a meeting under the current voluntary merger rule and the FCU Bylaws.

The Board is concerned that the current voluntary merger rule's reference to the provisions of the FCU Bylaws may, in many cases, result in an insufficient notice period for members of a merging FCU. Members who cannot or do not wish to attend the merger meeting need time to return their mail ballot so it is received before the date and

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<sup>12</sup> 12 CFR 708b.106.

<sup>13</sup> 12 CFR 708b.106(a)(1).

<sup>14</sup> 12 CFR 701, App. A, Art. IV, § 2.

<sup>15</sup> *Id.*



time of the meeting. If an FCU uses a third-party teller of elections, the teller may not be located in the same area as the FCU or member, and return mail could take additional time. Even if the FCU, member and teller are in the same area, seven days may be insufficient. For example, the Board is aware that in at least one recent proposed merger, an FCU complied with the regulation and mailed the member notices seven days before the meeting, but with mail delays due to a federal holiday during the seven-day period, members did not receive the special meeting notice in time to mail it back before the special meeting.

In addition to allowing time for mail delivery and return mail, members need time to consider fully the ramifications of the merger, including the question of whether to transfer their credit union's field of membership and net worth to another credit union. The contents of the member disclosure may also raise questions that members want the FCU's leadership to address before the merger vote. In at least one recent merger where the merging FCU mailed member notices several weeks before the special meeting, far longer than required under the current regulation, members were dissatisfied with the notice period and contacted NCUA. Allowing additional time between the time the merging FCU sends the member notice and the meeting will provide the merging FCU's membership with adequate time to consider the merger and provide the credit union leadership the time necessary to address any member questions.

Accordingly, the proposed rule would replace the reference to the FCU Bylaws for the timing of the delivery of the member notice with a requirement that the member notice be

mailed at least 45 days, but no more than 90 days, before the meeting to vote on the merger. The proposed rule would also revise the notice requirement in Article IV of the FCU Bylaws to be consistent.

The Board believes a notice period of at least 45 days is sufficient to provide for members to respond to a proposed merger, make inquiries, and plan to attend the merger meeting, but not so much time as to be inefficient or that members will forget about the merger meeting and opportunity to vote. Furthermore, the proposed requirement for a notice period of at least 45 days is no more rigorous than the notice requirements for other similar transactions. For example, credit unions seeking to merge into a bank must provide members with clear and conspicuous disclosures 90 days prior to the date of the membership vote on the merger and, again, 30 days before the date of the membership vote on the merger.<sup>16</sup>

However, the Board recognizes that under certain circumstances 45 days may be too long for a merging FCU to wait to complete a merger. For example, a merging FCU may have operational or financial difficulties that do not yet rise to the level of putting the merging FCU in danger of insolvency but nevertheless require a merger to be completed within a shorter period of time. On the other hand, 45 days may not be enough time for a merging FCU to complete a contentious merger where there are multiple member-to-member communications that the credit union wishes NCUA to review. Accordingly, the Board seeks specific comments on whether stakeholders agree with the proposed changes

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<sup>16</sup> 12 CFR 708a.305(a).

regarding the timing of notices. The Board may adjust the timing of notices depending on the persuasiveness of the comments.

### *Contents of Member Notice*

The Board is also proposing to revise the voluntary merger rule's requirements related to the content of the member notice. The Board has received many questions about the meaning of the current requirements and what, precisely, merging FCUs must disclose. The proposed revisions will update the rule to reflect present-day concerns, add clarity, and make it easier for members to understand the basic elements of the merger transaction.

The current voluntary merger rule's requirements in this area are based on the Board's responsibility to ensure that the merger meets the convenience and needs of the members<sup>17</sup> and an FCU board acts in the members' best interests.<sup>18</sup> In assessing the effects of a proposed merger, members need to know how the merger will affect their access to the continuing credit union, which includes details such as whether the continuing credit union plans to keep open the office locations of the merging FCU and the other office locations of the continuing credit union. Members also need to know whether certain benefits such as savings life insurance or credit life insurance will continue after the proposed merger.

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<sup>17</sup> 12 U.S.C. 1785(c)(4).

<sup>18</sup> 12 CFR 701.4(b)(1).

