

BULLETIN
NHBDL-2009-04

Issued by: New Hampshire Banking Department
Peter C. Hildreth, Bank Commissioner

Date: March 31, 2009

Re: Credit Unions – Declaring Dividends

This bulletin is intended to provide guidance on when notice to the bank commissioner or bank commissioner approval is required for New Hampshire chartered credit unions to declare dividends.

I. Summary

After meeting all other conditions, 1) dividends from current earnings require no notice or approval from the bank commissioner; 2) dividends from the undivided earnings of previous years that do not cause the net worth of the credit union to fall below “Well Capitalized” require notice to the bank commissioner; and 3) dividends from the undivided earnings of previous years that cause the net worth of the credit union to fall below “Well Capitalized” require prior bank commissioner approval.

II. Discussion

NH RSA 394-B:39 provides the statutory framework for credit unions to declare dividends. The statute addresses three scenarios: 1) dividends from current earnings, 2) dividends from the undivided earnings of previous years that do not cause the net worth of the credit union to fall below “Well Capitalized,” and 3) dividends from the undivided earnings of previous years that cause the net worth of the credit union to fall below “Well Capitalized.” Each of the scenarios will be addressed in turn.

A) Current Earnings

Required transfers to the required reserves of the credit union shall be made prior to the credit union’s board of directors (the “Board”) declaring a dividend. After such required transfers are made and at such intervals and for such periods as the Board may authorize, the Board may declare dividends from "current earnings." "Current earnings" means year-to-date earnings. No prior approval or notification to the bank commissioner is required to declare dividends on current earnings.

B) Previous Years’ Earnings

The Board may declare dividends from the undivided earnings of previous years. As with current earnings, required transfers to the required reserves of the credit union shall be made prior to any declaration.

1. “Well Capitalized”

“Well Capitalized” has the meaning set forth in Title 12 of the Code of Federal Regulations, Part 702 Prompt Corrective Action (PCA). If paying a dividend from the undivided earnings of previous years does not cause the net worth of the credit union to fall below “Well Capitalized,” no approval from the bank commissioner is required. Notice to the bank commissioner, however, must be given within thirty (30) days of the dividend declaration. Each time a dividend is declared using this portion of the statute, a new notification must be sent to the bank commissioner.

2. Falling Below “Well Capitalized”

If declaring a dividend from the undivided earnings of previous years will cause a credit union's net worth to fall below "Well Capitalized," the credit union must obtain prior approval from the bank commissioner before the Board may declare such a dividend.

For questions regarding this Bulletin, please contact Celia K. Leonard or Ingrid White at 603-271-3561.