

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).

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