

# CREDIT UNION MERGER MANUAL



## **Division of Credit Unions**

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# CREDIT UNION MERGER MANUAL

## **Introduction**

This Merger Manual applies to mergers where a Washington State-chartered credit union (Washington credit union) is the survivor in the merger. That is, this manual applies where:

- A Washington credit union is merging into another Washington credit union; or
- A federal, out-of-state or foreign credit union is merging into a Washington credit union, and the Washington credit union is the continuing credit union.

The surviving credit union is referred to as the continuing credit union, and the credit union that does not continue is referred to as the merging credit union.

Please be aware: if the merging credit union is a federal, foreign or out-of-state credit union, other requirements or restrictions may apply. This Merger Manual is intended to outline the general requirements of the Director under RCW 31.12.461 for merging two credit unions when the surviving credit union is state chartered. Individual merger circumstances may necessitate additional requirements be fulfilled.

## **Fiduciary Duties of Boards**

The board of directors of each credit union contemplating a merger should carefully consider all material aspects of the merger, including both the positive and negative effects that the merger could have on the members of the credit union. Before the merger is completed, the boards should assure themselves that their credit union has done an adequate due diligence of the other credit union. Two-thirds of the board members for a “merging” Washington state chartered credit union must approve the merger plan. The Division of Credit Unions expects that management of a “merging” state chartered credit union will contact the Division at least five business days prior to the Board of Directors’ vote on the merger. A Division representative may attend the board meeting in which the vote will be held. (RCW 31.12.633)

## **Merger Plan**

Credit unions should consult counsel before entering into a merger agreement. The credit unions should reach an understanding as to all material aspects of the merger. The two credit unions should enter into a signed merger plan, which specifically details the important agreed upon terms of the merger, such as how the employees and management of the merging credit union will be treated (i.e. retirement benefits, annual and sick leave carryover, medical coverage, and salary). It should address the merging credit union’s offices/branches and what are the surviving credit union’s plans for these offices or branches. The merger plan should be signed by both the managing officer and board chair for each credit union. We discourage credit unions from using the NCUA Merger Agreement (NCUA form 6304) for this purpose because, by its terms, the form should not be signed until the merger has been completed. However, the WA Secretary of State’s Office will require this “Merger Agreement” document at the time of filing.

## **Major Steps to a Merger**

The major steps to merge credit unions are as follows (not necessarily in this exact order):

- The boards adopt a merger plan.
- The continuing credit union determines whether filing under the federal Hart-Scott-Rodino Act (HSRA) is necessary. If the merger is subject to HSRA, the continuing credit union files pre-merger notification with the Federal Trade Commission.
- The continuing credit union performs a due diligence review sufficient to assure themselves they are aware of all potential pitfalls.
- The continuing credit union performs a fair value estimate review of the likely balance sheet and financial ratios if the merger is consummated.
- The continuing credit union submits a Merger Application to, and obtains approval from, the Division of Credit Unions.
- The continuing credit union submits a Merger Application to, and obtains approval from, NCUA Region V.
- The credit unions notify their bonding companies of the proposed merger.
- The credit unions obtain member approval for the proposed merger.
- The credit union submits DCU forms WCU 4 and WCU 4a, Merger Resolutions from the boards of each credit union.
- The credit unions file Articles of Merger with the Division which, in turn, files them with the Secretary of State, giving effect to the merger.
- The credit unions sign and submit the Merger Agreement (NCUA form 6304) to DCU and NCUA Region V.
- The credit unions submit final reports to DCU and NCUA Region V.
- The NCUA cancels the charter of the disappearing credit union, if federally-chartered.
- Continuing credit union files Certificate of Completion of Merger (Form 6309) with NCUA.

### **Applicable Washington and Federal Statutes and Rules**

**State of Washington.** Credit unions intending to merge must comply with:

- RCW 31.12.461, if both credit unions are Washington credit unions; or
- RCW 31.12.467, if a federal, out-of-state or foreign credit union is merging into a Washington credit union and the Washington credit union is the survivor.

**Federal – Federal Credit Union Act.** The credit unions must also comply with NCUA rules at 12 C.F.R. 741.208 and 12 C.F.R. Part 708b, Subpart A.

**Federal – Hart Scott Rodino Act.** In addition, the merger may be subject to the federal Hart-Scott-Rodino Act (HSRA). The HSRA requires credit unions to file a pre-merger notification and pay a substantial filing fee (upwards of \$45,000) with the Federal Trade Commission at least 30 days prior to the merger. The purpose of the filing is to give the FTC an opportunity to review the proposed merger to determine if it would violate federal antitrust laws.

The credit unions bear the responsibility to determine whether or not filing under the HSRA is required.

We will assume the HSRA applies if:

1. The disappearing credit union has more than \$200 million in assets; or

2. a. The disappearing credit union has at least \$50 million in assets; and
- b. The continuing credit union has at least \$100 million in assets (before the merger).

