



Efficient, Effective Regulation

Iowa Division of Credit Unions

MERGER GUIDELINES

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Introduction¹

This document provides guidance on the merger process for Iowa state-chartered credit unions in accordance with Iowa Code Chapter 533 and Iowa Administrative Rules Chapter 189. It is organized into sections covering 1) planning and due diligence, 2) the merger application, 3) preparing for and conducting the membership vote, and 4) merger completion. The credit union that will no longer exist is referred to as the merging credit union, while the credit union that remains will be referred to as the continuing credit union. If the proposed merger involves a federal or out-of-state credit union, other requirements may apply.

Section 1: Planning

It is the IDCU's policy that a credit union may merge with another credit union if it complies with the provisions of Iowa Code section 533.401, 189 Iowa Administrative Code (IAC) Chapter 12, and National Credit Union Administration (NCUA) Rules and Regulations Part 708. Before any Iowa state-chartered credit union may merge with another credit union, the IDCU and NCUA must provide approval.

The merger must adhere to applicable state and federal law, including IDCU policies and rules. The officials of the continuing credit union must be capable of managing the expanded operation.

Please use Form 6300 as your required document checklist during the merger process. Your assigned Examiner-in-Charge (EIC) or other IDCU staff may provide guidance in a proposed merger or consideration of a merger in terms of process and procedure.

Due Diligence

The IDCU may give requested examination data to the continuing credit union if a confidentiality agreement is signed by all parties and accepted by the IDCU. A copy of this agreement is located on the merger forms page of the IDCU web site. The Division may take steps to verify the credit union's intent to merge prior to sending confidential information. The following forms should be used to meet the verification requirements and obtain confidential information from IDCU:

- Merging Credit Union Board of Directors Resolution
- Continuing Credit Union Board of Directors Resolution
- Confidentiality Agreement

Board Approval

The majority of the board of directors of each credit union must approve the merger plan. This may be accomplished by a board vote. Upon approval, each board should complete the applicable Board of Directors Resolution form, and submit the form to the IDCU as part of the merger plan.

Notifying the Superintendent

In preparation of submitting a merger application, the boards of directors of both credit unions must develop the terms of the proposed merger. Each credit union board must vote to approve the merger

¹ Forms and checklists are available on the IDCU website. Underlining throughout this document indicates the form can be found on the IDCU website. <https://creditunions.iowa.gov/>

plan, and the continuing credit union must notify the IDCU within ten days of voting to merge, as outlined in 189 IAC 12.8.

National Credit Union Share Insurance

All Iowa state-chartered credit unions are required to maintain insurance from the National Credit Union Administration. Any additional insurance obtained from another share guarantor or insurance plan must be approved by the Iowa Commissioner of Insurance and the Superintendent.

Retention of Merger Records

The continuing credit union must keep a copy of all documents and records pertaining to the merger as part of its permanent records.

Accounting

Unless otherwise pre-approved, credit unions should use the acquisition method of accounting in accordance with generally accepted accounting principles (GAAP).

Section 2: Submitting the Merger Application

After the continuing credit union has notified the IDCU of its intent to merge, the merger application and all requested attachments must be completed and submitted to the IDCU by mail or hand delivery to the Division office at 200 East Grand Avenue, Suite 370, Des Moines, IA 50309, or by email to isaac.strohman@iowa.gov.

The IDCU cannot make a preliminary decision on the merger plan until receiving all required documents and information. Generally, credit unions can expect to have a preliminary decision on regulatory approval from the IDCU within 90 days of submitting the application, this may vary depending on the nature of the institutions involved and the completeness of the application documents.

Required Forms and Documents

The below list contains the forms needed from the credit unions to complete the application process. See Form 6300—Merger Plan Document Checklist for a complete list of documents required during the merger process. Refer to the IDCU website for a timeline.

