

April 2, 2013

SUBJECT: Deferred Compensation Arrangements and Related Investments

TO: The Board of Directors of all North Dakota Chartered Credit Unions

In 2011, the North Dakota Legislative Assembly voted the passage of a new section of law expressly authorizing credit unions to purchase investment or insurance products directly related to a benefit plan for credit union employees. This new section of law is found under North Dakota Century Code section 6-06-06(5)(h).

While the Department recognizes that credit unions are looking to offer competitive benefits in order to retain competent and professional personnel, we would like to encourage credit unions to perform an appropriate level of due diligence in making these investments. In reviewing the reasonableness of these investments and the overall impact on the credit union's safety and soundness, examiners will be looking at the following:

- 1) Whether the investments are directly related to employee benefit plans, and whether the employee benefit plans are offered only to credit union employees.
- 2) Whether the credit union's legal counsel has reviewed the agreements in order to ensure compliance with the Internal Revenue Code and other applicable statutes, and issues a written opinion to that effect.
- 3) Whether the credit union follows generally accepted accounting principles in accounting for the arrangement.
- 4) Whether the credit union's Board of Directors has thoroughly reviewed and approved the arrangement as part of an overall employee compensation program.
- 5) Whether the plan results in an unsafe and unsound concentration of credit union assets in the plan-related investments. Total investments which exceed 30% of the credit union net worth or individual investments which exceed 15% of a credit union's net worth will be considered material for purposes of this determination. However, other factors including the risk profile of the institution and the adequacy of the net worth position must be considered and could significantly reduce the level of investment considered safe and sound.
- 6) Whether the plan presents a safety and soundness risk to future earnings. Documented analysis must include a review of the financial costs related to the program and the impact on future earnings.

In addition to the above, examiners will evaluate the investment in a deferred compensation arrangement by applying the guidance in the Interagency Statement on the Purchase and Risk

Management of Life Insurance. This guidance addresses insurance related products. You are encouraged to review the executive summary and the complete interagency statement at the following:

Executive Summary: <http://www.fdic.gov/news/news/financial/2004/fil12704a.html>

Interagency Statement: <http://www.fdic.gov/news/news/financial/2004/fil12704toc.html>

We hope that this memorandum will serve to provide the credit union industry with guidance as to the Departments expectations with regard to these programs. If you have any questions or concerns regarding this guidance, please feel free to contact us at your convenience.

Sincerely,

Robert J. Entringer
Commissioner