

**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**

December 2, 2016

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, December 2, 2016, by conference call.

MEMBERS PRESENT: Robert J. Entringer, Chairman *(Office)*
Paul Brucker, Member *(Office)*
Deb Gallagher, Member *(Office)*
Melanie Stillwell, Member *(Williston)*

MEMBER ABSENT: George Economon, Member

ALSO PRESENT: Aaron Webb, Secretary *(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)*
Dave Hatton, Financial Institutions Examiner *(Detroit Lakes)*

APPROVAL OF MINUTES

Chairman Entringer indicated the Board received copies of the minutes of the regular meeting held on September 9, 2016.

It was moved by Member Stillwell, seconded by Member Gallagher, and carried by a vote of 4 to 0, with Member Economon absent, to approve the minutes of the regular meeting held September 9, 2016, as presented.

ARTICLES OF AMENDMENT TO THE BYLAWS – CITIZENS COMMUNITY CREDIT UNION, DEVILS LAKE

Chairman Entringer indicated Chief Examiner Krebs requested a redline copy of the proposed bylaws from Darwin Brokke, Manager of Citizens Community Credit Union (Citizens). Chairman Entringer stated the Board should have received this information from Chief Examiner Krebs; however, only Articles VI and VII will be considered by the Board at this meeting. Chairman Entringer added that the proposed amendments were approved by two-thirds vote of the Board of Directors of Citizens.

Chief Examiner Krebs indicated the amended Article VI, Section 3, adds that a special meeting can be called upon written request of not fewer than one percent of the members with a maximum of 400, as of the prior year-end. Chairman Entringer indicated this proposed change differs from NCUA's model bylaws which requires five percent with a maximum of 700 members; however, this proposed change is not materially inconsistent with other changes that have been made at other institutions.

In response to Member Brucker, Chairman Entringer stated according to Citizens' June 30, 2016, Call Report, approximately 113 members would be required to call a special meeting. Chairman Entringer indicated this brings about the question of whether the governance of Citizens by a smaller number of members is positive or negative.

Chief Examiner Krebs indicated the proposed change to Article VII, Section 1, substitutes "presiding officer" with "Chair". Chief Examiner Krebs explained "presiding officer" is found in other Sections of the bylaws; therefore, more changes may be required. Member Gallagher indicated in the case of the Chair being absent, the Vice Chair could be the presiding officer; therefore, keeping "presiding officer" in some areas of the bylaws may make more sense.

Chief Examiner Krebs indicated the proposed changes for filling a vacancy are reasonable.

In response to Member Stillwell, Chief Examiner Krebs indicated the requirement of 30 days, as referenced in Section 1, remains the same.

Chief Examiner Krebs indicated the proposed change to Section 3 establishes a prohibition for immediate family members of staff or current Board members to serve on the Board. Chief Examiner Krebs added that a definition of "immediate family members" is not provided. Chief Examiner Krebs continued that former employees

not being eligible to be members of the Board for at least three years is a requirement of other state-chartered credit unions.

Chief Examiner Krebs indicated the credit committee and supervisory committee have essentially been dispensed and the Board assumes those duties. Chief Examiner Krebs indicated a minimum age for voting has been added.

Chairman Entringer indicated the Department will request that Citizens provide a definition of “immediate family members”.

It was moved by Member Brucker, seconded by Member Gallagher, and carried by a vote of 4 to 0, with Member Economon absent, to approve the Articles of Amendment to the Bylaws, Articles VI and VII, for Citizens Community Credit Union, Devils Lake.

DAKOTA PLAINS CREDIT UNION, EDGELEY – ORDER AUTHORIZING INVESTMENT IN A CUSO

Chairman Entringer indicated the Board approved the request by Dakota Plains Credit Union, Edgeley, to invest in a CUSO at its September 9, 2016, meeting; adding the Order Authorizing Investment in a CUSO also needs to be approved by the Board.

It was moved by Member Brucker, seconded by Member Gallagher, and carried by a vote of 4 to 0, with Member Economon absent, to approve the Order Authorizing Investment in a CUSO for Dakota Plains Credit Union, Edgeley, to invest \$25,000 into Midwest Business Solutions, LLC (a/k/a Paktola), and that Chairman Entringer be authorized to sign the Order on behalf of the Board.

NORTH DAKOTA ADMINISTRATIVE RULES

Chairman Entringer indicated the changes to Article 13-03 following the meeting with the Government Affairs Committee (GAC) have been provided for the Board.