- Form 6301— Merger Application
- Form 6302 — Resolution of Continuing Board
- Form 6303 — Resolution of Merging Board
- Form 6304 — Merger Agreement (proposed)
- Form 6305 — Notice of Special Meeting (proposed); attach any letter to membership accompanying the notice.
- Form 6306 — Ballot for Merger (proposed)
- Continuing Credit Union Financial Statement

- Merging Credit Union Financial Statement
- Form 6310 — Consolidated Financial Statement
- Form 6311 — Continuing Credit Union Share Ratio
- Form 6312 — Merging Credit Union Share Ratio
- Form 6313 — Combined Share Ratio
- Confidentiality Agreement from IDCU website.
- Certification of No Non-Disclosed Merger-Related Financial Arrangements.
- Continuing Credit Union Delinquency Summary
- Merging Credit Union Delinquency Summary
- Current analysis of the adequacy of the Allowance for Loan & Lease Losses Account
- Board minutes that reference the merger for the merging and continuing credit union (24 months before the credit unions approved the merger plan).
- Copies of the merging and continuing credit unions' fields of membership.

Form 6301 Merger Application

Form 6301 is a web form and must be completed in its entirety in one session. The IDCU recommends documenting the answers to Form 6301 in a separate document in order to assist in completing the web form.

Designation of Continuing Credit Union

The merger plan must designate the continuing credit union, along with the location of its principal office after the merger.

Probable Asset/Share Ratios (PAS)

The analysis of the value of shares is used to determine whether a share adjustment is necessary. The Probable Assets to Shares (PAS) Worksheet on the IDCU web site must be included with the initial application.

The PAS Ratio formula is calculated by subtracting liabilities from assets and dividing the product by total shares. To determine the value of shares in each credit union the following information is necessary to complete the calculation:

- A current financial and statistical report from each credit union
- A joint appraisal of assets and liabilities should be performed
- A loan classification, with special attention to the collectability of outstanding loans

Provisions for Share Adjustments

If both credit unions offer similar products and services, the IDCU encourages the credit unions to discuss a share distribution of some kind if the PAS ratio difference is more than 500 basis points. For example, undivided earnings of this credit union might be used to increase, pro rata, the share balances of the merging credit union members or the dividend rate may be increased for the

accounting period ending immediately prior to the merger. The merging credit union board members have an obligation to ensure the members' interests are reasonably protected.

A share adjustment may also be made when the credit unions participating in the merger have different dividend periods. Any agreement for adjustment of members' shares shall be included in the merger application, with information as to the reason for the adjustment and how it is to be effected.

Potential Bylaw Amendments

The merger application must contain a statement of proposed amendments to the bylaws of the continuing credit union. Potential changes may include the following:

- The field of membership must be specifically addressed. If the credit unions have complementary common bonds, the application should describe the group to be served by the continuing credit union after the merger. If the common bonds are not complementary, the credit unions will need to submit a detailed plan for the field of membership. IDCU staff will review the field of membership on a case-by-case basis and address concerns directly with the credit union.
- Any changes in the number of members that constitute a quorum at membership meetings. A formal bylaw amendment form and a copy of the meeting minutes approving the change must be sent to the IDCU to be effective.
- Any change to the number and terms of the continuing credit union's board of directors. A formal bylaw amendment form and a copy of the meeting minutes approving the change must be sent to the IDCU to be effective. The boards of the two credit unions should not expect to be combined as a result of the merger.

Potential Name Change

If the continuing credit union plans to change their name as part of the merger, they must submit an amendment to their Articles of Incorporation, Bylaw Amendment, and a copy of the meeting minutes in which the amendment was approved prior to merger completion, see Iowa Code section 533.201. The IDCU may require a legal opinion regarding the appropriateness of the chosen name or an approval from the US Patent and Trademark Office.

Provision for Notification and Payment of Creditors

The boards of directors of each credit union must reach an agreement on arrangements for notifying and paying creditors of the merging credit union. The merging credit union may give advance notice of the merger to its creditors, and arrange submission and payment of bills prior to the merger date. The merging credit union may record all obligations incurred in accounts payable and pay such obligations that it would normally pay prior to the merger date. After the merger, the continuing credit union should notify and pay remaining creditors.

Waiving the Membership Vote

The Superintendent may permit the merger to become effective without an affirmative vote of the membership of the merging credit union only if the Superintendent finds that an emergency exists which justifies the waiver. If the Superintendent approves the waiver, a notice of balloting and sample ballot are not required in the merger application.

