

**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**

June 22, 2012

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, June 22, 2012.

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

MEMBERS ABSENT: None

ALSO PRESENT: Aaron Webb, Secretary (*Office*)
Suzette Richardson, Administrative Staff Officer (*Office*)
Janilyn Murtha, Assistant Attorney General (*Office*)
Corey Krebs, Chief Examiner – Credit Unions (*Office*)
Taylor Lee, Financial Institutions Examiner (*Office*)
Greg Tschider (*Office*)
Debra Gallagher, Capital CU (*Office*)
Vance Reinbold, Capital CU (*Office*)
Jim Schaeffbauer, Noridian Employees CU (*Office*)
Steve Schmidt, First Community CU (*Jamestown*)
Andy Waldock, First Community CU (*Jamestown*)

APPROVAL OF MINUTES

Chairman Entringer indicated the Board received copies of the minutes of the regular meeting held on March 16, 2012, and the special meeting held on April 24, 2012.

It was moved by Member Brucker, seconded by Member Watne, and carried by a vote of 4 to 0, with Member Tonneson absent, to approve the minutes of March 16 and April 24, 2012, as presented.

CAPITAL CREDIT UNION, BISMARCK – APPLICATION TO MERGE WITH NORIDIAN EMPLOYEES CREDIT UNION, FARGO, AND TO EXPAND ITS FIELD OF MEMBERSHIP

Assistant Commissioner Webb reviewed his Memorandum dated May 14, 2012, which indicates the Department received the merger application on April 24, 2012. Assistant Commissioner Webb noted Section 6-06-36 of the North Dakota Century Code refers to the right of credit unions to merge. Assistant Commissioner Webb also reviewed the procedures of Section 13-03-05-01 of the North Dakota Administrative Code. Assistant Commissioner Webb indicated all the requirements of the North Dakota Administrative Code have been met, and that no comments were received regarding the proposed merger.

Assistant Commissioner Webb indicated the Board of Directors of Capital Credit Union, Bismarck (Capital) and Noridian Employees Credit Union, Fargo (Noridian) approved a Resolution to merge on January 23, 2012, and February 2, 2012, respectively. Assistant Commissioner Webb indicated the membership of Capital approved the merger on February 27, 2012, by a vote of 78-1 and the membership of Noridian approved the merger on February 13, 2012, by a vote of 138-0.

Assistant Commissioner Webb indicated notice of the proposed merger was mailed to all credit unions within a 75 mile radius of Noridian, mailed to the North Dakota Bankers Association and the Independent Community Banks of North Dakota, and included in the Department's April and May 2012 Bulletin.

Assistant Commissioner Webb indicated this was a voluntary merger, with Noridian choosing to merge with Capital.

Assistant Commissioner Webb indicated the March 31, 2012, balance sheet for Capital shows a capital to asset ratio of 9.45% post-merger.

Assistant Commissioner Webb reviewed Section 6-06-07 of the North Dakota Century Code, which provides that upon approval by the State Credit Union Board of a merger, the former main office and branches of the merged credit union will become branches of the credit union, and that the continuing credit union is not required to file a branch application for any branches acquired through the merger.

Assistant Commissioner Webb indicated that Capital intends to continue operations in the current main office location of Noridian located at 4510 13th Avenue South, Fargo.

Assistant Commissioner Webb reviewed Section 6-06-07(2) of the North Dakota Century Code, which indicates in the event of a merger between credit unions with different geographic field of memberships, the surviving credit union may expand the field of membership to include the geographic field of membership of the merged credit union.

Assistant Commissioner Webb indicated Capital proposes to expand its field of membership to include “organizations and persons within a 75 mile radius of Fargo”; however, since this expansion is not well defined, the Department recommends that the field of membership expansion be modified to include a 75 mile radius of 4510 13th Avenue South, Fargo.

Assistant Commissioner Webb indicated the notice of expansion of the field of membership was published by the Department in the *Cooperstown Griggs County Courier* on May 4, 2012; the *Fargo Forum* on May 7, 2012; the *Finley Steele County Press* on May 4, 2012; the *Grand Forks Herald* on May 3, 2012; the *LaMoure Chronicle* on May 2, 2012; the *Lisbon Ransom County Gazette* on May 7, 2012; the *Mayville Traill County Tribune* on May 5, 2012; the *Milnor Sargent County Teller* on May 4, 2012; the *Valley City Times-Record* on May 5, 2012; and the *Wahpeton Daily News* on May 2, 2012.

