

CHAPTER 3
CONVERSION OF AN IOWA-CHARTERED CREDIT UNION
TO ANOTHER CHARTER TYPE

189—3.1(533) Definitions. As used in this chapter:

“*Credit union*” means credit union as defined in the Iowa Credit Union Act, Iowa Code section 533.1.

“*Federal banking agencies*” means federal banking agencies as defined in Section 3 of the Federal Deposit Insurance Act.

“*Federal credit union*” means credit union as defined in Section 101 of the Federal Credit Union Act, 12 U.S.C. 1752(1).

“*Mutual savings bank*” and “*savings association*” have the same meaning as defined in Section 3 of the Federal Deposit Insurance Act.

“*Senior management official*” means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as defined by the appropriate federal banking agency pursuant to Section 32(f) of the Federal Deposit Insurance Act, 12 U.S.C. 1831i(f).

“*Superintendent*” means the superintendent of credit unions of the Iowa credit union division of the department of commerce.

189—3.2(533) Authority to convert.

3.2(1) An Iowa-chartered credit union, with the approval of its members, may convert to a federal credit union, subject to applicable law, regulation and procedures of the governing recipient chartering authority, the National Credit Union Administration, and the requirements of this chapter.

3.2(2) An Iowa-chartered credit union shall remain responsible for the entire annual fee pursuant to Iowa Code section 533.62 during the year in which the credit union converts.

3.2(3) No credit union shall convert to a federal credit union without full disclosure to its members of the intents and purposes of conversion. If the intent to undertake a second conversion to a mutual savings bank or a savings association is among the purposes for conversion to a federal credit union, those facts and all related information shall be fully disclosed to members. If a further conversion to a stock institution is among the possible outcomes from the conversion, the converting Iowa-chartered credit union must fully and accurately disclose this possibility to its members.

189—3.3(533) Board of directors and membership approval.

3.3(1) Any conversion proposal may be approved by the board of directors only upon the affirmative vote of a majority of the board. The board must then set a date for a vote on the proposal by the members of the credit union.

3.3(2) The membership must approve the proposal to convert by the affirmative vote of a majority of those members who vote on such proposal. Each eligible member shall have one vote regarding the conversion proposal.

3.3(3) The vote of the members to convert must be at a special meeting called for that purpose, must be in the manner prescribed in the bylaws and this chapter, and must satisfy the number of members necessary to constitute a quorum to convene a meeting of the members as prescribed in the bylaws.

3.3(4) The board of directors must notify the superintendent of any proposed conversion and of any abandonment or disapproval of the conversion by the members or by the recipient chartering authority, the National Credit Union Administration, or applicable federal deposit insurer.

3.3(5) Prior to completion of any conversion, the board shall supply the superintendent a certified affidavit of compliance with these rules.

189—3.4(533) Notice to members and voting procedures.

3.4(1) A credit union that proposes to convert must submit written notice of its intent to convert by first-class mail, postage prepaid, to each member who is eligible to vote on the conversion, and the board of directors must cause a copy of the notice to be posted in a conspicuous location in each credit union office from the date of the mailings until the date of the meeting. The notice to members must be submitted and posted 90 calendar days, 60 calendar days, and 30 calendar days before the date of the membership meeting to vote on the conversion and a ballot must be submitted not less than 30 calendar days before the date of the vote. A member who joins the credit union subsequent to the 30-calendar-day notice and prior to the date and time of the special meeting and who is eligible to vote on the conversion shall be provided a copy of the 30-calendar-day notice and a ballot.

3.4(2) The notice to members must adequately describe the purpose and subject matter of the vote to be taken at the special meeting or by submission of the written ballot. The notice must provide an accurate disclosure of the reasons for the conversion stated in specific terms and not as generalities. The notice shall specify the costs of the conversion, such as changing the credit union name, examination and operating fees, attorney and consulting fees, tax liability. The notice must clearly inform the member that each eligible member may vote in person at the special meeting or by submitting the written ballot by mail or personal delivery to the credit union so it is received on or before the date and time of the special meeting. A member other than a natural person may cast a single vote through a delegated agent as provided by law. There shall be no voting by proxy. The notice must state in boldface type that the conversion will be decided by a majority of credit union members who vote on the issue.