If the merging credit union is requesting a waiver of its membership vote, note the request and provide an explanation in the merger application. Credit unions should not assume the membership vote will be waived.

Nonconforming Assets and Liabilities

When a state credit union is merging into a continuing federal credit union and it has any assets or liabilities that do not conform to federal requirements, the plan must contain a statement of actions that will be taken to eliminate the nonconformity.

Joint Approval

Credit unions must receive joint approval from the IDCU and NCUA before proceeding with the merger vote or completion process. Generally, credit unions can expect to have a preliminary decision on regulatory approval within 90 days of submitting the application, although this may vary depending on the nature of the institutions involved and the completeness of the application.

Section 3: Membership Vote

Upon receiving preliminary approval of the merger plan, the merging credit union may move forward with preparing for the membership vote on the proposed merger. Credit unions must notify the membership and conduct the vote in accordance with Iowa Code section 533.203 and 189 IAC Chapter 12. The merging credit union must hold the vote of the membership within 60 days of receiving preliminary approval from the IDCU as described in 189 IAC 12.8(2).

Voting Method Determination

The merging board must select a voting method by majority decision in accordance with Iowa Code section 533.203(3). Acceptable voting methods include an in-person meeting, mailed ballots, electronic ballots, or a combination of any of these methods.

In-Person Meeting Considerations

A meeting provides members the opportunity to discuss the merger proposal and obtain a full explanation from each credit union's leaders. Iowa law does not require a meeting of the membership prior to merger if an alternative voting method is selected.

A quorum must be present to conduct the vote. Minutes should be kept for this meeting and include

- 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 merger,
- and the number of members that voted against the merger.

The merging credit union may also provide for absentee ballots when the only voting method is an in-person meeting. 189 IAC 12.3(4) provides the procedures to follow for using absentee ballots. The result of the vote is announced at the end of the in-person meeting. No member may be permitted to cast more than one vote.

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 verifying member identity. If an in-person meeting is also held, all ballots must be postmarked 5 days before the meeting date to ensure that mailed ballots will be counted. 189 IAC 12.3(1) establishes the proper procedures 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 choosing to use only electronic voting must provide a way to cast votes inside credit union branch offices for members who have not opted into electronic communication. 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 IAC 12.3(2) and 189 IAC 12.3(3) establish 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 must verify that each member did not vote more than once. 189 IAC 12.3 establishes the proper procedures for using a combination of voting methods.

The merging credit union must keep a written record of the cast ballots to assure no member votes more than once. This may be accomplished by requiring all voting be submitted by a written ballot. An alternative method would be to maintain a register of all members present at the meeting and record on this register each individual member who votes at the meeting.

Election Committee

After approving voting methods, the board must appoint an election committee of at least five members. No more than two board members may serve on the election committee. All ballots must remain confidential. The election committee is responsible for:

- overseeing the balloting,

- tabulating all votes,
- and ensuring each eligible member only votes once.

Preparing Member Notifications

The IDCU must approve all proposed materials to be sent to the membership before the credit union may distribute the information to the members. Per Iowa Code section 533.401(2), the notice of balloting must be submitted at least fifteen days before it is sent to members. Submit these items to the IDCU by one of the following methods:

- By mail or hand delivery to 200 East Grand Ave, Suite 370, Des Moines, IA 50309.
- By email to isaac.strohman@iowa.gov.

Notice of Balloting

The merging credit union must set forth the substantive vote in its entirety, including the reasoning of the board of directors or the nominees for election, in a notice to all members eligible to vote. Credit unions should use [Form 6305—Notice of Balloting](#) located on the IDCU website to ensure all requirements are included.

