

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

**June 23, 2006**

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 Schafer Street, Suite G, Bismarck, North Dakota, at 9:35 a.m., Friday, June 23, 2006.

**MEMBERS PRESENT:** Timothy J. Karsky, Chairman  
Paul Brucker, Member  
Judy A. Millar, Member  
Melanie Stillwell, Member  
Steven S. Tonneson, Member

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Robert J. Entringer, Secretary  
Jim Laidlaw, Chief Examiner – Credit Unions  
Corey Krebs, Financial Institutions Examiner  
Greg Tschider, North Dakota Credit Union League  
Tony Richards, North Dakota Credit Union League  
Tony Buerkley, Hometown CU (*Kulm*)  
Darwin Brokke, Citizens Community CU (*Devils Lake*)

**MINUTES PREVIOUSLY APPROVED BY MAIL**

Chairman Karsky indicated the Board had previously received and approved the minutes of the regular meeting held on March 3, 2006.

**It was moved by Member Tonneson, seconded by Member Millar, and unanimously carried to approve the minutes of the special meeting held April 21, 2006.**

## **CITIZENS COMMUNITY CREDIT UNION, DEVILS LAKE – APPLICATION TO ESTABLISH A BRANCH**

Assistant Commissioner Entringer reviewed his Memorandum dated June 15, 2006, noting that the application was received on April 17, 2006, and was published in the *Grand Forks Herald* on May 13, 2006. No comments were received concerning the application, nor have there been any requests for copies of the application.

Assistant Commissioner Entringer indicated Citizens Community Credit Union is proposing to establish a branch in the Hugo's Grocery Store at 1925 13<sup>th</sup> Avenue North, Grand Forks, and the branch is located within the credit union's current field of membership. Assistant Commissioner Entringer indicated the credit union followed the criteria established for a branch application in Section 13-03-15-04 of the North Dakota Administrative Code, and Memorandum also set forth the criteria the State Credit Union Board should consider for a branch application found in Section 13-03-15-04(2) of the North Dakota Administrative Code.

President Brokke explained that the grocery store has recently been remodeled and were looking for a financial institution and pharmacy for the store. President Brokke noted most of the credit union's members live on the north side of Grand Forks, which is where its current branch office is located, adding that the grocery store branch would make it more convenient for those individuals that live and work on the north side and would also give the credit union more exposure to the grocery store customers. President Brokke noted that the grocery store will allow the credit union to partner with marketing efforts and added that currently the grocery store has approximately 11,000 customers per week.

President Brokke responded to Member Stillwell's question, noting that the credit union currently has 2,300 members at the branch in Grand Forks.

Member Tonneson asked if there were any other Hugo's Grocery Stores in Grand Forks, and President Brokke indicated there are two others, both of which have a financial institution in them.

**It was moved by Member Brucker and seconded by Member Tonneson to approve the application by Citizens Community Credit Union, Devils, to establish a branch in the Hugo's Grocery Store, 1925 13<sup>th</sup> Avenue North,**

**Grand Forks, and to approve the proposed Order. The motion was unanimously carried.**

President Brokke left the meeting via telephone at 9:47 a.m.

President Buerkley joined the meeting via telephone at 9:47.

## **HOMETOWN CREDIT UNION, KULM – APPLICATION TO EXPAND FIELD OF MEMBERSHIP**

Assistant Commissioner Entringer reviewed his June 15, 2006, Memorandum, noting that the current field of membership of Hometown Credit Union is limited to a 50 mile radius of the home office in Kulm and a 50 mile radius of its branch office in Hazelton. The proposed new field of membership as amended is: “membership in the credit union is limited to a 75 mile of the home office in Kulm and a 50 mile radius of its branch office in Hazelton”. The Memorandum also contained the criteria the State Credit Union Board should consider when approving a field of membership expansion, as well as the application requirements a credit union must follow when expanding its field of membership. The Memorandum noted that the notice of the application was published in the *Bismarck Tribune* and *Foster County Independent*, Carrington, as those were the only two counties impacted by the proposed field of membership expansion.

President Buerkley explained that the primary reason for expanding the field of membership is to take advantage of the change in the law which became effective August 1, 2005.

**It was moved by Member Millar, seconded by Member Stillwell, and unanimously carried to approve the application by Hometown Credit Union, Kulm, to expand its field of membership.**

President Buerkley left the meeting via telephone at 10:00 a.m.

## **2006 CREDIT UNION ASSESSMENT POLICY**

Chairman Karsky reviewed the April 21, 2006, Memorandum from Joan Becker, Director of Administration. Chairman Karsky noted the revenue that is

projected should be fairly accurate with the exception of the interest income and application fees. The expenses are fairly accurate and the Department is projecting a carryover of \$43,874.00. Chairman Karsky indicated the figures for the June 30, 2007, projected numbers are based on the yearend total asset numbers and because the credit unions have grown, the assessments are expected to increase without an adjustment to the assessment schedule.

