

reasonably possible, the risks associated with transactions supported by Ex-Im Bank. It is often difficult to assess risks related to individuals and non-publicly traded entities. Therefore, when an individual or a non-publicly traded entity applies for participation in an Ex-Im Bank program or is proposed as a guarantor for an Ex-Im Bank transaction, Ex-Im Bank may request social security and/or U.S. passport numbers from such individual or from the principals of such entity. Ex-Im Bank shall not require submission of this information, and unwillingness or inability to provide a social security or passport number shall not affect Ex-Im Bank's decision on an application for Ex-Im Bank assistance.

(b) *Use.* Ex-Im Bank shall use social security and passport numbers to assess the creditworthiness of Ex-Im Bank program participants and as a mechanism for enforcing agreements with Ex-Im Bank. Such information shall not be disclosed, except as warranted by law and regulation.

(c) *Notice.* Whenever Ex-Im Bank requests a social security or passport number, Ex-Im Bank shall place an appropriate Privacy Act notification on the form used to collect the information.

§ 404.22 Government contracts.

(a) *Approval by Assistant General Counsel for Administration.* Ex-Im Bank shall not contract for the operation of a system of records or for an activity which requires access to a system of records without the express, written approval of the Assistant General Counsel for Administration.

(b) *Contract clauses.* Any contract authorized under paragraph (a) of this section shall contain the standard contract clauses required by the Federal Acquisition Regulation (48 CFR 24.104) to ensure compliance with the requirements imposed by the Privacy Act. The division within Ex-Im Bank which is responsible for technical supervision of the contract shall be responsible for ensuring that the contractor complies with the Privacy Act contract requirements.

(c) *Contractor status.* Any contractor that operates an Ex-Im Bank system of records or engages in an activity which requires access to an Ex-Im Bank system of records shall be considered an Ex-Im Bank employee for purposes of this subpart. Ex-Im Bank shall supply any such contractor with a copy of the regulations in this subpart upon entering into a contract with Ex-Im Bank.

§§ 404.23–404.25 [Reserved]

§ 404.26 Employee standards of conduct.

(a) *Ex-Im Bank responsibilities.* Ex-Im Bank shall inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Ex-Im Bank also shall notify its employees that they have a duty to:

- (1) Protect the security of records;
- (2) Ensure the accuracy, relevance, timeliness, and completeness of records;
- (3) Avoid the unauthorized disclosure, either verbal or written, of records; and
- (4) Ensure that Ex-Im Bank maintains no system of records without public notice.

(b) *Employee responsibilities.* Except as otherwise permitted by the Privacy Act, Ex-Im Bank employees shall:

- (1) Not collect information of a personal nature from individuals unless an employee is authorized to collect such information to perform a function or discharge a responsibility on behalf of Ex-Im Bank;
- (2) Collect from individuals only that information which is necessary to the performance of the functions or to the discharge of official responsibilities;
- (3) Collect information about an individual directly from that individual, whenever practicable;
- (4) Inform each individual from whom information protected by the Privacy Act is collected of:

(i) The legal authority that authorizes Ex-Im Bank to collect such information and whether disclosure is mandatory or voluntary;

(ii) The principal purposes for which Ex-Im Bank intends to use the information;

(iii) The routine uses Ex-Im Bank may make of the information; and

(iv) The practical and legal effects upon the individual of not furnishing the information;

(5) Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as to ensure fairness to the individual in the determination;

(6) Make reasonable efforts, prior to disseminating any record about an individual, to ensure that such records are accurate, relevant, timely, and complete;

(7) Maintain no record concerning an individual's religious or political beliefs or activities, or his membership in associations or organizations, unless:

- (i) The individual has volunteered such information for his own benefit;

(ii) A statute expressly authorizes Ex-Im Bank to collect, maintain, use or disseminate the information; or

(iii) The individual's beliefs, activities or membership are pertinent to and within the scope of an authorized law enforcement or correctional activity;

(8) Notify the Assistant General Counsel for Administration of the existence or development of any system of records that has not been disclosed to the public;

(9) When required by the Act, maintain an accounting in the prescribed form of all disclosures of records by Ex-Im Bank to agencies or individuals;

(10) Not disclose any record to anyone for any use, unless such disclosure is permitted by the Act;

(11) Maintain and use records with care to prevent the inadvertent disclosure of records; and

(12) Notify the Assistant General Counsel for Administration of any record that contains information that the Act or the foregoing provisions of this paragraph do not permit Ex-Im Bank to maintain.

