

## Iowa Division of Credit Unions (IDCU) Merger Guidelines

Throughout all documents and forms regarding the merger process the credit union that will no longer exist will be referred to as the merging credit union and the credit union that remains in existence will be referred to as the continuing credit union.

### Step 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](#) and/or [189 Iowa Administrative Code \(IAC\) 12.6](#). Before any state-chartered credit union may merge with any credit union, prior approval of the IDCU must be obtained, along with preliminary approval by the NCUA.

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.

As necessary, representatives of the IDCU and/or the Iowa Credit Union League may provide assistance to investigate a proposed merger, assist officials of the credit unions in preparing a suitable merger plan, and analyze the financial condition of each credit union involved.

### *National Credit Union Share Insurance*

All Iowa state-chartered credit unions are required to maintain insurance from the appropriate agency of the federal government, the National Credit Union Administration. Federally insured credit unions are covered by the National Credit Union Share Insurance Fund (NCUSIF). If additional insurance is obtained from some other share guarantor or insurance plan, it must be approved by the Iowa commissioner of insurance and the superintendent.

If the continuing credit union is an out-of-state, non-federally insured or uninsured credit union an insurance application is required to be submitted to the appropriate NCUA Regional Director when the merging credit union requests approval of the merger proposal so that the credit union is federally insured as of the date of the merger, see [Iowa Code Section 533.115\(2\)](#). An NCUSIF deposit and a prorated insurance premium will be assessed on any additional share accounts insured as a result of the merger.

### *Retention of Merger Records*

A copy of all documents and records pertaining to the merger will be the responsibility of the continuing credit union to ensure they remain part of the permanent records of the continuing credit union.

### Step 2 Preparing the Merger Application

#### [Iowa Code Section 533.401](#) & [189 IAC 12.6\(2\)a](#)

A state credit union that seeks to merge with another credit union shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors, see [189 IAC 12.6](#). After both credit union boards vote to merge, a letter of intent to merge shall be sent to IDCU by the continuing credit union within 3 days of the meeting in which the vote was taken.

In preparation of submitting a merger application, the boards of directors of both credit unions develop the terms of the proposed merger. The continuing credit union may request examination data of the merging credit union from the Division once the IDCU receives a confidentiality agreement signed by officials of both credit unions. The application of merger, Form 6301, with all requested attachments must be completed and submitted to the IDCU. Please use Form 6300 as your checklist during the merger process.

### *Probable Asset/Share Ratios (PAS)*

The analysis of the value of shares is necessary to determine whether or not a share adjustment is warranted. The PAS forms 6311, 6312, and 6313 are included in this policy for this purpose.

To determine the value of shares in each credit union the following is necessary:

- 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
- The PAS Ratio formula is calculated by subtracting liabilities from assets and dividing the product by total shares.

### *Share Adjustments*

Assuming a “merger of equals”, in terms of products and services, IDCU would expect a merging dividend if the PAS ratios are materially different, or more than 250 basis points. The merging board members have an obligation to ensure the members’ interests are reasonably protected.

### *Provisions of Share Adjustments:*

- If the shares in both credit unions have a PAS of 100 percent or more but the PAS of shares in one credit union is significantly higher than the other, the members whose shares have a higher value may be entitled to an adjustment in connection with the merger. For example, undivided earnings of this credit union might be used to increase, pro rata, the share balances of these members or the dividend rate may be increased for the accounting period ending immediately prior to the merger.
- The shares in federally insured credit unions cannot be adjusted below their balances on the credit union records. Shares in a non-federally insured credit union, if impaired, will either be adjusted or appropriate agreements for adjustment or guarantees received from the insurance provider. Shares in an uninsured credit union, if impaired, may have to be adjusted down from the book value.
- 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 plan, with information as to the reason for the adjustment and how it is to be effected.

### *Designation of Continuing Credit Union*

The continuing credit union and where its principal office will be located after merger will be included in the plan. If the continuing credit union intends to keep the office of the merging credit union, the continuing credit union must complete a branch office application.

### *Legal Document Amendment Considerations*

The merger plan must contain a statement of proposed amendments to the bylaws of the credit union including the following:

- The definition of its field of membership – the field of membership must specifically describe the group to be served by the continuing credit union after the merger,
- Changes in the number of members that constitute a quorum at membership meetings,
- The number and terms of office of the members of the board of directors. A formal amendment must be filed with IDCU to be effective.

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 and a copy of the meeting minutes in which the amendment was approved prior to merger completion, see [Iowa Code Section 533.201](#).

### *Verification of Members' Accounts*

It is recommended that a complete verification of the share and loan accounts of members of each credit union be included in the merger plan. A verification of the member accounts may be conducted in connection with the distribution of the Notice of Balloting.

A written record must be kept of the balloting on the merger proposal to assure that no member will vote more than once. This may be accomplished by requiring all voting to be by 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.

### *Nonconforming Assets and Liabilities*

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

### *Provision for Notification and Payment of Creditors*

The boards of directors must reach agreement as to arrangements for notifying and paying creditors of the merging credit union.

- The merging credit union can give advance notice of the merger to its creditors so that, bills could be submitted and paid by the merging credit union prior to the merger date.
- The merging credit union can 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.

### **Step 3 – Preparing for the Membership Vote**

#### **[Iowa Code Section 533.401 & 189 IAC 12.6](#)**

Once all regulators involved provide preliminary approval, the merging board must, by majority vote, select a voting method in accordance with [Iowa Code Section 533.203\(3\)](#). The merging board may select a voting method before preliminary approval is granted by requesting a waiver from IDCU.

Note, if the merging credit union is requesting a waiver of its membership vote, the merger application should specify this. 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.