Chairman Karsky indicated the Department does not project any special examinations, and the application fees, miscellaneous income, and interest income on the funds on deposit at the Bank of North Dakota are estimated projections.

Chairman Karsky indicated the expenses are projected through the remainder of the biennium. The salary line item includes the three full-time examiners, Jim Laidlaw, Corey Krebs, and Todd Van Orman; 10% of the Assistant Commissioner's salary; 10% of the Commissioner's salary; 10% of the Director of Administration's salary; and 5% of one Administrative Assistant's salary.

Chairman Karsky indicated if everything goes as projected, the Department should have approximately an \$18,000 cushion in the credit union division. Chairman Karsky stated according to statute the Department cannot carryover greater than 20% of its budget without forfeiting the excess to the General Fund. Chairman Karsky reiterated that the credit union fees are used to totally support the credit union division – none of the monies are used in the banking or consumer divisions.

In answering a question from Mr. Tschider, Chairman Karsky indicated the Department does have the capability to offer a rebate; however, since the credit union division is currently operating fairly lean, a rebate was not feasible.

Member Tonneson asked in regard to application fees line item total, if the Department is expecting that few applications, and Chairman Karsky indicated we try to be fairly conservative in that line item projection.

**It was moved by Member Tonneson, seconded by Member Stillwell, and unanimously carried to approve the 2006 Assessment for State-Chartered Credit Unions.**

The Board adjourned at 10:10 a.m. and reconvened at 10:20 a.m.

**WRITTEN RECORD OF ALL WRITTEN AND ORAL COMMENTS  
REGARDING NORTH DAKOTA ADMINISTRATIVE CODE ARTICLE  
13-03 – JUNE 23, 2006**

*North Dakota Bankers Association – Section 13-03-02-04*

Chairman Karsky indicated the comment letter indicates the law implemented is incorrectly cited as there is no NDCC 6-06-12(7). However, when Section 6-06-12 of the North Dakota Century Code was amended the reference in the North Dakota Administrative Code was apparently never corrected; therefore, the correct reference should be Section 6-06-12(1)(g). The State Credit Union Board concluded that the correct reference should be changed in the proposed administrative rules.

*North Dakota Bankers Association – Section 13-03-03-03*

Chief Examiner Jim Laidlaw explained the intent of the change was to take out of Section 13-03-03-01 the section that states “notes or other evidences of debt issued by corporations” and create a new section which would require State Credit Union Board approval. The reason for the change is the wording “other evidences of debt” is open to interpretation and in the past the State Credit Union Board had included leases as other evidences of debt and the 10% of paid-in shares and deposits got to be too large of a limit for purchased leases. The State Credit Union Board concluded that to address the concern raised by the North Dakota Bankers Association they would simply insert a period after “upon approval from the State Credit Union Board” and delete “and subject to any rules the State Credit Union Board shall adopt”.

*North Dakota Bankers Association and Independent Community Banks of North Dakota – Section 13-03-04-01*

A credit union currently has to call a meeting of the membership to get an approval of greater than 75% of the members present to invest in a building, furniture and fixtures, and equipment when it exceeds 6% of the assets of the credit union. The State Credit Union Board discussed the fact that the members are involved by electing the directors that manage the credit union and further noted that federal credit unions are not required to get such approval.

*North Dakota Bankers Association and Independent Community Banks of North Dakota – Section 13-03-06-02*

It was pointed out that the language regarding extraordinary hardship in the proposed rule is currently in Section 13-03-06-01(3) with the only language changed is the wording “reserve”, which was changed to “allowance for loan and lease loss”. Further, Section 6-06-21 of the North Dakota Century Code requires that the allowance for loan and lease losses be established in accordance with generally accepted accounting principles and rules of the National Credit Union Administration. The State Credit Union Board discussed the fact that if GAAP requires a certain amount of funds in the allowance account, that cannot be changed; however, if the Department conducts an examination and classified a good deal more, the intent was to put a safety valve in there so that if you have an overzealous examiner there would be a safety valve to overrule what the examiner classified. Since the law requires the credit union to follow GAAP and rules of the National Credit Union Administration, the only time this could come into play is under an extraordinary hardship and although that term is not defined, under the rules of the National Credit Union Administration Part 702.205, the NCUA is required to consult with the state officials under prompt corrective action. This would be a when a credit union is on the brink of being put into conservatorship or liquidation, which would likely be considered an extraordinary hardship. The State Credit Union Board also concluded that Mr. Forsberg’s comment that the proposed change is an apparent conflict with Section 6-06-08.2 was in error because if the Commissioner were to order a credit union to increase its allowance, the credit union always has an appeal right to the State Credit Union Board and, in fact, if they disagreed with the amount that they were ordered by the Commissioner to increase the allowance they would appeal it to the State Credit Union Board who would then be making the decision. The State Credit Union Board also concluded that the change appeared to be merely housekeeping because the only change from the current rule was to change the word “reserve” to “allowance for loan and lease losses”.