Members must also know how the merger will affect the products and services that members currently receive from the merging FCU. Furthermore, members' interests in the transaction extend beyond practical matters of access and services, because the merging FCU's net worth belongs to the members. Members need to understand how much of the merging FCU's net worth will transfer to the continuing credit union.

Members also have a right to know if the management and other covered persons of their credit union will personally benefit from the merger transaction. This critical issue is discussed in some detail above.

To ensure that the member notice contains all relevant information in a format members can easily understand, the proposed rule would restructure the current voluntary merger rule's paragraph describing the summary of the merger plan into a list of shorter, easier to read, paragraphs. The proposed changes would improve readability and clarify exactly what information NCUA requires merging FCUs to disclose to their members. The proposal would also simplify certain items listed in the current rule.

One clarification relates to the physical locations of the continuing credit union. Current § 708b.106(a)(2)(iv) requires a list of the names and locations of the continuing credit union and its branches. The Board is aware that an important issue to members of the merging FCU is whether the locations of the continuing credit union will be convenient. This means the members need to know whether the continuing credit union plans to maintain the current location(s) of the merging FCU and the location of the continuing credit union's branches. Yet the current rule does not explicitly require this information,

and the Board has noted member notices in several recent mergers where the location information provided to members was incomplete or inaccurate. Many member notices listed the names and locations without providing addresses. The Board has also discovered errors in several other recent member notices that incorrectly identified locations.

The proposed revisions to § 708b.106 require specific disclosures about the continuing credit union's plans for the locations of the merging FCU and a list, including street address, of the continuing credit union's locations. As it could be impractical for a continuing credit union to list all its branches, the proposal requires a list of locations that are in reasonable proximity to the location(s) of the merging FCU. These proposed revisions will ensure that members understand how they will be able to access physical locations of their credit union after the merger.

The proposed revisions would also address the meaning of "an analysis of share values" and "explanation of any share adjustment." These terms mean that the member notice should inform members about the net worth of the merging FCU relative to the net worth of the continuing credit union, and whether any of the merging FCU's net worth will be returned to members of the merging FCU in the transaction. An FCU would be permitted to include a short statement explaining its net worth level, subject to review by NCUA as part of its overall review of the merging FCU's disclosures.

As the Board has previously noted, a merging FCU may have a higher net worth ratio because it did not expend its capital offering additional services or providing better facilities.<sup>19</sup> In these cases, it may be appropriate for the merger partners to consider whether the members of the merging FCU should receive some of this net worth through a share adjustment.

On the other hand, the credit unions may appropriately determine that offering additional or improved services or facilities to members of the merging FCU offsets the higher net worth of the merging FCU. The Board emphasizes that it is not requiring or encouraging share adjustments, but simply requiring merging FCUs to provide a more detailed explanation of how much of the merging FCU's net worth will transfer to the continuing credit union and how much, if any, will be rebated to the members of the merging FCU through a share adjustment. The updated language in the proposed rule is designed to be easier for members to work with than the current voluntary merger rule's terminology of "share values" and "share adjustment."

Another proposed revision relates to how credit unions present the member notice information. If the member notice fails to present critical information or presents it in such a way as to obscure critical details, then members will not be able to make a fully informed decision. Accordingly, merging FCUs must present information to their members in a way that is legible and easily understood.

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<sup>19</sup> 75 FR 15574, 15584 (Mar. 29, 2010).

The Board has observed several member notices in recent mergers that were deficient in this respect. In some recent mergers, FCUs provided member notices that refer to multi-page attachments for critical information such as an explanation of share adjustments or merger-related financial arrangements. While the current voluntary merger rule does not explicitly prohibit this practice, allowing it to continue hinders the goal of having merging FCUs fully inform their members about how the merger is likely to affect them.

The proposed revisions would require that the member notice include at least a summary statement for each component of the merger that is required to be disclosed without referring members to a separate attachment, although credit unions may provide additional information or explanations in the attachments. Members should not be made to page through voluminous and wordy attachments to ascertain the core details of the merger transaction that most affect them and their membership interests.

