

**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 7, 2001**

The regular meeting of the State Credit Union Board was called to order by Chairman Karsky in the Office of the Commissioner, Department of Financial Institutions, 2000 Schaffer Street, Suite G, Bismarck, North Dakota, at 9:32 a.m., Friday, December 7, 2001, by conference call arrangement.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)  
Judy A. Millar, Member (*Fargo*)  
Ervin E. Mund, Member (*Office*)  
Steven S. Tonneson, Member (*Minot*)

MEMBERS ABSENT: Charles W. Gates, Member

ALSO PRESENT: Robert J. Entringer, Secretary (*Office*)  
Jim Laidlaw, Chief Examiner – Credit Unions (*Office*)  
Scott Miller, Assistant Attorney General (*Office*)  
Greg Tschider, ND Credit Union League (*Office*)  
Kermit Larson, North Dakota Credit Union League (*Office*)  
Buell Reich, North Dakota Credit Union League (*Office*)

**MINUTES PREVIOUSLY APPROVED BY MAIL**

The minutes for the regular meeting of September 7, 2001, had been previously mailed to the Board, and approved.

## **ELM RIVER CREDIT UNION, PAGE – ARTICLES OF AMENDMENT TO THE BYLAWS – ARTICLE VIII, SECTION 1, BOARD OF DIRECTORS**

Chairman Karsky reviewed the proposed amendment to the bylaws of Elm River Credit Union, which specifies that the Board of Directors shall consist of five members, all of whom would be members of the credit union. Two of the directors are to be Page members, two directors are to be Kindred members, and one director at large. The proposed amendment to the bylaws states that the location of their membership card and data processing designation will determine whether they are Page or Kindred members. The proposed amendment also specifies a term for each of the directors: one would serve until the second annual meeting; two would serve until the third annual meeting; and two would serve until the fourth annual meeting; or until their successors are elected and qualified, and then annually thereafter all members shall be elected for a term of three years.

**It was moved by Member Millar, seconded by Member Mund, and approved by a vote of 4 to 0, with Member Gates absent to approve the Articles of Amendment to the Bylaws of Elm River Credit Union, Page.**

### **DEFINITION OF IMMEDIATE FAMILY**

Chairman Karsky explained that a Memorandum had been sent out to all state-chartered credit unions indicating that the State Credit Union Board had adopted a policy defining immediate family, as well as household. Chairman Karsky indicated no feedback has been received, although Examiner Hatzenbuhler had received a comment that it would result in the credit union having to change its bylaws in order to use the definitions. Chairman Karsky indicated he felt that is exactly what the Board had intended by adopting the policy for immediate family and household definitions.

### **FEDERAL CREDIT UNION INCIDENTAL POWERS ACTIVITY**

Chairman Karsky indicated that at the last meeting the Board had reviewed the packet of information provided, and had discussed NCUA's final rule regarding incidental powers. During that discussion it was suggested that Assistant Attorney General Miller review the regulation and make a presentation to the Board at the next meeting regarding his views of the incidental powers for federal credit unions.

Assistant Attorney General Miller indicated the state has an incidental powers section in our statute as well, found in Section 6-06-06(12), North Dakota Century Code, which states credit unions empowered to exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated. Assistant Attorney General Miller stated that Chairman Karsky felt the federal rule would fall under Subsection 11 of the powers statute, which states that a credit union may engage in any activity in which they could engage if they were federally-chartered; however, Assistant Attorney General Miller pointed out that the law became effective August 1, 2001, where the federal rule became effective after, and state law can not incorporate a federal law which became effective after the state law. Therefore, if the credit unions were to rely on Subsection 11 of the powers, they would not be able to incorporate the federal law regarding incidental powers.

Assistant Attorney General Miller continued that it is clear what NCUA is doing with its rule is providing a non-exhaustive list of incidental powers using the same test that the Board uses to determine whether a power is incidental. Assistant Attorney General Miller stated he feels the list of powers found in the federal rule are essentially the same and available to state-chartered credit unions under Subsection 12 of the powers in the North Dakota Century Code. Assistant Attorney General Miller stated it either is an incidental power or it is not, and all NCUA is doing is providing a list of what it concludes to be incidental powers at this time. Assistant Attorney General Miller felt at this time the credit unions are covered for the use of the incidental powers set forth in the final rule based on Subsection 12 of the powers statute. Assistant Attorney General Miller did state that although if there were an incidental power in the federal rule that the State Credit Union Board did not feel was available to a state-chartered credit union, that the Board should let the credit unions know that is not a power available to them under this Section.

