

Approved: 1-27-2011  
Date

## MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Forrest Knox at 3:34 p.m. on January 18, 2011, in Room 152-S of the Capitol.

All members were present except Representative Hermanson, who was excused.

### Committee staff present:

David Wiese, Office of the Revisor of Statutes  
Sean Ostrow, Office of the Revisor of Statutes  
Melissa Calderwood, Kansas Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Gary Deeter, Committee Secretary

### Conferees appearing before the Committee:

Ed Splichal, Acting State Bank Commissioner  
Judi Stork, Deputy State Bank Commissioner  
Shawn Mitchell, President/CEO, Community Bankers Association  
Jim Turner, President, Heartland Community Bankers Association  
Doug Wareham, Senior Vice President/Governmental Relations, Kansas Bankers Association  
John P. Smith, Administrator, Kansas Department of Credit Unions  
Haylee DaVee, AVP, Legislative and Public Affairs, Kansas Credit Union Association  
Aaron Jack, Acting Commissioner, Kansas Securities Commission

### Others attending:

See attached list.

The Chair invited members to introduce themselves, after which he referenced Attachments 1 and 2, which provide rules for committee proceedings and guidelines for conferees.

The Chair recognized Representative Proehl, who requested a bill be sponsored by the committee dealing with trusts. He introduced Judi Stork, Deputy Bank Commissioner, who explained that the proposed bill changes the date (from March to December) upon which the Commission bases its trust assessments (Attachment 3). A motion was made by Representative Proehl, seconded by Representative Grant, to accept the bill as a committee bill. The motion passed.

The Chair welcomed Ed Splichal, Acting State Bank Commissioner, who outlined the activities of the agency (Attachment 4). He stated that the fee-funded agency has two divisions: the banking division, with 56 employees, and the the consumer and mortgage lending division (CML), with a staff of 32. The banking division charters and supervises state-chartered banks, trust companies, and 53 money-transmitter companies; the CML licenses and supervises mortgage companies and brokers, supervised lenders, loan originators, payday loan companies, notifiers, and credit service organizations. Both divisions do on-site examinations; the CML division follows up with enforcement actions and fines companies and individuals for illegal activities. Legal, information technology, and finance staff provide support for the agency. Mr. Splichal provided detailed information about the entities regulated.

## CONTINUATION SHEET

Minutes of the House Financial Institutions Committee at 3:35 p.m. on January 18, 2011, in Room 152-S of the Capitol.

Answering questions, Mr. Splichal replied that even those banks with a CAMEL (Capital, Asset Quality, Management, Earnings, and Asset-Liability Management) score of 5 can survive if the bank management is sound. The primary problem for banks in financial trouble relates to bank management. However, the agency's first line of activity is to bolster the present management. He replied that the two banks that failed, even though they had high assets, had no capital structure.

Kevin Glendening, Deputy Bank Commissioner, Division of Consumer and Mortgage Lending (CML), reviewed aspects of the division, stating that it supervises 7000 entities, oversees \$269 billion in assets, and, through examinations, has returned \$1.5 million to consumers. Referencing the new Dodd-Frank Act, he commented that 11 federal acts impinge on the division's responsibilities. He also noted that the division, with mixed results, has been working on joint exams with other states.

Shawn Mitchell, President/CEO, Community Bankers Association, explained that the agency focuses on locally owned and operated banks in Kansas that foster local development (Attachment 5). He commented on aspects of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which, among many other things, creates the Consumer Financial Protection Bureau.

Jim Turner, President, Heartland Community Bankers Association, briefly reviewed the services of the association, stating that most of its 35 members are federal, thrift-chartered entities that provide mortgage-related services (Attachment 6). He noted that most of the lenders have a CAMEL 2 rating; none has a 5 rating. Answering a question, Mr. Turner replied that the expanding cost of meeting regulations causes an increasing number of bank acquisitions and mergers.

Doug Wareham, Senior Vice President/Governmental Relations, Kansas Bankers Association (KBA), introduced Kathy Olsen, General Counsel, and outlined the services of the KBA (Attachment 7). The KBA, founded in 1887, represents 315 Kansas banks in 440 towns and cities. He noted the impending impact of the Dodd-Frank Act on Kansas banks.

John P. Smith, Administrator, Kansas Department of Credit Unions, briefed the committee on the responsibilities of the department (Attachment 8). Defining natural-person credit unions as non-profit member-owned cooperatives providing a variety of financial services, he said 81 state-chartered credit unions are active in Kansas with assets totaling \$3.97 billion. The agency, with eleven FTEs (Full-time Equivalent), is fee-funded and provides oversight for all state credit unions. Oversight includes a financial examination of each credit union every 13 months. Members' funds are insured by the National Credit Union Share Insurance Fund (NCUSIF). He noted that currently no credit unions are rated as a CAMEL 5, 3 are rated at 4, 9 at 3, 56 at 2, and 14 at 1, and he listed the duties of the agency to its members.

Haylee Da Vee, AVP, Legislative and Public Affairs, Kansas Credit Union Association, provided information on the association, saying that the credit union movement intends to put people ahead of profits and that credit unions are governed by uncompensated volunteers (Attachment 9). She noted that, in spite of the current economic downturn, Kansas credit unions are generally healthy and well capitalized, with capital ratio above and delinquency rates below the national averages. She commented

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Minutes of the House Financial Institutions Committee at 3:35 p.m. on January 18, 2011, in Room 152-S of the Capitol.

on two areas of concern: increased assessments from the NCUSIF and the increased costs of regulatory scrutiny.

Aaron Jack, Acting Commissioner, Office of the Kansas Securities Commissioner, provided an overview of the agency (Attachment 10). Observing that Kansas was the first state (in 1911) to pass “blue-sky” laws regulating the sale of investments, he stated that the office is an independent, fee-funded agency that administers the Kansas Uniform Securities Act, the Uniform Land Sales Practices Act, and the Loan Brokers Act and that all registered companies and individuals are subject to certain ethical and industry standards. Agency staff provide investor education, investigate complaints, and audit records of registrants. During the past year the agency initiated 227 enforcement cases and issued \$3.7 million in restitution orders. Responding to a question, Rich Fleming, General Counsel, replied that 20% of the agency's fee fund is statutorily directed to the State General Fund (SGF) and that, at the end of the fiscal year, the fund is routinely swept so that about 75% of the fund is absorbed by the SGF.

The meeting was adjourned at 4:50 p.m. The next meeting is scheduled for January 25, 2011, in Room 152-S of the Capitol

# HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: JANUARY 18 2011

NAME	REPRESENTING
Helen Davila	KCUA
Maria Marsh	KCUA
Michael Baugh	KDCU
Aaron Jack	KSC
Paje Routhier	Hein Law Firm
John P. Smith	KDCU
Scott Paradise	Hartman Companies
Shawn Mitchell	CBA
Traois Low	Little Court Relations
Judi Stork	Office of the State Bank Comm
Ed Splichal	✓
Kevin Glendening	✓
Michelle Butler	Cap. Strategist's
Jim Turner	HCBH
Rick Fleming	KSC
Gail Bright	KSC
Kathy Olsen	KSBanner Assoc
Doug Wareham	KBA
Gary L. Scoby	Self
Lottie Kaufman	Ks Co-op Council



COMMITTEE RULES  
2011  
KANSAS HOUSE OF REPRESENTATIVES

**COMMITTEE ON FINANCIAL INSTITUTIONS**

The purpose of these rules is to facilitate the understanding of members of the Committee and the public in reviewing the flow of legislation through this committee. Unless stated to the contrary herein, the rules of the House or Mason's Manual of Legislative Procedure will apply.

**INTRODUCTION**

1. Fellow committee members and conferees shall be treated with respect and addressed in an appropriate manner. As may be necessary, the chair may develop and enforce additional rules concerning interaction between conferees and committee members during committee hearings.
2. All seating will be assigned by the chair.
3. All absences will be considered excused absences. Prior notification to the committee assistant of absence, tardiness, and early departure from the committee is appreciated.

**AGENDA**

1. The chair shall set the committee agenda, including scheduling and the order of business.
2. Items listed on the agenda shall be brought before the committee as announced by the chair. However, the chair may bring to discussion and possible vote any bills previously heard at any time. Any listed item on the agenda may be removed at any time by the chair.
3. All requests for submission of committee bills shall be made only by committee members by motion, second, and a vote of the committee. Discussion is in order unless precluded by the chair.
4. Adjournment shall be reserved to the chair.

**MOTIONS**

1. Original motions, after receiving a second, shall be in order when a bill is pending for consideration.
2. A substitute motion is in order, but no additional substitute motion shall be in order until the prior substitute motion is disposed of.
3. Amendments to motions are not in order, except upon consent of the member making the motion and his/her second, and with the approval of the chair.
4. An amendment to a bill must be germane to the area of law that is being proposed or changed. Since committees serve the purpose of examining issues for which there may be multiple solutions or approaches, germaneness will be interpreted as broadly as possible. Only the chair shall determine if an amendment is germane.
5. A motion to table a bill shall be in order at any time a bill is taken up by the chair for discussion and is a non-debatable motion that requires a simple majority vote of members present to pass. A successful motion to table a bill shall delay action on the bill a minimum of one day. The chair may refuse to accept a motion to table a bill or to move a

*Attachment 1*  
HFIC 1-18-11

bill out of committee.

6. A motion to take a bill from the table shall be in order only when such item is on the agenda or is taken up by the chair. The motion requires a simple majority vote of members present and is non-debatable, unless debate is approved by the chair.
7. A motion to report a bill out of committee without recommendation shall not be in order.
8. A motion to reconsider a previous successful motion shall only be made by a member voting on the prevailing side of the original motion. A simple majority vote of members present shall be required to reconsider a previous successful motion.
9. A motion to report a bill out of committee shall not be in order until all amendments, which have been prepared by the Revisor of Statutes office and reported to the chairman in advance of the meeting, have been considered.
10. There shall be no recorded committee votes on committee action. Any committee member may request his/her individual vote be recorded on a bill.

## **TESTIMONY**

1. No conferee shall be interrupted, except by the chair, during presentation of his/her testimony.
2. Questioning of a conferee shall be limited to the subject matter on the agenda for the day unless approved by the chair. If the questioning of a conferee by a committee member goes beyond reasonableness, the chair may discontinue the committee member's questioning of that conferee.
3. Committee members shall not publicly address questions or comments to other members or to conferees until and unless recognized by the chair and permission is granted.

## **DURING COMMITTEE MEETINGS**

1. All cell phones, pagers, and other electronic devices, in the committee room shall be "silent" and the audible use of cell phones in the committee room will not be permitted. The owner of any cell phone that rings during a committee meeting shall provide treats for the committee and staff (18).
2. Photography, including cell phones, video, and audio taping is prohibited unless approved in advance by the chair.

## **CONCLUSION**

All powers, duties and responsibilities addressed above may be suspended or modified at any time by the chair. All powers, duties and responsibilities not addressed above are reserved to the chair.

INFORMATION FOR CONFEREES  
2011  
KANSAS HOUSE of REPRESENTATIVES

**COMMITTEE ON FINANCIAL INSTITUTIONS**

By appearing before the committee each conferee is presumed to have read the rules listed below and agrees to abide by these rules.

1. Individuals wishing to appear and provide verbal testimony before the committee must notify the committee assistant 24 hours in advance of the hearing (296-7678). In advance of the hearing, all conferees shall submit to the committee assistant an electronic copy of their testimony. To facilitate the conduct of the committee meeting, conferees are requested to bring their written testimony (25 copies) to the committee assistant at least an hour before the scheduled committee meeting (274-W).
2. When time is separately reserved on the agenda for proponents and opponents of an issue and the time expires for either side, the testimony shall cease. Conferee's time limit will be determined by the number of conferees and order of business. The chair may make exceptions for the original sponsor of a bill, legislative staff, and state agency personnel. Conferees will be recognized in the order as established by the committee chairman. No conferee will be allowed to "yield" his/her time to another conferee.
3. All conferees whose testimony extends more than one page or five minutes shall expect their time to be shortened by the chair, if necessary, to expedite the meeting. Exceptions will be allowed for the original sponsor of a bill, staff briefings, and state agency briefings.
4. All cell phones, pagers, and other electronic devices, in the committee room shall be "silent" and the audible use of cell phones in the committee room will not be permitted. The owner of any cell phone that rings during a committee meeting shall provide treats for the committee and staff (18).
5. No food or drinks will be allowed in the committee room by guests, spectators or conferees.
6. Non-committee attendees shall not communicate privately with committee members in any manner within the committee room while the committee is in session. Any violation of this rule may result in the non-committee attendee being removed from the committee meeting for the rest of the legislative year.
7. Photography (including cell phones), video recording, audio recording or transmitting of proceedings is prohibited unless approved in advance by the chair.
8. All requests for committee bills shall be made by committee members only.

