

CREDIT UNION DIVISION[189]

Credit Union Department[295] renamed Credit Union Division[189] under the Department of Commerce by 1986 Iowa Acts, Senate File 2175, section 751, effective July 1, 1986. See IAB 9/10/86.

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CHAPTER 1
DESCRIPTION OF ORGANIZATION

189—1.1(533) Definitions. The definitions of terms included in Iowa Code section 17A.2 shall apply to such terms used in this chapter. In addition, as used in this chapter:

“*Board*” means the credit union review board.

“*Division*” means the credit union division.

“*Superintendent*” means the superintendent of the credit union division.

189—1.2(17A,533) Scope and application. This chapter describes the office of the superintendent and the methods whereby the public may obtain forms, instructions, and information regarding credit unions.

189—1.3(17A,533) Credit union division. The division is the office of the superintendent and other personnel who discharge the duties and responsibilities imposed upon the superintendent by the laws of this state. The superintendent has general supervisory and regulatory authority over all state chartered credit unions.

1.3(1) Central organization—superintendent. The superintendent is appointed by the governor and approved by the senate. The superintendent is the head of the credit union division with offices located at 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309. Rules may be promulgated by the superintendent subject to prior approval by the board. The superintendent may employ personnel as necessary to carry out the provisions of the credit union law.

1.3(2) Credit union review board. The credit union review board is composed of seven members who are appointed by the governor and approved by the senate. With the exception of four members first appointed as of January 1, 1979, board members serve for a three-year term. The board may adopt, amend, and repeal rules or take other action it deems necessary or suitable to effect the provisions of the credit union law. The board meets at least four times each year and special meetings may be called by the chairperson. A majority of the members of the board shall constitute a quorum to transact business.

This rule is intended to implement Iowa Code section 533.107.

189—1.4(17A,533) Forms and instructions. Information concerning the forms and instructions of the superintendent is available at the offices of the credit union division during usual business hours, 8 a.m. to 4 p.m. daily, excluding Saturdays, Sundays and holidays. Copies of the forms and instructions are also available at the credit union division’s Web site at <http://www.iacudiv.state.ia.us>.

This rule is intended to implement Iowa Code section 533.102.

[Filed 8/10/79, Notice 5/30/79—published 9/5/79, effective 10/10/79]

[Filed emergency 12/8/82—published 1/5/83, effective 12/8/82]

[Filed emergency 10/28/87—published 11/18/87, effective 11/18/87]

[Filed 1/31/03, Notice 12/25/02—published 2/19/03, effective 3/26/03]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 2
ORGANIZATION, CHARTERING AND FIELD OF MEMBERSHIP
OF A CREDIT UNION

189—2.1(533) Definitions.

“*Applicants*” means those persons who make application to the credit union division.

“*Application*” includes the documents required by the credit union division for chartering a credit union or for approval of an employee group to obtain service from an already chartered credit union.

“*Chartering*” means the approval of the credit union division of the state of Iowa which is required before a credit union may operate and do business in the state of Iowa.

“*Common bond*” means the relationship between natural or corporate persons required before such persons can be members of a credit union.

“*Division*” means the credit union division of the department of commerce of the state of Iowa.

“*Incorporators*” means those persons listed as incorporators in the filed documents of incorporation.

“*Membership*” means those persons who possess the required common bond and who are approved as eligible for services of a credit union.

“*Multiple group*” means a combination of an association common bond and an occupation, industry, or employer common bond.

“*Organization*” means the process of identifying the proposed membership of a credit union and choosing persons to apply for chartering with the division.

189—2.2(533) Purpose. All chartering and approval for the extension of credit union services shall be consistent with Iowa Code chapter 533 and shall promote safety and soundness of all credit unions. The division shall determine that each application has sound economic basis and that approval of the application will not endanger the safety and soundness of other credit unions.

189—2.3(533) Chartering process. The chartering process includes the organization, application, and chartering of a credit union under the laws of the state of Iowa.

189—2.4(533) Organization procedure. When persons wish to obtain a charter for a new credit union, they shall determine that the proposed membership for the credit union has a common bond as required by this chapter and that there exists probable support for the credit union by the proposed membership. The persons shall also choose seven applicants to apply for charter with the division.

189—2.5(533) Field of membership and common bond.

2.5(1) Types of common bond. Common bonds shall include relationships based on association, occupation, industry, or employer, or residence or employment within a specified community.

a. Association common bond shall be based on common loyalties, benefits, interests and activities.

b. Occupation, industry or employer common bond shall be based on common business, employer, or corporate parent.

c. Multiple group shall be based on a combination of “a” and “b.”

d. Community common bond shall be based on residence, employment or principal place of business in a specific geographic boundary.

2.5(2) Extension of common bond. Common bond may be extended to family members, employees and other persons of close affinity as defined by the credit union’s bylaws and as approved by the superintendent upon request extension.

2.5(3) Changes in common bond. A request for a change in common bond must be approved by the superintendent who shall base such approval on the determination that the change is consistent with the standards for chartering under this chapter.

189—2.6(533) Application for charter.

2.6(1) Applicants’ duties. The applicants for charter shall inform the superintendent of the division of the interest and commitment regarding forming a credit union. The applicants shall also obtain from

the superintendent the necessary information regarding applying for a charter, as well as an application and any other documents required for chartering. The applicants shall be responsible for filing all documents required for chartering and incorporation with the superintendent.

2.6(2) *Application for chartering.* The documents contained as part of the application for chartering shall include, but not be limited to, documents requesting the following information: names, addresses and current employment of all applicants; the proposed management staff and the proposed slate of credit union officers; a summary of the plan of business which indicates the economic feasibility of the operation of the credit union; a description of the common bond; and a draft of bylaws and articles of incorporation.

189—2.7(533) Chartering standards. In order to grant a charter, the superintendent shall determine that the purpose of this chapter is met and that each and every one of the following standards is met:

1. The proposed members possess a sufficient common bond;
2. The proposed management has the necessary financial expertise;
3. Chartering the credit union is in the interest of its proposed members;
4. The support of the proposed members indicates that the credit union will succeed; and
5. The applicants' plan of business is based on adequate and well-reasoned consideration of the expected costs and returns from operations.

189—2.8(533) Incorporation.

2.8(1) *Organization meeting.* Proposed members shall meet and through a majority vote approve the incorporation of the credit union chartered by the division.

2.8(2) *Filing of corporate records.*

a. Articles of incorporation. Upon the division's grant of a charter, the applicants shall file the credit union's articles of incorporation, with the certificate of approval attached, with the county recorder of the county where the credit union is to have its principal place of business.

b. Oath of office. Within ten days after the meeting to incorporate the new credit union, and within ten days after each annual meeting thereafter, a notarized oath of office including the name, signature, position, and address of each member of the board of directors shall be filed with the superintendent. Within ten days of the appointment or election of any new member of the board of directors, a notarized oath of office shall be filed in the same manner.

189—2.9(533) Commencement of business. A credit union shall not commence business (which shall include, but not be limited to, the incurring of any obligation or the commitment of any of its assets) until its chartering and incorporation are completed, and deposit insurance is obtained as required by law. A newly chartered credit union must commence business within 60 days after the date its charter is approved, or the credit union's certificate of approval may be revoked by the superintendent.

189—2.10(533) Use of credit union name. After being chartered as a credit union, a credit union shall represent itself as a credit union in the course of obtaining and doing business. Failure to meet this requirement may be grounds for revocation of charter by the superintendent.

189—2.11(533) Employee groups. Upon the application to and approval by the superintendent, an employee group may be served by an already chartered credit union without the requirement of a common bond relationship between the employee group and the chartered credit union effecting service.

2.11(1) *Application to serve an employee group.* A credit union desiring to serve an employee group shall submit an "Application to Serve an Employee Group" which is available from the division.

2.11(2) *Recognition of an employee group.* The superintendent may recognize that an employee group exists and approve a credit union's application to serve the employee group consistent with Iowa Code chapter 533 and the purpose of this chapter.

2.11(3) *Inquiry.* The superintendent may conduct an inquiry, and may use any of the powers granted to the superintendent under Iowa Code chapter 533, as deemed necessary in connection with an "Application to Serve an Employee Group" to determine:

- a. That the credit union making application has the authority in its bylaws to serve an employee group;
- b. That the employee group has made application to the credit union for services; and
- c. That the quality and management of the credit union making application are sound and that the credit union is capable of and will offer services to members of the proposed employee group equivalent to those offered to its present membership.

2.11(4) *Frequency of application.* There is no limit to the number of applications a credit union may have pending at any given time.

2.11(5) *Ability to spin off from credit union.* Any employee group previously authorized by Iowa Code chapter 533 may apply to the division for a charter. The application will be considered on the same basis as an initial chartering under this chapter. Notice of the application shall be given to interested parties including the parent credit union. The order of charter shall include a comprehensive plan for reorganization and reallocation of assets and liabilities.

189—2.12(533) Approval or denial.

2.12(1) *Inquiry and review.* The superintendent may conduct an inquiry, and use any powers granted to the superintendent under Iowa Code chapter 533, as is deemed necessary in connection with any application under this chapter to determine if granting the application would be consistent with the purpose of this chapter.

2.12(2) *Method of notice of decisions on applications.* The superintendent shall notify the applicants in writing of the decision of approval or denial of any application made under this chapter and shall mail the decision to the applicants. If an application is denied, the superintendent shall provide the applicants with the reasons for the denial.

2.12(3) *Time of notice.* The superintendent shall provide notification regarding approval or denial of an application for chartering within the time period required by Iowa Code chapter 533 and shall notify regarding approval or denial of employee group applications within 60 days. If it is necessary for an application to be amended, whether by addition, deletion or change, the period of review shall begin anew as of the date of amendment.

2.12(4) *Intervention.* The period of review will be extended for 14 days if the division receives a written intervention in objection to the approval of the employee group application. Upon the filing of an intervention, the superintendent may request additional information from the applicants.

189—2.13(533) Appeal.

2.13(1) *Contested case.* Applicants may appeal the denial of an application by requesting a contested case hearing before the superintendent within 30 days of issuance of the decision. The costs of a contested case hearing shall be paid by a requester if the requester fails to prevail at the contested case hearing.

2.13(2) *Appeal to review board.* The appeal of a ruling of the superintendent in a contested case hearing shall be before the credit union review board.

This chapter is intended to implement Iowa Code chapter 533.

[Filed 8/10/79, Notice 5/30/79—published 9/5/79, effective 10/10/79]

[Filed emergency 12/8/82—published 1/5/83, effective 12/8/82]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 2/2/90, Notice 11/15/89—published 2/21/90, effective 3/28/90]

[Filed 1/31/03, Notice 12/25/02—published 2/19/03, effective 3/26/03]

CHAPTER 3
CONVERSION OF AN IOWA-CHARTERED CREDIT UNION
TO ANOTHER CHARTER TYPE

189—3.1(533) Definitions. As used in this chapter:

“*Credit union*” means credit union as defined in the Iowa Credit Union Act, Iowa Code section 533.102.

“*Federal banking agencies*” means federal banking agencies as defined in Section 3 of the Federal Deposit Insurance Act.

“*Federal credit union*” means credit union as defined in Section 101 of the Federal Credit Union Act, 12 U.S.C. 1752(1).

“*Mutual savings bank*” and “*savings association*” have the same meaning as defined in Section 3 of the Federal Deposit Insurance Act.

“*Senior management official*” means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as defined by the appropriate federal banking agency pursuant to Section 32(f) of the Federal Deposit Insurance Act, 12 U.S.C. 1831i(f).

“*Superintendent*” means the superintendent of credit unions of the Iowa credit union division of the department of commerce.

189—3.2(533) Authority to convert.

3.2(1) An Iowa-chartered credit union, with the approval of its members, may convert to a federal credit union, subject to applicable law, regulation and procedures of the governing recipient chartering authority, the National Credit Union Administration, and the requirements of this chapter.

3.2(2) An Iowa-chartered credit union shall remain responsible for the entire annual fee pursuant to Iowa Code section 533.112 during the year in which the credit union converts.

3.2(3) No credit union shall convert to a federal credit union without full disclosure to its members of the intents and purposes of conversion. If the intent to undertake a second conversion to a mutual savings bank or a savings association is among the purposes for conversion to a federal credit union, those facts and all related information shall be fully disclosed to members. If a further conversion to a stock institution is among the possible outcomes from the conversion, the converting Iowa-chartered credit union must fully and accurately disclose this possibility to its members.

189—3.3(533) Board of directors and membership approval.

3.3(1) Any conversion proposal may be approved by the board of directors only upon the affirmative vote of a majority of the board. The board must then set a date for a vote on the proposal by the members of the credit union.

3.3(2) The membership must approve the proposal to convert by the affirmative vote of a majority of those members who vote on such proposal. Each eligible member shall have one vote regarding the conversion proposal.

3.3(3) The vote of the members to convert must be at a special meeting called for that purpose, must be in the manner prescribed in the bylaws and this chapter, and must satisfy the number of members necessary to constitute a quorum to convene a meeting of the members as prescribed in the bylaws.

3.3(4) The board of directors must notify the superintendent of any proposed conversion and of any abandonment or disapproval of the conversion by the members or by the recipient chartering authority, the National Credit Union Administration, or applicable federal deposit insurer.

3.3(5) Prior to completion of any conversion, the board shall supply the superintendent a certified affidavit of compliance with these rules.

189—3.4(533) Notice to members and voting procedures.

3.4(1) A credit union that proposes to convert must submit written notice of its intent to convert by first-class mail, postage prepaid, to each member who is eligible to vote on the conversion, and the board of directors must cause a copy of the notice to be posted in a conspicuous location in each credit

union office from the date of the mailings until the date of the meeting. The notice to members must be submitted and posted 90 calendar days, 60 calendar days, and 30 calendar days before the date of the membership meeting to vote on the conversion and a ballot must be submitted not less than 30 calendar days before the date of the vote. A member who joins the credit union subsequent to the 30-calendar-day notice and prior to the date and time of the special meeting and who is eligible to vote on the conversion shall be provided a copy of the 30-calendar-day notice and a ballot.

3.4(2) The notice to members must adequately describe the purpose and subject matter of the vote to be taken at the special meeting or by submission of the written ballot. The notice must provide an accurate disclosure of the reasons for the conversion stated in specific terms and not as generalities. The notice shall specify the costs of the conversion, such as changing the credit union name, examination and operating fees, attorney and consulting fees, tax liability. The notice must clearly inform the member that each eligible member may vote in person at the special meeting or by submitting the written ballot by mail or personal delivery to the credit union so it is received on or before the date and time of the special meeting. A member other than a natural person may cast a single vote through a delegated agent as provided by law. There shall be no voting by proxy. The notice must state in boldface type that the conversion will be decided by a majority of credit union members who vote on the issue.

3.4(3) In addition to the ballot provided to all eligible voting members under this rule, a return envelope preaddressed to the election committee, marked "ballot," must be provided with the ballot. A location on the outside of the envelope must be provided for the voting member to print the member's name and address. The voting process used for casting ballots in person at the special meeting shall be the same as that used for submitting the ballot by mail or personal delivery, by submission using an envelope preaddressed to the election committee, marked "ballot," with a location on the outside of the envelope for the voting member to print the member's name and address.

3.4(4) The board of directors shall appoint an election committee of no fewer than seven credit union members to be in charge of counting the ballots and verifying that no eligible member voted more than once. No board member or employee, or member of a board member's or employee's immediate family, may be a member of the election committee. No director, employee, agent or member of the election committee shall reveal the manner in which any member voted on the proposed conversion. The election committee shall see that all ballot envelopes are delivered to the committee unopened and that the counting of the ballots does not commence until after the close of the special meeting held in connection with the conversion proposal. The election committee shall be responsible for certifying the results of the election to the board of directors, including the actual number of eligible members who voted on the proposal and the number of those who voted in favor of and the number of those opposed to the conversion proposal.

3.4(5) The notice to members must state the date, time, and place of the meeting. The members may not vote on the proposal until the credit union has received preliminary approval from the superintendent given under 189—3.5(533) and preliminary determination from the National Credit Union Administration on the proposition for conversion.

3.4(6) If a purpose of conversion is to become a mutual savings bank, a savings association that is in mutual form or a stock institution, the notice must clearly inform the member that the conversion, if approved, could lead to members losing their ownership interest in the credit union. The notice must disclose that a credit union member has no more than one vote regardless of the number of shares held; whereas, in a mutual savings bank or savings association, voting may be based upon the amount in the member's deposit accounts, commonly one vote granted for each \$100 on deposit. The notice must further disclose that, if the mutual savings bank or savings association converts to a stock institution, members will lose their ownership interests and voting rights automatically received as a member.

3.4(7) In connection with the notices required by this rule, the converting credit union must include an affirmative statement that, at the time of conversion to a federal credit union and for a period of five years thereafter, the credit union does or does not intend to:

- a. Convert to a mutual savings bank or savings association or a stock institution;
- b. Provide any compensation to previously uncompensated members of the board of directors, or increase compensation or other conversion-related economic benefit, including stock options, special

prices on stock, or first rights of refusal, to directors, senior management officials, or their agents, brokers, family members or other closely related parties;

c. Base member voting rights on account balances.

3.4(8) In addition, if the purpose of conversion is to become a mutual savings bank or savings association, or a stock institution, the notice must describe a method that will be used to provide for a pro-rata distribution of all unencumbered credit union retained and undivided earnings in excess of regulatory required reserves, as calculated pursuant to Iowa Code section 533.303, or in excess of a well-capitalized net worth level, calculated pursuant to the Federal Credit Union Act, 12 U.S.C. Section 1790d, whichever amount is greater. The pro-rata distribution shall occur on all shares of record as of the date of first notice to members under this rule, and must be based upon the member's share balance less any amount pledged to share-secured loans.

3.4(9) At any time prior to completion of a conversion to a federal credit union, the board or the members by written request as provided in the bylaws may call for a special meeting of the members to be held to terminate the conversion proceedings. The membership must approve the proposal to terminate the conversion proceedings by the affirmative vote of a majority of those members who vote on such proposal as provided in this chapter.

189—3.5(533) Notice to the superintendent.

3.5(1) The credit union must provide the superintendent with notice of its intent to convert and a plan of conversion no less than 30 calendar days prior to the 90-calendar-day period preceding the date of the membership vote on the conversion under 189—3.4(533).

3.5(2) The credit union must give notice to the superintendent and provide a plan of conversion describing the material features of the conversion, along with a copy of the filing the credit union has made with the federal regulatory agency by which the credit union seeks that agency's approval of the conversion. The credit union must include with the notice to the superintendent a copy of the notice the credit union provides to members under 189—3.4(533), as well as the ballot form and all written materials the credit union has distributed or intends to distribute to its members, a copy of the return envelope addressed to the election committee marked "ballot" provided with the ballot form, and the procedures the election committee will follow in its receipt and counting of the ballots.

3.5(3) The superintendent will make a preliminary determination regarding the methods and procedures applicable to the membership vote. The superintendent will notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the superintendent disapproves of the proposed methods and procedures applicable to the membership vote. The credit union's submission of the notice of intent and plan of conversion does not relieve the credit union of its obligation to certify the results of the membership vote required by 189—3.6(533) or certify compliance with these rules required by 189—3.3(533) or eliminate the right of the superintendent to disapprove the actual methods and procedures applicable to the membership vote if the credit union fails to conduct the membership vote in a fair and legal manner.

3.5(4) The superintendent may disapprove a plan of conversion submitted by the board of directors of a credit union based upon any of the following determinations:

- a. The plan is inconsistent with applicable statutes and regulations.
- b. The plan does not contain all required information.
- c. The plan fails to fully and fairly disclose the effect of the proposal on members of the credit union.
- d. The plan does not fairly compensate members for their ownership interests in the credit union.

189—3.6(533) Certification of vote on conversion proposal. The board of directors of the converting credit union must certify the results of the membership vote to the superintendent within ten calendar days after the vote is taken. The board of directors must also certify at the same time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to 189—3.5(533) or provide copies of any new or revised materials and an explanation of the reasons for the changes.

189—3.7(533) Superintendent oversight of methods and procedures of membership vote.

3.7(1) The superintendent will issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within ten calendar days of receipt from the credit union of the certification of the result of the membership vote required under 189—3.6(533).

3.7(2) If the superintendent disapproves of the methods by which the membership vote was taken or the procedures applicable to the membership vote, the superintendent may direct that a new vote be taken at a time and place acceptable to the board of directors and the superintendent.

3.7(3) The superintendent's review of the methods by which the membership vote was taken and the procedures applicable to the membership vote includes determining that the notice to members is accurate and not misleading, that all notices required by these rules were timely, and that the membership vote was conducted in a fair and legal manner.

189—3.8(533) Other regulatory oversight of methods and procedures of membership vote. The federal agency that will have jurisdiction over the financial institution after conversion may subject the membership vote to verification and may direct that a new vote be taken if it disapproves of the methods by which the membership vote was taken or of the procedures applicable to the membership vote.

189—3.9(533) Completion of conversion.

3.9(1) Upon receipt of approvals under 189—3.7(533) and 189—3.8(533), the credit union may complete the conversion transaction.

3.9(2) The board of directors of the credit union must file with the superintendent appropriate evidence of approval of the conversion by the appropriate federal agency having jurisdiction over the financial institution after conversion and from the federal agency providing deposit insurance to the converted financial institution, and, if applicable, a copy of the notice from the National Credit Union Administration canceling the credit union insurance certificate. The board of directors of the credit union must also notify the superintendent of the actual date on which the conversion is to be effective.

3.9(3) Upon receipt of satisfactory proof that the Iowa-chartered credit union has complied with all applicable laws and regulations of this state and of the United States, the superintendent will cancel the charter of the credit union and issue a certificate of conversion which must be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation or certification of organization were filed and recorded, if different.

3.9(4) In the event it is subsequently determined the conversion was accomplished contrary to applicable law, regulation or the requirements of this chapter, in whole or in part, with the intent to deceive or mislead the members of the credit union or the superintendent, the superintendent will take immediate action to cause the conversion to be declared null and void, and to request from the appropriate regulatory authority that the converted institution be ordered to surrender its charter and be thereupon returned to the authority of the superintendent for reinstatement as a state charter or other action. The provisions of Iowa Code chapter 533 shall apply in the event it is determined that any director, officer, agent, employee or clerk of the credit union knowingly submitted, made or exhibited false statements, papers or reports to the superintendent or committed any acts which might result in that person's being found to have engaged in a fraudulent practice.

