

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

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

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 533.102.

“*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 533.112 during the year in which the credit union converts.

3.2(3) Disclosure to members.

a. No credit union shall convert to a federal credit union without full disclosure to its members of the intents and purposes of conversion.

b. 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.

c. If a further conversion to a stock institution is among the possible outcomes from the conversion, the converting Iowa-chartered credit union shall fully and accurately disclose this possibility to its members.

[ARC 0938C, IAB 8/7/13, effective 9/15/13]

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 shall then set a date for a vote on the proposal by the members of the credit union and select the method of voting by a favorable vote of a majority of the board, according to the provisions of Iowa Code section 533.203.

3.3(2) The membership shall 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 shall be in the manner prescribed in this chapter.

3.3(4) The board of directors shall notify the superintendent of any proposed conversion within three days of an affirmative vote by the board on a conversion proposal. The board shall also notify the superintendent 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 within

seven days of a membership vote to abandon or disapprove the conversion, receipt of disapproval by a chartering authority, or other decision to abandon the conversion.

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

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

3.4(1) *Requirements.* All conversion plans shall be submitted to the superintendent in accordance with 189—3.5(533). The members may not vote on the proposal until the credit union has received preliminary approval from the superintendent under 189—3.5(533), as well as the preliminary determination from the National Credit Union Administration on the proposition for conversion.

3.4(2) *Vote by board of directors.* The board of directors shall, by majority vote, select the method of voting for the membership vote on the conversion proposal in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

3.4(3) *Election committee.* The board shall appoint an election committee of not fewer than seven members, none of whom may be from the board of directors or be a member of a director's immediate family or be an employee of the credit union or a member of an employee's immediate family.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

3.4(4) *Notice of balloting.* The secretary shall set forth the conversion issue in a notice mailed to all members eligible to vote at least 90 calendar days, 60 calendar days, and 30 calendar days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting except for votes cast in person during voting at a meeting held for the purpose of voting.

(1) The close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate, in bold-faced type, that members have the right to vote on the proposed amendment through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall do all of the following:

(1) Adequately describe the purpose and the subject matter of the vote.

(2) Accurately disclose the reasons for the conversion, stated in specific terms and not as generalities.

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 shall clearly inform the member of all of the following:

1. That the conversion, if approved, could lead to members' losing their ownership interest in the credit union.

2. That a credit union member has no more than one vote regardless of the number of shares held, but that in a mutual savings bank or savings association, voting may be based on the amount in the member's deposit accounts, commonly one vote granted for each \$100 on deposit.

3. That if the mutual savings bank or association converts to a stock institution, members will lose their ownership interests and voting rights automatically received as a member.

4. The 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 533.303, or in excess of a well-capitalized net worth level, calculated pursuant to the Federal Credit Union Act, 12 U.S.C. §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 shall be based upon the member's share balance less any amount pledged to share-secured loans.

(3) Specify the costs of the conversion, such as changing the credit union name, examination and operating fees, attorney and consulting fees, tax liability, and any change or increase in compensation or economic benefit to directors or senior management officials, pursuant to subrule 3.10(2).

(4) 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 do each of the following:

1. Convert to a mutual savings bank or savings association or a stock institution.

2. 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.

3. Base member voting rights on account balances.

c. The notice shall not be included as part of any general mailing to members.

d. The notice may be sent electronically to those members who have opted to receive notices electronically.

e. The notice shall be posted in each credit union office 90 calendar days, 60 calendar days, and 30 calendar days before the close of balloting.

f. A member who joins the credit union subsequent to the 30-calendar-day notice and prior to the close of balloting and who is eligible to vote on the conversion shall be provided a copy of the 30-calendar-day notice and any balloting materials.

3.4(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the 30-calendar-day notice of balloting:

- (1) One ballot, clearly identified as the ballot.
- (2) One ballot envelope clearly marked “ballot” with instructions that the completed ballot shall be placed in that envelope and sealed.
- (3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.
- (4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed “ballot” envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

3.4(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

3.4(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

b. The secretary shall mail the balloting materials specified in paragraph 3.4(5)“*a*” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall

be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

3.4(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

3.4(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by 189—subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

3.4(10) *Certification of vote by board of directors.* The board of directors shall certify to the superintendent the results of the membership vote and the written materials provided to members according to the requirements of 189—3.6(533).

3.4(11) *Publication of results.* The board shall inform the membership of the results of the vote, and of the superintendent's approval or disapproval, by conspicuously posting notice in each credit union office for a period of 60 days following receipt of the superintendent's decision under 189—3.7(533). In addition to posting the results in each credit union office, the board shall also communicate the results to the membership by at least one of the following methods:

- a. Include the results in the next mailing of the member's statement of account.
- b. Include the results in the credit union newsletter.
- c. Include the results in the sponsor's newsletter.
- d. Post a notice on the credit union's Web site.
- e. Place a notice in a newspaper of general circulation within the geographic area of operation of the credit union.

3.4(12) *Effective date of conversion.* The board shall notify the superintendent of the effective date of the conversion and shall file evidence of federal regulatory approval for the conversion pursuant to 189—3.9(533).

3.4(13) *Certificate of conversion.* Upon receipt of the certificate of conversion from the superintendent, the credit union shall file the certificate pursuant to 189—3.9(533).

3.4(14) *Termination of conversion proceedings.* At any time prior to completion of a conversion to a federal credit union, the board or the members as provided in the bylaws may call for a special meeting of the members to be held to terminate the conversion proceedings. The membership shall approve the proposal to terminate the conversion proceedings by the affirmative vote of a majority of those members who vote on the proposal.

[ARC 0938C, IAB 8/7/13, effective 9/15/13]

189—3.5(533) Notice to the superintendent.

3.5(1) The credit union shall 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 close of balloting under 189—3.4(533).

3.5(2) The credit union shall 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 shall include with the notice to the superintendent a copy of the notice the credit union proposes to provide to members under 189—3.4(533), as well as the proposed ballot and related instructions and envelopes, all written materials the credit union has distributed or intends to distribute to its members, and the procedures the election committee will follow in its receipt and counting of the ballots.

3.5(3) Superintendent's preliminary determination.

a. The superintendent shall make a preliminary determination regarding the methods and procedures applicable to the membership vote.

b. The superintendent shall 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.

c. 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 as 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.

[ARC 0938C, IAB 8/7/13, effective 9/15/13]

189—3.6(533) Certification of vote on conversion proposal.

3.6(1) The board of directors of the converting credit union shall certify the results of the membership vote to the superintendent within ten calendar days after the vote is taken.

3.6(2) The board of directors shall 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.

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

3.7(1) The superintendent shall 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.

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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) Submission of evidence of approval and effective date.

a. The board of directors of the credit union shall 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.

b. The board of directors of the credit union shall 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 shall cancel the charter of the credit union and issue a certificate of conversion that shall 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 was filed and recorded, if different.

3.9(4) Violations of law or intent to deceive or mislead.

a. 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, or with the intent to deceive or mislead the members of the credit union or the superintendent, the superintendent shall 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 returned to the authority of the superintendent for reinstatement as a state charter, or other action.

b. 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 or made or exhibited false statements, papers or reports to the superintendent.

c. If during the conversion process any person commits any act constituting a fraudulent practice under Iowa Code section 714.8, the matter shall be referred to the attorney general.

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 shall 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 shall 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.

[ARC 0938C, IAB 8/7/13, effective 9/15/13]

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

3.10(1) No director or senior management official of an Iowa credit union shall 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 shall 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.

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