*Attachment 2*  
*H.F.I.C. 1-18-11*

9. Conferees shall not read their testimony. Rather, testimony should be presented in a summary fashion. Conferees shall introduce themselves, identify on whose behalf they are appearing, identify whether they are a proponent, opponent, or neutral on the bill, and as briefly as possible state the reasons for their position.
10. If suggested amendment(s) are to be offered, a proposed draft of the amendment(s) must be provided with the written testimony.
11. Conferees shall address their remarks during testimony to committee members and staff only. Testimony shall relate to the subject matter of the measure under consideration.
12. The chair reserves the right to admonish, limit, and/or terminate the testimony of a conferee whose testimony is repetitive in nature or that is, in the judgment of the chair, not relevant to the matter under consideration.
13. While the giving of testimony is not preceded with the formality of an oath, by appearing before the committee every conferee hereby certifies that his or her testimony is truthful, based upon facts that are capable of verification and offered in good faith. Conferees shall promptly bring to the committee's attention any qualifications or corrections in their testimony.
14. Committee members shall not be approached during committee hearings or deliberation by anyone other than fellow legislative members or legislative staff.

**K.S.A. 9-1703. Examination and administrative expenses; annual assessment, due dates for payments, delinquency penalty; disposition of receipts; bank commissioner fee fund.**

(a) The expense of every regular examination, together with the expense of administering the banking and savings and loan laws, including salaries, travel expenses, supplies and equipment, shall be paid by the banks and savings and loan associations of the state, and for this purpose the bank commissioner shall, prior to the beginning of each fiscal year, make an estimate of the expenses to be incurred by the department during such fiscal year. From this total amount the commissioner shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank and savings and loan association assessments. The commissioner shall allocate and assess the remainder to the banks and savings and loan associations in the state on the basis of their total assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 USC 1817, and amendments thereto, or K.S.A. 17-5610, and amendments thereto, except that the annual assessment will not be less than \$1,000 for any bank or savings and loan association.

(b) The expense of every regular trust examination, together with the expense of administering trust laws, including salaries, travel expenses, supplies and equipment, shall be paid by the trust companies and trust departments of banks of this state, and for this purpose, the bank commissioner, prior to the beginning of each fiscal year, shall make an estimate of the trust expenses to be incurred by the department during such fiscal year. The commissioner shall allocate and assess the trust departments in the state on the basis of their total fiduciary assets, as reflected in the last ~~March~~ December 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 USC 1817, and amendments thereto, or K.S.A. 17-5610, and amendments thereto, except that the annual assessment shall not be less than \$1,000 for any active trust department. The commissioner shall allocate and assess the trust companies in the state on the basis of their fiduciary assets as reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704, and amendments thereto, except that the annual assessment will not be less than \$1,000 for any active trust company. A trust department which has no fiduciary assets, as reflected in the last ~~March~~ December 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 USC 1817, and amendments thereto, or K.S.A. 17-5610, and amendments thereto, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for the inactive trust department. A trust company which has no fiduciary assets, as reflected in the last preceding year-end report filed with the commissioner, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for an inactive trust company. No inactive trust department or trust company shall accept any fiduciary assets or exercise any part of or all of its trust authority until such time as it has applied for and received prior written approval of the commissioner to reactivate its trust authority.

(c) A statement of each assessment made under the provisions of subsection (a) or (b) shall be sent by the commissioner on July 1 or the next business day thereafter, to each bank, savings and loan association, trust department and trust company that exists as a corporate entity with the secretary of state's office as of the close of business on June 30, and is authorized by the office of the state bank commissioner to conduct banking, savings and loan or trust business.

Attachment 3

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The assessment may be collected by the state bank commissioner as needed and in such installment periods as the commissioner deems appropriate, but no more frequently than monthly. When the commissioner issues an invoice to collect the assessment, payment shall be due with 15 days of the date of the invoice. The commissioner may impose a penalty upon any bank, savings and loan association, trust department or trust company which fails to pay its annual assessment when it is 15 days or more past due. The penalty shall be assessed in the amount of \$50 for each day the assessment is past due.

The commissioner shall remit all moneys received from such examination fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or by a person or persons designated by the commissioner.

(d) The amount of expenses incurred and the cost of service performed on account of any bank, trust department or trust company or other corporation which are outside the normal expenses of an examination required under the provisions of K.S.A. 9-1701 or 17-5612, and amendments thereto, shall be charged to and paid by the bank, trust department, trust company or corporation for which such expenses were incurred or cost of services performed.

(e) As used in this section, "savings and loan association" means a Kansas state-chartered savings and loan association.

(f)(1) In the event a bank, savings and loan association or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company, between the preceding March 31 and June 30, for banks and savings and loan associations, or the preceding December 31 and June 30, for trust companies, the surviving or acquiring bank, savings and loan association or trust company is obligated to pay the assessment based on the value of the assets of all institutions involved with the merger, consolidation or assumption for the following fiscal year commencing July 1.

(2) In the event a bank, savings and loan association, or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company after July 1, the surviving entity shall be obligated to pay the unpaid portion of the assessment for the remainder of the fiscal year commencing July 1 which would have been due of the institution being merged, consolidated or assumed.

History: L. 1947, ch. 102, § 89; L. 1949, ch. 110, § 3; L. 1955, ch. 65, § 1; L. 1959, ch. 61, § 1; L. 1965, ch. 79, § 1; L. 1969, ch. 62, § 1; L. 1973, ch. 50, § 2; L. 1975, ch. 44, § 31; L. 1981, ch. 55, § 1; L. 1985, ch. 57, § 2; L. 1992, ch. 49, § 1; L. 1993, ch. 30, § 1; L. 1994, ch. 33, § 1; L. 1995, ch. 25, § 1; L. 1996, ch. 39, § 1; L. 2000, ch. 12, § 1; L. 2001, ch. 5, § 43; L. 2006, ch. 89, § 3; L. 2010, ch. 99 § 1; L. 2011, ch. \_\_ § \_\_; July 1.



Ed Splichal, Acting Commissioner

Office of the State Bank Commissioner

Sam Brownback, Governor

**HOUSE FINANCIAL INSTITUTIONS COMMITTEE**  
**January 18, 2011**

Mr. Chairman and Members of the Committee:

My name is Ed Splichal, and I am the acting bank commissioner for the State of Kansas. I am pleased to have the opportunity to appear before you today and provide an overview of the Office of the State Bank Commissioner. I thought I would go into a brief explanation about the agency, who we are and what we do, and then share some current statistical information about the condition of the entities we regulate.

Our agency is totally fee funded and is primarily comprised of two divisions with oversight of financial entities. We have the banking division which charters and supervises state chartered banks, trust companies and trust departments, and money transmitter companies. This division has 56 employees. The majority of these employees are field examiners who go into the banks and trust companies, do a review of the condition of the entities, and provide feedback to our office. As a result of these on-site examinations, we provide a written examination report that is sent back to the entity, which summarizes our assessment of their bank or trust company. Additionally, our staff in Topeka provides follow-up with the entities when weaknesses are noted, and if warranted, we may issue some form of enforcement action to assist the entity in improving their condition. Our goal is to ensure safe and sound banking in Kansas. We rate our banks and trust companies on a scale of one to five, with one being the best and five being the worst. In a moment, I will share more with you on these ratings. We also have a nine member banking board that consists of six bankers, and three public members, that approve various applications, including new charters, and provides advice to the agency.

In addition, the banking division oversees money transmitter companies. We currently oversee 53 entities. These companies provide services for individuals to transmit money whether it is through wire services, money orders, or stored-value cards. We have regulated these entities for a number of years but have increased our supervision within just the last year, and are ready to begin on-site examinations of these entities.

Our second division is the Consumer and Mortgage Lending Division. They license and supervise mortgage companies and brokers, supervised lenders, loan originators, payday loan companies, notifiers, and credit service organizations. This division has a staff of 32. Much like banking, they do onsite examinations, and provide a report back to the main office for follow-up. The CML division does enforcement actions on a regular basis and fines companies and individuals for illegal activities. Additionally, unlicensed groups performing activities falling under the supervision of this division are issued cease and desist actions for being unlicensed and are fined for their inappropriate actions.

Finally, we have staff members that support the primary functions of our agency. We have a legal division with three attorneys, a consumer relations person, and a legal assistant. Additionally, we have an IT staff of four individuals, and a Finance and Administration area to oversee our budgeting, accounting, payroll, and HR functions.

Now, to share a little bit of information about the condition of the entities we regulate.

*Attachment 4*  
*HFC 1-18-11*

## **BANKING DIVISION**

1. **Condition of banks.** Ratings show that we currently have 52 out of 240 banks rated 3, 4, or 5. If you remember I mentioned the scale of one to five, with one being the best. Any bank rated 3 or worse is considered a problem bank. Right now we have 22% of our banks on the problem bank list. Also, we have six of those banks rated a five, which is extremely concerning. Just to contrast this, at year end 2006, we had 7 banks on the problem bank list out of 255, which is less than 3%. Additionally, we had no 5 rated banks and only one 4 rated bank.

Week Period	Not Rated	1	2	3	4	5	Total / 3-4-5
1/1/11	2	72	114	34	12	6	240 / 52
Condon National Bank, Coffeyville, converted to a state bank effective 1/1/2011							

Year Ending	Not Rated	1	2	3	4	5	Total / 3-4-5
12-86	0	65	213	95	59	12	444 / 166
12-87	0	69	202	92	56	16	435 / 164
12-88	0	76	194	106	40	8	424 / 154
12-89	0	71	214	87	30	5	407 / 122
12-90	0	72	199	81	40	2	394 / 123
12-91	0	62	219	69	25	4	379 / 98
12-92	0	68	214	64	18	1	365 / 83
12-93	0	97	197	47	5	4	350 / 56
12-94	0	121	181	24	9	1	336 / 34
12-95	0	138	158	17	2	0	316 / 19
12-96	0	144	134	14	1	0	293 / 15
12-97	0	171	111	5	1	0	288 / 6
12-98	2	167	108	3	1	0	281 / 4
12-99	2	154	117	4	2	0	279 / 6
12-00	2	145	111	7	4	0	269 / 11
12-01	3	142	110	12	2	0	269 / 14
12-02	3	137	106	11	5	0	262 / 16
12-03	2	121	109	26	5	0	263 / 31
12-04	0	126	119	15	1	0	261 / 16
12-05	2	138	113	7	1	0	261 / 8
12-06	1	137	110	6	1	0	255 / 7
12-07	2	118	122	8	2	1	253 / 11
12-08	0	104	112	20	10	1	247 / 31
12/25/09	3	85	111	30	15	2	246 / 47
12/31/10	1	72	114	34	12	6	239 / 52



2. **Banking Enforcement Actions.** Currently we have 63 active and pending actions against banks. This includes:

- 3 Board Resolutions
- 32 Memorandums of Understanding
- 18 Cease and Desist Orders
- 7 Written Agreements
- 1 IT Board Resolution
- 1 IT Memorandum of Understanding
- 1 BSA Memorandum of Understanding

3. **Bank Closings**

Closed Sylvan Grove State Bank, Sylvan Grove on 7-23-10 Total assets at closing approx. \$28,569,714  
 Closed Hillcrest Bank, Overland Park on 10-22-10 Total assets at closing approx. \$1,561,056,814

4. **Bank Conversions in 2010**

Community National Bank, Topeka, converts to a state bank effective 1/1/2010

5. **Banking Industry Financial Data – STATE Chartered Banks in KS**

	<b>12-31-09</b>	<b>9-30-10</b>
Total assets	30,238,914	30,261,753
Total deposits	24,500,163	24,564,250
Loan loss allowance	371,111	384,499
Total equity capital	3,018,181	3,119,931
Noncurrent loans and leases	573,540	667,291
Earning assets	27,729,959	27,768,133
Restructured loans and leases	103,255	173,838
Net income attributable to bank	51,613	63,748
Net charge-offs	262,323	177,262
% of unprofitable institutions	17.07%	14.88%
Net interest margin	3.67%	3.61%
Return on assets (ROA)	0.17%	0.28%
Net charge-offs to loans	1.36%	1.26%
Noncurrent loans to loans	3.01%	3.60%
Core capital (leverage) ratio	9.21%	9.23%
Tier 1 risk-based capital ratio	13.08%	13.68%

## 6. Industry Issues

Asset Quality

Earnings

Reg Burden – new Dodd Frank law

### CML DIVISION

Approved Regulated Entities as of year-end FY 10:

Mortgage Company Licensees

Supervised Loan Licensees

Loan Originators

Notification Registrants

Credit Services Organizations

Total 7,023

Total assets of licensees \$269 Billion

### Fiscal Year 2010

Exams 201

Enforcement Actions completed 94

Total Cash Refunds to Consumers through Exams and Actions \$1,161,551.00

Consumer Savings through reduction in contractual obligations \$326,517.00

Fines, Settlements, and Investigative Fees Collected \$323,649.00

Telephone Contacts 11,799

CML Website Hits 1,554,932

### Currently Open

Enforcement Actions 96

Complaints 121

### Recent Changes

Passage of SAFE Act (July, 2008)

Implementation of NMLS for licensing all of our entities

Require testing and continuing education for loan originators

NMLS Mortgage Call Reports:

To provide state regulators with information concerning mortgage origination activity

Passage of Dodd-Frank Wall Street Reform & Consumer Protection Act which created the Bureau of Consumer Financial Protection Bureau (CFPB) (July, 2010)

Reg Z

Prohibitions against Loan Originators steering consumer to lender with less favorable terms in order to increase own compensation (YSP)

Disclosures for private education loans

Many credit card regulation and disclosure changes – limits on fees and rate increases

Higher priced mortgage loan disclosures

New Mortgage Transfer Disclosure which tells consumer who now owns their loan

## Reg X (RESPA)

Changes to Good Faith Estimate and HUD-1 Settlement Statement

Meant to simplify ability of consumer to understand their cost of a loan product and facilitate ability of consumer to shop around for best mortgage product.