3.9(5) If the superintendent finds a material deviation from the provisions of this chapter, or from Iowa Code chapter 533, that would invalidate any steps taken in the conversion, the superintendent will promptly notify the credit union and the National Credit Union Administration of the nature of the adverse findings.

3.9(6) The conversion of the Iowa credit union to a federal credit union will not be effective and completed until final approval is given by the superintendent, any improper actions are cured, and corrective steps have been accomplished, if applicable.

189—3.10(533) Limit on compensation of officials.

3.10(1) No director or senior management official of an Iowa credit union may receive any economic benefit in connection with a plan of conversion or the actual conversion of the credit union, other than

regular compensation and other usual benefits paid to directors or senior management officials in the ordinary course of business.

3.10(2) In connection with the notices to members required by this chapter, the converting credit union must disclose to the members the cost of the conversion, including any change or increase in compensation or economic benefit to directors or senior management officials of the credit union in the event the conversion process is accomplished.

These rules are intended to implement Iowa Code section 533.403.

[Filed emergency 11/19/03—published 12/10/03, effective 11/19/03]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 4
PROCEDURE FOR ADOPTION OF RULES

189—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the credit union division are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

189—4.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the credit union division may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

189—4.3(17A) Public rule-making docket.

4.3(1) Docket maintained. The agency shall maintain a current public rule-making docket.

4.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

4.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication in the Iowa Administrative Bulletin to the time it is terminated or the rule becomes effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected and where and when oral presentations may be made;
- f. Whether a written request for issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis or statement may be inspected;
- g. The current status of the proposed rule;
- h. Any known timetable for division decisions or other action in the proceeding;
- i. The date of the rule’s adoption;
- j. The dates of the rule’s filing and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

189—4.4(17A) Notice of proposed rule making.

4.4(1) Contents. At least 35 days before adoption of a rule the credit union division shall publish Notice of Intended Action in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may request an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the credit union division shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the division for the resolution of each of those issues.

4.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with subrule 4.12(2).

4.4(3) *Copies of notices.* Persons desiring copies of future Notices of Intended Action by subscription must file with the credit union division at the address disclosed in 189—subrule 1.3(1) a written request indicating the name and address to which such Notices of Intended Action should be sent. The request shall specify whether the person wants to receive credit union rules as defined by rule 189—1.4(17A,533). Within seven days after submission of a Notice of Intended Action for publication, the division shall mail or otherwise transmit a copy of that notice to subscribers who have filed a written request.

189—4.5(17A) Public participation.

4.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the credit union division or the person designated in the Notice of Intended Action, at the address disclosed in 189—subrule 1.3(1).

4.5(2) *Oral proceedings.* The credit union division may, at any time, schedule an oral proceeding on a proposed rule. The division shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the division by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following:

a. A request by one or more individual persons must be signed by each person and include the address and telephone number of each person;

b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request; and

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

4.5(3) *Conduct of oral proceedings.*

a. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“*b*” or this chapter.

b. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. The superintendent, or another person designated by the superintendent who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

d. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the division at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other

information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the credit union division.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submission made by those participants in that proceeding; but no participant shall be required to answer any questions.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentation.

4.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the credit union division may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

4.5(5) *Accessibility.* The credit union division shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the division at (515)281-6514 in advance to arrange access or other needed services.

189—4.6(17A) Regulatory analysis.

4.6(1) *Definition of small business.* A “small business” is defined in Iowa Code section 17A.4A(7).

4.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the credit union division’s small business impact list by making a written application to the division at the address disclosed in 189—subrule 1.3(1). The application for registration shall state:

- a. The name of the small business or organization of small businesses;
- b. Its address;
- c. The name of the person authorized to transact business for the applicant;
- d. A description of the applicant’s business or organization; an organization representing 25 or more persons who each qualify as a small business shall indicate that fact; and
- e. Whether the applicant desires copies of Notices of Intended Action, for a reasonable cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The credit union division may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The division may periodically send a letter to each registered small business or organization, or organization of small businesses, asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

4.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the credit union division shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. For a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the division shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

4.6(4) *Qualified requesters for regulatory analysis—economic impact.* The credit union division shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a), after a proper request from:

- a. The administrative rules review committee; or
- b. The administrative rules coordinator.

4.6(5) *Qualified requesters for regulatory analysis—business impact.* The credit union division shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b), after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business; or
- d. An organization representing at least 25 small businesses. The request shall list the name, address, and telephone number of not less than 25 small businesses it represents.

4.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the credit union division shall adhere to the time lines described in Iowa Code section 17A.4A(4).

4.6(7) *Contents of request.* A request for a regulatory analysis is made when it is received by the division, at the address disclosed in 189—subrule 1.3(1). The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

4.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4,5).

4.6(9) *Publication of a concise summary.* The credit union division shall make available, to the extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

4.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2a), unless a written request expressly waives one or more of the items listed in that section.

4.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, and, if the credit union division determines that the rule would have a substantial impact on small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).

189—4.7(17A,25B) Fiscal impact statement.

4.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

4.7(2) If the credit union division determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the division shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

189—4.8(17A) Time and manner of rule adoption.

4.8(1) *Time of adoption.* The credit union division shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the credit union division shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

4.8(2) *Consideration of public comment.* Before the adoption of a rule, the credit union division shall fully consider all of the written and oral submissions received in that rule-making proceeding and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

4.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the credit union division may use its own experience, technical competence, specialized knowledge and judgment in the adoption of a rule.

189—4.9(17A) Variance between adopted rule and rule proposed in Notice of Intended Action. The credit union division shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action upon which the rule is based unless:

1. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
2. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
3. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

189—4.10(17A) Exemptions from public rule-making procedures.

4.10(1) *Omission of notice and comment.* To the extent the credit union division for good cause finds that public notice and participation are unnecessary, impracticable or contrary to the public interest in the process of adopting a particular rule, the division may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The division shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.10(2) *Categories exempt.* The credit union division may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 4.10(1).

189—4.11(17A) Concise statement of reasons.

4.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the credit union division shall issue a concise statement of reasons for the rule. Requests for such a statement shall be in writing and shall be delivered to the division at the address disclosed in 189—subrule 1.3(1). The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

4.11(2) *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any changes between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change; and
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the credit union division's reasons for overruling the arguments made against the rule.

4.11(3) *Time of issuance.* After a proper request, the credit union division shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

189—4.12(17A) Contents, style, and form of rule.

4.12(1) Contents. Each rule adopted by the credit union division shall contain the text of the rule and, in addition:

- a.* The date the division adopted the rule;
- b.* A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1), or the credit union division in its discretion decides to include such reasons;
- c.* A reference to all rules repealed, amended, or suspended by the rule;
- d.* A reference to the specific statutory or other authority authorizing adoption of the rule;
- e.* Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f.* A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1), or the credit union division in its discretion decides to include such reasons; and
- g.* The effective date of the rule.

4.12(2) Incorporation by reference. The credit union division may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the division finds that the incorporation of its text in the division's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The division may incorporate such matter by reference in a proposed or adopted rule only if the division makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this division, and how and where copies may be obtained from the division of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The division shall retain permanently a copy of any materials incorporated by reference in a rule of the division.

If the division adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

4.12(3) Reference to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the division shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the division. The division will provide a copy of that full text for a reasonable charge upon request, shall make copies of the full text available for review at the state law library, and may make the standards available electronically.

At the request of the administrative code editor, the division shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

4.12(4) Style and form. In preparing its rules, the division shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

189—4.13(17A) Agency rule-making record.

4.13(1) Requirement. The credit union division shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

4.13(2) Contents. The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of division submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the division's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the division, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the division, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the division is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the division shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general;

j. A copy of any significant written criticism of the rule, including a summary of any petition for waiver of the rule; and

k. A copy of any executive order concerning the rule.

4.13(3) Effect of record. Except as otherwise required by a provision of law, the rule-making record required by this rule need not constitute the exclusive basis for division action on that rule.

4.13(4) Maintenance of record. The credit union division shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in paragraph 4.13(2) "g," "h," "i," or "j."

189—4.14(17A) Filing of rules. The credit union division shall file each rule it adopts with the administrative rules coordinator. The filing must be executed as soon after adopting the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued for that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until after the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the division shall use the standard form prescribed by the administrative rules coordinator.

189—4.15(17A) Effectiveness of rules prior to publication.

4.15(1) Grounds. The credit union division may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if the division finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment

of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The division shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

4.15(2) *Special notice.* When the credit union division makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the division shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the division to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the division of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

189—4.16(17A) General statements of policy.

4.16(1) *Compilation, indexing, public inspection.* The credit union division shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)“a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

4.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the credit union division to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 4.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

189—4.17(17A) Review of rules by division.

4.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the credit union division to conduct a formal review of an existing rule. Upon approval of that request by the administrative rules coordinator, the division shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or whether the rule should be amended or repealed. The division may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

4.17(2) In conducting the formal review, the credit union division shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall comply with Iowa Code section 17A.7(2). A copy of the division’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection at the division at the address disclosed in 189—subrule 1.3(1).

These rules are intended to implement Iowa Code section 17A.4.

[Filed 8/10/79, Notice 5/30/79—published 9/5/79, effective 10/10/79]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

[Filed 9/10/03, Notice 8/6/03—published 10/1/03, effective 11/5/03]

CHAPTER 5
DEBT CANCELLATION PRODUCTS

189—5.1(533) Authority and purpose.

5.1(1) Authority. This chapter implements the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in the activity of offering debt cancellation products in accordance with Iowa Code Supplement section 533.315(9) “b.” These rules are promulgated under the authority of Iowa Code Supplement section 533.107.

5.1(2) Purpose. These rules set forth the standards that apply to voluntary debt cancellation contracts and agreements entered into by credit unions. The purpose of these standards is to ensure that credit unions offer and implement such contracts and agreements consistent with safe and sound practices, and subject to appropriate consumer protections.

189—5.2(533) Definitions. The definitions of terms included in rule 189—1.1(533) apply to such terms used in this chapter unless otherwise provided in this rule. In addition, the following definitions apply as used in these rules:

“*Actuarial method*” means the formula used in calculating refunds which produces a refund equal to the original fee multiplied by the ratio of the sum of the remaining scheduled monthly loan balances divided by the sum of the original scheduled monthly loan balances as of the due date next following the date of refund.

“*Bona fide*” means authentic and genuine in nature and made in a sincere and honest fashion without any intention to deceive.

“*Borrower*” means an individual who is a credit union member and who obtains an extension of credit from a credit union primarily for personal, family or household purposes.

“*Business day*” means every day except Saturday, Sunday and federal holidays unless on any such day an office of the credit union is open to conduct substantially all of its business.

“*Contract*” means a debt cancellation contract or a debt suspension agreement.

“*Debt cancellation product*” means a written contractual arrangement between a credit union and a borrower modifying loan terms under which the credit union agrees to suspend or cancel all or part of the borrower’s obligation to repay an extension of credit from that credit union upon the occurrence of a specified event. The contractual arrangement may be in the form of a debt cancellation contract, a debt suspension agreement or other accord and may be separate from or a part of other loan documents. A debt cancellation product does not include a loan payment deferral arrangement which is the borrower’s unilateral election to defer repayment or the credit union’s unilateral decision to allow a deferral of repayment.

“*Reasonable fee structure*” means a fee structure which allows a moderate return on investment and is suited to or within the means of an ordinary person, and is not formulated in a manner that an ordinary person would consider the fee structure excessive, outrageous, overreaching or unconscionable.

“*Residential mortgage loan*” means a real property loan secured by a one to four family dwelling that is the borrower’s primary or secondary residence.

189—5.3(533) Debt cancellation products.

5.3(1) General. A credit union may offer any debt cancellation product so long as the credit union complies with this chapter. The product may be offered for a fee or as an additional charge under a lease, loan or other extension of credit, and participation by a borrower must be voluntary.

5.3(2) Policies required. A credit union, before offering any debt cancellation product, must adopt written policies approved by its board of directors which establish and maintain effective risk management and control processes over the offering of the product. In addition, the policies must establish:

- a. A reasonable fee structure, if any fee will be charged for the product;
 - b. Appropriate disclosures, which shall be given to the borrower in accordance with this chapter;
- and

c. Claims-processing procedures, which shall be utilized to process debt cancellation claims.

5.3(3) Additional requirements. A credit union offering any debt cancellation product must:

a. Purchase insurance from an insurance company authorized to do business in Iowa to indemnify the credit union from loss resulting from offering the product. A credit union, before purchasing insurance, shall perform an appropriate level of due diligence to satisfy itself of the selected insurer's financial stability and claims-paying ability;

b. Maintain an adequate loss reserve relating to the debt cancellation product in an amount sufficient to offset potential losses, if any, not covered by the insurance required by paragraph 5.3(3) "a." The superintendent may require any credit union offering a debt cancellation product to provide evidence of the adequacy of the loss reserve related to that product, including, but not limited to, an actuarial opinion assessing the adequacy of the loss reserve; and

c. Not condition the making or alteration of the terms or conditions of a lease, loan or extension of credit upon the borrower's agreeing to purchase a debt cancellation product.

5.3(4) Notification to the superintendent of intent to offer debt cancellation products. A credit union must notify the superintendent in writing of its intent to offer any type of debt cancellation product at least 30 days prior to any such product being offered to borrowers. The notice must contain:

a. A statement describing the type(s) of debt cancellation product(s) the credit union will offer to its membership;

b. The fee structure established for the debt cancellation product, if any. The superintendent may require a credit union to cost justify its fee structure if it appears the fees are not reasonable; and

c. The name of the insurance company from which the credit union will purchase contractual liability coverage or other insurance required by paragraph 5.3(3) "a," along with information describing policy limits, deductible amounts and all limitations on coverage.

5.3(5) Existing debt cancellation products offered prior to March 19, 2008. A credit union offering any type of debt cancellation product prior to March 19, 2008, must, immediately following that date, provide to the superintendent notice of the existence of such product and provide to the superintendent the same information as required in subrule 5.3(4). A debt cancellation product in existence prior to March 19, 2008, may continue in force with a borrower, but all debt cancellation products offered by the credit union on and after March 19, 2008, must meet the requirements of this chapter.

189—5.4(533) Prohibited practices.

5.4(1) Anti-tying. A credit union may not extend credit or alter the terms or conditions of an extension of credit conditioned upon the borrower's entering into a debt cancellation contract or debt suspension agreement with the credit union.

5.4(2) Misrepresentations generally. A credit union may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to a debt cancellation agreement.

5.4(3) Prohibited contractual arrangement terms. A credit union may not offer debt cancellation agreements that contain terms:

a. Giving the credit union the right to unilaterally modify the arrangement unless:

(1) The modification is favorable to the borrower and is made without additional charge to the borrower; or

(2) The borrower is notified of any proposed change and is provided a reasonable opportunity to cancel the arrangement without penalty before the change goes into effect; or

b. Requiring the borrower to make a lump-sum, single payment at the outset of the contract or agreement where the debt subject to the contract or agreement is a residential mortgage loan.

189—5.5(533) Refunds of fees in the event of termination or prepayment of the covered loan.

5.5(1) Refund. If a debt cancellation contract or debt suspension agreement is terminated (including, for example, when the borrower prepays the covered loan), a credit union shall refund to the borrower any unearned fees paid for the contract unless the contract provides otherwise. A credit union may offer a borrower a debt cancellation product that does not provide for a refund only if the credit union also

offers that borrower a bona-fide option to purchase a comparable contractual arrangement that provides for a refund.

5.5(2) Method of calculation. A credit union shall calculate the amount of a refund using a method at least as favorable to the borrower as the actuarial method. However, if the refund calculation produces a result of less than \$5, the unearned fees may be considered to be zero and no refund will be owed to the borrower.

189—5.6(533) Method of payment of fees. Except as provided in paragraph 5.4(3) “b,” a credit union may offer a borrower the option of paying the fee for a debt cancellation product in a single payment or on a weekly, monthly or other periodic payment schedule. If a credit union offers the borrower the option to finance the single payment by adding the single payment to the amount financed, the credit union must also disclose to the borrower, in accordance with rule 189—5.7(533), whether, and, if so, the time period during which, the borrower may cancel the arrangement and receive a refund.

189—5.7(533) Disclosures. In connection with offering debt cancellation products, a credit union must make the short- and long-form disclosures described in this rule. In order to satisfy the requirements of this rule, the short-form disclosure must be substantially in the form described in rule 189—5.9(533), and the long-form disclosure must be substantially in the form described in rule 189—5.10(533).

5.7(1) Short-form disclosure. The credit union must make the short-form disclosure orally at the time the credit union first solicits the purchase of the contract or agreement with the borrower.

5.7(2) Long-form disclosure. The credit union must make the long-form disclosure in writing before the borrower completes the purchase of the contract or agreement. If the initial solicitation occurs in person, then the credit union shall provide the long-form disclosure in writing either at that time or at the time of the loan closing, but in no case later than three business days following the credit approval decision.

5.7(3) Exceptions for non-in-person transactions.

a. If the debt cancellation product is solicited by telephone, the credit union must make the short-form disclosure orally as required in subrule 5.7(1) and must mail the long-form disclosure required in subrule 5.7(2) and, if appropriate, a copy of the contract or agreement to the borrower within three business days, beginning with the first business day after the telephone solicitation or at the time of the loan closing, whichever is later.

b. If the debt cancellation product is solicited using the mail or “take-one” applications, the credit union may make only the short-form disclosure in writing as part of the written materials. If it is not included in the application materials, the long-form disclosure must be mailed to the borrower within three business days after the borrower contacts the credit union in response to the solicitation, beginning with the first business day, or at the time of the loan closing, whichever is later.

c. If the debt cancellation product is solicited using electronic media, the credit union may provide the disclosures required by this rule electronically, consistent with the requirements of this rule and the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq. The short-form disclosure shall be provided with the initial electronic solicitation, and the long-form disclosure no later than at the time of the loan closing or three business days following credit approval.

5.7(4) Exception to receipt of borrower’s acknowledgment of disclosures. A credit union may not obligate the borrower to pay for the debt cancellation product until after receiving the borrower’s written acknowledgment of receipt of disclosures unless, in the case of telephone, mail or “take-one” application solicitations, the credit union:

a. Maintains sufficient documentation to demonstrate that it provided the acknowledgment of receipt of disclosures to the borrower as required by this subrule;

b. Maintains sufficient documentation to demonstrate that it made reasonable efforts to obtain from the borrower a written acknowledgment of receipt of the long-form disclosure; and

c. Permits the borrower to cancel the purchase of the contract without penalty within 30 days after the credit union mailed the long-form disclosure to the borrower.

5.7(5) Form of disclosure. The disclosures required by this rule must be in a meaningful form, conspicuous, direct, and readily understandable, must be designed to call attention to the nature and significance of the information provided, and, if in written or electronic form, must include:

- a. A plain-language heading to call attention to the disclosure.
- b. A type size and a typeface that are easy to read.
- c. Wide margins and ample line spacing.
- d. Boldface or italics for key words and phrases.
- e. Distinctive type style and graphic devices when the disclosures are combined with other information.

5.7(6) Disclosures in advertisements and promotional materials. The short-form disclosure is required in advertisements and promotional materials except where the debt cancellation product is merely listed among products and services offered by the credit union.

189—5.8(533) Affirmative election to purchase and acknowledgment of receipt of disclosure.

5.8(1) Before entering into a debt cancellation contract or agreement, the credit union must obtain from the borrower a written affirmative election to purchase the product and written acknowledgment of receipt of the disclosures required in rule 189—5.7(533). The election and acknowledgment information must meet the intent and purpose of the standards established in rule 189—5.7(533).

5.8(2) The credit union must maintain sufficient documentation to demonstrate that it provided to the borrower the disclosures required by rule 189—5.7(533) and obtained from the borrower the documents required by this rule.

5.8(3) The credit union must permit the borrower to cancel the purchase of the debt cancellation product without penalty within 30 days after the credit union has mailed or otherwise provided the long-form disclosure to the borrower or has provided it to the borrower according to paragraph 5.7(4) “c” for an electronic media solicitation.

189—5.9(533) Short-form disclosure. The short-form disclosure must state:

5.9(1) The product is optional. “Your purchase of [debt cancellation product name] is optional. Whether or not you purchase [debt cancellation product name] will not affect your application for credit or the terms of any credit agreement you have with the credit union.”

5.9(2) Financing the payment of the fee. “Adding the fee to the amount you borrow will increase the cost of [product name].”

NOTE: This provision is applicable if the credit union offers to the borrower the option to pay the fee in a single payment. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.9(3) Refund of fee. “You may choose [product name] with a refund provision or without a refund provision. Prices of refund and no-refund products are likely to differ.” And either: “If you pay the fee in a single payment, you may cancel [product name] within 30 days and receive a full refund.” or “If you finance the payment of the fee as part of your loan and you pay off your loan early, you will receive a refund of any unearned fee calculated by the actuarial method.” or “If you cancel [product name] after the first 30 days of your loan, you will not receive a refund.”

NOTE: This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.9(4) Additional disclosures. “We will give you additional information before you are required to pay for [product name].” And, if applicable: “This information will include a copy of the contract containing the terms of [product name].”

5.9(5) Eligibility requirements, conditions, and exclusions. “There are certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [product name].” And either: “You should carefully read our additional information for a full explanation of the terms of [product name].” or “You should carefully read the contract for a full explanation of the terms of [product name].”

189—5.10(533) Long-form disclosure. The long-form disclosure must state:

5.10(1) *The product is optional.* “Your purchase of [product name] is optional. Whether or not you purchase [product name] will not affect your application for credit or the terms of any credit agreement you have with the credit union.”

5.10(2) *Explanation of debt suspension agreement.* “If [product name] is activated, your duty to pay the loan principal and interest to the credit union is only suspended. You must fully repay the loan after the period of suspension has expired.” And, if applicable: “This includes interest accumulated during the period of suspension.”

NOTE: This provision is applicable if the contract has a debt suspension feature.

5.10(3) *Amount of fee.* For closed-end credit: “The total fee for [product name] is \$_____.” For open-end credit, either: “The monthly fee for [product name] is based upon your account balance each month multiplied by the unit cost, which is \$_____.” or “The formula used to compute the fee is _____.”

5.10(4) *Financing the payment of the fee.* “Adding the fee to the amount you borrow will increase the cost of [product name].”