Member Watne questioned why an application to merge was not filed with the State Credit Union Board and Chairman Entringer and Assistant Commissioner Webb explained the Department does not have a formal merger application for credit unions; however, the Department has developed checklist which is given to the credit union proposing to merge so that all the requirements are met.

Jim Schaeffbauer indicated that Noridian is a small credit union with three employees and limited services. Mr. Schaeffbauer indicated due to budgetary demands the sponsoring organization pressured Noridian to become self-sufficient; therefore, Noridian decided merging was its best option. Mr. Schaeffbauer indicated Noridian interviewed several credit unions and chose to merge with Capital.

Debra Gallagher indicated she met several times with Mr. Schaeffbauer to discuss the possible merger.

Chief Examiner Krebs indicated there are no concerns with the surviving institution, as Capital is very sound and the addition of a branch in Fargo will not have a material financial impact. Chief Examiner Krebs indicated the proposed merger resolves Noridian's earning problems.

Chairman Entringer asked President Gallagher for the proposed time frame of the merger, and President Gallagher indicated if the State Credit Union Board approves the application the intent is to merge as of July 1, 2012.

Member Brucker asked if there is any contention to change the expansion of field of membership from a 75 mile radius of Fargo to the actual location of Noridian (4510 13th Avenue South, Fargo).

Chairman Entringer indicated the Department recommends this change because Noridian currently states its field of membership by the home office address; therefore, Capital must define the radius the same.

Chairman Entringer indicated the Department recommends approval of the merger application by Capital and the proposed Order.

It was moved by Member Watne, seconded by Member Brucker, and unanimously carried to approve the application by Capital Credit Union, Bismarck, to merge Noridian Employees Credit Union, Fargo, into Capital Credit Union, Bismarck, and that Chairman Entringer be authorized to sign the Order on behalf of the Board.

CAPITAL CREDIT UNION, BISMARCK – APPLICATION TO EXPAND FIELD OF MEMBERSHIP

Chairman Entringer indicated that Capital requested approval to expand its field of membership to include “organizations and persons within a 75 mile radius of Fargo; however, since this expansion is not well defined the Department is recommending that the field of membership request be modified to include “a 75 mile radius of 4510 13th Avenue South, Fargo (the current Noridian location)”.

It was moved by Member Tonneson, seconded by Member Watne, and unanimously carried to approve the request by Capital Credit Union, Bismarck, to expand its field of membership to include a 75 mile radius of 4510 13th Avenue South, Fargo.

Debra Gallagher, Vance Reinbold and Jim Schaeffbauer left the meeting at 9:50 a.m.

PROPOSED ADMINISTRATIVE RULE AMENDMENTS

Chairman Entringer indicated it is currently the 10-day comment period post hearing, as the hearing was held on Wednesday, June 20, 2012, with Assistant Commissioner Webb acting as the hearing officer. Chairman Entringer indicated that Jeff Olson, Mid-America Credit Union Association, was present for the hearing. Chairman Entringer indicated no comments were offered during the hearing, the comment period ends July 2, 2012, and that the next meeting is scheduled for Monday, July 9, 2012, by conference call at 9:00 a.m. Chairman Entringer indicated the rules should become effective approximately October 2012.

Greg Tschider left the meeting at 9:53 a.m.

FIRST COMMUNITY CREDIT UNION, JAMESTOWN – CONSTRUCTION AND DEVELOPMENT WAIVER REQUEST

Chief Examiner Krebs reviewed his Memorandum dated June 12, 2012, indicating the Department received a letter from First Community Credit Union (First Community) requesting approval of a waiver to increase the allowed percentage of construction and development loan commitments in their loan portfolio from 15% of their net worth to 15% of their net worth with an additional

15% of net worth for specific types of construction and development loans, for a maximum of 30% of net worth in all types of construction and development loans.

Chief Examiner Krebs indicated that North Dakota Administrative Code Section 13-03-16-05 and NCUA's Rules and Regulations 723.3 provides that the aggregate amount of construction and development loans that a credit union may issue may not exceed 15% of net worth less the allowance for loan losses account; however, a credit union may apply to the State Credit Union Board and the NCUA Regional Director for an exception to these limits.

