

IDCU Spin-Off Guidelines

Throughout all documents and forms regarding the spin-off process the credit union obtaining assets, liabilities, shares, or equity will be referred to as the **acquiring credit union** and the credit union giving up assets, liabilities, shares or equity will be referred to as the **transferring credit union**.

Step 1 - Planning

It is the Iowa Division of Credit Union's (IDCU) policy that a credit union may spin-off portions of its operations to another credit union if it complies with all IDCU policies and rules, the provisions of Iowa Code Chapter 533.401 and 189 Iowa Administrative Code Chapter 16. Preliminary approval from IDCU and any affected regulators must be obtained before any Iowa state-chartered credit union may spin-off part of its operations. IDCU will approve spin-offs that appear to be beneficial to both credit unions (189 Iowa Administrative Code 16.1) and meets requirements set forth in Iowa Code 533.401. The officials of the acquiring credit union must be capable of managing the expanded operation.

The boards of directors of both credit unions develop the terms of the proposed spin-off. Please use the Spin-Off Checklist as a guide to determine what documentation is needed at each stage.

Notification to IDCU

Both the transferring and acquiring credit unions must notify the Superintendent of the intent to be a party in a spin-off within 3 days of their board vote to do so. Forms 1 and 1A and a copy of the minutes from this meeting should be provided to the Iowa Credit Union Division.

Share Insurance Requirements

All credit unions doing business in Iowa are required to maintain federal share insurance through the National Credit Union Share Insurance Fund (NCUSIF) maintained by the National Credit Union Administration. If the acquiring credit union is a privately insured or uninsured out-of-state credit union, they must become federally insured prior to receiving preliminary approval of the spin-off by IDCU.

Accounting Considerations

We recommend both credit unions seek accounting advice on how to account for the spin-off.

Step 2 - Preparing the Spin-Off Application

(189 Iowa Administrative Code 16.2)

Once both credit union boards of directors formalize the spin-off plan and signed contract, the Application for Approval of the Spin-Off, Form 2, and all requested attachments must be completed and submitted to IDCU.

Details of the Transfer

Please provide the details on what assets, liabilities, shares and capital will be transferred between the two credit unions (subrule 16.2(3)). If the acquiring credit union intends to maintain an office currently held by the transferring credit union, the acquiring credit union must complete a branch office application form upon a successful vote of the affected membership.

Bylaw Changes Due to Spin-Off

The spin-off application must address the bylaw changes with regards to field of memberships. The field of membership changes must specifically describe the group to be served by the acquiring and transferring credit unions after the spin-off (subrule 16.2(2)). Please include a copy of the board minutes where the change in the field of membership was approved.

Ability to Serve Members

The acquiring credit union must provide support that shows it can serve the affected membership of the transferring credit union (subrule 16.2(5)).

Proposed Effective Date

Please provide **an estimated effective date** for the transfer to take place (sub rule 16.2(6)). This is an estimate only, due to needing regulatory approvals from the IDCU, NCUA and any other state regulators. Membership votes should not be scheduled until preliminary approval is given from all regulators.

Step 3 – Preparing for the Membership Vote

(Iowa Code §533.401 & 189 Iowa Administrative Code 16.3)

Once all regulators involved provide preliminary approval, the transferring board must, by majority vote, select a voting method in accordance with rule 189—12.6(533) with certain exceptions. In order to provide information on voting procedures in the member notification, this step may be waived by requesting a waiver from IDCU.

Only those members whose shares would be transferred to the acquiring credit union are eligible to vote. The quorum for this special vote will be the same quorum as stated in the transferring credit union's bylaws.

The transferring credit union must provide affected members the opportunity to opt-out of the vote, which allows the member to maintain their membership in the transferring credit union. A member may opt-out by providing the transferring credit union written notice at any time before the membership vote. (See Form 5) The transferring credit union should provide a copy of the opt-out form when communicating the voting information to affected members. Members that have chosen to opt-out forgo their right to vote on the proposal. The transferring credit union must ensure that members returning opt-out forms do not vote on the proposal. Once a member votes on the proposal they may not opt-out. A member may not opt-out after the membership vote has taken place.

The board shall appoint an election committee of at least 5 members to oversee the balloting, tabulate votes, and ensure each eligible member only votes once. No more than two board members may serve on the election committee.

The transferring credit union shall notify the eligible membership within 30 days of that decision. Acceptable voting methods include an in-person meeting, mailed ballots, electronic ballots or a combination of any of these methods. All ballots must remain confidential and be kept for at least 60 days after the certification of the vote.

In-Person Meeting Considerations

The meeting provides the members the opportunity to discuss the spin-off proposal and obtain a full explanation from the officials. A quorum must be present to conduct any business and hold the vote. The minutes of the meeting should reflect a discussion of the terms of the merger proposal, the number of members that attended the meeting, the number of members that voted in favor of the spin-off, and the number of members that voted against the spin-off. 189 Iowa Administrative Code 12.6(8) establishes the procedures to use for in-person meeting votes.

