

GUIDANCE FOR COMPLETING THE MERGER PACKET

It is the Credit Union Division's policy that a credit union may merge with another credit union if they comply with the provisions of Iowa Code Chapter 533.401. Before any state-chartered credit union may merge with any credit union, prior approval of the Credit Union Division must be obtained, along with preliminary approval by the NCUA.

To be approved, the Credit Union Division must find the merger desirable. The merger must adhere to applicable state and federal law, including Division policies and rules, and be in the best interest of the shareholders of the credit unions concerned. The officials of the continuing credit union must be capable of managing the expanded operation.

As necessary, representatives of the Credit Union Division 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.

Special Provisions:

- If the continuing credit union is an out-of-state, nonfederally insured or uninsured credit union that desires to be federally insured as of the date of the merger, 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. An NCUSIF deposit and a prorated insurance premium will be assessed on any additional share accounts insured as a result of the merger.
- When the continuing credit union is nonfederally insured, NCUSIF insurance of the member accounts of a merging federally insured credit union ceases as of the effective date of the merger. Members of the insured merging credit union must be notified of the discontinuance of federal insurance coverage prior to their vote on their vote on the merger proposal.
- Where the continuing credit union is uninsured, the NCUSIF insurance of the member accounts of the merging federally insured credit union will continue for a period of 1 year, subject to the restrictions in Section 206(d)(1) of the Act as noted in the Notice of Termination set forth in the NCUA Rules and Regulations Section 708.301(b)(3).
- Subparts B and C of Part 708 of the NCUA Rules and Regulations prescribe the procedures, notice requirements and forms to be used for terminating federal share insurance or conversion of federal share insurance to nonfederal share insurance.

Retention of Merger Records

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 credit union.

Credit Union Division Merger Process

Step 1 - Preparing a Merger Plan (Iowa Code Chapter 533.401)

In preparation of a merger plan, the boards of directors of both credit unions develop the terms of the proposed merger. A letter of intent to merge from both boards of directors shall be sent to the Credit Union Division. The application of merger, Form 6301, with all requested attachments must be completed and submitted to the Division. Please use Form 6300 as your checklist.

Probable Asset/Share Ratios (PAS)

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 analysis of the value of shares is necessary to determine whether or not a share adjustment is warranted. The PAS form, 6311, is included in this Policy for this purpose.

Share Adjustments

Share adjustments will be agreed upon by both boards of directors. If shares in both credit unions are equal in sound value, there usually will be not share adjustments in both credit unions and each member will have the same share balance after the merger as before.

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 or these members or the dividend rate might 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 nonfederally 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.

Insurance of Member Accounts

Any changes relative to insurance of member accounts, as well as, members' life savings or loan protection insurance must include an explanation in the merger plan.

- If the continuing credit union is nonfederally insured and the merging credit union is federally insured, insurance coverage ceases as of the effective date of merger.
- If the continuing credit union is uninsured, limited insurance will continue for 1 year subject to the restrictions in Section 206(d)(1) of the Act. If the continuing credit union desires federal insurance, an Application for Insurance of Accounts, NCUA 9600, should be submitted with the plan.

Bylaw Amendments for Continuing Credit Union

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

- The name of the credit union
- 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

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.

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 2 - Approval by Members (Iowa Code Chapter 533.401)

After approval by the Credit Union Division and preliminary approval from NCUA, the merging credit union shall call a meeting of the members. Members of the merging credit union must vote on the merger proposal at the annual meeting within 60 days after preliminary approval is received, or at a special meeting called

within 60 days after preliminary approval is received. The merger proposal of the merging credit union must be approved by affirmative vote of **a majority of the members of the credit union who vote on the proposal**.

A continuing Iowa state-chartered or federally chartered credit union requires only the action of the board of directors on a proposal to merge.

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 when the merging credit union is insolvent, is in danger of insolvency, or if the Superintendent finds that an emergency exists which justifies the waiver.