Chief Examiner Krebs indicated First Community has requested that their limit be raised to 30% of net worth with the additional 15% of net worth being reserved exclusively for the construction of 1-4 family dwellings, apartment complexes, and owner occupied business or agricultural buildings if permanent financing is committed under an SBA, FSA, or USDA guarantee program; or the Bank of North Dakota has committed to purchase part of First Community's completion under a business development program or PACE program.

Chief Examiner Krebs indicated First Community's application states that the current limit has made it difficult for the credit union to offer construction loans, even in circumstances where much of the risk was mitigated with the permanent financing partially guaranteed by USDA or a commitment from the Bank of North Dakota to buy part of the credit through the PACE programs. Chief Examiner Krebs indicated the application also discusses the housing shortage in several of the communities impacted by the oil activity, and how the current limit makes it difficult to meet the needs of the community.

Chief Examiner Krebs indicated the application discusses tools to be used to manage the risk, including USDA guarantees and the Bank of North Dakota PACE program. Chief Examiner Krebs indicated controls in place regarding the approval and construction process, as well as experience levels of individuals involved in the process are addressed in the application.

Chief Examiner Krebs indicated the application indicates low levels of delinquency and loss for all types of loans, and no losses for construction and development loans; geographic diversification was addressed since First Community has operations in numerous communities; a loan collateral report is included which outlines the various levels of loan concentrations; documentation indicates that no credits to one borrower exceed 15% of the credit union's net worth; loan policies are

included which discuss credit standards; and loan officers involved in this type of lending are detailed.

Chief Examiner Krebs indicated a copy of First Community's business lending policy is included with the application and appears to sufficiently address risk. Chairman Entringer indicated the business lending policy was not provided to the Board members; however, Chief Examiner Krebs has reviewed it and the Board can choose to accept his opinion that the business lending policy sufficiently addresses risk.

Chairman Entringer indicated the requirement that the State Credit Union Board consider the credit union's historical examination ratings would be considered "confidential" and not included in the open section of this meeting.

Chief Examiner Krebs indicated the Department recommends approval of the waiver for a construction and development loan limit of 30% of the credit union's net worth with the condition that the additional 15% of net worth is reserved exclusively for the construction of 1-4 family dwellings, apartment complexes, and owner occupied business or agricultural buildings if permanent financing is committed under an SBA, FSA, or USDA guarantee program; or the Bank of North Dakota has committed to purchase part of First Community's completion under a business development program or PACE program.

Chairman Entringer referred to correspondence listing that First Community has \$25,600,000 of Type 8 Participation Loans; however, that amount is gross and not net of the portion of loans that are sold or participated out.

Steve Schmidt, President of First Community, clarified the Type 8 Participation Loans category shows both balances that would be out of Bank of North Dakota grants or with the credit unions with which First Community has participated. President Schmidt indicated the majority of this amount (approximately \$14 million) would come from money that is participated out, primarily with the Bank of North Dakota.

Member Brucker inquired as to whether the first step for First Community was to receive approval of this request from the State Credit Union Board, and then forward the request and Board's action to NCUA for their review. Chairman Entringer indicated that is correct, since NCUA will not act on this request until after it is acted on by the State Credit Union Board.

President Schmidt reiterated that the purpose of First Community's request is not to go out into any risky ventures out of state, but to be exclusively within the State of North Dakota and possibly a small degree into Minnesota. President Schmidt indicated the types of loans First Community is considering are for family dwellings, apartments, and other owner occupied business ventures that are guaranteed by the USDA. President Schmidt indicated First Community is seeking more flexibility so that the USDA limit does not cause the credit union to turn down good projects in several cities in which the credit union is located.

Assistant Attorney General Murtha left the meeting at 10:05 a.m.

Member Tonneson inquired whether most of the construction loans will be guaranteed or financed elsewhere, instead of First Community retaining many of the loans without guarantees. President Schmidt stated First Community does keep some loans without guarantees, as many of the residential loans are financed through the credit union's secondary market loan program, with many also financed by other financial institutions to the owner once actually built. President Schmidt indicated some larger loans (\$2-4 million) are participated out 50-50 with the Bank of North Dakota and/or other credit unions in North Dakota to mitigate risk on First Community's books and give other institutions an opportunity for volume.

Member Tonneson asked if the requested increase will jeopardize First Community going higher than what is already allowed for total commercial or MBL loans, and President Schmidt stated the loan limit would have to remain within the credit union's current volume. President Schmidt stated the credit union has waivers in place that allow more than a 12.25%, with the internal limit currently set as five times the credit union's net worth, which amounts to approximately \$220 million in business loans.

