Chapter 1: Introduction

This Manual is written as a guide to assist your Credit Union to evaluate and act upon one of the most important transactions that a credit union may consider—a merger with another credit union.

A merger can be considered to have a life of its own, as it has a cycle from inception through closing the deal and actual physical merger of the credit unions. It can be a tremendously emotional experience for volunteers, employees, and members of a credit union. Our goal is to review the steps in the life cycle that you may encounter through the merger process and to raise pertinent legal, regulatory, accounting, and business issues that you may wish to consider. The various issues raised below are based on our observations of literally hundreds of credit union mergers on which we have provided advice and counsel. So as to protect confidentiality and privacy, please note that cited examples are based upon a compilation of observed merger experiences and do not reflect any one particular merger transaction.
Of course, this Manual cannot anticipate every legal, regulatory, accounting, or business issue and it is not intended to provide legal, regulatory, accounting, or business advice for any particular transaction or merger. Moreover, because federal and state laws and regulations affecting mergers are constantly evolving, the discussion herein cannot be relied upon for up-to-the-minute, comprehensive coverage of the subject matter or your Credit Union’s responsibilities under the law. Consultation with appropriate professionals including your Credit Union’s attorneys, accountants, business advisors, and, of course, your volunteers and your senior management team is well advised throughout the merger process. Even so, it is our hope and belief that our guidance will assist your Credit Union and its volunteers and senior management team in their merger process. At a minimum, this Manual should provide you with a road map and some comfort that you are headed in the right direction in evaluating and properly acting upon the issues that arise during the merger process.

This is the third edition of SWM’s Merger Manual. While the basic mechanics of a credit union merger have not changed, the due diligence requirements, some disclosure obligations, accounting considerations and regulatory scrutiny have certainly altered the legal landscape relative to mergers. This Manual has been completely updated to reflect these and other changes.

§ 1.1: A Word About State Law and Regulation

The scope of this Manual is such that it does not attempt to address the laws or regulations of any particular state. Rather, aspects of federal law, including the Federal Credit Union Act (“FCUA”) and Regulations of the National Credit Union Administration (“NCUA”) are referred to as the model most commonly known throughout the United States for credit unions. This does not mean that we have ignored aspects of state law which may play a very important part in your Credit Union’s merger. To this extent, where state law issues arise, we have presented the issues from the perspective of the “common law” (that is, the general concepts shared by courts in many states and in many states’ statutes). Consultation with counsel familiar with your state’s law is therefore well advised.