

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708b

Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a proposed rule on credit union mergers, federal share insurance terminations, and conversions from federal share insurance to nonfederal insurance. The proposed rule establishes communication and disclosure requirements to ensure that members are fully and properly informed before they vote on whether to convert from federal insurance to nonfederal insurance. The proposed rule provides protections to members who may lose federal insurance because they have large insured accounts at two federally-insured credit unions that are merging or they have term accounts at a federally-insured credit union that is converting to nonfederal insurance. The proposal also requires merging credit unions to analyze the premerger requirements imposed on credit unions

by the Hart-Scott-Rodino Act and provides other miscellaneous updates to the existing rule governing credit union mergers, terminations, and conversions of share insurance.

DATES: Comments must be received on or before September 27, 2004.

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/news/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule Part 708b (Mergers and Termination or Conversion of Insured Status)” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act (Act) authorizes the NCUA Board to prescribe rules regarding mergers of federally-insured credit unions and changes in insured status and requires written approval of the Board before one or more federally-insured credit unions merge or before a federally-insured credit union terminates federal insurance or converts to nonfederal insurance. 12 U.S.C. 1766(a), 1785(b), 1785(c), 1789(a). Part 708b of NCUA's rules addresses the merger of federally-insured credit unions and the voluntary termination or conversion of federally-insured status. 12 CFR part 708b.

The Board last made significant changes to part 708b in 1987. 52 FR 12370 (April 16, 1987). The Board has a policy of continually reviewing NCUA regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. As a result of the NCUA's 2003 review, the Board determined that part 708b should be updated and modernized.

B. Proposed Amendments

1. Amendment Related to Hart-Scott-Rodino Act

The Hart-Scott-Rodino Act (HSR Act), codified at 15 U.S.C. 18a, requires that parties, including credit unions, to certain mergers or acquisitions notify the Federal Trade Commission (FTC) before consummating the merger or acquisition. This premerger notification, or “HSR filing,” enables the FTC and the U.S. Department of Justice to determine which mergers are likely to be anticompetitive and challenge them under the antitrust laws before they are finalized. Credit unions that file must pay the FTC a substantial fee ranging from \$45,000 up to \$280,000.

Only mergers involving relatively large credit unions require HSR filings because merging entities that are below a certain asset size are exempt. Generally, credit unions need not file if 1) the merging credit union has less than \$50 million in assets or 2) the merging credit union has from \$50 million up to \$200 million in assets and the continuing credit union is below a certain asset size established by the FTC. See Introductory Guide II to the Premerger Notification Program, To File or Not to File (Premerger Notification Office, Bureau of Competition, U.S. Federal Trade Commission, January 2002).

The proposed amendment requires a merging credit union that has more than \$50 million in assets as reported on its last call report to inform NCUA in its merger proposal if the credit union plans to make an HSR filing and, if not, why not. The Board notes that many credit unions with more than \$50 million in assets for purposes of call reporting may have some assets that do not count towards the HSR filing thresholds and so the merger may not require HSR filing. Credit unions should consult with private counsel about HSR filing issues.

2. Amendments Related to Share Insurance Disclosure.

Section 151 of the Federal Deposit Corporation Improvement Act of 1991 (FDICIA) added § 43 to the Federal Deposit Insurance Act (FDIA). Pub. L. No. 102-242 (1991), Section 151(a); Pub. L. No. 102-550 (1992), Section 1603(b)(2); and 12 U.S.C. 1831t(b). Section 43 of the FDIA requires, among other things, that depository institutions, including credit unions, that do not have federal deposit or share insurance make conspicuous disclosure of that fact and its potential ramifications to their current and potential account holders in various media. For example, nonfederally-insured institutions must make conspicuous disclosure in all periodic account statements, on each signature card, and on each passbook, certificate of account, or similar instrument, that “the institution is not federally-insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.” 12 U.S.C. 1831t(b)(1).

In a recent report, the U.S. General Accounting Office (GAO) found that “many privately insured credit unions have not always complied with the disclosure requirements in Section 43 that are designed to notify consumers that the deposits in these institutions are not federally-insured.” *Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions* (GAO-03-0971, August, 2003), p. 20. As the title of the report suggests, GAO concluded that FTC is the most appropriate federal agency to enforce the provisions of §43 with respect to nonfederally-

insured credit unions. NCUA does have a responsibility, however, to ensure that members of a federally-insured credit union are fully informed in connection with a vote to terminate federal insurance or to convert from federal to nonfederal insurance and that management understands and is committed to fulfilling its disclosure requirements post-conversion. See 12 U.S.C. 1785(c)(5). Accordingly, the proposed amendments revise the disclosure requirements in connection with the membership vote of credit unions seeking to terminate or convert from federal insurance and require the credit unions to acknowledge §43 and certify that they will comply with its requirements following termination or conversion.

Federally-insured credit unions intending to terminate federal insurance or convert to non-federal insurance must first obtain approval from their members, and part 708b currently requires credit unions to use certain language to disclose to members, as part of the notification of member vote, the effects of insurance termination or conversion. The current disclosure language required by part 708b is similar to that required by §43 following the loss of federal insurance. The proposed amendments modify the part 708b disclosures to make them more consistent with the §43 disclosures.

The proposed amendments also update the form notices, ballots, and certifications in subpart C of part 708b. The Board intends that credit unions desiring to convert must use the forms in subpart C unless the Regional Director approves the use of alternative forms.

Although the current rule has forms for both insurance conversions and terminations, the proposal drops the termination forms. The Board understands that, currently, no states will permit an insured credit union to voluntarily terminate its share insurance. The proposed regulation will continue to specify the essential requirements for a termination, but the Board feels that specific regulatory forms covering terminations are unnecessary.

3. Other Amendments Related to Insurance Conversions and Terminations

a. Timing and Sequence of the Approval Process

Currently, part 708b requires that NCUA must approve a merger before the members vote to approve the merger. By contrast, for insurance conversions, part 708b provides two options as to when a credit union must give notice: “[n]otice to the Board may be given when membership approval is solicited, or after membership approval is obtained.” Compare 12 CFR 708b.106(a)(1)(mergers) with 708b.203(c)(conversions). These different provisions may create confusion in mergers that also involve insurance conversions. NCUA proposes to eliminate this confusion by changing the notice requirement for insurance conversions to require a converting credit union to notify NCUA and request approval of the conversion before the credit union solicits a member vote. This change is consistent with the only timing requirement imposed by the Act, which is that NCUA be notified at least 90 days before the intended date of conversion. 12 U.S.C. 1786(a)(2).

b. Right to Redeem Term Share Accounts Without Penalty

The proposed rule requires, as part of the conversion process, that a credit union notify its members in the notice of member vote that, if the conversion is approved, it will permit members to close share certificate and other term accounts without penalty if done before the effective date of conversion. During one recent insurance conversion, NCUA received inquiries from some members of the converting credit union as to whether they could close term accounts without suffering an early withdrawal penalty. As a matter of policy, it is unfair to force credit union members to maintain term accounts after the loss of federal share insurance. As a matter of contract law, the credit union's term account contract may also require the continuation of federal account insurance as an express or implied condition.

