

National Credit Union Administration

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(f)(5) of this section. The credit union may also post a content-neutral disclaimer using language similar to the language in paragraph (f)(3)(i) of this section.

(9) A converting credit union must inform members with the 90-day notice that if they wish to provide their opinions about the proposed conversion to other members they can submit their opinions in writing to the credit union no later than 35 days from the date of the notice and the credit union will forward those opinions to other members. The 90-day notice will provide a contact at the credit union for delivery of communications, will explain that members must agree to reimburse the credit union's costs of transmitting the communication including providing an advance payment, and will refer members to this section of NCUA's rules for further information about the communication process. The credit union, at its option, may include additional factual information about the communication process with its 90-day notice.

(10) A group of members may make a joint request that the credit union send its materials to other members. For purposes of paragraphs (f)(2) and (f)(3) of this section, the credit union will use the group name provided by the group.

§ 708a.5 Notice to NCUA.

(a) If a converting credit union's board of directors approves a proposal to convert, it must provide the Regional Director with notice of its intent to convert during the 90 calendar day period preceding the date of the membership vote on the conversion.

(1) A credit union must give notice to the Regional Director of its intent to convert by providing a letter describing the material features of the conversion or a copy of the filing the credit union has made or intends to make with another federal or state regulatory agency in which the credit union seeks that agency's approval of the conversion. A credit union must include with the notice to the Regional Director copies of the notices the credit union has provided or intends to provide to members under §§ 708a.3 and 708a.4. The credit union must also include a copy of the ballot form and all

written materials the credit union has distributed or intends to distribute to members. The term "written materials" includes written documentation or information of any sort, including electronic communications posted on a Web site or transmitted by electronic mail.

(2) As part of its notice to NCUA of intent to convert, the credit union's board of directors must provide the Regional Director with a certification of its support for the conversion proposal and plan. Each director who voted in favor of the conversion proposal must sign the certification. The certification must contain the following:

(i) A statement that each director signing the certification supports the proposed conversion and believes the proposed conversion is in the best interests of the members of the credit union;

(ii) A description of all materials submitted to the Regional Director with the notice and certification;

(iii) A statement that each board member signing the certification has examined all these materials carefully and these materials are true, correct, current, and complete as of the date of submission; and

(iv) An acknowledgement that federal law (18 U.S.C. 1001) prohibits any misrepresentations or omissions of material facts, or false, fictitious or fraudulent statements or representations made with respect to the certification or the materials provided to the Regional Director or any other documents or information provided to the members of the credit union or NCUA in connection with the conversion.

(3) A state-chartered credit union must state as part of the notice required by § 708a.5(a) if its state chartering law permits it to convert to a mutual savings bank and provide the specific legal citation. A state-chartered credit union will remain subject to any state law requirements for conversion that are more stringent than those this part 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 state-chartered credit union relies for its authority to convert to a mutual

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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:

(i) 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; and

(ii) 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.

(b) If it chooses, a credit union may seek a preliminary determination from the Regional Director regarding any of the notices required under this part and its proposed methods and procedures applicable to the membership conversion vote. The Regional Director will make a preliminary determination regarding the notices and methods and procedures applicable to the membership vote within 30 calendar days of receipt of a credit union's request for review unless the Regional Director extends the period as necessary to request additional information or review a credit union's submission. A credit union's prior submission of any notice or proposed voting procedures 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 consistent with the Federal Credit Union Act and these rules.

(c) After receiving the notice described in paragraph (a)(3) of this section, the Regional Director will contact and consult with the appropriate State Supervisory Authority.

§ 708a.6 Membership approval of a proposal to convert.

(a) A proposal for conversion approved by a board of directors requires

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approval by a majority of the members who vote on the proposal.

(b) The board of directors must set a voting record date to determine member voting eligibility that is at least one day before the publication of notice required in § 708a.3.

(c) A member may vote on a proposal to convert in person at a special meeting held on the date set for the vote or by written ballot filed by the member. The vote on the conversion proposal must be by secret ballot and conducted by an independent entity. The independent entity must be a company with experience in conducting corporate elections. No official or senior management official of the credit union or the immediate family members of any official or senior management official may have any ownership interest in or be employed by the independent entity.

§ 708a.7 Certification of vote on conversion proposal.

(a) 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.

(b) The certification must also include a statement that the notice, ballot and other written materials provided to members were identical to those submitted to NCUA pursuant to § 708a.5. If the board cannot certify this, the board must provide copies of any new or revised materials and an explanation of the reasons for any changes.

§ 708a.8 NCUA oversight of methods and procedures of membership vote.

(a) The Regional Director will review the methods by which the membership vote was taken and the procedures applicable to the membership vote. The Regional Director will determine: if the notices and other communications to members were accurate, not misleading, and timely; the membership vote was conducted in a fair and legal manner; and the credit union has otherwise complied with part 708a.