

## BOARD ACTION MEMORANDUM

**TO:** NCUA Board

**DATE:** March 5, 2010

**FROM:** Robert M. Fenner  
Office of General Counsel

**SUBJ:** Proposed Rule,  
12 C.F.R. Parts 701, 708a, 708b

**ACTION REQUESTED:** Board approval to issue proposed amendments to 12 C.F.R. Parts 701, 708a and 708b. The proposed amendments: (1) create new §701.4 to address fiduciary duties of FCU directors; (2) create new subpart C of part 708a to address credit union to bank mergers; and (3) revise existing rules on charter and insurance conversions in parts 708a and 708b.

**DATE ACTION REQUESTED:** March 18, 2010.

**OTHER OFFICES CONSULTED:** Office of Examination and Insurance, Office of Capital Markets and Planning, All Regional Directors, Office of Corporate Credit Unions, Office of Small Credit Union Initiatives, Office of the Chief Financial Officer.

**VIEWS OF OTHER OFFICES CONSULTED:** Generally concur.

**SUBMITTED TO INSPECTOR GENERAL FOR REVIEW:** Yes.

**BUDGET IMPACT, IF ANY:** None.

**RESPONSIBLE STAFF PERSONS:** Paul Peterson, Director, Applications Section, and Jacqueline Lussier and Elizabeth Wirick, Staff Attorneys, Office of General Counsel.

**SUMMARY:** Staff is proposing a number of changes designed to better protect credit union member rights and ownership interests. First, the new fiduciary duty rule in §701.4 requires FCU directors to carry out their duties in good faith, and have, or gain, an understanding of basic finance and accounting practices. Also, §701.4 prohibits FCUs from indemnifying its officials or employees for liability associated with misconduct that is grossly negligent, reckless, or willful in connection with a decision that affects the fundamental rights of members. Next, new subpart C of Part 708a establishes procedural and substantive requirements for converting a credit union to a bank through a merger. The new requirements would apply to both direct mergers and transactions where the credit union first converts to a mutual savings bank (MSB) and then merges with another bank without ever operating as a stand-alone MSB. Finally, the proposed amendments to Parts 708a and 708b revise existing rules to enhance the secrecy and integrity of the voting process in MSB and insurance conversions and require additional disclosures to members about the costs and effects of charter conversion.

**RECOMMENDED ACTION:** Recommend Board approval to issue the proposed revisions for a 60-day public comment period.

**ATTACHMENTS:** Notice of Proposed Rule Making and Request for Comments.