In most cases, an adequate and informative member notice will need to be no more than a couple of sentences or a short paragraph for each aspect of the merger. The proposed amendments would retain the existing requirement to supply current and consolidated financial statements to members, but the proposed rule would require these statements to be separate documents as they are generally presented as tables and can distract from other important disclosures in the member notice. FCUs would also provide the ballot for the merger proposal as a separate document consistent with existing requirements in NCUA's bank conversions and mergers rule, part 708a.<sup>20</sup>

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<sup>20</sup> 12 CFR 708a.104(a) (“A ballot must be included in the same envelope as the 30-day notice and only in the 30-day notice.”).

The changes to the contents of the member notice are proposed with the objective of helping to ensure members have adequate information to evaluate the proposed merger without imposing any significant additional burden on merging or continuing credit unions. If the proposed changes are adopted as a final rule, NCUA will issue a revised version of the credit union merger manual with updated forms corresponding to the changes. The use of a pre-approved, standardized format will speed NCUA's review and approval process.

The Board specifically invites comment on whether the proposed changes to the member notice are needed and sufficiently targeted to assist members in understanding the proposed merger transaction. The Board also invites comment on whether the member notice should be narrowed or expanded to include other items, such as ATM access and comparisons of fees for commonly used services.

#### *Member-to-Member Communications*

The proposed rule also includes a new paragraph that establishes procedures to allow for member-to-member communications in advance of a member vote on a proposed merger consistent with existing requirements in NCUA's bank conversions and mergers rule.<sup>21</sup>

As part of the member notice, FCUs would be required to inform members that if they wish to provide their opinions about the proposed merger to other members, they can

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<sup>21</sup> See 12 CFR 708a.104(f).



submit their opinions in writing to the merging FCU within 30 calendar days of receipt of the notice, and the FCU will forward those opinions to other members.

The interaction of the timeframes for: (1) the submission and receipt of the member-to-member communication with (2) the minimum required time period for receipt of the member notice before the member vote is taken, will work well in the vast majority of voluntary mergers. However, the Board is aware that, in some cases, the timing could force a merging FCU to postpone the date of the member vote. For example, if a merging FCU provides the minimum notice period of 45 days, and a member uses the maximum of the 30 days permitted to submit a member-to-member communication, there would be no time for the merging FCU to send the member-to-member communication and still comply with the requirement that members receive the member-to-member communication at least 15 days before the vote.

Accordingly, the Board encourages members desiring to communicate with other members about the merger to submit their communication as soon as possible during the 30-day period allotted. Similarly, merging FCUs that anticipate a member-to-member communication may want to provide the member notice earlier than 45 days before the vote to avoid having to postpone the vote.

The Board believes that the timeframes of the proposed rule allow merging FCUs the flexibility to choose a time for sending the member notice that fits their particular circumstances. The leadership of the merging FCU will be in the best position to

anticipate whether to expect a member-to-member communication. If a merging FCU believes that no member-to-member communication will occur, then sending notice to members 45 days before the vote may be sufficient although subject to potential problems. If, however, a merging FCU anticipates needing additional time to transmit or to contest a member-to-member communication, it can choose to send the notice to members earlier than 45 days before the vote.

As with the time period for the member notice, the Board is also open to changing the proposed rule's requirements for the timeframes related to member-to-member communications to reasonably longer or shorter periods of time based on the persuasiveness of the comments received.

The member notice must provide contact information at the merging FCU for delivery of such communications, must explain that members must agree to reimburse the credit union's costs of transmitting the communication, and must refer members to this provision of the voluntary merger rule for further information about the communication process. The merging FCU must ensure that members receive all appropriate communications from other members no later than 15 days before the member vote on the proposed merger.

Consistent with the bank conversions and mergers rule, a merging FCU may, at its option, include a statement with the member-to-member communication notifying members that the communication represents the opinion of a member of the merging

FCU and does not necessarily reflect the views of the management or directors of the FCU.<sup>22</sup> To avoid potentially misleading member communications, a merging FCU should submit member-to-member communications to the appropriate regional director or director of ONES within seven days of receipt of the communication if it believes that the communication is false or misleading with respect to any material fact, omits material facts necessary to make the statements in the communication true or accurate, relates to a personal claim or grievance, or otherwise is not proper. An FCU, however, may not add any additional information to the member communication without prior approval of a regional director or the director of ONES.