Asset figures should be based on the most recent month-end balance sheets of the credit unions.

If either of these circumstances exist, or if we notify you that we have other reasons to believe that the merger is subject to the HSRA:

- We will assume the Act applies, unless the continuing credit union provides a legal opinion that it does not; and
- If the credit union does not provide such an opinion, the credit union must provide written representation that it has complied with the HSRA and provide the date that the waiting period under the HSRA expires.

The Articles of Merger will not be filed and the merger will not be legally effective until any applicable HSRA waiting period has expired.

### **Submitting a Merger Application to the Division and NCUA**

After the boards have approved the merger plan, the continuing credit union may submit a merger application to the Division. The merger application should include the items and information listed in the attached Merger Application Checklist.

The merger application should be sent to the NCUA at the same time it is sent to the Division.

For a credit union to obtain approval from the Division or NCUA, an on-site examination may be required by the Division or the NCUA. Therefore, credit unions should allow at least 60 days after filing the merger application to obtain Division and NCUA approvals. More time may be needed if an examination requires corrective actions prior to the merger.

The Division will be in contact with the NCUA. If an examination is required, the Division will call the credit union contact person.

### **Accounting for the Acquisition Method for Mergers**

At the end of 2008, credit unions were required by Generally Accepted Accounting Principals (GAAP) to begin using the acquisition method of accounting for mergers, instead of the pooling method. The acquisition (fair value, or business combination) method requires a fair value analysis of the merged credit union's balance sheet. This is a monumental change that significantly increased the amount of work that goes into merger accounting.

It is not the intent of the Division to educate credit unions about the specifics of fair value merger accounting, but to outline the Division's expectations for merger accounting. This is a complex topic and the advice of professionals in the field will be expected.

#### ***What is the Importance of an Accurate Merged Credit Union Balance Sheet Prior to Performing a Fair Value Evaluation?***

The most important step in merger accounting is to ensure that the merging credit union's balance sheet accurately depicts the values of its assets, liabilities and equity prior to the fair value valuation.

Why is this so important? Quite simply, a more accurate beginning balance sheet will simplify the fair value adjustments. This will in turn result in more consistent and accurate accounting going

forward. In addition, the difference between the equity (net worth/retained earnings) prior to the fair value evaluation and after the fair value evaluation will, in general, be smaller. This is important because the merged credit union's retained earnings prior to the fair value adjustments are counted for PCA net worth purposes. Accurately reflecting the merging credit union's retained earnings (net worth) prior to the fair value adjustments is critical. For example, all credit risk in the merging credit union's loan portfolio should be accurately represented in the Allowance for Loan and Lease Losses. In addition, all liabilities for payouts for lease or contract termination and employee payments must be booked.

***Is There a Credit Union Size Under Which the Fair Valuation Work Need not be Performed by a CPA?***

Often the relative size of the merging credit union's assets will be small (less than 5% of the assets of the acquiring credit union) and may not be material to the asset size of the continuing credit union. When this is the case, the Division would accept the continuing credit union performing the fair value assessment.

The Division's expectation is that the complexity level of the fair value assessment will be based on the comparable size of the merger transaction credit unions and the apparent need for write-downs on the merging credit union's balance sheet. Please consult with your CPA, the Division, and NCUA representatives for guidance on the complexity level of the fair value assessment.

***Must the Fair Value Estimates and External Audits be Independent?***

We consider it unethical for a credit union's outside auditor (CPA) to perform the fair value evaluation, including any consulting work regarding the fair value estimates. This is because the continuing credit union's outside auditor will review and analyze the fair value adjustments going forward. It is important the external auditor maintain independence and not review their valuation work. This level of independence is expected even if the annual audit is not an opinion audit. If we find such a conflict, remedies may include requiring the work to be redone by an independent firm or a change in your audit firm.

The Division recommends that you contact other Washington state chartered credit unions who have completed mergers after January 1, 2009 regarding their experiences in performing merger accounting and their experiences with companies or individuals who have performed fair value evaluations.

***Must There be an Independent Audit of Ongoing Accounting Entries?***

In the event the annual audit is not an opinion audit, the agreed upon procedures audit must from the merger forward include: an evaluation of the accounting for the merger and any appropriate entries to adjust the value of specific accounts.

***What Fair Value Estimate Documentation Must Be Submitted With the Application and When Must it be Submitted?***

In the list of forms is an example of fair value estimate summary spreadsheets that are acceptable to the Division.

