

## **MINUTES**

### **SPECIAL COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE**

October 17-18, 2007  
Room 519-S—Statehouse

#### **Members Present**

Senator Ruth Teichman, Chairperson  
Representative Clark Shultz, Vice-Chairperson  
Senator Roger Pine  
Representative Nile Dillmore  
Representative Rocky Fund  
Representative Peggy Mast (October 17)  
Representative Ronnie Metsker  
Representative Cindy Neighbor

#### **Member Absent**

Senator Chris Steineger, Ranking Minority Member

#### **Staff**

Melissa Calderwood, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Jarod Waltner, Kansas Legislative Research Department  
Ken Wilke, Revisor of Statutes Office  
Bev Beam, Committee Secretary

#### **Conferees**

Barbara J. Hinton, Legislative Post Auditor  
Joe Lawhon, Principal Auditor, Legislative Post Audit  
John P. Smith, Administrator, Kansas Department of Credit Unions  
Marla Marsh, CEO, Kansas Credit Union Association  
Max Carr-Howard, Blackwell, Sanders, Peper  
Craig Meader (First National Bank of Kansas, Burlington), Kansas Bankers Association  
Matt Goddard, Vice President, Heartland Community Bankers Association  
Stuart Little, Community Bankers Association  
Brian Knight, Senior Vice President for Regulatory Affairs, National Association of State Credit Union Supervisors (NASCUS)

Sonya Allen, General Counsel, Office of the Kansas State Bank Commissioner

Testimony (written or oral) from interested individuals/organizations:

Erich Schaefer, Golden Plains Credit Union  
Lee Williams, Central Star Credit Union  
Mike Lackey, Credit Union 1 of Kansas  
Dennis Smith, Mid American Credit Union member  
Gary Regoli, CEO, Boeing Credit Union, Wichita  
Rick Dodds, Board Chairman, Boeing Credit Union, Wichita  
Marla Marsh, Kansas Credit Union Association  
Larry Damm, Cessna Employees Credit Union, Wichita (written only)  
Marilyn Wells, Catholic Family Federal Credit Union, Wichita (written only)  
David Fowler, First State Bank, Burlingame, Kansas  
Rich Merker, Inter-State Federal Savings, Kansas City, Kansas  
Matt Goddard, Heartland Community Bankers Association  
Doug Wareham, Senior Vice-President, Government Relations, Kansas Bankers Association

Legislative responses to issue:

David Adams, Michigan Credit Union League  
Bill Ratliff, Missouri Bankers Association

### **Wednesday, October 17 Morning Session**

Committee Chairperson, Senator Ruth Teichman, called the meeting to order at 10:00 a.m. and welcomed everyone to the meeting. Senator Teichman announced that Senator Chris Steineger would not be able to attend this meeting. Members of the Committee and staff were asked to introduce themselves.

Chairperson Teichman started the meeting by stating that the charge of the interim Committee is to review the recent Legislative Post Audit report entitled "Regulation of Credit Unions," and to review the Department of Credit Unions' procedures for ensuring institutions' safety, soundness, and compliance with the law. In particular, to study the Post Audit findings related to the Department of Credit Unions' interpretation of credit union membership requirements and the Department's examination activities as they relate to the clearly-defined procedures following the current established procedures and enforcement activities.

Barbara Hinton, Legislative Post Auditor, briefly went through the process for how this audit got approved. She stated the audit was requested by Representative Cox and Senator Teichman. Ms. Hinton said an audit can be requested by any legislator or any committee. She said the auditors worked with those requesting the report to develop a scope statement that provides some background about the entity to be audited and tries to identify the legislative issues or concerns. The legislative questions in this audit related to knowing whether the Department of Credit Unions was providing adequate oversight of credit unions, if expanded services were consistent with their current statutory authority, whether Kansas consumers were adequately protected, and whether the Department had adequate procedures for regulating expansions or mergers of credit unions. The

last issue addressed whether the Department had allowed out-of-state credit unions to operate branches in Kansas without reciprocity agreements. Ms. Hinton then introduced Joe Lawhon, Principal Auditor, who was the audit supervisor.

Mr. Lawhon began with an overview of the Kansas Department of Credit Unions. He said the Department of Credit Unions was established in 1968 to oversee the safety and soundness of Kansas credit unions. Prior to 1968, Mr. Lawhon noted credit unions were regulated by the State Bank Commissioner. The Department is a small agency with only 13 employees, including nine examiners.

Mr. Lawhon said credit unions are not-for-profit entities governed by a volunteer board elected by the credit union members with membership limited to a specific group of people. Two terms are commonly used to define that membership: "common bond" and "field of membership." *Common bond* is the characteristic that distinguishes a particular group of people from the general public. A common bond may be where people live, work, or go to church. Currently, a credit union's membership may be based on more than one common bond, such as individuals who are educators or individuals who reside in Shawnee County. *Field of Membership* are people who could become members because of the criteria set forth in common bond, such as the total number of individuals who are educators or who reside in Shawnee County.