While these requirements were previously reserved only for credit union to bank conversions, the Board is proposing these procedures for credit union to credit union mergers as well. The Board has observed in a recent merger a significant disparity between the high number of members voting to approve the proposed merger by mailed ballot compared to the low number of members voting to approve the merger in person at a member meeting. While such procedures are permissible under NCUA's regulations, the Board is concerned that members voting by mailed ballot do not benefit from the rigorous debate that may take place during a member meeting where members are free to discuss the proposed merger openly with management or the directors of the FCU.

This proposed addition to the voluntary merger rule allows members to communicate with other members in advance of the merger vote, and provides the opportunity for

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<sup>22</sup> 12 CFR 708a.104(f)(3)(i).

members to share ideas with other members who may be unable to attend the member meeting. These new procedures will allow for healthy member debate of a proposed merger prior to a member vote. While this may result in additional administrative burdens on merging FCUs, the Board believes that requiring merging FCUs to facilitate member-to-member communications is the least restrictive means to achieve this compelling objective of ensuring that members vote on a proposed merger with all information reasonably available to them.

*Sections 708b.202 and 204 Notice to Members of Proposal to Terminate or Convert Insurance*

To be consistent throughout the regulations, the Board is also proposing to amend the timing of the member notice requirement for federally insured credit unions seeking to terminate federal share insurance or convert to non-federal share insurance, through merger or otherwise. NCUA regulations currently require that the credit union mail notices to members at least seven days, but not more than 30 days, before the membership vote that will result in the loss of federal share insurance.<sup>23</sup> The proposal would change the required time for mailing the notice to at least 45 days, but not more than 90 days, before the member vote. This is consistent with the member notice period for voluntary mergers.

### **III. Conforming and Clarifying Amendments to Other NCUA Regulations**

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<sup>23</sup> 12 CFR 708b.202, 204.

*Appendix A to Part 701 Federal Credit Union Bylaws*

As discussed above, the Board proposes to require the merging FCU to mail member notices at least 45 days, but no more than 90 days, before the meeting to vote on a proposed merger. Accordingly, the Board is proposing to amend Article IV of the FCU Bylaws to be consistent with the proposed amendments to part 708b.

*Sections 708a.104 and 708a.305 Conversions and Mergers into Banks; Disclosures and Communications to Members*

The Board proposes to clarify the member-to-member communication requirements in §§ 708a.104(f)(3) and (g)(3) of NCUA's bank conversions and mergers rule, part 708a, to address circumstances where a member wishes to reply to a member-to-member communication sent by e-mail. Part 708a, in relevant part, sets out the parameters and procedures by which a FICU may convert to a mutual savings bank or merge into a bank.

The clarification addresses circumstances where a member receiving a member-to-member communication by e-mail attempts to reply to that communication. The source of the sent member-to-member communication may not be clear to members receiving it. For example, in one recent bank conversion attempt, members responding to a member-to-member communication unknowingly sent their responses to the converting credit union because it was not clear to them that the credit union was the actual sender, on

behalf of the communicating member, of the e-mail rather than the communicating member.

The Board is aware that if a FICU converting to or merging into a bank sends the member-to-member communication, on behalf of the communicating member, from its own e-mail system, it is difficult to have the “reply” function direct a reply e-mail back to the communicating member. The Board also realizes that some members replying to a member-to-member communication may wish to contact the credit union and not the communicating member. Accordingly, the Board is not proposing to dictate where replies to an e-mailed member-to-member communication are directed, but to require disclosure to inform members about where the reply goes.

This requirement could be satisfied in a variety of ways. For example, if a reply would go to the credit union’s third-party e-mail provider, the converting or merging FICU could send a message stating that if the member wants to contact either the credit union or the communicating member, they should do so using the respective e-mail addresses for the credit union or the communicating member. The Board does not want FICUs to have to alter e-mail systems and technologies to forward member-to-member communications.

As discussed above, with respect to FCUs seeking to merge with other FICUs pursuant to part 708b, the Board also proposes to require merging FCUs to facilitate member-to-member communications. Accordingly, the clarification made to part 708a regarding

member-to-member communications involving bank conversions or mergers would also be incorporated in a similar way into the proposed amendments to part 708b.

#### **IV. Regulatory Procedures**

##### *1. Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily those under \$100 million in assets).<sup>24</sup> As discussed below, the proposed rule only impacts a small number of small FCUs and FICUs and imposes costs that are either absorbed by other parties or offset by decreases in regulatory compliance burden.