The Board does not deem a similar provision allowing members to close term accounts without penalty as appropriate in insurance termination situations. In insurance termination situations, federal insurance may continue for up to a year after the date of termination; while in insurance conversion situations, federal insurance is lost completely on the date of conversion. See 12 U.S.C. 1786(c).

c. Communications to Members

The Board proposes to amend the current rule to modify the current requirement for Regional Director approval of certain written communications to members about insurance terminations or conversions. Currently, part 708b requires credit unions to use specific language in the notice to members of the pending change in insurance status and associated ballot. 12 CFR part 708b, subpart C. It also requires the approval of the Regional Director for any modifications to this language and any additional communications concerning insurance coverage included with the notice or ballot. 12 CFR 708b.303. The purpose of this approval requirement is to ensure that members are accurately informed about the ramifications of the loss of federal insurance coverage. The current approval requirement, however, does not extend to communications outside those included with the notice and ballot, such as separate mailings, e-mails, or postings on the world-wide web.

The Board is concerned about communications that credit unions may make that are intended to influence the member vote. While a credit union seeking to convert or terminate may make its case for conversion or termination to its members, it may not do so by misleading, inaccurate, or deceptive representations. For example, the Board believes that any discussion of NCUA insurance, or any comparison of nonfederal insurance to NCUA insurance, is inaccurate and deceptive if it fails to mention the most important aspect of NCUA insurance: by law, it is backed by the full faith and credit of the United States government. Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, Section 901, 101 Stat. 657 (1987); Massachusetts Credit Union Share Insurance Corporation v. National Credit Union Administration, 693 F.Supp. 1225, 1230-

31 (D.C.D.C. 1988) (“The Court concludes that it was the clear and unambiguous intention of the Congress to guarantee the resources of . . . depository institutions with the full faith and credit of the United States.”). The Board is also concerned about representations that state or imply that it is difficult or impossible to structure accounts at a federally-insured institution to obtain more than \$100,000 of share insurance coverage as these representations are also inaccurate and deceptive. The Board is proposing multiple amendments to address these member communications issues.

The Board is proposing to amend the current rule to clarify the concept of “notice.” Part 708b currently provides that when the board of directors of a federally-insured credit union adopts a resolution proposing to convert from federal to nonfederal insurance, including an insurance conversion associated with a merger or conversion of charter, it must provide its members with written notice of the proposal to convert insurance and of the date set for the membership vote. To ensure that the members are adequately informed about the nature of the insurance conversion, both the current and proposed rules prescribe specific forms for this notice. The proposed rule makes clear that the first written communication following the resolution to convert that is made by or on behalf of the credit union and that informs the members that the credit union will seek conversion of insurance is, in fact, the notice of the proposal to convert and must be in the prescribed form unless the Regional Director approves a different form.

The proposed rule will also place approval and disclosure requirements on “share insurance communications,” defined in the proposed rule as any written communication,

that: is made by or on behalf of a federally-insured credit union; is intended to be read by two or more credit union members; and mentions share insurance conversion or termination. The term covers communications delivered or made available before, during, and after the credit union board of directors decides to seek conversion or termination. The term includes, but is not limited to, communications delivered or made available by mail, e-mail, and internet website posting.

The current rule requires prior Regional Director approval of any “[m]odifications or additions to the notices or ballot concerning insurance coverage, and any additional communications concerning insurance coverage included with the notices or ballot” 12 CFR 708b.303. The current rule states that the Regional Director may not withhold such approval unless “it is determined that the credit union, by inclusion or omission of information, would materially mislead or misinform its membership.” Id. The proposed retains the prior approval requirement and the standard of review, but expands the types of communications subject to prior approval. Specifically, the proposed rule requires prior approval for all share insurance communications made during the voting period, including those communications not included with the notices or ballot.

The current rule does not contain any disclosure requirements for communications other than the disclosures contained in the form notice and ballot. The proposed rule, however, requires the inclusion of the following disclosure language, in a conspicuous fashion, in all share insurance communications: “IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE

NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION (CONVERTS TO PRIVATE INSURANCE)(TERMINATES ITS FEDERAL INSURANCE), AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK.”

To make an informed decision about conversion or termination, members must understand the potential repercussions from the loss of federal insurance. This information is so important it must be provided the first time the issue of conversion is raised and every time the issue is discussed. The proposed disclosure language tracks the disclosures required of nonfederally-insured credit unions by §43(b) of the FDIA after conversion. 12 U.S.C. 1831t(b). The proposal requires this language be included in all share insurance communications whether or not the communication requires prior NCUA approval and whether or not the credit union has made a formal decision to seek conversion or termination. The Board is concerned, for example, about the use of surveys and questionnaires as a vehicle to shape member opinion about conversions before the board of directors formally resolves to convert. The proposed rule also tracks §43(b) by requiring that the disclosure language be conspicuous. To ensure that the disclosure catches the attention of the member, the disclosure must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

As noted above, the proposed rule defines “share insurance communication” to include only those communications intended to be read by two or more members. The proposed rule’s disclosure and prior approval requirements do not apply to any communication that is addressed to a single person if the communication is not publicized by, or on behalf of, the credit union, or if the same or substantially the same communication is not otherwise made to more than one member. So, for example, if a member sent an email to a credit union asking for a replacement ballot or seeking more information about the member meeting, the credit union’s reply would not require prior Regional Director approval nor would it need to contain the disclosure language.

The Board also proposes to add a cross-reference to §740.2 of NCUA’s advertising regulation, which section prohibits the making of false or deceptive representations. 12 CFR 740.2. This cross-reference does not create any new requirement, but, rather, reminds credit unions of an important preexisting obligation when communicating with members.

d. Eligibility for Nonfederal Insurance

Not all states permit nonfederal primary share insurance. The proposed rule requires, as part of the request for NCUA approval of conversion to nonfederal insurance, that the converting credit union provide proof that the nonfederal insurer is authorized to issue share insurance in the state where the credit union is located and that the insurer will insure the credit union.

e. Voting Procedures

To ensure the integrity of the vote, the proposed rule requires the vote be conducted by secret ballot and be administered by an independent entity. The Board wants all members, including employee-members, to be able to vote in their own best interests free from any pressure. A secret vote administered by an independent entity will eliminate disclosure of early voting returns and pressure on members to vote in a certain way or change previously cast votes.

The proposed rule defines “independent entity” as a company with experience in conducting corporate elections. No official or senior manager of the credit union, or the immediate family members of any official or senior manager, may have any ownership interest in, or be employed by, the entity.

