

National Credit Union Administration

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solicit votes for the merger, regardless of whether or not they support the merger. Accordingly, NCUA strongly encourages credit unions to use an independent third party to solicit votes rather than diverting credit union employees from their usual duties.

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

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AUTHORITY: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

SOURCE: 70 FR 3288, Jan. 24, 2005, unless otherwise noted.

§ 708b.1 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 non-federal insurance, including termination or conversion resulting from a merger.

(c) Subpart C prescribes required forms for use in conversion of federal insurance to nonfederal insurance.

(d) Nothing in this part restricts or otherwise impairs the authority of the 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.

§ 708b.2 Definitions.

Conducted by an independent entity means:

(1) The independent entity will receive the ballots directly from voting members.

(2) After the conclusion of the special meeting that ends the ballot period, the independent entity will open all the ballots in its possession and tabulate the results. The entity must not open or tabulate any ballots before the conclusion of the special meeting.

(3) The independent entity will certify the final vote tally in writing to the credit union and provide a copy to the NCUA Regional Director. The certification will include, at a minimum, the number of members who voted, the number of affirmative votes, and the number of negative votes. During the course of the voting period the independent entity may provide the credit union with the names of members who have not yet voted, but may not provide any voting results to the credit union prior to certifying the final vote tally.

Continuing credit union means the credit union that will continue in operation after the merger.

Convert, conversion, and converting, when used in connection with insurance, refer to the act of canceling federal insurance and simultaneously obtaining insurance from another insurance carrier. They mean that after cancellation of federal insurance the credit union will be nonfederally-insured.

Federally-insured means insured by the National Credit Union Administration (NCUA) through the National Credit Union Share Insurance Fund (NCUSIF).

Independent entity means a company with experience in conducting corporate elections. No official or senior manager of the credit union, or the immediate family members of any official or senior manager, may have any ownership interest in, or be employed by, the entity.

Insurance and insured refer to primary share or deposit insurance. These terms do not include excess share or deposit insurance as referred to in part 740 of this chapter.

Merger-related financial arrangement means a material increase in compensation (including indirect compensation, for example, bonuses, deferred compensation, or other financial rewards) or benefits that any board member or senior management official of a merging credit union may receive in connection with a merger transaction. For purposes of this definition, a material increase is an increase that exceeds the greater of 15 percent or \$10,000.

Merging credit union means the credit union that will cease to exist as an operating credit union at the time of the merger.

Nonfederally-insured means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state or territorial law.

Regional director means either the director of the NCUA regional office for the region where a natural person credit union's main office is located or the director of the NCUA's Office of Consumer Protection. For corporate credit unions, *regional director* means the director of NCUA's Office of National Examinations and Supervision.

Secret ballot means no credit union employee or official can determine how

a particular member voted. Credit union employees and officials are prohibited from assisting members in completing ballots or handling completed ballots.

Senior management official means the chief executive officer (who may hold the title of president or treasurer/manager), any assistant chief executive officer, and the chief financial officer.

Share insurance communication means any written communication, excluding the forms in subpart C of this part, that is made by or on behalf of a federally-insured credit union that is intended to be read by two or more credit union members and that mentions share insurance conversion or termination. The term:

(1) Includes communications delivered or made available before, during, and after the credit union's board of directors decides to seek conversion or termination.

(2) Includes, but is not limited to, communications delivered or made available by mail, e-mail, and internet website posting.

(3) Does not include communications intended to be read only by the credit union's own employees or officials.

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.

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.

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

[70 FR 3288, Jan. 24, 2005, as amended at 75 FR 80680, Dec. 23, 2010; 75 FR 81393, Dec. 28, 2010; 78 FR 32544, May 31, 2013]

Subpart A—Mergers

§ 708b.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 subparts B and C of this part in addition to this subpart A.

(b) A federally-insured credit union must have the prior written approval of the NCUA before merging with any other credit union.

(c) Where the continuing credit union is a federal credit union, it must be in compliance with the chartering policies of the NCUA.

(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.

(e) Where both the merging and continuing credit unions are federally-insured and the two credit unions have overlapping fields of membership, the continuing credit union must, within three months after completion of the merger, either:

(1) Notify all members of the continuing credit union of the potential loss of insurance coverage if they had overlapping membership,

(2) Notify all individuals and entities that were actually members of both credit unions of the potential loss of insurance coverage, or

(3) Determine which members of both credit unions may actually have uninsured funds six months after the merger and notify those members of the potential loss of insurance coverage.