(c) *Review of systems of records.* Not less than once each year, the Ex-Im Bank Chief Information Officer shall review the systems of records maintained by Ex-Im Bank to ensure that Ex-Im Bank is in compliance with the provisions of the Privacy Act regarding publication of systems of records.

§ 404.27 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

PART 405—[REMOVED AND RESERVED]

2. 12 CFR part 405 is removed and reserved.

Dated: November 24, 1997.

Kenneth W. Hansen,

General Counsel, Federal Register Liaison Officer.

[FR Doc. 97-31775 Filed 12-3-97; 8:45 am]

BILLING CODE 6690-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Mergers or Conversions of Federally-Insured Credit Unions to Non Credit Union Status: NCUA Approval

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would add a new provision to the disclosure statement in regulations relating to NCUA approval of mergers or conversions of federally-insured credit unions to non credit union status. Credit unions would be required to disclose in plain English on the cover page of the disclosure statement specific facts relating to the proposed transaction's impact on the members.

DATES: Comments must be received by February 2, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax comments to (703) 518-6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6553.

SUPPLEMENTARY INFORMATION:**Background**

On September 16, 1994, the NCUA Board issued an interim final rule, part 708a, and request for comments. 59 FR 48790 (September 23, 1994). The rule established that the NCUA Board must approve any merger or conversion of a federally insured credit union to a non credit union institution. On March 1, 1995, the NCUA Board issued a final rule setting forth the procedures and disclosure requirements for these transactions. 60 FR 12659 (March 8, 1995). One of the issues addressed in the final rule was the requirement that a uniform member notice be sent to the members as part of the disclosure. Nine of the ten commenters supported a uniform notice. The reasons given were that a uniform notice would provide clear and consistent guidelines for merging credit unions, ensure that important information is not withheld from the members and require less individual review. The NCUA Board agreed with these goals, but believed that they could be accomplished more effectively through a listing of the information that must be included in the notice to members, rather than a form that may become outdated or not apply to all transactions. The final rule did not require a uniform notice.

The NCUA Board has had an opportunity to review Disclosure

Statements under this rule and now, agrees with the commenters that certain key information should be routinely provided to the members in plain English. Although most of the information is currently being provided, it is buried in a multi-page Disclosure Statement, often in excess of fifteen pages. Further, it is stated in a way that is difficult to understand.

Proposal

To ensure that the members understand the proposed transaction's impact, the Board proposes requiring credit unions to provide in plain English on the cover page of the Disclosure the following information: (1) The institution will no longer be democratically controlled with each member having one equal vote. The larger depositors will have more votes than the smaller depositors; (2) This action would enable the credit union to further change its organizational structure in the future. For example, if the institution were to convert to a stock institution, the members will lose their equity ownership interest. Any future decision to convert to a stock institution would be made by a vote of the members. The weight a member's vote carries will be based on the amount of the member's deposit; and (3) The board of directors may receive financial benefits not available to other members. For example, after waiting the two years required by NCUA's regulation, Board members could be compensated and they could obtain stock under terms not available to other members.

In the event these statements do not apply to a particular transaction, they may be modified as necessary.

The NCUA Board is interested in receiving comments on the proposed uniform disclosure requirements.

Regulatory Procedures*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under \$1 million in assets. The NCUA Board has determined and certifies that the proposed rule if adopted will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that it is highly unlikely that small credit unions would be engaged in a merger or conversion to a noncredit union institution. Accordingly, the NCUA Board has

determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendments will apply to all federally insured credit unions. The proposed amendments are not designed or intended to interfere with the state regulation of state-chartered institutions. However, existing statutory requirements mandate the Board approve transactions of this nature for all federally insured credit unions. Recognizing the interests of states and state regulators in supervising state chartered credit unions, the rule governing transactions of this nature includes a provision that allows federally insured state chartered credit unions, on a case-by-case basis, to obtain a waiver from NCUA's rule and follow state procedures if those procedures are determined to adequately address the concerns of NCUA's rule. With this provision in the rule, the NCUA Board has determined that the proposed amendments are not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The proposed amendment requires the credit union to provide to its members information that is provided by NCUA in the proposal. The Paperwork Reduction Act does not apply to disclosures that are directives for a person to disclose information completely supplied by the agency. 5 CFR 1320.3(c)(2).

