

§ 708a.5

12 CFR Ch. VII (1–1–06 Edition)

of conversion to a mutual savings bank, the credit union does or does not intend to:

- (i) Convert to a stock institution;
  - (ii) Provide any compensation to previously uncompensated directors or increase compensation or other conversion related benefits, including stock related benefits, to directors or senior management officials; and
  - (iii) Base member voting rights on account balances.
- (e) A converting credit union must include the following disclosures with each written communication it sends

to its members regarding the conversion. The disclosures must be 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. Certain portions of the disclosures must be capitalized and bolded. A converting credit union may modify the disclosure with the prior consent of the Regional Director and, in the case of a state credit union, the appropriate state regulatory agency. The unmodified form of disclosure reads as follows:

The National Credit Union Administration, the federal government agency that supervises credit unions, requires [insert name of credit union] to provide the following disclosures.

1. **OWNERSHIP AND CONTROL.** In a credit union, every member has an equal vote in the election of directors and other matters concerning ownership and control. In a mutual savings bank, **ACCOUNT HOLDERS WITH LARGER BALANCES USUALLY HAVE MORE VOTES AND, THUS, GREATER CONTROL.**
2. **EXPENSES AND THEIR EFFECT ON RATES AND SERVICES.** Most credit union directors and committee members serve on a volunteer basis. Directors of a mutual savings bank are compensated. Credit unions are exempt from federal tax and most state taxes. Mutual savings banks pay taxes, including federal income tax. If [insert name of credit union] converts to a mutual savings bank, these **ADDITIONAL EXPENSES MAY CONTRIBUTE TO LOWER SAVINGS RATES, HIGHER LOAN RATES, OR ADDITIONAL FEES FOR SERVICES.**
3. **SUBSEQUENT CONVERSION TO STOCK INSTITUTION.** Conversion to a mutual savings bank is often the first step in a two-step process to convert to a stock-issuing bank or holding company. In a typical conversion to the stock form of ownership, the **EXECUTIVES OF THE INSTITUTION PROFIT BY OBTAINING STOCK FAR IN EXCESS OF THAT AVAILABLE TO THE INSTITUTION'S MEMBERS.**
4. **COSTS OF CONVERSION.** The costs of converting a credit union to a mutual savings bank are paid from the credit union's current and accumulated earnings. Because accumulated earnings are capital and represent members' ownership interests in a credit union, the conversion costs reduce members' ownership interests. As of [insert date], [insert name of credit union] estimates **THE CONVERSION WILL COST [INSERT DOLLAR AMOUNT] IN TOTAL.** That total amount is further broken down as follows: [itemize the costs of all expenses related to the conversion including printing fees, postage fees, advertising, consulting and professional fees, legal fees, staff time, the cost of holding a special meeting, conducting the vote, and any other expenses incurred].

[63 FR 65535, Nov. 27, 1998, as amended at 64 FR 28735, May 27, 1999; 69 FR 8550, Feb. 25, 2004; 70 FR 4009, Jan. 28, 2005]

§ 708a.5 Notice to NCUA.

(a) The credit union must provide the Regional Director for the region where the credit union is located with notice of its intent to convert during the 90 calendar day period preceding the date of the membership vote on the conversion.

(b)(1) The credit union must give notice to the Regional Director by providing a letter describing the material features of the conversion or a copy of the filing the credit union has made with another Federal or State regulatory agency in which the credit

union seeks that agency's approval of the conversion. The credit union must include with the notice to the Regional Director a copy of the notice the credit union provides to members under § 708a.4, as well as, the ballot form and all written materials the credit union has distributed or intends to distribute to the members. The term "written materials" includes written documentation or information of any sort, including electronic communications posted on a Web site.

(b)(2) A federally-insured State chartered credit union must include in its notice to NCUA a statement as to whether the State law under which it is chartered permits it to convert to a mutual savings bank and include a

## National Credit Union Administration

## § 708a.8

legal citation to the State law providing this authority. A federally-insured State chartered credit union will remain subject to any State law requirements for conversion that are more stringent than those this chapter imposes, including any internal governance requirements, such as the requisite membership vote for conversion and the determination of a member's eligibility to vote. If a federally-insured State chartered credit union relies for its authority to convert to a mutual savings bank on a State law parity provision, meaning a provision in State law permitting a State chartered credit union to operate with the same or similar authority as a federal credit union, it must include in its notice a statement that its State regulatory authority agrees that it may rely on the State law parity provision as authority to convert. If a federally-insured state chartered credit union relies on a State law parity provision for authority to convert, it must indicate its State regulatory authority's position as to whether Federal law and regulations or State law will control internal governance issues in the conversion such as the requisite membership vote for conversion and the determination of a member's eligibility to vote.

(c) If it chooses, the credit union may provide the Regional Director notice of its intent to convert prior to the 90 calendar day period preceding the date of the membership vote on the conversion. In this case, the Regional Director will make a preliminary determination regarding the methods and procedures applicable to the membership vote. The Regional Director will notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the Regional Director disapproves of the proposed methods and procedures applicable to the membership vote. The credit union's prior submission of the notice of intent does not relieve the credit union of its obligation to certify the results of the membership vote required by § 708a.6 or eliminate the right of the Regional Director to disapprove the actual methods and procedures applicable to the membership vote if the

credit union fails to conduct the membership vote in a fair and legal manner.

[63 FR 65535, Nov. 27, 1998, as amended at 64 FR 28735, May 27, 1999; 70 FR 4009, Jan. 28, 2005]

### **§ 708a.6 Certification of vote on conversion proposal.**

The board of directors of the converting credit union must certify the results of the membership vote to the Regional Director within 10 calendar days after the vote is taken. The board of directors must also certify at this time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to § 708a.5 or provide copies of any new or revised materials and an explanation of the reasons for the changes.

### **§ 708a.7 NCUA oversight of methods and procedures of membership vote.**

(a) The Regional Director will issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within 10 calendar days of receipt from the credit union of the certification of the result of the membership vote required under § 708a.6.

(b) If the Regional Director disapproves of the methods by which the membership vote was taken or the procedures applicable to the membership vote, the Regional Director may direct that a new vote be taken.

(c) The Regional Director's review of the methods by which the membership vote was taken and the procedures applicable to the membership vote includes determining that the notice to members is accurate and not misleading, that all notices required by this section were timely, and that the membership vote was conducted in a fair and legal manner.

### **§ 708a.8 Other regulatory oversight of methods and procedures of membership vote.**

The Federal or State regulatory agency that will have jurisdiction over the financial institution after conversion must verify the membership vote and may direct that a new vote be taken, if it disapproves of the methods