



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

Office of General Counsel

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SSIC 6300  
89-0404

July 27, 1989

E. Burton Eubanks, President  
University Federal Credit Union  
P.O. Box 4069  
Austin, Texas 78765-8080

Re: Merger Premium (Your March 30, 1989, Letter)

Dear Mr. Eubanks:

You have asked why NCUA requires a continuing credit union to pay a merger premium when another credit union is merged with it. We have consulted with the NCUA's Regional Offices and our Office of Examination and Insurance concerning this issue. A merger premium is never charged. However, the responses from our Regional Offices indicate three situations which could be construed as a premium payment relating to NCUA's disposition of federally-insured credit union assets when they are either merged or liquidated.

One merger-related charge is the insurance deposit and premium paid by a continuing federally-insured credit union when an uninsured or nonfederally-insured credit union is merged into it. Part 708 of the NCUA Rules and Regulations (12 C.F.R. Part 708) addresses mergers of credit unions. Section 708.102 (copy enclosed) discusses the insurance deposit and prorated premium charged to a continuing credit union to cover the insurance of shares transferred to the continuing credit union. This insurance deposit and premium is charged to keep the National Credit Union Share Insurance Fund (NCUSIF) at a level which accounts for all shares which are covered by share insurance.

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Another merger-related adjustment occurs when the merged credit union's field of membership ("FOM") or other assets, such as buildings, loans or investments, represent a certain value to the continuing institution. The value of these assets is used to negotiate a lower net liquidation cost to the NCUSIF by reducing NCUSIF cash assistance or guarantee of losses to the continuing credit union.

The last situation is similar to the second. However, it concerns an insolvent credit union. Many times when a federally-insured credit union becomes insolvent, the NCUSIF will transfer the members' account balances to another federally-insured credit union ("credit union"). In this situation the credit union may accept a payment from the NCUSIF that is less than the amount of the share account balances transferred. The NCUA will place the insolvent credit union's share accounts and FOM out for bid. The winning credit union is the one that accepts the lowest dollar amount from the NCUSIF for the transfer of member share account balances. For example, the NCUSIF may pay the credit union 95 cents for the transfer of the insolvent credit union's share accounts which will be reflected at a \$1.00 share on its books. Obviously, the winning credit union places a value on gaining the FOM and the new member accounts and will bid on the share accounts accordingly.

Please contact this Office if you are aware of a "merger premium" charged to a continuing credit union other than the asset adjustments discussed above.

Sincerely,

*Hattie M. Ulan*

HATTIE M. ULAN  
Assistant General Counsel

Enclosure

## §708.0 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 of this Part sets forth the forms to be used for terminating Federal insurance or converting from Federal insurance to nonfederal insurance.

(d) Nothing in this Part shall operate as a restriction or otherwise impair the authority of 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.

## §708.1 Definitions.

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

(b) "Merging credit union" means the credit union which will cease to exist as an operating credit union at the time of the merger.

(c) "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.

(d) "Federally-insured" means insured by the Board through the National Credit Union Share Insurance Fund (NCUSIF).

(e) "Nonfederally-insured" means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state law.

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

(g) The terms "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.

(h) The terms "convert," "conversion" and "converting," when used in reference to insurance, refer to the act of canceling Federal insurance and simultaneously obtaining share or deposit insurance from another insurance carrier. They

# Part 708

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

mean that after cancellation of Federal insurance the credit union will be nonfederally insured.

### Subpart A—Mergers.

#### §708.101 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 Subpart B in addition to this Subpart A.

(b) No federally-insured credit union shall merge with any other credit union without the prior written approval of the Board.

(c) Where the continuing credit union is a Federal credit union, there must be compliance with the chartering policies of the Board.

(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

#### §708.102 Special provisions for Federal insurance.

(a) Where the continuing credit union is federally insured, an NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed 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, an application shall be submitted to the appropriate Regional Director when the merging credit union requests approval of the merger proposal. An NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed 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 refund will be made 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. (Refer to Subpart B, §§708.203 and 708.204 and Subpart C, §708.302(b).)

(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 as noted in the Notice of Termination set forth in §708.301(b)(3). (Refer to Subpart B, §§708.201 and 708.202, and Subpart C, §708.301(b).)

### §708.103 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, a plan for the proposed merger shall be prepared. The plan shall include:

- (1) current financial reports;
- (2) current delinquent loan schedules annotated to reflect collection problems;
- (3) combined financial report;
- (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.

### §708.104 Submission of merger proposal to NCUA.

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the following information will be submitted 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 is in agreement with the merger proposal (for states which require such agreement prior to NCUA approval); and
- (7) Application and Agreement for Insurance of Member Accounts (for continuing state credit unions desiring to become federally insured).

### §708.105 Approval of merger proposal by NCUA.

(a) In any case where the continuing credit union is federally insured, and the merging credit union is nonfederally insured or uninsured, a determination shall be made by NCUA as to the potential risk to the National Credit Union Share Insurance Fund (NCUSIF).

(b) If 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 such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger. In the event NCUA determines that the merging credit union, if it is a Federal credit union, is in danger of insolvency, and that the proposed merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund, NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging Federal credit union, notwithstanding the provisions of Section 708.106; *Provided* that the continuing credit union is federally insured.

(c) Any proposed charter amendments for a continuing Federal credit union will be approved contingent upon the completion of the merger.