

# MEETING OF THE BOARD OF CREDIT UNION ADVISORS

October 17, 2012

1:00 pm

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

Minutes

## **BOARD MEMBERS PRESENT:**

Scot Baumgartner, and Dean Hirabayashi. Arleen Childs is excused.

## **DEPARTMENT OF FINANCIAL INSTITUTIONS STAFF PRESENT:**

Ed Leary, Orla Beth Peck, Paul Allred, Jim Strasters and Merisa Lanford

## **OTHERS PRESENT:**

Heather Line and Stephen Nelson from Utah Credit Union Association.

### **1. Call meeting to order – Dean Hirabayashi**

### **2. Minutes**

Second set sent out due to NASCUS and NCUA discrepancy.  
Scot pointed out some sentence structure issues on page 3.

Minutes were not approved as there was not a quorum present.

### **3. Introduction – Ed Leary**

Commissioner Leary explained that the department is working on equalizing work loads and that Merisa Lanford is now assigned to this board.

Dean asked Merisa to introduce herself and then all present introduced themselves.

### **3. Bankruptcy – Jim Strasters**

Jim introduced himself and gave a brief overview of his background in federal government before he became an examiner.

Jim explained that bankruptcy law is very complicated and his advice is that if you get involved in a bankruptcy and there is any appreciable amount of money involved to hire an attorney. Jim recommends to keep copies of all notices from bankruptcy court or other parties involved because every once in awhile things can get misplaced. It also gives the examiners a better feel for what is transpiring in the bankruptcy rather than just what type it is. The most recent major concern in financial transactions that end up in bankruptcy is called BAPCPA, The Bankruptcy Abuse Prevention and Consumer Protection Act. It has a means test to determine if a person or entity should file a Chapter 13 or 7 bankruptcy. It was intended to intercept those people who have the ability to pay a portion of their debt yet they are filing Chapter 7 to get all their debts discharged. Jim discussed that examiners will automatically say a loan is a substandard loan when a bankruptcy is involved because one of the definitions of a substandard loan is one with a well defined weakness or more than normal risk of loss. The fact that the borrower has found it necessary to file bankruptcy indicates that there is some kind of well defined financial weakness. When a borrower files bankruptcy the lending entity is no longer the entity in control of a large portion of that debt. All of the creditors have some input into the administration of the estate. Ilene asked how long the loan has to stay substandard if it is a Chapter 7 and they have paid for 3 or 4 years. Jim said in his opinion a loan immediately becomes substandard unless the court decides the case is dismissed then the loan goes back to being what it was before the petition was filed. Orla Beth asked how a reaffirmation would affect it. Jim said to read the back of the bankruptcy notice where it talks about reaffirmation. Scot mentioned that people don't include some debts on their bankruptcy and asked how they do that. Jim said if a debt is not named in the bankruptcy it doesn't affect that debt and Paul confirmed that it is preferential treatment. Jim continued to discuss reaffirmations, granted discharges and there was a small discussion regarding untrue statements on loan documents. Commissioner Leary asked if this was an ongoing issue in credit unions. Scot said they still see a far amount on the abusive side.

#### **4. NCUA's Low Income Designated – Dean Hirabayashi and Orla Beth Peck**

Dean wanted this topic brought up because numerous credit unions received letters qualifying them but state chartered credit unions did not receive letters. Orla Beth said that at the NASCUS annual meeting the NCUA did say that each state could request the letter be sent out to state chartered credit unions. She discussed the qualifications for determining a low income designation. The credit unions used to apply but now the NCUA looks at the census. Utah's qualifications go along with the NCUA's designation. Orla Beth has not asked for letters to be sent out but will if credit unions want that. She said the advantages of being designated low income include the ability to have and raise supplemental capital and there are grants available to apply for. She doesn't see any difference in examinations for low income designated credit unions. Ilene asked what the disadvantages are and Orla Beth said she doesn't know that there are any. Orla Beth discussed supplemental capital and which regulators do and do not want it and said it would not happen this year.

Dean mentioned the NCUA small credit union designation and asked Orla Beth what she has heard about that. Orla Beth said the Chairman indicated that she wants to increase it from 10 million to 30 million. Stephen asked if the state has a small credit union designation and Orla Beth said the state does not but in the code there is a threshold for reserve requirements that change and lending limits change at 2 million in assets. She said that small credit unions are limited.

## **5. New NCUA Rules – Orla Beth Peck**

Orla Beth said there are several new rules. Two rules are not proceeding but there are two others that NASCUS has filed comment letters on. Orla Beth explained the first is maintaining access to emergency liquidity and what that entails. The second proposed rule is a change in the troubled credit union definition and how it is applied to a state chartered credit union. The purposed rule is that the CAMEL rating would be the lower of the NCUA's rating or the state's rating that would determine whether it is a troubled institution. Orla Beth said the rule as purposed is not clear and discussed the unclear points. State regulators are planning a fly-in with the NCUA Board to address the issues. NASCUS is trying to stop the change. Stephen asked how it compares to the practice that banks use. Orla Beth explained it is different because the FDIC is only the insurer, where as the NCUA is unique

as it is the insurer and charterer. Dean encouraged everyone to comment on the new rules.

## **6. Other business**

Commissioner Leary explained that the Annual Report will be made available electronically and on the website. Sonja will email an electronic copy when requested. We are not mailing them out. The legislature is pushing that things are not unnecessarily printed.

Commissioner Leary announced that The Department of Financial Institutions turns 100 years old in May of 2013.

Scot asked if there are any trends among credit unions to have longer extension of terms on loans. Orla Beth said the 5 year car loan is pretty standard. A discussion of the length of car loans ensued. Nothing in statute determines the length so it is up to the credit union's policies. Ilene discussed the kickbacks that large credit unions are giving to the car dealers and the smaller credit unions cannot compete with them.

Ilene asked if the below \$50,000 on member business loans amount would go to the legislature. Orla Beth said she would like to see a change and discussed the issues associated with a change.

Stephen mentioned the code is up for a cleaning and Ed said it won't be this year, it is a year long process.

## **7. Date of upcoming meetings – January 15 and April 16, 2012-1:00 p.m.**