

CORPORATE CREDIT UNION MERGER MANUAL

FOR FEDERALLY INSURED
CORPORATE CREDIT UNIONS

National Credit Union Administration
Office of Corporate Credit Unions



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INTRODUCTION

This Corporate Credit Union Merger Manual (Manual) provides guidance and forms for federally insured corporate credit unions planning to merge with other corporate credit unions. This Manual covers mergers involving both federal and state chartered corporate credit unions.

Mergers of federally insured credit unions are discussed under Section 708b of National Credit Union Administration's (NCUA) Rules and Regulations. Credit unions should refer to the full text of Section 708b as needed for additional information. The regulation is available on NCUA's website: www.ncua.gov.

Corporate credit unions needing additional assistance may contact the Office of Corporate Credit Unions (OCCU) or their State Supervisory Authority (SSA). Corporate credit unions should consult with legal and accounting professionals as necessary during the planning and execution of a merger.

For mergers of federally insured corporate credit unions, please submit merger packages to the OCCU Director. The Director will then prepare and submit the packet to the NCUA Board for review and approval or disapproval.

CHAPTER 1: PRE-MERGER PLANNING

Permissibility of the Merger

Section 708b describes merger procedures and notice requirements for mergers involving a federally insured corporate credit union. Items of interest are:

- A corporate credit union must have the prior written approval of the NCUA before merging with another corporate credit union;
- If the continuing or merging corporate credit union is state chartered, the merger must be permitted by state law or authorized by the state authority.

NCUA Letter to Credit Unions 10-CU-11, Information on NCUA's Merger and Purchase & Assumption Process provides guidance to natural person credit unions on mergers and purchase and assumptions. Some items discussed in 10-CU-11 may not apply to a corporate credit union, such as net worth requirements and field of membership issues; however, this letter may be a helpful resource.

Analysis of Key Financial Data

An analysis should be performed as part of the merger planning to ensure compliance with Part 704. A submitted merger plan must demonstrate how the continuing corporate credit union meets or would meet the requirements for retained earnings, key capital measures and NEV measures. It is important to note that the valuation is done prior to market value adjustments as these market value adjustments are not known at the time the merger package is prepared.

Key requirements include:

- 2% minimum NEV ratio;
- 4% minimum "leverage" ratio (5% to be well capitalized (WC));
- 4% tier one risk-based capital ratio (6% to be WC);
- 8% total risk-based capital ratio (10% to be WC); and
- Consistent annual retained earnings buildup to achieve 100bp (1%) in six years and 200bp (2%) in ten years.

Accounting Implications of the Merger

The Financial Accounting Standards Board requires the Acquisition Method of accounting for business combinations as discussed in Statement of Financial Accounting Standards No. 141 (revised December 2007).

Corporate credit unions planning to merge should obtain the advice of a Certified

Public Accountant on the accounting implications of the planned merger.

Key Benefits of Proposed Merger

Corporate credit union management should consider and discuss the key financial, operational and strategic benefits that the proposed merger would provide to members. The continuing corporate credit union must provide a detailed narrative describing the key benefits of the proposed merger. The primary reason for merging should be to enhance value to the members. When discussing, please consider the following:

- How the merger enhances products and services, creates operational efficiencies, and increases franchise value for your members;
- The potential impact on your corporate credit union's financial condition and operational capacity to serve the combined membership; and
- Whether the merger is in your corporate credit union members' best interest, not necessarily in your corporate credit union's best interest.

Hart-Scott-Rodino Antitrust Improvements Act

Under the Hart-Scott-Rodino Antitrust Improvements Act (HSRA), merging corporate credit unions may need to submit a *pre-merger notification* with the Federal Trade Commission (FTC). The purpose of the pre-merger filing enables the FTC to review the proposed merger to determine compliance with federal antitrust laws.

If the value of the merger transaction exceeds the filing threshold (the threshold amount is amended annually), the continuing corporate credit union is required to make a premerger filing for an antitrust review. Your merger proposal submitted to NCUA must state whether you made a HSRA filing and if not, why not. The continuing corporate credit union should consider obtaining legal advice.

For complete information please reference the FTC's web site at www.ftc.gov.

CHAPTER 2: PREPARE AND SUBMIT THE MERGER PACKAGE

Contents of the Merger Package

The continuing corporate credit union prepares the merger package. The merger package must describe how the continuing corporate will be compliant with the capital and net economic value requirements of Part 704. Check to see that your package is complete by using Form 6301, Merger Package Checklist (See Appendix.) All NCUA Merger Forms are available on our website at www.ncua.gov.

Notifying OCCU and, if applicable, your SSA as early as possible of your intent to merge and providing the complete merger package to both OCCU and, if applicable, your SSA may help to expedite the merger review.

For OCCU review purposes, the continuing and merging corporate credit unions must each provide their current financial information (balance sheet, income statement, and projected ratios for all Part 704 capital terms, including NEV), as well as future projections on a continuing basis in their merger package.