Credit unions, Mr. Lawhon continued, can either be federally or state chartered. Kansas-chartered credit unions are regulated by the Department. Federally-chartered credit unions are regulated by the National Credit Union Administration (NCUA).

Mr. Lawhon provided answers to the four audit questions concerning credit unions, including:

- To what extent have credit unions grown in comparison with other segments of the financial-services industry?

Audit findings include: the vast majority of financial institutions are based in Kansas, but as of June 2005, 26 of these or 5 percent were based in another state; most Kansas-based credit unions and banks are state-chartered rather than federally chartered; among Kansas-based financial institutions, state-chartered credit unions and banks have grown significantly more than their federally chartered counterparts; and Kansas-based financial institutions generally have not grown as fast as financial institutions nationwide.

Mr. Lawhon also gave the following recommendations to help ensure that the Department of Credit Unions' process for examining credit unions treats credit unions consistently and operates in an effective manner:

- Enforce its policy requiring examiners to complete conflict-of-interest forms annually;
- Revise its procedures to prohibit management staff from reviewing and approving examination reports of credit unions where family members are employed;
- Develop written guidance for examiners concerning when to make a formal recommendation to credit union management;
- Evaluate whether the current process of tracking only the progress of certain recommendations could be improved by tracking all recommendations; and

- Develop procedures that outline the actions the Department will take when credit unions do not submit required documentation of corrective action by the due date.

Mr. Lawhon noted that, in general, the Department of Credit Unions has reasonable procedures in place for ensuring the safety and soundness of credit unions. The vast majority of credit union managers surveyed were satisfied with the Department's actions. He said, however, the improvements identified should provide greater assurance that the Department's regulatory efforts are consistent and effective (Attachment 1).

Chairperson Teichman then introduced John Smith, Administrator, Kansas Department of Credit Unions (KDCU). Mr. Smith began his remarks with a brief history of credit unions, noting among other things, that in 1929 the statute allowing the chartering of credit unions by the Secretary of State was approved by the Kansas Legislature. Mr. Smith said the mission of KDCU is to protect Kansas citizens and credit union members from undue risk of financial loss through the examination and supervision of Kansas chartered credit unions by assuring safe and sound operation and compliance with applicable laws and regulations. The KDCU has been accredited by the National Association of State Credit Union Supervisors (NASCUS) since 1995. Mr. Smith noted that to earn NASCUS accreditation, a state regulatory agency must demonstrate that it meets accreditation standards in six areas: administration and finance, personnel, training, credit union examination, supervision, and legislative powers. Accreditation is renewed every five years by the agency completing an extensive self-examination in the six areas followed by an on-site visit by the heads of three state credit union regulatory agencies and a NASCUS member, according to Mr. Smith.

Mr. Smith said since the release of the audit report, KDCU had adopted new regulations and changes in policies and procedures. Mr. Smith first commented on the audit finding regarding the interpretation of "field of membership" (KSA 17-2205). In response to an open records request from the Kansas Credit Union Association (KCUA), with the Department's assistance, the KCUA reviewed and tabulated the field of membership of Kansas credit unions chartered since the enactment of the 1929 legislation authorizing credit union organizations. From 1929 to 2007, 318 credit unions were chartered, of these 79 or 24.8 percent were chartered as multiple common bond field of membership. Mr. Smith's testimony noted that the Office of the State Bank Commissioner and the Administrator have consistently interpreted KSA 17-2205 as allowing credit unions with multiple common bond field of membership. Credit unions with multiple common bonds also occur as a result of the merger of credit unions. Mergers, Mr. Smith stated, occur for several reasons; the sponsor company or organization relocates or goes out of business or the members decide to merge their credit union with another credit union. KDCU also may force a credit union that is experiencing problems to merge.

The Administrator also stated that the system of chartering credit unions with multiple common bonds appears to have served the needs of those organizing credit unions. KDCU supports the continuation of a system that has performed to the benefit of the member owners of Kansas credit unions. KDCU supports remedial legislation so that the law would conform to long-standing practice.

Mr. Smith also responded to audit findings including incidental powers and procedural recommendations (*i.e.*, conflict-of-interest and tracking, documentation of corrective action, letters of understanding and agreement). Mr. Smith responded to a finding calling for the development of written procedures for examiners to follow when reviewing a credit union's quarterly report by indicating that such written procedures are unnecessary. Mr. Smith's response noted: quarterly reports are electronic with a built-in algorithm to detect errors; review of quarterly reports is part of ongoing examiner training; written procedures cannot replace or be a substitute for training and experience; and a new 'risk report module' has been implemented since the issuance of the report.