## Upcoming Changes

July 21, 2011 - Transfer Date - Bureau of Consumer Financial Protection (CFPB)

Implement and enforce at least 17 Federal consumer financial laws including:

AMTPA – Alternative Mortgage Transaction Parity Act

ECOA – Equal Credit Opportunity Act

FCRA – Fair Credit Reporting Act

HOPA – Home Owners Protection Act

FDCPA – Fair Debt Collection Practices Act

GLBA - Gramm-Leach Bliley Act

HMDA – Home Mortgage Disclosure Act

RESPA – Real Estate Settlement Procedures Act

SAFE Mortgage Licensing Act

TILA – Truth – in – Lending Act

CLA – Consumer Leasing Act

Multi-State Mortgage Committee (MMC), and Multi-State Mortgage Exams

## History:

- EXAMINATION PROTOCOL and AGREEMENT was created, outlining the basic framework for the coordination and supervision of multistate mortgage entities
- 49 states (including Kansas) have signed to AGREEMENT (by early 2009)
- Multistate Mortgage Committee (MMC) was established as the oversight body charged with implementing and directing processes under the AGREEMENT
- MMC comprised 10 state regulatory officials appointed by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR)

## Kansas' involvement:

- Kevin Glendening with Kansas was an original committee member of the MMC for a 2-year term from December 2008 to December 2010
- Kansas has had involvement with MMC in drafting and implementing Exam Procedures and Multistate Exam Report Templates for use in exams
- Kansas has been involved with three multi-state exams so far
- Kansas took lead role as state in charge on the latest exam (Examiner-In-Charge state)

## Special Order

Pursuant to K.S.A. 9-1715, I am notifying this committee of the one special order issued June 7, 2010 by the bank commissioner's office during 2010.

Frequently, national and state-chartered banks will buy participations in the same loans which are secured by real estate. If the borrower defaults on the loan, then the collateral may be foreclosed upon with title to the real estate held in the names of all the participating banks. Subject to certain conditions, national banks are allowed to exchange their participation interest in the real estate for an interest in a limited liability company which then holds, manages, markets, and disposes of the real property. Titling the real estate in the sole name of a limited liability company, as opposed to several banks, may allow for an easier disposition of the collateral and improve the banks' ability to limit their loss.

Since the Kansas Banking Code does not specifically grant such authority to state-chartered banks, former Commissioner Thull determined that Special Order 2010-1 should be issued. This Special Order gives state-chartered banks similar authority to that which national banks enjoy and which allows the banks to exchange their participation interests in real estate owned and acquired through debts previously contracted, for an interest in a corporate entity which will manage, market and dispose of the real property. The Special Order was required to preserve the welfare of state-chartered banks and to ensure they are able to compete equally with national banks.

STATE OF KANSAS  
STATE BANK COMMISSIONER  
SPECIAL ORDER 2010-1

This Special Order issued this 7th day of June 2010, by the State Bank Commissioner (Commissioner).

WHEREAS, the Comptroller of Currency (OCC) has stated that a national bank is authorized, pursuant to 12 U.S.C. § 24(Seventh) and 29, 12 C.F.R. 5.36, and OCC Interpretive Letters #1118 and #1123, to exchange real property or a participation interest in real property permissibly acquired through debts previously contracted (DPC) for other types of real and personal property as long as it is done in good faith by the bank to improve its ability to recover, or otherwise limit its loss on the DPC property, and as shall be approved by the OCC; and

WHEREAS, no provision of Kansas law presently allows a Kansas state-chartered bank to exchange its participation interest in other real estate owned (OREO) acquired through DPC for an interest in a corporate entity which would manage, market and dispose of the real property; and

WHEREAS, K.S.A. 9-1715, as amended, grants the Commissioner the power to authorize Kansas state-chartered banks to engage in any activity in which such banks could engage were they operating as a national bank; and

WHEREAS, the Commissioner deems the issuance of this Special Order to be reasonably required to preserve the welfare of state banks and to promote the competitive equality of state banks and other insured depository institutions.

IT IS THEREFORE ORDERED, that subject to the limitations and conditions set forth in this Special Order, a Kansas state-chartered bank is hereby authorized to exchange its participation interest in OREO acquired through DPC for an interest in a corporate entity which will manage, market and dispose of the real property.

IT IS FURTHER ORDERED, prior to making the exchange, the bank's directors must determine that the exchange is in the best interest of the bank and would improve the ability of the bank to recover, or otherwise limit, its loss on the DPC property. The basis for such determination must be documented.

IT IS FURTHER ORDERED, prior to making the exchange, the bank must notify the Commissioner in writing of the proposed exchange, detailing the structure of the investment and the activity or activities to be conducted by the corporate entity. Also, prior to making the exchange, the bank must receive written notification of the Commissioner's approval. The approval will be based on an evaluation of the bank's risk management and measurement systems and controls to enable the bank to exchange for, hold, and dispose of the interest in the corporate entity in a safe and sound manner, and an evaluation of any other supervisory considerations relevant to the exchange; and

IT IS FURTHER ORDERED, the bank must certify that the bank's loss exposure is limited, as a legal and accounting matter, and the bank does not have open ended liability for the obligations of the corporate entity; and

IT IS FURTHER ORDERED, that the bank must certify that the enterprise in which the bank is investing agrees to be subject to supervision and examination by the Office of the State Bank Commissioner; and

IT IS FURTHER ORDERED, the bank may not further exchange its interest in the corporate entity for an interest in any other real or personal property. Such property would be too far removed from the bank's original DPC interest in the real estate to be considered DPC property; and

IT IS FURTHER ORDERED, the bank must ensure that the corporate entity complies with K.S.A. 9-1102 and K.A.R. 17-11-17, including obtaining a current appraisal of the real estate; and

IT IS FURTHER ORDERED, consistent with the limitations in 12 U.S.C. § 29 and 12 C.F.R. Part 34, the bank must dispose of its interest in the corporate entity no later than five years from the date it initially acquired title to the OREO, unless an extension up to an additional five years is granted by the Commissioner; and

IT IS FURTHER ORDERED pursuant to K.S.A. 9-1715(b), as amended, the terms of this Special Order shall take effect on June 7, 2010, and shall remain in full force and effect until amended or revoked by the Commissioner.  
IT IS SO ORDERED.

STATE BANK COMMISSIONER

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J. Thomas Thull

To: House Financial Institutions Committee

From: Shawn Mitchell, President and CEO  
Community Bankers Association of Kansas

Date: January 18, 2011

RE: The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010:  
Implications for Kansas Financial Institutions and Services

Chairman Knox and Members of the House Financial Institutions Committee,

Thank you for the opportunity to appear before the committee today and provide you with the community banks' perspective on the current state of financial institutions in Kansas and how the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 will impact them.

My name is Shawn Mitchell and I am President and Chief Executive Officer of the Community Bankers Association of Kansas (CBA). As a community banker for more than 15 years, I've seen firsthand the important role local community banks play throughout Kansas. Our business depends on building and maintaining personal relationships with our customers, supporting other small businesses that in turn provide jobs, services and helping our communities prosper. Community banks are continually involved in improving the day-to-day life of average, everyday people. CBA is a statewide organization of locally owned and operated banks intent on preserving local credit for local development. CBA member banks are as diverse as Kansas itself, as varied as the economies and the aspirations of the communities we serve.

All financial institutions around the country have been subject to greater scrutiny, criticism, and substantial government intervention in the past months due to many Wall Street mega banks creating an environment where their employees were incented to take on substantial risk to increase profits for the firm and then rewarded with increased pay. Community banks differ from that philosophy in that we incent our staff to minimize risk and maximize community development. Our common philosophy; if our local community flourishes, then we shall also. We support many of the federal activities to promote financial institution stability.

*Attachment 5*  
*AFIC 1-18-11*

## **The Dodd-Frank Wall Street Reform Bill**

The bill affects every aspect of our nation's financial services marketplace. The bill contains many constructive measures as well as some harmful measures that could not be modified or eliminated, despite strong opposition from many community bankers around the country. The full impact of this legislation will not be known until the rule writing is finalized, this will take years with many revisions sure to come.

### ***A few positive measures:***

**Asset-based deposit insurance assessments**—FDIC assessments will be based on bank assets rather than domestic deposits, which will reduce assessment rates by a third and save community banks \$4.5 billion over the next three years. Savings will compound for community banks as regular assessments continue.

**Too-big-to-fail**—The largest financial institutions will face higher capital and liquidity standards, a new systemic risk council and new resolution authority for the largest institutions so that they are wound down instead of propped up when they fail.

**Nonbank competitors**—The Consumer Financial Protection Bureau will reduce the unfair competitive advantage these firms have long enjoyed as unregulated financial services entities.

**Deposit insurance limit increase**—Deposit insurance coverage limit is permanently increased to \$250,000.

**Transaction Account Guarantee extension**—Unlimited deposit insurance coverage is extended for non-interest-bearing transaction accounts for two years.

**SOX Section 404(b)**—Public companies with capitalization of less than \$75 million are permanently exempted from the auditor attestation requirements of Sarbanes-Oxley Section 404(b).

**Volcker rule**—The largest banks are generally prohibited from engaging in proprietary trading or holding or obtaining an interest in a hedge fund or private equity fund, though there is a *de minimis* exception. Also included are exceptions for securities that community banks typically invest in.

The financial reform process is not over. Passing the bill is just one step in the process of financial reform that will continue to unfold for years to come.

## **The Wall Street Reform Act: Consumer Financial Protection Bureau**

The Consumer Financial Protection Bureau (CFPB) is an independent entity under the Federal Reserve. The director is appointed by the president and confirmed by the Senate. The agency will write consumer-protection rules for banks and nonbank financial firms and ensure consumers are protected from unfair, deceptive or abusive practices. Authority for a variety of consumer-protection laws, such as EFTA, TILA, RESPA, HMDA, ECOA and TISA, is transferred to the CFPB.

Though the CFPB formed upon enactment of the law, it will take time to nominate and confirm a director and transfer existing personnel from other agencies to the new bureau. At present, the board is working under the leadership of a special adviser to the president, Professor Elizabeth Warren.

The CFPB examines and enforces regulations for banks and credit unions with more than \$10 billion in assets, mortgage-related businesses and large nonbank financial firms. Prudential regulators may comment on CFPB rules before they are proposed, and the bureau has to respond in writing. The Financial Stability Oversight Council may set aside a CFPB regulation by a two-thirds vote. The CFPB shall consider the impact of new rules on depository institutions and consumers in rural areas.

While banks with assets of \$10 billion or less are subject to CFPB rules, they are exempt from CFPB examination and enforcement and will continue to be examined by their prudential regulators. The CFPB can require reports from small institutions, but community banks also won relief from certain paperwork burdens, including provisions requiring banks to maintain records on the number and dollar amount of customer deposit accounts and ATM transactions, geo-code customer transactions and annual disclosures of this information.

On Friday January 7<sup>th</sup>, 2011 I spoke with Elizabeth Warren personally via phone and we discussed her goals and hopes for the new CFPB. We also discussed some of the concerns of our Kansas community bankers and how the bureau might best protect our consumers while not unduly hindering our banks from provided much needed services and products.

I then met with Professor Warren on Monday January 10<sup>th</sup>, 2011 in Washington, D.C. and we again discussed the CFPB and how community bankers in Kansas looked at the new bureau. Professor Warren informed me that the new bureau intends to focus on regulating the shadow banking system and will work to reduce regulatory cost for community banks. Warren noted that simply writing a layer of new rules will not benefit consumers and that regulators should instead level the playing field between community banks, megabanks and the estimated 80,000 non-depository financial institutions.

Thank you for your time and I would be happy to stand for questions at the appropriate time.





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# HEARTLAND COMMUNITY BANKERS ASSOCIATION

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Heartland Community Bankers Association is a regional trade association representing community financial institutions. HCBA supports and enhances its member institutions by providing an array of quality products and services that advocate, educate and inform; and by offering a forum that fosters unity, camaraderie and the exchange of ideas.

## Board of Directors 2010-2011

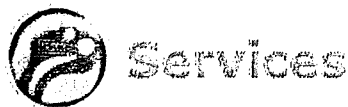
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James R. Turner .....	President
Janet I. Kraus .....	Vice-President
Debra S. Sayler .....	Bookkeeper
Dee Albright .....	Secretary
Alex Sonnich .....	Intern

*Attachment 6*

*AFIC 1-18-11*



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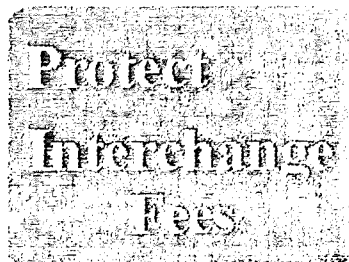
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## HCBA Services, Inc.