*North Dakota Bankers Association and Independent Community Banks of North Dakota – Section 13-03-14-01*

Chairman Karsky indicated it is his opinion that a credit union can certainly change its main office; however, because of the changes to Section 6-06-07, if a credit union decides to change its home office that does not allow it to expand its field of membership to a 75 mile radius of that new location. If a credit union tried to do that and the new 75 mile radius was beyond an existing location of a branch, the

credit union would lose the authority for that branch location because the language in Section 6-06-07 states that the restrictions on location and field of membership under this Section do not apply to a credit union office location or field of membership approved by the State Credit Union Board before January 1, 2005.

Chairman Karsky also pointed out that in researching this comment he found that many credit unions do not have a specific address in their organization certificate but simply say, for example, “the City of Minot”. The Board decided to provide further clarification based on the comment letters and the following language would be added to Section 13-03-14-01(5); prior to the period insert “which must be located in a credit union field of membership. Such a designation of a home office shall not expand a credit union’s field of membership.”

The State Credit Union Board also discussed whether relocating a main office, for example, from Williston to Dickinson, would result in loss of the field of membership in Williston. Chairman Karsky indicated he did not believe this would result in a loss of the field of membership in Williston, but it would not allow you to expand the field of membership simply by relocating the main office.

The State Credit Union Board concluded that since the definition in Section 13-03-14-01(5) was changed from “principal” to “home office” that the reference in Section 13-03-14-01(1) should be changed from principal to home office, as well as Section 13-03-14-02(2)(a).

The comment letter from Dakota West Credit Union, Watford City, questioned if changing the home office could be done at the whim of the board of the credit union, how many times it could be accomplished, and for what reasons. The State Credit Union Board concluded that the decision to change the home office is one that is left to the management of the credit union; as far as how many times it could be accomplished would again be a business decision, as well as the reason for changing. It is the position of the State Credit Union Board that the affect the change of the home office would have on the field of membership is that it will not change the field of membership as discussed earlier.

#### *Independent Community Banks of North Dakota – Section 13-03-14-02*

The comment suggests that the subsections 2(c) and 2(e) that were stricken would allow the State Credit Union Board to not require consideration of banking and other interested parties’ input and that was in direct conflict with legislative intent, as expressed in Section 6-06-07(3). The State Credit Union Board concluded that

renumbered Section 13-03-14-02(2)(e) allows for relevant public comment in favor of or in opposition to expansion of the field of membership. Banking institutions are certainly public comment and would be covered by this Section.

*North Dakota Bankers Association and Independent Community Banks of North Dakota – Section 13-03-15-04*

Both of the comments dealt with considering expressed opposition of an interested party as provided by Section 6-06-07(3). The Section referred to by the comment letters however specifically says that the State Credit Union Board shall adopt a procedure through which all interested persons, including banking institutions and credit unions, are afforded a reasonable opportunity to submit data, views, or arguments, orally or in writing; to obtain a hearing; and to intervene as a party to a proceeding concerning a proposed application for a credit union to expand the credit union's field of membership. However, the Section that was amended in Chapter 13-03-15 deals with a branch application and the law specifically provides that all branches after January 1, 2005, must reside within the credit union's field of membership after December 31, 2004. In addition, the Board noted that the State Banking Board does not consider comments from credit unions with regard to facility applications and there is no requirement that the State Credit Union Board consider the comments of a bank in the establishment of a branch.

*North Dakota Bankers Association – Section 13-03-19-06*

The State Credit Union Board discussed the fact that the limitation established is much less than what is allowed for a federal credit union by the National Credit Union Administration and without this regulation the State Credit Union Board could use the wild card provision to allow a much higher limit as provided by NCUA. Secondly, the waiver limitation is there in the event that a credit union would like to exceed the limit, it does not require it nor does it require the State Credit Union Board to grant the waiver; however, if a credit union can prove that it has an adequate program in place, the Board can certainly consider increasing or waiving the limitation found in Section 13-03-19-05. Nevertheless, the waiver could not exceed what is allowed for a federal credit union.