The Division's timeframes and requirements for submitting fair value estimates are as follows:

- The initial fair value estimates are required as part of the original merger application package.
- Updated fair value estimates must be submitted no less than two weeks prior to the merger date. This estimate should include:
  - specific debits and credit entries made to record all pre-merger position transaction for the acquired credit union (e.g. loan write-downs, staff payouts, contract termination liabilities)
  - estimate of the fair value of the acquired credit union
  - assumptions for how the fair value estimates were derived
  - all fair value adjustments with assumptions to assets or liabilities
  - estimated net worth of the acquiring credit union
- Within three weeks after the merger effective date, submit all the final fair value adjustments and the scheduled accounting entries to amortize the loan adjustments, core deposit intangible, etc. This documentation should include the final assumptions and copies of **all supporting documentation that has been modified** from the original estimate.

*Note: Division representatives will review the fair value adjustments for consistency and reasonableness, and make recommendations for changes, if deemed appropriate. The Division's goal is to provide consistency in the merger accounting process and to help ensure that the acquisition method of accounting that is performed meets regulatory guidance and expectations.*

### **5300 Call Report Entries**

Division representatives will contact credit union representatives after receipt of the submitted final fair value adjustments to go over the correct 5300 Call Report entries.

### ***Are the NCUA's Requirements for Merger Accounting Different from the Division's Requirements?***

In general, both the Division's and NCUA's merger accounting requirements are the same. The two agencies work closely with each other while processing merger applications. However, NCUA representatives may differ from Division representatives in how they analyze mergers and in the conclusions they draw.

### **Due Diligence Review**

The management of the continuing credit union is required to have a due diligence review performed on the merging credit union's operations and to perform an evaluation of the merging credit union's financial condition. A due diligence review is a comprehensive in-depth review of the merging credit union's operations, which includes an analysis of how the continuing credit unions operations and financial condition will be affected by the merger. The Division of Credit Unions may waive this requirement. The due diligence review will be performed prior to the merger date. The complexity of the due diligence review will be dependent upon many factors, such as the current financial condition of the merging credit union, the complexity of the merging credit union's balance sheet, notable problems stated in recent NCUA or Division exam reports or material conditions or problems listed in an audit report. In addition, the presence of contingent liabilities would warrant additional review. At a minimum, the due diligence review should include a review of the credit union's operations, loan portfolio, investments, accounting system and financial records. The loan review must satisfactorily review the problem and collection loan area, as well as whether the Allowance for Loan and Lease Losses account is adequately funded.

### **Merger forms information**

NCUA has a comprehensive Credit Union Merger Manual that is very helpful in planning the work needed to complete a merger in a timely manner. The Manual includes necessary forms. However, please be aware that most of the substantive and procedural requirements in the Manual do not apply where a state-chartered credit union is the continuing credit union.

Credit unions can find the NCUA Merger Manual on-line at NCUA's website [www.ncua.gov](http://www.ncua.gov) by clicking on RESOURCES & PUBLICATIONS, PUBLICATIONS, Guides, Manuals & Forms under General Information (NCUA homepage). You may also order the Merger Manual by calling or writing to:

National Credit Union Administration Region V  
1230 W. Washington Street, Suite 301  
Tempe, AZ 85281  
(602) 302-6024

The Division will accept NCUA merger forms, assuming they are completed and tailored appropriately to reflect that the continuing credit union is state-chartered, etc. We have referenced NCUA form numbers where applicable in the attached Checklist. **If you wish to substantively revise the NCUA forms, or create your own merger forms, you will need prior approval from the Division and NCUA.**

### **Membership Approval**



The disappearing credit union must receive member approval of the merger. The credit union may take the merger proposal to a vote of members after receiving the Division and NCUA's approval of the merger.

A disappearing Washington credit union may take the merger proposal to members at a regular or special meeting of members. Typically, the vote is taken at a special meeting. The credit union must comply with applicable statutory and bylaw provisions in notifying members of the meeting. For example, see RCW 31.12.195 concerning notice of special meetings. Members of the credit union should be given the opportunity to vote by mail ballot, and to vote in-person at the special membership meeting. The merger proposal must be approved by two-thirds majority vote of the members of the disappearing credit union who vote on the proposal. In addition to other requirements, the merger proposal given to membership must include the following:

- Disclose what branches and offices of the merging credit union will remain open after the merger;
- Disclose whether any employees will lose their positions because of the merger;
- Disclose any discontinuance of services or products that will occur to the merging credit union's membership as a result of the merger;
- Disclose any compensation, retirement or severance benefits that will be paid to senior management as a result of the merger and state the amounts; and
- Disclose all other merger terms that could be viewed as adverse by a credit union member.

If the disappearing credit union is a federal, foreign or out-of-state credit union, other requirements or restrictions may apply.

If the merging credit union is state chartered and would like to invoke the Federal Power Parity Provision of the RCW regarding the membership vote on the merger, the merging credit union must state this in the merger application. The merging credit union will not be allowed to invoke Federal Power Parity for its membership vote after regulatory approval is given. The merger application must state that the merging credit union will follow all the federal guidelines when conducting the membership vote on the merger. Credit unions should be aware that the Director of Credit Unions has final authority to interpret and apply RCW 31.12.404(3), "restrictions, limitations, and requirements" as it may apply to specific powers exercised by a credit union.