Subsidiary of the Heartland Community Bankers Association

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Group Term Life  
Long Term Disability  
High Limit AD&D  
Personal Accident Expense Plan

Cancer Plans  
Section 125 Flex Plan  
Retirement Programs  
Executive Benefit Plans  
Long-Term Care  
Specified Health Event Insurance

### Service Programs

Customer Loyalty  
Check Printing  
Credit Cards  
Default Servicing  
Flood Determinations  
Credit Reports

Compliance Consulting  
Document Management  
IT Risk Compliance  
Intrusion Testing  
Securities and Investments  
Automated Valuation Models



**Date:** January 18, 2011

**To:** House Financial Institutions Committee

**From:** Doug Wareham, Senior Vice President-Government Relations

**Re:** KBA Background Summary & Banking Industry Issues

Chairman Knox and members of the House Financial Institutions Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 315 Kansas banks that provide financial services in 440 towns and cities across the state. Kansas banks currently employ just over 14,000 Kansans. Thank you for the opportunity to provide you with a brief background of our organization and to highlight some of the challenges facing Kansas bankers.

**KBA Background:**

Very briefly, our organization is a voluntary, non-profit trade association representing the Kansas banking industry and I'm very proud to say we currently represent 99% of the banks chartered in Kansas. KBA was organized 124 years ago and our sole purpose is to support and assist Kansas banks and Kansas bankers. I have provided a listing of our Officers and Board of Directors for your review. Also, please note that KBA is governed by its membership. Each member bank (regardless of size) has one vote.

Legislative advocacy is only one of the roles our staff team plays. In addition to monitoring and providing input on state and federal issues impacting Kansas banks, we also provide extensive training for bank employees, assistance with health and business insurance needs for our banks and their employees and we have a legal department comprised of three attorneys and a paralegal that work full time assisting Kansas bankers with their regulatory compliance needs.

**Banking Issues:**

As 2011 begins, the Kansas banking industry, like other segments of business & industry continues to be negatively impacted by a sluggish Kansas economy. While we are fortunate the agriculture sector remains strong, commercial lending continues to be hindered by the lagging effects of the recent recession. In addition to slow economic growth, Kansas banks are also facing an unprecedented period of increased regulatory burden and increased compliance costs.

The adoption of the Dodd/Frank Wall Street Reform and Consumer Protection Act of 2010 went far beyond addressing the troubling practices of Wall Street investment firms and mortgage brokerages that contributed to the housing crisis and subsequent recession. The American

Bankers Association (ABA) estimates an additional 5,000+ pages of new regulations for community banks will be promulgated and some estimators are predicting 20,000 pages of new regulations.

Attached to my written testimony are two documents that provide greater detail of the impacts of the Dodd/Frank reform bill.

- Summary of Dodd/Frank Bill consequences for Community Banks
- KBA President Charles Stones Congressional Testimony (August 23, 2010)

Once again, thank you for the opportunity to share information with you today, and please know that our general counsel, Kathy Olsen, and I look forward to being a resource for you throughout the 2011 State Legislative Session. I would be happy to stand for questions now or at the appropriate time.

## **Kansas Bankers Association Board of Directors**

### **Elected Officers:**

John E. Boyer, IV, KANZA Bank, Kingman, KBA Chairman  
John Lehman, The First National Bank of Girard, KBA Vice-Chairman  
Frank Reifschneider, Garden City State Bank, Garden City, KBA Treasurer  
Jeannette Richardson, Farmers National Bank, Hutchinson, KBA Past Chairman

### **Board Members:**

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Mike Ewy, Community State Bank, Coffeyville  
Paul Boeding, Baileyville State Bank, Seneca  
Kyle Russell, Verus Bank, NA, Derby  
David Brownback, Citizens State Bank, Ellsworth  
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John Geiger, United Bank of Kansas, Lenexa  
John Danler, Girard National Bank, Yates Center  
Julie Hower, Farmers & Drovers Bank, Council Grove  
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Richard Jenson, Trego-WaKeeney State Bank, WaKeeney  
Skip Numrich, First National Bank, Scott City  
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Kendal Kay, Stockgrowers State Bank, Ashland  
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Glenetta Schierding, GTrust Financial Partners, Overland Park  
Dan Heinz, INTRUST Bank, NA, Wichita  
Alex Williams, The Halstead Bank, Halstead



## **The Dodd-Frank Bill Has Enormous Consequences for Community Banks**

The Dodd-Frank Act will dramatically and negatively affect **all** banks – **large and small**. Some provisions will have a direct negative impact, such as the sheer volume of new regulations and new reporting burdens, many of which will flow from the new rules set by the Consumer Financial Protection Bureau (CFPB). There are other provisions which ostensibly provide some relief for community banks, but market competition and other unintended consequences are expected to quickly reverse any “static” or “initial” savings. These include the loss of interchange income (despite an exemption from mandated, below market pricing for debit transactions) and the increased competition for deposits resulting from the rise in cost of funding using **non**-deposit liabilities which will now be subject to FDIC assessments. Here are some things to consider:

### **5,000 Pages Of New Regulations**

Congress consistently underestimates the complexity and volume of the regulations resulting from new laws. Based on the number of pages of regulations resulting from previous laws, the Dodd-Frank Act will result in more than 5,000 pages of new regulation for traditional banks. This is in addition to the 50 new or expanded regulations affecting banks over the last two years.

### **Consumer Financial Protection Bureau Rules Apply to All Banks**

All banks – **large and small** – will be required to comply with rules and regulations set by the CFPB, including rules that identify what the bureau considers to be “unfair, deceptive, or abusive.” The CFPB can require community banks to submit whatever information it decides it needs and the **CFPB can examine community banks** at its discretion on a “sampling basis.” Thus, the new legislation will result in enormous new compliance burdens for community banks and a new regulator looking over their shoulders.

### **New, Undefined term in “consumer protection” laws**

UDAAP – Unfair and Deceptive Acts and Practices, is well defined, accepted law. Dodd-Frank adds the term “abusive” to this law, yet did not define the term. This leaves it open for the interpretation to anyone and everyone’s interpretation. The Bureau will have broad authority to curb practices it finds to be unfair, deceptive and abusive. What constitutes “abusive” behavior may be very broadly defined and is very likely to create an environment conducive to increased litigation. This is likely to be exacerbated by the fact that State Attorneys General are authorized to enforce Federal consumer laws transferred to the Bureau and any rules issued by the Bureau as well.

### **Significant New Disclosures and Reporting Requirements**

All banks, regardless of size, will have to comply with extensive new disclosure and reporting requirements created by the bill. For instance, the CFPB is given sweeping authority to require whatever disclosures it thinks are necessary to permit consumers to understand “the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.” All banks will have to ask a business customer whether it is a women-owned, minority-owned, or small business, maintain records of the responses, and submit the information to the CFPB each year. The Dodd-Frank Act also requires 20 new HMDA reporting obligations. These and other reporting requirements will add considerable compliance costs to every bank’s bottom line.



## Loss of Interchange Income on Debit Transactions

Small banks have an exemption from the rules the Fed will set for large banks, but market share will always flow to the lowest priced product, even if those lower prices are mandated. We expect that retailers in the market will seek to reduce their costs which will compress rates overall. It also means a loss of revenue that supports free transactions and other valuable services, or both.

## New Capital Standards

**All banks** with over \$500 million in assets will be prohibited from using trust preferred securities to raise Tier 1 capital at their holding companies going forward. This will eliminate a popular source of capital that often is down streamed to a bank. In addition, the agencies will be imposing more onerous capital rules on banks, large and small, and will force all banks to maintain higher levels of capital than expected in the past.

## No Limit on Size of FDIC Insurance Fund

The Dodd-Frank Act **eliminates dividends** whenever the deposit insurance fund (DIF) exceeds 1.35 percent of insured deposits and **eliminates the hard cap** (of 1.50 percent) on the size of the fund. It also gives the FDIC **unrestricted authority** to set a new "designated reserve ratio" or long-term target ratio **above** 1.50 percent. The bill **raises the minimum** level for DIF to 1.35 percent, and does benefit banks under \$10 billion by requiring larger banks to make up the gap from the old minimum of 1.15 percent to the new minimum of 1.35 percent. Smaller banks would continue to pay premiums, however, and how this provision will be implemented is unknown. All banks would be required to keep the fund above the minimum and at the new designated reserve ratio wherever that is set.

## Heightened Regulation of Mortgages

The Act significantly increases the regulation of mortgage lending and servicing by banks and nonbanks. In particular, the Act:

- Mandates comprehensive additional residential mortgage loan related disclosures.
- Requires mortgage loan securitizers to retain a certain amount of risk (as established by the regulatory agencies). However, mortgages that conform to the new regulatory standards as "qualified residential mortgages" will not be subject to risk retention requirements. DFA was passed in part to correct systemic problems in the securitization market which contributed to the crisis. Congress determined that some form of risk retention was desirable to ensure that participants in a mortgage securitization transaction had so-called "skin in the game." The goal was to prevent (or at least discourage) the origination of loans both without regard for a borrower's ability to repay, and without regard to default risk or the ultimate losses posed if originators or others in the securitization process had no risk beyond the origination stage. However, risk retention requirements cannot be considered in isolation from the other many other new mandated changes in the mortgage loan process. There have been dramatic changes to the mortgage lending process with changes to the Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA) and the Secure and Fair Enforcement for Mortgage Licensing Act. (SAFE)

These changes, in and of themselves, would be onerous. But when added all together they are driving many banks out of the mortgage lending business.



## **ISSUES MOST AFFECTING STATE LEGISLATURES**

### **OCC Federal Preemption**

The standard for preemption is modified for national banks. Blanket preemption will be limited and will be on a more case-by-case basis.

### **Interstate Branching**

DFA overrides state law regarding interstate branching and provides that national and state banks can establish de novo branches in new host states under the same conditions that a bank chartered within the host state could branch on an intrastate basis.

## **POTENTIALLY POSITIVE ISSUES RESULTING FROM DFA**

### **Ends the practice of "too big to fail"**

- Designates "systemically significant" banks and creates a Financial Stability Oversight Council
- See included article referring to Tom Hoenig

### **Deposit Insurance**

- Permanently increased FDIC insurance to \$250,000, but adds costs because of reserve ratio
- Changed the FDIC assessment base from deposits to assets

### **Non-banks subject to BCFP**



# Collateral Damage

Latest round of financial reforms has community banks feeling like they're catching fire meant for someone else.

by Dennis Boone

**AS PRESIDENT OF THE KANSAS BANKERS ASSOCIATION,** Chuck Stones has four attorneys on his staff. They deal with roughly 5,000 legal inquiries raised each year by the KBA's 320 member banks. And they're about to get a lot busier.

Although many business owners may still feel otherwise, the worst economic contraction in a generation is now, by official measures, history. But even if the country is able to dodge a recessionary Round II—which appears more unlikely as negative indicators continue to pile up—folks in Stones' line of work are becoming increasingly worried. The most recent cause for concern is a mammoth package of legislation moving through Congress and being sold as financial reforms.

At more than 2,000 pages, the complete bill has essentially been vetted by no single member of Congress, let alone by the banking industry. Hence the now-infamous quote by Sen. Chris Dodd of Connecticut, the bill's co-author, that "no one will know until this is actually in place how it works."



*"Banks just don't know what to expect yet, and this is going to cause them to pull back even further."*

— Chuck Stones, president, Kansas Bankers Association

So, much like the insurance industry executives awaiting the regulatory shoe to drop after health-care reform earlier this year, bankers anticipate that thousands of pages enabling regulation are headed their way. And because we still have no true understanding how the reforms will affect financial institutions' operations, Stones and other banking figures say a certain measure of paralysis is bound to set in soon.

For how long? That's anybody's guess.

"The uncertainty created by this, at least psychologically, will affect the lending markets," Stones

said. "Banks just don't know what to expect yet, and this is going to cause them to pull back even further."

"It's not exactly a whole new ball game, it's just an uncertain ball game."

If one thing is for certain as the reforms move forward, he said, it's that community banks in particular will suffer. They simply don't have the existing staff, Stones said, to deal with the huge volumes of additional regulations that are coming.

"It's not entirely clear yet, but we're estimating something like 5,000 pages of regulations that will apply to traditional banks coming from this," he said. "We're really worried about that. We've always felt like we're one of the most highly regulated industries out there, and if you add 5,000 new pages of regulations, that's an extra burden, especially on community banks."

Dealing with that, he said, will not be a simple matter of consulting his staff attorneys or devoting more bank resources needed to interpret the new laws. As with changes last year in requirements for mortgage-lending processes, the costs of compliance, and the added costs of documenting it, could prove to be too much for some banks.

"Hiring cuts into the bottom line, and some banks just aren't going to be able to do that," Stones said. "Most experts are looking at another round of consolidation like we saw in late '80s and early '90s; I have no idea what that number might be, but there will definitely be fewer banks in Kansas and in the U.S.—and that's never good for the consumer."

Max Cook, Stones' counterpart with the Missouri Bankers Association, views development with as much trepidation. The measure that could clear Congress this month, he said, "is a piece of legislation that negatively impact community banks and is going, in turn, to have a big impact on Main Street in this



country and on the ability of banks to lend. "I just think it's going to be devastating."

In the past 2 years, Cook said, the banking industry had seen 50 new regulations placed on it, and the new measure promises 30 more.

"You can't keep piling on rules regulations one after another without suffocating an industry," Cook said, "and that's basically what this will do to community banks. I'm afraid that, in addition to suffocating the banks and causing even further cutback in lending, we'll see fewer and fewer of these banks."