§ 708b.102 Special provisions for federal insurance.

(a) Where the continuing credit union is federally-insured, the NCUSIF will assess a deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) 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, it must submit an application to the appropriate Regional Director when the merging credit union requests approval of the merger proposal. If the Regional Director approves the merger, the NCUSIF will assess a deposit and a prorated insurance premium (unless waived in whole

or in part for all insured credit unions during that year) 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 NCUSIF will make the refund only after expiration of the one-year period of continued insurance coverage noted in paragraph (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.

(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.

§ 708b.103 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, the two credit unions must prepare a plan for the proposed merger that includes:

(1) Current financial statements for both credit unions;

(2) Current delinquent loan summaries and analyses of the adequacy of the Allowance for Loan and Lease Losses account;

(3) Consolidated financial statements, including an assessment of the generally accepted accounting principles (GAAP) net worth of each credit union before the merger and the GAAP net worth of the continuing credit union after the merger;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments, and where the net worth ratio of the merging credit union is more than 500 basis points higher than the net worth ratio of the continuing

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credit union, an explanation of the factors considered in establishing the amount of any proposed adjustment or in determining no adjustment is necessary;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Description of any merger-related financial arrangement, as defined in § 708b.2;

(8) Provisions with respect to notification and payment of creditors;

(9) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;

(10) 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

(11) 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.

(b) [Reserved]

[70 FR 3288, Jan. 24, 2005, as amended at 75 FR 81394, Dec. 28, 2010]

§ 708b.104 Submission of merger proposal to the NCUA.

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the credit unions must submit the following information 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 approves the merger proposal (for states that require such agreement before NCUA approval);

(7) Application and Agreement for Insurance of Member Accounts (for continuing state credit unions desiring to become federally-insured);

(8) If the merging credit union's assets on its latest call report are equal to or greater than the threshold amount established annually by the Federal Trade Commission under 15 U.S.C. 18a(a)(2)(B)(i), currently \$63.4 million, a statement about whether 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]

[70 FR 3288, Jan. 24, 2005, as amended at 75 FR 81394, Dec. 28, 2010]

§ 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

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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]

§ 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, and a detailed description of any merger related financial arrangement, as defined in § 708b.2. The description must include the name and title of each individual recipient and an explanation of the financial impact of each element of the arrangement, including direct salary increases and any indirect compensation, such as any bonus, deferred compensation or other financial reward;

(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 this part unless the Regional Director approves the use of different forms.

[70 FR 3288, Jan. 24, 2005, as amended at 75 FR 81394, Dec. 28, 2010]

§ 708b.107 Certification 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.

[70 FR 3288, Jan. 24, 2005, as amended at 75 FR 81394, Dec. 28, 2010]

§ 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 vote must be taken by secret ballot and conducted by an independent entity.

(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.

[70 FR 3288, Jan. 24, 2005, as amended at 75 FR 81394, Dec. 28, 2010]

§ 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 credit of the United States government; and

(3) Include a conspicuous statement that if the termination or merger is approved, and the credit union, or the continuing credit union in the case of a merger, subsequently fails, the federal government does not guarantee the member will get his or her money back.

(b) The credit union must deliver the notice in person to each member, or mail it to each member at the address for the member as it appears on the records of the credit union, not more than 30 nor less than 7 days before the date of the vote. The membership must be given the opportunity to vote by mail ballot. The credit union may provide the notice of the proposal and the ballot to members at the same time.

(c) If the membership and the NCUA approve the proposition for termination of insurance, the credit union must give the members prompt and reasonable notice of termination.

§ 708b.203 Conversion of insurance.

(a) A federally-insured state credit union may convert to nonfederal insurance, if permitted by state law, either on its own or by merging into a nonfederally-insured credit union.

(b) A federal credit union may convert to nonfederal insurance only by merging into, or converting its charter to, a nonfederally-insured state credit union.

(c) Conversion to nonfederal insurance requires the prior written approval of the NCUA. After the credit union board of directors resolves to seek a conversion, the credit union must notify the Regional Director promptly, in writing, of the desired conversion and request NCUA approval of the conversion. The notification must be in the form specified in subpart C of this part, unless the Regional Director approves a different form. The credit union must provide this notification and request for approval to the Regional Director at least 14 days before the credit union notifies its members and seeks their vote and at least 90 days before the proposed conversion date. NCUA will approve or disapprove the conversion as described in paragraph (g) of this section.