NOTE: This provision is applicable if the credit union offers the option to pay the fee in a single payment. Lump-sum payment of the fee is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(5) *No refund of fee paid in lump sum.* “You have the option to purchase [product name], which includes a refund of the unearned fee if you terminate the contract or repay the loan in full prior to the scheduled termination date. Prices of refund and no-refund products may differ.”

NOTE: This provision is applicable if the credit union offers the option to pay the fee in a single payment for a no-refund debt cancellation product. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(6) *Refund of fee paid in lump sum.* Either: “If you pay the fee in a single payment, you may cancel [product name] within 30 days and receive a full refund.” or “If you finance the payment of the fee as part of your loan and you pay off your loan early, you will receive a refund of any unearned fee calculated by the actuarial method.” or “If you cancel [product name] after the first 30 days of your loan, you will not receive a refund.”

NOTE: This provision is applicable where the borrower pays the fee in a single payment and the fee is added to the amount borrowed. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(7) *Termination of [product name].* Either: “You have no right to cancel [product name].” or “You have the right to cancel [product name] in the following circumstances: _____.” And either: “The credit union has no right to cancel [product name].” or “The credit union has the right to cancel [product name] in the following circumstances: _____.”

5.10(8) *Eligibility requirements, conditions, and exclusions.* “There are certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [product name].” And either: “The following is a summary of the eligibility requirements, conditions, and exclusions: [Summary of eligibility requirements, conditions, and exclusions.]” or “You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraph(s) _____ of the [product name] agreement.”

189—5.11(533) Safe and sound practices.

5.11(1) A credit union must ensure that risks associated with debt cancellation contracts and debt suspension agreements are managed in accordance with safe and sound principles and practices. Consequently, a credit union must implement and maintain effective risk management and control processes in conjunction with its debt cancellation contracts and debt suspension agreements, including, but not limited to, appropriate recognition and reporting of income, expenses, assets and liabilities. Additionally, the processes must provide for the recognition and financial reporting of the appropriate treatment of all expected and unexpected losses associated with these products.

5.11(2) A credit union must assess the adequacy of its internal controls and risk mitigation activities in view of the characteristics and extent of its debt cancellation contracts and debt suspension agreements. Accordingly, a credit union must evaluate its existing risk tolerances and management systems to assess, evaluate and monitor third-party relationships in connection with the development, offering and servicing of the credit union's debt cancellation contracts and debt suspension agreements, including compliance and reputation risks, and the potential adverse impact nonperformance by the third party may have on the financial performance of the credit union.

5.11(3) Debt cancellation agreements may only be offered by a credit union in connection with an extension of credit primarily for personal, family or household purposes.

189—5.12(533) Exception for Guarantee Automobile Protection or Guarantee Asset Protection (GAP) and other debt cancellation products offered by credit unions through unaffiliated, nonexclusive agents.

5.12(1) Credit unions offering Guarantee Automobile Protection or Guarantee Asset Protection (GAP) and other debt cancellation products through unaffiliated, nonexclusive agents, most notably on vehicle loans made available through automobile dealers, are exempt from compliance with respect to:

- a. The requirement to notify the superintendent of the existence of the Guarantee Automobile or Asset Protection (GAP) or other types of debt cancellation products in subrule 5.3(5);
- b. The requirement that a credit union which offers a borrower a debt cancellation product without a refund also must offer a borrower a bona-fide option to purchase a comparable debt cancellation product that provides for a refund in subrule 5.5(1);
- c. The requirement to provide the long-form disclosure in rule 189—5.10(533); and
- d. The requirement to obtain a borrower's written acknowledgment of receipt of disclosures in subrule 5.7(4).

5.12(2) Credit unions offering GAP debt cancellation products through unaffiliated, nonexclusive agents remain subject to the following requirements:

- a. The credit union may not extend credit or alter the terms or conditions of an extension of credit when the extension or alteration is conditioned upon the borrower's purchase of a debt cancellation product;
- b. The credit union may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to information that must be disclosed under this rule;
- c. The credit union may not offer a debt cancellation product that contains terms giving the credit union the unilateral right to modify the contract unless the modification is favorable to the borrower and is made without additional charge to the borrower; or unless the borrower is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect;
- d. If a debt cancellation product is terminated, the credit union must refund to the borrower any unearned fees paid for the contract unless the contract provides otherwise;
- e. The credit union shall calculate the amount of a refund using a method at least as favorable to the borrower as the actuarial method;
- f. If the credit union offers the borrower the option to finance the fee for a debt cancellation product, the credit union must disclose to the borrower whether, and, if so, the time period during which, the borrower may cancel the contract and receive a refund;
- g. At the time of the initial solicitation of the debt cancellation product, the credit union must provide to the borrower the short-form disclosure described in rule 189—5.9(533), as modified to reflect nonapplicability of those items described in subrule 5.12(1). The form of the short-form disclosures must be readily understandable and meaningful, and must be included in advertisements and other promotional material for debt cancellation products, unless the advertisements and promotional material are of a general nature;

h. Before entering into a contract, the credit union must obtain a borrower's written affirmative election to purchase the debt cancellation product. The written election must be conspicuous, simple, direct, and readily understandable and must be designed to call attention to its significance;

i. A credit union that does not provide the long-form disclosures will conspicuously inform borrowers that they will receive a copy of the contract before the borrowers are required to pay for the debt cancellation product; and

j. A credit union must manage the risks associated with the debt cancellation product in accordance with this rule.

These rules are intended to implement Iowa Code Supplement section 533.315(9) "b."

[Filed 1/24/08, Notice 12/5/07—published 2/13/08, effective 3/19/08]

CHAPTER 6
BRANCH OFFICES

189—6.1(533) Establishment of branch offices.

6.1(1) *Definition.* A branch office is determined to be a place where ordinary services of the credit union are provided to the members.

6.1(2) *Application.* A state chartered credit union desiring to establish and operate a branch office shall submit to the superintendent an “Application to Establish a Branch Office.” The application and instructions for preparing and filing it are furnished upon request.

6.1(3) Reserved for hearing and notice.

6.1(4) *Guidelines.* In determining whether or not approval of a branch office should be granted, the superintendent will consider the following factors:

a. Whether the establishment of a branch office is reasonably necessary for service to, and is in the best interest of, the applicant credit union’s membership.

b. Whether the member population density and other economic characteristics of the area primarily to be served by the proposed office afford reasonable promise of adequate support for the office.

c. Whether the capital structure of the applicant credit union is adequate in relation to the costs and anticipated increased business, if any, occasioned by the proposed branch office.

d. Whether the operation and management of the applicant credit union is such as will adequately provide for a branch office operation.

e. Such other factors as the superintendent determines appropriate or necessary in determining an applicant credit union’s ability to establish and operate a branch office.

6.1(5) Reserved.

6.1(6) *Certification.* If after notice and hearing the decision of the superintendent is favorable, the superintendent shall issue certification to evidence approval for the establishment and operation of the branch office to be effective on a specified date and at a designated location.

189—6.2(533) Change of location of branch office.

6.2(1) A credit union desiring to move its branch office shall submit to the superintendent an application to relocate a branch office. The rules governing the establishment of a branch office shall also govern the relocation of a branch office.

6.2(2) If a credit union elects to cease operations at a branch office facility such credit union shall notify the superintendent at least 60 days prior to the effective date of ceasing such operations.

These rules are intended to implement Iowa Code section 533.301(19).

[Filed 11/9/79, Notice 9/5/79—published 11/28/79, effective 1/2/80]¹

[Filed 3/28/80, Notice 2/6/80—published 4/16/80, effective 5/21/80]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 2/17/87, Notice 11/19/86—published 3/11/87, effective 4/15/87]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

¹ Effective date (Ch 6) delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 7
LOW-INCOME DESIGNATED CREDIT UNION

189—7.1(533) Authority. Iowa Code subsection 533.301(1) grants a credit union the power to receive from its members, nonmembers where the credit union is serving predominantly low-income members, other credit unions, and federal, state, county, and city governments, payments on shares or as deposits.

Low-income designated credit unions must comply with the National Credit Union Administration (NCUA) Rules and Regulations applicable to all federally insured credit unions. In particular, NCUA Rules and Regulations, Parts 701.32, 701.34 and 705, apply specifically to low-income designated credit unions.

A low-income designated credit union has the same purpose as all other credit unions: to create a source of credit at a fair and reasonable rate of interest; to encourage habits of thrift among its members; and to provide the opportunity for people to use and control their savings for their mutual benefit. In addition, these credit unions have the additional requirement that a majority of their members must be at or below the income standards set by these rules.

189—7.2(533) Definitions. The following words and terms, when used in these rules, shall have the meaning indicated:

“Account” or *“accounts”* means share, share draft, certificate and deposit accounts of a member (including public unit and nonmembers permitted by the Iowa Code) in a credit union which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

“Low-income member” means those members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or those members whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau, or those members otherwise defined as low-income as determined by the superintendent and the National Credit Union Administration Board. The term “low-income member” also includes those members who are enrolled as full-time or part-time students in a university, college, high school, or vocational school.

“Member” or *“members”* means those persons enumerated in the credit union’s field of membership who have been elected to membership in accordance with the credit union’s bylaws and the Iowa Code. It also includes those nonmembers permitted by the Iowa Code to maintain an account in a credit union, including nonmember financial institutions and nonmember public units and political subdivisions.

“Political subdivision” means any subdivision of a public unit, as defined by this subrule, or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities and other special districts created by state statute or compacts between states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

“Predominantly” means a majority greater than 50 percent.

“Public unit” means the United States, any state of the United States, the District of Columbia, any commonwealth, zone, territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in Section 3(c) of the Indian Financing Act of 1974.

“Subordinated debt account” means a debt having a claim against the issuer’s assets that is lower in ranking, or junior to, other obligations, and is paid after claims to holders of senior securities are satisfied.

“Superintendent” means the superintendent of credit unions for the credit union division of the Iowa department of commerce.

189—7.3(533) Low-income designation documentation. A credit union requesting designation, or a group requesting a charter, as a low-income credit union must submit a written request for a low-income

designation to, and receive approval from, the superintendent. The credit union or group must provide documentation supporting that the majority of the members, or potential members in the case of a newly organized credit union, meet the low-income designation.

In determining whether a credit union is or will be, in the case of a newly organized credit union, serving a low-income membership, any one of the following methods may be used:

7.3(1) *Loan survey.* Based on a 100 percent survey of the loans, more than 50 percent of the credit union's borrowers must qualify as low-income members.

7.3(2) *Member survey.* Based on a 100 percent survey of the current members, more than 50 percent of the credit union's members must qualify as low-income members.

7.3(3) *Zip code analysis.* Based on a 100 percent survey of the zip code residence of all current members, more than 50 percent of the credit union's current members must reside in defined low-income zip codes, based on current U.S. Census Bureau's median household income statistics.

7.3(4) *Other methods.* Any other method determined by the superintendent which shows reasonable evidence that more than 50 percent of the credit union's members, or potential members in the case of a newly chartered credit union, qualify as low-income or live in areas where a majority of the residents are low-income.

189—7.4(533) Nonmember deposits. Low-income credit unions can receive nonmember shares and deposits from any source, including other financial institutions, public units, philanthropic individuals or groups such as churches and foundations, and the Community Development Revolving Loan Program. Nonmember account holders shall not have the rights and privileges afforded by Iowa Code chapter 533 to members of a credit union, and are limited in their involvement with a credit union to that specified by this rule.

7.4(1) *Limitations.* Unless a greater amount has been approved by the superintendent, the maximum aggregate amount of all public unit and nonmember accounts shall not, at any given time, exceed 20 percent of the total shares and deposits of the credit union or \$1.5 million, whichever is greater.

7.4(2) *Exception to limit.* Before accepting any public unit or nonmember accounts in excess of 20 percent of total shares and deposits, the board of directors must adopt a specific written plan concerning the intended use of these accounts and forward a copy to, and receive approval from, the superintendent.

a. The plan must include:

(1) A statement of the credit union's needs, sources and intended uses of public unit and nonmember shares and deposits;

(2) Provision for matching maturities of public unit and nonmember shares and deposits with corresponding assets, or justification for any mismatch; and

(3) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.

b. In addition to the plan specified by this subrule, a credit union seeking an exception must include in its written request:

(1) The new maximum level of public unit and nonmember shares and deposits being requested, either as a dollar amount or a percentage of total shares and deposits of the credit union;

(2) A copy of the credit union's latest financial statement, including income and expenses;

(3) A copy of the credit union's loan and investment policies; and

(4) Such other documentation as may be required by the superintendent.

7.4(3) *Use of nonmember deposits.* Nonmember deposits in low-income designated credit unions may be:

a. Loaned to the members when current member share and deposit accounts are insufficient to meet the loan demand and liquidity needs of the credit union;

b. Invested and the positive spread used to improve the income of the credit union; and

c. Invested and the positive spread used to build the capital of the credit union.

189—7.5(533) Removal of low-income designation. Once a credit union qualifies for low-income designation, it is presumed that the status will be retained. However, the income level of the field of

membership may increase due to improvement in economic conditions, or the merger or expansion of the credit union. Documentation regarding continued low-income status eligibility will be reviewed during each regular examination of the credit union to ensure that the credit union continues to meet the standards established by this rule. Final decision regarding removal of low-income designation rests with the superintendent. Removals may be appealed to the credit union review board in a timely manner.

7.5(1) Reason for removal. The designation as a low-income credit union may be removed by the superintendent:

a. At the request of the credit union if it is determined by the superintendent that to do so will not adversely affect the members of the credit union and that the removal action would be in the public interest; or

b. If, after notice to the credit union and the opportunity for a hearing, the superintendent determines that the credit union no longer meets the standards and limitations established by this rule and that the removal action would be in the public interest.

7.5(2) Result of loss of low-income designation on nonmember accounts. Immediately following the removal of the low-income status, the credit union shall provide all nonmembers written notice of the removal action, informing them:

a. That the credit union is no longer eligible to receive nonmember payments on shares and deposits;

b. That all nonmember accounts with a stated maturity date may be withdrawn prior to maturity without any early withdrawal penalty; and

c. That the nonmember shares and deposits held by the credit union must be withdrawn and the account closed either upon the stated date of maturity of the account or the date when the account ceases to be federally insured as required by Iowa Code section 533.307, whichever occurs first.

189—7.6(533) Receipt of secondary capital. A low-income designated credit union may offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers, subject to the approval of the superintendent. Prior to offering secondary capital accounts, the board of directors must adopt a plan for the use of the funds and forward a copy to, and receive approval from, the superintendent.

7.6(1) Terms and conditions of a secondary capital account. A secondary capital account must be consistent with the following terms and conditions:

a. A secondary capital account contract agreement must be executed between an authorized representative of the account holder and the credit union, accurately disclosing the terms and conditions consistent with this subrule. A copy of the agreement must be retained by the credit union throughout the term of the agreement;

b. A secondary capital account must be established as a subordinated debt account and may not be pledged as security on any loan or other obligation with the credit union or any other party;

c. Funds in a secondary capital account must be subordinate to all other claims made upon the credit union, including those of shareholders, creditors and the National Credit Union Share Insurance Fund;

d. The stated maturity of a secondary capital account must be at least five years, may not be redeemed prior to its maturity, may be interest-bearing, and will not be eligible for insurance coverage by any governmental or private entity;

e. Funds in a secondary capital account must be made available to cover operating losses realized by the credit union which exceed the credit union's net available reserves and undivided earnings, exclusive of the allowance for loan and investment losses accounts. Losses are to be divided on a pro-rata basis among all secondary capital accounts held by a credit union at the time of the loss and, to the extent such funds are used, the credit union shall not restore or replenish the account; and

f. Upon the merger or other voluntary dissolution of a low-income designated credit union, except in the case of a merger with another low-income credit union, a secondary capital account held by the merging or dissolving credit union is to be closed and, to the extent not needed to cover losses as provided by this subrule, the funds in the account are to be paid out to the account holder.

7.6(2) *Accounting treatment for secondary capital accounts.* Funds in secondary capital accounts are to be recorded in the credit union books as a “secondary capital account.” For accounts with remaining maturities of less than five years, the financial statements of the credit union must be footnoted to reflect a value of the accounts according to the following scale:

- a. 4 or more years remaining maturity but less than 5 years—80 percent;
- b. 3 or more years remaining maturity but less than 4 years—60 percent;
- c. 2 or more years remaining maturity but less than 3 years—40 percent;
- d. 1 year or more remaining maturity but less than 2 years—20 percent; and
- e. Less than 1 year of remaining maturity—0 percent.

These rules are intended to implement Iowa Code section 533.301(1).

[Filed 8/23/96, Notice 6/19/96—published 9/11/96, effective 10/16/96]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 8 ACCOUNTS

189—8.1(533) Definitions.

“Account” or *“accounts”* means shares, certificates or share draft accounts of a member in a credit union or a public unit which are approved under Iowa Code chapter 533.

“Member” means a natural person or an entity within the field of membership who has become eligible for credit union services and has been accepted for membership by the credit union.

“Public unit” means the United States, a state of the United States, a county, municipality or a political subdivision thereof.

189—8.2(533) Insurance required. All accounts of a credit union shall be insured in accordance with Iowa Code chapter 533. Credit unions shall provide notice to members of the amount and type of deposit insurance coverage on members’ accounts at each main and branch office location. Information regarding insured deposits shall be made available to members upon request. The notice and information requested under this rule shall not limit the notice for information required by the credit union deposit insurer.

189—8.3(533) Authorized accounts. Credit unions are authorized to have accounts as provided under Iowa Code chapter 533 which are clarified and explained under this chapter and are consistent with the laws of the residence of the account holder. This shall include, but not be limited to: ownership accounts, trust accounts, executor accounts, corporate accounts, IRA and Keogh accounts, deferred compensation accounts, and public unit accounts.

189—8.4(533) Ownership accounts. Ownership accounts shall mean accounts owned by single individuals or their agents or nominees; accounts held by a guardian, custodian, or conservator for the benefit of a ward or minor; or accounts owned by more than one person whether as joint tenants with right of survivorship, as tenants in common, or by husband and wife as community property.

189—8.5(533) Trust accounts.

8.5(1) Credit unions shall receive trust accounts only as depositories and not as trustees of trust accounts.

8.5(2) Trust accounts shall include irrevocable trust accounts, revocable trust accounts and testamentary accounts. Testamentary accounts shall include tentative or “Totten” trust accounts, payable-upon-death accounts, or any account which evidences an intention that the funds of the account shall pass on the death of the owner of the funds to a named beneficiary.

8.5(3) To the extent required by law, funds held in revocable trust accounts and testamentary accounts shall be subject to the debts of the owner of the account and to inheritance tax. Within 30 days of notice of the death of an owner of funds held in a revocable trust account or a testamentary account, the credit union shall notify the executor of the deceased owner’s estate, or the beneficiary, of the existence and current balance of the account.

189—8.6(533) Executor accounts. Executor accounts shall include accounts established for the purpose of administering funds held on deposit in the name of a decedent, either in the name of the decedent or in the name of an executor or administrator of the decedent’s estate.

189—8.7(533) Corporate accounts. Corporate accounts shall include accounts held by a corporation, partnership, or unincorporated activity. This shall mean any account other than the account of a natural person.

189—8.8(533) IRA and Keogh accounts. IRA and Keogh accounts shall include accounts of a participant or designated beneficiary of a trust or custodial account maintained pursuant to a pension or profit-sharing plan described and authorized by the U.S. Internal Revenue Code.

189—8.9(533) Deferred compensation accounts. Deferred compensation accounts shall include accounts into which are deposited funds by an employer pursuant to a deferred compensation plan described and authorized by the U.S. Internal Revenue Code.

These rules are intended to implement Iowa Code chapter 533.

[Filed 2/2/90, Notice 11/15/89—published 2/21/90, effective 3/28/90]

[Filed emergency 3/26/90—published 4/18/90, effective 3/28/90]

[Filed 2/13/91, Notice 12/12/90—published 3/6/91, effective 4/10/91]

CHAPTER 9
REAL ESTATE LENDING
[Prior to 7/6/94, see 189—Chs 9 and 10]

189—9.1(533) Real estate lending. These rules shall apply to real estate-related loans either originated by a credit union or acquired by purchase, assignment or otherwise.

9.1(1) The board of directors of the credit union shall formulate and maintain a written real estate lending policy that is appropriate for the size of the credit union and the nature and scope of its operation. Each policy must be comprehensive and consistent with safe and sound lending practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The real estate lending policy should reflect the level of risk that is acceptable to the board and should provide clear and measurable underwriting standards that enable the credit union's lending staff to evaluate all relevant credit factors. The real estate lending policy, at a minimum, should:

- a. Establish loan portfolio diversification standards.
- b. Set appropriate terms and conditions by type of real estate loan.
- c. Establish loan origination and approval procedures.
- d. Establish prudent underwriting standards which include clear and measurable loan-to-value limitations.
- e. Establish review and approval procedures for exempted loans.
- f. Establish loan administration procedures.
- g. Establish real estate appraisal and evaluation programs.
- h. Monitor the portfolio and provide timely reports to the board of directors.
- i. Establish conformance with secondary market investor requirements where applicable.

9.1(2) The board of directors of the credit union shall establish its own internal loan-to-value (LTV) limits for real estate loans.

When formulating the real estate policy, the board should consider both internal and external factors, such as size and condition of the credit union, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate-related laws and rules, and general market conditions.

9.1(3) Real estate loan made for sale into the secondary market shall be considered in transit for a period of up to 90 days after being sold and shall not be considered risk assets for reserving purposes during this time period.

This rule is intended to implement Iowa Code section 533.315(4)“a.”

189—9.2(533) Evidence of title. When lending for the purpose of acquisition or for the purpose of refinance of acquisition, when a new mortgage, deed of trust, or similar instrument is filed, the credit union shall obtain either:

1. A written legal opinion by an attorney admitted to practice in the state in which the real estate is located showing marketable title in the mortgagor and describing any existing liens and stating that the credit union's mortgage, deed of trust, or similar instrument is a first lien on the real estate; or
2. Title insurance written by an insurance company licensed to do business in the state in which the real estate is located describing any existing liens and insuring the title to the real estate and the validity and enforceability of the mortgage, deed of trust, or similar instrument as a first lien on the real estate.

This rule is intended to implement Iowa Code section 533.315(4)“a.”