Required Content

Pursuant to 189 IAC 12.2(3) and NCUA Rules & Regulations Part 708, the notice of balloting shall:

- Set forth the rules and procedures for voting;
- Include the date of the close of balloting for ballots submitted other than in person at a meeting held for the purpose of voting;
- Indicate that balloting is subject to an affirmative vote of a majority of ballots cast;
- Clearly explain that no other vote on the subject shall be taken after the closing date of balloting except for votes cast in person at a meeting held for the purpose of voting.
- Include a summary of the board’s reasons for the proposed merger,
- Specify the purpose of the meeting and the location if a meeting of the membership will be held;
- Inform members that they have the right to vote on the proposal according to the method of voting selected by the board of directors pursuant to Iowa Code section 533.203;
- Inform members that they can submit comments about the merger that will be publicly available through an NCUA website and how to submit those comments;
- Provide the name and location (including all branches) of the continuing credit union;
- Disclose discontinuance of any services or products;
- Disclose any merger related financial arrangements such as increased compensation, retirement, severance or any other economic benefits that have accrued or will accrue to

senior management, managers, directors, or the five top paid employees, agents, brokers, family members, or any other closely related parties as a result of or due to the merger; and

- State any other vital matters, including any special merger terms, which might influence the members in voting on the merger proposal.

The notice of balloting should be accompanied by:

- Form 6306—Sample Ballot for Merger Proposal;
- Forms 6310, 6311, 6312, and 6313;
- A statement comparing the net worth of the credit unions;
- A comparison of deposit and loan rates
- A summary of the merger plan- Containing as a minimum: an analysis of share values, any dividend to be paid, and any explanation of any changes relative to the insurance of member accounts.

If members have elected to receive electronic communications, they may receive the notice electronically. All other members must receive at least one notice of balloting through regular mail, but this can be included with mailed statements.

Additional notifications to meet Iowa law can be fulfilled by distributing a notice any of the following ways:

- Statement mailings
- Newsletters
- Credit Union website
- Signs posted in the credit union branches and ITMs.

Timing of Notice

Federal and Iowa law currently have different deadlines for member notification. Both the NCUA and IDCU must approve the final version of the notice of balloting before it is mailed to the merging credit union members. The following table depicts the different periods for notification.

Notification Type	Federal Rules	Iowa Rules
Member Notification	Minimum of 45 days but no more than 90 days.	Minimum of 20 but no more than 60 days prior to the scheduled conclusion of the vote.
Member Peer to Peer Communication	Must notify NCUA Office of Credit Union Resources and Expansion 15 days before notifying the members.	N/A

NCUA Requirements for Member-to-Member Communication

NCUA requires that the Notice of Balloting be sent to NCUA's Office of Credit Union Resources and Expansion at least 15 days before mailing the notification to members. IDCU will submit the approved Notice of Balloting and sample ballot to CUREMail@ncua.gov on behalf of the merging credit union after approval. This ensures that NCUA sets up a space for your members to communicate with each other about the potential merger. (The member-to-member communication will be posted at the discretion of the NCUA and notice to the credit union may not be provided).

Verification of Members' Accounts

The IDCU recommends that a complete verification of the share and loan accounts of members of each credit union be included as part of the merger process. A verification of the member accounts may be conducted in connection with the distribution of the Notice of Balloting.

Retention of Ballots and Publication of Results

All ballots must be retained for a period of 60 days after the close of balloting, in accordance with 189 IAC 12.8(3). The merging credit union shall publish the results of the vote, pursuant to 189 IAC 12.12, in a conspicuous place within every credit union branch and at least one of the following listed methods:

- Place the results on the credit union's website
- 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 merging credit union shall complete Form 6308—Certification of the Merger Vote to notify the Superintendent of the results of the membership vote. The following items must be submitted:

- A certified copy of the board minutes which contain the vote of the board of directors to approve the merger and to submit the merger to a vote of the membership.
- A certified copy of the notices provided to members.
- A certified copy of any ballots provided to members.
- A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed merger.

Any necessary bylaw amendments and branch applications pertaining to the merger may be

prepared and sent with Form 6308—Certification of the Merger Vote, or any time after the Superintendent acknowledges receipt of this form.

Certificate and Bylaws Completed by IDCU

Upon receipt of Form 6308—Certification of the Merger Vote, the IDCU will provide the continuing credit union three copies of the Certificate of Merger to be filed with the county recorder after the merger completion, and a new bylaw page 2A encompassing the merging credit union's field of membership dated the effective date of the merger. The IDCU will provide updated branch certificates for any branches retained in the merger.

If the merger application indicates a change in board members, the membership quorum, or a name change, the IDCU will prepare new bylaws and/or other official legal documents after any required amendments are submitted to the IDCU office.