(The new module allows KDCU to retrieve and compare quarterly reports one day following electronic uploading). Mr. Smith concluded his testimony, noting that to improve supervision of Kansas credit unions, KDCU has adopted several new regulations and is in the process of revising and updating existing regulations (Attachment 2).

The Chairperson next called on Marla Marsh, CEO, Kansas Credit Union Association, to give the financial institution's response to the court filing. Ms. Marsh said that after reviewing the Post Audit report and discussing the staff's recommendations, the Legislative Post Audit Committee did not see a need to recommend a statutory change or to direct the Department to change its procedures.

Ms. Marsh continued, noting that both the current and past administrators of the Department were told by the Attorney General's (AG's) Office to continue proceeding as they had been in the past and rely on the precedent set back in 1946 by the Bank Commissioner's Office. Both those administrators recommended that the Post Audit staff talk to the AG's office (the general counsel for the Department). When presenting the report before the National Conference of State Legislatures (2006 Annual Meeting), the Post Audit staff, Ms. Marsh testified, stated they had not contacted the AG's Office. KCUA indicated this is a significant oversight and one that could have led to greater understanding of the history of how this line of interpretation developed in the first place if it had only been pursued. She said credit unions want to have regulations that are promulgated, that are non-onerous, that are appropriate, that keep up with the times, that they can rely on when they have different administrators coming through the doors and when they have different examination staffs providing examination.

Ms. Marsh also noted KCUA agrees (with the audit finding) that the growth of credit unions has not come at the expense of other financial institutions. Ms. Marsh also highlighted differences between credit unions and other institutions, including banks. Credit unions can only accumulate their capital or their reserves to operate on or their safety and soundness factor through their earnings. They do not have any outside capital stock. Credit unions have one member, one vote. Every member of the credit union is equal in their ownership. Capital accumulation is essential for all financial institutions. It is the key for determining whether or not financial institutions should be allowed to expand and grow. Ms. Marsh concluded, noting that it is the opinion of KCUA that the most significant findings of this entire study are that credit unions continue to be what they have been all along, not-for-profit financial cooperatives, as outlined under the current law. Credit unions have only 5 percent of the market share and have not grown at the expense of banks, even with the multiple common bond interpretation that started in 1946 (Attachment 3).

Max Carr-Howard of Blackwell, Sanders, Peper (counsel to KCUA), next addressed legal interpretations in the Post Audit report, noting among other things, his concern that the Post Audit report has a fundamental misunderstanding of the application of the federal case on which they rely to interpret that the Kansas Law has either been violated or misinterpreted by the Department. Mr. Carr-Howard's testimony noted that relying on the U.S. Supreme Court case is flawed because it does not have final say of what the Kansas law means. The Kansas Supreme Court will give deference to the interpretation by the Department (issue of common bond). The statute reads that a common bond shall exist, it does not specifically say a single common bond, and it does not explicitly say multiple common bonds. It is a statute written in 1929, there is no legislative history. Mr. Carr-Howard continued by indicating that the United States Supreme Court decision was immediately reversed by the United States Congress when it passed an amendment after the Court's decision allowing multiple common bonds. Mr. Carr-Howard stated when the Kansas Supreme Court interprets a statute, it does not just look at one small provision as the Audit Committee did, it looks at the entire provision to understand what the Legislature's intent was and if this was presented to the Kansas Supreme Court, which it has not yet been, the Kansas Supreme Court would not just look at the phrase "a common bond," it would consider the entire law and it would consider the fact that

one of the primary mandates of the statute is to insure the financial integrity of the credit unions and to protect the credit union members. Mr. Carr-Howard concluded it is the opinion of the firm that there is no need to change the law in order to permit multiple common bonds. There is nothing explicit in the statute that prohibits multiple common bonds (Attachment 4).

### **Afternoon Session**

The Chairperson called the meeting to order and resumed testimony. First to testify was Craig Meader, First National Bank of Kansas, Burlington/Waverly for the Kansas Bankers Association (KBA). Mr. Meader said he is past KBA chairman and currently serves as chairman of the special task force dedicated to achieving equal tax and regulatory treatment for banks and large, diversified, full-service credit unions. Mr. Meader said bankers are keenly aware of the unchecked growth and expansion patterns of large credit unions in Kansas, but the organization felt an unbiased third-party review was necessary.

Mr. Meader said after reviewing the Post Audit report, the KBA does agree with the findings of Post Audit that state-chartered credit unions in Kansas have and are continuing to take advantage of the credit unions' failure to comply with KSA 17-2205 (field of membership). Mr. Meader noted the most telling finding states the Department's interpretation of credit unions' membership requirement does not appear to conform to state law. The testimony highlighted the finding that there are at least five credit unions in the State of Kansas with field of membership in the entire state, which the KBA believes is the most blatant example of ignoring current law. On the issue of multiple bonds, Mr. Meader noted the report states that while federal law allows federally chartered credit unions to serve people from two or more occupational groups, federal law does not allow them to include geographic groups in multiple bonds. The Kansas Credit Union Department's mixing of occupational and geographic groups has enabled credit unions to greatly expand their reach, as referenced by the example of the Boeing Credit Union growth from 44,000 eligible members in 1995 to over two million in 2005.

