

K.A.R. 121-11-2. Process for merger of credit unions. (a) Either of the following may merge into a single credit union:

(1) Any two credit unions formed under the laws of this state; or

(2) any credit union formed under the laws of this state and any credit union formed under the laws of any other state or of the United States of America that is formed for the same purpose for which a credit union might be formed under the laws of this state.

(b) The two affected credit unions shall notify the administrator in writing of their intent to merge within 14 days after each credit union's board of directors formally agrees in principle to merge by the execution of a corporate resolution by each entity's board of directors.

(c) Upon approval of a proposal for merger by a majority of each board of directors, the credit unions shall jointly prepare a plan for the proposed merger, which shall include the following:

(1) The names of the proposed continuing credit union and the merging credit union;

(2) the terms and conditions of the proposed merger and the mode of carrying out the merger, which shall be referred to as the merger agreement and shall be approved by a corporate resolution of each board of directors;

(3) the manner and basis of converting the membership shares of the merging credit union into the membership shares of the continuing credit union;

(4) a statement of any changes in the articles of incorporation or bylaws of the continuing credit union effected by the proposed merger, including any proposed change in the field of membership;

(5) documentation that any proposed change in the field of membership will meet the statutory requirements for field of membership specified in K.S.A. 17-2205, and amendments thereto;

(6) the current financial reports of each credit union, as follows:

(A) The current financial statements for each credit union;

(B) the current delinquent loan summaries and analyses of the adequacy of the allowance for loan and lease losses account;

(C) consolidated financial statements, including an assessment of the net worth of each credit union before the merger and the anticipated net worth of the proposed continuing credit union;

(D) an analysis of the asset-to-share ratio for the proposed merging credit union and the proposed continuing credit union;

(E) an explanation of proposed share adjustments, if any;

(F) an explanation of provisions for reserves, undivided earnings, or dividends;

(G) provisions with respect to the notification and payment of creditors; and

(H) an explanation of any changes relative to any type of insurance provided in conjunction with member accounts;

(7) disclosure of any financial benefit that is to be received by the officers, senior management, and directors but is not available to ordinary members;

(8) a summary of the products and services proposed to be available to the members of the continuing credit union that could differ from those available at the

merging credit union, with an explanation of the effects of any changes from the current products and services provided to the members of the merging credit union;

(9) a summary of the advantages and disadvantages of the merger; and

(10) any other information deemed critical to the merger agreement by both boards of directors.

(d) An application for approval of the merger shall be complete when the following information is submitted to the administrator:

(1) The merger plan as described in subsection (c);

(2) a copy of the corporate resolution of each board of directors, formally agreeing in principle to merge pursuant to subsection (b);

(3) a copy of the corporate resolution of each board of directors, formally approving the merger agreement pursuant to subsection (c);

(4) (A) The proposed notice of special meeting of the members; or

(B) a copy of the ballot form to be sent to the members if the credit union decides to hold the vote without a meeting of the members; and

(5) a written explanation of the voting procedures.

(e) If the proposed continuing credit union is organized under the laws of another state or of the United States, an application to merge that is prescribed by the state or federal supervisory authority of the proposed continuing credit union may be accepted by the administrator. Additional information to determine whether to deny or approve the merger may be required by the administrator.

(f) Preliminary approval of an application for merger, conditioned upon meeting specific requirements, may be granted by the administrator. However, final approval shall not be granted unless all of the following conditions are met:

(1) The requirements have been met within the time frame, if any, specified in the preliminary approval granted by the administrator.

(2) National credit union share insurance fund approval has been granted by the national credit union administration for the proposed continuing credit union.

(3) Verification of continuance of a surety bond for the proposed continuing credit union has been provided to the administrator.

(g) An application for merger may be denied by the administrator if the administrator finds any of the following:

(1) The financial condition of the proposed merging credit union before the merger would substantially impair the financial stability of the proposed continuing credit union or negatively impact the financial interests of the members or creditors of either credit union.

(2) The plan includes a change in the products or services available to members of the proposed merging credit union that substantially harms the financial interests of the members or creditors of the proposed merging credit union.

(3) The officers, directors, or senior management are to receive undue financial benefits not ordinarily received by similar credit unions and not available to ordinary members.

(4) The credit unions do not furnish to the administrator all information material to the application that is requested by the administrator.

(5) The field of membership that would result from the proposed merger would not meet the statutory requirements of K.S.A. 17-2205, and amendments thereto.

(6) The merger would be contrary to law or regulation.

(h) Upon approval of the plan of merger, the board of directors of each credit union shall direct, by resolution, that the plan be submitted to a vote at a special meeting to be called within 60 days of the preliminary approval by the administrator. Advance notice of the meeting shall be given by sending a letter addressed to each member at the last known address currently reflected on the books of the credit union or electronically at the member's last known electronic mail address. Additionally, the board of directors of each credit union may post the notice on the credit union's bulletin board or web site, or both. This notice shall be sent no more than 30 days and no less than 14 days before the meeting at which the merger will be voted on. The notice shall meet the following requirements:

(1) Specify the purpose, date, time, and place of the meeting;

(2) contain a summary of the merger plan and directions specifying how a member can obtain a copy of the complete merger plan;

(3) state the reasons for the proposed merger;

(4) provide the name and location, including the location of each branch, of the proposed continuing credit union;

(5) inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be received no later than the date and time announced for the meeting called for that purpose; and

(6) be accompanied by a ballot for merger proposal and instructions on how to vote by written ballot by mail.

(i) The approval of a proposal to merge a credit union into another credit union shall require the affirmative vote of a majority of the members of each credit union who participate in the vote to merge, either by presence at the special meeting or by participation by written ballot before the meeting.

(j) With the prior approval of the administrator, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure that each member has an opportunity to vote on the merger.

(k) The board of directors of the proposed merging credit union shall appoint or hire an independent teller or tellers to ensure the accuracy and integrity of the vote.

(l) Upon approval of the merger plan by the membership, the secretary of the proposed continuing credit union shall submit in triplicate the completed and signed certificate of merger in compliance with K.S.A. 17-2228, and amendments thereto, along with any necessary amendments to the continuing credit union's articles of incorporation and bylaws, to the administrator. The final approval of the merger shall be forwarded by the administrator to the national credit union administration for share insurance approval. Upon final approval by the national credit union administration of share insurance for the proposed continuing credit union, a certified copy of the certificate of merger shall be issued by the administrator, and approval of any necessary amendments to the continuing credit union's articles of incorporation and bylaws shall be granted by the administrator to the continuing credit union.

(m) Upon receipt of a certified copy of the certificate of merger issued by the administrator and the national credit union administration's approval, the records of the merging credit union and the continuing credit union shall be combined on the effective date of the merger. The board of directors of the continuing credit union shall certify the

completion of the merger to the administrator within 30 days after the effective date of the merger.

(n) Upon receipt by the administrator of the completion of the merger certification, the following shall be performed by the administrator:

(1) Sending a copy of the merger certification to the national credit union administration;

(2) approving any bylaw amendments; and

(3) canceling the charter of the merging credit union.

(o) For good cause shown, any time frame or deadline specified in this regulation may be extended by the administrator. (Authorized by K.S.A. 17-2260; implementing K.S.A. 2008 Supp. 17-2228; effective P- May 1, 2009.)