(d) Approval of a conversion of Federal to nonfederal insurance requires the affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The vote must be taken by secret ballot and conducted by an independent entity.

(e) For all conversions, 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) Proof that the nonfederal insurer is authorized to issue share insurance in the state where the credit union is located and that the insurer will insure the credit union.

(f) The board of directors of the credit union and the independent entity that conducts the membership vote must certify the results of the membership vote to the NCUA within 14 calendar days after the deadline for receipt of votes. The certification must include the total number of members of record of the credit union, the number who voted on the conversion, the number who voted in favor of the conversion, and the number who voted against. The certification must be in the form specified in subpart C of this part.

(g) Generally, the NCUA will conditionally approve or disapprove the con-

version in writing within 14 days after receiving the certification of the vote. The credit union must complete the conversion within six months of the date of conditional approval. If a credit union fails to complete the conversion within six months the Regional Director will disapprove the conversion. The credit union's board of directors, if it still wishes to convert, must then adopt a new conversion proposal and solicit another member vote.

(h) For conversions by merger, the merging credit unions must follow the procedures specified in subparts A and B of this part and use the forms specified in subpart C of this part. In the event the procedures of Subpart A and B conflict, the credit union must follow subpart B.

[70 FR 3288, Jan. 24, 2005, as amended at 73 FR 30477, May 28, 2008; 75 FR 81394, Dec. 28, 2010]

§ 708b.204 Notice to members of proposal to convert insurance.

(a) When the board of directors of a federally-insured credit union adopts a resolution proposing to convert from federal to nonfederal insurance, including an insurance conversion associated with a merger or conversion of charter, it must provide its members with written notice of the proposal to convert insurance and of the date set for the membership vote. The first written communication following this resolution that is made by or on behalf of the credit union and that informs the members that the credit union will seek conversion of insurance is the notice of the proposal to convert. 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 credit of the United States government, while the insurance provided by the nonfederal insurer is not guaranteed by the federal or any state government;

(3) Include a conspicuous statement that if the conversion or merger is approved, and the credit union, or the continuing credit union in the case of a merger, subsequently fails, the federal

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government does not guarantee the member will get his or her money back; and

(4) Be in the form set forth in subpart C of this part, unless the Regional Director approves a different form.

(b) The credit union must deliver the notice in person to each member or mail it to each member at the address for the member as it appears on the records of the credit union, not more than 30 nor less than 7 days before the date for the vote. The credit union must give the membership the opportunity to vote by mail ballot. The form of the ballot must be as set forth in subpart C of this part, unless the Regional Director approves the use of a different form. The notice of the proposal and the ballot may be provided to the members at the same time.

(c) If the membership and the NCUA approve the proposition for conversion of insurance, the credit union will give prompt and reasonable notice to the membership. The credit union must deliver the notice at least 30 days before the effective date of the conversion. The notice must identify the effective date of the conversion, and the first page must also include a conspicuous statement (*i.e.*, in bold and no smaller than any other font size used in the notice) that:

(1) The conversion will result in the loss of federal share insurance, and

(2) The credit union will, at any time before the effective date of conversion, permit all members who have share certificates or other term accounts to close the federally-insured portion of those accounts without an early withdrawal penalty.

§ 708b.205 Modifications to notice and ballot.

(a) Converting credit unions will use the form notice and ballot as provided in subpart C of this part unless the Regional Director approves the use of a different form.

(b) A converting credit union will provide the Regional Director with a copy of the notice and ballot, including any reasons for conversion and estimated costs of conversion, on or before the date the notice and ballot are mailed to the members.

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(c) Federally-insured state credit unions may include additional language in the notice and ballot regarding state requirements for mergers, where appropriate.

§ 708b.206 Share insurance communications to members.

(a) Every share insurance communication must comply with § 740.2 of this chapter, which, in part, prohibits federally-insured credit unions from making any representation that is inaccurate or deceptive in any particular.

