

National Credit Union Administration

§ 708b.2

State chartered credit union. Specifically, both of those groups were treated as non-members not entitled to vote. This example makes the point that a credit union must be diligent in maintaining a reliable membership list.

(d) NCUA's conversion rule requires a converting credit union to permit members to vote by written mail ballot or in person at a special meeting held for the purpose of voting on the conversion. Although most members may choose to vote by mail, a significant number may choose to vote in person. As a result, a converting credit union should be careful to conduct its special meeting in a manner conducive to accommodating all members that wish to attend. That includes selecting a meeting location that can accommodate the anticipated number of attendees and is conveniently located. The meeting should also be held on a day and time suitable to most members' schedules. A credit union should conduct its meeting in accordance with applicable federal and State law, its bylaws, Robert's Rules of Order or other appropriate parliamentary procedures, and determine before the meeting the nature and scope of any discussion to be permitted.

[70 FR 4010, Jan. 28, 2005]

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

Sec.

708b.1 Scope.

708b.2 Definitions.

Subpart A—Mergers

708b.101 Mergers generally.

708b.102 Special provisions for federal insurance.

708b.103 Preparation of merger plan.

708b.104 Submission of merger proposal to the NCUA.

708b.105 Approval of merger proposal by the NCUA.

708b.106 Approval of the merger proposal by members.

708b.107 Certificate of vote on merger proposal.

708b.108 Completion of merger.

Subpart B—Voluntary Termination or Conversion of Insured Status

708b.201 Termination of insurance.

708b.202 Notice to members of proposal to terminate insurance.

708b.203 Conversion of insurance.

708b.204 Notice to members of proposal to convert insurance.

708b.205 Modifications to notice and ballot.

708b.206 Share insurance communications to members.

Subpart C—Forms

708b.301 Conversion of insurance (State Chartered Credit Union)

708b.302 Conversion of insurance (Federal Credit Union).

708b.303 Conversion of insurance through merger.

AUTHORITY: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

SOURCE: 70 FR 3288, Jan. 24, 2005, unless otherwise noted.

§ 708b.1 Scope.

(a) Subpart A of this part prescribes the procedures for merging one or more credit unions with a continuing credit union where at least one of the credit unions is federally-insured.

(b) Subpart B of this part prescribes the procedures and notice requirements for termination of federal insurance or conversion of federal insurance to non-federal insurance, including termination or conversion resulting from a merger.

(c) Subpart C prescribes required forms for use in conversion of federal insurance to nonfederal insurance.

(d) Nothing in this part restricts or otherwise impairs the authority of the NCUA to approve a merger pursuant to section 205(h) of the Act.

(e) This part does not address procedures or requirements that may be applicable under state law for a state credit union.

§ 708b.2 Definitions.

(a) *Continuing credit union* means the credit union that will continue in operation after the merger.

§ 708b.101

(b) *Convert, conversion, and converting*, when used in connection with insurance, refer to the act of canceling federal insurance and simultaneously obtaining insurance from another insurance carrier. They mean that after cancellation of federal insurance the credit union will be nonfederally-insured.

(c) *Federally-insured* means insured by the National Credit Union Administration (NCUA) through the National Credit Union Share Insurance Fund (NCUSIF).

(d) *Independent entity* means a company with experience in conducting corporate elections. No official or senior manager of the credit union, or the immediate family members of any official or senior manager, may have any ownership interest in, or be employed by, the entity.

(e) *Insurance and insured* refer to primary share or deposit insurance. These terms do not include excess share or deposit insurance as referred to in part 740 of this chapter.

(f) *Merging credit union* means the credit union that will cease to exist as an operating credit union at the time of the merger.

(g) *Nonfederally-insured* means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state or territorial law.

(h) *Share insurance communication* means any written communication, excluding the forms in Subpart C of this Part, that is made by or on behalf of a federally-insured credit union that is intended to be read by two or more credit union members and that mentions share insurance conversion or termination. The term:

(1) Includes communications delivered or made available before, during, and after the credit union's board of directors decides to seek conversion or termination.

(2) Includes, but is not limited to, communications delivered or made available by mail, e-mail, and internet website posting.

(3) Does not include communications intended to be read only by the credit union's own employees or officials.

(i) *State credit union* means any credit union organized and operated according to the laws of any state, the several

12 CFR Ch. VII (1-1-06 Edition)

territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, *state authority* means the appropriate state or territorial regulatory or supervisory authority for any such credit union.

(j) *Terminate, termination, and terminating*, when used in reference to insurance, refer to the act of canceling federal insurance and mean that the credit union will become uninsured.

(k) *Uninsured* means there is no share or deposit insurance available on the credit union accounts.

Subpart A—Mergers

§ 708b.101 Mergers generally.

(a) In any case where a merger will result in the termination of federal insurance or conversion to nonfederal insurance, the merging credit union must comply with the provisions of subparts B and C of this part in addition to this subpart A.

(b) A federally-insured credit union must have the prior written approval of the NCUA before merging with any other credit union.

(c) Where the continuing credit union is a federal credit union, it must be in compliance with the chartering policies of the NCUA.

(d) Where the continuing or merging credit union is a state credit union, the merger must be permitted by state law or authorized by the state authority.

(e) Where both the merging and continuing credit unions are federally-insured and the two credit unions have overlapping fields of membership, the continuing credit union must, within three months after completion of the merger, either:

(1) Notify all members of the continuing credit union of the potential loss of insurance coverage if they had overlapping membership,

(2) Notify all individuals and entities that were actually members of both credit unions of the potential loss of insurance coverage, or

(3) Determine which members of both credit unions may actually have uninsured funds six months after the merger and notify those members of the potential loss of insurance coverage.