## THE ECONOMIC BACKDROP

Concerns over a more rugged lending landscape will reach far beyond banking circles. From the onset of America's financial-markets crisis in late 2008, a crippling lack of loan activity has pitted lenders against both developers and construction companies in an economic deadlock: Those who want to borrow accuse banks of sitting on piles of cash to satisfy regulators' demands for higher reserve requirements; those can lend say the credit freeze won't be broken until more prospective borrowers can come forward with higher-quality development proposals that make the investment worth the risk.

A new layer of uncertainty for banks will only prolong that standoff, banking authorities say. But the situation involves more than just an updated definition of creditworthiness: Getting the lending/development/construction pump primed and running again would be tough enough even if there were solid signs of recovery ahead.

There aren't.

Earlier this spring, we saw signs of hope when first-quarter GDP growth clocked in at a respectable 3.2 percent. The Bureau of Economic Analysis said that profits before taxes, taxes on corporate income and profits from current production for that period all showed healthy gains over the final quarter of 2009. But in two revisions since, the first-quarter numbers have been cut twice, from 3.2 percent down to 3.0, and, last month, to 2.7 percent.

On a broader front, consumer confidence nationally took a nosedive in June, as did home sales. The Dow Jones Industrial Average lost nearly 10 percent of its value in the second quarter. Gold prices are at record highs as hoarding continues, and the Conference Board's index of leading economic indicators has steadily retreated since March, suggesting that the recovery to date has already peaked.

Viewed individually, none of those readings sets off major alarms. Collectively? They have many financial experts warning that another deep recession, and potentially worse, could set in as soon as the end of this year.



*Dodd-Frank will "have a big impact on Main Street in this country and on the ability of banks to lend. I just think it's going to be devastating."*

— Max Cook, president, Missouri Bankers Association

## A BAD TIME TO BE AILING

For banks that are already trying to plug holes in their fundamentals, the prospect of a downturn is particularly troublesome, said Fred Hays, a professor of banking and finance at the University of Missouri—Kansas City's Bloch School of Business.

"The FDIC problem bank list, you now have roughly 775 banks rated there," Hays said. "We've gotten into trouble when over 10 percent of the banks in the country are on that list, and for some, it will get worse before it gets better."

### A Big Hit for Small Banks

Community banks, loosely defined by Fed Chairman Ben Bernanke as those with less than \$1 billion in total assets, made up the bulk of the 251 U.S. financial institutions that have failed since the start of 2008.

**77.6%, or 197**

(less than \$1 billion in assets)

**22.4%, or 54**

(more than \$1 billion in assets)

### The Biggest Losers

Those 251 failed banks had combined assets of \$613,292,462. The assets of Washington Mutual alone amounted to more than half of that, and the 10 biggest institutions on that list accounted for nearly 73 percent.

The top 10 failures, ranked by assets:

Institution Name	State	Total assets (000s)
1. Washington Mutual	Nev.	\$307,021,614
2. IndyMac	Calif.	\$30,698,512
3. Colonial Bank	Ala.	\$25,455,112
4. Guaranty Bank	Texas	\$13,464,352
5. BankUnited	Fla.	\$13,111,463
6. Downey S&L Assn.	Calif.	\$12,779,371
7. WesternBank of Puerto Rico	PR	\$11,938,184
8. Amtrust Bank	Ohio	\$11,438,990
9. United Commercial	Calif.	\$10,895,336
10. California National	Calif.	\$7,781,100

Combined assets: \$444,584,034  
Combined assets all failed banks (2008–2010): \$613,292,642

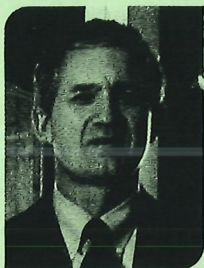




**Hanging it up** | Smaller community banks are more likely to consolidate with larger competitors or simply shut their doors, particularly in rural areas, if the regulatory reforms being debated in Congress are enacted, banking authorities say.

That figure, he notes, comes after more than 225 of the weakest players in the banking system have been washed out since the start of 2008—more than 140 last year alone. But with more than 7,000 banks still operating, not counting non-bank financial institutions, it may be too early to declare a banking Armageddon, Hays said.

Hays said. “In the midst of all this, Bank of America lost market share in Kansas City. Some institutions gained deposits that came away from others that appeared to have a financial problem.” Longer-term, he said, the concept of regional market share in credit availability was itself becoming antiquated.



*“Some of this may come as a surprise to consumers. We’re doing everything we can to make sure we educate our customers on how these changes may affect them.”*

— Kevin Barth, president, Commerce Bank

“Look at it this way: If you look at most banking systems around the world, most of those countries have only a handful of dominant institutions,” Hays said. “We’re very different in that we have some large, complex financial institutions, but we also have all those community banks. We’ve got lots of institutions. If we lose some percentage of that, it may not really show up all that much.”

One short-term question, he said was whether the demise of some community banks would lead to larger banks’ becoming larger, or increase the median size of remaining community banks.

“There is some evidence of that if you look at the Kansas City market,”

“I think there will be credit available,” Hays said. “The market is not a Kansas City market. If you’re looking for development loans, it is now possible to go outside the market because you’re not geographically bound in ways we once thought we were. Look at the impact of the Internet on consumer business; you get online and in a few minutes, you can find the best deposit rates in the country. Developers, too, can act on that and take advantage of that.”

#### BROADER IMPACT

Of course, community banks aren’t being singled out with this legislation. After all, it was conceived as a way to impose controls on large banks and

Wall Street firms whose shenanigans contributed to the 2008 crisis.

Like the community banks, even the largest regional banks anticipate some headaches they’d prefer not to have.

Commerce Bank, with nearly \$18 billion in assets and UMB Bank, at nearly \$12 billion, fall well shy of the threshold that made the nation’s biggest banks the primary focus of the reform package. Officials with both say that the reforms likely will mean higher fees, reduced perks—free checking, for example, may be on the way out—and new challenges securing credit.

“We’re not sure how all of this will end up, but it seems to be penalizing institutions that were sticking to their knitting and being good, responsible providers of financial services,” said Commerce Bank’s president, Kevin Barth.

The bad news with Dodd-Frank, as the reform measure has become known, is that it failed to address longstanding problems the two large quasi-governmental agencies most often associated with the housing meltdown’s origins, Fannie Mae and Freddie Mac. The good news? What emerged in those 2,000 pages of legislation could have been a whole lot worse, they said.

#### A SWING AND A MISS

The disappointing part of the regulatory reform movement, bankers say, is that even though some elements of the legislation are meant to address significant flaws in financial markets, much of the remedy is excessive, misguided and over-reaching. A glaring example of that would be the new Consumer Financial Protection Bureau.

“I honestly think this whole new layer of regulation with the CFPB is really, in the end, not going to make a whole lot of difference to most consumers,” said the KBA’s Stones.

In that sense, are community banks just collateral damage in the reform movement?



"Absolutely," said Stones.

"This was a financial crisis with a multi-headed monster, and none of those heads were community banks," he said. "There were non-bank mortgage lenders making loans to people who could never pay them back. Wall Street firms and banks that had risky investments based on those mortgages. Hedge funds and derivatives that all put a tremendous amount of stress on the system, causing property values to drop.

"So community banks that weren't

responsible were greatly affected by those lower values and the impact on their loan portfolios, especially in commercial real estate," Stones said. "And this new round of regulation, aimed at preventing the next crisis, didn't even start with the Number One cause of it all—Fannie Mae and Freddie Mac."

That, said MBA's Cook, has been the true irony of the Dodd-Frank measure. When community banks inevitably close, he said, "it will force those assets into bigger places, many of which

are where the problem started."

That disproportionate impact on smaller banks in rural areas will likewise be felt by consumers, Stones said.

"Even before this, there was a whole news series of regulations on mortgage lending that really affected banks in rural areas," Stones said. "In the Kansas City area, the standard home loan is a 30-year fixed; that's not the case in rural areas."

Those areas, where a 5-year balloon note is more common, could see that lending activity vanish, he said.

"We've got banks in rural area that say 'We can't comply with these any more, so we're just not going to make mortgage loans'. If a bank consolidates or gets out of the mortgage business in those areas, who goes in to make those loans? The answer is: Nobody."

Unlike the smaller banks, Commerce has sufficient critical mass, staffing and experience to deal with a bevy of new regulations. But that doesn't mean the bank is happy about having to do so. "We're going to play the hand we're dealt," Barth said. "It's like anything else; once something blows up, there's an urge to come in and regulate."

"But we'll deal with it and continue to be very good providers of financial services to our customers," he said.

## WAYS OF HOPE

While significant challenges remain for the economy in general and banks in particular, Barth said, recent activity suggests that this region's entrepreneurial zeal remained intact.

"If you look around Kansas City, you will find people innovating, starting new businesses, and with some success," he said. He recounted a recent discussion with a business owner who said his biggest concern for 2010 was finding nine additional members of the sales staff who would be willing to learn new skills and travel.

A focus on growth, persistence and innovation, Barth said, would be the key to getting not just this region, but the country, out of its doldrums.

"The entrepreneurial spirit," Barth said, "the creativity of the American entrepreneur and business owner, that is what will ultimately help our country—and help us—come out of the recession." ■

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August 23, 2010

TO: The United States House of Representatives Financial Services Committee  
Subcommittee on Oversight and Investigations

From: Charles A. Stones, President  
Kansas Bankers Association

Mr. Chairman, Members of the Sub Committee, invited Members of Congress,

The Kansas Bankers Association appreciates this opportunity to testify at this field hearing on this important topic.

The Kansas Bankers Association represents 320 traditional community banks in Kansas. Kansas is a state with a large number of community banks. As of 12/31/09 there were 323 chartered banks in the state ranging in asset size from \$4.5 Million to \$3.7 Billion. State charters outnumber national charters by a 3.2 to 1 margin. The average asset size is \$155 million. 36% of all chartered banks in Kansas have less than \$100 million in assets. The assets of all Kansas chartered banks, state and national charters, total \$50.2 billion.

Kansas covers a large geographical area (82,000 sq. miles), therefore, it is not surprising that a high percentage of our Kansas banks can be found in rural communities. Nearly 20% of all Kansas chartered banks are located in towns of fewer than 500 people and 60% of all chartered banks are located in towns of fewer than 5,000 population. It is also important to understand that nearly two-thirds of all Kansas banks have an average of less than 14 employees. Kansas banks currently employ 14,020 people. Banks continue to want to make loans to deserving businesses and individuals.

Traditional banks feel the burden of regulation. For the typical small bank, more than **one out of every four dollars** of operating expense goes to pay the costs of government regulation. The passage of the recent Financial Reform legislation, which includes a new Consumer Financial Protection Bureau, will certainly add to the regulatory burden now faced by banks. In addition, the past year has seen a multitude of new regulations, from RESPA to Reg E, these new regs are taking a toll on banks, especially traditional community banks. For instance, the new RESPA rules are causing many banks, especially in rural areas to reconsider their participation in residential real estate lending. The question is: who will pick up the slack in these areas if the local community bank exits that market? Again, new Reg E rules are making banks reconsider



whether to continue paying overdrafts for their customers using debit cards. This will cause a great deal of inconvenience to consumers who utilize this service. The bottom line is that most of the changes and technological advances in banking over the past several years have been for the sole purpose of customer convenience. Those advances have costs associated with them. When businesses are not fairly compensated for services they perform, those services stop being available. The consumer pays the ultimate cost in loss of that service.

These new regulations and laws are putting, and will continue to put, a huge amount of pressure on the earnings of banks. From exponential increases in FDIC premiums to the new laws and regs mentioned above, one consultant put it very succinctly, "Banks will have a harder time making money in the future." This will inevitably drive banks to consolidate. Again, who will fill the void in small town Kansas if the current local bank decides it can no longer make a fair profit, and closes? **It is time for Washington to realize that traditional banks have economic value in this country.** It is not enough to say the words, it is time that policies, laws, rules and regulations begin to demonstrate that fact. Actions speak louder than words.

Traditional banking has been the backbone of our nation's economy and **yet** the term "bank" has been misused by almost everyone in the media and in Washington D.C. Kansas banks still adhere to the 3-C's of credit: credit, character and collateral, when making loans. The extension of credit is, in essence, the evaluation of risk. We believe Government intervention into this process altered decision making by many lenders, and allowed loans to be made that would never be made in a totally "free" market system. The Community Reinvestment Act is one example of this type of intervention, as is the relaxed underwriting standards of FNMA and Freddie Mac. While homeownership is a worthy goal, encouraging people to purchase homes they cannot afford is much worse, in the long run, for everyone. Government intervention in the lending process altered decision making and interfered with the "free market system" on the front end of many transactions. Expecting the same "free market system" to work on the back end of the process is unrealistic if it is not allowed to function on the front end.

Traditional banking needs to be strengthened and encouraged because, as in years past, we will be the engine that drives any economic recovery. Traditional bankers are just like every other small businessman and businesswoman trying to keep their communities strong. We ask you to not confuse these banks on Main Street with those on Wall Street.