[Filed 11/9/79, Notice 9/5/79—published 11/28/79, effective 1/30/80]

[Filed 12/20/79, Notice 10/31/79—published 1/9/80, effective 2/13/80]

[Filed emergency 9/24/82 after Notice 8/4/82—published 10/13/82, effective 9/24/82]

[Filed 2/22/85, Notice 11/7/84—published 3/13/85, effective 4/17/85]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 6/15/94, Notice 5/11/94—published 7/6/94, effective 8/10/94]

[Filed 1/24/97, Notice 12/18/96—published 2/12/97, effective 3/19/97]

[Filed 1/31/03, Notice 12/25/02—published 2/19/03, effective 3/26/03]
[Filed 11/3/05, Notice 9/28/05—published 11/23/05, effective 12/28/05]
[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 10
CORPORATE CENTRAL CREDIT UNION

189—10.1(533) Corporate central credit union powers. A corporate central credit union established in accordance with Iowa Code chapter 533 shall have all the powers, restrictions, and obligations imposed upon or granted to a credit union established in accordance with that chapter, the additional powers permitted under Iowa Code section 533.213, and such other powers granted to federally chartered corporate central credit unions under Part 704 of the National Credit Union Administration Rules and Regulations.

This rule is intended to implement Iowa Code section 533.213.

[Filed 6/15/94, Notice 5/11/94—published 7/6/94, effective 8/10/94]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 11
INSOLVENCY

189—11.1(533) Definition of insolvency. Insolvency shall exist where the assets of a credit union, if liquidated, would not equal the amount necessary to pay off the liability of the credit union.

189—11.2(533) Factors considered. In determining whether a credit union is insolvent, the superintendent shall, among other things, consider the following:

1. Amount and length of delinquent loans;
2. Available reserves;
3. Source of operating funds;
4. Book and market value of assets; and
5. Current and expected operating expenses.

189—11.3(533) First year of operation. A credit union in its first year of operation will not be subject to the insolvency provisions of rules 11.1(533) and 11.2(533) unless the extent of the insolvent condition threatens the safety and soundness of the credit union, or unless the credit union has violated a provision of Iowa Code chapter 533.

These rules are intended to implement Iowa Code section 533.501.

[Filed 12/20/79, Notice 10/31/79—published 1/9/80, effective 2/13/80]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 9/29/89, Notice 7/26/89—published 10/18/89, effective 11/22/89]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 12
BYLAW AMENDMENT VOTING PROCEDURE—MAILED BALLOT

189—12.1(533) Authority for mailed ballots. At an annual or special meeting a majority of the members present must have approved amending bylaw Section 19.1 to include the balloting by mail provision.

12.1(1) Any and all amendments to the bylaws must be approved by the superintendent before they become operative.

12.1(2) Reserved.

189—12.2(533) Notice to voting members.

12.2(1) The proposed amendment(s) shall be set forth in its entirety in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the close of balloting by mail.

12.2(2) The notice shall state the date of the close of the balloting. Such closing date shall be not less than 20 days nor more than 30 days from the date of the notice.

12.2(3) The notice shall contain a summary of the board's reasons for recommending the bylaw amendment.

189—12.3(533) Balloting procedure.

12.3(1) A ballot shall be included with the notice to all eligible voting members of the credit union.

12.3(2) Ballots must be returned to the credit union by the date of the closing of the balloting.

12.3(3) Ballots hand-delivered to the credit union must be received by the closing date.

12.3(4) Ballots returned to the credit union by mail must be postmarked no later than the closing date in order to be valid.

12.3(5) The ballot must be signed by the member.

189—12.4(533) Balloting in conjunction with membership meeting.

12.4(1) Should the board of directors determine that balloting by mail will be done in conjunction with an annual or special meeting such ballots must be mailed to the members at least 20 days but not more than 30 days prior to the meeting.

12.4(2) The board shall inform the members they have the right to vote on the proposed amendment(s) in person at the meeting or by written ballot.

12.4(3) Written ballots must be postmarked or received in the credit union office no later than the date of the meeting to be valid.

12.4(4) Notice requirements shall be identical to those set forth in 189—12.2(533).

189—12.5(533) Ballot.

12.5(1) Ballots referred to in this chapter shall be substantially in the following form:

SAMPLE	BALLOT	SAMPLE
<p>I, the undersigned member of XYZ Credit Union acknowledge receipt of the notice containing proposed amendment(s) to the bylaws and herewith cast my vote.</p>		
<p>Shall the proposed amendment to the following be adopted?</p>		
Section 6.2	Yes___	No___
Section 7.4	Yes___	No___
Section 18.1	Yes___	No___
<p>_____ Signature of Member</p>		
<p>_____ Account Number</p>		
<p>_____ Date</p>		

12.5(2) Each proposed amendment must be listed separately on the ballot so that the member has the opportunity to vote on each proposal.

12.5(3) Bifold post cards which can be sealed by the member may be used as ballots.

12.5(4) Ballots shall be delivered to the election committee unopened.

189—12.6(533) Confidentiality of ballots.

12.6(1) The board shall appoint from the membership an election committee of not less than five members to be in charge of counting the ballots and verifying that no eligible member voted more than once. No member of the board may serve on the election committee.

12.6(2) Returned ballots become the property and responsibility of the election committee.

12.6(3) No director or employee or member of the election committee shall reveal the manner in which any member voted on the proposed amendment(s).

189—12.7(533) Certification of ballots in support of division approval.

12.7(1) No sooner than five days after the close of the balloting period the election committee shall certify the vote count to the board.

12.7(2) The following documentation shall be submitted by the board to the superintendent in support of their request for approval:

- a. A certified copy of the board minutes which contain the recommendation to submit the proposed amendment(s) to the membership.
- b. A certified copy of the notice.
- c. A certified copy of the ballot.
- d. A certified statement, including the vote count that a majority of the eligible members voted in favor of the proposed amendment(s).

189—12.8(533) Reporting the results of the vote to the membership.

12.8(1) The board shall inform the membership of the results of the vote and whether the amendment received the approval of the superintendent by conspicuously posting such notice in the credit union office for a period of 60 days and by one of the following methods:

- a. Include the results in the next mailing of the member's statements of account, or
- b. Include the results in the credit union newsletter, or

- c.* Include the results in the sponsor newsletter, or
- d.* A notice in a newspaper of general circulation within the credit union's area of operation.

12.8(2) Reserved.

189—12.9(533) Preservation of ballots.

12.9(1) Immediately upon certification of the vote by the election committee the ballots shall be sealed and appropriately labeled.

12.9(2) Ballots shall be retained in the credit union for a period of 60 days from the date of final approval or denial of the amendment(s) by the superintendent.

These rules are intended to implement Iowa Code section 533.201.

[Filed emergency 6/30/82—published 7/21/82, effective 7/1/82]

[Filed 8/27/82, Notice 7/21/82—published 9/15/82, effective 10/20/82]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 13
POWERS OF SUPERINTENDENT IN CONTROL OF CREDIT UNION

189—13.1(533) Powers of superintendent or special deputy superintendent. When the superintendent takes control of a credit union pursuant to Iowa Code sections 533.501 and 533.502, the superintendent or the superintendent's special deputy shall have the power to operate and direct the affairs of the credit union in its regular course of business which shall include, but not be limited to:

1. Approval, disapproval and administration of loans;
2. Approval, disapproval and administration of deposits and investments;
3. Approval, disapproval and administration of borrowing;
4. Making, administering and terminating contracts;
5. Purchase, sale and disposal of real and personal property;
6. Filing and defending legal actions and claims;
7. Hiring, supervising and firing employees, agents and consultants;
8. Causing examinations and audits; and
9. Taking any actions necessary to maintain insurance and protect property.

189—13.2(533) Surrender of control. The superintendent shall determine when the superintendent's control shall cease unless such right to control expires as provided by Iowa Code sections 533.501 and 533.502. Upon determining that control shall cease, the superintendent shall either turn the control of the credit union back to the board of directors of the credit union or shall seek a receivership.

These rules are intended to implement Iowa Code sections 533.501 and 533.502.

[Filed 9/29/89, Notice 7/26/89—published 10/18/89, effective 11/22/89]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 14
EXAMINATION REVIEWS AND INVESTIGATIONS
Note: Chapter 14, "Contested Case Proceedings," rescinded, IAB 2/21/90, effective 3/28/90.

189—14.1(533) Definitions.

"Division officer" means the superintendent, deputy superintendent or any division employee authorized by the superintendent under Iowa Code section 533.505 to subpoena witnesses, to compel their attendance, to administer oaths, to examine any person under oath and to require the production of books and records.

"Examination review" means the review of a division field examination before the superintendent at the division's office.

"Formal investigative proceeding" means the taking of subpoenaed testimony of a witness by a division officer.

"Formal order of investigation" means the written order of the superintendent which indicates the reason for the formal investigation as well as the division personnel appointed division officers.

"Warning" means a written direction by the superintendent, or by a division employee on behalf of the superintendent, to cease acts or practices violative of Iowa Code chapter 533 or which threaten the safety and soundness of a credit union.

189—14.2(533) Application of rules. The rules of this chapter shall apply only to examination reviews and investigations conducted by the division. They do not apply to inquiries conducted by the division regarding chartering or employee group applications, or to hearings, appeals or rule-making proceedings. Further, these rules in no way limit the authority granted to the division or the superintendent by Iowa Code chapter 533.

189—14.3(533) Examination reviews.

14.3(1) Based on the division's examination of a credit union, the superintendent may, by written notice, request a credit union or its directors to appear at an examination review at the division's office.

14.3(2) If a credit union or its directors fail to appear at an examination review, the superintendent may: institute a formal investigation and issue subpoenas; or institute a contested case hearing.

14.3(3) At any time, including during an examination or an examination review, the superintendent may issue a written warning directing a credit union or an officer, director or employee of a credit union, to take action as deemed consistent with Iowa Code chapter 533 or as necessary for the safety and soundness of the credit union.

14.3(4) If a credit union fails to comply with a warning of the superintendent, the superintendent may institute a formal investigation or a contested case hearing.

14.3(5) If an officer, director or employee of a credit union fails to comply with the superintendent's warning, the superintendent may: institute a formal investigation; initiate a contested case hearing regarding removal of the officer, director or employee of the credit union; or refer the matter for criminal prosecution.

189—14.4(533) Preliminary informal investigations. An informal investigation may be conducted if the division receives an indication that there may be a violation of Iowa Code chapter 533 or that the safety and soundness of a credit union may be threatened based on any of the following: information received from a member of a credit union, from a member of the public, or from a federal or a state agency; from the examination of filings, financial reports, or credit union business records; from an examination review, or from some other occurrence or fact. In a preliminary informal investigation, no process shall be issued or testimony compelled.

189—14.5(533) Nonpublic proceedings and transcripts of examination reviews or informal preliminary investigatory proceedings. Examination reviews and preliminary informal investigations shall be nonpublic. Transcripts of any examination review or informal investigatory proceeding may be officially recorded as provided for in subrule 14.6(4).

189—14.6(533) Formal investigations.

14.6(1) *Initiation of formal investigations.* Formal investigations shall begin only upon the issuance of a formal order of investigation signed by the superintendent. Subpoenas for testimony and documents may be issued only after a formal investigation has begun.

14.6(2) *Issuance of formal order.* A formal order of investigation may be issued by the superintendent, and a formal investigation may be made if the superintendent has a reasonable basis to believe that there may be a violation of Iowa Code chapter 533 or that the safety and soundness of a credit union may be threatened based on any of the following: information received from a member of a credit union, from a member of the public, from a federal or a state agency; from the examination of filings, financial reports, or credit union business records; from an examination review, or from some other occurrence or fact. A formal order of investigation shall set forth the possible violations of law as well as a general statement describing the factual basis for the violations. A formal order shall also specify the division officers authorized to issue subpoenas in the formal investigation.

14.6(3) *Presiding officers.* Formal investigatory proceedings may be held before the superintendent, a deputy superintendent, or any division officer so designated by the superintendent in the formal order of investigation.

14.6(4) *Transcripts.* Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the division officer conducting the investigation. Any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony at the division's offices. A person who has submitted documentary evidence or has testified as a witness in a formal investigative proceeding shall be entitled, upon written request, and at the person's expense, to procure a copy of the documentary evidence produced by the witness or a transcript of the witness's testimony. However, the division may, for good cause, deny the request.

14.6(5) *Rights of witnesses.*

a. Any person who is compelled or requested to furnish documentary evidence or testimony at a formal investigative proceeding shall upon request be shown the division's formal order of investigation. Copies of formal orders of investigation shall not be furnished for their retention to those persons except with the express approval of the superintendent. The superintendent shall not grant approval unless the superintendent is satisfied that there exist reasons for approval which are consistent both with the protection of privacy of persons involved in the investigation and with the unimpeded conduct of the investigation.

b. Any person compelled to appear, or who appears by request or permission of the division, at a formal investigative proceeding may be accompanied, represented and advised by counsel. This means that a witness testifying shall have the right to have an attorney present with the witness during any formal investigative proceeding and to have the attorney:

- (1) Advise before, during, and after the conclusion of the examination,
- (2) Question the client/witness briefly at the conclusion of the examination to clarify any of the answers the client/witness has given, and
- (3) Make summary notes during the examination.

c. Witnesses shall be sequestered and, unless otherwise permitted in the discretion of the division officer conducting the investigation, no person other than the witness's counsel shall be permitted to be present during the witness's examination.

14.6(6) *Service of subpoenas.* Service of subpoenas issued in formal investigative proceedings shall be effected by personal service or by restricted certified mail.

14.6(7) *Nonpublic proceedings.* Except as otherwise provided by law, all formal investigative proceedings shall be nonpublic.

14.6(8) *Enforcement of subpoenas.* If a subpoenaed party fails to comply with a subpoena, the division may enforce the subpoena in district court.

189—14.7(533) Action following an examination, examination review or an informal or formal investigation. After an examination, an examination review, or an informal or formal investigation, the

division may take one or more of the following actions as consistent with Iowa Code chapter 533: issue a warning; conduct an examination review or an informal or formal investigation; institute a contested case hearing looking to the imposition of remedial sanctions; or refer the matter for criminal prosecution.

189—14.8(533) Voluntary submission of information. Any person who becomes involved in an examination review or in a preliminary or formal investigation may, on the person's own initiative, submit a written statement to the division which sets forth the person's interests and position with regard to the subject matter involved.

189—14.9(533) Effect of disposition and settlement on criminal proceedings. In the course of the division's examinations or investigations, contested cases, or lawsuits, the division staff, with the superintendent's authorization, may discuss the disposition of the matters with persons involved. A disposition may be by consent, by settlement, or in some other manner; however, it is the policy of the division that the disposition of any matter may not expressly or impliedly extend to any criminal charges that have been or may be brought against any person, and may not affect any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter of the division who consents or agrees to consent to any judgment or order, does so solely for the purpose of resolving the claims against the person in a division's investigation, contested case, or civil suit, and not for the purpose of resolving any criminal charges that have been or might be brought against the person. This policy reflects the fact that neither the division nor its staff has the authority or responsibility for instituting, conducting, settling or otherwise disposing of criminal proceedings. This authority and responsibility are vested in the county attorneys, the attorney general, or representatives of the U.S. Department of Justice.

These rules are intended to implement Iowa Code chapter 533.

[Filed 2/2/90, Notice 11/15/89—published 2/21/90, effective 3/28/90]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 15
FOREIGN CREDIT UNION BRANCH OFFICES

189—15.1(17A) Definitions. The definition of terms included in Iowa Code section 17A.2 and 189—1.1(533) shall apply to such terms used in this chapter. In addition, as used in this chapter:

“*Account insurance*” means either the federal NCUA insurer or a state guaranty corporation which has been approved by the regulator who supervises the foreign credit union.

“*Foreign credit union*” means a credit union chartered by a state regulator other than the Iowa regulator.

“*Reciprocal state*” means a state whose statute allows Iowa’s state chartered credit unions to establish branch offices in that state.

189—15.2(533) Application of foreign credit union.

15.2(1) An application for a credit union organized and duly qualified as a credit union in a reciprocal state to establish a branch office in Iowa shall be submitted on a form furnished by the superintendent.

15.2(2) The application may be obtained by writing the Superintendent, Credit Union Division, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309; or calling (515)281-6514.

189—15.3(533) Exhibits. Attached to the application submitted pursuant to 15.2(1) shall be the following exhibits:

15.3(1) Reserved.

15.3(2) A schedule of interest rates to be charged on loans to be made to the residents of this state, a statement that the applicant understands the provisions of Iowa Code chapter 537, and a copy of that portion of the applicable law under which the credit union operates establishing maximum interest rates.

15.3(3) Evidence that the credit union members’ share and deposit accounts are insured by Title II of the Federal Credit Union Act (12 U.S.C. Secs. 1781 et seq.) or other comparable insurance acceptable to the superintendent. (See rule 189—15.1(17A).)

15.3(4) Evidence that the credit union has obtained surety bond coverage and fidelity bond coverage as required by the laws of the state under which the credit union operates.

15.3(5) A letter from the supervisory agency indicating the credit union is in good standing in the state where the principal office is located.

15.3(6) A copy of the last report, audit or examination by the applicable regulatory or supervisory agency and response to that report, audit or examination, if such response was required.

15.3(7) If the credit union operates on a fiscal year different from the calendar year, a statement indicating the period covered by the credit union’s last fiscal year.

15.3(8) A copy of the audited balance sheet and income statement, prepared by an independent accountant or certified public accountant, for the most recently completed calendar or fiscal year.

15.3(9) A copy of the most recent month-end balance sheet and income statement.

15.3(10) Statistics indicating the present number of members in the credit union, the total number of persons eligible for membership, the number of persons eligible for membership in Iowa, and the number of members residing in Iowa.

15.3(11) A statement of exact present field of membership and the location of any branch offices in Iowa as well as any proposed field of membership, if a change is to be made concurrently with the establishment of the branch office.

15.3(12) Copy of articles of incorporation.

15.3(13) Copy of official bylaws.

15.3(14) An analysis of delinquent loans prepared as of the date of the most recent financial statements.

15.3(15) A report of the names, addresses and telephone numbers of the person(s) managing each branch office in this state.

15.3(16) The language to be used in connection with the credit union’s name in Iowa.

15.3(17) A copy of a resolution of the board of directors agreeing to keep the superintendent or the superintendent's duly designated representative advised at all times of the address at which the books, accounts, papers, records, files, safes and vaults are located in Iowa and the office hours of the credit union. (See 189—15.8(533)).

189—15.4 Reserved.

189—15.5(533) Annual reporting requirements. By resolution, a copy of which shall be furnished to the superintendent, the board of directors shall commit the credit union to furnish to the superintendent the following:

15.5(1) The names of the officers, within 15 days after the board of directors elects the officers of the credit union. At this time, the credit union shall also notify the superintendent of the names of the board of directors, the members and alternate members of the credit committee and the members of the supervisory committee. Such reporting may be done by providing copies of the oath of directors or whatever form the credit union uses to report such information to the regulator of their state.

15.5(2) The names of the directors, officers, members and alternate members of the credit committee and members of the supervisory committee within 15 days of any change. Such reporting shall be done as outlined in 15.5(1).

15.5(3) The names, addresses and telephone numbers of the person(s) managing each branch office in this state within 15 days of any change.

15.5(4) Reports of annual audits or examinations, on a continuing basis, performed by the applicable regulatory or supervisory agency within 30 days of receipt by the credit union and copies of any responses to those reports at the time they are sent to the agency.

15.5(5) All amendments to the articles of incorporation, bylaws and the field of membership within 30 days of adoption and approved by the applicable regulatory or supervisory agency.

15.5(6) Should the branch office be closed such action shall be reported to the superintendent at least 30 days prior to the actual closing.

189—15.6(533) Fees.

15.6(1) Each credit union operating a branch office in this state pursuant to these rules and Iowa Code section 533.115 shall pay an annual fee of \$250 to the superintendent on or before February 1 of each year.

15.6(2) If payment is not made to the superintendent by the due date, the certificate then in effect stating that the foreign credit union has been approved to operate a branch office in Iowa may by order be summarily suspended or revoked by the superintendent ten days after giving of notice by the superintendent that such amount is due and unpaid.

15.6(3) If, after such an order as described in subrule 15.6(2) is made, a request for hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is rescinded as of its effective date.

189—15.7(533) Certificate of approval.

15.7(1) Within 60 days of the receipt of the application and all required exhibits the superintendent shall transmit in writing a decision granting or denying the application.

15.7(2) In the case of approval of the application the superintendent shall issue a Certificate of Approval for the foreign credit union to operate a branch office in the state of Iowa. Said certificate shall be suitable for framing and shall be displayed in the branch office.

189—15.8(533) Change of location of a branch office.

15.8(1) A foreign credit union desiring to move its branch office within the state of Iowa shall be required by 15.3(17) and this rule to notify the superintendent at least 60 days prior to the date the office is moved; except in the event of dissolution of the credit union the 60-day notice requirement shall be automatically waived by the superintendent.

15.8(2) Notification of the proposed change in location shall be submitted on an Application to Relocate a Branch Office. The rules governing the establishment of a branch office by a foreign credit union shall also govern the relocation of a branch office.

These rules are intended to implement Iowa Code section 533.115.

[Filed 2/22/85, Notice 11/7/84—published 3/13/85, effective 4/17/85]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 2/17/87, Notice 11/19/86—published 3/11/87, effective 4/15/87]

[Filed emergency 10/28/87—published 11/18/87, effective 11/18/87]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 16
DIRECTOR ELECTION—ABSENTEE BALLOT VOTING PROCEDURE

189—16.1(533) Authority for absentee ballots.

16.1(1) A credit union must have adopted the standard bylaws as revised by the credit union division in January 1985 in order to utilize absentee ballots.

16.1(2) The board of directors may consider utilizing absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

16.1(3) The board of directors must have established written policies setting forth the election rules.

189—16.2(533) Notice of voting members.

16.2(1) At least 30 days prior to the mailing of the annual meeting notice the membership must be informed that interested persons may submit their names to the nominating committee for consideration as candidates for election.

16.2(2) The membership must be informed that printed ballots will be used for the election and there will be no nominations from the floor.

16.2(3) The annual meeting notice shall be issued as authorized by bylaw section 4.1.

16.2(4) The notice must inform the membership that they may vote either in person at the annual meeting, or if they meet the criteria established by the board, by absentee ballot.

16.2(5) The notice must state the conditions which allow the member to vote by absentee ballot and how a ballot may be obtained.

189—16.3(533) Balloting procedure.

16.3(1) Ballots shall be mailed to those voting members who meet the criteria established by the board, and who contact the credit union office requesting an absentee ballot.