4. Miscellaneous Amendments

The Board is proposing an amendment to require notice to members regarding the potential reduction of account insurance coverage resulting from the merger of two federally-insured credit unions. Two credit unions that are proposing to merge may have overlapping fields of membership, and there may be individuals who belong to both credit unions. If these individuals have accounts at both credit unions in an aggregate amount exceeding \$100,000, they run the risk of losing some insurance

coverage on their accounts as a result of the merger. Last December, NCUA finalized a change to its insurance rules to extend insurance coverage in this situation for up to six months following a merger. 68 FR 75111 (December 30, 2003)(Amendments to 12 CFR part 745). Still, some members may not make the appropriate account adjustments within the six-month window. To ensure these members are aware of the possible loss of coverage, this proposed rule requires the continuing credit union either (1) notify all members of the continuing credit union of the potential loss of insurance coverage from overlapping fields of membership, (2) notify all individuals who are members of both credit unions of the potential loss of insurance coverage, or (3) determine which members of both credit unions may actually have uninsured funds six months after the merger and notify those members of the potential loss of insurance coverage.

The proposed rule clarifies that that the terms “insurance” and “insured” as used in part 708b refer to primary share or deposit insurance, not to excess insurance.

The proposed rule requires merging credit unions to analyze the net worth of the two credit unions before merger, as calculated under generally accepted accounting principles (GAAP), and compare those figures with the estimated net worth of the continuing credit union after merger. The credit unions must conduct this analysis to determine any negative effects on GAAP net worth resulting from a merger.

The proposed rule also makes other minor changes to modernize the language.

REGULATORY PROCEDURES

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). Each year, there are about 300 mergers that involve federally-insured credit unions, and about 250 of these mergers involve small credit unions. In almost all cases, however, the small credit union merges into a much larger continuing credit union. The larger credit union is available to assist the small credit union with each step in the merger process, keeping the economic impact on the small credit union to a minimum. Accordingly, the Board does not anticipate that this proposed rule would have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

B. Paperwork Reduction Act

Section 708b contains information collection requirements. As required by the Paperwork Reduction Act of 1995 ([44 U.S.C. 3507\(d\)](#)), NCUA has submitted a copy of this proposed rule as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval for revision of Collection of

Information, Mergers of Federally Insured Credit Unions, Control Number 3133-0024.

The proposed §708b ensures that NCUA has sufficient information to determine whether to approve the proposed merger, insurance conversion, or insurance termination. The proposed §708b further ensures that members have sufficient and accurate information to exercise their vote properly concerning the proposed merger, insurance conversion, or insurance termination. The proposed §708b also protects the property interests of members that may lose some or all of the federal insurance due to a merger, conversion, or termination of insurance.

Mergers

Each year, there are approximately 300 mergers involving one or more federally insured credit unions. NCUA estimates that it will take the two merging credit unions about 25 hours between them to prepare the required merger documents (proposed §708b.103), to collect and submit the required information to NCUA (proposed §708b.104), to provide required insurance disclosures if the merger involves a share insurance conversion (proposed §708b.206), to notify members of the merger and send them the ballot (proposed §708b.106), to notify NCUA of the merger's completion (proposed §708b.108), and to notify the members of the results of the merger and the possible effect on their insurance coverage (proposed §708b.101(e)). Three hundred respondents (the two merging credit unions together treated as one respondent) times

25 hours per respondent equals 7,500 total annual burden hours associated with this collection of information.

Share Insurance Terminations.

Approximately zero credit unions each year engage in share insurance terminations. If one or more credit unions does engage in a voluntary termination of insurance in the future NCUA estimates there will be minimal burden in the form of collections of information on those credit unions. NCUA estimates that it will take each credit union 10 hours to prepare the required termination documents and notice to NCUA (proposed §708b.201), the notice to members and ballot (proposed §708b.202), and the required disclosures in other communications that the credit union plans to send to its members (proposed §708b.206). Zero respondents times 10 hours per respondent equals zero total annual burden hours associated with this collection of information.

Share Insurance Conversions

Approximately three credit unions each year engage in share insurance conversions outside of the merger context. NCUA estimates there will be minimal burden in the form of collections of information, since NCUA provides forms and form language in the regulation and associated manuals. NCUA estimates that it will take each credit union 10 hours to prepare the required conversion documents and notice to NCUA (proposed §708b.203), the notice to members and ballot (proposed §708b.204), and the required

disclosures in other communications that the credit union plans to send to its members (proposed §708b.206). Three respondents times 10 hours per respondent equals 30 total annual burden hours associated with this collection of information.

Total annual burden hours = 7,530.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Mark Menchik, Room 10226, New Executive Office Building, Washington, DC 20503

The NCUA considers comments by the public on this proposed collection of information in-

-- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;

-- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

-- Enhancing the quality, usefulness, and clarity of the information to be collected; and

-- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulations.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. The Treasury and General Government Appropriations Act, 1999 - -

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would 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).

E. Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects

12 CFR part 708b

Credit Unions, Mergers of Credit Unions, Reporting and Recordkeeping Requirements.

By the National Credit Union Administration Board on July 22, 2004.

Becky Baker

Secretary of the Board

For the reasons stated above, NCUA proposes to revise 12 CFR part 708b as follows:

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

Sec.

708b.1 Scope.

708b.2 Definitions.

Subpart A – Mergers

708b.101 Mergers generally.

708b.102 Special provisions for federal insurance.

708b.103 Preparation of merger plan.

708b.104 Submission of merger proposal to the NCUA.

708b.105 Approval of merger proposal by NCUA.

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

708b.107 Certificate of vote on merger proposal.

708b.108 Completion of merger.

Subpart B – Voluntary Termination or Conversion of Insured Status

708b.201 Termination of insurance.

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

708b.203 Conversion of insurance.

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

708b.205 Modifications to notice.

708b.206 Share insurance communications to members.

Subpart C – Forms

708b.301 Conversion of insurance (State Chartered Credit Union).

708b.302 Conversion of insurance (Federal Credit Union).

708b.303 Conversion of insurance through merger.

Authority: 12 U.S.C. 1766, 1785, 1786, 1789.

§ 708b.1 Scope.

(a) Subpart A of this Part prescribes the procedures for merging one or more credit unions with a continuing credit union where at least one of the credit unions is federally-insured.

(b) Subpart B of this Part prescribes the procedures and notice requirements for termination of federal insurance or conversion of federal insurance to nonfederal insurance, including termination or conversion resulting from a merger.

(c) Subpart C prescribes required forms for use in conversion of federal insurance to nonfederal insurance.

(d) Nothing in this Part restricts or otherwise impairs the authority of the NCUA to approve a merger pursuant to Section 205(h) of the Act.