Special Provisions:

- If the continuing credit union is an out-of-state uninsured credit union, the termination of insurance must be approved by **a majority of all the credit union's members**. The credit union must notify the Superintendent, and the NCUA Board, through the regional director, in writing at least 90 days prior to termination and the membership vote must have been obtained within 1 year prior to giving the Superintendent and the NCUA Board notice.
- No state-chartered federally-insured credit union shall terminate federal insurance without the prior written approval of the Superintendent and the NCUA Board. The Superintendent and the NCUA Board will approve or disapprove the termination in writing within 90 days after being notified by the credit union.
- If the continuing credit union is nonfederally insured, conversion to nonfederal insurance must be approved by an affirmative vote **of a majority of the credit union's members who vote** on the proposition, **provided at least twenty (20) percent of the total membership participates** in the voting. The credit union must notify the Superintendent, and the NCUA Board, through the regional director, in writing at least 90 days prior to conversion. Notice to the Superintendent and the NCUA Board may be given when membership approval is solicited or after membership approval is obtained.
- No federally insured credit union shall convert to nonfederal insurance without the prior written approval from the Superintendent and the NCUA Board. The Superintendent and the NCUA Board will approve or disapprove the conversion in writing within 90 days after being notified by the credit union.

Notice of Members' Meeting

In accordance with the provisions of Article IV, Meeting of Members, Standard Credit Union Bylaws, members must be given advance notice of the meeting at which the proposal is to be submitted. Under most circumstances, the recording secretary must cause written notice to be MAILED to each member at least 20 days before the date of the meeting. The Notice of Special Meeting of the Members (form 6305), shall:

- Specify the purpose of the meeting and the location.
- 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, and an explanation of any changes relative to insurance of member accounts.
- State the reason for the proposed merger.
- Provide the name and location (including branches) of the continuing credit union.
- Inform the members that they have the right to vote on the proposal in person at the meeting.
- Be accompanied by a Sample Ballot for Merger Proposal.
- Chart of comparable deposit and loan rates

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

A verification of the members, accounts may be conducted in connection with the distribution of the Notice of Special Meeting of the Members.

Action at Members' Meeting

The meeting provides the members the opportunity to discuss the merger proposal and obtain a full explanation from the officials. The minutes of the meeting should reflect a discussion of the terms of the merger proposal. The minutes should also show:

- The number of members qualified to vote
- The number of members that attended the meeting
- The number of members that voted in favor of the merger
- The number of members that voted against the merger

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.

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. Certification of vote on Merger Proposal, (form 6308), will be used.

Step 3 - Completion of Merger

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. (see below for explanation of how this should be recorded on the books of each 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

Entries shall be recorded in the journal and cash record and general ledger of each credit union involved, as of the effective date of the merger, reflecting the transfer of the assets and liabilities of the merging credit union to the continuing credit union.

The transfer entries shall then be posted from the journal and cash record to the general ledger. Checks received from the merging credit union representing the transfer of cash should not be recorded again in the journal and cash record; the above entry suffices.

Sample Worksheet:

(1) Merging Credit Unions -- Entries in the journal and cash record:

Accounts	Debit	Credit
Accounts Payable	\$500	
Shares	30,000	
Regular Reserve	1,000	
Undivided Earnings	600	
Allowance for Loan Losses	1,000	
Loans		\$16,000
Cash		6,100
U.S. Government Obligations		9,000
Other Shares, Deposits and Certificates		2,000

(2) Continuing Credit Union – Entries in the journal and cash record:

Accounts	Debit	Credit
Loans	\$16,000	
Cash	6,100	
U.S. Government Obligations	9,000	
Other Shares, Deposits and Certificates	2,000	
Accounts Payable		\$500
Shares		30,000
Regular Reserve		1,000
Allowance for Loan Losses		1,000

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 708.102.

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.

Step 4 - Document Submission

Final Reports

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 board presiding officer and financial officer of the continuing credit union shall execute the Certification of Completion of Merger. 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. The charter of the merging credit union may not be canceled until the officials have certified on Form 6309 that the merger has been completed.

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.

Final documentation and filing information

Upon receipt of the final documents, the Division 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.