(b) Every share insurance communication must contain the following conspicuous statement: "IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION CONVERTS TO PRIVATE INSURANCE WITH [insert name of private share insurer] AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK." The statement must:

(1) Appear on the first page of the communication where conversion is discussed and, if the communication is on an Internet Web site posting, the credit union must make reasonable efforts to make it visible without scrolling; and (2) Must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

(c) Every share insurance communication about share insurance termination must contain the following conspicuous statement: "IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION TERMINATES ITS

FEDERAL INSURANCE AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK.” The statement must:

(1) Appear on the first page of the communication where termination is discussed and, if the communication is on an internet website posting, the credit union must make reasonable efforts to make it visible without scrolling; and

(2) Must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

(d) A converting credit union must provide the Regional Director with a copy of any share insurance communication that the credit union will make during the voting period. The Regional Director must receive the copy at or before the time the credit union makes it available to members. The converting credit union must inform the Regional Director when the communication is to be made, to which members it will be directed, and how it will be disseminated. For purposes of this section, the voting period begins on the date of the board of director’s resolution to seek conversion or termination and ends on the date the member voting closes.

(e) The Regional Director may take appropriate action, including disapproving a conversion, if he or she determines that a converting credit union, by inclusion or omission of information in a share insurance communication, materially mislead or misinformed its membership. For example, the Regional Director will treat any share insurance communication that compares the relative strength, safety, or claims paying ability of a private insurer with that of the National Credit Union Share Insurance Fund as materially misleading if the comparison fails to mention that the federal insurance provided by the NCUA is backed by the full faith and credit of the United States government.

[70 FR 3288, Jan. 24, 2005, as amended at 75 FR 81394, Dec. 28, 2010]

Subpart C—Forms

§ 708b.301 Conversion of insurance (State Chartered Credit Union).

Unless the Regional Director approves the use of different forms, a state chartered credit union must use the forms in this section in connection with a conversion to nonfederal insurance.

(a) Form letter notifying NCUA of intent to convert:

(insert name), NCUA Regional Director

(insert address of NCUA Regional Director)

Re: Notice of Intent to Convert to Private Share Insurance

Dear Director (insert name):

In accordance with federal law at title 12, United States Code Section 1785(b)(1)(D), I request the National Credit Union Administration approve the conversion of (insert name of credit union) from federal share insurance to private primary share insurance with (insert name of private insurance company).

On (insert date), the board of directors of (insert name of credit union) resolved to pursue the conversion from federal insurance to private insurance. A copy of the resolution is enclosed.

On (insert date), the credit union plans to solicit the vote of our members on the conversion. The credit union will employ (insert name, address, and telephone number of independent entity) to conduct the member vote. The credit union will use the form notice and ballot required by NCUA regulations, and will certify the results to NCUA as required by NCUA regulations.

Aside from the notice and ballot, the credit union (does)(does not) intend to provide its members with additional written information about the conversion. I understand that NCUA regulations forbid any communications to members, including communications about NCUA insurance or private insurance, that are inaccurate or deceptive.

(Insert name of State) allows credit unions to obtain primary share insurance from (insert name of private insurance company). I have enclosed a copy of a letter from (insert name and title of state regulator) establishing that (insert name of private insurer) has the authority to provide (insert name of credit union) with primary share insurance.

I have enclosed a copy of a letter from (insert name of private insurer) indicating it has accepted (insert name of credit union) for primary share insurance and will insure the credit union immediately upon the date that it loses its federal share insurance.

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

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The point of contact for conversion matters is (insert name and title of credit union employee), who can be reached at (insert telephone number).

Sincerely,
(signature)
Chief Executive Officer.
Enclosures

(b) Form notice to members of intent to convert and special meeting of members:

NOTICE OF PROPOSAL TO CONVERT TO NONFEDERALLY-INSURED STATUS AND SPECIAL MEETING OF MEMBERS

(INSERT NAME OF CONVERTING CREDIT UNION)

On (insert date), the board of directors of your credit union approved a proposition to convert from federal share (deposit) insurance to private insurance. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date) to address this proposition.

PURPOSE OF MEETING

The meeting has two purposes:

1. To consider and act upon a proposal to convert your account insurance from federal insurance to private insurance.
2. To approve the action of the Board of Directors in authorizing the officers of the credit union to carry out the proposed conversion.

INSURANCE CONVERSION

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up to \$100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than \$100,000. If the conversion is approved, your federal insurance will terminate on the effective date of the conversion. Instead, your accounts in the credit union will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

IF THIS CONVERSION IS APPROVED, AND THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET YOUR MONEY BACK.