### **Completion of merger**

When the credit unions have obtained written approvals from both the Division and the NCUA, and the required approval from members, and all regulatory waiting periods have expired (such as the 30 day pre-merger filing under the HSRA, if applicable), the merger may be completed. The merger is completed on the date that the Division files the continuing credit union's Articles of Merger with the Secretary of State or on a subsequent date indicated in the Articles but no later than 90 days after the filing.

### **Division contact**

For information on merger applications, please call or write to:

Division of Credit Unions  
Post Office Box 41200  
Olympia, WA 98504-1200  
(360) 902-8701  
Email: [DCU@dfi.wa.gov](mailto:DCU@dfi.wa.gov)

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# NCUA Form 6301

## Merger Checklist

Except to the extent noted, the continuing credit union should submit each item to both the Division and NCUA Region V:

1. The application cover letter, addressing:
  - A detailed explanation of the reason for the merger.
  - One primary contact person at each credit union, with mailing address, e-mail address, and phone number.
  - Designation of the continuing credit union and location of its main office after the merger.
  - What new services and products will the merging credit union's members have access to after the merger?
  - Are there any branch offices, products and services that the merging credit union's members will not have access to after the merger? If so, how will the continuing credit union discontinue these products or services, and/or a branch office?
  - The continuing credit union's plans for the disappearing credit union's office(s).
  - Which board members (if any) will be added to the continuing credit union's board?
  - Whether the merging credit union has an executive contract or agreements that will require a payout to an existing manager or senior staff member. This would include retirement benefits.
  - What employment arrangements (if any) will be provided to employees of the disappearing credit union, including the manager and senior management employees?
  - Any capital rebate to members and the remaining net worth amount.
  - Explanation of any proposed share adjustment or justification for no share adjustment.
  - Explanation of any provisions for reserves, undivided earnings, or dividends.
  - Proposed effective date of the merger.
  - Explanation of any changes to insurance, such as life savings and insurance of member accounts.
2. If the merger exceeds the HSRA thresholds, a legal opinion satisfactory to the Division that the HSRA does not apply, or a copy of the Federal Trade Commission pre-merger notification and a statement representing the date that the HSRA waiting period expires.
3. If the disappearing credit union is federally chartered, a copy of its latest NCUA exam report.
4. Copy of the notice to the bonding company as to the proposed merger.
5. Copy of the required notice to creditors, and any provision for paying creditors outside the normal course of business.

6. Current financial statements for each credit union.
7. Current delinquent loan summary for each credit union.
8. Combined Statement of Financial Condition following fair value accounting using the format provided under Forms.
9. Submit the initial fair value estimates at the time of the application.
10. An analysis of members common to both credit unions whose combined balances may be over the insured (\$250,000) maximum.
11. Copies of the field of membership of each credit union.
12. DCU forms WCU 4 and WCU 4a, merger resolution of the board of directors of each credit union.
13. NCUA form 6305A, Notice of Special Meeting of the Members on Proposal to Merge. Credit unions must be careful to adequately disclose all relevant aspects of the merger. For example, if the continuing credit union has agreed to an employment or consulting agreement for the manager of the disappearing credit union, the relevant details of the agreement should be disclosed.
14. NCUA form 6306A, Ballot for Merger Proposal.
15. NCUA form 6308A, Certification of Vote on Merger Proposal.
16. NCUA form 6304, Merger Agreement. (Two original signed copies)

**ITEMS TO BE COMPLETED AFTER INITIAL APPLICATION PLAN IS RECEIVED**

17. With the updated fair value estimates submitted two weeks prior to the merger date include the assumptions for how the fair value estimates were derived, the valuation of the loan and investment portfolios, USPAP appraisals of credit union real estate, calculation of the core deposit intangible, the estimated net worth of the acquiring credit union post merger, the specific debits and credit entries made to record all pre-merger position transaction for the acquired credit union. (e.g. loan write-downs, contract termination liabilities)
18. An affidavit from the newspaper or certification that creditors were provided notice for three consecutive weeks as required by RCW 31.12.461(3).
19. DCU form, Articles of Merger. (Two original signed copies)
20. NCUA form 6309, Certification of Completion of Merger.
21. Copy of notice to the bonding company of the effective date of the merger.
22. Submit the final fair value adjustments and the proposed accounting entries to amortize the loan adjustments, core deposit intangible, etc. within three weeks after the merger effective date. This documentation should include the final assumptions relating to the fair value entries.

