

NCUA LETTER TO CREDIT UNIONS

NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314

DATE: September 2018

LETTER NO: 18-CU-03

TO: Federally Insured Credit Unions

SUBJ: Merger Rule Provisions Including the Member-to-Member (MTM) Communications Process

Dear Board of Directors and Chief Executive Officer:

This letter explains various key provisions of the recently revised NCUA Regulation affecting federally insured credit union mergers.¹ The changes are effective October 1, 2018 and apply to proposed merger applications received by the NCUA or the applicable State Supervisory Authority on or after this date.

The revisions include a provision to facilitate the sharing of member-to-member (MTM) communications of a federally insured credit union regarding the proposed merger of their credit union. To facilitate this provision, the NCUA's Office of Credit Union Resources and Expansion (CURE) established an MTM communication process.

Background

Each federally insured credit union proposing to merge with another federally insured credit union is required to include a statement in its member notice about the availability of a website where members of the merging credit union can share comments or questions with each other about the proposed merger. Members may jointly or individually submit a comment and attachments about the merger through this website.

Prior to posting, CURE will review each submitted communication. As Part 708b permits, the NCUA has the right to not post a communication that it reasonably believes:

- i. Is false or misleading with respect to any material fact;
- ii. Omits a material fact necessary to make the statement in the material not false or misleading;
- iii. Relates to a personal claim or personal grievance, or solicits personal gain or business advantage by or on behalf of any party;
- iv. Addresses any matter, including a general economic, political, racial, religious, social, or other topic or cause that is not related to the proposed merger; or

¹ In June 2018, the NCUA Board approved revisions to Appendix A of Part 701 and Part 708b of the NCUA Regulations affecting federally insured credit union mergers.

- v. Directly or indirectly and without expressed factual foundation:
- impugns a person's character, integrity, or reputation;
 - makes charges concerning improper, illegal, or immoral conduct; or
 - makes statements impugning the safety and soundness of the credit union.

MTM Communication Process

All federally insured credit unions are required to submit their proposed merger application to the NCUA for review and approval. When the NCUA gives a merging federal credit union the permission to proceed with its membership vote, the merging credit union must send a copy of its member notice to CURE. The notice must be emailed to CUREMail@ncua.gov at least 15 days before it is mailed to members with a link² that shows a credit union-specific MTM web address where members can find how and where to submit comments pertaining to the proposed merger.

When the merging federally insured credit union is state chartered, it must comply with the requirements of its regulator, in addition to applicable requirements of the NCUA's merger rule. Unless a membership vote is waived under state law, the NCUA must receive a copy of the notice at least 15 days before any mailing of the member notice (or equivalent state document). The notice must include a link to a credit union-specific MTM web address where members can find how and where to submit comments pertaining to the proposed merger.

Members of the merging credit union may submit comments using the specific MTM web address provided. Each submitter will be requested to provide certain personal information. Once CURE reviews and posts a comment, it will be accessible for viewing at the merging credit union's MTM-URL address.

Regardless of the charter type, the member notice must:

- Include a link where members can find how and where to submit comments (<https://www.ncua.gov/services/Pages/resources-expansion/comments-proposed-merger.aspx>);
- Be emailed to CUREMail@ncua.gov at least 15 days before it is mailed to members; and
- Be received at least 45 but no more than 90 days before the meeting date by the members of the credit union proposing to merge.

Bylaw Amendment

The merger rule requires an update by merging federal credit unions to their Bylaws. Revised Part 708b requires more time between when the notice of meeting is sent to the membership and the date of the meeting to vote on a merger. Members must now receive the notice at least 45, but no more than 90 days, prior to the meeting.

² (<https://www.ncua.gov/services/Pages/resources-expansion/comments-proposed-merger.aspx>)

Federal credit unions should adopt the needed bylaw change prior to submitting its proposed merger application to the NCUA. The board of directors must document in the credit union's board minutes the adoption of the new bylaw wording for Article IV, Section 2 found below:

“Section 2. Notice of meetings required. The secretary must give written notice to each member: at least 30 but no more than 75 days before the date of the annual meeting; at least 7 days before the date of any special meeting; and at least 45 but no more than 90 days before the date of any meeting to vote on a merger with another credit union.”

For state-chartered federally insured credit unions, a bylaw change may not be needed. Questions regarding such a change should be directed to the respective State Supervisory Authority.

Other Provisions

Other approved revisions and clarifications to Part 708b are summarized below. For additional details, refer to [NCUA Regulations, Part 708b](#).

- 1) Requirement for the merging credit union to disclose certain merger-related financial arrangements for covered persons in its member notice.
- 2) Requirement for the merging and continuing credit unions to submit any respective board minutes to the NCUA that reference the merger during the 24 months prior to the boards of directors of the credit unions approving the merger plan.
- 3) Requirement that the merging and continuing credit unions certify (Board Presiding Officer and CEO) that there are no other merger-related financial arrangements other than those disclosed in the notice to the members of the proposed merging credit union.
- 4) Elimination of the NCUA's Merger Manual since all associated forms are incorporated in the rule.

For questions on the MTM communication process, please contact CURE at 703-518-6610 or CUREMail@ncua.gov. For questions regarding any of the other provisions of the new merger rule, please contact the appropriate NCUA Regional Office.

Sincerely,

/s/

J. Mark McWatters
Chairman