Also, because this conversion, if approved, would result in the loss of federal share insurance, the credit union will, at any time between the approval of the conversion and the effective date of conversion and upon request by the member, permit all members who have share certificates or other term accounts to close the federally-insured portion of those accounts without an early withdrawal penalty. (This is an optional sentence. It may be deleted without the approval of the Regional Director. The members must be informed about this right, however, as described in 12 CFR 708b.204(c).)

The board of directors has concluded that the proposed conversion is desirable for the following reasons: (insert reasons). (This is an optional paragraph. It may be deleted without the prior approval of the Regional Director.)

The proposed conversion will result in the following one-time cost associated with the conversion: (List the total estimated dollar amount, including (1) the cost of conducting

the vote, (2) the cost of changing the credit union's name and insurance logo, and (3) attorney and consultant fees.)

The conversion must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a ballot. If you cannot attend the meeting, please complete the ballot and return it to (insert name and address of independent entity conducting the vote) by no later than (insert time and date). To be counted, your ballot must reach us by that date and time.

By order of the board of directors.
(signature of Board Presiding Officer)
(insert title and date)

(c) Form ballot:

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BALLOT FOR CONVERSION TO NONFEDERALLY-INSURED STATUS

(INSERT NAME OF CONVERTING CREDIT UNION)

Name of Member: (insert name)
Account Number: (insert account number)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address).

I understand if the conversion of the (insert name of credit union) is approved, the National Credit Union Administration share

(deposit) insurance I now have, up to \$100,000, or possibly more if I use different account structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

I FURTHER UNDERSTAND THAT IF THIS CONVERSION IS APPROVED AND THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT I WILL GET MY MONEY BACK.

I vote on the proposal as follows (check one box):

Approve the conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the conversion.

Do not approve the conversion to private insurance.

Signed: _____
(Insert printed member's name)

Date: _____

(d) Form certification of member vote to NCUA:

CERTIFICATION OF VOTE ON CONVERSION TO NONFEDERALLY-INSURED STATUS

We, the undersigned officers of the (insert name of converting credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution to seek the conversion of our primary share insurance coverage from NCUA to (insert name of private insurer).

2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and the ballot, as approved by the National Credit Union Administration, were mailed to our members.

3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed conversion.

4. At the special meeting, the credit union arranged for an explanation of the conversion to the members present at the special meeting.

5. The (insert name), an entity independent of the credit union, conducted the membership vote at the special meeting. The members voted as follows:

(insert) Number of total members

(insert) Number of members present at the special meeting

(insert) Number of members present who voted in favor of the conversion

(insert) Number of members present who voted against the conversion

(insert) Number of additional written ballots in favor of the conversion

(insert) Number of additional written ballots opposed to the conversion

(insert "20% or more") OR (insert "Less than 20%") of the total membership voted. Of those who voted, a majority voted (insert "in favor of") OR ("against") conversion.

The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date).

(signature of Board Presiding Officer)

(insert typed name and title)

(signature of Board Secretary)

(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):

(signature of officer of independent entity)

(typed name, title, and phone number)

[70 FR 3288, Jan. 24, 2005, as amended at 73 FR 30477, May 28, 2008]

§ 708b.302

12 CFR Ch. VII (1-1-16 Edition)

§ 708b.302 Conversion of insurance (Federal Credit Union).

Unless the Regional Director approves the use of different forms, a federal credit union must use the following forms in this section in connection with a conversion to a nonfederally-insured state charter.

(a) Form letter notifying NCUA of intent to convert:

(insert name), NCUA Regional Director
(insert address of NCUA Regional Director)
Re: Notice of Intent To Convert to State Charter and to Private Share Insurance

Dear Director (insert name):

In accordance with federal law at title 12, United States Code Section 1785(b)(1)(D), I request the National Credit Union Administration approve the conversion of (insert name of federal credit union) to a state charter in (insert name of state) and from federal share insurance to private primary share insurance with (insert name of private insurance company).

On (insert date), the board of directors of (insert name of credit union) resolved to pursue the charter conversion and the conversion from federal insurance to private insurance. A copy of the resolution is enclosed.

On (insert date), the credit union plans to solicit the vote of our members on the conversion. The credit union will employ (insert name, address, and telephone number of independent entity) to conduct the vote. The credit union will use the form notice and ballot required by NCUA regulations, and will certify the results to NCUA as required by NCUA regulations.

