

to pay or perform an obligation to a third person. Under a *guaranty* agreement, a Federal credit union agrees to satisfy the obligation of the principal only if the principal fails to pay or perform. The *principal* is the person primarily liable, for whose performance of his obligation the surety or guarantor has become bound.

(c) *Requirements.* The suretyship or guaranty agreement must be for the benefit of a principal that is a member and is subject to the following conditions:

(1) The Federal credit union limits its obligations under the agreement to a fixed dollar amount and a specified duration;

(2) The Federal credit union's performance under the agreement creates an authorized loan that complies with the applicable lending regulations, including the limitations on loans to one member or associated members or officials for purposes of §§ 701.21(c)(5), (d); 723.2 and 723.8; and

(3) The Federal credit union obtains a segregated deposit from the member that is sufficient in amount to cover the Federal credit union's total potential liability.

(d) *Collateral.* A segregated deposit under this section includes collateral:

(1) In which the Federal credit union has perfected its security interest (for example, if the collateral is a printed security, the Federal credit union must have obtained physical control of the security, and, if the collateral is a book entry security, the Federal credit union must have properly recorded its security interest); and

(2) That has a market value, at the close of each business day, equal to 100 percent of the Federal credit union's total potential liability and is composed of:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or banker's acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(3) That has a market value equal to 110 percent of the Federal credit union's total potential liability and is composed of:

(i) Real estate, the value of which is established by a signed appraisal or evaluation in accordance with part 722 of this chapter. In determining the value of the collateral, the Federal credit union must factor in the value of any existing senior mortgages, liens or other encumbrances on the property except

those held by the principal to the suretyship or guaranty agreement; or

(ii) Marketable securities that the Federal credit union is authorized to invest in. The Federal credit union must ensure that the value of the security is 110 percent of the obligation at all times during the term of the agreement.

#### **PART 741—REQUIREMENTS FOR INSURANCE**

3. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L. 101–73.

4. Amend § 741.2 by designating the existing paragraph as (a) and adding new paragraphs (b), (c) and (d) to read as follows:

##### **§ 741.2 Maximum borrowing authority.**

(a) \* \* \*

(b) A federally insured State-chartered credit union may apply to the regional director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable State law or by the State regulator. The waiver request must include:

(1) Written approval from the State regulator;

(2) A detailed analysis of the safety and soundness implications of the proposed waiver;

(3) A proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation; and

(4) An explanation demonstrating the need to raise the limit.

(c) The regional director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured State-chartered credit union.

5. Add new § 741.221 to read as follows:

##### **§ 741.221 Suretyship and guaranty requirements.**

Any credit union, which is insured pursuant to Title II of the Act, must adhere to the requirements in § 701.20 of this chapter. State-chartered, NCUSIF-insured credit unions may only enter into suretyship and guaranty agreements to the extent authorized under State law.

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**BILLING CODE 7535–01–P**

#### **NATIONAL CREDIT UNION ADMINISTRATION**

##### **12 CFR Part 708a**

#### **Conversion of Insured Credit Unions to Mutual Savings Banks**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** NCUA proposes to update its rule regarding conversion of insured credit unions to mutual savings banks. This proposal, seeking to accomplish full disclosure and transparency, would require a converting credit union to provide additional information in the notice to members of its intent to convert. Specifically, the credit union would have to disclose any economic benefit a director or senior management official of a converting credit union may receive in connection with the conversion. The proposal also would require the converting credit union to disclose that conversion to a mutual savings bank could lead to members having diminished voting rights and losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders. NCUA believes this proposal would enhance a member's ability to make informed decisions about the conversion without increasing the regulatory burden for converting credit unions and would help converting credit unions to more fully understand what NCUA expects to be included in the notice to members.