In summary, Mr. Meader said KBA believes the Kansas Credit Union Department's process for approving new branch locations, mergers, acquisitions, and modifications to the credit unions' field of membership lacks transparency and, therefore, accountability. The KBA also believes it is the responsibility of the Legislature to address the non-compliance concerns identified in the report. Mr. Meader requested that the Special Committee on Financial Institutions and Insurance include in its report to the LCC, the formal recommendation supporting the introduction of legislation to address both the credit union field of membership non-compliance issue and the lack of transparency regarding credit union branching, mergers, acquisitions, and modifications to the credit union field of membership (Attachment 5).

Matt Goddard, Vice President, Heartland Community Bankers Association (HCBA), testified that while HCBA generally agrees with the conclusions in the Legislative Post Audit report, they are alarmed with the finding, "The Department's interpretation of credit unions' membership requirement doesn't appear to conform to State Law." Mr. Goddard noted the report casts serious doubt as to whether the Department of Credit Unions is applying Kansas law or instead choosing to ignore it. He stated if current law is not practical or poses a challenge to the safety and soundness of credit unions, the law should be changed. If that is not the case, the law should be enforced. Mr. Goddard said HCBA has several disagreements with the report and its overview, including: the report states that credit unions are not-for-profit, but they do, in fact, make a profit. They engage in commercial business activities and their primary corporate function is not a charitable work. Tax-exempt credit unions should not be confused with tax exempt 501c(3) charities. Another issue with the overview

is its claim that credit union membership “is limited to a specific group of people.” He said the so-called “common bond” has been stretched to the point of absurdity and in many credit unions is nonexistent. He added that adequate regulatory procedures do not appear to be in place for Kansas credit unions, especially as they relate to the expanding definition of field of membership. Reading the report, Mr. Goddard concluded, HCBA members also are left with the conclusion that the rapid growth of the community charter has outpaced the ability of the Department to monitor the lending practices of credit unions (Attachment 6).

Stuart Little, Little Government Relations, testified that Community Bankers Association (CBA) members were pleased the audit report revealed that, “for the most part, we found the Department has and follows adequate procedures to ensure the safety and soundness of credit unions, but some improvements are needed.” Mr. Little said CBA hopes this Committee can thoroughly examine the aspects of non-compliance with state law regarding the field-of-membership expansions. He said it is the Association’s hope that this review will result in the Department of Credit Unions moving toward a change in the statute to make their current practice lawful or return to compliance with current state statute (field of membership practices) (Attachment 7).

Melissa Calderwood, Principal Analyst, Kansas Legislative Research Department, next gave an overview, “Origins of the Credit Union” and discussed “Kansas Credit Unions Today.” Summarizing Ms. Calderwood’s report, she stated that modern day credit unions have historical roots dating back to the fall of the feudal system, the Industrial Revolution in Europe and the growth of collectivism, the arrival of the credit union in America, to the regulation and growth of credit unions today. A timeline detailing historical events in the credit union movement was attached to her memorandum. Specifically, Ms. Calderwood stated the American credit union was modeled after its European counterpart in that its members function as a fiscal collective and cooperative, uniting together to create a not-for-profit financial institution. She said European influences that shaped the inception of the credit union are seen in principles utilized in today’s credit unions, such as members deposit their funds for savings and the credit union makes loans available to its members. She said credit unions are comprised of members with a commonality, such as a profession.

Ms. Calderwood said the philosophy of “people helping people” guided the founding of the credit union movement in the United States. She said in 1929 the Kansas Legislature passed, and the Governor approved, SB 248 allowing the organization of credit unions in the State of Kansas. The law regarding membership in a credit union specified that credit union organizations “shall be limited to groups of both large and small membership, having a “common bond” of occupation or association or to groups residing within a well-defined neighborhood, community or rural district.”

Under the 1929 law, oversight of the credit unions was the role of the State Bank Commissioner. She added that in 1968, HB 1636 established new oversight for the state-chartered credit unions. The bill called for oversight of those credit unions by the Kansas Department of Credit Unions and its Administrator and the Credit Union Council (a seven-member council appointed by the Governor). Currently, the Department’s oversight includes 88 natural person member-owned, state-chartered credit unions and one corporate credit union (Attachment 8).

