

MEETING OF THE BOARD OF CREDIT UNION ADVISORS

April 14, 2009

1:00 pm

Utah Department of Financial Institutions
324 South State Street, Suite 201
Salt Lake City Utah

Minutes

BOARD MEMBERS PRESENT:

Dennis Hymas, Brenda Van Hoorn, Arleen Childs, Sandra Garcia

DEPARTMENT OF FINANCIAL INSTITUTIONS STAFF PRESENT:

Commissioner Ed Leary, Paul Allred, Orla Beth Peck, and Sonja Long

OTHERS PRESENT:

Scott Simpson and Steven Nielsen – Utah League of Credit Unions; Ken Payne – Freedom Credit Union

1. Call meeting to order – Chairman Dennis Hymas

Brett Blackburn is excused today. He welcomed Scott and Steven from the league.

2. Minutes

Brenda Van Hoorn made the motion to accept the minutes. Arleen Childs seconded the minutes.

3. Red Flags – Orla Beth Peck

Orla Beth gave out two handouts; the first handout is on compliance issues. The second handout is a sample policy that the league put together. She said that the sample policy was sent out several months ago.

The Red Flags (FACT ACT) was supposed to be implemented for credit unions on November 1, 2008. That compliance date got pushed back to May 1, 2009. Paul Allred said that there was a big uproar from the financial

institutions and they pleaded with the FTC to push it back. It is for all financial institutions and some non-depositories as well.

Orla Beth thought that since this date is fast approaching, that we talk about it for credit unions specifically.

Each credit union should have a policy and procedures to identify the Red Flags for identity theft when opening new accounts, transactions of existing accounts, and activity on an account that has been dormant. Orla Beth believes that credit unions already have these policies and procedures, they may be not be written down on paper. These are common sense things that you do probably without thinking. Orla Beth has listed the 26 Red Flags that have been identified. They fall into five categories. Orla Beth went through the categories and some of the items. (Refer to the compliance handout.)

These 26 Red Flags, and it is very likely that over the course of the next few years, this regulation will be increased to include new things. Part of the Red Flag regulation is that you expand on this list as new ways of detecting fraud appear.

In essence each credit union must do four things to be in compliance:

1. Adopt a policy.
2. Have procedures in place to identify identity theft risks.
3. Hold and document periodic staff training for all appropriate staff. There are ways that new accounts people can detect and prevent identity theft and fraud. There are also frauds that can target your loan people. All of your staff will need periodic training.
4. Periodically review the policy, procedures, and training to update for changing conditions.

Steven asked if Orla Beth felt that all staff needed to be trained or just the front line. Orla Beth said probably the tellers need to be looking for transactions that might come across their counter. New accounts people and loan people. Someone suggested that anyone who touches a member should be trained.

Sandra asked if all of you pull a credit report with every account that is opened. Some do and some don't, it depends on what they are applying for. Orla Beth said that might depend on if you are an open field credit union

where people are just coming in the door versus a credit union that has a field of membership that has a sponsor or you know the people.

Orla Beth explained that the department isn't looking to make this any harder. A lot of the elements in this new law are in the Bank Secrecy Act. Certainly compliance is what we are after.

Commissioner Leary asked as a whole, do you feel good with respect to the FACT ACT or do you feel behind. A few said that they are still behind, but they know what they need to do.

Who is the enforcement authority? It is FTC based, so it is questionable. Commissioner Leary asked Paul to research that and follow-up at the next meeting. Commissioner Leary said that a year ago the department went out and got the authority to enforce federal statutes under our state law. In our exams we can cite violations of federal law. The only sanctions we can take against an institution is if it is provided under state law. We therefore have to list every federal law that the institutions have to comply with. But it is always a list in progress. So we will need to go in and amend that rule and list the newer laws.

4. Corporate Stabilization – Orla Beth Peck

This is the thing that the credit unions are dealing with right now. Orla Beth said that this issue has been up in the air and constantly changing since January when NCUA put the \$1 billion capital infusion into US Central. That was the first shoe that dropped. At that time they talked that it was going to cost 51 basis points; that they would have to write down their NCUSIF capitalization deposit by 51% percent. Then the middle of March, NCUA took US Central and Westcorp into conservatorship. At that time they announced that the write down deposit had gone from 51% to now 69% of your 1% capitalization deposit. That has to be done through expense. 69 basis points, when the average credit union made about 50 basis points last year, is going to hurt. In addition to that, they have already announced a 30 basis point premium on the share insurance fund to try to build the fund back up. We are not expecting very many credit unions to be in the black after December 31. There were some credit unions that were given an option; to either take all of that in '09 or to go back and re-state their call report with a prior period adjustment in '08 and take the 69 basis points in '08 and the 30 basis points in '09. Also out there, the NCUA board did go to congress to

ask them to allow them to borrow the money from the Treasury Department, sort of. This wouldn't stop the credit unions from taking this loss; it would only allow them to spread it out over a longer period of time. Orla Beth has heard of up to seven years. The good news is that credit unions have about twice as much capital heading into this recessionary period, as they did in the early 80's. There are some credit unions that are already under what they call "prompt corrective actions. Those credit unions get no carve out for this, so this will make their situation worse. If they're down into a little bit of a hole, it will make the hole deeper and will pretty much make eliminate when they can get out of that hole in their capital.

In the CALL Report, the NCUA did add a couple of line items so that on your income statement you can see your income before this hit and then the income afterwards. Examiners are going to be looking at what your fundamental credit union is without taking this into consideration.