##### *Number of Small Entities Affected*

The proposed rule will not affect a substantial number of small entities. Based on recent experience, the requirements for merging FCUs in subpart A of part 708b will only apply to about 138 small FCUs each year. With nearly 3,000 small FCUs currently in the credit union system, this is not a substantial number of small FCUs.

The requirements for bank conversions or terminating federal share insurance coverage in subpart B of part 708b will apply to even fewer small FICUs. In recent experience, bank

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<sup>24</sup> 5 U.S.C. 603(a).

conversions have all involved FICUs with greater than \$100 million in assets. While some small FICUs may seek to convert to banks, the Board does not believe that this number will be substantial. Likewise, while a majority of the FICUs terminating federal share insurance coverage have less than \$100 million in assets, only an average of 5 small FICUs terminate federal share insurance coverage each year.

#### *Economic Impact on Small Entities*

The economic impact of the proposed rule will also be minimal. In almost all cases, a small FCU merges into a much larger FICU. The larger FICU often assists the small FCU with each step in the merger process keeping the economic impact on the small FCU to a minimum. Additionally, subpart A of part 708b will require communicating members to reimburse small FCUs for reasonable expenses decreasing the likely economic impact of the new member-to-member communication requirements.

Moreover, the requirement to disclose all merger-related financial arrangements will, in some instances, simplify compliance for merging FCUs with such arrangements.

Merging FCUs will no longer be required to determine whether the merger-related financial arrangement is a “material” increase in compensation or whether the employee is a “senior management official” as defined in current § 708b.2. As discussed above, a number of small FCUs have struggled with this analysis in recent mergers despite good faith efforts to comply with the voluntary merger rule.



Furthermore, the slight increase in the overall time period required to consummate mergers or terminate federal share insurance in subparts A and B of part 708b should not have a significant impact on small FCUs and FICUs.

Accordingly, NCUA certifies that this regulation will not have a significant economic impact on a substantial number of small entities.<sup>25</sup>

## 2. *Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501, *et seq.*) (PRA), the NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

Information collection requirements for parts 708a and 708b are assigned OMB control numbers 3133-0182 and 3133-0024, respectively. Proposed revisions to these currently approved collections due to these proposed amendments have been submitted to OMB for approval in accordance with 5 CFR § 1320.11.

The Board invites comment on (a) whether the collections of information are necessary for the proper performance of the agency's function, including practical utility; (b) the accuracy of estimates of the burden of the information collections, including the validity

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<sup>25</sup> 5 U.S.C. 605(a).

of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information being collected, and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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, National Credit Union Administration, 1775 Duke Street, Suite 5067, Alexandria, Virginia 22314–3428, or Fax No. 703–519-8579, or Email at *PRAComments@ncua.gov* and the (2) 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*.

*Titles:* 12 CFR Part 708a, Bank Conversions and Mergers (OMB No. 3133-0182) and 12 CFR Part 708b, Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversions of Insured Status (OMB No. 3133-0024).

*Frequency:* Event generated.

*Affected Public:* FICUs (708a); FCUs (708b).

Part 708a: The Board proposes to clarify the member-to-member communication requirements in §§ 708a.104(f)(3) and 708a.305(g)(3) to address circumstances where a

member wishes to reply to a member-to-member communication sent by e-mail. If applicable, the converting credit union must notify members using the “reply” feature that the email has been directed to an address other than the requesting member’s and identify to whom the response was sent. This provision is also included under § 708b.106(d)(5).

Part 708b: The Board is proposing to add a requirement that, where the merging credit union is an FCU, the merging and continuing credit unions include at least two years of board minutes in the merger package submitted to NCUA under § 708b.104(a). The merger package would also include a new certification from both credit unions that there are no merger-related financial arrangements other than those that would be disclosed to the merging FCU’s members. The proposed rule would also amend the contents of the member notice for members of merging FCUs in § 708b.106(b) to require a detailed description of any merger-related financial arrangements involving a covered person and additional information about the physical locations of the merging and continuing credit unions.

Additionally, proposed § 708b.106(d) would establish a mechanism for member-to-member communications and require a merging FCU to ensure that its members receive any member-to-member communication at least 15 calendar days before a vote. Should the merging FCU believe the member’s request is not proper, it must submit the request to the regional director for determination.