**DATES:** Comments must be received on or before December 1, 2003.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov) instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Frank S. Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Pub. L. 105–21. Section 202 of CUMAA amended the provisions

of the Federal Credit Union Act (Act) concerning conversion of insured credit unions to mutual savings banks. 12 U.S.C. 1785(b). CUMAA required NCUA to promulgate final rules regarding charter conversions that were: (1) Consistent with CUMAA; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. NCUA issued rules in compliance with this mandate. 63 FR 65532 (November 27, 1998); 64 FR 28733 (May 27, 1999).

It has been almost five years since NCUA first amended Part 708a to comply with CUMAA. In that time, NCUA has grown concerned that many credit union members do not fully appreciate the effect the conversion may have on their ownership interests in the credit union and voting power in the mutual savings bank.

### Discussion

There are increasing indications that a high percentage of credit unions that convert to mutual savings banks have or will undertake a second conversion to become a stock institution. While it is certainly within the rights of the credit union membership to exercise their right to convert and change the structure of the institution, converting credit unions generally do not adequately discuss in the notice to credit union members the likelihood and ramifications of a second conversion to a stock institution.

While State laws may vary, under the Office of Thrift Supervision's regulations, there is no minimum waiting period for a newly chartered Federal mutual savings bank to convert to a stock institution. As a result, it is possible for a credit union that converts to a Federal mutual savings bank to attempt to convert to a stock institution in less than two years. In most cases, a conversion from a mutual savings bank to a stock institution will result in a loss of ownership interest for a majority of its members because most members do not purchase stock in the institution.

While CUMAA provides that an insured credit union may convert to a mutual savings bank without the prior approval of NCUA, it also requires NCUA to administer the member vote on conversion and review the methods and procedures by which the vote is taken. This is reflected in NCUA's conversion rule. The rule requires a converting credit union to provide its members with written notice of its intent to convert. 12 CFR 708a.4. It also specifies that the member notice must

adequately describe the purpose and subject matter of the vote on conversion. *Id.* In addition, a converting credit union must notify NCUA of its intent to convert. 12 CFR 708a.5. The credit union must provide for NCUA's review a copy of the member notice, ballot, and all other written materials the credit union has provided or intends to provide to its members in connection with the conversion. *Id.*

A converting credit union has the option of submitting these materials to NCUA before it begins to distribute them to its members. *Id.* This enables the credit union to obtain NCUA's preliminary determination on the methods and procedures of the member vote based on NCUA's review of the written materials. The credit union can then decide whether to move forward with the often expensive, labor intensive conversion process with a full and complete understanding of NCUA's position. NCUA believes its review of these materials is a practical and unintrusive way of fulfilling, at least part of, its congressionally mandated responsibility to review the methods and procedures of the vote to ensure that all reasonable measures to accomplish full disclosure and transparency have been taken to inform the credit union membership of the potential consequences of their vote.

If NCUA disapproves of the methods and procedures of the member vote, after the vote is conducted, then NCUA is authorized to direct a new vote be taken. 12 CFR 708a.7. NCUA interprets its responsibility to review the methods and procedures of the member vote to include determining that the member notice and other materials sent to the members are accurate and not misleading, that all required notices are timely, and that the membership vote is conducted in a fair and legal manner.

NCUA believes that full and proper disclosure to members that they could potentially lose their ownership interest in their credit union if it ultimately becomes a stock institution is key to describing the purpose and subject matter of the member vote adequately. Failing to discuss this integral risk associated with the conversion adequately is tantamount to providing misleading information. Most of the conversion packets NCUA has reviewed since CUMAA went into effect have contained some information relating to this issue, but have not addressed it sufficiently to make this point clear to members.

A charter conversion is a sophisticated transaction with consequences that might not surface for a number of years and that are often not

recognizable at the time of conversion to even the most astute members. As a result, few members can make a truly informed decision about how the conversion will affect their ownership interest in the credit union unless the credit union provides them with this information. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders.