# NCUA Form 6305A

Instructions for NCUA 6305A (revised for state chartered credit unions): If the merging credit union is a Washington state chartered credit union, then not more than 30 nor less than 20 days before the date of the vote, the merging credit union must provide its members (a) advance notice of a special meeting to vote on a proposed merger and (b) a copy of the merger ballot. The merging credit union should conduct the membership vote only after the Division of Credit Unions approves the proposed merger. If the merging credit union is a federally chartered credit union, then different instructions may apply.

\* \* \* \* \*

## Notice of Special Meeting of the Members on Proposal to Merge

\_\_\_\_\_ Credit Union  
(Merging)

You are encouraged to attend a special meeting of your credit union to be held at

\_\_\_\_\_ on  
(Address)

\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m.

The meeting has two purposes:

1. To consider and act upon a proposal to merge our credit union with \_\_\_\_\_ Credit Union, the continuing credit union. 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.
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.

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.

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

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

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Other factors for member consideration include:

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The main office of the continuing credit union will be as follows:

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

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The merger must have the approval of at least two-thirds majority vote of members of the credit union who vote on the proposal.

Enclosed with this **Notice of Special Meeting is a Ballot for Merger Proposal**. If you cannot attend the meeting, please complete the ballot and return it to the credit union office at \_\_\_\_\_ by no later than \_\_\_\_\_, 20\_\_\_\_. To be counted, your ballot must reach us by the date and time announced for the meeting.

**BY ORDER OF THE BOARD OF DIRECTORS:**

\_\_\_\_\_  
Board Presiding Officer

\_\_\_\_\_  
Date

Instructions for NCUA 6306A (revised for state chartered credit unions): If the merging credit union is a Washington state chartered credit union, then not more than 30 nor less than 20 days before the date of the vote, the merging credit union must provide its members (a) advance notice of a special meeting to vote on a proposed merger and (b) a copy of the merger ballot. The merging credit union should conduct the membership vote only after the Division of Credit Unions approves the proposed merger. If the merging credit union is a federally chartered credit union, different instructions may apply.

\* \* \* \* \*

## Ballot for Merger Proposal

Name of Member: \_\_\_\_\_ Account Number: \_\_\_\_\_

Your credit union must receive this ballot by \_\_\_\_\_ (date for vote). Please mail or bring it to:

*(Insert credit union address)*

I have read and understand the Notice of Special Meeting for the members of the \_\_\_\_\_ Credit Union. The meeting will be held on the above date to consider and act upon the merger proposal described in the notice. I vote on the proposal as follows (check one box):

- Approve the proposed merger and authorize the Board of Directors to take all necessary action to accomplish the merger.
- Do not approve the proposed merger.

Signed: \_\_\_\_\_  
Member's Name

Date: \_\_\_\_\_

# NCUA Form 6308A

Instructions for NCUA 6308A (revised for state chartered credit unions): If the merging credit union is a Washington State chartered credit union then within 10 days after the membership vote, the merging credit union must complete this form and mail it to the Division of Credit Unions.

\* \* \* \* \*

## Certification of Vote on Merger Proposal of the Credit Union

\_\_\_\_\_  
(Merging)

We, the undersigned officers of the \_\_\_\_\_ Credit Union, certify that our Board of Directors completed the following actions:

1. At a meeting on \_\_\_\_\_, 20\_\_\_\_, adopted a resolution approving the merger of our credit union with \_\_\_\_\_ Credit Union (continuing credit union).
2. Not more than 30 nor less than 20 days before the date of the vote, delivered in person or mailed to every member of our credit union (a) a copy of the Notice of Special Meeting of the Members and Ballot for Merger Proposal, as approved by the Division of Credit Unions, and (b) a copy of the merger plan announced in the Notice.
3. Conducted a special meeting of the members of our credit union at the time and place announced in the Notice to consider and act upon the proposed merger.
4. At the special meeting, explained the merger proposal and any changes in federally insured status to the members present.
5. Conducted the membership vote at the special meeting. A majority of the voting members of our credit union voted in favor of the merger as follows:  
\_\_\_\_ Number of members present at the special meeting  
\_\_\_\_ Number of members present who voted in favor of the merger  
\_\_\_\_ Number of members present who voted against the merger  
\_\_\_\_ Number of additional written ballots in favor of the merger  
\_\_\_\_ Number of additional written ballots opposed to the merger
6. Recorded in the meeting minutes the action of the members at the special meeting.

This certification signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Board Presiding Officer

\_\_\_\_\_  
Secretary



# NCUA Form 6309

Instructions for NCUA 6309: Within 30 days following the effective date of the merger, the continuing credit union must complete this form and mail it to the NCUA regional director with the documents requested on the form. Additionally, a copy must be sent to the Division of Credit Unions.

