



KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

IOWA DEPARTMENT OF COMMERCE
DIVISION OF CREDIT UNIONS
KATIE AVERILL, SUPERINTENDENT

December 16, 2020

**Iowa Division of Credit Unions
Regulatory Advisory Bulletin**

Approved Waiver for Board of Director Elections at Virtual Annual Meetings:

Due to global health concerns related to COVID-19, the recommendation from the Centers for Disease Control and Prevention, and need to socially distance, many Iowa state-chartered credit unions transitioned in-person annual meetings into virtual annual meetings for calendar year 2020. The global health concerns related to COVID-19 continue, as such the Iowa Division of Credit Unions renews the 2020 Variance for Board of Director Elections at Virtual Annual Meetings.¹

Virtual annual meetings include many opportunities, but also many challenges. One challenge exists in providing each member a meaningful opportunity to vote for the credit union's board of directors.

Iowa Code Section 533.204 requires each credit union to complete the election of the board of directors at each annual meeting. Iowa Administrative Code Section 189, Chapter 12 articulates the available voting options, sets out the requirement that credit unions provide each member a meaningful opportunity to vote, and the requirements and eligibility for nominating and voting for candidates. Iowa Administrative Code §§ 189 – 12.1; 12.3(1) (533). The Administrative Code lays out the five options for board of director election voting:

1. Mailed ballots – 189 – 12.3(4)
2. Electronic voting – 189 – 12.3(5)
3. In-person only at the meeting – 189 – 12.3(8)
4. Absentee ballots – subsequent in-person vote at meeting – 189 – 12.3(6)
5. Combination.

The difficulty lies in balancing the need for social distancing and virtual meetings with the need for compliant voting, as virtual annual meetings largely prevent in-person voting at the meeting. As such, the Iowa Division of Credit Unions hereby establishes a waiver from Iowa Administrative Code Section 189 – 12.3 to the extent the rule requires in-person voting to be completed at the annual meeting. This Division action is consistent with Iowa Administrative Code 189, Chapter 23 and is only effective through December 31, 2021. The Division finds that the superintendent has jurisdiction over rule 189 – 12.3. No statute or rule otherwise controls the granting of this waiver from the rule, and the waiver is consistent with applicable statutes, constitutional provisions, and other provisions of law. See Iowa Administrative Code § 189 – 23.1(2). The Division further finds this waiver does not inappropriately waive or vary the statutory requirement found in Iowa Code Section 533.204, because the membership is still required to elect the board of directors through the annual meeting, and only the method of voting is being varied. The superintendent finds each of the following:

¹ In accordance with a legislative change, this has been captioned as a waiver rather than a variance; this is not a substantive change.

1. Application of the requirement that in-person voting be held at the meeting will result in an undue hardship on credit unions due to requirements of social distancing and difficulties related to COVID-19;
2. The waiver from the requirement that in-person voting be done at the meeting will not prejudice the legal rights of credit union members, as members must still be provided a meaningful opportunity to vote;
3. The requirement that in-person voting be done at the meeting is not specifically mandated by another statute or provision or law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by permitting in-person voting prior to the annual meeting.

For the forgoing reasons, the Superintendent of the Iowa Division of Credit Unions, upon her own motion, issues this waiver to Iowa Administrative Code 189, Chapter 12 and hereby permits all Iowa state-chartered credit unions to hold in-person voting at each credit union branch or drive thru window prior to the scheduled annual meeting. Voting must be available for no less than 72 hours and all in-person voting completed other than “at the annual meeting” shall be completed at the credit union “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 the annual meeting in order to be considered valid.” Iowa Administrative Code § 189 – 12.3(3)(d). The close of balloting shall be at least 5 days before the scheduled annual meeting. Iowa Administrative Code § 189 – 12.3(3).

Completed ballots must be returned to the credit union in an envelope with a completed Identification Form. Iowa Administrative Rule 12.3(4). Returned ballots shall be placed in ballot boxes and shall be opened and the vote tallied by the election committee in accordance with Iowa Administrative Code Sections 189 – 12.3(2)(f); 12.3(4)(c). The Identification Form shall include the name, address, signature, and credit union account number of the voter, but may be completed by the credit union member at the time the ballot is cast. Iowa Administrative Code §189 – 12.3(4)(a)(3). A credit union allowing members to vote in-person at the branch or drive thru will need to provide each member who requests a ballot the following:

1. Envelope
2. Blank Ballot
3. Blank Identification Form

If a credit union elects to hold voting (either in whole or in-part) before the virtual annual meeting, then the credit union is prohibited from accepting nominations of board of director candidates from the floor and must follow the procedure for accepting nominations by petition set forth under Iowa Administrative Code Sections 189 – 12.2(1); 12.2(2); 12.2(5). All other notice requirements and procedures set forth in Iowa Administrative Code Section 189, Chapter 12 remain in full force and effect.

If a credit union has elected to hold a hybrid annual meeting [a live meeting being simultaneously broadcast virtually] the credit union may choose to offer in-person voting at the meeting instead of in-person voting at the credit union or in combination with in-person voting at the credit union. However, no matter how the credit union chooses to hold its annual meeting voting, the credit union is required to ensure each member is only permitted to vote once and that each member has a meaningful opportunity to vote. Each credit union is responsible for establishing its own method for validation.

Katie Averill
Superintendent of Credit Unions

KA/jcp