

National Credit Union Administration

§ 708a.13

(b) The credit union must complete the conversion within one year of the date of receipt of NCUA approval under § 708a.8. If a credit union fails to complete the conversion within one year the Regional Director will disapprove of the methods and procedures. The credit union's board of directors must then adopt a new conversion proposal and solicit another member vote if it still desires to convert.

(c) The Regional Director may, upon timely request and for good cause, extend the one year completion period for an additional six months.

(d) After notification by the board of directors of the mutual savings bank or mutual savings association that the conversion has been completed, the NCUA will cancel the insurance certificate of the credit union and, if applicable, the charter of a federal credit union.

§ 708a.11 Limit on compensation of officials.

No director or senior management official of an insured credit union may receive any economic benefit in connection with the conversion of a credit union other than compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

§ 708a.12 Voting incentives.

If a converting credit union offers an incentive to encourage members to participate in the vote, including a prize raffle, every reference to such incentive made by the credit union in a written communication to its members must also state that members are eligible for the incentive regardless of whether they vote for or against the proposed conversion.

§ 708a.13 Voting guidelines.

A converting credit union must conduct its member vote on conversion in a fair and legal manner. NCUA provides the following guidelines as suggestions to help a credit union obtain a fair and legal vote and otherwise fulfill its regulatory obligations. These guidelines are not an exhaustive checklist and do not by themselves guarantee a fair and legal vote.

(a) *Applicability of state law.* While NCUA's conversion rule applies to all conversions of federally insured credit unions, federally insured state-chartered credit unions (FISCUs) are also subject to state law on conversions. NCUA's position is that a state legislature or state supervisory authority may impose conversion requirements more stringent or restrictive than NCUA's. States that permit this kind of conversion may have substantive and procedural requirements that vary from federal law. For example, there may be different voting standards for approving a vote. While the Federal Credit Union Act requires a simple majority of those who vote to approve a conversion, some states have higher voting standards requiring two-thirds or more of those who vote. A FISCU should be careful to understand both federal and state law to navigate the conversion process and conduct a proper vote.

(b) *Eligibility to vote.*

(1) Determining who is eligible to cast a ballot is fundamental to any vote. No conversion vote can be fair and legal if some members are improperly excluded. A converting credit union should be cautious to identify all eligible members and make certain they are included on its voting list. NCUA recommends that a converting credit union establish internal procedures to manage this task.

(2) A converting credit union should be careful to make certain its member list is accurate and complete. For example, when a credit union converts from paper recordkeeping to computer recordkeeping, some member names may not transfer unless the credit union is careful in this regard. This same problem can arise when a credit union converts from one computer system to another where the software is not completely compatible.

(3) Problems with keeping track of who is eligible to vote can also arise when a credit union converts from a federal charter to a state charter or vice versa. NCUA is aware of an instance where a federal credit union used membership materials allowing two or more individuals to open a joint account and also allowed each to become a member. The federal credit

union later converted to a state-chartered credit union that, like most other state-chartered credit unions in its state, used membership materials allowing two or more individuals to open a joint account but only allowed the first person listed on the account to become a member. The other individuals did not become members as a result of their joint account, but were required to open another account where they were the first or only person listed on the account. Over time, some individuals who became members of the federal credit union as the second person listed on a joint account were treated like those individuals who were listed as the second person on a joint account opened directly with the 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.

(c) *Scheduling the special meeting.* 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 wishing to attend, including 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.

(d) *Voting incentives.* Some credit unions may wish to offer incentives to members, such as entry to a prize raffle, to encourage participation in the conversion vote. The credit union must

exercise care in the design and execution of such incentives.

(1) The credit union should ensure that the incentive complies with all applicable state, federal, and local laws.

(2) The incentive should not be unreasonable in size. The cost of the incentive should have a negligible impact on the credit union's net worth ratio and the incentive should not be so large that it distracts the member from the purpose of the vote. If the board desires to use such incentives, the cost of the incentive should be included in the directors' deliberation and determination that the conversion is in the best interests of the credit union's members.

(3) The credit union should ensure that the incentive is available to every member that votes regardless of how or when he or she votes. All of the credit union's written materials promoting the incentive to the membership must disclose to the members, as required by §708a.12 of this part, that they have an equal opportunity to participate in the incentive program regardless of whether they vote for or against the conversion. The credit union should also design its incentives so that they are available equally to all members who vote, regardless of whether they vote by mail or in person at the special meeting.

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

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