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## Certification of Completion of Merger into Credit Union

(Continuing)

We, the undersigned officers of the above-named credit union, certify to the National Credit Union Administration as follows:

1. The merger of our credit union with \_\_\_\_\_ Credit Union was completed as of \_\_\_\_\_, 20\_\_\_\_ (date of the executed merger agreement) according to the terms and plan approved by this Board of Directors by a resolution adopted at the meeting held on \_\_\_\_\_, 20\_\_\_\_. We previously provided a certified copy of the resolution to the National Credit Union Administration.
2. We completed all required steps for the merger and transferred the merging credit union's assets.

Attached to this certification are the following documents:

1. Financial reports for each credit union immediately before the completion of the merger.
2. A consolidated financial report for the continuing credit union immediately after the completion of the merger.
3. The charter of the merging federal credit union (if available).
4. The insurance certificate for the merging federally insured credit union (if available).
5. A copy of the executed merger agreement, Form NCUA 6304.

This certification signed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Board Presiding Officer

\_\_\_\_\_  
Treasurer



State of \_\_\_\_\_

County of \_\_\_\_\_

Before me, a Notary Public (or other authorized officer), appeared the above named \_\_\_\_\_ and \_\_\_\_\_, Board Presiding Officer and Treasurer of \_\_\_\_\_ Credit Union, who being personally known to me as (or proved by the oath of credible witnesses to be) the persons who executed the annexed instrument acknowledged the same to be their free act and deed and in their respective capacities the free act and deed of said credit union.

(SEAL)

Notary Public

My commission expires \_\_\_\_\_, 20\_\_\_\_\_.

State of \_\_\_\_\_

County of \_\_\_\_\_

Before me, a Notary Public (or other authorized officer), appeared the above named \_\_\_\_\_ and \_\_\_\_\_, Board Presiding Officer and Treasurer of \_\_\_\_\_ Credit Union, who being personally known to me as (or proved by the oath of credible witnesses to be) the persons who executed the annexed instrument acknowledged the same to be their free act and deed and in their respective capacities the free act and deed of said credit union.

(SEAL)

Notary Public

My commission expires \_\_\_\_\_, 20\_\_\_\_\_.

**DCU Form WCU 3a**  
**Certificate of Financial Statements**

\_\_\_\_\_  
(merging credit union)

\_\_\_\_\_  
(as of date)

STATE OF WASHINGTON            )  
  )  
  ) ss  
  )  
COUNTY OF \_\_\_\_\_)

We, the undersigned, each for themselves, do hereby certify that:

1. The attached financial statements are a true statement of the condition of the credit union named;
2. All the assets and liabilities are shown under their proper designation;

Said credit union has no liabilities of any character, disclosed or undisclosed, not shown on this statement;

DATED \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
President/CEO and/or Board Chair

**DCU Form WCU 3b**  
**Certificate Of Financial Statements**

---

(*continuing* credit union)

---

(as of date)

STATE OF WASHINGTON            )  
  )  
  ) ss  
  )  
COUNTY OF \_\_\_\_\_)

We, the undersigned, each for themselves, do hereby certify that:

1. The attached financial statements are a true statement of the condition of the credit union named;  
and,
2. All the assets and liabilities are shown under their proper designation.

DATED \_\_\_\_\_, 20\_\_\_\_\_

---

President/CEO and/or Board Chair

# Merger Resolution of the Board of Directors

\_\_\_\_\_ Credit Union

(Continuing)

## **Resolution**

The Board of Directors of the above-named credit union (*Continuing Credit Union*) believes that the Continuing Credit Union should merge with

\_\_\_\_\_ Credit Union (*Merging Credit Union*). The Continuing Credit Union will assume the Merging Credit Union's shares and liabilities. The Merging Credit Union will transfer to the Continuing Credit Union all of its assets, rights, and property. All members of the Merging Credit Union will receive shares or deposits (as appropriate) in the Continuing Credit Union, which will stay in business under its present charter.

The Board Presiding Officer and Secretary of the Continuing Credit Union are authorized to:

- Seek approval of the merger by the Division of Credit Unions (DCU) and the National Credit Union Administration (NCUA)
- Execute and deliver the merger agreement
- Execute all agreements and other papers required to complete the merger

## **Certification**

We certify to the DCU and the National Credit Union Administration that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of the Continuing Credit Union at a meeting duly held under our bylaws on

\_\_\_\_\_, 20 \_\_\_\_\_. A quorum was present and voted. The resolution is duly recorded in the minutes of the meeting and is still in full force and effect.

\_\_\_\_\_  
Board Presiding Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

# DCU Form WCU 4a

## Merger Resolution of the Board of Directors

\_\_\_\_\_ Credit Union  
(Merging)

### **Resolution**

The Board of Directors of the above-named credit union (*Merging Credit Union*) believes that the Merging Credit Union should merge with

\_\_\_\_\_ Credit Union (*Continuing Credit Union*). The Continuing Credit Union will assume the Merging Credit Union's shares and liabilities. The Merging Credit Union will transfer to the Continuing Credit Union all of its assets, rights, and property. All members of the Merging Credit Union will receive shares or deposits (as appropriate) in the Continuing Credit Union, which will stay in business under its present charter.