The Act provides that a member of a Federal credit union is entitled to only one vote irrespective of the number of shares held by that member. The "one member one vote" structure gives an equal voice to all members, even those of modest means. 12 U.S.C. 1760. Most, if not all, state credit unions also are required to follow this approach. This is not usually the case with mutual savings banks. In most instances, mutual savings banks allot votes based on the amount of a member's deposits. Commonly, one vote is granted for each \$100 a member has on deposit up to a maximum of 1,000 votes. As noted above, NCUA believes that disclosing that members could have lesser voting power in the mutual savings bank than they do in the credit union is central to describing the purpose and subject matter of the member vote in an adequate and proper fashion. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose that the conversion from a credit union to a mutual savings bank could lead to members having lesser voting rights in the mutual savings bank than they had in the credit union.

NCUA's conversion rule echoes CUMAA by providing that directors and senior management officials of a credit union may not receive any economic benefit from the conversion of their credit union other than compensation and benefits paid to them in the ordinary course of business. 12 CFR 708a.10. This is intended to insure that management's decision to begin the conversion process is based on sound business judgment reflecting the best interests of the members. Consistent with this statutory and regulatory limitation, NCUA believes it is appropriate to require a converting credit union to disclose in the member

notice any conversion related benefits a director or senior management official may receive, including compensation not permitted in the credit union context. To be complete, this disclosure must include any foreseeable stock related benefits associated with a subsequent conversion to a stock institution. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA proposes to require a converting credit union to disclose whether it will provide any or increasing compensation or other conversion related benefits, including stock related benefits, to directors or senior management officials.

### Regulatory Procedures

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The proposed rule requires some revisions to the disclosures a converting credit union must provide to its members. It is unlikely that small credit unions will engage in these kinds of conversions. The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, the NCUA has determined that a regulatory flexibility analysis is not required.

#### *Paperwork Reduction Act*

The Office of Management and Budget control number associated with part 708a is 3133-0153. The NCUA Board has determined that the proposed rule will not increase paperwork requirements and a paperwork reduction analysis is not required.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the States, on the connection between the National government and the States, or on the distribution of power and responsibilities among the various levels of Government. NCUA has

determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

#### *Agency Regulatory Goal*

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

### List of Subjects in 12 CFR Part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on September 24, 2003.

Becky Baker,

*Secretary of the Board.*

For the reasons stated above, NCUA proposes to amend § 708a.4 as follows:

#### **PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS**

1. The authority citation for part 708a continues to read as follows:

**Authority:** 12 U.S.C. 1766, 12 U.S.C. 1785(b).

2. Section 708a.4 is amended by adding paragraph (d) to read as follows:

#### **§ 708a.4 Voting procedures.**

\* \* \* \* \*

(d)(1) An adequate description of the purpose and subject matter of the member vote on conversion, as required by paragraph (c) of this section, must include:

(i) A disclosure that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converts to a stock institution and the members do not become stockholders;

(ii) A disclosure that the conversion from a credit union to a mutual savings bank could lead to members having lesser voting rights in the mutual savings bank than they had in the credit union; and

(iii) A disclosure of any conversion related economic benefit a director or senior management official may receive including receipt of or an increase in

compensation and any foreseeable stock related benefits associated with a subsequent conversion to a stock institution.

(d)(2) In connection with the disclosures required by paragraphs (d)(1)(i) through (iii) of this section, the converting credit union must include an affirmative statement, that at the time 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.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-NM-125-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 767-300 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767-300 series airplanes. This proposal would require a general visual inspection for clearance between the corners of the A1 galley and the aft pressure bulkhead, and corrective actions, if necessary. This proposal would also require modification of the A1 galley. These actions are necessary to prevent interference of the A1 galley with the radial stiffener on the aft pressure bulkhead, which could result in fatigue crack propagation. Fatigue crack propagation could lead to possible rapid decompression of the airplane or to damage and/or interference with the airplane control systems that pass through the bulkhead and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 17, 2003.