

**REGULAR STATE CREDIT UNION BOARD MEETING  
HELD BY CONFERENCE CALL  
OFFICE OF THE COMMISSIONER  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
2000 SCHAFFER STREET, SUITE G  
BISMARCK, NORTH DAKOTA**

**September 5, 2014**

The regular meeting of the State Credit Union Board was called to order by Chairman Entringer in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 9:30 a.m., Friday, September 5, 2014, by conference call.

**MEMBERS PRESENT:** Robert J. Entringer, Chairman (*Office*)  
Paul Brucker, Member (*Office*)  
Don Clark, Member (*Fargo*)  
Melanie Stillwell, Member (*Williston*)  
Steve Tonneson, Member (*Minot*)

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Aaron Webb, Secretary (*Office*)  
Suzette Richardson, Administrative Staff Officer (*Office*)  
Jan Murtha, Assistant Attorney General (*Office*)  
Corey Krebs, Chief Examiner – Credit Unions (*Office*)  
Sara Sauter, Financial Institutions Examiner (*Office*)  
Heidi LaBree, Financial Institutions Examiner (*Office*)  
Nick Woodard, United Saving CU (*Fargo*)  
Darrell Olson, Town and Country CU (*Minot*)  
Mike Heidt, Town and Country CU (*Minot*)

**APPROVAL OF MINUTES**

Chairman Entringer indicated the Board received copies of the minutes of the regular meeting held on June 17, 2014.

**It was moved by Member Brucker, seconded by Member Stillwell, and unanimously carried to approve the minutes of the regular meeting held June 17, 2014, as presented.**

## **TOWN AND COUNTRY CREDIT UNION, MINOT – EXEMPTION REQUEST**

Chief Examiner Krebs reviewed his Memorandum dated August 29, 2014, detailing the request by Town and Country Credit Union (TCCU) to apply for a waiver of the 25% minimum equity interest requirement for construction and development loans as outlined in Part 723.3 of NCUA's Rules and Regulations and Section 13-03-16-05 of the North Dakota Administrative Code.

Chief Examiner Krebs indicated that TCCU meets the criteria necessary to obtain the waiver of a new equity requirement of 20%. Chief Examiner Krebs explained even though construction and development loans are considered the riskiest business loans, the waiver request does not create immediate safety and soundness concerns for TCCU. Chief Examiner Krebs indicated that TCCU intends to use this waiver on no more than 65% of the construction and development loans granted. Chief Examiner Krebs indicated TCCU's loan portfolio performance will be reviewed during Department examinations and Call Reports.

Chief Examiner Krebs noted that the Board previously granted a waiver to TCCU to its aggregate portfolio limit for construction and development loans up to 100% of net worth, which was limited to 45% of net worth by NCUA; as well as waivers approved for limited personal guarantees and no personal guarantees.

Chief Examiner Krebs indicated the Department recommends approval of the exemption from the loan to value limit requested by TCCU.

CCO Heidt explained that TCCU has operated under the 75% loan to value limitation for over 30 years; however, at the last examination it was noted the credit union is at 77.7% loan to value. CCO Heidt continued that TCCU typically remains under the final appraised value; therefore, would like to continue to operate under the 75% rule as a baseline and if it increases due to extra project costs it will not be a regulation violation. CCO Heidt indicated TCCU will monitor to stay within 65% of construction and development loans that are written.

In response to Chairman Entringer, CCO Heidt agreed the problem is how NCUA regulation requires the calculation of value, which makes it more difficult than it should be.

In response to Member Brucker, Chairman Entringer indicated NCUA will make the final decision regarding this waiver request.

**It was moved by Member Tonneson, seconded by Member Clark, and unanimously carried to approve the request by Town and Country Credit Union, Minot, for a waiver of the 25% minimum equity interest requirement for construction and development loans, up to 20%.**

Chairman Entringer indicated the Board's recommendation will be forwarded to NCUA for final action.

President Olson and CCO Heidt left the conference call at 9:40 a.m.

## **UNITED SAVINGS CREDIT UNION, FARGO – APPLICATION TO EXCEED 6% FIXED ASSETS LIMITATION**

Chief Examiner Krebs reviewed his Memorandum dated August 29, 2014, indicating United Savings Credit Union (USCU) has requested approval to move from its existing location, 220 North 10<sup>th</sup> Street, to a new building under construction at 1001 1<sup>st</sup> Avenue North, Fargo.