Brian Knight, Senior Vice President, Regulatory Affairs, National Association of State Credit Union Supervisors (NASCUS), then testified. Mr. Knight stated that since 1965, NASCUS has served as the professional association of the nation’s state and territorial credit union regulatory agencies. He said NASCUS facilitates communication and coordination among the state agencies and between the state and federal systems. Mr. Knight testified as to the method of accreditation. He said accreditation means that the state regulatory agency meets the highest levels of regulatory proficiency. If at any time the Performance Standards Committee has reason for concern that an accredited agency’s adherence to accreditation standards has been diminished, the Committee may

conduct a special review and, if warranted, suspend or revoke accreditation or place an agency on probation until the deficiency is corrected.

Mr. Knight continued his testimony by clarifying NASCUS' position on a credit union's "field of membership." He stated that NASCUS does not advocate one field of membership approach over another but believes that those decisions are public policy decisions and should be left to state legislative and executive bodies. Regarding "common bond," Mr. Knight stated that generally speaking, credit union field of membership is often presented in terms of varying common bonds. He said in this context, common bond is understood to define the unifying characteristics of groups of people who qualify for credit union membership. Single common bond would denote a credit union whose membership consists of a single employee or associational group or a single community or geographic area. Multiple common bonds denote membership in a credit union which includes multiple groups with distinct common bonds. These might include employee groups, association groups, trade industry groups, communities and geographic areas, or some combination thereof. Mr. Knight said approaches to common bond and credit union field of membership varies between the states and between the state and federal system. He said generally speaking, field of membership itself is not usually considered a safety and soundness issue but rather a public policy issue (Attachment 9).

John Smith, Administrator, KDCU, next presented a comparison of financial institutions branching and merger procedures and restrictions (credit unions). Following Mr. Smith's testimony, Sonya Allen, General Counsel, Office of the Kansas State Bank Commissioner, highlighted branching and merger procedures and restrictions (banks).

Mr. Smith stated that as of June, 2007, 89 credit unions were chartered under the credit union laws of Kansas. With regard to branching, these 89 credit unions operate a total of 191 main office and branch locations. From a historical perspective, credit unions in Kansas operate branches going back to at least the 1960s, he said. KSA 17-2226 limits the aggregate of real estate and improvements for current use and occupancy to 5 percent total shareholdings reserves and undivided earnings without the written approval of the Department's Administrator. Another statute, KSA 17-2221, requires credit unions to acquire the written approval of the Administrator before changing their place of business. As required by statute, credit unions annually report their branch locations to the Department. At each examination, the credit union examiners visit the branch locations to review signage, security measures, loan files, policies, and procedures.

Mr. Smith then reported on credit union mergers. A total of 126 credit unions have merged with other continuing credit unions since 1968. Of those, 89 occurring primarily before 1997 were sale-purchase arrangements with KSA 17-2229 as the authority. Another 31 mergers were completed through merger agreements utilizing the provisions of KSA 17-2228 as the authority. Six mergers were involuntary, completed as a result of administrative order. When a sale or merger or sale purchase agreement occurs, Mr. Smith testified, the purchasing or continuing credit union normally incorporates the field of membership of the merging credit union into the bylaws of the surviving credit union. This is to ensure that the members continue to receive services.

Credit unions are cooperative member-owned organizations, so the Board of Directors first works out the merger arrangement and then it is voted on by the members. The Board of Directors of the surviving credit union, Mr. Smith commented, must approve the incorporation of the field of membership into the credit union bylaws by the affirmative vote of two-thirds vote or, as an alternative, the members must attend a meeting of the membership and must approve the bylaw amendment by an affirmative vote of three-fourths of those in attendance. The credit union notifies the Administrator of the merger agreement and a date of certification of the merger agreement by the Administrator constitutes the date of approval. The agreement must be returned by the Administrator to the merging credit unions within 30 days. KSA 17-2228 provides authority for a credit union



chartered by another state or a federal credit union chartered by NCUA to merge with a Kansas credit union. In KSA 17-2229, a sale purchase agreement of any or all of the assets of the selling credit union is developed between the credit unions involved. The Administrator has one month to approve or disapprove the agreement or it is deemed approved without the Administrator's action. Subsequently, the sale-purchase agreement must be approved by at least three-fourths vote of the shareholders present at a membership meeting of the credit union being sold and of the shareholders present at the membership meeting of the purchasing credit union. Once the selling credit union has disposed of all assets, the Administrator files a Certificate of Dissolution for the selling credit union with the Kansas Secretary of State and the credit union ceases to exist (Attachment 10).

Sonya Allen, General Counsel, Office of the Kansas State Bank Commissioner, said regarding branching, all banks have to have state approval either from the State Banking Commissioner or the State Banking Board. If an applicant is a one or two rated bank and they are well capitalized, then the Commissioner can approve that application. If they are not an eligible bank, then it goes to the State Banking Board to be approved. There are publication requirements associated with branch applications and there can be hearings in the event the Board or Commissioner determines there should be a public hearing. There are time limits to process the application and for all applications except one on the list (provided during the meeting), the contracting trustee, there also is a federal agency approval. The review criteria for the Commissioner and the Banking Board approving a branch is identical – the applicant has to show there is reasonable probability of usefulness and success of the proposed branch bank and that the applicant bank is financially sound.