16.3(2) Voting members who meet the criteria established by the board shall be given the opportunity to vote in person at the credit union office prior to the day of the annual meeting.

16.3(3) An envelope marked “Ballot” shall be provided to the absentee voter and the voter shall sign in the appropriate location on the outside of the envelope and seal the envelope before mailing or delivering the ballot in person to the credit union office. The envelope shall be substantially in the following form:

From	SAMPLE ENVELOPE	<i>SAMPLE</i>

_____	CONTAINS ABSENTEE BALLOT	
	TO: Election Committee	
	ABC Credit Union	
	Anytown, IA 00000	
Signature _____		

16.3(4) Ballots returned to the credit union office by mail must be received no later than the day of the annual meeting in order to be valid.

189—16.4(533) Ballot.

16.4(1) Ballots referred to in this chapter shall be substantially in the following form:

BALLOT	
Director Election	
___ Mary Adams	___ Jane Martin
___ Ben Benson	___ Sam Smith
___ Charles Cotson	___ Ann Tucker
___ John Jones	___ Pat Williams
Vote for 3 candidates only — Ballots cast for more than 3 persons will be invalid.	

SAMPLE

16.4(2) Ballots used by absentee voters and those voting at the annual meeting shall be identical.

16.4(3) Absentee ballots shall be delivered to the election committee unopened.

189—16.5(533) Appointment of election committee.

16.5(1) The board shall appoint from the membership an election committee of not less than five members to be in charge of counting the ballots. The election committee shall elect a chairperson who shall be one of the appointed committee members. No member of the board may serve on the election committee.

16.5(2) The election committee shall verify that no eligible member voted more than once by maintaining a membership register indicating which members have voted. This membership register shall also be used at the annual meeting to ensure only qualified members are provided a ballot.

189—16.6(533) Confidentiality of ballots.

16.6(1) All ballots become the property and responsibility of the election committee.

16.6(2) No director or employee or member of the election committee shall reveal the manner in which any member voted on the election.

189—16.7(533) Counting of ballots.

16.7(1) If a substantial number of absentee ballots are received prior to the date of the annual meeting the election committee chairperson may set a time prior to the annual meeting for the purpose of counting the absentee ballots on hand.

16.7(2) In the event such a meeting as described in subrule 16.7(1) is held the election committee is bound by the confidentiality requirement of subrule 16.6(2). Additionally the election committee shall not in any manner reveal the status of the vote count at any time prior to the announcement of the final results.

189—16.8(533) Preservation of ballots.

16.8(1) Immediately upon certification of the election results by the election committee the ballots shall be sealed and appropriately labeled.

16.8(2) Ballots shall be retained in the credit union for a period of 60 days from the date of the annual meeting.

189—16.9(533) Reporting the results of the election to the membership.

16.9(1) The chairperson of the election committee shall inform the membership present at the annual meeting of the results of the election.

16.9(2) The board shall inform the rest of the membership of the results of the election by conspicuously posting notice in the credit union office for a period of 60 days and by one of the following methods:

- a. Include the results in the next mailing of the member's statement of account, or
- b. Include the results in the credit union newsletter, or

- c.* Include the results in the sponsor newsletter, or
- d.* A notice in a newspaper of general circulation within the credit union area of operation.

These rules are intended to implement Iowa Code section 533.204.

[Filed emergency after Notice 12/8/86—published 12/31/86, effective 1/1/87]

[Filed 2/17/87, Notice 11/19/86—published 3/11/87, effective 4/15/87]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 17
INVESTMENT AND DEPOSIT ACTIVITIES FOR CREDIT UNIONS

189—17.1(533) Authority and purpose.

17.1(1) These rules implement the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in investment and deposit activities which would be permitted if the credit union were federally chartered in accordance with Iowa Code sections 533.301(5) “j” and 533.301(25), and are promulgated under the authority of Iowa Code section 533.104.

17.1(2) These rules identify certain investments and deposit activities permissible under the Federal Credit Union Act, 12 U.S.C. Section 1757, and National Credit Union Administration (NCUA) rules and regulations, 12 CFR Part 703, and prescribe the rules governing those investments and deposit activities on the basis of safety and soundness concerns. Additionally, these rules identify and prohibit certain investments and deposit activities, which may or may not be permitted for federal credit unions and which are considered inconsistent with state law or unsafe or unsound investment for Iowa state-chartered credit unions. Finally, these rules address investment authority granted to Iowa state-chartered credit unions in Iowa Code chapter 533, which may or may not be permitted for federal credit unions.

17.1(3) Exceptions. These rules do not apply to:

- a. Investment in loans to members and other activities pursuant to Iowa Code sections 533.301(2), 533.301(3), 533.301(15) and 533.301(16);
- b. Investment in real estate-secured loans to members pursuant to Iowa Code section 533.315(4);
- c. Investment in credit union service organizations pursuant to Iowa Code section 533.301(5) “f”;
- d. Investment in fixed assets pursuant to Iowa Code section 533.301(10).

189—17.2(533) Definitions. The definition of terms included in Iowa Code section 17A.2 and 189—1.1(533) applies to such terms used in this chapter unless otherwise provided in this rule. In addition, the following definitions apply as used in these rules:

“Adjusted trading” means selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

“Associated personnel” means a person engaged in the investment banking or securities business who is directly or indirectly controlled by a National Association of Securities Dealers (NASD) member, whether or not the person is registered or exempt from registration with NASD. “Associated personnel” includes every sole proprietor, partner, officer, director, or branch manager of any NASD member.

“Banker’s acceptance” means a time draft that is drawn on and accepted by a bank and that represents an irrevocable obligation of the bank.

“Bank note” means a direct, unconditional, and unsecured general obligation of a bank that ranks equally with all other senior unsecured indebtedness of the bank, except deposit liabilities and other obligations that are subject to any priorities or preferences.

“Borrowing repurchase transaction” means a transaction in which the credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price.

“Call” means an option that gives the holder the right to buy a specified quantity of a security at a specified price during a fixed time period.

“Collateralized mortgage obligation” means a multiclass mortgage-related security.

“Collective investment fund” means a fund maintained by a national bank under Comptroller of the Currency regulations, 12 CFR Part 9.

“Commercial mortgage-related security” means a mortgage-related security, as defined in this rule, except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multifamily dwelling consisting of more than four units.

“Commercial paper” means a debt obligation of a United States-chartered corporation with a maturity date of 270 days or less, which may be interest-bearing or discount-purchased.

“*Corporate bonds*” means a debt obligation of a United States-chartered corporation with a maturity date greater than 270 days, which may be interest-bearing or discount-purchased.

“*Counterparty*” means the party on the other side of the transaction.

“*Custodial agreement*” means a contract in which one party agrees to hold securities in safekeeping for others.

“*Delivery versus payment*” means payment for an investment must occur simultaneously with its delivery.

“*Deposit note*” means an obligation of a bank that is similar to a certificate of deposit but is rated.

“*Derivatives*” means any derivative instrument, as defined under generally accepted accounting principles (GAAP).

“*Embedded option*” means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

“*Eurodollar deposit*” means a U.S. dollar-denominated deposit in a foreign branch of a United States depository institution.

“*European financial options contract*” means an option that can be exercised only on its expiration date.

“*Exchangeable collateralized mortgage obligation*” means a class of a collateralized mortgage obligation (CMO) that, at the time of purchase, represents beneficial ownership interests in a combination of two or more underlying classes of the same CMO structure. The holder of an exchangeable CMO may pay a fee and take delivery of the underlying classes of the CMO.

“*Fair value*” means the amount at which an instrument could be exchanged in a current, arm’s-length transaction between willing parties, as opposed to a forced or liquidation sale.

“*Financial options contract*” means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract as specified in the agreement.

“*Immediate family member*” means a spouse or other family member living in the same household.

“*Industry-recognized information provider*” means an organization that obtains compensation by providing information to investors and receives no compensation for the purchase or sale of investments.

“*Investment*” means any security, obligation, account, deposit, or other item authorized for purchase by a federal credit union under the Federal Credit Union Act, 12 U.S.C. Section 1757(7), 1757(8), or 1757(15), or NCUA rules and regulations, 12 CFR Part 703, other than loans to members and the exceptions specified in 189—subrule 17.1(3).

“*Investment portfolio*” means the amount invested by a credit union pursuant to Iowa Code sections 533.301(5), 533.301(25), 533.304 and 533.305, excluding any investment in nonearning assets such as real estate, premises and equipment, the capitalization deposit in the National Credit Union Share Insurance Fund (NCUSIF), and any other investment which does not generate a regular dividend or interest or receive or accrue added value.

“*Investment repurchase transaction*” means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

“*Maturity*” means the date the last principal amount of a security is scheduled to come due and does not mean the call date or the weighted average life of a security.

“*Mortgage-related security*” means a security as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), e.g., a privately issued security backed by first lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure, that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

“*Mortgage servicing rights*” means a contractual obligation to perform mortgage servicing and the right to receive compensation for performing those services. Mortgage servicing is the administration of

a mortgage loan, including collecting monthly payments and fees, providing record-keeping and escrow functions, and, if necessary, curing defaults and foreclosing.

“Negotiable instrument” means an instrument that may be freely transferred from the purchaser to another person or entity by delivery, or endorsement and delivery, with full legal title becoming vested in the transferee.

“Net worth” means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in NCUA rules and regulations, 12 CFR Part 702.2(f).

“Official” means any member of a credit union’s board of directors, credit committee, auditing/supervisory committee, or investment-related committee.

“Ordinary care” means the degree of care that an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

“Pair-off transaction” means an investment purchase transaction that is closed or sold on or before the settlement date. In a pair-off transaction, an investor commits to purchase an investment, but then pairs off the purchase with a sale of the same investment on or before the settlement date.

“Put” means an option that gives the holder the right to sell a specified quantity of a security at a specified price during a fixed time period.

“Registered investment company” means an investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a). Examples of registered investment companies are mutual funds and unit investment trusts.

“Regular way settlement” means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for immediate delivery of that type of security. For example, regular way settlement of a Treasury security includes settlement on the trade date (cash), the business day following the trade date (regular way), and the second business day following the trade date (skip day).

“Residual interest” means the remainder cash flows from collateralized mortgage obligations/real estate mortgage investment conduits (CMOs/REMICs), or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

“Securities lending” means lending a security to a counterparty, either directly or through an agent, and accepting collateral in return.

“Security” means a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

1. Either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;
2. Is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
3. Either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

“Senior management employee” means a credit union’s chief executive officer (typically this individual holds the title of president or manager), an assistant chief executive officer, and the chief financial officer.

“Small business-related security” means a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)), e.g., a security that is rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, and represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under the Federal Credit Union Act, 12 U.S.C. Section 1757(7).

“Superintendent” means the superintendent of credit unions appointed by the governor to direct and regulate credit unions pursuant to Iowa Code chapter 533.

“Weighted average life” means the weighted average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time) and then summing and dividing by the total amount of principal.

“When-issued trading of securities” means the buying and selling of securities in the period between the announcement of an offering and the issuance and payment date of the securities.

“Yankee dollar deposit” means a deposit in a United States branch of a foreign bank licensed to do business in the state in which it is located, or a deposit in a state-chartered, foreign-controlled bank.

“Zero coupon investment” means an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

189—17.3(533) Investment policies. A state-chartered credit union’s board of directors must establish written investment policies consistent with Iowa Code chapter 533, the Federal Credit Union Act, these rules, and other applicable laws and regulations and must review the policies at least annually. These policies may be part of a broader, asset-liability management policy. Written investment policies must address, at a minimum, the following:

17.3(1) The purposes and objectives of the credit union’s investment activities;

17.3(2) The characteristics of the investments the credit union may make, including the issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;

17.3(3) How the credit union will manage interest rate risk;

17.3(4) How the credit union will manage liquidity risk;

17.3(5) How the credit union will manage credit risk including specifically listing institutions, issuers, and counterparties that may be used, or criteria for the credit union’s selection, and limits on the amounts that may be invested with each;

17.3(6) How the credit union will manage concentration risk, which can result from dealing with a single issuer or related issuers, lack of geographic distribution, holding obligations with similar characteristics like maturities and indexes, holding bonds having the same trustee, and holding securitized loans having the same originator, packager, or guarantor;

17.3(7) Who has investment authority and the extent of that authority. Those with authority must be qualified by education or experience to assess the risk characteristics of investments and investment transactions. Only officials or employees of the credit union may be voting members of an investment-related committee;

17.3(8) The name of the broker-dealer(s) the credit union may use;

17.3(9) The name of the safekeeper(s) the credit union may use;

17.3(10) How the credit union will handle an investment that, after purchase, is outside of board policy or fails a requirement of these rules; and

17.3(11) How the credit union will conduct investment trading activities, if applicable, including addressing:

a. Who has purchase and sale authority;

b. Limits on trading account size;

c. Allocation of cash flow to trading accounts;

d. Stop loss or sale provisions;

e. Dollar size limitations of specific types, quantity and maturity to be purchased;

f. Limits on the length of time an investment may be inventoried in a trading account; and

g. Internal controls, including segregation of duties.

189—17.4(533) Record keeping and documentation requirements.

17.4(1) All state-chartered credit unions must comply with generally accepted accounting principles (GAAP) applicable to reports or statements required to be filed with the superintendent. This contrasts

with only federal credit unions with assets of \$10 million or greater that must comply with GAAP in reports and statements filed with the NCUA.

17.4(2) A credit union must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been audited in accordance with Iowa Code section 533.208 or NCUA rules and regulations, 12 CFR Part 701.12, or both, and examined by the superintendent or the NCUA, or both. The documentation should include, where applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure documents or a description of the security from an industry-recognized information provider, financial data, and tests and reports required by the credit union's investment policy and these rules.

17.4(3) A credit union must maintain documentation that its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been audited in accordance with Iowa Code section 533.208 or NCUA rules and regulations, 12 CFR Part 701.12, or both, and examined by the superintendent or the NCUA, or both.

17.4(4) A credit union must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.

189—17.5(533) Discretionary control over investments and investment advisers.

17.5(1) Except as provided in 17.5(2), 17.5(3) and 17.5(4), a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from investment advisers and is required to authorize a recommended purchase or sale transaction before its execution.

17.5(2) A credit union may delegate discretionary control over the purchase and sale of investments to a person other than a credit union official or employee:

a. Provided the person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b); and

b. Provided the amount of investment authority does not exceed the greater of 10 percent of the credit union's total assets or 100 percent of its net worth, in the aggregate, at the time of delegation; and

c. Provided the amount of investment authority delegated is annually reviewed by the board of directors, within 30 days after the end of the credit union's fiscal year, so the amount of investment authority calculated under 17.5(2) "b" is determined by using the credit union's year-end fiscal total assets and net worth amount; and

d. Provided the amount of investment authority delegated is correspondingly reduced at such time as the total assets or net worth amount declines by 10 percent or more during a consecutive three-month period and the delegated investment authority exceeds the total assets or net worth cap established in this subrule.

17.5(3) At the annual reevaluation of delegated investment authority, the credit union must comply with the 10 percent of total assets or 100 percent of net worth cap. The credit union's board of directors must, no later than its next regularly scheduled monthly board meeting, be informed of the amount exceeding the total asset or net worth cap and must notify in writing the superintendent within five days after the board meeting of the exception to this rule. The credit union must develop a plan to comply with the cap within a reasonable period of time.

17.5(4) Before transacting business with an investment adviser, a credit union must analyze the investment adviser's background and information available from state or federal securities regulators, including any enforcement actions against the adviser, associated personnel, or the firm for which the adviser works.

17.5(5) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per-transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

17.5(6) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and the investments' performance.

189—17.6(533) Credit analysis. A credit union must conduct and document a credit analysis on an investment and the issuing entity before purchasing it, except for investments issued or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation. A credit union must update this analysis at least annually for as long as it holds the investment.

189—17.7(533) Notice of noncompliant investments. A credit union's board of directors must receive notice, no later than the next regularly scheduled monthly board meeting, of any investment that either is outside of board policy after purchase or has failed a requirement of these rules. The board of directors must document its action regarding the investment in the minutes of the board meeting, including a detailed explanation of any decision not to sell the investment. The credit union must notify the superintendent in writing of an investment that has failed a requirement of these rules within five days after the board meeting.

189—17.8(533) Broker-dealers.

17.8(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) or is a depository institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

17.8(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following:

- a.* The background of any sales representative with whom the credit union is doing business;
- b.* Information available from state or federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel; and
- c.* If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

17.8(3) The requirements of 17.8(1) do not apply when the credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other depository institution.

189—17.9(533) Safekeeping of investments.

17.9(1) A credit union's purchased investments and repurchase collateral must be in the credit union's possession, recorded as owned by the credit union through the Federal Reserve Book Entry System, or held by a board of directors-approved safekeeper under a written custodial agreement that requires the safekeeper to exercise, at least, ordinary care.

17.9(2) Any safekeeper used by a credit union must be regulated and supervised by either the Securities and Exchange Commission, a federal or state depository institution regulatory agency, or a state trust company regulatory agency.

17.9(3) A credit union must obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping.

17.9(4) Annually, the credit union must analyze the ability of the safekeeper to fulfill the safekeeper's custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

189—17.10(533) Monitoring nonsecurity investments.

17.10(1) At least quarterly, a credit union must prepare a written report listing all of its shares and deposits in banks, credit unions, and other depository institutions, that have one or more of the following features:

- a. Embedded options;
- b. Remaining maturities greater than three years; or
- c. Coupon formulas that are related to more than one index or are inversely related to, or are multiples of, an index.

17.10(2) The requirement of 17.10(1) does not apply to shares and deposits that are securities.

17.10(3) If a credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the report described in 17.10(1). If a credit union has an investment-related committee, then each member of the committee must receive a copy of the report, and each board member must receive a summary of the information in the report.

189—17.11(533) Valuing securities.

17.11(1) Before purchasing or selling a security, a credit union must obtain either price quotations on the security from at least two broker-dealers or a price quotation on the security from an industry-recognized information provider. This requirement to obtain price quotations does not apply to new issues purchased at par or at original issue discount.

17.11(2) At least monthly, a credit union must determine the fair value of each security it holds. It may determine fair value by obtaining a price quotation on the security from an industry-recognized information provider, a broker-dealer, or a safekeeper.

17.11(3) At least annually, the credit union's auditing/supervisory committee or its external auditor must independently assess the reliability of monthly price quotations received from a broker-dealer or safekeeper. The credit union's auditing/supervisory committee or external auditor must follow generally accepted auditing standards, which require either recomputation or reference to market quotations.

17.11(4) If a credit union is unable to obtain a price quotation required by this rule for a particular security, then it may obtain a quotation for a security with substantially similar characteristics.

189—17.12(533) Monitoring securities.

17.12(1) At least monthly, a credit union must prepare a written report setting forth, for each security held, the fair value and dollar change since the prior month end, with summary information for the entire portfolio.

17.12(2) At least quarterly, a credit union must prepare a written report setting forth the sum of the fair values of all fixed and variable rate securities held that have one or more of the following features:

- a. Embedded options;
- b. Remaining maturities greater than three years; or
- c. Coupon formulas that are related to more than one index or are inversely related to, or are multiples of, an index.

17.12(3) When the amount calculated in 17.12(2) is greater than a credit union's net worth, the report described in that subrule must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on:

- a. The fair value of each security in the credit union's portfolio;
- b. The fair value of the credit union's portfolio as a whole; and
- c. The credit union's net worth.

17.12(4) If the credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the reports described in 17.12(1) through 17.12(3). If the credit union has an investment-related committee, then each member of the committee must receive copies of the reports, and each member of the board of directors must receive a summary of the information in the reports.

189—17.13(533) Permissible investment activities.

17.13(1) *Regular way settlement and delivery versus payment basis.* A credit union may only contract for the purchase or sale of a security as long as the delivery of the security is by regular way settlement and the transaction is accomplished on a delivery versus payment basis.

17.13(2) *Federal funds.* A credit union may sell federal funds to a national bank; or to a state bank, trust company or mutual savings bank operating in accordance with Iowa law or the laws of any state where it operates a credit union office; or in banks and institutions, the accounts of which are insured by the Federal Deposit Insurance Corporation; or to credit unions, the accounts of which are insured by the National Credit Union Administration; and as long as the interest or other consideration received from the financial institution is at the market rate for federal funds transactions.

17.13(3) *Investment repurchase transaction.* A credit union may enter into an investment repurchase transaction so long as:

a. Any securities the credit union receives are permissible investments for federal and Iowa credit unions; the credit union, or its agent, either takes physical possession or control of the repurchase securities or is recorded as owner of them through the Federal Reserve Book Entry Securities Transfer System; the credit union, or its agent, receives a daily assessment of the securities' market value, including accrued interest; and the credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and

b. The credit union has entered into signed contracts with all approved counterparties.

17.13(4) *Borrowing repurchase transaction.* A credit union may enter into a borrowing repurchase transaction so long as:

a. The transaction meets the requirements of 17.13(3);

b. Any cash the credit union receives, when aggregated with all other credit union borrowings, is subject to the borrowing limit in accordance with Iowa Code section 533.306 or to any lesser amount specified by policy of the board of directors, and any investments the credit union purchases with that cash are permissible for federal credit unions; and

c. The investments referenced in 17.13(4)“*b*” mature no later than the maturity of the borrowing repurchase transaction.

17.13(5) *Securities lending transaction.* A credit union may enter into a securities lending transaction so long as:

a. The credit union receives written confirmation of the loan;

b. Any collateral the credit union receives is a legal investment for federal credit unions; the credit union, or its agent, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the Federal Reserve Book Entry Securities Transfer System; and the credit union, or its agent, receives a daily assessment of the market value of the collateral, including accrued interest; and maintains adequate margin that reflects a risk assessment of the collateral and the term of the loan;

c. Any cash the credit union receives, when aggregated with all other credit union borrowings, is subject to the borrowing limit in accordance with Iowa Code section 533.306 or to any lesser amount specified by policy of the board of directors, and any investments the credit union purchases with that cash are permissible for federal credit unions and mature no later than the maturity of the transaction; and

d. The credit union has executed a written loan and security agreement with the borrower.

17.13(6) *Trading securities.*

a. A credit union may trade securities, including engaging in when-issued trading and pair-off transactions, so long as the credit union can show that it has sufficient resources, knowledge, systems, and procedures to handle the risks.

b. A credit union must record any security it purchases or sells for trading purposes at fair value on the trade date. The trade date is the date the credit union commits, orally or in writing, to purchase or sell a security.

c. At least monthly, the credit union must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.