(e) This Part does not address procedures or requirements that may be applicable under state law for a state credit union.

§ 708b.2 Definitions.

(a) Continuing credit union means the credit union that will continue in operation after the merger.

(b) Convert, conversion, and converting, when used in connection with insurance, refer to the act of canceling federal insurance and simultaneously obtaining insurance from another insurance carrier. They mean that after cancellation of federal insurance the credit union will be nonfederally-insured.

(c) Federally-insured means insured by the National Credit Union Administration (NCUA) through the National Credit Union Share Insurance Fund (NCUSIF).

- (d) Independent entity means a company with experience in conducting corporate elections. No official or senior manager of the credit union, or the immediate family members of any official or senior manager, may have any ownership interest in, or be employed by, the entity.
- (e) Insurance and insured refer to primary share or deposit insurance. These terms do not include excess share or deposit insurance as referred to in Part 740.
- (f) Merging credit union means the credit union that will cease to exist as an operating credit union at the time of the merger.
- (g) Nonfederally-insured means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state or territorial law.
- (h) Share insurance communication means any written communication, excluding the form communications in Subpart C of this Part, that is made by or on behalf of a federally-insured credit union, that is intended to be read by two or more credit union members, and that mentions share insurance conversion or termination. The term includes communications delivered or made available before, during, and after the credit union board of directors decides to seek conversion or termination. The term includes, but is not limited to, communications delivered or made available by mail, e-mail, and internet website posting.

- (i) State credit union means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, state authority means the appropriate state or territorial regulatory or supervisory authority for any such credit union.

- (j) Terminate, termination, and terminating, when used in reference to insurance, refer to the act of canceling federal insurance and mean that the credit union will become uninsured.

- (k) Uninsured means there is no share or deposit insurance available on the credit union accounts.

Subpart A—Mergers

§ 708b.101 Mergers generally.

- (a) In any case where a merger will result in the termination of federal insurance or conversion to nonfederal insurance, the merging credit union must comply with the provisions of Subparts B and C in addition to this Subpart A.

(b) A federally-insured credit union must have the prior written approval of the NCUA before merging with any other credit union.

(c) Where the continuing credit union is a federal credit union, it must be in compliance with the chartering policies of the NCUA.

(d) Where the continuing or merging credit union is a state credit union, the merger must be permitted by state law or authorized by the state authority.

(e) Where both the merging and continuing credit unions are federally-insured and the two credit unions have overlapping fields of membership, the continuing credit union must, within three months after completion of the merger, either:

(1) Notify all members of the continuing credit union of the potential loss of insurance coverage if they had overlapping membership,

(2) Notify all individuals and entities that were actually members of both credit unions of the potential loss of insurance coverage, or

(3) Determine which members of both credit unions may actually have uninsured funds six months after the merger and notify those members of the potential loss of insurance coverage.

§ 708b.102 Special provisions for federal insurance.

(a) Where the continuing credit union is federally-insured, the NCUSIF will assess a deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) on the additional share accounts insured as a result of the merger of a nonfederally-insured or uninsured credit union with a federally-insured credit union.

(b) Where the continuing credit union is nonfederally-insured or uninsured but desires to be federally-insured as of the date of the merger, it must submit an application to the appropriate Regional Director when the merging credit union requests approval of the merger proposal. If the Regional Director approves the merger, the NCUSIF will assess a deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) on any additional share accounts insured as a result of the merger.

(c) Where the continuing credit union is nonfederally-insured or uninsured and does not make application for insurance, but the merging credit union is federally-insured, the continuing credit union is entitled to a refund of the merging credit union's NCUSIF deposit and to a refund of the unused portion of the NCUSIF share insurance premium (if any). If the continuing credit union is uninsured, the NCUSIF will make the refund only after expiration of the one-year period of continued insurance coverage noted in subsection (e) of this section.

(d) Where the continuing credit union is nonfederally-insured, NCUSIF insurance of the member accounts of a merging federally-insured credit union ceases as of the effective date of the merger.

(e) Where the continuing credit union is uninsured, NCUSIF insurance of the member accounts of the merging federally-insured credit union will continue for a period of one year, subject to the restrictions in Section 206(d)(1) of the Act.

§ 708b.103 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, the two credit unions must prepare a plan for the proposed merger that includes:

(1) Current financial statements for both credit unions;

(2) Current delinquent loan summaries and analyses of the adequacy of the Allowance for Loan and Lease Losses account;

(3) Consolidated financial statements, including an assessment of the generally accepted accounting principles (GAAP) net worth of each credit union before the merger and the GAAP net worth of the continuing credit union after the merger;

- (4) Analyses of share values;
- (5) Explanation of any proposed share adjustments;
- (6) Explanation of any provisions for reserves, undivided earnings or dividends;
- (7) Provisions with respect to notification and payment of creditors;
- (8) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;
- (9) Provisions for determining that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a federal credit union); and
- (10) Proposed charter amendments (where the continuing credit union is a federal credit union). These amendments, if any, will usually pertain to the name of the credit union and the definition of its field of membership.

(b) [Reserved.]

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

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the credit unions must submit the following information to the Regional Director:

- (1) The merger plan, as described in this Part;
- (2) Resolutions of the boards of directors;
- (3) Proposed Merger Agreement;
- (4) Proposed Notice of Special Meeting of the Members (for merging federal credit unions);
- (5) Copy of the form of Ballot to be sent to the members (for merging federal credit unions);
- (6) Evidence that the state's supervisory authority approves the merger proposal (for states that require such agreement before NCUA approval);
- (7) Application and Agreement for Insurance of Member Accounts (for continuing state credit unions desiring to become federally-insured);
- (8) If the merging credit union has \$50 million or more in assets on its latest call report, 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; and

(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 “will fully comply with 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).

§ 708b.105 Approval of merger proposal by the NCUA.

(a) In any case where the continuing credit union is federally-insured and the merging credit union is nonfederally-insured or uninsured, the NCUA will determine the potential risk to the NCUSIF.

(b) If the NCUA finds that the merger proposal complies with the provisions of this Part and does not present an undue risk to the NCUSIF, it may approve the proposal subject to any other specific requirements as it may prescribe to fulfill the intended purposes of

the proposed merger. For mergers of federal credit unions into federally-insured credit unions, if the NCUA determines that the merging credit union is in danger of insolvency and that the proposed merger would reduce the risk or avoid a threatened loss to the NCUSIF, the NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging credit union otherwise required by §708b.106 of this Part.

(c) NCUA may approve any proposed charter amendments for a continuing federal credit union contingent upon the completion of the merger. All charter amendments must be consistent with NCUA chartering policy.