Chief Examiner Krebs highlighted the following changes:

Section 13-03-05-01(1): Have a more consistent process for merger applications submitted to the State Credit Union Board.

Chief Examiner Krebs explained the current steps for a state-chartered credit union are: (1) the credit union's Board of Directors approves a Resolution to Merge, (2) secures a qualifying vote from the membership, (3) provides the application to the State Credit Union Board. Chief Examiner Krebs explained the steps for a federal credit union are: (1) the Resolution is made by the Board of Directors, (2) the application is provided to NCUA who then either denies or conditionally approves the application, (3) the proposed merger is then voted on by the membership.

Chief Examiner Krebs indicated the change would provide the following process: (1) the Resolution is made by the credit union's Board of Directors, (2) provide the application to the State Credit Union Board, at which time publication will occur, (3) after action by the State Credit Union Board the application is presented to the credit union's membership for voting.

Chairman Entringer indicated if an application is approved by the State Credit Union Board, an Order is presently being provided to the credit union; however, with the above proposed change, a condition will be added to the Order that the proposed merger be approved by the credit union's membership.

In response to Member Gallagher, Chairman Entringer indicated it was a valid point that the credit union would be required to provide the membership vote to the State Credit Union Board.

Member Gallagher stated she feels the changes to the steps regarding a merger are more cumbersome, as a credit union should provide notice to its membership prior to submitting the application to the State Credit Union Board so the membership is aware of the application prior to publication by the Department. Member Gallagher indicated this would be costly for the credit union.

Chairman Entringer indicated he discussed this with the GAC; however, does not feel the publication requirement can be changed.

Chairman Entringer agreed with Member Brucker's suggestion to follow the current process when two state-chartered credit unions are proposing to merge, and follow this proposed process when a state-chartered and federally-chartered credit union are proposing to merge.

In response to Chairman Entringer, Assistant Attorney General Murtha stated she feels the Department would be questioned by the Legislative Rules Committee as to why two processes were necessary.

Chief Examiner Krebs indicated the request for this change was originated by Stephen Schmitz, and when told the credit union would have to notify its membership of a proposed merger, Mr. Schmitz felt this should be shared with the membership early on.

Chairman Entringer stated it seems odd to seek approval from the regulator before the credit union's membership agrees with the proposed merger. Member Gallagher pointed out the difference in the number of state-chartered credit unions this proposed change would impact compared to the number of federally-chartered credit unions in North Dakota.

After further discussion, Chairman Entringer indicated the Board has the choice to make the suggested change which mirrors the NCUA's process or not make the change at all.

There was considerable discussion about changing the process for a merger approval by the membership.

Chairman Entringer then offered that we would not change the Order for merger approval and a state-chartered credit union would get its membership vote; a federally-chartered credit union would have to get its membership vote sent to the Board before action is taken on an application. Members Brucker, Gallagher and Stillwell agreed.

Chairman Entringer stated the Department has the capability if there is an emergency to waive requirements and we do not have to publish; therefore, we could come up with a process when the circumstances dictate. Assistant Attorney General Murtha noted that the public should get notice at some point.

In response to Chairman Entringer, Assistant Attorney General Murtha indicated it would be within the Board's discretion, as long as the intent is to change the order in the process. However, the downside is if there is any Board member that has a concern with the way the section is worded, it can always be brought back before the Board for reconsideration.

Chief Examiner Krebs referred to page 31, Section 13-03-16.1-05(2)(d), Construction or development lending, stating that the GAC asked for clarification since State law changed in 2009, and there are some concerns that this Section of the rule is already addressed within state law. Chief Examiner Krebs noted the concern has always been that a builder files a mechanic lien that will have precedence over the lender. Chief Examiner Krebs stated in North Dakota that mechanic law would have precedence over most mortgages, but not a construction mortgage unless it is filed beforehand. Chief Examiner Krebs indicated the point made by GAC is the institution really needs to get a date down title policy, which is essentially what this rule would require. Chief Examiner Krebs explained the Department felt a credit union would not need that date down title insurance, as the rule can be interpreted such that the requirement would be satisfied by a proof of lien position when the loan is initially made.

Chairman Entringer clarified that North Dakota statutes trump rules; therefore, if the statute states this does not have to be done, it would control.

Chief Examiner Krebs referred to page 30, Section 13-03-16.1-03(1)(b), Loan limits, stating the old rule read that credit can be extended an additional 10 percent for seasonal operating advances and repayment is required within twelve months. Chief Examiner Krebs explained the proposal is to change twelve months to fifteen months.