#### **Impact of Financial Reform and new regulations on consumers**

Those who support the idea of the Consumer Financial Protection Bureau believe it will protect the consumer from overzealous financial institutions. However, the traditional community banker exemplifies the ultimate in "consumer financial protection". Traditional banks live with their customers; they see them in the community and at school events, serve on boards with them, etc. If a traditional bank treats a customer badly, the whole community knows about it. This is in contrast to many non-bank competitors whose dealing with the consumer is usually a onetime experience. Being sales-based operations, they typically gather a fee and move on to the next customer, with little regard for their customer's long term satisfaction. Unfortunately,



the CFPB will not make a distinction between the banker and the salesman in its approach to "protect" consumers.

We believe that the CFPB will actually hurt consumers. A study by David Evans and Joshua Wright (**Evans** is Lecturer, University of Chicago Law School; Executive Director, Jevons Institute for Competition Law and Economics, and Visiting Professor, University College London; and Managing Director, LECG. **Wright** is Assistant Professor, George Mason University Law School and Department of Economics.) showed that:

*"Under plausible yet conservative assumptions the CFPB would:*

- increase the interest rates consumers pay by at least 160 basis points;*
- reduce consumer borrowing by at least 2.1 percent; and,*
- reduce the net new jobs created in the economy by 4.3 percent.*

These unintended consequences will hurt everybody while only "protecting" a very small few. And this is only the start. As we stated earlier, the unintended consequence of new very strict RESPA rules will likely be the departure of many small banks in rural areas from the residential real estate market. The result will be that many consumers will be unable to secure credit purchasing a home in rural areas of Kansas from a local bank. They will be forced to go out of market, if they can. Most non-bank lenders are unfamiliar with rural areas and the low volume makes rural areas unattractive for those types of lenders.

The unintended consequences of new Reg E rules and new Interchange rules will likely be that fewer consumers will have access to debit cards, which have become a major consumer convenience.

Maybe the most mis-used word in the English language for the last 18 months is the word "bank".

It has been used to describe everything from Wall Street investment firms, to insurance giants (like AIG) to payday lenders. And rarely has it been used to describe what it really is – the word "bank" really should be used only to describe a business that accepts deposits, AND makes loans, AND is insured by the FDIC – ALL 3 – PERIOD!!!

Many in the media, especially the national media, seem to think that investments companies, mortgage brokers and traditional banks are all alike. The VAST majority of traditional banks did NOT write those wild toxic sub-prime mortgages that led to the housing bust. You know the ones – there's a whole cable TV channel basically dedicated to buying and selling houses that would sell for \$120 – 150,000 in Topeka or Salina, but sell for \$800,000 - \$1 million in California. And they are sold to people making \$100,000 or less. Hence the name "SUB PRIME" loan. They were told that when their adjustable rate, no down payment mortgage loan was ready for an adjustment, if they couldn't make the new payment, they could always sell the house and make a killing!!!



Traditional banks were not the ones who bought any loan that was sent to them, in the name of putting every American in a home, whether they could afford it or not, and then sliced and diced those sub-prime loans up and sold them as mortgage backed securities to hedge funds all over the world as AAA credits.

Traditional banks, like we mostly have in Kansas, are business women and men in the relationship business. They are working to make their communities a better place, just like others in the business community. They are trying their best, under whatever environment they find themselves – political, economic, regulatory – to help people achieve their dreams. Whatever it may be, to buy a car, buy a home, educate their children, start or expand their business, or whatever their dream happens to be.

Bankers all over Kansas are involved in almost every community or economic development project that comes along. They are neck deep in United Way campaigns, sponsoring Little League, 4H, FFA and bank employees are involved in all kinds of charity work from Let's Help, Rescue Missions, church's all over the State and country.

Finally, and probably most importantly, I would submit to you that banks are the economic engine of this country. You REALLY should care if banks are being too highly regulated, with over constraining new rules and regulations, the economic future of our country may depend on an efficient innovative banking system.

Remember economics class? Remember the term "financial intermediation"?

That's what banks are and do – they are financial intermediaries.

Quoting from the college economic text book, "*Economics*", by Campbell McConnell, about commercial banks –

"But commercial banks also perform an additional function which other financial institutions and businesses do not. That unique function is to CREATE money by taking deposits AND making loans. Because of their unique money-making abilities, commercial banks are unique and highly strategic institutions in our economy."

Some people call this the "roll over" effect - money is deposited, loaned out, re-deposited and loaned out again – the typical number used in the rollover effect is 4 times.

So, you really should care what happens to the banking system.

Bankers understand and welcome that challenge. And even though this new law will make things more difficult to operate in an efficient manner, they will learn the new "road map" for our industry and continue to do the best they can.



## Too Big HAS Failed

There are no banks chartered in Kansas that would come close to being deemed "Too Big to Fail". In fact, at just over \$50 billion of assets, the combined assets of all banks chartered in Kansas would not meet the size threshold of "Too Big to Fail". In some people's eyes, that is very insignificant. Yet, when you look at the thousands of individuals, small businesses and agricultural operations that are financed by the traditional community banks in Kansas, one could hardly call it insignificant. However, the 325 banks in Kansas are negatively impacted by the policy of "Too Big to Fail". When the "mega-banks" are systematically bailed out, time after time, they no longer see any downside to overly risky behavior. Yet, traditional community banks and the whole country are hurt badly by the economic downturn that inevitably follows.

It has been my view for quite some time that business lines, operations and functions, outside of the traditional banking function of taking deposits and making loans, by the large Wall Street "banks" have put the FDIC deposit insurance fund and the whole banking system at risk. Those "functions" need to be identified, segregated, and capitalized separately, thereby reducing the risk to the banking system.

Will the new, Systemic Risk council and other policies and procedures placed in the Dodd-Frank Wall Street Reform legislation eliminate the policy of "Too Big to Fail"?, only time will tell, but I sincerely doubt it. It will take a great amount of strength and fortitude on the part of regulators and policy makers to systematically dissolve a bank that has been deemed to be "systemically significant".

# KANSAS HOUSE FINANCIAL INSTITUTIONS COMMITTEE

January 18, 2011

John P. Smith, Administrator  
Kansas Department of Credit Unions  
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## **Chairman Knox and members of the House Financial Institutions Committee**

I am John P. Smith, Administrator of the Kansas Department of Credit Unions. With me today is Michael D. Baugh, Financial Examiner Administrator. My testimony today consists of a summary of information about Kansas credit unions and the credit union system. More detailed information about the Kansas Department of Credit Unions and credit unions in general is in the handout distributed to members of the Committee. We will respond to your questions at the conclusion of my testimony. I appreciate the opportunity to talk with you today about credit unions.

- Natural person credit unions are non-profit member owned cooperatives that provide a variety of financial services to their members. Their board and committees members are non-paid volunteers. The size and complexity of the credit union determines the number of services offered. These services may include checking accounts, consumer loans, business loans, debit cards, credit cards, first mortgages, and home equity mortgages. Today there are 81 Kansas chartered natural person credit unions with assets of \$3,970,247,466, 21 federal credit unions and 1 corporate credit union operating in Kansas. Corporate credit unions provide natural person credit unions with investment, liquidity, and cash-management products and services
- The Kansas Department of Credit Unions (the Department) is the state credit union financial regulatory agency authorized by the 1968 Kansas Legislature to provide for management, control, regulation and general supervision of state-chartered Kansas credit unions. The Department is fully funded as a fee fund agency operating solely on the revenue produced through fees collected from state-chartered credit unions examined and regulated by the agency.
- All fees received by the Department are remitted to the state treasurer with 20% credited to the state general fund and the balance credited to the credit union fee fund.
- The Department has 11 FTE's consisting of an Administrator, a Financial Examiner Administrator, three Financial Examiner Principals, three Financial Examiner

Seniors, one Financial Examiner, and two Administrative Specialists. (Attachment A is the organization chart for the Department)

- All member accounts in Kansas credit unions are insured by the National Credit Union Share Insurance Fund. The National Credit Union Share Insurance Fund (NCUSIF) is the federal fund created by Congress in 1970 to insure member's deposits in federally insured credit unions. The insurance limit was permanently increased to \$250,000 per individual depositor on September 17, 2010. Administered by the National Credit Union Administration, the NCUSIF is backed by the "full faith and credit" of the U.S. Government.
- The Department is required by statute to examine every Kansas state-chartered credit union at least every 18-months to ensure financial stability and compliance with state and federal laws and regulations. Currently the average period between examinations is just under a 13-month cycle, a standard the Department has maintained since 2002.

Selected information about Kansas chartered credit unions as of September 30, 2010:

- Total Members in Kansas: 552,830.
- Meritrust Credit Union, Wichita is the largest credit union in assets with \$693,818,028.
- Catholics United, Hutchinson is the smallest credit union in assets with \$174,505.
- The 5 largest credit unions make up 47% of the total assets or \$1,866,135,071.
- The 10 largest credit unions make up 68.11% of the total assets or \$2,704,151,749.
- The newest credit union, Catholics United Credit Union, Hutchinson, was chartered in 2005.

### **Credit Union Financial Performance**

- Third quarter (September 30, 2010) call report statistics indicate Kansas credit unions are faring better than federally insured credit unions nationwide.

- Assets for Kansas credit unions increased at an annualized growth rate of 3.60%; nationally by 3.5%. September 30 assets totaled \$3,970,247,446, an increase of \$215,858,709 since June 30, 2010.
- Annualized loan growth increased by 5.75% compared with a 3.86% growth rate nationally.
- Total loans for Kansas chartered credit unions have increased by \$161,293,171 or 6.38% for the 12 months ending 9/30/10. Total loans for all federally insured credit unions have decreased by \$8,410,553,387 or 1.46% over the same period of time.
- Credit union average delinquency remained unchanged from June, 2010 at 1.36% compared to an increase of 2 basis points at 1.75% for all federal credit unions nationwide.
- The September 30, 2010 year to date (YTD) annualized return on average assets (ROAA) for Kansas chartered credit unions combined was 0.64% after the Temporary Corporate Credit Union Stabilization Expense and a premium assessment for the National Credit Union Share Insurance Fund (NCUSIF). This is an increase from 0.58% at June 30, 2010. Prior to the expenses noted above the combined ROAA for Kansas chartered credit unions was 0.77%. For all FICU's the ROAA as of September 30, 2010 was 0.45% after the Temporary Corporate Credit Union Stabilization Expense and NCUSIF premium assessment. This is an increase from 0.40% at June 30, 2010. Prior to the expenses noted above the ROAA was 0.61%.

### **Credit Union Examination Results**

- At the conclusion of each examination KDCU issues a CAMEL rating in Capital, Asset Quality, Management, Earnings, and Asset-Liability Management. From the individual ratings of 1 (least financial risk) to 5 (most financial risk) an overall composite rating of 1 to 5 is assigned. As of December 1, 2010, the ratings were
- |           |                  |
|-----------|------------------|
| • CAMEL 1 | 14 credit unions |
| • CAMEL 2 | 56               |
| • CAMEL 3 | 9                |
| • CAMEL 4 | 3                |
| • CAMEL 5 | 0                |



## **Credit Union System**

Natural person credit unions are non-profit member owned cooperatives that provide a variety of financial services to their members. The size and complexity of the credit union determines the number of services offered. These services may include checking accounts, consumer loans, business loans, debit cards, credit cards, first mortgages, and home equity mortgages.

28 corporate credit unions provide natural person credit unions with investment, liquidity, and cash-management products and services. Several corporate credit unions held investments in mortgage backed obligations backed by home mortgages that failed to perform. Since 2007 NCUA conserved five corporate credit unions including U.S. Central Federal Credit Union located in Lenexa, Kansas. Since the failure of these corporate credit unions, NCUA has adopted regulations designed to prevent future failures and have increased their supervision.

In Kansas, Kansas Corporate Credit Union located in Wichita, Kansas provides services to Kansas natural person credit unions. Kansas Corporate is chartered and examined by the Kansas Department of Credit Unions. Kansas Corporate is insured by the National Credit Union Share Insurance Fund administered by the National Credit Union Administration. Kansas Corporate meets the new regulatory standards adopted by NCUA following the failure of the five corporate credit unions.

The investment losses sustained by the corporate credit unions have been replaced by capital held by the corporates and an assessment of the member owners, natural person credit unions.

## **History**

The Kansas Department of Credit Unions (KDCU) is the state credit union financial regulatory agency authorized by the 1968 Kansas Legislature to provide for management, control, regulation and general supervision of state-chartered, Kansas credit unions.

Regulation of credit unions was performed under the supervision of the Kansas Bank Commissioner beginning in 1929 when Kansas law authorized the organization of credit unions and continued until 1968, when the authority to regulate credit unions was transferred to the Kansas Credit Union Administrator.

KDCU is a fully funded as a fee fund agency operating solely on the revenue produced through fees collected from state-chartered credit unions examined and regulated by the agency.

All fees received by the agency are remitted to the state treasurer with 20% credited to the state general fund and the balance credited to the credit union fee fund.

Today, the Department has 11 FTE's consisting of an Administrator, a Financial Examiner Administrator, three Financial Examiner Principals, three Financial Examiner Seniors, one Financial Examiner, and two Administrative Specialists. (Attachment A is the organization chart for the Department)

As of September 30, 2010 KDCU supervised and examines 81 natural person credit unions with assets of \$3,970,247,466 and 1 corporate credit union with assets of \$305,588,103.

Kansas also has 21 federal-chartered credit unions regulated and examined by the National Credit Union Administration.