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

(a) When the merging credit union is a federal credit union, the members must:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of NCUA approval, or by mail ballot, received no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting in accordance with the provisions of Article IV, Meetings of Members, Federal Credit Union Bylaws. The notice must:

- (i) Specify the purpose of the meeting and the time and place;

- (ii) Contain a summary of the merger plan, including, but not necessarily limited to, current financial statements for each credit union, a consolidated financial statement for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;

- (iii) State reasons for the proposed merger;

- (iv) Provide name and location, including branches, of the continuing credit union;

- (v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be received no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

- (vi) Be accompanied by a Ballot for Merger Proposal.

(b) 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 who vote on the proposal. If the continuing credit union is uninsured or nonfederally-insured, the voting requirements of subpart B apply. If the continuing credit union is nonfederally-insured, 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.

§ 708b.107 Certificate of vote on merger proposal.

The board of directors of the merging federal credit union must certify the results of the membership vote to the Regional Director within 10 days after the vote is taken. The certification must include the total number of members of record of the credit union, the number who voted on the merger, the number who voted in favor, and the number who voted against. If the continuing credit union is nonfederally-insured, the merging credit union must use the certification form in Subpart C of this Part unless the Regional Director approves the use of a different form.

§ 708b.108 Completion of merger.

(a) Upon approval of the merger proposal by the NCUA and by the state supervisory authority (where the continuing or merging credit union is a state credit union) and by

the members of each credit union where required, the credit unions may complete the merger.

(b) Upon completion of the merger, the board of directors of the continuing credit union must certify the completion of the merger to the Regional Director within 30 days after the effective date of the merger.

(c) Upon the NCUA's receipt of certification that the merger has been completed, the NCUA will cancel the charter of the merging federal credit union (if applicable) and the insurance certificate of any merging federally-insured credit union.

Subpart B—Voluntary Termination or Conversion of Insured Status

§ 708b.201 Termination of insurance.

(a) A state credit union may terminate federal insurance, if permitted by state law, either on its own or by merging into an uninsured credit union.

(b) A federal credit union may terminate federal insurance only by merging into, or converting its charter to, an uninsured state credit union.

(c) A majority of the credit union's members must approve a termination of insurance by affirmative vote. The credit union must use an independent entity to collect and tally

the votes and certify the results for all terminations, including terminations that involve a merger or charter conversion. The vote must also be taken by secret ballot, meaning that no credit union employee or official can determine how a particular member voted.

(d) Termination of federal insurance requires the NCUA's prior written approval. A credit union must notify the NCUA and request approval of the termination through the Regional Director in writing at least 90 days before the proposed termination date and within one year after obtaining the membership vote. The notice to the NCUA must include:

(1) A written statement from the credit union that it "will fully comply with the requirements of 12 U.S.C. §1831t(b), including all notification and acknowledgment requirements;" and

(2) A certification of the member vote. The certification must include the total number of members of record of the credit union, the number who voted in favor of the termination, and the number who voted against.

(e) The NCUA will approve or disapprove the termination in writing within 90 days after being notified by the credit union.

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

(a) When the board of directors of a federally-insured credit union adopts a resolution proposing to terminate federal insurance, including termination due to a merger or conversion of charter, it must provide its members with written notice of the proposal to terminate and of the date set for the membership vote. The first written communication following the resolution that is made by or on behalf of the credit union and that informs the members that the credit union will seek termination is the notice of the proposal to terminate. This notice must:

(1) Inform the members of the requirement for a membership vote and the date for the vote;

(2) Explain that the insurance provided by the NCUA is federal insurance and is backed by the full faith and credit of the United States government; and

(3) Include a conspicuous statement that if the termination or merger is approved, and the credit union, or the continuing credit union in the case of a merger, subsequently fails, the federal government does not guarantee the member will get his or her money back.

(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, not more than 30 nor less than 7 days before the date of the vote. The

membership must be given the opportunity to vote by mail ballot. The credit union may provide the notice of the proposal and the ballot to members at the same time.

(c) If the membership and the NCUA approve the proposition for termination of insurance, the credit union must give the members prompt and reasonable notice of termination.

§ 708b.203 Conversion of insurance.

(a) A federally-insured state credit union may convert to nonfederal insurance, if permitted by state law, either on its own or by merging into a nonfederally-insured credit union.

(b) A federal credit union may convert to nonfederal insurance only by merging into, or converting its charter to, a nonfederally-insured state credit union.

(c) Conversion to nonfederal insurance requires the prior written approval of the NCUA. After the credit union board of directors resolves to seek a conversion, the credit union must notify the Regional Director promptly, in writing, of the desired conversion and request NCUA approval of the conversion. The notification must be in the form specified in Subpart C of this part, unless the Regional Director approves a different form. The credit union must provide this notification and request for approval to the

Regional Director at least 14 days before the credit union notifies its members and seeks their vote and at least 90 days before the proposed conversion date.

(d) Approval of a conversion of federal to nonfederal insurance requires the affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The credit union must use an independent entity to collect and tally the votes and certify the results for all conversions, including conversions that involve a charter conversion or merger. The vote must be taken by secret ballot, meaning that no credit union employee or official can determine how a particular member voted.

(e) For all conversions, the notice to the NCUA must include:

(1) A written statement from the credit union that it "will fully comply with the requirements of 12 U.S.C. § 1831t(b), including all notification and acknowledgment requirements;" and

(2) Proof that the nonfederal insurer is authorized to issue share insurance in the state where the credit union is located and that the insurer will insure the credit union.

(f) The board of directors of the credit union and the independent entity that conducts the membership vote must certify the results of the membership vote to the NCUA

within 10 days after the deadline for receipt of votes. The certification must include the total number of members of record of the credit union, the number who voted on the conversion, the number who voted in favor of the conversion, and the number who voted against. The certification must be in the form specified in Subpart C of this Part.

(g) Generally, the NCUA will approve or disapprove the conversion in writing within 14 days after receiving the certification of the vote.

(h) For conversions by merger, the merging credit unions must follow the procedures specified in Subparts A and B of this Part and use the forms specified in Subpart C of this Part. In the event the procedures of Subpart A and B conflict, the credit union must follow Subpart B.

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

(a) When the board of directors of a federally-insured credit union adopts a resolution proposing to convert from federal to nonfederal insurance, including an insurance conversion associated with a merger or conversion of charter, it must provide its members with written notice of the proposal to convert insurance and of the date set for the membership vote. The first written communication following this resolution that is made by or on behalf of the credit union and that informs the members that the credit union will seek conversion of insurance is the notice of the proposal to convert. This notice must:

(1) Inform the members of the requirement for a membership vote and the date for the vote;

(2) Explain that the insurance provided by the NCUA is federal insurance and is backed by the full faith and credit of the United States government, while the insurance provided by the nonfederal insurer is not guaranteed by the federal or any state government;

(3) Include a conspicuous statement that if the conversion or merger is approved, and the credit union, or the continuing credit union in the case of a merger, subsequently fails, the federal government does not guarantee the member will get his or her money back;

(4) Inform the members that if the conversion or merger is approved, the credit union will permit members that have share certificates or other term accounts at the credit union to close those accounts before the effective date of the merger without any early withdrawal penalty; and

(5) Be in the form set forth in Subpart C of this Part, unless the Regional Director approves a different form.