Scott Simpson asked if there were a lot of state chartered credit unions that had significant money with US Central and/or Westcorp. Orla Beth said that she had sent out an email to ask and only two state chartered credit unions had money there. The NCUA has guaranteed all deposits in all corporates. The NCUA took that action to maintain confidence in the corporate system.

Dennis Hymas said that he had employees who attended the recent ACUIA meeting that was held here locally. They did a poll at that meeting and it was about 50/50 on who were going to make the adjustment in '08 vs '09.

5. Legislative Wrap up – Paul Allred

Paul explained that part of what we do in the department is to monitor what is going on in the Legislature. The League does that as well, Scott and Lynne are up at the Legislature whenever Paul and Ed have gone up.

Our bill, HB286 which was to amend our Title 70D and 70C, which deals with mortgage lending, passed and was signed by the Governor. It will become law on May 12. It just brings us in compliance with the SAFE Act. We have parts of 70D that deal with mortgage loan originators. The SAFE Act that was passed by Congress last summer says if you are a mortgage loan originator in the US, and you are not working for a depository institution, you have to be licensed. If the states don't take care of the licensing, then HUD will take over. We have a bifurcated system here in

Utah, most of the licensing goes on at the Division of Real Estate, but we have a part of it. We amended our act to be compliant with that. Beginning January 1, 2011, if you are under our Title 70D you will need to be licensed by the department. With the depositories, their loan officers will have to be registered under FFIEC. The last update Paul got, there hasn't been any kind of work done telling us what the registration is going to look like. That will be for first and second mortgages. There will be a national database that will track your activity and your record, so if there is action taken against you, others can look at that. Congress is hoping that this will address some of the issues that brought on the crisis that we are facing now. We are in the process of evaluating what that means for us, we will now have to pass rules. We have a deadline for starting that process in November. Our rules will identify the number of hours that are required to take the exam, so the pre-licensing courses and bond issues and things like that. But none of that should impact the depositories.

HB195 – The Uniform Probate Code. We watched that bill; it was an amendment to the code to address health savings accounts. Those have been out there and available through depositories and what was determined was that here in Utah we didn't have a provision in our probate code that talks about when a health savings account is established. Federal law says it is state law that determines when the account is established.

SB270 – The gift card amendment. This bill takes gift cards out from the unclaimed property act. That is a significant piece of legislation.

SB140 – The Financial Institutions disclosure of records. We in the '08 session inherited a new chapter under our Title 7 dealing with the right to financial privacy. Previously that section was found in the judicial code; when the Legislature went in and re-wrote some sections in the judicial code, they moved it out of there and put it into our title. It is the equivalent of what is on the Federal side. This bill says is that if all account holders agree that a governmental entity can look at the account information, then you can give it to them.

SB208 – The Utah Public Notice website amendments. This was Senator Urquhart's bill. His whole approach in this bill was that the current system of providing public notice is antiquated and shouldn't occur through newspapers, it should occur electronically. He met with huge resistance from the newspapers. The bill finally ended up with is that you have to publish in

the newspaper and on a website created by the newspapers beginning in 2010. For a two year period you will have to publish in both places. They placed a \$10 cap for the website.

SB2 – The appropriations bill. This is how the Legislature takes care of all the appropriations that occur. It is interesting to watch the process as it goes through. Our department meets with both analysts from the Governor’s office and from the Legislature to propose our budget. Commissioner Leary and Michael Jones take care of that. This year each state agency had cutbacks in their budgets. Our budget operates on a restricted account, we are not funding through the general fund or with tax dollars. We are funding from the money that the institutions pay into the department. We needed to help with cuts as well. We have four vacancies in our examiner positions, so we were asked if we would leave them vacant as our cut. The department agreed to leave those positions vacant. Unfortunately, the night before the session in SB2, the legislature took the money out of our restricted account that represented those four positions and moving that money to the general fund. \$340,000 was taken from our restricted account and given to the general fund. That is your money, not money that should be in the general fund. It was too late to do anything about it at the time. We contacted the three associations that represent the depository institutions to make them aware of it. Our financial institutions board decided in their board meeting on March 18 made a motion for a board resolution. We have asked the three associations to provide input and make comments. We are in the process of finalizing that resolution and then will have the five board members sign it and then deliver it to the Governor and the Legislature. The members of the credit union board also agreed with the board resolution. Commissioner Leary said that he would have Sonja send out a copy of the signed resolution when it has been delivered.

6. Other business:

Commissioner Leary had two items that he wanted to share with the board. He explained that it is the time in the cycle that the department gets re-accredited. We are accredited by two different associations, NASCUS on behalf of the credit union work that we do and CSBS on behalf of the bank work we do. What that means is like the good housekeeping seal of approval. Other federal and state agencies can rely on the quality of our work and our examinations. Every five years we have to be re-accredited. 2009 is when we are trying to accomplish both of those again. What we are

trying to do for the first time is to combine those at the same time. It is currently scheduled for December 1.

The second item, Commissioner Leary passed out two handouts. He uses these handouts when he gives speeches. The first one it breaks down the industries headquartered in Utah. He went through those numbers. On the second page, the major changes that occurred in the financial institutions recently are listed. The third page is a listing of industrial banks that remain in Utah and their information. Most people ask for this information.

7. Date of upcoming meetings – July 16 and Oct 22, 2009 – 1:00 p.m.