With respect to the application content, there are both state and federal forms. The applicant needs to describe the new state office, including the geographic area to be served and the staffing needs. They need to explain how the proposed new office would be useful and the impact the new office would have on the overall condition of the bank. They also have to provide information addressing whether the proposed premises and fixed asset costs comply with applicable statutory limits. They have a 50 percent fixed assets cap they cannot exceed without prior approval of the Commissioner.

With regard to the merger application, mergers and purchase and assumption transactions are all approved by the Commissioner. There is a three-week state publication requirement. For the federal agency approval, it is three weeks with the FDIC or one week with the Federal Reserve. When reviewing an application, the Office looks at the merger agreement, the director and stockholder proceedings that have taken place, the applicant has to write a description of the transaction and the financing arrangements, including any plans to raise additional equity or to incur debt, Ms. Allen said. The Bank Commissioner requires a pro forma balance sheet and regulatory capital schedule be provided that will show the effect of the merger transaction on the resulting institution. The Office also requires projected combined statements of income for the first year and pro forma and projected regulatory capital schedules. Additional requirements include directors and senior executive officers showing who will be running the institution and how the proposal is going to meet the convenience and needs of the community. With respect to the review criteria by statute, those are found in KSA 9-1724. The office is required to look at whether the interests of the depositors, creditors, and stockholders of each bank or corporation are protected. Is the merger, consolidation, or transfer in the public interest and is the merger, consolidation, or transfer made for a legitimate purpose (Attachment 11).

A Committee member asked Ms. Allen why, in her opinion, these regulations and procedures are so different from the credit unions. Ms. Allen stated the state banking codes are taken from the requirements at the federal level. She said the state mirrors a lot of those requirements. She said they are very interested in the safety and soundness of the institution and the protection of depositors. Ms. Allen further stated that a depositor should be able to know what is occurring with

their institution and have a right to move their funds to another institution in the event they do not like the activity of the current institution.

John Smith was then asked to respond to the same question. Mr. Smith said the background is the cooperative nature of credit unions originally and, to this day, as member-owned cooperatives. Credit unions share branches, he noted. When the laws were established, they were permissive in nature and credit unions did not come forth wanting a lot of regulations due to the nature of their organization. Mr. Smith also noted the agency does not have publication requirements, but there is a statute governing the release of information. Mr. Smith has to notify the party or credit union involved and the Department also provides quarterly call reports and that information is available on the Internet.

### **Thursday, October 18 Morning Session**

Testimony regarding “Field of Membership” was presented as part of a focused Committee discussion.

Erich Schaefer, Golden Plains Credit Union, Garden City, stated his credit union was originally chartered as Equity Federal Credit Union in 1951 to serve the employees of Cooperative Equity Exchange in Garden City, employees of the credit union, members of their immediate family and organizations of such persons. He said many amendments occurred following the organization, the first field of membership change occurring in March 1971. Membership was then expanded to include the residents of Wichita, Scott, Lane, Finney, and Kearny counties in Kansas. In 1974, the credit union converted to a state charter and the name was changed to Golden Plains Credit Union. He said in 1976 the credit union expanded the field of membership again to include persons residing in Kansas west of Highway 281. He said this membership expansion allowed the credit union to serve members in all or a portion of 46 Kansas counties. In May of 1981, the credit union was granted a statewide field of membership that allows Golden Plains to serve persons residing in Kansas. He said Golden Plains’ focus is on service to their members ([Attachment 12](#)).

Lee Williams, President, Central Star Credit Union, Wichita, noted Central Star has done both a merger and a field of membership expansion in the last six years. Central Star, Ms. Williams noted, is committed to ensuring that financial literacy is a key component of the financial services the credit union delivers to the citizens of Kansas. Central Star was founded in 1940 and remained a closed field of membership until 2001, when it applied to the Department of Credit Unions and was approved to expand to the five surrounding counties. When the credit union applied for expansion, it was required to submit a plan for how it was going to provide services to the community, what financial institutions were already available to that market place, the impact it was going to have on that community, and how it was going to deliver services to the community. Also, Central Star was required to submit its financials, and the impact the expansion would have on the credit union. Commenting on its merger, Ms. Williams noted Central Star merged about three years ago. The Board of Directors made the decision to expand our field of membership in an effort “to survive” and help provide the community with an expensive array of consumer products: ATMS, home banking, debit cards, and identity theft protection. Ms. Williams concluded her testimony by asking the Committee to stay focused on field of membership and community needs (rather than branching, merging) and realize what the Kansas Credit Unions provide to Kansas consumers.