3.4(3) In addition to the ballot provided to all eligible voting members under this rule, a return envelope preaddressed to the election committee, marked "ballot," must be provided with the ballot. A location on the outside of the envelope must be provided for the voting member to print the member's name and address. The voting process used for casting ballots in person at the special meeting shall be the same as that used for submitting the ballot by mail or personal delivery, by submission using an envelope preaddressed to the election committee, marked "ballot," with a location on the outside of the envelope for the voting member to print the member's name and address.

3.4(4) The board of directors shall appoint an election committee of no fewer than seven credit union members to be in charge of counting the ballots and verifying that no eligible member voted more than once. No board member or employee, or member of a board member's or employee's immediate family, may be a member of the election committee. No director, employee, agent or member of the election committee shall reveal the manner in which any member voted on the proposed conversion. The election committee shall see that all ballot envelopes are delivered to the committee unopened and that the counting of the ballots does not commence until after the close of the special meeting held in connection with the conversion proposal. The election committee shall be responsible for certifying the results of the election to the board of directors, including the actual number of eligible members who voted on the proposal and the number of those who voted in favor of and the number of those opposed to the conversion proposal.

3.4(5) The notice to members must state the date, time, and place of the meeting. The members may not vote on the proposal until the credit union has received preliminary approval from the superintendent given under 189—3.5(533) and preliminary determination from the National Credit Union Administration on the proposition for conversion.

3.4(6) If a purpose of conversion is to become a mutual savings bank, a savings association that is in mutual form or a stock institution, the notice must clearly inform the member that the conversion, if approved, could lead to members losing their ownership interest in the credit union. The notice must disclose that a credit union member has no more than one vote regardless of the number of shares held; whereas, in a mutual savings bank or savings association, voting may be based upon the amount in the member's deposit accounts, commonly one vote granted for each \$100 on deposit. The notice must further disclose that, if the mutual savings bank or savings association converts to a stock institution, members will lose their ownership interests and voting rights automatically received as a member.

3.4(7) In connection with the notices required by this rule, the converting credit union must include an affirmative statement that, at the time of conversion to a federal credit union and for a period of five years thereafter, the credit union does or does not intend to:

- a.* Convert to a mutual savings bank or savings association or a stock institution;
- b.* Provide any compensation to previously uncompensated members of the board of directors, or increase compensation or other conversion-related economic benefit, including stock options, special prices on stock, or first rights of refusal, to directors, senior management officials, or their agents, brokers, family members or other closely related parties;
- c.* Base member voting rights on account balances.

3.4(8) In addition, if the purpose of conversion is to become a mutual savings bank or savings association, or a stock institution, the notice must describe a method that will be used to provide for a pro-rata distribution of all unencumbered credit union retained and undivided earnings in excess of regulatory required reserves, as calculated pursuant to Iowa Code section 533.17, or in excess of a well capitalized net worth level, calculated pursuant to the Federal Credit Union Act, 12 U.S.C. Section 1790d, whichever amount is greater. The pro-rata distribution shall occur on all shares of record as of the date of first notice to members under this rule, and must be based upon the member's share balance less any amount pledged to share-secured loans.

3.4(9) At any time prior to completion of a conversion to a federal credit union, the board or the members by written request as provided in the bylaws may call for a special meeting of the members to be held to terminate the conversion proceedings. The membership must approve the proposal to terminate the conversion proceedings by the affirmative vote of a majority of those members who vote on such proposal as provided in this chapter.

189—3.5(533) Notice to the superintendent.

3.5(1) The credit union must provide the superintendent with notice of its intent to convert and a plan of conversion no less than 30 calendar days prior to the 90-calendar-day period preceding the date of the membership vote on the conversion under 189—3.4(533).

3.5(2) The credit union must give notice to the superintendent and provide a plan of conversion describing the material features of the conversion, along with a copy of the filing the credit union has made with the federal regulatory agency by which the credit union seeks that agency's approval of the conversion. The credit union must include with the notice to the superintendent a copy of the notice the credit union provides to members under 189—3.4(533), as well as the ballot form and all written materials the credit union has distributed or intends to distribute to its members, a copy of the return envelope addressed to the election committee marked "ballot" provided with the ballot form, and the procedures the election committee will follow in its receipt and counting of the ballots.

3.5(3) The superintendent will make a preliminary determination regarding the methods and procedures applicable to the membership vote. The superintendent will notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the superintendent disapproves of the proposed methods and procedures applicable to the membership vote. The credit union's submission of the notice of intent and plan of conversion does not relieve the credit union of its obligation to certify the results of the membership vote required by 189—3.6(533) or certify compliance with these rules required by 189—3.3(533) or eliminate the right of the superintendent 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.

