members' shares or similar accounts to any non credit union institution; a majority of all members of record must vote to approve the transaction; directors must agree to receive no benefits in excess of those available to the members; notice to members must be preapproved by the NCUA Board and must include all pertinent information required by the rule as well as any additional information deemed necessary on a case by case basis; FISCUs may only engage in the transaction if they obtain approval from the state authority to proceed with the merger or conversion; and FISCUs must follow part 708a unless they obtain a waiver from NCUA.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions. It is highly unlikely that small credit unions (those under \$1 million in assets) would be engaged in a merger or conversion to a non credit union institution. The final rule merely clarifies statutory authority. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

These amendments do not change paperwork requirements.

Executive Order 12612

This rule applies to all federally insured credit unions. The rule clarifies existing statutory requirements of NCUA Board approval of certain transactions involving federally insured credit unions. Recognizing the interests of states and state regulators in supervising state chartered credit unions, the NCUA Board has included a provision in the final rule that allows FISCUs, 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, the NCUA Board has determined that this amendment is 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.

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 March 1, 1995. Becky Baker,

Secretary of the Board.

Accordingly, the interim rule adding a new regulation in 12 CFR part 708a which was published at 59 FR 48790 on September 23, 1994, is adopted as a

final rule with changes 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 continues to read as follows:

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

2. Sections 708a.1 and 708a.2 are revised to read as follows:

§708a.1 NCUA Board Approval.

Section 205(b)(1) of the Federal Credit Union Act requires NCUA Board approval in advance of any transaction whereby a federally-insured credit union transfers all or any part of its members' accounts to any non credit union institution. This part establishes rules and procedures for any merger, conversion or other transaction in which a federally-insured credit union's share accounts or similar member accounts are transferred to a non credit union institution. Transactions where a federally-insured credit union transfers member accounts to another credit union are subject to the provisions of part 708b of this chapter. Compliance with this part 708a is in addition to any other federal or state laws and regulations which may be applicable to the proposed transaction, including state corporate laws and state and federal securities laws.

§708a.2 Plan for Merger or Conversion to a Non Credit Union Institution.

(a) *Proposition for merger or conversion*. The board of directors of the credit union shall approve a proposition for merger or conversion.

(b) *Plan for merger or conversion.* Upon approval of a proposition for merger or conversion by the board of directors, a plan for the transaction shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report, if applicable;

(4) Contingencies;

(5) Explanation of any provisions for reserves, undivided earnings or dividends; (6) Analyses of share values and explanation of any adjustments to member's share accounts;

(7) Analyses of the regulatory effect of the merger or conversion brought about by the change in government regulator;

(8) Explanation of any other relevant effects on the members; and

(9) Any additional information, as required by the NCUA Regional Director.

(c) *Nonpreferential treatment*. The plan for merger or conversion shall provide that, for a period of at least two years after the effective date of the transaction:

(1) No director of the credit union may receive any compensation or any benefits not provided or available to other members; and

(2) No director or senior management official of the credit union shall be allowed to acquire stock in the resulting or continuing institution or any successor institution, on any terms other than those readily available to all members of the former credit union. This prohibition would include stock issued for services rendered prior to the merger or conversion. For purposes of this section, *senior management official* means the credit union's chief executive officer, any assistant chief executive officers and the chief financial officer.

3. Sections 708a.3, 708a.4, 708a.5, 708a.6 and Appendix A are added to read as follows:

§708a.3 Submission of Proposal to NCUA.

(a) Submissions to the NCUA Regional Director. Upon approval of the plan by the board of directors of the credit union, the following will be submitted to the appropriate NCUA Regional Director:

(1) The plan, as described in § 708a.2(b) of this part;

(2) A resolution of the board of directors approving the plan;

(3) A written agreement from each member of the board of directors and each senior management official to comply with the terms of § 708a.2(c) (the agreement shall be executed by NCUA as well, in the event of approval of the transaction);

(4) A proposed merger or conversion agreement;

(5) A proposed Notice of Meeting, as described in Appendix A of this part;(6) A copy of the form ballot and any

(6) A copy of the form ballot and any accompanying materials to be sent to the members, as described in Appendix A of this part;

(7) A complete copy of the package [to be] submitted to any other regulatory agencies involved in the merger or conversion;

(8) A copy of an appraisal of the value of the credit union, if the proposal is to