It was moved by Member Brucker, seconded by Member Watne, and unanimously carried to approve the waiver by First Community Credit Union, Jamestown, for a construction and development loan limit of 30% of the credit union's net worth with the condition that the additional 15% of net worth is reserved exclusively for the construction of 1-4 family dwellings, apartment complexes, and owner occupied business or agricultural buildings if permanent financing is committed under an SBA, FSA, or USDA guarantee program; or the Bank of North Dakota has committed to purchase part of First Community's completion under a business development program or PACE program.

Chairman Entringer indicated the application and State Credit Union Board's approval will be forwarded to NCUA for their consideration. Chief Examiner Krebs indicated he believes NCUA must act on the request within 60 days.

Steve Schmidt and Andy Waldock left the meeting at 10:10 a.m.

Member Watne indicated she had to leave the meeting at 10:10 a.m., and that serving on the State Credit Union Board has been highly educational.

Chairman Entringer thanked Member Watne for her service on the State Credit Union Board; that she has been an excellent Board Member; and the Department appreciates the time and effort she has given to the Board.

CAPITAL CREDIT UNION, BISMARCK – AMENDMENT TO BYLAWS

Chairman Entringer indicated Capital has submitted an amendment to its bylaws regarding Article VIII, Section 1, to change the number of directors from not more than 9 nor fewer than 5, to not more than 11 nor fewer than 5 members. Also, to add that "One member must reside within a 75 mile radius of Fargo".

It was moved by Member Tonneson, seconded by Member Stillwell, and carried by a vote of 4 to 0, with Member Watne absent, to approve the Articles of Amendment to the Bylaws, Article VIII, Section 1, for Capital Credit Union, Bismarck.

2012 ANNUAL ASSESSMENT POLICY FOR STATE-CHARTERED CREDIT UNIONS

Chairman Entringer reviewed his Memorandum dated June 13, 2012, which refers to North Dakota Century Code Section 6-06-08(4). Chairman Entringer indicated the Department has three separate divisions: banking, credit union, and consumer, which are all self-funded by assessments or through application and examination fees. Chairman Entringer reviewed the expense descriptions for the credit union division.

Chairman Entringer reviewed the projected revenue and expense schedules included with the Memorandum, which indicates at the end of this fiscal year (June

30, 2012) an estimated carryover of \$227,000, based on the current assessment formula adopted last year less a 15% credit.

Chairman Entringer explained the Department would like to reduce the carryover since by statute the Department cannot carryover more than 20% of its budget (expenses) from one biennium to the next; if more than 20% is carried over those monies transfer to the General Fund. Chairman Entringer indicated it is the Department's goal to keep the carryover down. Chairman Entringer indicated the estimated carryover is approximately 51% of the estimated expenses for the next fiscal year. Chairman Entringer indicated the Department sets a goal of having an approximate cushion of 15-20% of estimated expenses.

Chairman Entringer indicated if a 15% credit is offered this year the Department expects to reduce the carryover; however, it would still be sizeable as compared to the expense. Chairman Entringer indicated in order to reduce the carryover to 20% of 2013 estimated expenses would necessitate an approximate 40% credit to the assessment. Chairman Entringer indicated he suggests the Board target a carryover of approximately 30% of projected expenses for the ensuing fiscal year when establishing the assessment, and continue to set the formula sufficient to gradually reduce the carryover to the 30% target.

Chairman Entringer referred to the attached proposed State-Chartered Credit Union Annual Assessment Policy which is what the Board must act on.

Member Brucker clarified that the Board would act on the same rate schedule used last year, along with a 15% credit, and Chairman Entringer indicated that is correct.

Chief Examiner Krebs indicated he understands the Board's goal is to stay at, or slightly below, NCUA's assessment level for comparable-sized institutions, and believes in some categories that has happened. Chief Examiner Krebs indicated the idea would be that the Department's assessment schedule be a closer parallel to what a credit union would pay under NCUA's assessment.

Chief Examiner Krebs indicated another goal is to better balance revenue with expenses. Chief Examiner Krebs indicated the projected revenue and expense was based on March 31, 2012, amounts, rather than June 30, 2012, amounts.

Chief Examiner Krebs stated the idea is to evaluate the process after two years of actual assessments are collected under the current formula.

