

§ 708b.105

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 “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).

(b) [Reserved]

§ 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.

[70 FR 3288, Jan. 24, 2005, as amended at 73 FR 30477, May 28, 2008]

12 CFR Ch. VII (1–1–10 Edition)

§ 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