1. Items required for **all** merger packages:

- The names of the continuing and merging corporate credit unions with charter numbers;
- Detailed explanation of the reason for the merger;
- Proposed effective date of the merger;
- Discussion of key benefits of the proposed merger;
- Legal opinion indicating the applicability of the Hart-Scott-Rodino Antitrust Improvements Act;
- Current financial statements and five year projections for the continuing corporate credit union of both the merging and continuing corporate credit union as well as on a continuing/merged basis;
- Current year budget and five year budget projections for the continuing corporate credit union of both the merging and continuing corporate credit union as well as on a continuing/merged basis;
- Strategic Business Plan;
- Current staffing and projected staffing plan;
- Continuation of benefit plans of merging and continuing corporate credit unions;
- Capital Accumulation Plan, if applicable;
- Descriptions of functional areas;
- Descriptions of products/services;
- Detailed Operational, Financial and Payment Systems conversion and integration

- plans, including risk assessments;
- Detailed Information Technology systems conversion and integration plans, including risk assessments;
- Due diligence reviews on significant member, vendor and management contractual agreements of merging and continuing corporate credit unions, including disclosure of any potential adverse financial or legal impacts;
- Business contingency (continuity) plans of the continuing corporate, addressing continuity of service to members. (back-up, processes and recovery sites);
- Current delinquent loan summary (same reporting period) for both corporate credit unions;
- Current analysis of the adequacy of the Allowance for Loan and Lease Losses Account (same reporting period) for both corporate credit unions, if applicable;
- Analyses of share values. In lieu of Forms NCUA 6311 and 6312, submit a schedule of the retained earnings, core capital, and capital ratios as set forth in Part 704 of NCUA's Rules and Regulations. The ratios are to be calculated for both the merging and continuing corporate credit union as well as on a continuing/merged basis;
- Explanation of any proposed share adjustments;
- Analysis and discussion of ongoing or expected Other Than Temporary Impairment on investment(s) and "legacy assets";
- Proposed Merger Agreement (Form NCUA 6304) stating any terms related to share adjustments. This copy should be submitted in draft with the merger package. Prepare and submit the final, signed merger agreement only after NCUA approves the merger and the merger is completed;
- Explanation of any provisions for reserves, undivided earnings, or dividends;
- Provisions for notifying and paying creditors;
- Provisions for notifying key/critical vendors, especially, payments-related partners;
- Information on where the members will be served. Include the location of the continuing corporate credit union office(s) and whether there are plans to serve the members through the merging corporate credit union's existing office(s);
- One primary contact person at both the merging and continuing corporate credit unions. Include their mailing addresses, e-mail addresses, and phone numbers (for questions or notification of merger decisions);
- Resolutions of both boards of directors (Forms NCUA 6302 and 6303);
- The names of Continuing Directors and their background information;
- The names of Continuing Supervisory, Executive, Asset-Liability, Nominating and Credit Committees and their background information;
- The names of Continuing Corporate Credit Union Officers and their background information;
- From a merging corporate federal credit union, a proposed Notice of Special Meeting of the Members on Proposal to Merge (Form NCUA 6305A). **NCUA can waive the vote by members of a merging corporate federal credit union only if the merging credit union is insolvent or in danger of insolvency and is merging into another federally insured credit union; and**
- From a merging federal corporate credit union, a copy of the ballot to be sent to

the members (Form NCUA 6306A).

2. Additional items for certain merger packages:

- If the merging corporate credit union is state chartered and the continuing corporate credit union is federally chartered, provisions for determining that all assets and liabilities of the continuing credit union will conform with the Federal Credit Union Act; and
- If the merging corporate credit union is state chartered, evidence that the State Supervisory Authority approves of the proposed merger.

CHAPTER 3: NCUA REVIEW AND APPROVAL PROCESS

OCCU Review Process

Prior to NCUA Board action, the OCCU Staff and Director will:

- Review the merger package documents;
- Ensure an appropriate staff person has been assigned overall responsibility for supervising the merger process;
- Determine whether a retention and contingency plan for key employees has been established;
- Review staffing and technology needs to ensure they are adequately addressed;
- Determine if overhead costs have been appropriately analyzed and allocated;
- Determine if task lists and time tables are reasonable;
- Verify that plans are in place to communicate necessary information to the members of the merging corporate credit union;
- Determine that contingency plans are in place to address potential events; and
- Ensure reporting mechanisms are in place so that senior management and the board of directors are informed of the merger's ongoing progress.

NCUA Approval Process

Merger requests are to be submitted to the OCCU Director. The OCCU Director will submit the merger proposal to the NCUA Board for appropriate action. Corporate credit unions are encouraged to contact OCCU early in the merger process for any additional information and guidance.

The NCUA Board may approve the proposed merger if the merger:

- Is in the best interest of the members;
- Meets the requirements of the Federal Credit Union Act and NCUA's Rules and Regulations;
- Minimizes undue risk to the NCUSIF; and
- Meets applicable state law, as determined by the State Supervisory Authority.