Share deposits in Kansas credit unions are federally insured through the National Credit Union Share Insurance Fund (NCUSIF), an arm of the National Credit Union Administration (NCUA).

### **Agency Function**

KDCU is required by statute to examine every Kansas state-chartered credit union at least every 18-months to ensure financial stability and compliance with state and federal laws and regulations. Currently, the average period between examinations is just under a 13-month cycle, a standard the department has maintained since 2002.

In addition to examinations, statutes and regulations provide for KDCU to grant new charters, merge and liquidate credit unions when necessary and handle consumer complaints.

The National Association of State Credit Union Supervisors (NASCUS) accredits the Department, recognizing the Department's examination standards as equivalent to the standards established by the NCUA, the federal credit union regulator/insurer. The Department was accredited by NASCUS for the first time in 1995, re-accredited in 2000, 2005 and waiting for the result of the fourth accreditation review that occurred in October, 2010.

Credit unions are member owned cooperatives. Their board and committees members are non-paid volunteers.

### **Administrator Responsibilities**

The Administrator is charged with the responsibilities of management, control, regulation and general supervision of credit unions. This includes requiring every credit union to submit to an examination by the Department, consistent with the authority of the NCUA as insurer.

The Administrator may:

- Require an independent audit to be performed under standards established by the agency.
- Approve the merger, the sale or purchase of assets or the voluntary and involuntary dissolution of a credit union.
- Issue orders for corrective action for violations of law.
- Become the conservator for any credit union deemed insolvent and may appoint a liquidation agent.
- Suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any director, officer, committee member or employee who has committed any violation of a law, rules and regulations or of a cease and desist order or who has engaged in or participated in any unsafe or unsound practice in connection with a credit union or who has committed or engaged in any act, omission or practice in connection with the credit union which constitutes a breach of that person's fiduciary duty as such director, officer, committee member or employee, when the administrator has determined that such action or actions have resulted or will result in substantial financial loss or other damage that seriously prejudices the interest of the members.
- Recommend the removal of directors, supervisory or credit committees or submit findings of dishonest, reckless or incompetent performance of duties to the board of directors, supervisory or credit committee or to the credit union members at a general meeting of the shareholders.
- Suspend the charter, merge, liquidate, or take possession of any credit union which fails to federally insure share deposits, which loses coverage or allows such coverage to lapse.
- Authorize any credit union to engage in any activity in which such credit union could engage were they operating as a federally insured credit union.
- Require a credit union to establish net worth accounts as set by law.
- Establish rules and regulations governing the powers of corporate credit unions.
- Establish rules and regulations governing loans to credit union members, directors and members of the supervisory or credit committees.
- Approve the purchase, lease or rental of real estate and improvements by credit unions.
- Approve the establishment, operation of branches or relocation of existing branches.



- Disclose or approve the disclosure of any confidential information secured or produced by the administrator in making an investigation or examination of a credit union.
- Approve a credit union's place of business or change in place of business.
- Approve a conversion of a state-chartered credit union to a federal charter.
- Authorize a credit union organized in another state to do business in Kansas.

In addition, the Administrator has:

- General charge of the work of the Credit Union Council and shall keep a permanent record of all meetings and proceedings of the council.
- Administrative supervision of all agency employees.

### **Examination Process**

Each Kansas credit union is examined at least once every 18 months. The operations and condition of a particular credit union determine the length of time between examinations.

The KDCU on-site examination format is based on a system called AIRES (Automated Integrated Regulatory Examination System), which is used by both the state and federal credit union regulators and provides for continuity between the state and federal examinations.

At the conclusion of each examination KDCU issues a CAMEL rating in Capital, Asset Quality, Management, Earnings, and Asset-Liability Management. From the individual ratings of 1 (least financial risk) to 5 (most financial risk) an overall composite rating of 1 to 5 is assigned. As of December 1, 2010, the ratings were

CAMEL 1	14
2	56
3	9
4	3
5	0

A credit union with a composite 3, 4 or 5 CAMEL rating receive an examination no less than 12 months from their last exam.

Each examination includes a comparison of the credit union's financial ratios to standards recognized by regulators, in addition to peer group statistics.

The examination report incorporates an examiner's findings into a Document of Resolution, which identifies the areas to be addressed by the credit union's board of directors.

All document of resolution items are tracked by KDCU for completion with follow-up contacts scheduled to review the credit union's progress.

As part of the regulatory process, KDCU requires every credit union to remit a quarterly financial report (call report) to update the Department and the federal insurer.

KDCU continues a major initiative regarding risk focused examinations which focus examination time and effort on areas of highest risk.

The risk-focused exam concentrates on seven areas: Credit Risk, Interest Rate Risk, Liquidity Risk, Transaction Risk, Compliance Risk, Strategic Risk and Reputation Risk.

The National Credit Union Administration defers the examination of Kansas's state-chartered credit unions to KDCU because the Department staff demonstrates the ability to conduct examinations equal in scope to any examination by the federal insurer.

Federal insurance examiners participate in joint examinations when KDCU and federal insurance fund representatives determine the need for a joint examination. KDCU examiners are in-charge of all joint examinations.

### **Credit Union Council**

The Credit Union Council serves as an advisory group to the Administrator on issues and concerns of credit unions. The Council reviews proposed legislation and regulations under consideration by the agency as well as the Department's biennial budget.

Each of the seven members of the Council is appointed by the Governor for a term of three years and each may serve for two consecutive three-year terms. Five of the seven members shall be officers of state-chartered credit unions and four of these five Council members must be from different congressional districts and two are public members.

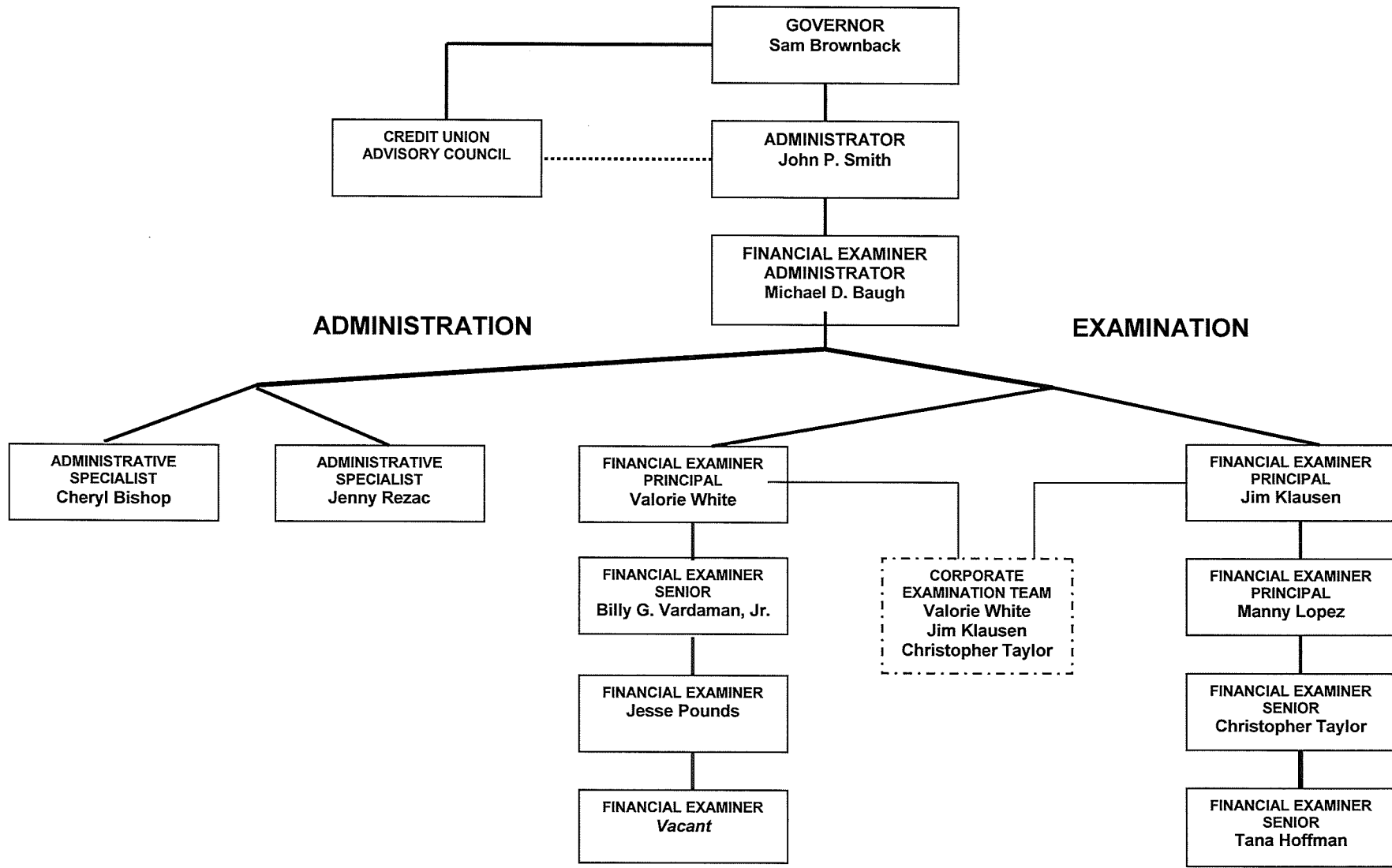
No more than four of the Council members may be from the same political party. The Council holds one regular council meeting during each quarter of the year and may hold other meetings, as the Council considers appropriate.

## KANSAS DEPARTMENT OF CREDIT UNIONS

## ORGANIZATIONAL CHART

1-18-2011

S-10





KANSAS CREDIT UNION ASSOCIATION

**To: House Financial Institutions Committee**

**From: Haley DaVee, Vice President of Governmental & Public Affairs**

**Date: Tuesday, January 18, 2011**

**Re: Credit Union Industry Update**

The Kansas Credit Union Association appreciates the opportunity to comment today on the state of the credit union industry in Kansas.

The first Kansas credit union was chartered in 1929, on the eve of the greatest economic depression faced by our country. The number of credit unions continued to grow throughout the 1930s as consumers pooled their money together to create opportunities for savings and lending by putting "people" ahead of "profits". The 101 Kansas credit unions today continue in this same vein and are structured as not-for-profit financial cooperatives whose purpose is to serve the financial needs of their 605,000+ member/owners. They are governed by a board of uncompensated volunteers elected by the members of the credit union.

Kansas has a strong tradition and presence of state chartered credit unions—with 80 state chartered and 21 federally chartered. The importance of having a local regulator that understands local market conditions cannot be overstressed as Kansas continues to recover from the economic recession.

To say that the past 24 months have been tumultuous for the financial services industry would be an understatement. However, KCUA is pleased to report that Kansas credit unions are generally healthy and well capitalized. A recent analysis of September 2010 call report data showed that the Kansas credit union industry was ahead of national growth trends in assets, shares, and loans. Kansas credit unions have an average capital ratio of 11.7% of assets, which is a higher level than credit unions nationwide. In addition, delinquency rates have declined since September 2009 from 1.43% to 1.35% and the Kansas rate remains below the national average.

The positive position of credit unions stems from the fact that every decision made at a credit union is driven by bettering the members and the financial institution they co-own. The focus at credit unions is on working with members in the interest of maintaining a strong and secure institution for all. Credit unions have long provided financial literacy tools to members and offered products to help members when they need it most, including offering small dollar loans to help members get through tough times. Credit unions today continue to serve their members as they cope with the economic recession.

In addition, there is a fundamental conservatism that arises from the cooperative structure of credit unions. Credit unions must maintain similar capital levels as banks for safety and soundness. As cooperatives, credit unions cannot raise capital from outside sources when they face a shortage of capital. The only way for credit unions to maintain and grow their capital levels is through retained earnings.

Kansas credit unions make up 6.8% of the marketplace by assets in Kansas. Though credit unions are only a small portion of the overall marketplace, there is an ever-greater need today for safe and sound options in the financial services marketplace. Despite being stable and well capitalized, Kansas credit unions are not immune from feeling the effects of the recession. Our members are primarily concerned about the increasing assessments for the insurance fund and the increasing regulatory burden facing credit unions as policymakers in Washington DC work to prevent future abuses in the system.

### **Increased Assessments**

Credit unions in Kansas are federally insured by the National Credit Union Share Insurance Fund under the National Credit Union Administration. Though there have been no credit union failures in Kansas, there has been an increasing financial burden placed upon Kansas credit unions as they share in the cost of replenishing the fund.

Prior to 2008, NCUA assessments to credit unions had been negligible primarily because in normal times the interest on the assets owned by the insurance fund was sufficient to cover all expenses. Since 2008, credit unions have seen assessments rise from 15 bp in 2009, to 26 bp in 2010, to an estimated 35 bp for 2011.

### **Increased Regulatory Scrutiny**

The second factor that has impacted Kansas credit unions is the increasing volume of federal legislation and corresponding regulation that is being issued as the federal government attempts to prevent a similar crisis from occurring in the future. Attached you will see a list of the federal regulations that were implemented in 2010 and what we will be working to come into compliance with in 2011.

While Kansas credit unions did not engage in the activities that caused the economic crisis, they are inevitably affected by regulations that encompass all financial institutions. These regulations oftentimes require credit unions to change systems and processes. In addition, most require vast amounts of communication with members. Coming into compliance is oftentimes costly—in both equipment changes, communications to members, and staff resources.