*North Dakota Bankers Association – Chapters 13-03-19, 13-03-20, 13-03-21, 13-03-22*

The State Credit Union Board noted the limits placed in Chapters 13-03-19 and 13-03-20 were lower than those authorized for federal credit unions. In Chapter



13-03-21 a federal credit union is authorized to purchase real estate loans and bundle those to sell; however, a North Dakota state-chartered credit union is only authorized to purchase loans within North Dakota, therefore the limit included only those North Dakota real estate loans. Within the new Chapter 13-03-22, there were also additional restrictions placed on permissible investments which are more restrictive than what the National Credit Union Administration allows. The State Credit Union Board concluded that advance notice to engage in one of the activities authorized under these Chapters is not required for federal credit unions and therefore should not be required for a state-chartered credit union.

*Dakota West Credit Union, Watford City – Section 13-03-20-02(1)(a)*

The State Credit Union Board discussed the comment from Mr. Zubke and the fact that there was a misunderstanding by the Secretary to the Board as to the percentage that was approved. The State Credit Union Board actually approved 15% of a state-chartered credit union's net worth; however, when the document was published the Secretary misunderstood the change and published the rule at a 10% limit. Chairman Karsky discussed the options with the Board, one of which was to change it to 15%, which is still more restrictive than what the National Credit Union Administration allows, and conclude that it is not a substantial change from what was published. The risk in doing this is that the Attorney General's Office or the Legislative Rules Committee would say that it is a substantial change and would throw it out. The second option is to remove Subdivision a, and then we would default to what the National Credit Union Administration allows for a federally-chartered credit union; a change could be made at a later date. The State Credit Union Board concluded since it had approved a 15% limitation and due to the error in publication – it was published as 10% which is lower than what had been approved – and in order to act on the comment by Dakota West Credit Union, the Board decided to remove Section 13-03-20-02(1)(a).

*North Dakota Bankers Association – Section 13-03-02(2)*

It was concluded that the comment provided was in regard to Section 13-03-23-02(2). It was pointed out that Chapter 13-03-23 was simply copied from Chapter 13-03-13-04 through Chapter 13-03-13-11, and placed in its own Chapter and renumbered. With regard to the comment, the State Credit Union Board concluded that the current rule does not provide that it must be a corporation and, therefore, if the rule is thrown out we go back to the existing rule which is the same as the proposed rule.

*North Dakota Bankers Association – Section 13-03-23-04*

Chairman Karsky again noted that the Section is simply copied from a currently existing Section, but did point out that under the administrative rules if the State Credit Union Board holds a hearing the North Dakota Bankers Association could become a party to the hearing by filing a motion to intervene or protesting the application. Additionally, with regard to the comment for public notice and opportunity for a hearing, the Department's Bulletin is sent out to all financial institutions at the end of each month and the agenda is posted on the Department's website at least one week prior to the State Credit Union Board or State Banking Board meetings, with the exception of special meetings.

*North Dakota Bankers Association – Section 13-03-23-06*

It was noted that the rule is simply copied from the existing administrative rule and is not making any changes other than to put it into its own chapter. The State Credit Union Board discussed the fact that the limit is somewhat higher than what is allowed for a federal credit union; however the National Credit Union Administration does not appear to have an issue with that and this is simply a difference between a state and federal charter.

*North Dakota Bankers Association – Section 13-03-25-01(3)(d)*

It was determined that the comment is in reference to Section 13-03-25-02(3)(d). The State Credit Union Board concluded that the error was correctly noted by the comment letter and changed the references to Sections 13-03-25-07 and 13-03-25-08.

*Independent Community Banks of North Dakota – Section 13-03-25*

This comment appears to attempt to reinforce the previous comments with regard to Chapter 13-03-06-02, which was already addressed.

PUBLIC COMMENT

*Section 13-03-02-04*

The State Credit Union Board noted the law implemented cited as 6-06-12(7) was corrected to read 6-06-12(1)(g).

*Section 13-03-03-03*

A period was inserted after “upon approval from the State Credit Union Board”. The wording “and subject to any rules of the State Credit Union Board shall adopt” is stricken.

*Chapter 13-03-14*

The reference to “principal office” in Section 13-03-14-01 was changed to “home office”, as well as in Section 13-03-14-02(2)(a). Also, at the end of Section 13-03-14-01(5) prior to the period the wording “which must be located in the credit union field of membership” was inserted, and the sentence “Such a designation of a home office shall not expand a credit union’s field of membership” was also inserted.

*Section 13-03-20-02(1)(a)*

This Section was deleted and Subdivisions “b” and “c” will be renumbered as “a” and “b”.

*Section 13-03-25-02(3)(d)*

The references were changed to Sections 13-03-25-07 and 13-03-25-08.

**It was moved by Member Brucker, seconded by Member Millar, and unanimously carried to approve the administrative rules as amended.**

The Board adjourned to closed session at 12:20 p.m.

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Timothy J. Karsky, Chairman

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Robert J. Entringer, Secretary