*Estimated number of respondents:* 1 (708a); 138 (708b).

*Estimated total burden hours:* 712 (708a; increase of 2 hours); 8,120 (708b; increase of 558 hours).

### *3. Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. 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 final 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. NCUA has therefore determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

### *4. Assessment of Federal Regulations and Policies on Families*

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**

**12 CFR Part 701**

Advertising, Credit, Credit unions, Fair housing, Insurance, Reporting and recordkeeping requirements.

**12 CFR Part 708a**

Credit unions, Conversions, Mergers of credit unions, Reporting and recordkeeping requirements

**12 CFR Part 708b**

Credit unions, Mergers of credit unions

By the National Credit Union Administration Board, on May 25, 2017.

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Gerard Poliquin  
Secretary of the Board

For the reasons discussed above, the National Credit Union Administration proposes to amend 12 CFR parts 701, 708a and 708b as follows:

**PART 701--ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT  
UNIONS**

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Revise the first sentence of Section 2 of Article IV of appendix A to part 701 to read as follows:

**Appendix A to Part 701 – Federal Credit Union Bylaws**

**Article IV. Meetings of Members**

\* \* \* \* \*

Section 2. **Notice of meetings required.** The secretary must give written notice to each member of meetings: at least 30 but no more than 75 days before the date of the annual meeting; at least 7 days before the date of any special meeting; and at least 45 but no

more than 90 days before the date of any meeting to vote on a merger with another credit union or a conversion to or merger with a bank.

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**PART 708a—BANK CONVERSIONS AND MERGERS**

3. Revise the authority citation for part 708a to read as follows:

**Authority:** 12 U.S.C. 1752(7), 1766, 1785(b), 1785(c), and 1789.

4. Add § 708a.104(f)(3)(iii) to read as follows:

**§ 708a.104 Disclosures and communications to members.**

(f) \* \* \*

(3) \* \* \*

(iii) If use of any “reply” or “reply to” function in a member’s e-mailed material causes an e-mail to be directed to any e-mail address other than the requesting member’s e-mail address (such as the credit union’s e-mail address), the converting credit union must notify members using the “reply” or “reply to”

function that the e-mail has been directed to an address other than the requesting member's and identify to whom the response was sent.

\* \* \* \* \*

5. Add § 708a.305(g)(3)(iii) to read as follows:

**§ 708a.305 Disclosures and communications to members.**

(g) \* \* \*

(3) \* \* \*

(iii) If use of any “reply” or “reply to” function in a member’s e-mailed material causes an e-mail to be directed to any e-mail address other than the requesting member’s e-mail address (such as the credit union’s e-mail address), the converting credit union must notify members using the “reply” or “reply to” function that the e-mail has been directed to an address other than the requesting member’s and identify to whom the response was sent.

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**PART 708b -- MERGERS OF FEDERALLY-INSURED CREDIT UNIONS;  
VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS**

6. The authority citation for part 708b continues to read as follows:

**Authority:** 12 U.S.C. 1752(7), 1766, 1785, 1786, and 1789.

7. Amend § 708b.2 as follows:

- a. Add a definition for “covered person”.
- b. Revise the definition of “merger-related financial arrangement”.
- c. Remove the definition for “senior management official”.
- d. Add a definition for “record date”.

**§ 708b.2 Definitions.**

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*Covered person* means the chief executive officer or manager (or a person acting in a similar capacity); the four most highly compensated employees other than the chief

executive officer or manager; and any member of the board of directors or the supervisory committee.

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*Merger-related financial arrangement* means any increase in compensation or benefits that any covered person of a merging credit union has received during the 24 months prior to the date of the approval of the merger plan by the boards of directors of both credit unions. It also means any increase in compensation or benefits that any covered person of a merging credit union will receive in the future because of the merger. This definition includes all direct and indirect compensation, such as salary, bonuses, deferred compensation, early payout of retirement benefits, increased insurance benefits, or any other financial rewards or benefits.

\* \* \* \* \*

*Record date* means a date announced by the board of directors of a merging credit union as the official date by which a person must have been a member of the merging credit union in order to be eligible to vote on a proposed merger.