In response to Member Brucker, Chief Examiner Krebs stated the extra 10 percent relates to agricultural operating loans, with the thought process if the operating loan was FSA guaranteed it would be excluded from this rule; if the loan was in any way guaranteed by the government it would be excluded. Chief Examiner Krebs continued the language details the presence of a federal crop insurance program essentially provides there is a guaranteed revenue stream of up to 75% of the cost, which is similar to guaranteed coverage of an FSA or other type of guaranteed program. Chief Examiner Krebs explained the thought process is if an agricultural operating loan is boxed in with enough characteristics of a guaranteed credit because of the federal crop insurance program that there is not substantial additional risk. Chief Examiner Krebs indicated term loans are covered against the 15 percent; real estate or equipment that relate to the agricultural operating credit is allowed an additional 10 percent; resulting in a total of 25 percent of a credit union's net worth.

In response to Member Brucker, Chairman Entringer explained if the Board approves the rules for publication subject to changes discussed today, the Department (1) would initiate publication in the eight major newspapers; (2) the latest publication

date is determined so that a hearing can be scheduled to receive comments, no earlier than 20 days after the last publication date; (3) written comments can be received up to 10 days after the hearing; (4) all comments are brought for the Board's review, at which time the Board must act on any comments, (Chairman Entringer explained no substantive changes can be made without the rule process starting over); (5) when the rules are finalized they are forwarded to the Attorney General's Office for review; (6) the Attorney General's Office issues letter regarding whether all procedures were followed appropriately; (7) the rules are forwarded to Legislative Council for scheduling with the Legislative Rules Committee, at which time the Department must appear to answer questions, and the hearing the Legislative Rules Committee can make any changes it wants; (8) after Legislative Rules Committee approval the rules, they become effective the beginning the following month.

Assistant Attorney General Murtha explained the rules can be changed during the comment period if the changes are in regard to sentence structure, and these changes could be adopted by the Board.

Chairman Entringer indicated the rules will be on the Department's website for review.

Chairman Entringer explained because the way NCUA's Member Business Lending rules are written, the Department's Member Business Lending rules are preempted as of January 1, 2017; therefore, rules do not need to be repealed.

Chairman Entringer explained if NCUA does not approve any of the Department proposed Member Business Lending rules, they are preempted as well.

It was moved by Member Gallagher, seconded by Member Brucker, and carried by a vote of 4 to 0, with Member Economon absent, to publish the North Dakota Administrative Rules as presented.

PROPOSED MEETING DATES FOR 2017

Chairman Entringer indicated the proposed meeting dates for 2017 are the first Friday of March, June, September and December: March 3, June 2, September 1, and December 1.

All members agreed to Chairman Entringer's suggestion to begin all meetings at 9:00 a.m. instead of 9:30.

It was moved by Member Brucker, seconded by Member Gallagher, and carried by a vote of 4 to 0, with Member Economon absent, to approve March 3, June 2, September 1, and December 1 as the 2017 State Credit Union Board meeting dates, with all meetings beginning at 9:00 a.m.

CREDIT UNION BUDGET UPDATE

Chairman Entringer indicated the Board received the Organizational Status by Summary Account and Source for the month ending October 2016.

UPDATE – AGENCY BRIEFING

Chairman Entringer indicated he, Assistant Commissioner Webb, Chief Examiner Kruse, Chief Examiner Krebs, and Director of Administration Becker met with Governor-Elect Burgum, Lieutenant Governor-Elect Sanford, and their transition team on Wednesday, November 30, 2016, to discuss a variety of requested topics. Chairman Entringer stated he feels the meeting went well; however, does not know when he will hear whether he will be reappointed.

The Board went into closed session at 10:29 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, and returned to open session at 11:15 a.m.

APPROVAL OF EXECUTIVE SESSION MINUTES

It was moved by Member Brucker, seconded by Member Gallagher, and carried by a vote of 4 to 0, with Member Economon absent, to approve the executive session minutes of the regular meeting held on September 9, 2016, as presented.

NEW FILE DOWNLOAD PROCESS

Chairman Entringer indicated that Member Brucker prefers the previous File Transfer system to the ITD Managed File Transfer system; however, explained the

ITD system allows for more security and items can be added to a folder. Member Gallagher indicated she was able to download the information; Member Stillwell indicated she did not try the new system.

The meeting adjourned at 11:18 a.m.

Robert J. Entringer, Chairman

Aaron Webb, Secretary