

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 533.303, 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.