189—17.14(533) Permissible investments.

17.14(1) Variable rate investment. A credit union may invest in a variable rate investment, as long as the index is tied to domestic interest rates and not, for example, to foreign currencies, foreign interest rates, domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this subrule, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

17.14(2) Corporate credit union shares or deposits. A credit union may purchase shares or deposits in a corporate credit union, except when the superintendent or the NCUA has notified it that the corporate credit union is not operating in compliance with NCUA rules and regulations, 12 CFR Part 704. A credit union's aggregate amount of paid-in capital and membership capital, as defined in NCUA rules and regulations, 12 CFR Part 704, in one corporate credit union is limited to 2 percent of its assets measured at the time of investment or adjustment. A credit union's aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to 4 percent of its assets measured at the time of investment or adjustment.

17.14(3) Registered investment company. A credit union may invest in a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for federal credit unions.

17.14(4) Collateralized mortgage obligation/real estate mortgage investment conduit. A credit union may invest in a fixed or variable rate collateralized mortgage obligation/real estate mortgage investment conduit.

17.14(5) Municipal security. A credit union may purchase and hold a municipal security, as defined in the Federal Credit Union Act, 12 U.S.C. Section 1757(7)(K), only if a nationally recognized statistical rating organization has rated it in one of the four highest rating categories.

17.14(6) Instruments issued by institutions described in the Federal Credit Union Act, 12 U.S.C. Section 1757(8). A credit union may invest in the following instruments issued by an institution described in Section 1757(8) of the Federal Credit Union Act:

- a. Yankee dollar deposits;
- b. Eurodollar deposits;
- c. Banker's acceptances;
- d. Deposit notes; and
- e. Bank notes with original weighted average maturities of less than 5 years.

17.14(7) European financial options contract. A credit union may purchase a European financial options contract or a series of European financial options contracts only to fund the payment of dividends on member share certificates or interest on member certificates of deposit when such dividend or interest rate is tied to an equity index provided:

- a. The option and dividend/interest rate are based on a domestic equity index;
- b. Proceeds from the options are used only to fund dividends/interest on the equity-linked certificates;
- c. Dividends or interest, or both, on the certificates are derived solely from the change in the domestic equity index over a specified period;
- d. The options' expiration dates are no later than the maturity date of the certificate;
- e. The certificate may be redeemed prior to the maturity date only upon the member's death or termination of the corresponding option;
- f. The total costs associated with the purchase of the option is known by the credit union prior to effecting the transaction;
- g. The options are purchased at the same time the certificate is issued to the member;
- h. The counterparty to the transaction is a domestic counterparty and has been approved by the credit union's board of directors;

- i.* The counterparty to the transaction:
- (1) Has a long-term, senior, unsecured debt rating from a nationally recognized statistical rating organization of AA- (or equivalent) or better at the time of the transaction, and the contract between the counterparty and the credit union specifies that if the long-term, senior, unsecured debt rating declines below AA- (or equivalent) then the counterparty agrees to post collateral with an independent party in an amount fully securing the value of the option; or
 - (2) Posts collateral with an independent party in an amount fully securing the value of the option if the counterparty does not have a long-term, senior, unsecured debt rating from a nationally recognized statistical rating organization;
- j.* Any collateral posted by the counterparty is a permissible investment for federal credit unions and is valued daily by an independent third party along with the value of the option;
- k.* The aggregate amount of equity-linked member certificates does not exceed the credit union's net worth;
- l.* The terms of the certificate include a guarantee that there can be no loss of principal to the member regardless of changes in the value of the option unless the certificate is redeemed prior to maturity; and
- m.* The credit union provides its board of directors with a monthly report detailing, at a minimum:
- (1) The dollar amount of outstanding equity-linked certificates;
 - (2) The certificates' maturities; and
 - (3) The fair value of the options as determined by an independent third party.
- 17.14(8) Debt obligations of U.S.-chartered corporations.** An Iowa state-chartered credit union may invest in unsecured notes and acceptances, commonly referred to as "commercial paper" and "corporate bonds," of U.S.-chartered corporations pursuant to Iowa Code section 533.301(5) "h" and "i" and this rule, only if:
- a.* The investment in a corporate bond debt obligation is rated in one of the two highest rating categories by a nationally recognized statistical rating organization and has a maturity of less than five years;
 - b.* The investment in a commercial paper debt obligation is rated in one of the four highest rating categories by a nationally recognized statistical rating organization and has a maturity of less than one year;
 - c.* An investment in a nonrated equivalent value issue of a commercial paper debt obligation shall otherwise adhere to the limitations of rated issues. In lieu of the required rating by a nationally recognized statistical rating organization, a credit union shall retain documentation supporting the method used in determining the equivalent rating and the current and previous two years of year-end financial statements which indicate acceptable operating performance of the issuing U.S. corporation;
 - d.* Subsequent to the date of purchase but prior to the date of maturity, the rating is downgraded two or more categories by the same nationally recognized statistical rating organization used when the investment was purchased, and the investment exceeds the credit union's net worth by 5 percent or more, the credit union shall have no more than 30 days to divest of the security unless the credit union seeks and receives a waiver from the superintendent as provided by rule;
 - e.* The total investment by a credit union in debt obligations in a lone U.S. corporation and its subsidiaries shall not exceed 25 percent of the credit union's net worth;
 - f.* The total aggregate investment by a credit union in debt obligations of U.S. corporations and their subsidiaries shall not exceed the lesser of 100 percent of the credit union's net worth or 20 percent of the credit union's investment portfolio;
 - g.* An investment will be considered speculative and unauthorized if it contains any of the following characteristics, and the credit union shall be required to divest of the security in accordance with 17.14(8) "d" without an opportunity of waiver:
 - (1) It is issued by a business entity not recognized in the market place or by other than a U.S.-chartered corporation, or by both;
 - (2) It has a maturity that exceeds that established in this subrule; or

(3) It is issued to cover or underwrite foreign market operations, or for new-line products or services, or both, which exceed 25 percent of the investment offering;

h. If the net worth level of a credit union falls or remains below an amount which causes the limitations of this subrule to be exceeded for two consecutive quarters, and the amount of difference is 5 percent or more of the net worth, the credit union shall divest of a sufficient amount of debt obligations so the credit union no longer exceeds the limitations or seek a waiver from the superintendent as provided by rule;

i. A corporate credit union chartered in accordance with Iowa Code chapter 533 is exempt from the provisions and limitations of this subrule and, instead, shall have the powers, restrictions and obligations contained in NCUA rules and regulations, 12 CFR Part 704, for federally insured corporate credit unions.

189—17.15(533) Prohibited investment activities. A credit union may not engage in adjusted trading or short sales.

189—17.16(533) Prohibited investments.

17.16(1) Derivatives. A credit union may not purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate swaps. This prohibition does not apply to:

a. Any derivatives permitted under NCUA rules and regulations, 12 CFR 701.21(i) and 189—subrule 17.14(7);

b. Embedded options not required under GAAP to be accounted for separately from the host contract; and

c. Interest rate lock commitments or forward sales commitments made in connection with a loan originated by the credit union.

17.16(2) Zero coupon investments. A credit union may not purchase a zero coupon investment with a maturity date that is more than ten years from the settlement date.

17.16(3) Mortgage servicing rights. A credit union may not purchase mortgage servicing rights as an investment but may perform mortgage servicing functions as a financial service for a member as long as the mortgage loan is owned by a member.

17.16(4) Commercial mortgage-related security. A credit union may not purchase a commercial mortgage-related security that is not otherwise permitted by the Federal Credit Union Act, 12 U.S.C. Section 1757(7)(E).

17.16(5) Stripped mortgage-backed securities. A credit union may not invest in stripped mortgage-backed securities (SMBS) or securities that represent interests in SMBS except as described in 17.16(5)“a” and “c.”

a. A credit union may invest in and hold exchangeable collateralized mortgage obligations (exchangeable CMOs) representing beneficial ownership interests in one or more interest-only classes of a CMO (IO CMOs) or principal-only classes of a CMO (PO CMOs), but only if:

(1) At the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points;

(2) The offering circular or other official information available at the time of purchase indicates that the notional principal on each underlying IO CMO declines at the same rate as the principal on one or more of the underlying non-IO CMOs, and the principal on each underlying PO CMO declines at the same rate as the principal, or notional principal, on one or more of the underlying non-PO CMOs; and

(3) The credit union staff has the expertise dealing with exchangeable CMOs to apply the conditions in 17.16(5)“a”(1) and 17.16(5)“a”(2).

b. A credit union that invests in an exchangeable CMO may exercise the exchange option only if all of the underlying CMOs are permissible investments for that credit union.

c. A credit union may accept an exchangeable CMO representing beneficial ownership interests in one or more IO CMOs or PO CMOs as an asset associated with an investment repurchase transaction

or as collateral in a securities lending transaction. When the exchangeable CMO is associated with one of these two transactions, it need not conform to the conditions in 17.16(5) "a"(1) and 17.16(5) "a"(2).

17.16(6) Insurance company annuity product. A credit union may not purchase an insurance company annuity product as an investment of the credit union. However, a credit union, in its capacity as an employer, may establish retirement or defined employee benefit programs, which may include the purchase of an annuity for the specific purpose of funding an employee benefit plan, provided that:

a. The plan is usually entirely funded by the credit union and the underlying investments are owned by the credit union;

b. There is a direct connection between the purchase of the investment and the employee benefit obligation;

c. If an employee leaves the credit union before the specified time, fails to exercise an option or to vest in the plan, dies, or in some manner forfeits the right to the planned benefit, the credit union must take the steps necessary to dispose of any investment(s) not needed to meet an actual or potential obligation under the employee benefit plan; and

d. A credit union may, under certain circumstances, hold an otherwise impermissible investment purchased to fund an employee benefit plan after an employee retires or separates from the credit union. For example, when a qualified employee is allowed to exercise an investment option following separation, the investment may be held in order to satisfy this benefit plan provision. In most cases this is an acceptable practice provided the option period is reasonable. Upon the employee's exercise of the option or the expiration of the exercise period, the credit union must divest itself of any remaining impermissible investment(s).

17.16(7) Other prohibited investments. A credit union may not purchase residual interests in collateralized mortgage obligations, real estate mortgage investment conduits, or small business-related securities.

189—17.17(533) Conflicts of interest.

17.17(1) A credit union's officials and senior management employees, and their immediate family members, may not receive anything of value in connection with their investment transactions. This prohibition also applies to any other employee, such as an investment officer, if the employee is directly involved in investments, unless the credit union's board of directors determines that the employee's involvement does not present a conflict of interest. This prohibition does not include compensation for employees.

17.17(2) A credit union's officials and employees must conduct all transactions with business associates or family members that are not specifically prohibited by 17.17(1) at arm's length and in the credit union's best interest.

189—17.18 Reserved.

189—17.19(533) Investment pilot program.

17.19(1) Under an investment pilot program, the credit union division will permit a limited number of credit unions to engage in investment activities prohibited by this rule but otherwise permitted by the Federal Credit Union Act, 12 U.S.C. Section 1757.

17.19(2) Except as provided in 17.19(4), before a credit union may engage in an additional activity it must obtain written approval from the superintendent. To obtain approval, a credit union must submit its written request to the superintendent that addresses the following items:

a. Certification that the credit union is "well-capitalized" under NCUA rules and regulations, 12 CFR Part 702;

b. Board policies approving the activities and establishing limits on them;

c. A complete description of the activities, with specific examples of how they will benefit the credit union and how they will be conducted;

d. A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

- e.* Examples of reports the credit union will generate to monitor the activities;
- f.* Projections of the associated costs of the activities, including personnel, computer, and audit;
- g.* Descriptions of the internal systems that will measure, monitor, and report the activities;
- h.* Qualifications of the staff and officials responsible for implementing and overseeing the activities; and
- i.* Internal control procedures that will be implemented, including audit requirements.

17.19(3) If the superintendent supports the credit union's request to engage in the additional activity as provided in 17.19(2), the superintendent will forward the request to the NCUA regional director for review and nonobjection. If the regional director determines that the additional activity would be approved for the credit union if it were federally chartered and does not object otherwise, the superintendent may approve the credit union's request.

17.19(4) Subsequent to the publication date of these rules, a credit union will not need to seek written approval of the superintendent to engage in an investment activity prohibited by the rules but permitted by the Federal Credit Union Act if the activity is part of a third-party investment program the NCUA approves for federal credit unions after the third party submits a request to the NCUA Director of the Office of Strategic Program Support and Planning that addresses the following items:

- a.* A complete description of the activities with specific examples of how a federal credit union will conduct and account for them, and how the activities will benefit a federal credit union;
- b.* A description of any risks to a federal credit union from participating in the program; and
- c.* Contracts that must be executed by the federal credit union.

189—17.20(533) Responsibility placed upon the credit union to show cause.

17.20(1) A state-chartered credit union that engages in an investment activity that it believes to be permissible for federal credit unions, whether or not addressed by these rules, must provide the superintendent, when requested, satisfactory documentation that the activity is not prohibited by the Iowa Code or by the NCUA, or both.

17.20(2) If a credit union engages in an investment activity, whether expressly permitted by these rules or an investment activity that the credit union believes, in good faith, is permitted, and which at the time of engagement is not or thought not to be prohibited by the Iowa Code or the NCUA, or both, but subsequently becomes or is found to have been prohibited, the credit union must develop a plan to become compliant within a reasonable period of time.

17.20(3) Although automatic authority is granted to Iowa credit unions by Iowa Code sections 533.301(5)“j” and 533.301(25) and these rules, such authority may be withheld or withdrawn by the superintendent for safety and soundness concerns or for blatant disregard for these rules, in whole or in part, by a credit union.

These rules are intended to implement Iowa Code section 533.301(5).

[Filed 2/5/88, Notice 11/18/87—published 2/24/88, effective 3/30/88]

[Filed 1/31/03, Notice 12/25/02—published 2/19/03, effective 3/26/03]

[Filed 11/4/04, Notice 9/15/04—published 11/24/04, effective 12/29/04]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 18
MAINTENANCE OF ALLOWANCE FOR LOAN AND LEASE LOSSES ACCOUNT

189—18.1(533) Definitions. The following words and terms, when used in these rules, shall have the meaning shown below:

“Allowance for loan and lease losses” means an estimate of loan and lease losses in the entire loan portfolio, including estimated inherent losses, in conformity with generally accepted accounting principles and which meets regulatory requirements for full and fair disclosure of the financial statements.

“Legal reserve” means the statutory reserve account of the credit union set aside from gross earnings as a regular reserve against losses on loans and other contingencies, in accordance with Iowa Code chapter 533.

“Provision for loan and lease losses” means an expense account of the general ledger to which debit or credit adjustments to the allowance for loan and lease losses are charged.

“Special reserve” means an additional regular reserve account of the credit union, established and required by the superintendent, to be set aside against losses from loans or other contingencies, in accordance with Iowa Code chapter 533.

[ARC 9777B, IAB 10/5/11, effective 11/9/11]

189—18.2(533) Legal reserve required.

18.2(1) Each credit union shall establish and maintain a legal reserve for contingencies as provided by Iowa Code chapter 533. The totals of the legal reserve and the allowance for loan losses account shall be combined for determining the applicable percentage of gross income to be transferred to the legal reserve.

18.2(2) Nothing in this rule shall preclude the requirements of Iowa Code chapter 533 relating to the maintenance of the legal reserve or to the authority of the superintendent to approve a plan for distribution of the reserve or to the requiring of additional amounts to be set aside as a special reserve.

189—18.3(533) Generally accepted accounting principles.

18.3(1) Credit union financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP), except for authorized intentional regulatory accounting practices (RAP) which may differ, and shall provide for the complete and accurate disclosure of all assets, liabilities, and equity, including any valuation allowance accounts as may be necessary to correctly present the financial position; and all income and expenses necessary to correctly present the results of operations for the period concerned.

18.3(2) The financial statement shall be prepared and made available within 15 days after the end of each month and shall show the condition of the credit union as of the close of business on the last business day of the month.

18.3(3) Complete and accurate disclosure shall be required of a credit union so as to provide for a level of disclosure to any person or entity in order to clearly and objectively inform them of the financial condition and the results of operations of the credit union.

[ARC 9777B, IAB 10/5/11, effective 11/9/11]

189—18.4(533) Allowance for loan and lease losses.

18.4(1) The amount carried in this account shall represent an amount at least equal to reasonably foreseeable loan and lease losses. Each credit union is required to establish and maintain a methodology to determine the amount needed in the allowance for loan and lease losses account in accordance with generally accepted accounting principles (GAAP).

18.4(2) The credit union’s board of directors must adopt a policy ensuring that loans are charged off in a timely manner.

18.4(3) At a minimum, the account shall be adjusted at least quarterly or prior to the end of each dividend period, or more often as required. The amount of the periodic adjustments shall be determined by the credit union after all charge-offs and recoveries applicable to the period have been recorded.

Periodic adjustments to the allowance for loan and lease losses account will be charged to the provision for loan and lease losses.

18.4(4) The credit union shall maintain full and complete documentation of the determination of the balance in the allowance for loan and lease losses account.

18.4(5) The maintenance of an allowance for loan and lease losses account shall not eliminate the requirement for transferring the percentage of gross income before the payment of a dividend to the credit union's regular reserves as required by Iowa Code chapter 533.

[ARC 9777B, IAB 10/5/11, effective 11/9/11]

189—18.5(533) Allowance for loan and lease losses computation.

18.5(1) Credit unions are responsible for determining an adequate allowance for loan and lease losses account and adopting a reasonable methodology for doing so. In determining the appropriate allowance, each credit union shall:

- a. Separate the loan portfolio into homogenous loan pools based on common risk factors;
- b. Calculate the net loss percentage of each pool, using the historical loss or adjusted loss method which includes consideration of: loan delinquency status; collection experience of the credit union; economic conditions that may affect collectibility; availability of pledged shares; collateral, security, or endorsers; insured or guaranteed status; and the general credit reputation of the borrowers;
- c. Individually classify loans with unique characteristics;
- d. Add the resulting amounts to determine the amount needed in the allowance for loan and lease losses account.

18.5(2) If a credit union fails to determine an adequate and reasonable allowance for loan and lease losses which will result in the fair presentation of its financial statement, the superintendent may require additional amounts to be set aside as provided by Iowa Code chapter 533.

[ARC 9777B, IAB 10/5/11, effective 11/9/11]

189—18.6(533) Accounting treatment.

18.6(1) The allowance for loan and lease losses account shall be charged with the amount of the uncollectible loans which have been authorized for charge-off by the board of directors or as directed by the superintendent. Likewise, recoveries on loans charged off shall be credited to this account.

18.6(2) Routine periodic adjustments to the allowance for loan and lease losses account, accomplished during an accounting or dividend period within the current fiscal year, shall be made by a charge to the provision for loan and lease losses account.

18.6(3) Prior period adjustments to the allowance for loan and lease losses account, within the current fiscal year, may be permitted only in relation to the correction of an error in a prior period financial statement. These corrections shall be accounted for and reported in the same manner as routine periodic adjustments, and shall be charged to the current period expenses through the provision for loan and lease losses.

18.6(4) Prior period adjustments to the allowance for loan and lease losses account, outside of the current fiscal year, may be permitted only in relation to the correction of an error in the previous fiscal year financial statement. These corrections shall be accounted for and reported as a charge to the undivided earnings account. If the result of this correction would create a deficit balance in the undivided earnings account, the deficiency so created may be transferred to other segregations of undivided earnings or to the legal reserve account, subject to the prior approval of the superintendent.

18.6(5) If a deficit is created in the legal reserve account, through the establishment or maintenance of the allowance for loan and lease losses account, the deficit shall be transferred first to undivided earnings and, if this shall cause a deficit in undivided earnings, then to other segregations of undivided earnings that may exist, exclusive of the special reserve account should it be required by the superintendent.

18.6(6) The superintendent may waive, in whole or in part, the requirement for the maintenance of the allowance for loan and lease losses account which is in excess of the statutory reserve requirements of Iowa Code chapter 533 but is required under this chapter. Such waiver shall be as a result of written

application from the directors of a credit union and shall set forth their justification for the requested waiver.

[ARC 9777B, IAB 10/5/11, effective 11/9/11]

These rules are intended to implement Iowa Code chapter 533.

[Filed 10/26/90, Notice 9/19/90—published 11/14/90, effective 1/1/91]

[Filed 11/10/92, Notice 8/19/92—published 11/25/92, effective 12/30/92]

[Filed ARC 9777B (Notice ARC 9672B, IAB 8/10/11), IAB 10/5/11, effective 11/9/11]

CHAPTER 19
AMEND, MODIFY OR REVERSE ACTS OF THE BOARD OF DIRECTORS—
MAILED BALLOT VOTING PROCEDURE

189—19.1(533) Definitions. Reserved.

189—19.2(533) Authority for mailed ballots.

19.2(1) The members present at any annual or special meeting of the membership may vote to amend, modify or reverse an act of the board of directors or to instruct the board to take action not inconsistent with the bylaws or Iowa Code chapter 533.

19.2(2) In order to be binding upon the board, any vote so taken by the membership at any meeting to amend, modify or reverse an act of the board or to instruct the board to take action requires an affirmative vote of a simple majority of all eligible members of the credit union after submitting the action to the membership by mailed ballot.

189—19.3(533) Notice to voting members.

19.3(1) Within 60 days of an annual or special meeting of the membership where it was voted to amend, modify or reverse an act of the board of directors or to instruct the board to take action not inconsistent with the bylaws or Iowa Code chapter 533, the board of directors shall submit the issue to all eligible voters of record as of the date of such annual or special meeting.

19.3(2) The proposed amendment, modification, reversal or instruction to take action shall be set forth in its entirety in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting by mail. The only items included in the mailing of the notice shall be pertinent to the proposed amendment, modification, reversal or instruction to take action, and the notice shall not be included as part of any general mailing to the members.

19.3(3) The notice shall set forth the rules and procedures of voting, the date of the close of balloting, the name of the election committee chairperson, and an announcement that balloting on the action(s) specified in the notice are subject to an affirmative vote of a simple majority of all members eligible to vote and that no other vote on the action(s) will be taken after the specified closing date of balloting.

19.3(4) The notice shall contain a summary of the board's reasons for their actions which were subsequently voted amended, modified or reversed, as well as a summary of the reasons, if known, for the vote to amend, modify or reverse the board action.