Mike Lackey, Chairman of the Board of Directors, Credit Union 1 of Kansas, stated Credit Union 1 has a long history of serving members in every corner of the state without any geographic

boundaries. The credit union's statewide expansion in the 1970s certainly follows the language in the credit union law which allows for groups of both large and small membership, Mr. Lackey testified. Credit Union 1 currently provides access to member services through physical facilities in Topeka, Shawnee, and Fort Riley. The credit union has always considered physical facilities vital to providing members with access to its services. In a time when members are asking the credit union to be more creative in how it provides access to member services, the credit union finds it ironic that the Legislature is being asked to take away financial service alternatives for the members and citizens of Kansas (Attachment 13).

Dennis Smith, Mid-American Credit Union member, testified that he has been a member of the credit union since 1977, and spoke about how important the credit union has been to him. He said he is from Greensburg and the credit union in Greensburg allowed them to skip some payments when they were not able to make them and also offered invaluable advice after the May 2007 tornado. He said the convenience of the Mid-American Credit Union was so important and they are always willing to help.

Gary Regoli, President/CEO Boeing Wichita Credit Union (BWCU), stated that BWCU operates 11 branches in Wichita, Derby, Haysville, Andover, and Lawrence, with plans for additional branches over the next few years. The credit union has grown from \$70 million in assets in 1986 to just over \$506 million in assets as of September 30, 2007.

Mr. Regoli said even though BWCU is the largest in Kansas, it would be considered medium sized in many states, including every state that touches Kansas' borders except Nebraska. Branching remains an important component of any progressive bank, thrift, or credit union's future viability. Many financial institutions are actively adding branches in markets like Wichita, Topeka, Lawrence, and Kansas City to grow, expand their outreach and execute their own business plans. Mr. Regoli also said BWCU prides itself on operating within the letter of the law and doing the right thing and the expansions of our field of membership were in the best interest of BWCU's members and Kansas consumers. He said field of membership is extremely relevant to BWCU's past, present, and future success (Attachment 14).

A Committee member asked Mr. Regoli why, when their television advertisement says his credit union is just like a bank, should not they be treated just like a bank? Mr. Regoli responded that he takes that as a compliment. He said he has high regard for bankers. So, when someone says they are just like a bank, he takes it as a compliment because they set a very high standard. Operationally, just like a bank. "Why, because we are serving consumers just like the banks are and our consumers are no different than the bank's consumers. They want banking services from their credit union. We happen to be a credit union." As to differences in supervision, Mr. Regoli stated credit unions have a different set of rules. We were chartered as a credit union, we have volunteers that run the credit union, always have, always will.

Rick Dodds, Boeing Wichita Credit Union Board Chairman and member, stated that like other credit unions, BWCU is a financial cooperative. BWCU provides an economic benefit to members, is dedicated to serving members, not making a profit, and is democratically controlled by the membership. He said it has been eight years since BWCU's expansion to its current field of membership. He said BWCU has in good faith relied on the field of membership approved by the State of Kansas. He said field of membership expansion is a factor in achieving credit union safety and soundness in the face of volatile economic conditions or significant changes in the financial services industry. He said during the course of its history, BWCU found itself facing adverse conditions from time to time as the fortunes of The Boeing Company changed depending on the cycle of the market for its products as well as the effects of employee strikes which have also occurred from time to time (Attachment 15).

Marla Marsh, Kansas Credit Union Association, stated that when banks started expanding, they had to change their statute because the statutes specifically prohibited branching. Credit union regulators, including the bank commissioners, looked at a statute that was silent in comparison to a bank statute that prohibits expansion. As a regulator, they knew that capital and financial stability depended on growth. They took the stand that safety and soundness demanded expansion. As evidenced by their actions, they did not interpret credit union statutes as more restrictive than those of the banks, but more open.

Ms. Marsh continued, noting statewide community charters were first granted in the early 1980's after deregulation and the expansion of bank branching. Banks tell legislators that everyone should just stay in their own lane. Nothing has stayed the same as it was in 1929 and no organization should be expected to revert back to those times. She said credit unions are not asking you to protect them the way banks are asking you to protect them from farm credit or realtors or insurance agents or WalMart. She said credit unions are asking you to put the needs and wants of consumers first, ensuring the safety and soundness of their chosen financial services provider, their credit union ([Attachment 16](#)).

Larry Damm, Cessna Employees Credit Union, Wichita (written only) ([Attachment 17](#)).

Marilyn Wells, Catholic Family Federal Credit Union, Wichita (written only) ([Attachment 18](#)).

In the absence of Frank Sullentroop, Legacy Bank, Wichita, David Fowler, Chairman, First State Bank, presented his testimony ([Attachment 19](#)).

