

# ELLEN PHILIP

ASSOCIATES, INC.

## Data Management Solutions

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April 20, 2010

Ms. Mary Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: Comments on Notice of Proposed Rulemaking  
(Fiduciary Duties at Federal Credit Unions; Mergers and Conversions of  
Insured Credit Unions)

Dear Ms. Rupp:

As president of Ellen Philip Associates, Inc., I am providing comments to the National Credit Union Administration on the Board's advance notice and request for comments on its proposed changes to Rule 12 CFR Parts 701, 708a and 708b. By way of background, Ellen Philip Associates has been a leading provider of independent vote tabulation services for over 31 years. During that time we have provided tabulation services related to the annual and special meetings of hundreds of publicly owned corporations and have acted as inspector of election in a number of credit union votes in recent years. We specialize in sensitive situations, such as Employee Plan votes and high-profile contested corporate elections. We are known for the integrity of the process that surrounds our tabulations and for neutrality and confidentiality. We appreciate the opportunity to offer comments on your proposed new rules, and we do so from the point of view of a company that is closely tuned to the practical details of the voting process.

Comment #1:

On page 16 of the proposed changes it is stated that: "After the conclusion of the special meeting that ends the ballot period, the independent entity will open all the ballots in its possession and tabulate the results. The entity must not open or tabulate any ballots before the conclusion of the special meeting." It is later stated that: "During the course of the voting period the independent entity may provide the credit union with the names of members who have not yet voted, but may not provide any voting results to the credit union prior to certifying the final vote tally."

A tabulating entity is able to provide a listing of persons who have not yet voted only if it is able to identify, precisely, which eligible members **have** submitted properly completed ballots. The way such information has been obtained, traditionally, is by opening envelopes as they are received, checking the validity of the voting control number printed on the ballot and examining the ballot for proper execution. If opening envelopes and examining ballots during the voting window were prohibited, "unvoted" lists, as they are called, would be impossible to produce. The tabulator could provide, at best, a count of envelopes received. Apart from improperly completed ballots, it should be noted, envelopes sometimes contain materials that are completely unrelated to the voting process.

Comment #2:

On page 24 of the proposed changes it is stated that: "The board of directors of the merging credit union must certify the results of the membership vote within 10 calendar days after the vote is taken."

Such a requirement, taken in conjunction with a prohibition on opening envelopes until the meeting is over, makes for a situation in which rush is inevitable and the risk of error is heightened, especially when large volumes are involved. From a production point of view, it's a situation that is grossly inefficient. Rush work and overtime are bound to increase costs.

Comment #3:

On page 16, of the proposed changes it is stated that: "Credit union employees and officials are prohibited from assisting members in completing ballots or handling completed ballots". They further state that "nothing prohibits the independent teller from placing a secure ballot box at credit union branch locations for use by members who bring their completed ballots to the credit union. Also, nothing prohibits employees from distributing blank ballots to those members who may have misplaced their original ballot".

We would suggest, to make the integrity of the process unquestionable, that an independent party be appointed to empty branch ballot boxes and forward the contents to the tabulating entity.

Comment #4:

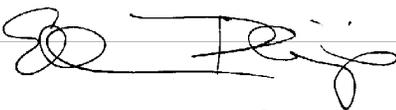
On page 34, you invite comment on "minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses".

The Securities and Exchange Commission has sanctioned the offering of electronic voting in corporate elections for over 15 years. That agency, in fact, actively encourages the use of electronic voting tools. The use of Internet and telephonic voting has been very successful, and public companies, and their shareholders, have benefited in a number of ways. Ellen Philip Associates has been providing these services since 1996 and below are some of the advantages we see in allowing electronic options in the vote collection process:

- Electronic voting is secure and it ensures privacy.
- It is quick and convenient. Everyone has a telephone, and more and more people have Internet access.
- It offers tighter control over execution of the ballot. On a paper ballot a voter may neglect to check a box, or may forget to sign. Internet and telephone facilities are programmed in a way that obliges voters to properly execute a vote, and they are guided through the process.
- It reduces reply-mail postage costs and eliminates the loss of votes due to postal delays.
- It eliminates the cost of opening envelopes, extracting the contents, examining ballots for proper execution, and capturing vote data.
- It provides a complete and accurate audit trail for all votes. Date and time of each vote is captured automatically, and mail votes are loaded daily to the electronic vote system (with a separate source code for mail). Duplicate votes are recorded, yet only a member's first vote is included in the tabulation.
- It might reduce the number of ballots requested in branches. Electronic votes tend to be executed promptly, so there is less opportunity for ballots to be misplaced before they are voted.

We hope you will give our comments consideration and would welcome the opportunity to discuss them with you.

Sincerely,



Ellen Philip  
President