\* \* \* \* \*

8. Revise § 708b.104(a) to read as follows.

**§ 708b.104 Submission of merger proposal to NCUA.**

(a) \* \* \*

(8) If the merging credit union's assets on its latest call report are equal to or greater than the threshold amount established and published in the Federal Register annually by the Federal Trade Commission under 15 U.S.C. § 18a(a)(2)(B)(i), a statement about whether the two credit unions intend to make a Hart-Scott-Rodino Act premerger notification filing with the Federal Trade Commission and, if not, an explanation why not;

(9) For mergers where the continuing credit union is not federally insured and will not apply for federal insurance:

(i) A written statement from the continuing credit union that it “is aware of the requirements of 12 U.S.C. § 1831t(b), including all notification and acknowledgment requirements”; and

(ii) Proof that the accounts of the credit union will be accepted for coverage by the nonfederal insurer (if the credit union will have nonfederal insurance);

(10) For mergers where the merging credit union is a federal credit union, board minutes for the merging and continuing credit union that reference the merger during the 24

months prior to the date of the approval of the merger plan by the boards of directors of both credit unions; and

(11) For mergers where the merging credit union is a federal credit union, a certification from the merging credit union and the continuing credit union that there are no merger-related financial arrangements other than those disclosed in the notice required under paragraph (a)(4) of this section in connection with the proposed merger.

9. Revise § 708b.106 to read as follows:

**§ 708b.106 Approval of the merger proposal by members.**

(a) *Advance notice of member vote.* If the merging credit union is a federal credit union, members must receive at least 45 calendar days, but no more than 90 calendar days, advance written notice of any member meeting called to vote on the merger proposal.

(b) *Contents of member notice.* While the merging credit union may refer members to attachments for additional information or explanation, the notice provided to members pursuant to paragraph (a) shall, at a minimum, contain the following:

(1) A statement of the purpose of the meeting and the time and place;

(2) A statement of the right of members to vote on the merger proposal in person or by mail ballot to be received no later than the date and time announced for the member meeting called to vote on the merger proposal;

(3) A statement of the right of members to communicate with other members by mail or e-mail pursuant to paragraph (d) of this section;

(4) A summary of the merger plan, including but not necessarily limited to:

(i) A statement that the merging credit union does or does not have a higher net worth percentage than the continuing credit union;

(ii) A statement as to whether the members of the merging credit union will receive a share adjustment or not, including a summary of reasons for the decision and, at the merging credit union's discretion, a short explanation about the capital level;

(iii) An explanation of any changes in insurance such as life savings protection insurance or loan protection insurance;

(iv) An explanation of any changes related to federal share insurance (if the continuing credit union is not federally insured); and

(v) A detailed description of all merger-related financial arrangements involving a covered person (e.g., the amount of any increase in the covered person's compensation, bonus, deferred compensation, insurance benefits, or other financial benefits including early payouts of retirement benefits provided because of the merger). This description must include the recipient's name and title as well as, at a minimum, the amount of the merger-related financial arrangement expressed, where possible, as a dollar figure.

(5) A statement of the reasons for the proposed merger; and

(6) A statement identifying the physical locations of the merging credit union by street address, stating whether each location is to be closed or retained, and a list of branches of the continuing credit union by street address that are located in reasonable proximity to the merging credit union's locations.

(c) *Additional documents.* The notice provided to members pursuant to paragraph (a) shall be accompanied separately by the following documents:

(1) The current financial statements for each credit union and a consolidated financial statement for the continuing credit union;

(2) Any additional information or explanatory material that the merging credit union wishes to provide that does not detract from the required disclosures and gives further detail to members regarding information disclosed pursuant to paragraph (b) of this section; and

(3) A Ballot for Merger Proposal.

(d) *Member-to-member communications.* Within 30 calendar days of receiving the notice provided to members pursuant to paragraph (a), members may jointly or individually make a written request to the merging credit union that the credit union mail or e-mail a requesting member or members' merger-related communications to other members eligible to vote provided that the member or members agree to reimburse the credit union for reasonable expenses, excluding overhead, of mailing or e-mailing the communications on behalf of the requesting member(s). The merging credit union must ensure that members receive all merger-related communications at least 15 calendar days prior to any member meeting called to vote on the merger proposal.