(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, not more than 30 nor less than 7 days before the date for the vote. The credit union must give the membership the opportunity to vote by mail ballot. The form of the ballot must be as set forth in Subpart C of this Part, unless the Regional Director approves the use of a different form. The notice of the proposal and the ballot may be provided to the members at the same time.

(c) If the membership and the NCUA approve the proposition for conversion of insurance, the credit union will give prompt and reasonable notice to the membership. The notice must identify the effective date of the conversion, and include a conspicuous statement that:

- (1) The conversion will result in the loss of federal share insurance, and
- (2) The credit union will, at any time before the effective date of conversion, permit all members who have share certificates or other term accounts to close those accounts without an early withdrawal penalty.

§ 708b.205 Modifications to notice.

(a) Any modifications or additions to the notices, ballots, or certifications as provided in Subpart C of this Part may be made only with the prior written approval of the Regional

Director and, in the case of a state credit union, also require the approval of the appropriate state authority. For information directed to members, the Regional Director may withhold approval of such modifications or additions if he or she determines that the credit union, by inclusion or omission of information, would materially mislead or misinform its membership.

(b) Federally-insured state credit unions may include additional language in the notice and ballot regarding state requirements for mergers, where appropriate.

§ 708b.206 Share insurance communications to members.

(a) Every share insurance communication must comply with §740.2 of this Chapter, which, in part, prohibits federally-insured credit unions from making any representation that is inaccurate or deceptive in any particular.

(b) Every share insurance communication about share insurance conversion must contain the following conspicuous statement: "IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION CONVERTS TO PRIVATE INSURANCE AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT

DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK.” The statement must:

(1) Appear on the first page of the communication where conversion is discussed and, if the communication is on an internet website posting, must be visible without scrolling; and

(2) Must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

(c) Every share insurance communication about share insurance termination must contain the following conspicuous statement: “IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION TERMINATES ITS FEDERAL INSURANCE AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK.” The statement must:

- (1) Appear on the first page of the communication where termination is discussed and, if the communication is on an internet website posting, must be visible without scrolling; and
- (2) Must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

(d) Any share insurance communication that will be made during the voting period may be made only with the prior written approval of the Regional Director and, in the case of a state credit union, also with the approval of the appropriate state authority. The Regional Director may withhold approval of such communications if he or she determines that the communication, by inclusion or omission of information, would materially mislead or misinform the credit union's membership. For purposes of this paragraph, the voting period begins on the date of the board of director's resolution to seek conversion or termination and ends on the date the member voting closes.

Subpart C—Forms

§ 708b.301 Conversion of insurance (State Chartered Credit Union).

Unless the Regional Director approves the use of different forms, a state chartered credit union must use the forms in this section in connection with a conversion to nonfederal insurance.

(a) Form letter notifying NCUA of intent to convert:

(insert name), NCUA Regional Director

(insert address of NCUA Regional Director)

Re: Notice of Intent to Convert to Private Share Insurance

Dear Director (insert name):

In accordance with federal law at Title 12, United States Code Section 1785(b)(1)(D), I request the National Credit Union Administration approve the conversion of (insert name of credit union) from federal share insurance to private primary share insurance with (insert name of private insurance company).

On (insert date), the board of directors of (insert name of credit union) resolved to pursue the conversion from federal insurance to private insurance. A copy of the resolution is enclosed.

On (insert date), the credit union plans to solicit the vote of our members on the conversion. The credit union will employ (insert name, address, and telephone number of independent entity) to conduct the member vote. The credit union will use the form notice and ballot required by NCUA regulations, and will certify the results to NCUA as required by NCUA regulations.

Aside from the notice and ballot, the credit union (does)(does not) intend to provide its members with additional written information about the conversion. I understand that NCUA regulations forbid any communications to members, including communications

about NCUA insurance or private insurance, that are inaccurate or deceptive. I have enclosed copies of all draft communications that, under NCUA regulations, require your review and approval.

(Insert name of State) allows credit unions to obtain primary share insurance from (insert name of private insurance company). I have enclosed a copy of a letter from (insert name and title of state regulator) establishing that (insert name of private insurer) has the authority to provide (insert name of credit union) with primary share insurance.

I have enclosed a copy of a letter from (insert name of private insurer) indicating it has accepted (insert name of credit union) for primary share insurance and will insure the credit union immediately upon the date that it loses its federal share insurance.

You have my assurances that, in connection with the proposed conversion of (insert name of credit union) to private share insurance, the credit union will fully comply with all the notice, disclosure, and acknowledgment requirements of 12 U.S.C. §1831t(b).

Upon conversion, the credit union will keep the Federal Trade Commission apprised of its efforts to comply with §1831t(b).

The point of contact for conversion matters is (insert name and title of credit union employee), who can be reached at (insert telephone number).

Sincerely,

(signature)

Chief Executive Officer

Enclosures

(b) Form notice to members of intent to convert and special meeting of members:

Notice of Proposal to Convert to Nonfederally-insured Status and Special

Meeting of Members

(Insert name of converting credit union)

On (insert date), the board of directors of your credit union approved a proposition to convert from federal share (deposit) insurance to nonfederal insurance. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date) to address this proposition.

Purpose of Meeting.

The meeting has two purposes:

1. To consider and act upon a proposal to convert your account insurance from federal insurance to private insurance.
2. To approve the action of the Board of Directors in authorizing the officers of the credit union to carry out the proposed conversion.

Insurance Conversion.

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up to \$100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than \$100,000. If the conversion is approved, your federal insurance will terminate on the effective date of the conversion. Instead, your accounts in the credit union will instead be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

**IF THIS CONVERSION IS APPROVED AND THE (insert name of credit union)
FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET
YOUR MONEY BACK.**

Also, because this conversion, if approved, would result in the loss of federal share insurance, the credit union will, at any time after approval of the conversion and before the effective date of conversion, permit all members who have share certificates or other term accounts to close those accounts without an early withdrawal penalty.

The board of directors has concluded that the proposed conversion is desirable for the following reasons: (insert reasons). (This is an optional paragraph. If it is used, the proposed language must be submitted to the Regional Director for approval).

The proposed conversion will result in the following one-time cost associated with the conversion: (List the total estimated dollar amount, including (1) the cost of conducting the vote, (2) the cost of changing the credit union's name and insurance logo, and (3) attorney and consultant fees.)

The conversion must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a ballot. If you cannot attend the meeting, please complete the ballot and return it to (insert name and address of independent entity conducting the vote) by no later than (insert time and date). To be counted, your ballot must reach us by that date and time.