Aside from the notice and ballot, the credit union (does/does not) intend to provide our members with additional written information about the conversion. I understand that NCUA regulations forbid any communications to members, including communications about NCUA insurance or private insurance, that are inaccurate or deceptive.

I have enclosed a copy of a letter from (insert name and title of state regulator) indicating approval of our conversion to a state charter.

(Insert name of State) allows credit unions to obtain primary share insurance from (insert name of private insurance company). I have enclosed a copy of a letter from (insert name and title of state regulator) establishing that (insert name of private insurer) has the authority to provide (insert name of credit union), after conversion to a state charter, with primary share insurance.

I have enclosed a copy of a letter from (insert name of private insurer) indicating it has accepted (insert name of credit union) for primary share insurance and will insure

the credit union immediately upon the date that it loses its federal share insurance.

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

Enclosed you will also find other information required by NCUA's Chartering and Field of Membership Manual, Chapter 4, §III.C.

The point of contact for conversion matters is (insert name and title of credit union employee), who can be reached at (insert telephone number).

Sincerely,

(signature),
Chief Executive Officer.

Enclosures

(b) Form notice to members of intent to convert and special meeting of members:

NOTICE OF PROPOSAL TO CONVERT TO A STATE CHARTER AND TO NONFEDERALLY-INSURED STATUS AND SPECIAL MEETING OF MEMBERS

(INSERT NAME OF CONVERTING CREDIT UNION)

On (insert date), the board of directors of your credit union approved a proposition to convert from federal share (deposit) insurance to private insurance and to convert from a federal credit union to a state-chartered credit union. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date) to address this proposition.

PURPOSE OF MEETING

The meeting has two purposes:

1. To consider and act upon a proposal to convert your credit union from a federal charter to a state charter and your account insurance from federal insurance to private insurance.
2. To approve the action of the Board of Directors in authorizing the officers of the credit union to carry out the proposed conversion.

INSURANCE CONVERSION

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up to \$100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than \$100,000. If the conversion is approved, your federal insurance will terminate on the effective date of the conversion. Instead, your accounts in the credit union will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by

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the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States

government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

IF THIS CONVERSION IS APPROVED, AND THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET YOUR MONEY BACK.

Also, because this conversion, if approved, would result in the loss of federal share insurance, the credit union will, at any time between the approval of the conversion and the effective date of conversion and upon request of the member, permit all members who have share certificates or other term accounts to close the federally-insured portion of those accounts without an early withdrawal penalty. (This is an optional sentence. It may be deleted without the approval of the Regional Director. The members must be informed about this right, however, as described in 12 CFR 708b.204(c).)

The board of directors has concluded that the proposed conversion is desirable for the following reasons: (Insert reasons). (This is an optional paragraph. It may be deleted without the approval of the Regional Director.)

The proposed conversion will result in the following one-time cost associated with the conversion: (List the total estimated dollar amount, including (1) the cost of conducting the vote, (2) the cost of changing the credit union's name and insurance logo, and (3) attorney and consultant fees.)

The conversion must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a ballot. If you cannot attend the meeting, please complete the ballot and return it to (insert name and address of independent entity conducting the vote) by no

later than (insert time and date). To be counted, your ballot must reach us by that date and time.

By order of the board of directors.
(signature of Board Presiding Officer)
(insert title and date)

(c) Form ballot:

BALLOT FOR CONVERSION TO STATE CHARTER AND NONFEDERALLY-INSURED STATUS

(INSERT NAME OF CONVERTING CREDIT UNION)

Name of Member: (insert name)
Account Number: (insert account number)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address).

I understand if the conversion of the (insert name of credit union) is approved, the National Credit Union Administration share (deposit) insurance I now have, up to \$100,000, or possibly more if I use different accounts structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

I FURTHER UNDERSTAND THAT, IF THIS CONVERSION IS APPROVED AND THE (insert name of credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT I WILL GET MY MONEY BACK.

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I vote on the proposal as follows (check one box):

[] Approve the conversion of charter and conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the conversion.

[] Do not approve the conversion of charter and the conversion to private insurance. Signed: _____

(Insert printed member's name)

Date: _____

(d) Form certification to NCUA of member vote:

CERTIFICATION OF VOTE ON CONVERSION TO STATE CHARTER AND NONFEDERALLY-INSURED STATUS

We, the undersigned officers of the (insert name of converting credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution to seek the conversion of our credit union to a state charter and the conversion of our primary share insurance coverage from NCUA to (insert name of private insurer).