Chief Examiner Krebs indicated the estimated cost to construct the new building along with other fixed assets already owned by USCU will result in a fixed asset ratio in excess of the 6% limit established in Section 13-03-04-01 of the North Dakota Administrative Code; therefore, USCU is requesting permission to exceed the 6% limit.

Chief Examiner Krebs indicated the projected building cost including the lot is estimated at \$2,208,000; the building costs plus current fixed assets results in a fixed asset total of \$3,217,000; and the fixed asset ratio is projected to be 7.65% upon completion. Chief Examiner Krebs continued that the ratio declines to 6.9% at the end of Year 5 projections due to additional planned fixed asset costs.

Chief Examiner Krebs indicated the new building will have an impact on USCU's overall profitability, and explained the estimated gain on assets and depreciation expenses.

Chief Examiner Krebs noted that USCU has already sold its current building and construction of the new building is scheduled to begin soon.

Chief Examiner Krebs indicated the Department has not made a recommendation regarding USCU's request.

President Woodard indicated at yearend 2013, the Board began discussion on major renovation of the building USCU moved into in 1979; adding the only previous improvements have been roof repairs, lights, signage, and a boiler. President Woodward added because of the age of the building the duct work is underground, and there are asbestos and mold issues throughout the building. President Woodard indicated the estimated cost to renovate the building equaled the cost of constructing a new building.

President Woodard indicated the new building is approximately three blocks south of the existing location, and is a much more favorable traffic count location. President Woodard continued that new construction compared to renovation would not interrupt customer services. President Woodard added that NDSU has begun construction of a four-level parking garage south of USCU's existing building, which would result in essentially hiding the building.

President Woodard indicated the current building has 6,600 square feet and in order to keep fixed assets under 6%, the new construction would have to be less than 4,500 square feet which was not feasible. President Woodard continued that the proposed building would be 5,900 square feet, and due to increased costs, construction would be approximately \$250 per square foot.

President Woodard indicated USCU is very conservative with a capital ratio over 18%; therefore, would not consider a new building if it was not financially feasible. President Woodard added that the site for the new building has qualified for renaissance zoning, and USCU's request for the eligible five-year tax break has been approved.

In response to Chairman Entringer, President Woodard indicated the loss of 700 square feet of office space should not have a negative effect.

In response to Chairman Entringer, President Woodard indicated the \$3.2 million in fixed assets is net of the sale of the existing building, which was sold for \$330,000.

In response to Member Tonneson, President Woodard indicated the proposed building could be expanded to the north or a second level could be added. President Woodard added there are two drive-up lanes at the proposed building, with the possibility of adding another lane if USCU obtained the alley to the west of the building.

In response to Member Tonneson, President Woodard stated the intention is to return fixed assets to 6% within three years due to proposed growth.

Chairman Entringer explained the requirement for a state-chartered bank is that it cannot exceed 65% of common stock, surplus, undivided profits or retained earnings. Chairman Entringer referred to President Woodard's five-year projected balance sheet which indicates there will be 36.5% of equity in 2015, 38% in 2018, and 37.9% in 2019. Chairman Entringer indicated the ratio to be considered is fixed assets to total assets, which will be 6.9% in 2019 based on the projections provided by USCU.

Member Brucker stated he feels USCU is a credit union with strong reserves. Chairman Entringer agreed and added that earnings will not be seriously impacted.

Chairman Entringer suggested if the Board decides to approve the request, a percentage maximum of total assets be set that USCU cannot exceed, along with a timeframe goal of returning to 6% of fixed assets.

**It was moved by Member Clark and seconded by Member Tonneson to approve the request by United Savings Credit Union, Fargo, to exceed the fixed asset limitation not to exceed 8% of total assets.**

After discussion, it was the consensus that a time limitation not be included in the proposed order.

**The motion was unanimously carried.**

President Woodard left the conference call at 9:59 a.m.

## **DAKOTA WEST CREDIT UNION, WATFORD CITY – ARTICLES OF AMENDMENT TO CERTIFICATE OF ORGANIZATION**

Chairman Entringer indicated Dakota West Credit Union has relocated its main office from 329 North Main Street to 340 North Main Street, Watford City; therefore, the Amendment to Certificate of Organization containing the new address needs to be approved by the Board and submitted to the Secretary of State's Office for filing.