189—19.4(533) Balloting procedures.

19.4(1) A ballot and envelope shall be included with the notice to all eligible voting members of the credit union. The ballot shall be substantially in the form specified in this rule.

19.4(2) An envelope marked "BALLOT" shall be provided to all eligible voters and the voter shall sign in the appropriate location on the outside of the envelope and seal the envelope before mailing or delivering the ballot in person to the credit union office. The use of a return envelope with postage affixed is not required and the envelope shall be substantially in the form specified by this rule.

19.4(3) Ballots must be returned to the credit union by the date of the closing of the balloting as specified in the notice to members. Ballots hand-delivered to the credit union must be received prior to the close of normal credit union business hours of the closing date of balloting in order to be considered valid. Ballots mailed to the credit union must be postmarked no later than the closing date of balloting and received within five business days after such closing date in order to be considered valid.

19.4(4) Ballots shall be delivered to the election committee in envelopes unopened. Ballots received by the election committee not in compliance with this subrule shall be considered invalid.

189—19.5(533) Ballot and envelope.

19.5(1) Ballots referred to by this rule shall be substantially in the following form:

SAMPLE BALLOT:

It has been voted at an annual or special meeting of the membership that action previously taken by the Board of Directors of the credit union should be (amended) (modified) (reversed).

In accordance with Iowa Code section 533.7 and 189 Iowa Administrative Code Chapter 19, the enclosed notice advises you that you have the right to vote on this matter, provides you important information concerning this issue and sets forth the procedures and rules for voting.

ON THE ISSUE AT HAND: _____

SHALL THE ABOVE ACTION, PREVIOUSLY TAKEN BY THE BOARD OF DIRECTORS, BE (AMENDED) (MODIFIED) (REVERSED) AS WAS VOTED AT AN ANNUAL OR SPECIAL MEETING OF THE MEMBERSHIP AND AS SET FORTH IN ITS ENTIRETY IN THE NOTICE ENCLOSED WITH THIS BALLOT?

YES _____ NO _____

19.5(2) Envelopes referred to by this rule shall be substantially in the following form:

SAMPLE ENVELOPE:

FROM:

TO: Election Committee
 (Name) Credit Union
 (Address)
 (City, State & Zip)

"BALLOT ENCLOSED"

 Signature

19.5(3) Each proposed amendment, modification, reversal or instruction to take action must be listed separately on the ballot so that the member has the opportunity to vote on each proposal.

189—19.6(533) Confidentiality of ballots.

19.6(1) The board of directors shall appoint from the credit union membership an election committee of not less than five members to be in charge of counting of the ballots and verifying that no eligible member voted more than once. No more than two members of the election committee shall be from the board of directors.

19.6(2) All returned ballots become the property and responsibility of the election committee.

19.6(3) No director, employee, agent or member of the election committee shall reveal the manner in which any member voted on the proposed amendment, modification, reversal or instruction to take action.

189—19.7(533) Counting of ballots and reporting results of the vote to the membership.

19.7(1) No sooner than 10 nor later than 20 calendar days after the closing date of balloting, the election committee shall meet and open the ballot envelopes and count or cause to be counted the ballots.

19.7(2) If a simple majority of all eligible members voted in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting shall be considered affirmed, and the board of directors shall take immediate action to comply with the directions of the membership.

19.7(3) If a simple majority of all eligible members failed to vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting is not affirmed, and the prior action of the board of directors shall be considered upheld.

19.7(4) The election committee shall submit to the board of directors a certified statement as to the results of the election, including the number of members eligible to vote on the proposed amendment, modification, reversal or instruction to take action, the actual number of members voting on the proposal, and the vote count of the eligible members voting in favor of the proposed amendment, modification, reversal or instruction to take action. The certified statement shall be submitted to the board of directors within 30 days after the closing date of balloting.

19.7(5) Within five calendar days after certification by the election committee to the board of directors, the board of directors shall inform the members of the results of the vote and whether the amendment, modification, reversal or instruction to take action was or was not affirmed by the membership by conspicuously posting a notice in the credit union office for a period of 60 days and by one of the following methods:

- a.* Include the results in a notice in the next general mailing of the members' statements of account;
- or
- b.* Include the results in a notice in the next issue of the credit union newsletter; or
- c.* Include the results in a notice in a newspaper of general circulation within the credit union's area of operation.

189—19.8(533) Preservation of ballots.

19.8(1) Immediately upon certification of the vote by the election committee, the ballots shall be sealed and appropriately labeled.

19.8(2) Ballots shall be retained in the credit union for a period of 60 days after the date of the latest notice method used in providing the voting results to the members as specified in subrule 19.7(5) before being destroyed.

These rules are intended to implement Iowa Code section 533.203(3).


[Filed 11/10/92, Notice 8/19/92—published 11/25/92, effective 12/30/92]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 20
PETITIONS FOR RULE MAKING

189—20.1(17A) Petition for rule making. Any person may file a petition for rule making with the division at Credit Union Division, Attn: Rules Coordinator, 200 East Grand, Suite 370, Des Moines, Iowa 50309-1827. A petition is deemed filed when it is received by that office. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
CREDIT UNION DIVISION

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).		PETITION FOR RULE MAKING
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The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the division’s authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner’s arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 20.4(17A).

20.1(1) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

20.1(2) The division may deny a petition because it does not substantially conform to the required form.

189—20.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

189—20.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Credit Union Division, Attn: Rules Coordinator, 200 East Grand, Suite 370, Des Moines, Iowa 50309-1827.

189—20.4(17A) Division consideration.

20.4(1) Within 14 days after the filing of a petition, the division must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the division must schedule a brief and informal meeting between the petitioner and the division, a member of the division, or a member of the staff of the division, to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition. The division may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the division by any person.

20.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to petitioner.

20.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the division's rejection of the petition.


These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 21
DECLARATORY ORDERS

189—21.1(17A) Petition for declaratory order. Any person may file a petition with the credit union division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the credit union division, at Credit Union Division, Attn: Rules Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827. A petition is deemed filed when it is received by that office. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE
CREDIT UNION DIVISION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).		PETITION FOR DECLARATORY ORDER
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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 21.7(17A).

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

189—21.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division shall give notice of the petition to all persons not served by the petitioner pursuant to 21.6(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons.


189—21.3(17A) Intervention.

21.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 21 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

21.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the credit union division.

21.3(3) A petition for intervention shall be filed at Credit Union Division, Attn: Rules Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition

for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF COMMERCE CREDIT UNION DIVISION	
Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	
	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

189—21.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The credit union division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

189—21.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to Credit Union Division, Attn: Rules Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827.

189—21.6(17A) Service and filing of petitions and other papers.

21.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

21.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with Credit Union Division, Attn: Rules Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

21.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule 189—22.12(17A).

189—21.7(17A) Consideration. Upon request by petitioner, the credit union division must schedule a brief and informal meeting between the original petitioner, all intervenors, and the credit union division, a member of the credit union division, or a member of the staff of the credit union division, to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the credit union division by any person.

189—21.8(17A) Action on petition.

21.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the superintendent or the superintendent's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

21.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 189—22.2(17A).

189—21.9(17A) Refusal to issue order.

21.9(1) The division shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the division to issue an order.
3. The credit union division does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other division or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the credit union division to determine whether a statute is unconstitutional on its face.

21.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final division action on the petition.

21.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

189—21.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

189—21.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

189—21.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the credit union division, the petitioner, and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other

persons, a declaratory order serves only as precedent and is not binding on the division. The issuance of a declaratory order constitutes final division action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 22
CONTESTED CASES
Prior to 2/21/90, see 189—Chapter 14.

189—22.1(17A) Scope and applicability. Except when inconsistent with Iowa Code chapter 533, this chapter applies to contested case proceedings conducted by the credit union division.

189—22.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the superintendent of credit unions, the superintendent’s designee or, under certain circumstances, the administrative law judge.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the superintendent did not preside.

189—22.3(17A) Time requirements.

22.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

22.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

189—22.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the division action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific division action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

189—22.5(17A) Notice of hearing.

22.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

22.5(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the division or the state and of parties’ counsel where known;

- f.* Reference to the procedural rules governing conduct of the contested case proceeding;
- g.* Reference to the procedural rules governing informal settlement;
- h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., superintendent, superintendent's designee, administrative law judge from the department of inspections and appeals); and
- i.* Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 22.6(17A), that the presiding officer be an administrative law judge.

189—22.6(17A) Presiding officer.

22.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the division head or members of the division.

22.6(2) The superintendent may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the division nor any officer of the division under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* An administrative law judge with the qualifications identified in subrule 22.6(4) is unavailable to hear the case within a reasonable time.
- d.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interdivision appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.

22.6(3) The superintendent shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 22.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

22.6(4) An administrative law judge assigned to act as presiding officer shall have the following technical expertness unless waived by the division: An administrative law judge shall have had at least five years' experience as an executive officer in a credit union or in the regulation or examination of credit unions.

22.6(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the superintendent. A party must seek any available intradivision appeal in order to exhaust adequate administrative remedies.

22.6(6) Unless otherwise provided by law, the superintendent when reviewing a proposed decision upon intradivision appeal shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

189—22.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the division in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

189—22.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine

the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

189—22.9(17A) Disqualification.

22.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

22.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other division functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 22.9(3) and 22.23(9).

22.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

22.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 22.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 22.25(17A) and seek a stay under rule 22.29(17A).

189—22.10(17A) Consolidation—severance.

22.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common

questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

22.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

189—22.11(17A) Pleadings.

22.11(1) Petition. A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

- a. The persons or entities on whose behalf the petition is filed;
- b. The particular provisions of statutes and rules involved;
- c. The relief demanded and the facts and law relied upon for such relief; and
- d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

22.11(2) Answer. An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

22.11(3) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

189—22.12(17A) Service and filing of pleadings and other papers.

22.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the division, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

22.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

22.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Credit Union Division, Attn: Contested Case Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the credit union division.

22.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the credit union division, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

22.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Credit Union Division, Attn: Contested Case Coordinator, 200 East Grand Ave., Suite 370, Des Moines, Iowa 50309-1827 and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

189—22.13(17A) Discovery.

22.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

22.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 22.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

22.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

189—22.14(17A) Subpoenas.

22.14(1) Issuance.

a. A division subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

22.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

189—22.15(17A) Motions.

22.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

22.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the division or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

22.15(3) The presiding officer may schedule oral argument on any motion.

22.15(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the division or an order of the presiding officer.

189—22.16(17A) Prehearing conference.

22.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

22.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

22.16(3) In addition to the requirements of subrule 22.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

22.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

189—22.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

22.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The division may waive notice of such requests for a particular case or an entire class of cases.

22.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

189—22.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with division rules. Unless otherwise provided, a withdrawal shall be with prejudice.

189—22.19(17A) Intervention.

22.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall

be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

22.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

22.19(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

22.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

189—22.20(17A) Hearing procedures.

22.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

22.20(2) All objections shall be timely made and stated on the record.

22.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

22.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

22.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

22.20(6) Witnesses may be sequestered during the hearing.

22.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

189—22.21(17A) Evidence.

22.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

22.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

22.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

22.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

22.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

22.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

189—22.22(17A) Default.

22.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

22.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

22.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final division action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 22.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

22.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

22.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

22.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

22.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 22.25(17A).

22.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

22.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

22.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 22.29(17A).

189—22.23(17A) Ex parte communication.

22.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 22.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

22.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

22.23(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

22.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 22.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

22.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

22.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 22.23(1).

22.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 22.17(17A).

22.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

22.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received

through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

22.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the division. Violation of ex parte communication prohibitions by division personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

189—22.24(17A) Recording costs. Upon request, the division shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

189—22.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the superintendent may review an interlocutory order of the presiding officer. In determining whether to do so, the superintendent shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the division at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

189—22.26(17A) Final decision.

22.26(1) When the superintendent presides over the reception of evidence at the hearing, the superintendent's decision is a final decision.

22.26(2) When the superintendent does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the division without further proceedings unless there is an appeal to, or review on motion of, the superintendent within the time provided in rule 22.27(17A).

189—22.27(17A) Appeals and review.

22.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the superintendent within 30 days after issuance of the proposed decision.

22.27(2) *Review.* The superintendent may initiate review of a proposed decision on the superintendent's own motion at any time within 30 days following the issuance of such a decision.

22.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the credit union division. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

22.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may remand a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

22.27(5) Scheduling. The division shall issue a schedule for consideration of the appeal.

22.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The superintendent may resolve the appeal on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

189—22.28(17A) Applications for rehearing.

22.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

22.28(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the division decision on the existing record and whether, on the basis of the grounds enumerated in subrule 22.27(4), the applicant requests an opportunity to submit additional evidence.

22.28(3) Time of filing. The application shall be filed with the credit union division within 20 days after issuance of the final decision.

22.28(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the credit union division shall serve copies on all parties.

22.28(5) Disposition. Any application for a rehearing shall be deemed denied unless the division grants the application within 20 days after its filing.

189—22.29(17A) Stays of division actions.

22.29(1) When available.

a. Any party to a contested case proceeding may petition the credit union division for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the division. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The superintendent may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the credit union division for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

22.29(2) When granted. In determining whether to grant a stay, the presiding officer or superintendent shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

22.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the division or any other party.

189—22.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

189—22.31(17A) Emergency adjudicative proceedings.

22.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the superintendent may issue a written order in compliance with 1998 Iowa Acts, chapter 1202,

section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the superintendent by emergency adjudicative order. Before issuing an emergency adjudicative order the superintendent shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the division is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the division is necessary to avoid the immediate danger.

22.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the superintendent's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the division;
- (3) Certified mail to the last address on file with the division;
- (4) First-class mail to the last address on file with the division; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that division orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the division shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

22.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

22.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which division proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further division proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

¹[Filed 10/19/84, Notice 7/18/84—published 11/7/84, effective 12/12/84]

¹[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

¹[Filed emergency 10/28/87—published 11/18/87, effective 11/18/87]

[Rescinded IAB 2/21/90, effective 3/28/90]

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

¹ 189—Chapter 14, “Contested Case Proceedings”

CHAPTER 23
UNIFORM WAIVER AND VARIANCE RULES

189—23.1(17A,ExecOrd11) Scope of chapter. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board or the superintendent in situations where no other more specifically applicable law provides for waivers. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board or the superintendent. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the division does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

23.1(1) Definitions.

“*Board*” means the credit union review board created by Iowa Code section 533.107.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

“*Superintendent*” means the superintendent of credit unions appointed by the governor to direct and regulate credit unions pursuant to Iowa Code chapter 533.

“*Waiver or variance*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

23.1(2) Applicability.

a. The superintendent may grant a waiver or variance from a rule adopted by the board or superintendent only if (1) the board or superintendent has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested; and (3) the requested waiver or variance is consistent with applicable statutes, constitutional provisions, or other provisions of law.

b. No waiver or variance may be granted from a requirement which is imposed by statute.

189—23.2(17A,ExecOrd11) Superintendent discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the superintendent upon consideration of all relevant factors. Each petition for a waiver or variance shall be evaluated by the superintendent based on the unique, individual circumstances set out in the petition.

23.2(1) Criteria for waiver or variance. The superintendent may, in response to a completed petition or on the superintendent’s own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the superintendent finds all of the following:

a. The application of the rule would result in an undue hardship on the person for whom the waiver or variance is requested;

b. The waiver or variance from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether a waiver or variance should be granted, the superintendent shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the superintendent shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

23.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the superintendent from granting waivers or variances in other contexts including, without limitation, those described in Iowa Code sections 533.303 and 533.401 or on the basis of other

standards if a statute or other rule authorizes the superintendent to do so and the superintendent deems it appropriate to do so.

189—23.3(17A,ExecOrd11) Requester’s responsibilities in filing a waiver or variance petition.

23.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Credit Union Division, 200 East Grand, Suite 370, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

23.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance under each of the four criteria specified in subrule 23.2(1).
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the superintendent and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Any information known to the requester regarding the treatment of similar cases by the superintendent.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver or variance.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver or variance.

23.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the superintendent should exercise the superintendent’s discretion to grant the petitioner a waiver or variance.

189—23.4(17A,ExecOrd11) Notice. The superintendent shall acknowledge a petition upon receipt. The superintendent shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the superintendent may give notice to other persons. To accomplish this notice provision, the superintendent may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the superintendent attesting that notice has been provided.

189—23.5(17A,ExecOrd11) Superintendent’s responsibilities regarding petition for waiver or variance.

23.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the superintendent may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the superintendent may, on the superintendent’s own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and the superintendent or the superintendent’s designee.

23.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the board or superintendent so provides by rule or order; or (c) when a statute so requires.

23.5(3) *Ruling.* An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

23.5(4) *Conditions.* The superintendent may place any condition on a waiver or variance that the board or superintendent finds desirable to protect the public health, safety, and welfare.

23.5(5) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

23.5(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the superintendent a waiver may be renewed if the superintendent finds that grounds for a waiver continue to exist.

23.5(7) *Time for ruling.* The superintendent shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the superintendent shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

23.5(8) *When deemed denied.* Failure of the superintendent to grant or deny a petition within the required time period shall be deemed a denial of that petition by the superintendent.

23.5(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

189—23.6(17A,ExecOrd11) *Public availability.* All orders granting or denying waivers and variances under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver or variance and orders granting or denying a waiver or variance petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the superintendent is authorized or required to keep confidential. The superintendent may accordingly redact confidential information from petitions or orders prior to public inspection.

189—23.7(17A,ExecOrd11) *Voiding or cancellation.* A waiver or variance is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver or variance issued by the superintendent pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the superintendent issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with any conditions contained in the order.

189—23.8(17A,ExecOrd11) *Violations.* Violation of conditions in the waiver or variance order is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

189—23.9(17A,ExecOrd11) *Defense.* After the superintendent issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

189—23.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the order in response to the request unless a contrary time is provided by rule or statute.

189—23.11(17A,ExecOrd11) Summary reports. Semiannually, the superintendent shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the superintendent’s actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

Exhibit A

Sample Petition (Request) for Waiver/Variance

BEFORE THE SUPERINTENDENT OF CREDIT UNIONS

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER
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A request for waiver or variance from a rule adopted by the superintendent shall include the following information in the petition for waiver or variance where applicable and known:

- a. Provide the petitioner’s (person asking for a waiver or variance) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver or variance is requested.
- c. Describe the specific waiver or variance requested; include the exact scope and operative time period that the waiver or variance will extend.
- d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver or variance will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
- e. Provide a history of prior contacts between the superintendent and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Provide information known to the petitioner regarding the treatment by the superintendent of similar cases.
- g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver or variance.
- h. Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance.
- i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.
- j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the superintendent, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The superintendent may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Credit Union Division, 200 East Grand, Suite 370, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

[Filed 6/21/01, Notice 5/16/01—published 7/11/01, effective 8/15/01]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 24
ELECTRONIC TRANSFER OF FUNDS

189—24.1(527) Scope. Iowa Code section 527.3 authorizes the administrator to issue rules applicable to financial institutions regarding the operation or control of a satellite terminal or pertaining to a financial transaction engaged in through a satellite terminal. Iowa Code section 527.11 empowers the administrator to adopt and promulgate rules which are necessary to properly and effectively carry out and enforce Iowa Code chapter 527. When the term “administrators” appears in this chapter, it signifies that joint action or enforcement may be taken by the administrators specified in Iowa Code sections 527.2 and 527.3.

189—24.2(527) Terms defined. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 527.2 shall be considered to be incorporated verbatim in these rules.

“*Cardholder*” means a person who has received an access device from a cardholder financial institution to access a customer asset account or customer asset accounts maintained at that financial institution by means of a satellite terminal.

“*Cardholder financial institution*” means the financial institution maintaining the customer asset account(s) of a cardholder which is accessible by means of an access device issued by that financial institution.

“*Certification*” means the process by which a central routing unit ensures that access devices, satellite terminals, software vendors, and the data processing center of an establishing or cardholder financial institution meet certain minimum operational standards established by the central routing unit to ensure that the central routing unit and electronic funds transfer system are in compliance with Iowa Code chapter 527. The certification process may be performed by a central routing unit prior to initial operation of a satellite terminal or data processing center and at any subsequent time as determined appropriate by a central routing unit to ensure continued compliance with Iowa Code chapter 527.

“*Customer card number*” means a unique number assigned to each cardholder to identify the cardholder financial institution, the cardholder, and the particular business location or office of the cardholder financial institution where the cardholder’s customer asset account(s) is maintained which may be accessed by the access device issued by the cardholder financial institution.

“*Electronic funds transfer system*” means the electronic system which is used to process transactions initiated at a satellite terminal and includes the access device, the satellite terminal, the cardholder financial institution and its data processing center, the establishing financial institution and its data processing center, and a central routing unit.

“*Establishing financial institution*” means the financial institution that owns or retains control of a satellite terminal.

“*Front-end processor*” means a data processing facility directly connected to an on-line point-of-sale terminal, as defined by Iowa law, which is utilized in an electronic funds transfer system in conjunction with another data processing facility that is certified by an approved central routing unit. A front-end processor and certified data processing facility that are directly connected constitute a single data processing center, as defined by Iowa law, only if the following specified conditions are satisfied: (1) All on-line point-of-sale satellite terminal transactions received by the front-end processor of the certified data processing facility that cannot be immediately authorized or rejected by the certified data processing facility must be immediately transmitted to an approved central routing unit, subject to the exceptions expressed in Iowa Code subsection 527.5(9); and (2) All on-line point-of-sale satellite terminal transactions received by the front-end processor of the certified data processing facility which are capable of being immediately authorized or rejected by the certified data processing facility must be transactions initiated by cardholders of financial institutions directly serviced by the certified data processing facility and must be immediately authorized or rejected by the certified data processing facility.

“*Reversal*” means the procedure implemented to cancel a previously transmitted transaction from a satellite terminal initiated by a cardholder through the use of an access device. A reversal may be cardholder-generated or system-generated.

“*Switch-behind*” means an electronic funds transfer system configuration in which a satellite terminal is directly connected to the establishing financial institution’s data processing center, which is directly connected to a central routing unit.

“*Switch-in-front*” means an electronic funds transfer system configuration in which a satellite terminal is directly connected to a central routing unit.

“*Transaction*” means each separate, identifiable financial function as authorized by Iowa Code chapter 527, performed at a satellite terminal capable of completing the financial function, by a cardholder properly using an access device and an electronic personal identifier at the satellite terminal.

189—24.3(527) Applications to operate a central routing unit.

