



National Credit Union Administration
Office of Credit Union Resources and Expansion

June 15, 2023

Mr. Steve Snider
stevesnider@cinci.rr.com

Dear Mr. Snider:

Thank you for contacting NCUA and I appreciate you raising your concerns as NCUA strongly supports the rights of the members. There are, however, a few points that I would like to provide additional clarity on that were raised in your e-mail.

Your e-mail stated members were given a 30-day rather than a required 45-day advance notice of the member vote. The 45-day advanced notice is for mergers under 12 C.F.R. § 708b.106. This rule is not applicable in this case because Butler Heritage FCU is proposing to convert from federal insurance to non-federal insurance resulting from a merger. Instead, the notice for a credit union converting its status as an insured credit union is provided for under the Federal Credit Union Act and is limited from 7 to 30 days. The Federal Credit Union Act states the following:

No credit union shall convert from status as an insured credit union under this chapter as provided under subsection (a)(2) of this section until the proposition for such conversion has been approved by a majority of all the directors of the credit union, and by affirmative vote of a majority of the members of the credit union who vote on the proposition in a vote in which at least 20 per centum of the total membership of the credit union participates. Following approval by the directors, written notice of the proposition and of the date set for the membership vote shall be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. The membership shall be given the opportunity to vote by mail ballot. If the proposition is approved by the membership, prompt and reasonable notice of insurance conversion shall be given to all members. 12 U.S.C. § 1786(d)(2).

You also inquired about the availability of a website where members of the merging credit union can share comments and questions about the merger (“MTM communication”). This is a requirement of 12 C.F.R. § 708b.106(b)(3) and is not a requirement for a credit union converting its status as an insured credit union. NCUA has not required the MTM communication when a federally insured credit union is converting to private insurance via merger because the statute limits the notice period from 7 to 30 days, precluding the MTM communication.

You also raised several issues with the credit union’s compliance with its charter and bylaws, including allegations of falsified votes, conflicts of interest, proxy voting, and impermissible

annual meeting locations. Bylaws function as a contract between a credit union and its members and NCUA has a long-standing policy to not become involved in internal federal credit union disputes unless they involve a violation of law or regulation or there are safety and soundness concerns. In general, credit union bylaws should be interpreted and enforced according to state law. As such, we defer to local courts to settle these matters.

NCUA specifically considered your report of the bylaw violation involving the credit union's failure to amend its bylaws to permit electronic votes before the majority of votes were induced but determined not to take further action. This bylaw violation did not have any adverse consequences for members. The credit union's board could have adopted the conforming bylaw amendment at any time by a two-thirds vote without NCUA approval. In keeping with its policy not to intervene in internal credit union disputes, NCUA will not generally take action against minor or technical bylaw violations, but retains discretion to enforce the FCU Bylaws in appropriate cases, such as safety and soundness concerns or threats to fundamental, material credit union member rights. In this case members were adequately notified of the option to vote electronically and thus the failure of the credit union to formally amend its bylaws did not affect fundamental, material member rights.

You also discussed that NCUA received several complaints regarding Butler Heritage FCU's merger. When NCUA receives complaints, we generally first refer the matter to the credit union's Supervisory Committee for investigation. The Supervisory Committee is expected to complete a thorough, independent and impartial investigation into member complaints. On April 18, 2023, we sent a letter to Butler Heritage FCU's Supervisory Committee requesting an investigation into several issues you and others raised concerning the voting process. On May 2, 2023, we received a response from the Supervisory Committee contending that the voting process was handled properly and facilitated by an independent third party.

Finally, NCUA's conditional approval was granted after a thorough review of the documents provided and NCUA found that Butler Heritage FCU complied with NCUA's share insurance conversion regulation.¹ This conditional approval is not intended to address the substance of any allegations of charter and bylaw violations included within the complaint. The conditional approval letter is solely intended to state that Butler Heritage FCU complied with NCUA's share insurance regulation.

If you have any questions, please contact Consumer Access Analyst Dong Zhang at (571) 480-0745.

Sincerely,

Martha J. Ninichuk
Director

¹ 12 C.F.R. part 708b, subpart B.

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