**It was moved by Member Brucker, seconded by Member Stillwell, and unanimously carried to approve the Amendment to Certificate of Organization for Dakota West Credit Union, Watford City, to relocate its main office from 329 North Main Street to 340 North Main Street, Watford City.**

### **USE OF THE WORD BANKING**

Chairman Entringer indicated the Department received a complaint from the North Dakota Bankers Association last year regarding a credit union using the word "banking" in an advertisement. Chairman Entringer added at that time legal counsel for the credit union provided information that it is permissible for a federal credit union to use the word "banking" in advertisements.

Chairman Entringer indicated Chapter 6-02 of the North Dakota Century Code states that unless a financial institution is chartered as a bank the use of the word "bank, banker, banking, or words of like import" are not permitted, unless a waiver is granted by the Commissioner which is based on the fact that there would be no confusion to the public that it is a bank.

Assistant Attorney General Murtha explained the issue is that under state statutes there is no specific authority for state-chartered credit unions to use the term banking; however, because federally chartered credit unions can do it, the question is whether the use of the parity statute would be permitted. Assistant Attorney General Murtha continued that the parity statute changed from allowing state-chartered credit unions to do what federally chartered credit unions are allowed, unless the Board opted to otherwise modify that by rule. Assistant Attorney General Murtha stated the statute changed to a permissive statute which means parity has to be specifically authorized by the Board; therefore, it is questioned whether or not the Board can issue a parity order that would be permissible parity pursuant to federal law, but directly contradict another state statute, or whether or not the Board wishes to issue such an order.

Assistant Attorney General Murtha indicated she is researching this issue and will provide the Board with an answer at the next meeting which the Board will have to consider at that point as a matter of policy.

Chairman Entringer reiterated this is an issue to be considered by the Board at its December 5, 2014, meeting.

In response to Member Tonneson, Chairman Entringer indicated this issue is the result of a credit union using the word “banking” as a verb of action in an advertisement.

## **CREDIT UNION BUDGET UPDATE**

Chairman Entringer reviewed the Organizational Status by Summary Account and Source for credit unions for the month ending July 30, 2014, as presented; adding that the yearly assessments are included.

## **FTE BUDGET PACKAGE**

Joan Becker, Director of Administration, joined the meeting at 10:08 a.m.

Chairman Entringer referred to budget projections he emailed to the Board members regarding the credit union division for the 2015-2017 biennium.

Chairman Entringer indicated that Chief Examiner Krebs requested an additional FTE (full-time employee) be added for the credit union division. Chairman Entringer indicated the Governor’s budget guidelines specifies the only way to add a FTE is through an optional package, and this was included in the Department’s proposed budget to the Office of Management and Budget (OMB) and the Governor’s Office.

Chief Examiner Krebs explained the state has had substantial growth, with huge oil and ag impact.

Chief Examiner Krebs reviewed a schedule which shows the last full-time staff member was added to the credit union division 10 years ago; in that timeframe credit unions have doubled in size, with 124% in asset growth of which 115% is loan growth. Chief Examiner Krebs indicated the majority of loan growth has been in

business loans (221%) which have an impact on the examination since these loans are the most time intensive to review. Chief Examiner Krebs indicated 10 years ago 40% of a loan portfolio was reviewed; however, that is down to 30% of ag and commercial loans.

Chief Examiner Krebs referred to annual data provided by NASCUS which indicates our Department averages 10.5 credit unions per examiner with the national average being 5.5, or \$787 million in assets per examiner nationwide compared to \$900 million in North Dakota. Chief Examiner Krebs continued this equates to approximately 4.5 examinations written per examiner nationwide compared to 9 in North Dakota.

Chief Examiner Krebs indicated that business loans as a function of assets is 5% nationwide; however, in North Dakota it is 37%.

Chief Examiner Krebs concluded he is running out of efficient options to keep up with the examination cycle.

Chairman Entringer referred to the two budget projections for the Department, with one including the additional FTE, as well as factoring in the average growth in the total assets in credit unions over the past years; however, the projections do not include an increase in assessments. Chairman Entringer explained the different carryover amounts at the end of the biennium are due to including the additional FTE, which brings about the potential that credit union assessments would have to be increased.

Chairman Entringer indicated this issue is being brought to the Board for their input and discussion; adding that the Department has the opportunity to withdraw the optional package before the Governor's final budget is delivered.

Chairman Entringer added that he and Chief Examiner Krebs would meet with the League GAC to ensure they are aware of the proposal.