The transferring credit union may also provide for absentee ballots when the only voting method is an in-person meeting. 189 Iowa Administrative Code 12.6(7) provides the procedures to follow for using absentee ballots.

Mailed Balloting Considerations

Mailed ballots provide efficient and convenient access if the membership is not heavily concentrated in one location. The election committee is responsible for ensuring that member identity is verified. All ballots must be postmarked no later than the closing date of balloting to be counted. 189 Iowa Administrative Code 12.6(5) establishes the proper procedure for using mailed ballots.

Electronic Balloting Considerations

Electronic ballots provide efficient and convenient access to members that already communicate with the credit union through electronic channels. Credit unions that choose to provide only electronic voting must provide those who have not opted into electronic communication a way to cast votes in credit union branch offices. The election committee must test the electronic voting system at regular intervals and ensure that each member's identity is verified. Ballots must be received by midnight on the date balloting closes to be counted. 189 Iowa Administrative Code 12.6(6) establishes the proper procedures for using electronic ballots.

Combination Balloting Considerations

Special provisions exist if the board chooses to combine an in-person meeting with either a mailed ballot or electronic ballot. The balloting cutoff date must be at least 5 days before the

in-person meeting. The election committee will reveal the results of the vote at the end of the in-person meeting. The committee also needs to ensure that members vote only once.

Notice of Balloting – Vote of Eligible Members – Form 3 (subrule 16.2(7))

The Notice of Balloting - Vote of Eligible Members -Form 3 needs to address the following items:

- The purpose of the vote.
- The reason for the proposed spin-off.
- The specific assets, liabilities, shares, and equity that will transfer to the acquiring credit union.
- The changes to the transferring credit union’s field of membership
- Provide the name and proposed locations of the acquiring credit union.
- The rules and procedures for voting.
- The date of the close of balloting for ballots submitted other than in-person.
- The date of the in-person meeting, if applicable.
- That balloting is subject to an affirmative vote of the majority of the members casting a ballot.
- That no votes will be accepted after the close of voting unless an in-person meeting is being held.
- If more than one method is chosen, state that members may use any one of the methods to vote.

At a minimum, members shall receive the following information:

- Loan and deposit rate comparisons
- Any other details that may influence the members voting decision, such as a change in services offered or discontinued
- Opt-Out form

All materials provided to the affected membership need to be submitted to the Iowa Division of Credit Union office at a minimum of 7 business days prior to the planned distribution of the information to members. The Division must approve the materials for accuracy before the credit union may distribute the information to the affected members. These items may be submitted to the Division by one of the following methods.

- By mailing to 200 East Grand Ave, Suite 370, Des Moines, IA 50309
- By email to Amanda.swangel@iowa.gov
- By Fax to (515) 725 - 0519

Each affected member should be given a minimum of 20 days but not more than 30 days advance notice of the membership vote. If members have elected to receive electronic communications, they may receive the notice electronically. All other members must receive notice through regular mail. The notice may additionally be distributed any of the following ways:

- Statement mailings

- Newsletters
- Credit Union web site
- Signs posted in the credit union

Retention of Ballots and Publication of Results (subrules 12.9 & 12.10)

The transferring credit union must keep all ballots for a period of 60 days after the close of balloting according to subrule 12.6(9). The credit unions shall publish the results of the vote in a conspicuous place within every credit union branch and at least one of the following other listed methods.

- Place the results on the credit union's web site
- Include a copy of the results in member statements
- Include the results in the credit union's newsletter
- Include the results in the credit union sponsor's newsletter
- Place a notice in a newspaper of general circulation within the geographic area of the credit union

Report to the Superintendent

The board presiding officer and recording secretary of the transferring credit union shall notify the Superintendent of the results of the vote within 10 days after the vote is taken. Please use Form 6, Certification of the Spin-Off Proposal Vote.

Step 4 – Spin-Off Completion Considerations

The effective date, or completion of the spin-off is when the actual transfer of assets, liabilities, shares and equity takes place. All documents and records pertaining to the spin-off will be the responsibility of both the acquiring and transferring credit union. Records should be kept for at least 7 years after the transfer. Credit unions using outside data processing systems should give advance notice of the spin-off to its processor and request guidance in transferring the accounts.

Balancing the Books

- Entries necessary to record the financial terms of the merger, including any share adjustment, shall be made on the books of each credit union.
- Trial balances of the general ledger and the individual share and loan ledgers shall be prepared for both credit unions.
- After the trial balances have been proved, financial and statistical reports for each credit union shall be prepared.

Final Report Submission

After the transfer of the assets, liabilities and equity accounts to the acquiring credit union has been completed, financial and statistical reports of both credit unions shall be prepared. The board presiding officer and financial officer of both credit unions shall execute the Certification of Completion of Merger. This form shall be submitted to the Superintendent within 30 days after the effective date of the spin-off.

Certificate Completion by the Division

The Superintendent will then issue a certificate to certify the completion of the spin-off to each credit union. If a branch office is transferred as part of the spin-off, the affected regulator will provide the acquiring credit union a copy of any required official document to be displayed in the branch. Any branch office acquired by an out-of-state credit union will be subject to the foreign credit union fee.