Section 4: Merger Completion Considerations

At the time the merger is completed, the board's presiding officer and the chief financial officer of the board (typically the board treasurer) of each credit union participating in the merger should take actions to merge assets and liabilities of the merging credit union. Form 6304—Merger Agreement should be signed and dated at this time. The topics below provide guidance on completing the merger.

After the merger is complete, the following forms and documents must be sent to the IDCU within 30 days of the effective merger date to close the merger and transfer the NCUSIF deposit of the merging credit union to the continuing credit union:

- Signed Form 6304—Merger Agreement.
- Form 6309—Certification of Completion of Merger
- Financial statements for both credit unions before the merger effective date.
- Financial statements for both credit unions after the merger effective date.
- Merging Credit Union's original State of Iowa Charter Certificate.
- Merging Credit Union's original Share Insurance Certificate.
- Merging Credit Union's bond coverage extension letter.

Books and Records

All the books and records of the merging credit union shall be transferred to the continuing credit union to be retained as required by law and industry standard. The continuing credit union may need to seek accounting advice to ensure the proper accounting method for the merger is used.

Transfer of Assets, Liabilities, and Equity Accounts

All assets, liabilities, and equity accounts of the merging credit union shall be conveyed or transferred to the continuing credit union with the appropriate legal documents. It may be desirable to obtain the services of an attorney to prepare legal documents required to effect proper transfer and conveyance. The credit unions should take steps to register bonds and securities in the name of the continuing credit union. Appropriate receipts of transfers and registrations shall be made between the financial officers of the credit unions involved.

The continuing credit union should retain a fully executed Form 6304—Merger Agreement for its files. It should also retain evidence of the IDCU and NCUA approval of the merger. You may be asked to provide proof of the merger when you are dealing with outside parties previously connected with the merging credit union.

Surety Bond Coverage

The continuing credit union's surety bond coverage should be reviewed and increased where necessary as of the effective date of the merger. The continuing credit union should notify its surety company regarding the merger. The bond coverage of the merging credit union may be canceled as soon as the charter has been canceled, at the conclusion of the merger, not before.

NCUA Capitalization Deposit

The NCUSIF deposit and insurance premium will be assessed in accordance with NCUA Rules and Regulations section 708b.102.

Contracts/Contingent Liabilities

All debts and obligations of the merging credit union are assumed by the continuing credit union upon completion of the merger, as set forth in Iowa Code section 533.401(8). The officials of the continuing credit union should review all outstanding contracts of the merging credit union for potential costs of contingent liabilities. For example, the cancellation of a data processing contract may carry a significant cancellation expense. The continuing credit union may be required to pay the merging credit union's Moneys and Credits Tax and the annual assessment of the IDCU.

Cancellation of Charter of Merging Credit Union

If the Superintendent is satisfied that the merger has been accomplished in accordance with the approved plan and all membership voting rules were followed, the charter of the merging credit union will be canceled.

Termination of Insurance of Merging Credit Union

If the NCUA Regional Director is satisfied that the merger has been accomplished in accordance with the approved plan, the insurance certificate of any merging federally insured credit union will be canceled.

Final Certificate Filing with the County Recorder's Office

The continuing credit union shall file the copies of the Certificate of Merger with the county recorder

of the county within which the merging state credit union had its principal place of business and with the county recorder of the continuing credit union's principal place of business. The county recorder will record one of the Certificates of Merger and note recording on the other two Certificates.

The county recorder shall record and index the Certificate of Merger, and the continuing credit union will return the original Certificate of Merger with the recorder's certificate of record attached to the Superintendent for permanent record. The two Certificates marked "copies" are for filing with the continuing credit union and the merging credit union.

Resources

Iowa Division of Credit Unions website:

<https://creditunions.iowa.gov/>

National Credit Union Administration website:

<https://ncua.gov/>

NCUA Merger Resources Webpage:

<https://ncua.gov/support-services/credit-union-resources-expansion/credit-union-merger-resources>

Iowa Code Chapter 533:

<https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=533&year=2023>

Iowa Administrative Code 189:

<https://www.legis.iowa.gov/law/administrativeRules/chapters?agency=189&pubDate=01-25-2023>

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