Member Stillwell commented that Western Cooperative Credit Union is growing due to oil impact and has a lot of liquid money in cash and short term investments. Member Stillwell indicated the credit union is assessed on its assets and would pay a hefty assessment fee even though it is not a complex MBL credit union and questioned if there was a way to develop the assessment formula to account for this. Chairman Entringer agreed that the assessment formula could be modified.



Chairman Entringer indicated that the Comptroller of the Currency assigns a premium to national banks if they are rated “3”, “4”, or “5”; therefore, the assessment would be higher due to the risk. Chairman Entringer indicated this could be an option for the credit union assessment formula.

Member Stillwell indicated she believes the credit union division is short staffed; however, questioned if all credit unions should be assessed in relation to the credit unions that are causing the complex exams.

In response to Member Brucker, Chairman Entringer indicated the Board would be approving the FTE position if the optional budget package is approved; however, added the final decision will be made by the Legislature.

Chairman Entringer stated the proposal was brought to the Board’s attention for discussion; adding that a decision should be made after the League GAC has also been given an opportunity to address the issue. Chairman Entringer indicated a special meeting will have to be held to determine whether the proposal should be withdrawn since the Governor’s Budget is released in December.

Member Brucker indicated this would be a material change to the budget which means an assessment change. Member Brucker stated he believes Chief Examiner Krebs made good points; however, suggested the decreasing number of state-chartered credit unions should also be a factor and project forward the impact that would have on the Department. Member Brucker pointed out a “worst case scenario” would be to add a position, increase the assessments, and then discover the Department really did not need another position since the number of credit unions decreased.

Chairman Entringer indicated he and Chief Examiner Krebs discussed different adjustments that could be made; for example, discontinue yearly examinations of credit unions over \$250 million. Chairman Entringer stated the Department could conform with its exam schedule of 24 months, unless there is concern regarding a credit union. Chairman Entringer indicated a problem is that Chief Examiner Krebs is at times the voice of reason in comparison to NCUA. Chief Examiner Krebs qualified himself as the “quality control” person; adding that NCUA examines the large credit unions yearly and wonders what concerns the credit unions may have if the Department was not a part of those exams.

Chairman Entringer explained the bank division also has an equivalent Chief Examiner position; however, does not conduct examinations, only reviews them,

whereas Chief Examiner Krebs does conduct examinations. Chairman Entringer indicated his and Assistant Commissioner Webb's time allotted to the credit union division would likely decrease if Chief Examiner Krebs is in the office more as opposed to both writing and reviewing examinations.

Member Tonneson commented he feels there is a legitimate need for another position based on statistics presented by Chief Examiner Krebs; adding that Member Stillwell and Brucker's comments regarding a possible change to the assessment formula and considering the future number of credit unions also seem logical. Member Tonneson added the Department needs to proceed wisely so there is a fair impact on credit union assessments.

Chairman Entringer stated that credit union profitability will be impacted; therefore, the proposition to add a FTE must be considered carefully and an important part is getting input from the League GAC.

It was noted that Chief Examiner Krebs would provide the information he discussed to the Board.

Chairman Entringer concluded that he and Chief Examiner Krebs will schedule a meeting with the League GAC in early October, and then schedule a special Board meeting to readdress this issue.

Joan Becker, Director of Administration, left the meeting at 10:28 a.m.

**The Board went into closed session at 10:02 a.m. to review the Supervisory Reports of Examination pursuant to North Dakota Century Code 6-01-07.1, and to discuss any confidential records pursuant to North Dakota Century Code 44-04-19.2.**

The Board reconvened in open session at 10:50 a.m.

## **DEPARTMENT LEGISLATION**

Chairman Entringer indicated that he, Assistant Commissioner Webb, and Assistant Attorney General Murtha have been reviewing the North Dakota Century Code and at this time have not identified any areas regarding credit unions that need to be proposed for legislative updates or changes.

Chairman Entringer asked the Board members to contact the Department if they feel any changes and/or additions need to be made.

Member Brucker stated he believes the use of the word “banking” needs to be addressed. Chairman Entringer agreed and stated the first step is for Assistant Attorney General Murtha to review the parity aspect.

In response to Member Tonneson, Chairman Entringer indicated a parity order could be proposed or a legislative change would be required.

The meeting adjourned at 10:52 a.m.

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Robert J. Entringer, Chairman

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Aaron Webb, Secretary