Rich Merker, President of Inter-State Federal Savings and Loan of Kansas City, Kansas, testified that Inter-State Federal is a member of Heartland Community Bankers Association. Mr. Merker stated that for savings and loans and commercial banks that compete against bank-like credit unions, field of membership requirements are still very relevant today. He said without an honest application of those rules, credit unions can act like banks and savings and loans but benefit from the tax exempt status of traditional credit unions. As a mutual savings association, Inter-State Federal Savings has many of the same characteristics as a credit union but must pay taxes, complies with the Community Reinvestment Act, and competes with credit unions that do not have those obligations. If the common bond requirement is too heavy a burden to bear, Mr. Merker encouraged existing credit unions to pursue a mutual savings bank charter ([Attachment 20](#)).

Matt Goddard, Heartland Community Bankers Association (HCBA), noted that HCBA believes that the common bond is extremely relevant today because it is one of the primary justifications for several benefits credit unions receive, such as exemption from income taxes and the Community Reinvestment Act. Mr. Goddard added that the environment in which the banking industry found itself in 1951 is similar to that of expansionist credit unions today. He said although they may technically and operationally be cooperatives, they have lost that sense of mutuality and are now just a collection of consumers looking for the best possible deal on interest rates. He said that would seem to be the case with the large multi-employer common bond credit unions and those with statewide fields of membership. He added that if credit unions wish to continue to enjoy the benefits associated with being a credit union, then the common bond remains very relevant today ([Attachment 21](#)).

Doug Wareham, Senior Vice President, Government Relations, Kansas Bankers Association, testified that all would agree that the credit union field of membership requirements are a fundamental requirement adopted by the Kansas Legislature in the form of KSA 17-2205 to keep credit unions focused on their intended mission and to protect the integrity of financial institutions in Kansas that are required to pay the federal income taxes and the Kansas privilege (income) tax. He said Kansas bankers are not opposed to paying these taxes, although eliminating them would create

a level playing field. He said bankers understand the important role tax dollars play in supporting the state's infrastructure. He said, however, they cannot sit idly by when tax-exempt competitors and their regulators ignore Kansas laws designed in part to protect tax-paying financial institutions (Attachment 22).

The Committee next reviewed two states' recent approaches to amending field of membership requirements. David Adams, Michigan Credit Union League, testified that he understood that the May 2006 report recommended that the Kansas Department of Credit Unions should enforce the current provisions of KSA 17-2205 and also consider seeking amendments to Kansas law that would more broadly and explicitly define the field of membership authority for state-chartered credit unions. Mr. Adams stated it his strong belief that the public benefits greatly by having broad fields of membership without antiquated and burdensome regulations that arbitrarily make it difficult for credit unions to expand. Although this does create competition for banks and other for-profit providers, there is not a market anywhere in the U.S. where bankers can show adverse effect on their market share or earnings as a direct result of relaxed credit union field of membership requirements.

Mr. Adams further noted that whether in Kansas or Michigan, the public needs and deserves to have as many options as possible for gaining access to consumer and small business credit. Affordable, basic financial services offered without the threat of "predatory lending" or discrimination practices are needed now more than ever. Mr. Adams said allowing credit union field of membership expansion, whether through regulatory processes or legislative statute revisions, represents good public policy in Kansas, Michigan, and elsewhere in the U.S. He said the banking industry has enjoyed record earnings in each of the past eight years. Data shows that credit unions are actually losing market share to commercial banks in holdings of depository institution assets and household debt. In some states like Michigan and Kansas, credit union membership growth has leveled out and help is needed to assure that credit unions are allowed to grow and compete. Mr. Adams noted that even with the Michigan Legislature's intervention to allow more flexible field of membership expansion, banks continue to outperform credit unions in asset growth, earnings, and market share (Attachment 23).

William Ratliff, Executive Vice President, Missouri Bankers Association, was last to testify. Mr. Ratliff explained that SB 591 is a compromise bill worked out between the Missouri banking industry and the credit unions, and it is the result of over six months of very tough negotiations. He said the bill creates new standards under which the Director of the Missouri Division of Credit Unions must operate in order to authorize the expansion of a credit union's geographic field of membership. Mr. Ratliff said the biggest problem facing all sides in this issue was trying to come up with a definition of a "local, well-defined neighborhood, community or rural district." This bill finally provides a definition, he said. A "local, well-defined neighborhood, community or rural district" is the county where the credit union's headquarters is located, plus all counties contiguous to that headquarter's county. He said SB 591 is supported by the Missouri Bankers Association, the Missouri Independent Bankers Association, and the Missouri Credit Union Association. He said in addition, this bill provides new standards for "standing" to entities that may challenge this expansion before both the Missouri Credit Union Commission and in court (Attachment 24).

Following brief Committee discussion, the Chairperson closed the meeting, noting that the next meeting is scheduled for November 7 and 8, 2007. The meeting adjourned at 3:15 p.m.

Prepared by Bev Beam  
Edited by Melissa Calderwood

Approved by Committee on:

November 8, 2007  
(Date)