The Board Presiding Officer and Secretary of the Merging Credit Union are authorized to:

- Seek approval of the merger by the Division of Credit Unions (DCU) and the National Credit Union Administration (NCUA)
- Execute and deliver the merger agreement
- Execute all agreements and other papers required to complete the merger

### **Certification**

We certify to the DCU and the National Credit Union Administration that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Directors of the Continuing Credit Union at a meeting duly held under our bylaws on

\_\_\_\_\_, 20\_\_\_\_. A quorum was present and voted. The resolution is duly recorded in the minutes of the meeting and is still in full force and effect.

\_\_\_\_\_  
Board Presiding Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

## Articles of Merger

**of a State or Federal Credit Union into a  
Washington State-chartered Credit Union**

*Submit two originals*

\_\_\_\_\_  
**UBI # of Merging Credit Union** (if applicable)

\_\_\_\_\_  
Phone # of Merging Credit Union

**To Credit Unions:** Please type or print in black ink.

**To Secretary of State:** If item 2A below is checked, please remove the Merging Credit Union from the active list and place it on the inactive list.

1. These Articles of Merger concern the merger of \_\_\_\_\_  
(Merging Credit Union)  
into \_\_\_\_\_ (Continuing Credit Union).

2. The **Merging** Credit Union is [check one]:

\_\_\_\_\_ A. Operating under Chapter 31.12 RCW;

\_\_\_\_\_ B. Operating under the Federal Credit Union Act; or

\_\_\_\_\_ C. Operating under the law of the State of \_\_\_\_\_.

3. The **Continuing** Credit Union is operating under Chapter 31.12 RCW and its

**UBI #** is: \_\_\_\_\_

4. The boards of directors and members of the Merging Credit Union and Continuing Credit Union have given all required approvals of the merger, in accordance with applicable law.

5. The merger has received all necessary regulatory approvals and all applicable regulatory waiting periods have expired.

Articles of Merger  
Page Two



6. The merger will be effective [*check one*]:

\_\_\_\_\_ A. As of the close of business on the date the Articles of Merger document is filed with the Secretary of State; or

\_\_\_\_\_ B. At the time and on the date specified below, which in no event is more than 90 days after the date this Articles of Merger document is filed with the Secretary of State:

\_\_\_\_\_ (Date)

7. If item 2A above is checked, the Merging Credit Union requests that the Secretary of State remove the Merging Credit Union from the list of active corporations and place it on the inactive list, as of the effective date of the merger.

8. Each of the undersigned Officers hereby represents to the best of his or her knowledge that this document is true and correct.

\_\_\_\_\_  
Signature of Merging Credit Union Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Continuing Credit Union Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\*\*\*\*\*

**Approved for filing:**

\_\_\_\_\_  
Assistant Director, Division of Credit Unions  
Department of Financial Institutions

\_\_\_\_\_  
Date



## ***DCU BULLETIN***

***Division of Credit Unions***

***Washington State Department of Financial Institutions***

***Phone: (360) 902-8701***

***FAX: (360) 704-6901***

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August 17, 1998

No. B-98-13

### **Effective Date of Credit Union Mergers**

#### **Overview**

If the surviving credit union in a merger is a Washington State-chartered credit union, when does the merger become legally effective? The Washington State Credit Union Act (Credit Union Act) is unclear on this point.

The effective date can impact whether another Division assessment is due and other significant matters. We believe that there would be value in providing more certainty for credit unions on the effective date of mergers.

#### **Analysis**

The Credit Union Act addresses certain aspects of mergers. RCW 31.12.461, .464(4), 467(3). However, the CU Act does not specify when a credit union merger becomes effective.

The NCUA form Merger Agreement (NCUA 6304) – that most credit unions use – provides that the merger will be effective on the date entered on the first line of the Agreement. The instructions on the second page of the form direct credit unions not to fill in the date or sign the Agreement until the merger is completed.

In analyzing this issue, we reviewed the parallel provisions under the Washington Business Corporation Act. The Business Corporation Act provides that a merger becomes effective when articles of merger are filed with the Washington Secretary of State, or at a later date as specified in the articles (not to exceed 90 days). RCW 23B.11.050, 23B.01.230. The rationale appears to be that the merger takes effect on the date provided in the public record maintained by the Secretary of State. In the credit union context, credit unions do not file articles of merger, but do file the signed merger agreement with the Secretary of State (through the Division).

## **Conclusion**

In the absence of direction in the Credit Union Act, the Division has determined to adopt the rationale of the Business Corporation Act – that mergers become effective as provided in the public record maintained by the Secretary of State. Accordingly, credit union mergers will become legally effective on the date the Division files the merger agreement with the Secretary of State, or a later date as specified in the agreement itself (not to exceed 90 days).