CHAPTER 4: PROCEDURES FOR MERGING FEDERAL CORPORATE CREDIT UNIONS

Member Notification

After NCUA approves your merger proposal, a merging federal corporate credit union must present the proposal for approval at a membership meeting. Members have the right to vote on the merger proposal via the following:

1. In person at the annual meeting (if it takes place within 60 days after NCUA approval);
2. At a special meeting to be called within 60 days of NCUA approval; or
3. By mail or electronic ballot received no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

You are also required to give members advance notice of the meeting. You must mail or deliver the notice and ballot in person to each member at least 7 days before the scheduled meeting. The notice must include the following:

1. The purpose, time, and location of the meeting;
2. A summary of the merger package, including individual and continuing financial statements for the merging and continuing corporate credit unions;
3. Reasons for the proposed merger;
4. The name and location of the continuing corporate credit union;
5. The members 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 meeting; and
6. A copy of the merger proposal ballot.

Votes Needed for Approval

A majority of the members of a merging corporate federal credit union who vote on the proposal must separately approve the merger. Mail and electronic ballots must be received no later than the date and time announced for the membership meeting.

Certificate of Vote on Merger Proposal

The board of directors of a merging corporate federal credit union must certify the results of the membership vote to the OCCU Director within 10 days after the vote is taken. (Submit NCUA Form 6308A) The certification must include the total number of members of record of the corporate credit union, the number who voted on the merger, the number who voted in favor, and the number who voted against. NCUA will then review the certification for consideration of approval of the merger.

CHAPTER 5: COMPLETE THE MERGER

Once a merger proposal is approved by the NCUA Board and, where applicable, the State Supervisory Authority, the merging corporate credit unions complete any federal or state post-approval requirements (such as, for corporate federal credit unions, a member vote), and any member vote of is certified, the corporate credit unions may complete the merger.

The board of directors of both corporate credit unions must execute the merger agreement (Form NCUA 6304) and submit a copy of the executed agreement to OCCU with the final merger documents at the time the merger is completed. The effective date of the merger is the date of the executed merger agreement, when the continuing corporate credit union assumes the merging corporate credit union's assets, liabilities, and shares.

Within 30 days after the effective date of the merger, the continuing corporate credit union must complete the certification of completion of merger (Form NCUA 6309) and send it to the OCCU Director with the following documents attached:

- Financial reports for each corporate credit union immediately before the completion of the merger;
- A continuing financial report for the continuing corporate credit union immediately after the completion of the merger;
- The charter number of the merging corporate credit union;
- The insurance certificate for the merging corporate credit union; and
- A copy of the executed merger agreement, NCUA Merger Form 6304.

Upon OCCU's receipt of certification that the merger has been completed, NCUA will cancel the charter and/or insurance certificate, as applicable, of the merging federally insured corporate credit union.

The merger must be completed within four months of NCUA Board approval; otherwise, you must notify the OCCU Director of the reasons for the delay.

If the merging corporate credit union's charter is not cancelled by December 31, NCUA will issue an invoice for the applicable NCUSIF operating fee. The continuing corporate credit union will be responsible for paying this invoice. The continuing corporate credit union is responsible for retaining all documents.

Surety Bond Coverage

The continuing corporate credit union needs to review its surety bond coverage to ensure compliance with Section 704.18 of NCUA's Rules and Regulations. The continuing corporate credit union must have the minimum dollar amount of coverage as of the effective date of the merger. It also should notify its surety bond carrier of a pending merger.

The merging corporate credit union cannot cancel its surety bond coverage until the merger is complete and its charter canceled. Depending on the surety bond carrier, the merging corporate credit union may need to provide documentation to the surety bond carrier prior to the merger.

GLOSSARY OF TERMS

Continuing Credit Union: The credit union which will continue in operation after the merger.

Effective Date of the Merger: Date of the executed merger agreement, Form NCUA 6304. Also the date when the continuing credit union assumes the merging credit union's assets, liabilities, and shares.

Federally insured: Insured by the National Credit Union Administration through the National Credit Union Share Insurance Fund.

Merging Credit Union: The credit union which will cease to exist as an operating credit union at the time of the merger.

APPENDIX - NCUA MERGER FORMS

NCUA 6301	Merger Package Checklist
NCUA 6302	Merger Resolution: Continuing Credit Union
NCUA 6303	Merger Resolution: Merging Credit Union
NCUA 6304	Merger Agreement
NCUA 6305A	Notice of Special Meeting of the Members on Proposal to Merge
NCUA 6306A	Ballot for Merger Proposal
NCUA 6308A	Certification of Vote on Merger Proposal
NCUA 6309	Certification of Completion of Merger

The NCUA Merger Forms are designed to be completed electronically. Please download the forms from the NCUA web-site at www.ncua.gov.