Chairman Entringer indicated the Department's recommendation is to keep the formula as is with the addition of a 15% credit to every credit union, which would result in projected assessments of \$410,000, and reduce the carryover to approximately \$200,000. Chairman Entringer added he would suggest the Board adopt a target of the carryover of 30% of estimated expenses for the ensuing year.

Member Tonneson asked for clarification of what percentage carryover results in being turned over to the General Fund. Chairman Entringer explained if the carryover cash exceeds 20% of the entire Department budget, anything over that 20% has to be turned over to the General Fund. Chairman Entringer explained that 20% is not calculated on the Department's current budget, but the proposed budget for the next biennium.

Member Brucker asked for clarification that under the Department's proposal, each credit union would receive the 15% credit this year, as well as receiving credits in future years. Chairman Entringer stated that is correct.

Member Tonneson reiterated that the revenue and expenses of all three divisions of the Department combined must be maintained under 20% of the entire budget, and Chairman Entringer indicated that is correct.

It was moved by Member Tonneson, seconded by Member Stillwell, and carried by a vote of 4 to 0, with Member Watne absent, to approve the 2012 Annual Assessment Policy for State-Chartered Credit Unions as proposed, along with a 15% credit for each credit union.

CREDIT UNION BUDGET UPDATE

Chairman Entringer reviewed the Organizational Status by Summary Account and Source for credit unions for the month ending May 31, 2012, as presented.

AUDIT FUNCTION GUIDANCE

Chairman Entringer indicated that Chief Examiner Krebs drafted his Memorandum regarding audit function guidance as directed by the Board at its March 16, 2012, meeting, while discussing the proposed changes to the administrative rules. Chairman Entringer indicated it was the Board's consensus that rather than changing the administrative rules, the Department should prepare and send out some type of guidance to the credit unions regarding audit procedures.

Chief Examiner Krebs indicated the first portion is his Memorandum and the second portion is Recommended Fraud Audit Procedures, which should not be new to the credit unions as they have been a part of NCUA's Examiners' Guide for many years. Chief Examiner Krebs indicated most credit unions are complying with these recommendations.

Chief Examiner Krebs indicated the intent of his Memorandum was to discuss the audit process, as well as include suggestions that were encouraged by the Board at its March 16, 2012, meeting. Chief Examiner Krebs indicated the intent is to make sure the content of his Memorandum is consistent with what the Board has requested.

Chief Examiner Krebs reviewed his Memorandum with the Board.

Chairman Entringer referred to the statement "The Department and the State Credit Union Board are **strongly** encouraging all credit unions, regardless of size, to outsource the financial statement audit and account verification process to a CPA firm and to obtain an opinion audit". Chairman Entringer indicated he does not want to go on record assuming what the Board is encouraging; adding the statement may imply a credit union cannot perform an internal audit, which is not the intent if a credit union has a strong internal audit function.

Member Brucker indicated he feels the Board's intent was that the credit unions take a look at outsourcing financial statement audit and account verification, especially if internal expertise is not available. Member Brucker questioned whether the words "**strongly** encouraging all" are too harsh.

Member Tonneson agreed the Board wants to encourage credit unions to consider outsourcing audits, adding that the word **strongly** may be too strong printed

in bold, since the Board is not mandating this action. It was agreed the word strongly would not be printed in bold.

Member Brucker referred to the sentence “Several smaller credit unions continue to utilize the Supervisory Committee to perform the financial audits and account verifications, or are obtaining a more limited non-opinion audit from a CPA firm”, and questioned whether “several” is correct or should be “a few”. Chief Examiner Krebs indicated there are 3 or 4 credit unions that rely 100% on their Supervisory Committees to perform audits. The Board agreed the word “several” should be changed to “a few”.

Member Stillwell referred to the sentence “All credit unions are required to obtain an annual financial statement audit and account verification”, and asked if the account verification is required annually. Chief Examiner Krebs stated the account verification is required bi-annually, and Chairman Entringer indicated that sentence would be separated to require an annual financial statement audit and bi-annual account verification.

RESOLUTION FOR MEMBER WATNE

Chairman Entringer indicated the Department will draft and send out for signature a Board Resolution thanking Member Watne for her years of service to the Board; and once signed, will be mailed to Member Watne.

The Board went into closed session at 10:44 a.m. to review the Supervisory Reports of Examination pursuant to North Dakota Century Code 6-01-07.1.

Robert J. Entringer, Chairman

Aaron K. Webb, Secretary