(e) *Additional procedures governing member-to-member communications.* Member-to-member communication requests pursuant to paragraph (d) are governed by these additional procedures:

(1) A member request must indicate if the member wants the materials mailed or e-mailed. If the member requests the materials to be mailed, the credit union must

mail the materials to all eligible members. If a member requests the materials to be e-mailed, the credit union will e-mail the materials to all members who have agreed to accept communications electronically from the credit union. The merging credit union will inform the member of the percentage of members for whom it does not have an e-mail address.

(2) The merging credit union may, at its option, include the following statement with a member's materials:

On (date), the board of directors of (name of merging credit union) adopted a proposal to merge with (name of continuing credit union). Credit union members who wish to express their opinions about the proposed merger to other members may provide those opinions to (name of credit union). By law, the credit union, at the requesting members' expense, must then send those opinions to the other members. The attached document represents the opinion of a member of this credit union. This opinion is a personal opinion and does not necessarily reflect the views of the management or directors of the credit union.

(3) The merging credit union may not add anything other than the statement allowed by paragraph (e)(2) to the member communication without prior approval of the regional director.



(4) After consultation with the regional director according to subparagraph (f), the merging credit union is not required to mail or e-mail materials that:

(i) Due to size or similar reasons are impracticable to mail or e-mail;

(ii) Are false or misleading with respect to any material fact;

(iii) Omit a material fact necessary to make the statement in the material not false or misleading;

(iv) Relate to a personal claim or personal grievance, or solicit personal gain or business advantage by or on behalf of any party;

(v) Relate to any matter, including a general economic, political, racial, religious, social, or similar cause that is not materially related to the proposed merger;

(vi) Directly or indirectly and without expressed factual foundation impugn a person's character, integrity, or reputation;

(vii) Directly or indirectly and without expressed factual foundation make charges concerning improper, illegal, or immoral conduct; or

(viii) Directly or indirectly and without expressed factual foundation make statements impugning the safety and soundness of the credit union.

(5) If use of any “reply” or “reply to” function in a member’s e-mailed material causes an e-mail to be directed to any e-mail address other than the requesting member’s e-mail address (such as the credit union’s e-mail address), the converting credit union must notify members using the “reply” or “reply to” function that the e-mail has been directed to an address other than the requesting member’s and identify to whom the response was sent.

(f) *Consultation with regional director regarding improper member communications.* If the merging credit union believes some or all of the member or members’ request is not proper, it must submit the member materials to the regional director within 7 calendar days of receipt. The credit union must include with its transmittal letter a specific statement of why the materials are not proper and a specific recommendation for how the materials should be modified, if possible, to make them proper. The regional director will review the communication, communicate with the requesting member, and respond to the credit union within 7 calendar days with a determination on the propriety of the materials. The credit union must then immediately mail or e-mail the material to the members if so directed by NCUA.

(g) *Clear and conspicuous disclosures required.* Any information required by paragraph (b) to be disclosed on the notice provided to members pursuant to paragraph (a) shall be

legible, written in plain language, designed to be understood by ordinary consumers, and in the language in which most transactions are conducted for that member.

(h) *Approval of a proposal to merge.* Approval of a proposal to merge a federal credit union into a federally insured credit union requires the affirmative vote of a majority of the members of the merging credit union as of a certain record date established by the board of directors. If the continuing credit union is not federally insured, the requirements of subpart B also apply and the merging credit union must use the form notice and ballot in subpart C of this part unless the regional director approves the use of different forms.

10. Revise § 708b.202(b) to read as follows:

**§ 708b.202 Notice to members of proposal to terminate insurance.**

\* \* \* \* \*

(b) The credit union must deliver the notice in person to each member, or mail it to each member at the address for the member as it appears on the records of the credit union, at least 45 days, but not more than 90 days, before the date of the vote. Members must be permitted to vote by mail ballot. The credit union may provide the notice of the proposal and the ballot to members at the same time.

\* \* \* \* \*

11. Revise § 708b.204(b) to read as follows:

**§ 708b.204 Notice to members of proposal to convert insurance.**

\* \* \* \* \*

(b) The credit union must deliver the notice in person to each member, or mail it to each member at the address for the member as it appears on the records of the credit union, at least 45 days, but not more than 90 days, before the date of the vote. Members must be permitted to vote by mail ballot. The credit union may provide the notice of the proposal and the ballot to members at the same time.

\* \* \* \* \*