In conclusion, the Kansas credit union industry is working as hard as ever with their members to see them through these difficult economic times. As not-for-profit financial cooperatives, Kansas credit unions have a long history of serving as a safe, stable alternative to traditional banking. We believe that ultimately the consumer is better served by having choices for their financial services. Thank you again for the opportunity to give you an update on the state of the credit union industry.

# MAJOR FEDERAL REGULATORY DEVELOPMENTS IMPACTING CREDIT UNION COMPLIANCE REQUIREMENTS 2010 through 2011

Prepared January 18, 2011

DATE	REGULATION	DESCRIPTION
01/1/10	(RESPA) (HUD)	Lenders must comply with new Good Faith Estimate rules and provide borrowers with revised GFE and HUD-1 settlement forms.
01/1/10	Truth in Savings (Federal Reserve Board)  See also 10/1/10 for NCUA's rules	New disclosure requirements for overdraft protection programs: Under new Truth in Savings rules, depository institutions have to disclose on their periodic statements both the monthly and year-to-date fees charged for overdrafts and returned items (NSF).
1/1/2010	Right to Financial Privacy Act/ Regulation S	Final rule amends the regulation that determines the rates and conditions under which a government agency must reimburse financial institutions for costs related to producing member financial records.
2/14/10	Regulation Z – (Fed)	New disclosure requirements for private educational loans: Regulation Z is amended to expand information on these types of loans.
2/22/10	Credit CARD Act of 2009 (Fed)	Most credit card rules go into effect: The rules implementing most of the Credit CARD Act of 2009, which impose broad restrictions on credit card programs by amending Regulation Z, were finalized in early January (four provisions applying to all open-end loans also effective).
2/27/10	Expedited Funds Availability Act of 1987 – (Fed)	Fed moves all its check processing operations to one location: This change make all checks “local” under the Expedited Funds Availability Act of 1987 (Regulation CC implementing rules), impacting depository institutions’ disclosures and availability schedules.
6/1/10	Unlawful Internet Gambling Enforcement Act of 2006 – (Fed & Treasury)	New Internet gambling regulations go into effect, implementing UIGEA. These rules were postponed from the original Dec. 1, 2009 .
7/1/10	Regulation E (Fed)	Institutions must obtain the accountholder’s “opt in” to charge a fee on ATM and one-time debit card overdrafts.
7/1/10	Regulation Z/Truth in Lending (Fed)	Major revisions to the regulations governing open-end loans: This is the first comprehensive revision in a quarter of a century of the Regulation Z/Truth in Lending rules applicable to all open-end loans (other than home equity loans), including other credit card revisions.
7/1/10	FACT Act Furnisher regulations (NCUA, FTC and the federal banking agencies)	Regulations implement the accuracy and integrity and direct dispute provisions of Section 312 of the FACT Act (Section 623 of the FCRA).

8/22/10	Amendments to Regulation Z (Fed)	The last of the Credit CARD Act rules go into effect: establish what are reasonable and proportional penalty fees and charges on credit cards, and how credit card issuers are to reevaluate every six months any interest rate increase imposed since January 1, 2009.
8/22/10 (See also 1/31/11)	Gift card restrictions: (Fed)	Amendments to Regulation E, required by the CARD Act, restrict the fees and expiration dates that apply to gift cards, certificates, and general-use prepaid cards that are sold or issued to consumers primarily for personal, family, or household purposes. (Gift cards or certificates already produced by April 1, 2010 can be used until January 31, 2011, but the actual terms and conditions have to conform to the August 2010 deadline.)
10/1/10	New mortgage staff registration regulations are effective: (NCUA and the federal banking agencies, with the Conference of State Bank Supervisors maintaining the registry)	Regulations issued by NCUA and the federal banking agencies are effective at the beginning of October with actual registration expected during the first half of 2011. Implementation of the SAFE Act will require certain employees involved in originating residential mortgage loans to register annually with a national database; the actual registry is still being developed in coordination with the states. The registration procedures are expected to be announced by the end of 2010 with credit union employees then having six months to register.
10/1/10	Truth in Savings change requiring the use of the term "Total Overdraft Fees": (NCUA)	NCUA amended its TIS rules as required by law to be substantially similar to the Fed's TIS overdraft rules.
10/25/10	NCUA Lending – Short Term, Small Amount Loans NCUA Lending, NCUA Part 701.21	NCUA's final rule gives FCUS the ability to offer short term, small amount loans as an option to pay day loans. FCUs are allowed to charge a maximum APR of 28% for STS loans and final rule places restrictions on the terms, amount and fees for these loans
11/26/10	Regulation D: Reserve Requirements of Depository Institutions (Fed)	Annual adjustment to the reserve and reporting requirements of depository institutions.
12/31/10	FACT Act ID theft red flag rules for institutions under FTC's jurisdiction	The FTC delayed enforcement of the red flags rule until for creditors subject to its enforcement authority (which includes state chartered credit unions). This has no effect on other agencies' enforcement of the original 11/1/08 effective date.
1/1/11	FACT Act Risk-based pricing notices (Fed and FTC)	CUs will have to provide a risk-based pricing notice if the CU uses a consumer report in connection with a member's credit application or extension; and based at least in part on that report, grants or extends credit to the member on "material terms" (i.e., APR) that are "materially less



		favorable” than the most favorable terms available to a substantial portion of the credit union’s members offered the same type of credit.
1/1/11	Privacy - Model Privacy Notices (Part 716)	Regulation provides a standardized, model privacy form that can be issued to members/consumers. Although use of the model form is not mandated, privacy notices using the sample clauses of the old regulation will no longer receive safe harbor compliance protection after December 31, 2010. As of January 1, 2011, only privacy forms utilizing the model format will receive the safe harbor.
1/1/11	Truth in Lending / Regulation Z: Mortgage Loan rules---Notice of sale or transfer of mortgages (Fed)	This Final Rule issued in September 2010 contains some changes from the Interim Rule issued in November, 2009. The rule requires any party that acquires ownership interest of an existing mortgage loan through purchase, assignment or transfer to provide certain required disclosures within 30 days of the change in ownership.
1/1/11	Truth in Lending / Regulation Z--- Annual Adjustment of fee-based trigger for additional mortgage loan disclosures under HOEPA (Fed)	The Fed issued its annual adjustment of the dollar amount of fees that triggers additional disclosures under TILA and HOEPA.
1/3/2011	Bank Secrecy Act: Confidentiality of Suspicious Activity Reports	Final rule addresses the statutory prohibition against SAR disclosure by financial institutions and government; modifies the safe harbor provision to include changes made under the USA Patriot Act; and makes minor technical revisions that make the various SAR rules consistent.
1/28/11	S.A.F.E. Act - Estimated Federal Registration Start Date  NCUA and the federal banking agencies	The final SAFE Act regulations were effective on 10/1/10. However, compliance with the registration requirement is not required until 180 days after the date the agencies provide in a public notice that the registry is accepting initial registrations. This is estimated to occur sometime after 1/28/11.
1/30/11	Truth in Lending / Regulation Z--- MDIA Interim Final Rule requiring disclosure of how mortgage payments change over time.	The Fed’s Interim Final Rule that implements provisions of the MDIA requiring disclosure in a table of how mortgage loan payments can change over time. Credit unions must comply with the interim rule for applications they receive on or after January 30, 2011.
1/31/11  See also 8/22/10	Regulation E - Gift Card Rule Change Effective Date	Extension of the effective date to January 31, 2011 when the actual gift card or gift certificate has to be replaced, although all the substantive gift card restrictions on notice, fees and expiration dates went into effect on August 22, 2010 -- adopted so that businesses didn’t have to physically replace the plastic or paper before the 2010 holiday season
3/2/11	Regulation: NCUA’s Part 740: Notice of Insured Status	NCUA amended the share insurance and official sign regulations to reflect the permanent increased standard maximum insurance amount (SMSIA) of \$250,000.



4/1/11	Truth in Lending / Regulation Z--- Mortgage Loan Originator Compensation Practices (Fed)	The Final Rule prohibits payments to loan originators based on the loan terms or conditions such as the interest rate. Payments may be based upon loan amounts. The rule also prohibits loan originators from steering consumers to consummate a loan not in their best interest.
4/1/11	Truth in Lending / Regulation Z--- Appraisal Independence	The Interim Rule includes several provisions that protect the integrity of the appraisal process. For example, the rule prohibits coercion and other similar actions designed to cause appraisers to base the appraised value of real estate on factors other than their independent judgment
Pending	Major revisions to Regulation Z's closed-end mortgage loans and HELOC loans: (Fed)	May be finalized during 2010 (comment periods closed in December 2009), with an effective date probably 18 months after the regulations are finalized; but with the creation of a new Consumer Financial Protection Bureau, which is charged with reconciling TILA and RESPA disclosures, these regulations continue to be delayed.
3/15/12	ADA Accessibility Standards Compliance Date	The Department of Justice's ADA regulations are effective on March 15, 2011. The 2010 Accessibility Standards are effective on March 15, 2012.
7/21/11	Designated Transfer Date for the new Bureau of Consumer Financial Protection	Status: Pursuant to the Consumer Financial Protection Act of 2010, the Secretary of the Treasury designated July 21, 2011, as the date for the transfer of functions to the Bureau of Consumer Financial Protection (CFPB).



## **Mission statement**

The Mission of the Office of the Kansas Securities Commissioner is to protect and inform Kansas investors, to promote integrity, fairness and full disclosure in financial services, and to foster capital formation.

## **History and Overview**

In 1911, Kansas became the first state to pass a law regulating the sale of investments. Lawmakers stated that the law was an attempt to prevent the sale of securities which had nothing behind them other than the "blue sky." In the next few years, other states passed similar laws and since that time, all state securities laws are known as Blue Sky laws. Following the great Stock Market Crash of 1929, the federal government began to regulate investment activity with the passage of the Securities Act of 1933 and the creation of the U.S. Securities and Exchange Commission in 1934.

The Office of the Kansas Securities Commissioner is an independent state agency funded entirely by industry fees. The agency regulates and monitors the offering of securities and financial services within Kansas by registering securities, broker-dealers and their agents, investment advisers and their representatives, loan brokers and certain land subdivisions. Agency staff also investigate potential violations of the laws and ensure that registered persons and entities comply with industry, legal, and accounting standards. The staff has the authority to investigate any investment related activity which has occurred in Kansas, even when companies or individuals from outside of the state are involved.

The Securities Commissioner administers the Kansas Uniform Securities Act, the Uniform Land Sales Practices Act, and the Loan Brokers Act. The Commissioner enforces these laws through administrative, civil and criminal proceedings.

## **Industry Compliance**

All registered companies and individuals are subject to certain ethical and industry standards, and must also abide by federal and state laws and regulations. The Commissioner's staff has the authority to examine the books and records of any registrant. The staff responds to questions from the public concerning the securities industry, and investigates complaints and apparent misconduct. The staff also provides educational opportunities to the industry regarding compliance with applicable standards and rules.

*Attachment 10*  
*HFIL 1-18-11*

## **Registration**

### **Securities, Loan Brokers and Land Subdivisions**

Registration requirements for securities offerings, loan brokers and land subdivisions provide for Kansans to be treated fairly and fully informed about investments and loan broker services. The staff evaluates compliance with legal and accounting registration requirements, and provides assistance in interpreting and complying with registration exemptions. Staff members consult with and advise small businesses seeking to raise capital. Information on the registration of particular securities offerings is available to the public.

### **Broker-Dealers, Agents, Investment Advisers and Representatives**

Brokerage firms and the agents who work for them, as well as Investment Advisory firms and their representatives who provide investment advice generally must register with the Securities Commissioner before engaging in business in Kansas or soliciting investments from Kansas residents. Each individual must pass examinations and provide specific background information before registration can be approved. Information on a company's or individual's registration, employment history and disciplinary history is available to the public.

## **Enforcement**

The enforcement staff detects and investigates violations of the laws administered by the agency. The staff of certified law enforcement officers responds to inquiries from the public and initiates its own investigations. The agency has the authority to investigate activities originating both inside and outside of Kansas, whether concerning registered or unregistered persons or entities. The staff works closely with local, state and federal law enforcement agencies.

## **Legal**

Attorneys for the agency provide advice to the office regarding the Commissioner's activities, authority and responsibilities. The attorneys represent the agency in administrative and civil proceedings, and represent the State in criminal prosecutions. Legal staff also address public questions concerning the laws administered by the office, and provide opinions interpreting the laws and regulations.

## **Investor Education**

The Kansas Securities Commissioner has offices located in Topeka and in Wichita. Anyone with concerns or questions relating to investments or loan brokering should contact the office. The Securities Commissioner can:

- Tell you whether securities, individuals or companies are registered in Kansas.
- Inform you about the disciplinary history of broker-dealers, agents and investment advisers.
- Explain what a prospectus or offering documents is, and why you should read one before investing.
- Answer questions concerning your rights and responsibilities when dealing with a securities agent or investment adviser.
- Investigate problems with your brokerage account, questionable sales practices, telephone solicitations and allegations of fraud or misrepresentation.
- Advise you of what the agency can and cannot do on your behalf.
- Discuss loan brokers and the laws that pertain to them.
- Provide you with written information relating to the securities industry, types of securities, and the making of investment decisions.

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