Mr. Tschider asked if Assistant Attorney General Miller felt it was necessary for the Board to adopt a rule stating that these are the incidental powers available to state-chartered credit unions. Assistant Attorney General Miller stated that it would certainly provide a safe harbor for the credit unions knowing which powers the Board believes are incidental and that if the credit union exercised those powers, no one would question their use. On the other hand, Section 6-06-06(12), authorizes incidental powers and it is really up to the credit union to decide if it is an incidental power and if the Board says this is not an incidental power, then there

is an argument and an issue that the Board has the authority to resolve one way or the other. Assistant Attorney General Miller said it certainly would be a safe harbor, but he did not feel it was necessary for the Board to adopt a rule.

Chairman Karsky stated so far there has not been a problem with credit unions exercising incidental powers and that the majority of those gray areas seem to be with regard to CUSOs. Chairman Karsky indicated he felt until such time as there are difficulties regarding incidental powers, he would prefer not to draft such an exhaustive list at this time.

Member Mund asked if credit unions normally call the Department before they engage in an activity. Chairman Karsky stated he believes credit unions contact the Department more often now than previously.

## **DAKOTA PLAINS CREDIT UNION, EDGELEY – NCUA APPROVAL REGARDING MEMBER BUSINESS LOANS**

Chairman Karsky reviewed the letter to Dakota Plains Credit Union, Edgeley, authorizing the credit union to grant member business loans up to \$350,000 per member, and that the waiver extends through December 31, 2004, or until the net worth equals \$2,333,333, whichever comes first.

## **DAY WITH THE COMMISSIONER**

Chairman Karsky indicated the Day with the Commissioner for credit unions has been set for January 31, 2002, adding that the Department held this event quite regularly; however, has not been done for some time. Chairman Karsky indicated there will be presentations from NCUA; Chief Examiner Laidlaw; Commissioner Karsky, who will talk about privacy; and Governor Hoeven, who will talk about the farm program and ag policy. Chairman Karsky indicated flyers would be sent out soon and the date would also be noted in the Department Newsletter, which will be sent to all financial institutions at year-end.

## **PRIVACY**

Chairman Karsky indicated that privacy was a heated discussion during the special session of the Legislature and that the Legislature took no action on the bill. Chairman Karsky indicated he thought Governor Hoeven would have preferred that the Legislature suspend Senate Bill No. 2191 with some modifications; however, nothing was done. If the pending June 2002 referral vote is unsuccessful there should be no problems going forward; however, if the referral vote is successful, the financial institutions could have some issues that they will have to deal with. Chairman Karsky indicated if the referral vote is successful, the Department might ask for an Attorney General's Opinion regarding these processing issues whether the exemption under the old state law would take place and cover the customer initiated transactions; the other key issue was the exportation of North Dakota's privacy law with respect to a financial institution that has a non-North Dakota resident as a customer and a question as to whose privacy law that customer is subject to. Chairman Karsky discussed the Supreme Court ruling regarding the exportation of interest rates and that the bank that brought that suit won its case enabling the bank to charge a higher rate of interest than was allowed under the respective state law. Chairman Karsky indicated we may have to request an Attorney General's Opinion to verify that the Supreme Court ruling regarding exportation of interest rates would apply with regard to the exportation of the state privacy statute. Chairman Karsky indicated the OCC, the federal regulator for national banks, may take a different position and as they have stated, they will determine what privacy law the respective national banks are subject to and they may take a position that the national banks are not subject to North Dakota's privacy law, which would cause further heated debate on the privacy issue.

## **MEETING DATES FOR 2002**

The meeting dates for 2002 were set for March 1, June 7, September 6, and December 6.

## **OTHER ITEMS**

Member Mund stated the State of Maryland had gotten its member business loan rule approved by NCUA, and wondered if it was a good time to resubmit our proposed member business loan rule to NCUA for reconsideration. Chairman Karsky indicated he, Chief Examiner Laidlaw, and Member Mund were going to

the NASCUS Convention next week and that they should visit with Regional Director Walters to question the likelihood of the North Dakota rule being reconsidered and approved by NCUA. Member Mund indicated another item is that with the Reg Flex going into effect, the Department should look at the federal law on certified appraisals going from \$100,000 to \$250,000 and consider following federal law on this. Chairman Karsky indicated we could certainly look at that and bring something to the Board's March meeting.

The Board went into closed session at 9:55 a.m.

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Timothy J. Karsky, Chairman

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Robert J. Entringer, Secretary