3.5(4) The superintendent may disapprove a plan of conversion submitted by the board of directors of a credit union based upon any of the following determinations:

- a. The plan is inconsistent with applicable statutes and regulations.
- b. The plan does not contain all required information.
- c. The plan fails to fully and fairly disclose the effect of the proposal on members of the credit union.
- d. The plan does not fairly compensate members for their ownership interests in the credit union.

189—3.6(533) Certification of vote on conversion proposal. The board of directors of the converting credit union must certify the results of the membership vote to the superintendent within ten calendar days after the vote is taken. The board of directors must also certify at the same time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to 189—3.5(533) or provide copies of any new or revised materials and an explanation of the reasons for the changes.

189—3.7(533) Superintendent oversight of methods and procedures of membership vote.

3.7(1) The superintendent will issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within ten calendar days of receipt from the credit union of the certification of the result of the membership vote required under 189—3.6(533).

3.7(2) If the superintendent disapproves of the methods by which the membership vote was taken or the procedures applicable to the membership vote, the superintendent may direct that a new vote be taken at a time and place acceptable to the board of directors and the superintendent.

3.7(3) The superintendent's review of the methods by which the membership vote was taken and the procedures applicable to the membership vote includes determining that the notice to members is accurate and not misleading, that all notices required by these rules were timely, and that the membership vote was conducted in a fair and legal manner.

189—3.8(533) Other regulatory oversight of methods and procedures of membership vote. The federal agency that will have jurisdiction over the financial institution after conversion may subject the membership vote to verification and may direct that a new vote be taken if it disapproves of the methods by which the membership vote was taken or of the procedures applicable to the membership vote.

189—3.9(533) Completion of conversion.

3.9(1) Upon receipt of approvals under 189—3.7(533) and 189—3.8(533), the credit union may complete the conversion transaction.

3.9(2) The board of directors of the credit union must file with the superintendent appropriate evidence of approval of the conversion by the appropriate federal agency having jurisdiction over the financial institution after conversion and from the federal agency providing deposit insurance to the converted financial institution, and, if applicable, a copy of the notice from the National Credit Union Administration canceling the credit union insurance certificate. The board of directors of the credit union must also notify the superintendent of the actual date on which the conversion is to be effective.

3.9(3) Upon receipt of satisfactory proof that the Iowa-chartered credit union has complied with all applicable laws and regulations of this state and of the United States, the superintendent will cancel the charter of the credit union and issue a certificate of conversion which must be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation or certification of organization were filed and recorded, if different.

3.9(4) In the event it is subsequently determined the conversion was accomplished contrary to applicable law, regulation or the requirements of this chapter, in whole or in part, with the intent to deceive or mislead the members of the credit union or the superintendent, the superintendent will take immediate action to cause the conversion to be declared null and void, and to request from the appropriate regulatory authority that the converted institution be ordered to surrender its charter and be thereupon returned to the authority of the superintendent for reinstatement as a state charter or other action. The provisions of Iowa Code chapter 533 shall apply in the event it is determined that any director, officer, agent, employee or clerk of the credit union knowingly submitted, made or exhibited false statements, papers or reports to the superintendent or committed any acts which might result in that person's being found to have engaged in a fraudulent practice.

3.9(5) If the superintendent finds a material deviation from the provisions of this chapter, or from Iowa Code chapter 533, that would invalidate any steps taken in the conversion, the superintendent will promptly notify the credit union and the National Credit Union Administration of the nature of the adverse findings.

3.9(6) The conversion of the Iowa credit union to a federal credit union will not be effective and completed until final approval is given by the superintendent, any improper actions are cured, and corrective steps have been accomplished, if applicable.

189—3.10(533) Limit on compensation of officials.

3.10(1) No director or senior management official of an Iowa credit union may receive any economic benefit in connection with a plan of conversion or the actual conversion of the credit union, other than regular compensation and other usual benefits paid to directors or senior management officials in the ordinary course of business.

3.10(2) In connection with the notices to members required by this chapter, the converting credit union must disclose to the members the cost of the conversion, including any change or increase in compensation or economic benefit to directors or senior management officials of the credit union in the event the conversion process is accomplished.

These rules are intended to implement Iowa Code section 533.34.

[Filed emergency 11/19/03—published 12/10/03, effective 11/19/03]