## **Coordination with the Division**

The credit union submitting the merger agreement to the Division should contact the Division prior to submission to coordinate the date inserted by the credit union in the first line of the agreement. The date should be the future date that the merging credit unions want the merger to take legal effect – either the date the Division will file the merger agreement with the Secretary of State, or a later date (not to exceed 90 days). The credit union should make sure that the merger agreement is received by the Division at least 5 business days before the date that the Division intends to file the agreement with the Secretary of State.

## **Merger of books**

We have observed that in many cases the books of the credit unions are merged **before** the credit unions have submitted their signed merger agreement to the Division for filing with the Secretary of State. In the future, credit unions may merge their books **no sooner** than the legal effective date of the merger.

AFFIDAVIT OF PUBLICATION

IN THE MATTER NOTICE OF PUBLICATION

Notice to Creditors NOTICE OF

3-15-129

STATE OF WASHINGTON }  
COUNTY OF COWLITZ } SS.

CAROL MACIELEWICZ being duly sworn says

that he/she is the CHIEF CLERK of the

THE DAILY NEWS

And that The Daily News, published in Cowlitz County, has been approved as a Legal Newspaper by order of the Superior Court of the State of Washington of Cowlitz County, and  
Annexed printed copy is a true copy of the NOTICE

in the above entitled matter as it was printed in the regular entire issue of said paper for a period of THREE INSERTIONS

commencing on the 06 day of FEBRUARY, 1997 and ending on the 20 day of FEBRUARY, 1997, and that said newspaper was regularly distributed to its subscribers during all of said period, and that said NOTICE

was published in said newspaper and not in a supplement form. That the full amount of the fee charged for said foregoing publication is the sum of \$ 57.25 which amount has been paid in full at the rate of \$6.18 per inch for the first insertion and \$ 7.36 per inch for each subsequent insertion.

*Carol Macielewicz*

Subscribed and sworn to before me this 21 day of FEBRUARY, 1997

*Haunena Whitrich*  
HAUNENA WHITRICH

*Sample*

Notice to Creditors  
NOTICE OF MERGER FOR  
TEAMSTERS #38 CREDIT UNION  
Teamsters #38 Credit Union  
merging into Cowlitz Public  
Employee Credit Union  
creditor of Teamsters #38 Credit  
Union must notify Cowlitz Public  
Employee Credit Union  
Cowlitz Public Employee Credit Union  
1211 1st St. N.E.  
Longview, WA 98641  
Attention: Chief Clerk  
All claims must be made within 90  
days of date of publication of this  
notice. For more information, call  
425-836-1100. C.P.E.C.U.  
3-22-97  
Done this 21 day of February, 1997  
Public Act 8, 1st of 1997

↑  
see page  
5, 204  
order

## MASTER MERGER ACCOUNTING SPREADSHEET TEMPLATE

### Example of XYZ CU Into ABC CU - Fair Value Entries

30-Sep-10

	9/30/2010 Final Orig. <u>Amount</u>	FMV <u>Discount</u>	Pro Forma Adjusted <u>Amount</u>	Eliminate Negative <u>Goodwill</u>	Final Pro Forma Adjusted <u>Amount</u>
<b>Assets</b>					
Net Loans Receivable	5,292,840	319,217	4,973,623	0	4,973,623
ALLL Balance	33,876	33,876	0	0	0
Net Loans	5,258,964	285,341	4,973,623	0	4,973,623
Investment Securities	7,886,403	0	7,886,403	0	7,886,403
Cash & Working Funds	162,612	0	162,612	0	162,612
Land & Building	1,036,522	38,478	1,075,000	0	1,075,000
Other Fixed Assets	29,446	0	29,446	0	29,446
Goodwill	0	79,214	79,214	79,214	0
Core Deposit Intangible	0	380,348	380,348	0	380,348
All Other Assets	<u>133,121</u>	<u>0</u>	<u>133,121</u>	<u>0</u>	<u>133,121</u>
<b>Total Assets</b>	14,507,068	54,271	14,561,339	79,214	14,640,553
<b>Liabilities</b>					
Accounts Payable	136,070	0	136,070	0	136,070
All Other Liabilities	550	0	550	0	550
Member Shares	<u>12,812,909</u>	<u>0</u>	<u>12,812,909</u>	<u>0</u>	<u>12,812,909</u>
<b>Total Liabilities</b>	12,949,529	0	12,949,529	0	12,949,529
<b>Total Equity</b>	1,557,539	54,271	1,611,810	79,214	1,691,024
Total Liabilities & Equity	14,507,068	54,271	14,561,339	79,214	14,640,553
CPA Determined Entity Val:	1,611,810				
Bargain Purchase Calc.:	79,214				
Calculated Goodwill	0				