BY ORDER OF THE BOARD OF DIRECTORS:

(signature of Board Presiding Officer)

(insert title and date)

(c) Form ballot:

Ballot for Conversion to Nonfederally-insured Status

(Insert name of converting credit union)

Name of Member: (insert name) Account Number: (insert account number)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address)

I understand if the conversion of the (insert name of credit union) is approved, the National Credit Union Administration share (deposit) insurance I now have, up to \$100,000, or possibly more if I use different accounts structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

**I FURTHER UNDERSTAND THAT IF THIS CONVERSION IS APPROVED AND THE
(insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT
GUARANTEE THAT I WILL GET MY MONEY BACK.**

I vote on the proposal as follows (check one box):

Approve the conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the conversion.

DO NOT approve the conversion to private insurance.

Signed _____

(Insert printed member's name)

Date: _____

(d) Form certification of member vote to NCUA:

Certification of Vote on Conversion to Nonfederally-insured Status

We, the undersigned officers of the (insert name of converting credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution to seek the conversion of our primary share insurance coverage from NCUA to (insert name of private insurer).

2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and the ballot, as approved by the National Credit Union Administration, were mailed to our members.

3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed conversion.

4. At the special meeting, the credit union arranged for an explanation of the conversion to the members present at the special meeting.

5. (Insert name), an entity independent of the credit union, conducted the membership vote at the special meeting. The members voted as follows:
 - (insert) Number of total members
 - (insert) Number of members present at the special meeting
 - (insert) Number of members present who voted in favor of the conversion
 - (insert) Number of members present who voted against the conversion
 - (insert) Number of additional written ballots in favor of the conversion
 - (insert) Number of additional written ballots opposed to the conversion

(insert "20% or more") **OR** (insert "Less than 20%") of the total membership voted. Of those who voted, a majority voted (inset "in favor of") **OR** ("against") conversion.

The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date).

(signature of Board Presiding Officer)

(signature of Board Secretary)

(insert typed name and title)

(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):

(signature of officer of independent entity)(typed name, title, and phone number)

§ 708b.302 Conversion of Insurance (Federal Credit Union).

Unless the Regional Director approves the use of different forms, a federal credit union must use the following forms in this section in connection with a conversion to a nonfederally-insured state charter.

(a) Form letter notifying NCUA of intent to convert:

(insert name), NCUA Regional Director

(insert address of NCUA Regional Director)

Re: Notice of Intent to Convert to State Charter and to Private Share Insurance

Dear Director (insert name):

In accordance with federal law at Title 12, United States Code Section 1785(b)(1)(D), I request the National Credit Union Administration approve the conversion of (insert name of federal credit union) to a state charter in (insert name of state) and from federal share insurance to private primary share insurance with (insert name of private insurance company).

On (insert date), the board of directors of (insert name of credit union) resolved to pursue the charter conversion and the conversion from federal insurance to private insurance. A copy of the resolution is enclosed.

On (insert date), the credit union plans to solicit the vote of our members on the conversion. The credit union will employ (insert name, address, and telephone number of independent entity) to conduct the member vote. The credit union will use the form notice and ballot required by NCUA regulations, and will certify the results to NCUA as required by NCUA regulations.

Aside from the notice and ballot, the credit union (does)(does not) intend to provide our members with additional written information about the conversion. I understand that NCUA regulations forbid any communications to members, including communications about NCUA insurance or private insurance, that are inaccurate or deceptive. I have enclosed copies of all draft communications that, under NCUA regulations, require your review and approval.

I have enclosed a copy of a letter from (insert name and title of state regulator) indicating approval of our conversion to a state charter.

(Insert name of State) allows credit unions to obtain primary share insurance from (insert name of private insurance company). I have enclosed a copy of a letter from (insert name and title of state regulator) establishing that (insert name of private insurer) has the authority to provide (insert name of credit union), after conversion to a state charter, with primary share insurance.

I have enclosed a copy of a letter from (insert name of private insurer) indicating it has accepted (insert name of credit union) for primary share insurance and will insure the credit union immediately upon the date that it loses its federal share insurance.

You have my assurances that, in connection with the proposed conversion of (insert name of credit union) to a state charter and to private share insurance, the credit union will fully comply with all the notice, disclosure, and acknowledgment requirements of 12 U.S.C. §1831t(b). Upon conversion, the credit union will keep the Federal Trade Commission apprised of its efforts to comply with §1831t(b).

Enclosed you will also find other information required by NCUA's Chartering and Field of Membership Manual, Chapter 4, §III.C.

The point of contact for conversion matters is (insert name and title of credit union employee), who can be reached at (insert telephone number).

Sincerely,

(signature)

Chief Executive Officer

Enclosures

(b) Form notice to members of intent to convert and special meeting of members:

**Notice of Proposal to Convert to a State Charter and to Nonfederally-insured
Status and Special Meeting of Members
(Insert name of converting credit union)**

On (insert date), the board of directors of your credit union approved a proposition to convert from federal share (deposit) insurance to nonfederal insurance and to convert from a federal credit union to a state-chartered credit union. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date) to address this proposition.

Purpose of Meeting.

The meeting has two purposes:

1. To consider and act upon a proposal to convert your credit union from a federal charter to a state charter and your account insurance from federal insurance to private insurance.

2. To approve the action of the Board of Directors in authorizing the officers of the credit union to carry out the proposed conversion.

Insurance Conversion.

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up to \$100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than \$100,000. If the conversion is approved, your federal insurance will terminate on the effective date of the conversion. Instead, your accounts in the credit union will instead be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

**IF THIS CONVERSION IS APPROVED AND THE (insert name of credit union)
FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET
YOUR MONEY BACK.**

Also, because this conversion, if approved, would result in the loss of federal share insurance, the credit union will, at any time after approval of the conversion and before the effective date of conversion, permit all members who have share certificates or other term accounts to close those accounts without an early withdrawal penalty.

The board of directors has concluded that the proposed conversion is desirable for the following reasons: (insert reasons) (This is an optional paragraph. If it is used, and if it makes reference to the insurance conversion, the proposed language must be submitted to the Regional Director for approval).

The proposed conversion will result in the following one-time cost associated with the conversion: (List the total estimated dollar amount, including (1) the cost of conducting the vote, (2) the cost of changing the credit union's name and insurance logo, and (3) attorney and consultant fees.)

The conversion must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a ballot. If you cannot attend the meeting, please complete the ballot and return it to (insert name and address of independent entity conducting the vote) by no later than (insert time and date). To be counted, your ballot must reach us by that date and time.

