

**§ 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

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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 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 "is aware of the requirements of 12 U.S.C. 1831t(b), including all notification and acknowledgment requirements;" and

(2) A certification of the member vote that 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