List of Subjects in 12 CFR Part 708a

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,
Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 708a as follows:

PART 708a—MERGERS OR CONVERSIONS OF FEDERALLY-INSURED CREDIT UNIONS TO NON CREDIT UNION STATUS: NCUA APPROVAL

1. The authority citation for part 708a is revised to read as follows:

Authority: 12 U.S.C. 1766, 1785.

2. Amend Appendix A to part 708a to revise paragraph (2)(m) to read as follows:

Appendix A to Part 708a—Notice to Members of Special Meeting, Disclosure and Ballot

* * * * *

(2) * * *

(m) The cover of the Disclosure Statement must contain the following statement in bold, appropriately modified to the extent that this statement does not accurately describe the transaction:

PLEASE READ THIS DISCLOSURE DOCUMENT. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR CREDIT UNION.

If the credit union converts to a savings bank, the institution will no longer be democratically controlled with each member having one equal vote. As explained in this Disclosure, the larger depositors will have more votes than the smaller depositors.

This action would enable the credit union to further change its organizational structure in the future. For example, if the institution were to convert to a stock institution, you would lose your equity ownership interest. Any future decision to convert to a stock institution would be made by a vote of the members, however, the weight your vote carries will be based on the amount of your deposit in the institution.

If the credit union converts to a savings bank, your board of directors may receive financial benefits not available to other members. For example, Board members could be compensated and they could obtain stock on terms not available to other members, after waiting the two years required by credit union regulation.

* * * * *

[FR Doc. 97-31501 Filed 12-3-97; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708b

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

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA Board propose to amend the disclosure forms in NCUA's regulations relating to mergers and voluntary termination or conversion of insured status in mergers of federally-insured credit unions. The amendments inform the members that, if their credit union converts to nonfederal insurance, the private insurance fund insuring their accounts is not backed by the full faith and credit of the United States government. It also informs the members that, if their credit union

terminates insurance, their shares, excluding those covered for one year, are no longer insured by the federal government or any other entity.

DATES: Comments must be received on or before February 2, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. Fax comments to (703) 518-6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, requires credit unions that are not federally insured to advise their members on "all periodic statements of account, on each signature card, and on each passbook, certificate or deposit, or similar instrument evidencing a deposit a notice that the institution is not federally insured, and that if the institution fails, the Federal government does not guarantee that depositors will get back their money." 12 U.S.C. 1831t(b)(1). Clearly, a member of a credit union being asked to vote on a proposal that would replace federal insurance with private insurance is entitled to a similar disclosure. Currently, NCUA's regulations do not require disclosure of this information.

Proposal

Sections 708(b).301 (a)(1) and (b)(1) contain the form notices that are sent to the members if a credit union is seeking to terminate federal insurance. The proposal would amend the notices by clarifying to the members that if the credit union fails, their shares are no longer insured by the federal government or any other entity.

Sections 708b.302(a)(1), (a)(2), (b)(1) and (b)(2) contain the form notices and ballots that are sent to the members if a credit union is seeking to convert from federal to nonfederal insurance. The proposal would add a sentence to the notice and ballot explaining that the insurance provided by the NCUA is backed by the full faith and credit of the United States government and that the private insurance the member will receive if the credit union converts is not backed by the United States government.

The Board believes this information must be disclosed in order for the member to make an informed vote on the proposed transaction. Disclosure of this information is consistent with the disclosure requirements Congress imposes on credit unions lacking federal insurance.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under \$1 million in assets. The NCUA Board has determined and certifies that the proposed rule if adopted will not have a significant economic impact on a substantial number of small credit unions. The reasons for this determination are that the proposed rule requires the addition of two sentences to the disclosure form used by credit unions converting to nonfederal insurance. The addition of these two sentences will not increase the costs of the conversion and therefore will not create a financial burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendments will apply to all federally insured credit unions. The proposed amendments are not designed or intended to interfere with the state regulation of state-chartered institutions. However, the Board is modeling this proposal on federal legislation that specifically applies to state-chartered credit unions. The NCUA Board has determined that the proposed amendments are not likely to have any direct effect on states, the relationship between the states, or the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The proposed amendment requires the credit union to provide to its members information that is provided by NCUA in the proposal. The Paperwork Reduction Act does not apply to disclosures that are directives for a person to disclose information completely supplied by the agency. 5 CFR 1320.3(c)(2).