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 merging credit union shall notify the 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 merger 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 merger, and the number of members that voted against the merger. [189 IAC 12.6\(8\)](#) establishes the procedures to use for in-person meeting votes. The merging credit union may also provide for absentee ballots when the only voting method is an in-person meeting. [189 IAC 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 IAC 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 IAC 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 ([189 IAC 12.6\(4\)](#))*

Each 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

The Notice of Balloting, Form 6305, shall:

- Specify the purpose of the meeting and the location.
- State the reason for the proposed merger.
- Include a summary of the merger plan, containing as a minimum, a combined financial report (form 6310 or its equivalent), an analysis of share values, any dividend to be paid, and any explanation of any changes relative to the insurance of member accounts.
- Provide the name and location (including all branches) of the continuing credit union.
- Inform the 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](#).
- Be accompanied by a Sample Ballot for Merger Proposal.
- Enclose a chart of comparable deposit and loan rates.
- Disclose discontinuance of any services or products.
- Disclose any compensation, retirement, severance or any other economic benefits that have accrued or will accrue to senior management, managers, directors, agents, brokers, family members, or any other closely related parties as a result of or due to the merger.
- State any other vital matters, including any special merger terms, which might influence the members in voting on the merger proposal.
- Enclose Forms 6310 , 6311, 6312,6313.

All proposed materials provided to the 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. IDCU must approve the materials for accuracy before the credit union may distribute the information to the members. These items may be submitted to IDCU by one of the following methods.

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

#### *Retention of Ballots and Publication of Results ([189 IAC 12.9](#) & [189 IAC 12.10](#))*

All ballots must be kept for a period of 60 days after the close of balloting according to [subrule 12.6\(9\)](#). The merging credit union 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 merging credit union shall notify the Superintendent of the results of the vote within 10 days after the vote is taken. Please use Form 6308, Certification of the Merger Vote.

### **Step 4 - Merger Completion Considerations**

At the time the merger is completed, the board presiding officer and the chief financial officer of each credit union participating in the merge should take actions to merge assets and liabilities of the merging credit union. The topics below provide guidance on completing the merger.

#### *Checking Accounts of Merging Credit Union*

- Obtain an agreement from the bank as to the amount of service charge for handling the merging credit union's account for outstanding checks.
- Calculate the net amount of cash in the bank to be transferred to the continuing credit union. The net amount must allow for checks disbursed but not yet presented for payment and should allow for estimated service charges. Issue a check for this amount, payable to the continuing credit union.
- Send the bank statements with canceled checks to the continuing credit union.
- Issue an order to the bank to stop payments at the end of 90 days on any outstanding check of the merging credit union. At the end of 90 days, remit the balance in the merging credit union's account to the continuing credit union.

#### *Closing and 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.

- The books of the merging credit union, but not the books of the continuing credit union, shall be closed.
- Trial balances of the general ledger and the individual share and loan ledgers shall be prepared for both the merging and continuing credit unions.
- After the trial balances have been proved, financial and statistical reports for each credit union shall be prepared.

#### *Entries on the Books of the Credit Unions*

All mergers completed after December 31, 2008 are required to use Accounting Standards Codification (ASC) Topic 805, Business Combinations and ASC Topic 820, Fair Value Measurements and Disclosures methods when combining records. The continuing credit union may need to seek accounting advice to ensure the proper accounting method for the merger is used.

#### *Individual Share and Loan Accounts*

The individual Share and Loan Accounts of the merging credit unions may be ruled off, balance brought forward, and transferred to the continuing credit union. Trial balances of the individual share and loan accounts shall then be taken by the continuing credit union to insure that they are in agreement with the general ledger control accounts. The accounts, passbooks, or other statements shall be re-numbered to avoid any confusion in identity, and the name of the continuing credit union shall be stamped on each individual ledger, passbook, or statement.

Credit unions using outside data processing should give advance notice of the merger to its processor and request guidance in merging the accounts.

#### *Other Books and Records*

All the books and records of the merging credit union shall be transferred to the continuing credit union to be retained for a period of not less than 5 years for reference and examination.

#### *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. Steps shall also be taken to register bonds and securities in the name of the continuing credit union. Appropriate receipting shall be made between the financial officers of the credit unions involved. The continuing credit union should assure that it obtains a fully executed Merger Agreement, (form 6304), for its files. It should also retain evidence of the Credit Union Division and NCUA approval of the merger. At times, you will be requested 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 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*

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 cancellation expense. This occurs when the continuing credit union does not require the data processing service that had been retained by the merging credit union through a term contract.

### *Final Report Submission*

After the transfer of the assets, liabilities and equity accounts to the continuing credit union has been completed, financial and statistical reports of the continuing credit union shall be prepared.

The charter of the merging credit union may not be canceled until the officials have certified the merger has been completed. The board presiding officer and financial officer of the continuing credit union shall execute the Certification of Completion of Merger, Form 6309. This form shall be submitted to the Superintendent with the financial and statistical reports, including pre-merger financial statement, and a post-merger combined financial statement, the charter and insurance certificate to the appropriate NCUA Regional Director, out-of-state regulatory authority or private deposit insurance provider, as applicable, upon completion of the merger. The continuing credit union shall submit these items to the Superintendent within 30 days after the effective date of the merger.

### *Cancellation of Charter of Merging Credit Union*

If the Superintendent is satisfied that the merger has been accomplished in accordance with the approved plan, the charter of the merging credit 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.

### *Certificate Completion by IDCU*

Upon receipt of the final documents, IDCU will provide the continuing credit union three copies of the Certificate of Merger for filing with the county recorder and a new bylaw page 2A encompassing the merging credit union's field of membership.

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 mark copy on the other two Certificates, but will place their seal on all copies.

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.