24.3(1) *Approval required.* A central routing unit shall not be operated in the state of Iowa unless written approval for that operation has been obtained from the administrators.

24.3(2) *Application requirements.* A person desiring to operate a central routing unit shall submit to the administrators an application which shall contain all of the information and shall be accompanied by all documentation expressly provided for in Iowa Code section 527.9. The administrators will notify the applicant in writing whether the application is considered complete.

24.3(3) *Incomplete applications.* If the application is found by the administrators to be incomplete, the applicant will be notified within a reasonable period of that fact and of the specific deficiencies. Anytime after 30 days following any such notification, the application may be denied for lack of information, if requested supplemental information is not timely submitted by the applicant.

24.3(4) *Final notice.* Upon receiving a complete application, the administrators shall approve or disapprove an application for operation of a central routing unit within 60 days after the date of written notice to the applicant that the application is determined to be complete. The administrators shall notify the applicant in writing as to the decision to approve or disapprove.

This rule is intended to implement Iowa Code section 527.9.

189—24.4(527) Compliance examinations of a central routing unit.

24.4(1) *Performance examinations.* A central routing unit shall be subject to examination by the administrators for the purpose of determining compliance with Iowa Code chapter 527. Such an examination may be conducted after the central routing unit is operating under the approval of the administrators and shall be conducted at the time the approval of the administrators is sought in accordance with rule 24.3(527).

24.4(2) *Compliance factors.* A compliance examination of a central routing unit conducted by the administrators shall consider the following factors to ensure that the central routing unit and all other components of an electronic funds transfer system are in full compliance with the requirements of Iowa Code chapter 527:

a. Transaction charges. The transaction charges paid to the central routing unit by each financial institution which utilizes the central routing unit must be consistent with the schedule of charges set forth in the application to operate a central routing unit and must be consistent with the requirements of Iowa Code subsection 527.5(6).

b. Transmission capabilities. The central routing unit must be capable of accepting and routing and, if approved to operate, is being operated to accept and route transmissions of transaction data originating at any satellite terminal located in the state, whether receiving transaction data from a satellite terminal or from a data processing center or other central routing unit.

c. Connections with data processing centers. The central routing unit must be directly connected to every data processing center that is directly connected to a satellite terminal located in the state.

d. Transaction requirements. A central routing unit must ensure that an electronic funds transfer system consistently complies with the following transaction requirements:

(1) All cardholders initiating transactions at satellite terminals must use an access device and an electronic personal identifier issued by the cardholder financial institution, unless the use of an electronic personal identifier is not required by Iowa Code chapter 527 for transactions initiated at specified types of satellite terminals.

(2) All transactions must originate at satellite terminals certified by a central routing unit. Satellite terminals located in this state must meet all applicable state and federal requirements.

(3) All transactions shall be authorized either on an on-line real time basis or on a batch basis through a data processing center or a central routing unit.

(4) If the establishing financial institution's data processing center cannot authorize or reject a particular transaction, then the transaction must be routed to a central routing unit.

e. Validation. A central routing unit must validate and edit all transaction messages flowing through the electronic funds transfer system to ensure transaction integrity.

f. Error recovery. A central routing unit must be responsible for error recovery of all of the central routing unit's owned or controlled hardware, software, and communication facilities and must define all necessary interface requirements for data processing centers, satellite terminals, and financial institutions.

g. Authorization services. A central routing unit shall provide authorization services for all cardholder financial institutions which have agreed to such authorization services if:

(1) The cardholder financial institution's data processing center is unavailable or is responding slowly; or

(2) The cardholder financial institution's cardholder information is retained at the central routing unit for card authorization services.

h. Third-party audits. Third-party audits of an electronic funds transfer system, including a central routing unit, must be conducted at least annually to ensure adequate security and controls and must be documented for review by the administrators, upon request.

i. Duplication of critical processing hardware. A central routing unit must provide duplication of critical processing hardware to ensure functional integrity of the central routing unit.

j. Electronic funds transfer system reliability standards. A central routing unit must be available for processing transactions 99 percent of the time, on an annual basis, during the schedule of operation established by the central routing unit. To provide this continuous service to cardholders and the respective cardholder financial institution, a central routing unit must provide for data processing center backup service for all cardholder financial institutions which utilize a data processing center. This may be accomplished by either of the following:

(1) Cardholder financial institutions may maintain a cardholder authorization file at the central routing unit; or

(2) A central routing unit may authorize transactions based on cardholder financial institution's established parameters when the cardholder financial institution's data processing center is responding slowly or is in an inoperative state.

k. Confidentiality.

(1) A central routing unit shall not divulge specific transaction information to any person or financial institution concerning any cardholder, or an establishing or cardholder financial institution, unless such person or financial institution is part of, or is necessary to effect, the specific transaction, or unless disclosure of such information is required by applicable state or federal law.

(2) A central routing unit shall not divulge any statistics on the operations of any establishing or cardholder financial institution to any third party without the written consent of the particular financial institution.

(3) A central routing unit may disclose total terminal statistics that are generic to the central routing unit and which do not identify any particular financial institution or the operations of any particular financial institution.

(4) A central routing unit may disclose transaction(s) data to any federal or state regulatory authority as required by law.

24.4(3) *Certification processes of a central routing unit to demonstrate compliance.* To assist the administrators with compliance examinations of a central routing unit, a central routing unit shall certify financial institutions, satellite terminals located in the state, and data processing centers directly connected to the central routing unit located in this state or directly connected to cardholder financial institutions, to demonstrate that satellite terminals located in this state and the central routing unit are performing in accordance with the requirements of Iowa Code sections 527.5 and 527.9.

a. Certification of financial institutions. All establishing financial institutions and their data processing centers must comply with the following procedures, which shall be confirmed and certified by a central routing unit:

(1) The establishing financial institution and its data processing center must ensure that all transaction data transmitted by the establishing financial institution's data processing center conforms to the central routing unit's electronic communication format standards.

(2) The establishing financial institution's data processing center must be certified or recertified to support new terminal types or models, to utilize any new satellite terminal vendor, or to perform terminal hardware upgrades or software version updates, prior to actual transmission of transaction data by that data processing center to the central routing unit.

(3) Use of any satellite terminal located in this state must be available to all cardholders of cardholder financial institutions and other establishing financial institutions on a nondiscriminatory basis. A cardholder financial institution shall have the right to offer to its cardholders any type of transaction which is supported by a central routing unit. Establishing financial institutions must offer to all cardholders of any establishing or cardholder financial institution the same type of transactions at their satellite terminals located off the premises of the establishing financial institution as are offered to cardholders of the establishing financial institution.

(4) An electronic personal identifier must be issued by a cardholder financial institution for each cardholder access device. A central routing unit must provide for cardholder entry of the electronic personal identifier for all transactions transmitted to the central routing unit. The requirement to issue an electronic personal identifier is not applicable to access devices which are only for use at a limited function terminal, as defined by Iowa Code section 527.2.

(5) A central routing unit must approve access devices displaying its logo or trade name which are issued by cardholder financial institutions, including any access devices that are redesigned, so that the central routing unit may control the operational quality of the access devices and ensure uniform implementation of changes of such access devices.

(6) A control record must be maintained by a central routing unit for every satellite terminal deployed by an establishing financial institution which participates with the central routing unit.

(7) The establishing financial institution's data processing center must be responsible for forwarding transactions which it cannot authorize or reject to a central routing unit for further routing. The establishing financial institution's data processing center must set a timer for that particular transaction at the time the transaction is forwarded to the central routing unit. If the establishing financial institution's data processing center does not receive a transaction transmission response from the central routing unit within the time frames established by the central routing unit, then the establishing financial institution's data processing center must immediately generate and transmit a reversal for that particular transaction. The cardholder financial institution's data processing center must accept the reversal from a central routing unit and the cardholder financial institution must post valid reversals to the particular cardholder's customer asset account. To monitor such reversals, a central routing unit must log each transaction routed through the central routing unit, validate each transaction's completion and ensure that all transactions are sent to and received by the appropriate data processing centers for both the cardholder financial institution and the establishing financial institution.

(8) A central routing unit must certify all satellite terminals (whether switch-in-front or switch-behind) that an establishing financial institution proposes to use in conjunction with the central routing unit. This certification process shall test each satellite terminal for its ability to satisfactorily perform all transaction functions supported by the central routing unit in accordance with operational standards for satellite terminals as established by the central routing unit.

(9) An establishing financial institution must ensure that each of its satellite terminals provides a record of all approved or denied transactions at the satellite terminal by either an audit journal or the creation of duplicate receipts held within the satellite terminal and must ensure that the satellite terminal generates a customer receipt in compliance with 12 CFR 205.9 (Regulation E) and requirements established by the central routing unit.

(10) Proper maintenance and service of satellite terminals on both a regular and emergency basis are the responsibilities of the establishing financial institution.

b. Certification of data processing centers. All data processing centers connected to a central routing unit must comply with the following procedures and requirements, which shall be confirmed by a central routing unit:

(1) A data processing center shall operate in such a manner as to comply with all requirements established in Iowa Code chapter 527.

(2) A data processing center shall conform to a central routing unit's standards including, but not limited to, the following:

1. Format and message content.

2. Electronic personal identifier encryption.

3. Communications protocol.

4. Certification of on-line transaction transmissions for data processing centers, new terminals, and all establishing and cardholder financial institutions directly or indirectly connected to the central routing unit.

(3) A data processing center must meet minimum response time goals established by a central routing unit. Satellite terminal transactions shall be handled on a first-in, first-out basis. No data processing center may prioritize satellite terminal transactions.

(4) Rescinded IAB 10/25/06, effective 11/29/06.

(5) If a satellite terminal located in the state is not directly connected to an approved central routing unit, then the satellite terminal must be directly connected to a data processing center which is directly connected to an approved central routing unit. A data processing center or central routing unit is directly connected to a satellite terminal when a transaction transmission from the satellite terminal is received by the data processing center or central routing unit prior to being received or processed by or routed to any other data processing center or facility which categorizes, separates or routes the transaction transmission. A data processing facility certified by a central routing unit and a front-end processor directly connected to an on-line point-of-sale satellite terminal and directly linked to the data processing facility both constitute a data processing center for purposes of this paragraph.

(6) This subrule does not limit the authority of a data processing center to authorize or reject transactions requested by cardholders of a cardholder financial institution pursuant to an agreement whereby the data processing center authorizes or rejects requested transactions on behalf of the cardholder financial institution and provides to the cardholder financial institution, on a batch basis and not on an on-line real time basis, information concerning authorized or rejected transactions of cardholders of the cardholder financial institution.

c. Nonsupport of a satellite terminal by a central routing unit. A central routing unit has the authority to refuse or discontinue support of any satellite terminal (either switch-in-front or switch-behind) that is not established or maintained by the establishing financial institution in accordance with the certification procedures and requirements of this subrule if the central routing unit reasonably determines that initial or continued support of the noncomplying satellite terminal may jeopardize the safety and soundness of the operation of an electronic funds transfer system. If such action is contemplated by a central routing unit, written notice of the intended action and the reasons for not supporting particular satellite terminals shall be sent by the central routing unit to the appropriate establishing financial institution by certified or restricted certified mail, with a copy provided to the administrator, within 30 days of the date such action to discontinue support is to be taken, or within 10 days from the date the central routing unit determines it appropriate to refuse initial support of a newly established satellite terminal.

d. Appeals to division administrator.

(1) Whenever a central routing unit provides notice concerning the nonsupport of any satellite terminal located in the state upon the determination that the satellite terminal will not be, or is not being, maintained by the establishing financial institution in accordance with the requirements of this subrule and Iowa Code chapter 527, the establishing financial institution has the right to file a written appeal to the administrator within 30 days from the date the central routing unit issued a written notice of such action. The written appeal shall set forth any facts in dispute and shall state the reasons why the decision of the central routing unit to refuse initial or continued support of its satellite terminal or terminals should be reversed by the administrator. If the establishing financial institution fails to file a written appeal to the administrator, the financial institution is deemed to have consented to the nonsupport of its satellite terminal or terminals by the central routing unit.

(2) The administrator shall conduct hearings and exercise any other appropriate authority conferred by Iowa Code sections 527.3 and 527.5 regarding the operation or control of a satellite terminal which a central routing unit has initially determined to be operating in a manner inconsistent with the requirements of this subrule and Iowa Code chapter 527.

(3) Upon appeal, the administrator may affirm, modify, or reverse the initial determination of a central routing unit that a satellite terminal located in Iowa is not being operated or controlled in accordance with the requirements of this subrule and Iowa Code chapter 527.

(4) In the event of consent by the establishing financial institution, or if upon the record made at the hearing the administrator affirms the initial determination of the central routing unit, the administrator may initiate proceedings to revoke the privilege of the establishing financial institution to continue operation and control of the satellite terminal or terminals determined to be in noncompliance in accordance with the procedures established in paragraph “e” of this subrule, or may deny the initial application to establish or operate such noncomplying satellite terminals in accordance with rule 24.5(527).

(5) If the initial determination of the central routing unit is either reversed or modified, the administrator shall document the reasons for determining that the satellite terminals in question comply with the requirements of this subrule and Iowa Code chapter 527 or why the initial determination of the central routing unit has been modified and shall deliver a copy of these findings to the establishing financial institution and the appropriate central routing unit. Any further proceedings or hearings on the same subject matter shall be governed by the provisions of Iowa Code chapter 17A relating to contested cases.

e. Revocation of privilege.

(1) Whenever the administrator determines, upon notice and hearing pursuant to Iowa Code chapter 17A, that a satellite terminal located in this state, a data processing center, or a central routing unit is being operated within an electronic funds transfer system in violation of Iowa Code chapter 527 or the compliance procedures and standards established by this subrule, the administrator may revoke the approval to operate within the electronic funds transfer system. If the administrator does not have any direct authority over the facility because of the provisions of Iowa Code section 527.3, the administrator may revoke with respect to any financial institution over which the administrator does have direct authority the privilege to engage in transactions through or with that facility. With respect to revocation of the approval to operate a central routing unit, all of the administrators specified in Iowa Code section 527.3 may jointly participate, since all types of financial institutions may be served by the central routing unit. All references to the term “administrator” in this paragraph “e” shall signify all of the administrators with respect to revocation of the approval to operate a central routing unit.

(2) The administrator shall have additional authority to cause such revocations as established in Iowa Code section 527.12.

(3) If a central routing unit or satellite terminal of an establishing financial institution is determined by the administrator to fail to comply with the requirements of Iowa Code chapter 527 or this subrule at the time of application to the administrator, then the application may be denied by the administrator without the need for notice or opportunity for hearing.

(4) A revocation by the administrator performed pursuant to this subrule shall be effective when ordered by the administrator, anything in Iowa Code chapter 17A to the contrary notwithstanding.

(5) The administrator may bring an action in the district court in the name of the state to enjoin any financial institution or other person who continues to utilize or to operate a satellite terminal, data processing center, or central routing unit after the approval has been revoked.

(6) The administrator may bring an action to enjoin any person who fails to obtain any approval required by Iowa Code chapter 527.

189—24.5(527) Applications to establish a satellite terminal.

24.5(1) *Approval required.* A satellite terminal shall not be established or operated in the state of Iowa unless written approval for that establishment and operation has been obtained from the administrator. Exceptions to this requirement may exist based upon judicial rulings on applicability of Iowa Code subsections 527.5(3) and 527.5(7) to certain federally chartered financial institutions.

24.5(2) *Application requirements.* A person desiring to establish and operate a satellite terminal shall submit to the administrator an application which shall contain all of the information and shall be accompanied by all documentation expressly provided for in Iowa Code subsection 527.5(3).

24.5(3) *Incomplete applications.* If the application is found by the administrator to be incomplete, the applicant will be notified within a reasonable period of that fact and of the specific deficiencies. Anytime after 30 days following any such notification, the application may be denied for lack of information if requested supplemental information is not timely submitted by the applicant.

24.5(4) *Final notice.* Upon receiving a complete application, the administrator shall approve or disapprove an application for the establishment and operation of a satellite terminal within 30 days after the date of written notice to the applicant that the application is determined to be complete. The administrator shall notify the applicant in writing as to the decision to approve or disapprove.

24.5(5) *Denial of application.* If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal, the administrator shall notify the person filing the informational statement or an amendment thereto within 30 days of the filing thereof of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subrule shall not be construed to prohibit the administrator from enforcing the provisions of this chapter or Iowa Code chapter 527, nor shall it be construed to constitute a waiver of any prohibition, limitation or obligation imposed by this chapter or Iowa Code chapter 527.

24.5(6) *Failure to establish.* If the applicant fails to establish a satellite terminal within 60 days after the date of written notification of approval by the administrator or within 90 days of filing of the application if such notice is not given by the administrator and expressed approval is presumed, the application to establish and operate a satellite terminal in this state shall be considered to be withdrawn by the applicant and the satellite terminal shall not be established and operated in Iowa without reapplication or extension of the application period by the administrator.

24.5(7) *Notice to terminate satellite terminal operation.* If an establishing financial institution determines, for whatever reasons, that a satellite terminal it operates shall no longer be made available for continued use in the state of Iowa, written notice of such termination of service shall be provided to the administrator, with a copy to the central routing unit, at least 15 business days prior to such discontinuance of service.

This rule is intended to implement Iowa Code subsection 527.5(7).

189—24.6(527) Customer instruction in the use of a satellite terminal. Iowa Code subsection 527.5(4) prohibits employees of the establishing financial institution or affiliate from attending or operating a satellite terminal except on a temporary basis for the purpose of instructing customers in the proper use of the satellite terminal. For purposes of this rule, such temporary basis shall be defined to be no more than 30 calendar days from the date of initial operation of the satellite terminal.

Satellite terminals located on the premises of the establishing financial institution are exempt from this restriction.

This rule is intended to implement Iowa Code subsection 527.5(4).

[Filed 2/12/93, Notice 1/6/93—published 3/3/93, effective 4/7/93]

[Filed 10/31/96, Notice 8/14/96—published 11/20/96, effective 12/25/96]

[Filed 12/30/05, Notice 11/23/05—published 1/18/06, effective 2/22/06]

[Filed 10/5/06, Notice 8/30/06—published 10/25/06, effective 11/29/06]

CHAPTER 25
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES

The credit union division hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

189—25.1(17A,22) Definitions. As used in this chapter:

"Agency" in these rules means the Iowa credit union division.

189—25.3(17A,22) Requests for access to records.

25.3(1) Location of record. In lieu of the words "(insert agency head)", insert "superintendent". In lieu of the words "(insert agency name and address)", insert "Iowa Credit Union Division, 200 E. Grand, Suite 370, Des Moines, Iowa 50309".

25.3(2) Office hours. In lieu of the words "insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

25.3(7) Fees.

c. Supervisory fee. In lieu of "(specify time period)", insert "one-half hour".

189—25.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "Iowa credit union division".

189—25.9(17A,22) Disclosure without the consent of the subject.

25.9(1) Open records are routinely disclosed without the consent of the subject.

25.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 25.10(17A,22) or in any notice given for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

189—25.10(17A,22) Routine use.

25.10(1) "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

25.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request, of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

189—25.11(17A,22) Consensual disclosure of confidential records.

25.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 189—25.7(17A,22).

25.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

189—25.12(17A,22) Release to subject.

25.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 25.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code subsection 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code subsection 22.7(5))

d. As otherwise authorized by law.

25.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

189—25.13(17A,22) Availability of records.

25.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

25.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency. (Iowa Code sections 422.72 and 422.20)

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Minutes of closed meetings of a government body. (Iowa Code subsection 21.5(4))

d. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code subsection 17A.3(1) "d."

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

f. All papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state credit union or other person by the superintendent of credit unions pursuant to the laws of this state. (Iowa Code section 533.108)

g. Reports of examinations conducted by the superintendent of credit unions and reports of examinations received by or furnished to the superintendent of credit unions pursuant to Iowa Code section 533.113.

h. Information and material in the public file of applications filed with the superintendent pursuant to rule 2.12(17A) deemed by the superintendent to be confidential.

i. All information obtained by examiners and described in Iowa Code section 533.108.

j. All applications, reports, materials, documents, information and other writings obtained from the National Credit Union Administration or authorized account insurer (Iowa Code section 533.307), Federal Reserve Bank, Comptroller of the Currency or any agency of the United States government which would cause the denial of services or information to the agency. (Iowa Code section 22.9; the Privacy Act of 1974 (U.S.C. 522a); and Part 790 of the National Credit Union Administration Rules and Regulations, 12 CFR 790, August 1987)

k. Those personnel records which are confidential under Iowa Code sections 22.7(11), 19A.9 and 19A.15.

l. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

m. Any other information made confidential by law.

25.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 25.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 25.4(3).

189—25.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 189—25.1(17A,22). The credit union division does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in another record system. The record systems maintained by the agency which may contain personally identifiable information are the files of current and former agency employees. This information is collected pursuant to Iowa Code section 533.106.

189—25.15(17A,22) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the agency other than record systems as defined in rule 189—25.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 25.13(17A,22). In addition, the

records listed in subrules 25.15(1) to 25.15(4) may contain information about individuals. All records are stored on paper.

25.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

25.15(2) *Credit union review board records.* Agendas, minutes, and materials presented to the credit union review board are available from the office of the credit union division, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Credit union review board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

25.15(3) *Publications.* News releases, annual reports, project reports, agency newsletters, etc., are available from the office of the credit union division.

Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

25.15(4) *Orders issued by the superintendent.* All findings of fact, conclusions of law, and orders issued by the superintendent of credit unions subsequent to a public hearing under the provisions of Iowa Code chapter 17A. These records may contain information about individuals making written or oral comments at the public hearing.

25.15(5) *Published materials.* The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

25.15(6) *Policy manuals.* The agency's employees' manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to Iowa Credit Union Division, 200 E. Grand Avenue, Suite 370, Des Moines, Iowa 50309. Policy manuals do not contain information about individuals.

25.15(7) *Reports to superintendent.* Reports obtained by the superintendent of credit unions pursuant to the provisions of Iowa Code section 533.330. These reports are considered open reports.

25.15(8) *Officers, directors and shareholders.* Lists filed with the superintendent of credit unions pursuant to the provisions of Iowa Code section 533.204. These reports are considered open records.

25.15(9) *Other records.* All other records that are not exempted from disclosure by law.

These rules are intended to implement Iowa Code section 22.11.

[Filed 8/5/88, Notice 5/18/88—published 8/24/88, effective 9/30/88]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]