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OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
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DATE: May 21, 2004

LETTER NO.: 2004-CU-03

TO: The Board of Directors and Management of Michigan State-Chartered Credit Unions

SUBJECT: New Michigan Credit Union Act effective June 1, 2004

The purpose of this letter is to provide information on, and explain OFIS plans for implementation of, the new Michigan Credit Union Act (2003 PA 215). The new Act, which becomes effective June 1, 2004, repeals and replaces the present Michigan Credit Union Act (1925 PA 285) in its entirety. The complete text of the new Act can be found at <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-ACT-215-OF-2003>. Select Statutes, Rules and Regulations/Codes and Acts/Credit Union.

Implementing the new Act will require substantial changes to the Michigan Credit Union Rules, Standard Bylaws, and previously issued OFIS interpretative Bulletins and Letters to Credit Unions. A technical amendment bill will also be required to correct certain items in the original legislation. These changes will likely occur over the next twelve months, and OFIS recognizes, during this transition period, inconsistencies or conflicts may exist between provisions in the new Act, an individual credit union's bylaws, and previous OFIS pronouncements. OFIS will exercise forbearance regarding obvious violations resulting from such inconsistencies which do not cause safety and soundness concerns. Our regulatory examinations will focus primarily on safety and soundness issues, including compliance with the new Act, during the transition period.

To assist in complying with the new Act, OFIS has identified several areas where a credit union may be required to adopt or revise operating policies and internal procedures. **This is in no way intended to be an all-inclusive listing, and each board of directors and management team should perform a due diligence review of the new Act, including consultation with legal counsel where appropriate.**

Corporate Governance Issues

Qualifications to serve: Section 341(8) of the new Act sets specific requirements for serving as a director or member of a credit or supervisory committee. Each board of directors needs to ensure all persons serving as a director or committee member meet these requirements.

Fiduciary Duty: Section 342(2) of the new Act gives the board of directors explicit authority and responsibility for the general direction of business affairs, funds, and records of the credit union, and for maintaining its safety and soundness. Section 383 requires credit union officials to perform their

duties in good faith and with the degree of diligence, care, and skill an ordinarily prudent person would exercise under similar circumstances in a like position.

Delegation of duties: Sections 342(3) and 342(4) of the new Act specify the minimum duties for directors and allow delegation of certain of those duties to the general manager. All such delegations should be formally noted in the board records. While the duties listed in Section 342(4) may be delegated, the board of directors retains the responsibility for overall operation of the credit union.

Frequency of Board meetings: Section 342(3)(p) of the new Act requires a minimum of at least nine board meetings each calendar year, with no more than 62 days between meetings.

Director's Oath of Office: Section 342(10) of the new Act requires each director to take an oath of office which must be retained in the institution's corporate records.

Confidentiality: Section 381 of the new Act prohibits directors, officers, committee members, and employees from disclosing confidential information related to the business of the credit union.

Conflict of Interest: Section 384 of the new Act prohibits a director, committee member, officer, or employee of the credit union from participating in the deliberation or action on any matter that affects his or her pecuniary interest. Each board of directors should review their credit union's directorship and conflict of interest policies to ensure compliance with Section 384.

Preferential Treatment: Section 423(4) of the new Act prohibits a credit union from offering rates, terms, or conditions on any loan endorsed or guaranteed by an official that are more favorable than the rates, terms and conditions for comparable loans to other credit union members.

Loans to Employees: Section 423(9) of the new Act allows a credit union to offer reduced rate loans to employees under a uniform policy adopted by the board of directors. This section also requires that loans or other extensions of credit to the general manager be approved by the board, or by the credit committee if that committee does not include any credit union employees.

Field of Membership

Common Bond: Section 352 of the new Act contains membership eligibility and field of membership requirements and OFIS approval processes. Section 352(2) requires the board of directors to establish the field of membership for their credit union, which shall consist of **one or more** of the following:

- (a) Groups of any size that have a common bond of occupation, association, or religious affiliation.
- (b) Groups of persons whose common bond is residence, employment, or worship within a geographic area composed of one or more school districts, counties, cities, villages, or townships.
- (c) Groups whose common bond is common interests, activities, or objectives.

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Application Process: As part of the transition process, OFIS will be developing guidelines for filing a field of membership application under the new Act. These guidelines will be posted on the OFIS website as soon as they are completed, and a letter will be issued to notify the credit unions that the new guidelines have been issued. In the interim, credit unions should continue the current process of submitting field of membership application letters to the Enterprise Monitoring Division of OFIS.

Questions regarding the application process may be directed to the Enterprise Monitoring Division by calling 517-241-9981.

Investments

Out of State Credit Unions: Section 401(2)(r) of the new Act now limits investments in other credit unions, including corporate credit unions, to “domestic” institutions, defined as those chartered under this Act. This additional limitation appears to be the inadvertent consequence of an error in the drafting process. OFIS never intended to limit credit union’s current authority, which clearly permits investment in credit unions and corporate credit unions operating in any state, or under a federal charter.

This is one of the items that needs to be corrected in a technical amendment bill. Since a technical amendment bill will not be enacted before the June 1, 2004 effective date of the new Act, **the OFIS Commissioner will be issuing an order under Section 431(4) to permit credit unions to continue to invest in out of state credit unions and corporate credit unions.** A copy of this order, when issued, will be provided to each credit union and posted on the OFIS website.

Continuing Communications

Revising OFIS policies, procedures, and pronouncements to fully conform to the new Act will take an extended period of time. OFIS will continue to provide information to the credit union community through letters and other pronouncements as the process moves forward. For example, each credit union will need to adopt new bylaws to conform with the new Act. Information to rescind the current bylaws and adopt these new bylaws will be sent out to all credit unions after the technical amendments bill becomes effective.

Questions regarding the regulation, examination, or supervision of credit unions should be directed to the OFIS Credit Union Division at 517-373-6930. Questions regarding bylaw amendments, field of membership applications, and other corporate matters should be directed to the OFIS Enterprise Monitoring Division at 517-241-9981.

Sincerely,

Roger W. Little, Deputy Commissioner
Credit Union Division