BY ORDER OF THE BOARD OF DIRECTORS:

(signature of Board Presiding Officer)

(insert title and date)

(c) Form ballot:

Ballot for Conversion to State Charter and Nonfederally-insured Status

(Insert name of converting credit union)

Name of Member: (insert name) Account Number: (insert account number)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address)

I understand if the conversion of the (insert name of credit union) is approved, the National Credit Union Administration share (deposit) insurance I now have, up to \$100,000, or possibly more if I use different accounts structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

**I FURTHER UNDERSTAND THAT, IF THIS CONVERSION IS APPROVED AND
THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES
NOT GUARANTEE THAT I WILL GET MY MONEY BACK.**

I vote on the proposal as follows (check one box):

Approve the conversion of charter and conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the conversion.

DO NOT approve the conversion of charter and the conversion to private insurance.

Signed _____

(Insert printed member's name)

Date: _____

(d) Form certification to NCUA of member vote:

**Certification of Vote on Conversion to State Charter and Nonfederally-insured
Status**

We, the undersigned officers of the (insert name of converting credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution to seek the conversion of our credit union to a state charter and the conversion of our primary share insurance coverage from NCUA to (insert name of private insurer).
2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and ballot, as approved by the National Credit Union Administration, were mailed to our members.
3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed conversion.
4. At the special meeting, the credit union arranged for an explanation of the conversion to the members present at the special meeting.
5. (Insert name), an entity independent of the credit union, conducted the membership vote at the special meeting. The members voted as follows:

(insert) Number of total members

(insert) Number of members present at the special meeting

(insert) Number of members present who voted in favor of the conversion

(insert) Number of members present who voted against the conversion

(insert) Number of additional written ballots in favor of the conversion

(insert) Number of additional written ballots opposed to the conversion

(insert "20% or more") **OR** (insert "Less than 20%") of the total membership voted. Of those who voted, a majority voted (inset "in favor of") **OR** ("against") conversion.

The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date).

(signature of Board Presiding Officer)

(signature of Board Secretary)

(insert typed name and title)

(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):

(signature of officer of independent entity)(typed name, title, and phone number)

§ 708b.303 Conversion of insurance through merger.

Unless the Regional Director approves the use of different forms, a federally-insured credit union that is merging into a nonfederally-insured credit union must use the forms in this section.

(a) Form notice to members of intent to merge and convert and special meeting of members:

**Notice of Special Meeting on Proposal to
Merge and Convert to Nonfederally-insured Status
(Insert name of merging credit union)**

On (insert date), the Board of Directors of your credit union approved a proposition to merge with (insert name of continuing credit union) and to convert from federal share (deposit) insurance to nonfederal insurance. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date).

Purpose of Meeting

The meeting has two purposes:

1. To consider and act upon a proposal to merge our credit union with (insert name of continuing credit union), the continuing credit union.

2. To approve the action of the Board of Directors of our credit union in authorizing the officers of the credit union, subject to member approval, to carry out the proposed merger.

If this merger is approved, our credit union will transfer all its assets and liabilities to the continuing credit union. As a member of our credit union, you will become a member of the continuing credit union. On the effective date of the merger, you will receive shares in the continuing credit union for the shares you own now in our credit union.

Insurance Conversion.

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up to \$100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than \$100,000. If the merger is approved, your federal insurance will terminate on the effective date of the merger. Instead, your accounts in the credit union will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

IF THIS MERGER IS APPROVED AND THE (insert name of continuing credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET YOUR MONEY BACK.

Also, because this merger, if approved, would result in the loss of federal share insurance, the (insert name of merging credit union) will, at any time after approval of the merger and before the effective date of merger, permit all members who have share certificates or other term accounts to close those accounts without an early withdrawal penalty.

Other Information Related to the Proposed Merger

The directors of the participating credit unions carefully analyzed the assets and liabilities of the participating credit unions and appraised each credit union's share values. The appraisal of the share values appears on the attached individual and consolidated financial statements of the participating credit unions.

The directors of the participating credit unions have concluded that the proposed merger is desirable for the following reasons: (insert reasons) (If any of the reasons are related to the conversion from federal to nonfederal insurance, the proposed language must be submitted to the Regional Director for approval).

The Board of Directors of our credit union believes the merger should include/not include an adjustment in shares for the following reasons: (insert reasons)

The main office of the continuing credit union will be as follows: (insert location)

The branch office(s) of the continuing credit union will be as follows: (insert locations)

The merger must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a Ballot for Merger Proposal and Conversion to Nonfederally-insured Status. If you cannot attend the meeting, please complete the ballot and return it to (insert name of independent entity conducting vote) at (insert mailing address) by no later than (insert date and time). To be counted, your ballot must reach (insert name of independent entity conducting vote) by the date and time announced for the meeting.

BY ORDER OF THE BOARD OF DIRECTORS:

(signature of Board Presiding Officer)

(insert name and title of Board Presiding Officer) (insert date)

(b) Form ballot:

Ballot for Merger Proposal and Conversion to Nonfederally-insured Status

Name of Member: (insert name) Account Number: (insert account number)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address)

I understand if the merger or conversion of the (insert name of merging credit union) into the (insert name of merging credit union) is approved, the National Credit Union Administration share (deposit) insurance I now have, up to \$100,000, or possibly more if I use different accounts structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

**I FURTHER UNDERSTAND THAT, IF THIS MERGER IS APPROVED AND THE
(insert name of continuing credit union) FAILS, THE FEDERAL GOVERNMENT
DOES NOT GUARANTEE THAT I WILL GET MY MONEY BACK.**

I vote on the proposal as follows (check one box):

[] **Approve** the merger and the conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the merger and conversion.

[] **DO NOT approve** the merger and the conversion to private insurance.

Signed: _____

(Insert printed member's name)

Date: _____

(c) Form certification of vote:

Certification of Vote on Merger Proposal and Conversion to Nonfederally-insured Status of the (Insert name of merging credit union)

We, the undersigned officers of the (insert name of merging credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution approving the merger of our credit union with (insert name of continuing credit union).

2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and the ballot, as approved by the National Credit Union Administration, and a copy of the merger plan announced in the notice, were mailed to our members.

3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed merger.

4. At the special meeting, the credit union arranged for an explanation of the merger proposal and any changes in federally-insured status to the members present at the special meeting.

5. (insert name), an entity independent of the credit union, conducted the membership vote at the special meeting. At least 20 percent of our total membership voted and a majority of voting members favor the merger as follows:
 - (insert) Number of total members
 - (insert) Number of members present at the special meeting
 - (insert) Number of members present who voted in favor of the merger
 - (insert) Number of members present who voted against the merger
 - (insert) Number of additional written ballots in favor of the merger
 - (insert) Number of additional written ballots opposed to the merger

6. The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date):

(signature of Board Presiding Officer)

(signature of Board Secretary)

(insert typed name and title)

(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):

(signature of officer of independent entity)(typed name, title, and phone number)