

PART 708a—MERGERS OR CONVERSIONS OF FEDERALLY-INSURED CREDIT UNIONS: NCUA APPROVAL

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APPENDIX A TO PART 708a—NOTICE TO MEMBERS OF SPECIAL MEETING, DISCLOSURE AND BALLOT

AUTHORITY: 12 U.S.C. 1766, 12 U.S.C. 1785.

SOURCE: 60 FR 12661, Mar. 8, 1995, unless otherwise noted.

§ 708a.1 NCUA Board approval.

Section 205(b)(1) of the Federal Credit Union Act requires NCUA Board approval in advance of any transaction whereby a federally-insured credit union transfers all or any part of its members' accounts to any non credit union institution. This part establishes rules and procedures for any merger, conversion or other transaction in which a federally-insured credit union's share accounts or similar member accounts are transferred to a non credit union institution. Transactions where a federally-insured credit union transfers member accounts to another credit union are subject to the provisions of part 708b of this chapter. Compliance with this part 708a is in addition to any other federal or state laws and regulations which may be applicable to the proposed transaction, including state corporate laws and state and federal securities laws.

§ 708a.2 Plan for merger or conversion to a non credit union institution.

(a) *Proposition for merger or conversion.* The board of directors of the credit union shall approve a proposition for merger or conversion.

(b) *Plan for merger or conversion.* Upon approval of a proposition for merger or conversion by the board of directors, a plan for the transaction shall be prepared. The plan shall include:

- (1) Current financial reports;

- (2) Current delinquent loan schedules annotated to reflect collection problems;

- (3) Combined financial report, if applicable;

- (4) Contingencies;

- (5) Explanation of any provisions for reserves, undivided earnings or dividends;

- (6) Analyses of share values and explanation of any adjustments to member's share accounts;

- (7) Analyses of the regulatory effect of the merger or conversion brought about by the change in government regulator;

- (8) Explanation of any other relevant effects on the members; and

- (9) Any additional information, as required by the NCUA Regional Director.

(c) *Nonpreferential treatment.* The plan for merger or conversion shall provide that, for a period of at least two years after the effective date of the transaction:

- (1) No director of the credit union may receive any compensation or any benefits not provided or available to other members; and

- (2) No director or senior management official of the credit union shall be allowed to acquire stock in the resulting or continuing institution or any successor institution, on any terms other than those readily available to all members of the former credit union. This prohibition would include stock issued for services rendered prior to the merger or conversion. For purposes of this section, *senior management official* means the credit union's chief executive officer, any assistant chief executive officers and the chief financial officer.

§ 708a.3 Submission of proposal to NCUA.

(a) *Submissions to the NCUA Regional Director.* Upon approval of the plan by the board of directors of the credit union, the following will be submitted to the appropriate NCUA Regional Director:

- (1) The plan, as described in § 708a.2(b) of this part;

- (2) A resolution of the board of directors approving the plan;

- (3) A written agreement from each member of the board of directors and

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each senior management official to comply with the terms of §708a.2(c) (the agreement shall be executed by NCUA as well, in the event of approval of the transaction);

(4) A proposed merger or conversion agreement;

(5) A proposed Notice of Meeting, as described in appendix A of this part;

(6) A copy of the form ballot and any accompanying materials to be sent to the members, as described in appendix A of this part;

(7) A complete copy of the package [to be] submitted to any other regulatory agencies involved in the merger or conversion;

(8) A copy of an appraisal of the value of the credit union, if the proposal is to convert or merge the credit union either directly or indirectly into a stock institution, and any plan for sale or distribution of stock to the credit union's members, officials and employees; and

(9) In the case of a federally-insured state chartered credit union, evidence that the state supervisory authority is in agreement with the merger or conversion proposal.

(b) *Coordination with State Supervisory Authority.* In the event the proposal is filed with the NCUA prior to receiving consent from the state supervisory authority:

(1) The Board will coordinate with the state supervisory authority; and

(2) The Board will not approve any merger or conversion unless it is approved by the state supervisory authority.

(c) *Waiver of NCUA rules and approval by state supervisory authority.* A federally-insured state credit union may, on a case-by-case basis, request a waiver of this part 708a from the Board and receive authority to proceed under state rules and procedures. In making such a request, the credit union shall demonstrate that the concerns underlying this part 708a are adequately addressed and, in particular that:

(1) Proceeding under state rules present no financial risk to the credit union or the NCUSIF;

(2) Adequate safeguards exist against breach of duty by, or preferential treatment of directors, committee

members and others involved in the transaction; and

(3) The transaction is otherwise fair to members and carried out pursuant to an informed and decisive membership vote.

§708a.4 Approval of proposal by NCUA.

If NCUA finds that the proposal complies with the provisions of this part and does not present an undue risk to the NCUSIF or unduly prejudice the members, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the stated purposes of the proposal. No proposal will be approved that does not *clearly* inform the members of the fundamental rights they would be giving up if their credit union converts or merges into a non credit union institution.

§708a.5 Approval of proposal by members.

(a) *Notification of members.* The members shall:

(1) Have the option of voting on the proposal either in person at a membership meeting or by mail ballot.

(2) Be given advance notice of the membership meeting in accordance with the provisions of appendix A of this part. The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 days nor less than 14 days prior to the date for the vote. The ballot to be used for the membership vote shall be in accordance with the provisions of appendix A of this part. The notice and ballot shall be provided to the members at the same time. If applicable, the notice and ballot shall be provided in both English as well as the native language of the majority of the members.

(3) Be made aware that the complete application and proposal are available for inspection at the credit union's branch offices during normal business hours.

(b) *Vote by members.* The proposal must be approved by the affirmative vote of a majority of the credit union's members.