2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and ballot, as approved by the National Credit Union Administration, were mailed to our members.

3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed conversion.

4. At the special meeting, the credit union arranged for an explanation of the conversion to the members present at the special meeting.

5. The (insert name), an entity independent of the credit union, conducted the membership vote at the special meeting. The members voted as follows:

(insert) Number of total members
(insert) Number of members present at the special meeting

(insert) Number of members present who voted in favor of the conversion

(insert) Number of members present who voted against the conversion

(insert) Number of additional written ballots in favor of the conversion

(insert) Number of additional written ballots opposed to the conversion

(insert "20% or more") OR (insert "Less than 20%") of the total membership voted. Of those who voted, a majority voted (insert "in favor of") OR ("against") conversion.

The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date).

(signature of Board Presiding Officer)

(insert typed name and title)

(signature of Board Secretary)

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(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):
(signature of officer of independent entity)
(typed name, title, and phone number)

[70 FR 3288, Jan. 24, 2005, as amended at 73 FR 30477, May 28, 2008; 75 FR 34621, June 18, 2010]

§ 708b.303 Conversion of insurance through merger.

Unless the Regional Director approves the use of different forms, a federally-insured credit union that is merging into a nonfederally-insured credit union must use the forms in this section.

(a) Form notice to members of intent to merge and convert and special meeting of members:

NOTICE OF SPECIAL MEETING ON PROPOSAL TO MERGE AND CONVERT TO NONFEDERALLY-INSURED STATUS

(INSERT NAME OF MERGING CREDIT UNION)

On (insert date), the Board of Directors of your credit union approved a proposition to merge with (insert name of continuing credit union) and to convert from federal share (deposit) insurance to private insurance. You are encouraged to attend a special meeting of our credit union at (insert address) on (insert time and date).

PURPOSE OF MEETING

The meeting has two purposes:

1. To consider and act upon a proposal to merge our credit union with (insert name of continuing credit union), the continuing credit union.

2. To approve the action of the Board of Directors of our credit union in authorizing the officers of the credit union, subject to member approval, to carry out the proposed merger.

If this merger is approved, our credit union will transfer all its assets and liabilities to the continuing credit union. As a member of our credit union, you will become a member of the continuing credit union. On the effective date of the merger, you will receive shares in the continuing credit union for the shares you own now in our credit union.

INSURANCE CONVERSION

Currently, your accounts have share insurance provided by the National Credit Union Administration, an agency of the federal government. The basic federal coverage is up

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to \$100,000, but accounts may be structured in different ways, such as joint accounts, payable-on-death accounts, or IRA accounts, to achieve federal coverage of much more than \$100,000. If the merger is approved, your federal insurance will terminate on the effective date of the merger. Instead, your accounts in the credit union will be insured up to \$(insert dollar amount) by (insert name of

insurer), a corporation chartered by the State of (insert name of State). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States government. The private insurance you will receive from (insert name of insurer), however, is not guaranteed by the federal or any state or local government.

IF THIS MERGER IS APPROVED AND THE (insert name of continuing credit union) FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE YOU WILL GET YOUR MONEY BACK.

Also, because this merger, if approved, would result in the loss of federal share insurance, the (insert name of merging credit union) will, at any time between the approval of the merger and the effective date of merger and upon request of the member, permit all members who have share certificates or other term accounts to close the federally-insured portion of those accounts without an early withdrawal penalty. (This is an optional sentence. It may be deleted without the approval of the Regional Director. The members must be informed about this right, however, as described in 12 CFR 708b.204(c).)

version to Nonfederally-insured Status. If you cannot attend the meeting, please complete the ballot and return it to (insert name of independent entity conducting vote) at (insert mailing address) by no later than (insert date and time). To be counted, your ballot must reach (insert name of independent entity conducting vote) by the date and time announced for the meeting.

By order of the board of directors.
(signature of Board Presiding Officer)
(insert name and title of Board Presiding Officer) (insert date)

OTHER INFORMATION RELATED TO THE PROPOSED MERGER

(b) Form ballot:

BALLOT FOR MERGER PROPOSAL AND CONVERSION TO NONFEDERALLY-INSURED STATUS

The directors of the participating credit unions carefully analyzed the assets and liabilities of the participating credit unions and appraised each credit union's share values. The appraisal of the share values appears on the attached individual and consolidated financial statements of the participating credit unions.

Name of Member: (insert name)
Account Number: (insert account number)

The directors of the participating credit unions have concluded that the proposed merger is desirable for the following reasons: (insert reasons)

The credit union must receive this ballot by (insert date and time for vote). Please mail or bring it to: (Insert name of independent entity and address)

The Board of Directors of our credit union believes the merger should include/not include an adjustment in shares for the following reasons: (insert reasons)

I understand if the merger or conversion of the (insert name of merging credit union) into the (insert name of continuing credit union) is approved, the National Credit Union Administration share (deposit) insurance I now have, up to \$100,000, or possibly more if I use different account structures, will terminate upon the effective date of the conversion. Instead, my shares in the (insert name of credit union) will be insured up to \$(insert dollar amount) by (insert name of insurer), a corporation chartered by the State of (insert name of state). The federal insurance provided by the National Credit Union Administration is backed by the full faith and credit of the United States Government. The private insurance provided by (insert name of insurer) is not.

The main office of the continuing credit union will be as follows: (insert location)

The branch office(s) of the continuing credit union will be as follows: (insert locations)

The merger must have the approval of a majority of members who vote on the proposal, provided at least 20 percent of the total membership participates in the voting.

Enclosed with this Notice of Special Meeting is a Ballot for Merger Proposal and Con-

**I FURTHER UNDERSTAND THAT, IF THIS MERGER IS APPROVED AND
THE (insert name of continuing credit union) FAILS, THE FEDERAL
GOVERNMENT DOES NOT GUARANTEE THAT I WILL GET MY MONEY
BACK.**

I vote on the proposal as follows (check one box):

Approve the merger and the conversion to private insurance and authorize the Board of Directors to take all necessary action to accomplish the merger and conversion.

Do not approve the merger and the conversion to private insurance.

Signed: _____

(Insert printed member's name)

Date: _____

(c) Form certification of vote:

CERTIFICATION OF VOTE ON MERGER PROPOSAL AND CONVERSION TO NONFEDERALLY-INSURED STATUS OF THE (INSERT NAME OF MERGING CREDIT UNION)

We, the undersigned officers of the (insert name of merging credit union), certify the completion of the following actions:

1. At a meeting on (insert date), the Board of Directors adopted a resolution approving the merger of our credit union with (insert name of continuing credit union).

2. Not more than 30 nor less than 7 days before the date of the vote, copies of the notice of special meeting and the ballot, as approved by the National Credit Union Administration, and a copy of the merger plan announced in the notice, were mailed to our members.

3. The credit union arranged for the conduct of a special meeting of our members at the time and place announced in the Notice to consider and act upon the proposed merger.

4. At the special meeting, the credit union arranged for an explanation of the merger proposal and any changes in federally-insured status to the members present at the special meeting.

5. The (insert name), and entity independent of the credit union, conducted the membership vote at the special meeting. At least 20 percent of our total membership voted and a majority of voting members favor the merger as follows:

(insert) Number of total members

(insert) Number of members present at the special meeting

(insert) Number of members present who voted in favor of the merger

(insert) Number of members present who voted against the merger

(insert) Number of additional written ballots in favor of the merger

(insert) Number of additional written ballots opposed to the merger

6. The action of the members at the special meeting was recorded in the minutes.

This certification signed the (insert date):

(signature of Board Presiding Officer)

(insert typed name and title)

(signature of Board Secretary)

(insert typed name and title)

I (insert name), an officer of the (insert name of independent entity that conducted the vote), hereby certify that the information recorded in paragraph 5 above is accurate.

This certification signed the (insert date):

(signature of officer of independent entity)

(typed name, title, and phone number)

[70 FR 3288, Jan. 24, 2005, as amended at 73 FR 30477, May 28, 2008]

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

Sec.

709.0 Scope.

709.1 Definitions.

709.2 NCUA Board as liquidating agent.

709.3 Challenge to revocation of charter and involuntary liquidation.

709.4 Powers and duties of liquidating agent.

709.5 Payout priorities in involuntary liquidation.

709.6 Initial determination of creditor claims by the liquidating agent.

709.7 Procedures for appeal of initial determination.

709.8 Administrative appeal of the initial determination.

709.9 Expedited determination of creditor claims.

709.10 Treatment by conservator or liquidating agent of financial assets transferred in connection with a securitization or participation.