

Justice and Attorney General



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Main points

This chapter reports the results of our work on the regulation of Saskatchewan credit unions and our follow-up on the progress of the Superintendent of Pensions in addressing our past recommendations.

Regulating Saskatchewan Credit Unions

The Registrar appointed under *The Credit Union Act, 1998*, is responsible for supervising the regulation of credit unions in Saskatchewan. We concluded that the Registrar had appropriate processes to supervise the regulation of credit unions. While the Registrar is appropriately supervising the regulation of credit unions, there is a lack of formal clarity whether the Registrar carries out its responsibilities as an individual or as part of the Saskatchewan Financial Services Commission (Commission). We recommend that the Ministry of Justice and Attorney General and the Commission formally assign roles and responsibility to supervise regulation of credit unions.

Superintendent of Pensions – Processes to supervise pension plans—a follow-up

The Superintendent of Pension has now implemented all our past recommendations to better supervise pension plans.

Introduction

The Ministry of Justice and Attorney General (Justice) provides legal services and justice policy advice to government in order to protect the legal rights of citizens and to promote social and economic order for Saskatchewan. Also, Justice provides support for the courts system, prosecutorial services, civil law services, and marketplace regulation.¹

For the year ended March 31, 2010, Justice spent \$145.3 million on its programs and earned revenues of \$51.4 million. Information about Justice's revenues and expenses appears in Justice's *2009-10 Annual Report* (see <http://www.justice.gov.sk.ca>).

Our 2010 Report – Volume 2 reports the results of our audits of Justice and its Crown agencies for their years ended March 31, 2010.

This chapter reports the results of our work on the regulation of Saskatchewan credit unions and our follow-up on the progress of the Superintendent of Pensions in addressing our past recommendations.

Regulating Saskatchewan Credit Unions

Background

Saskatchewan has 61 credit unions providing financial and other services to about 270 communities. Locally-elected boards manage credit unions. Like other financial institutions, credit unions are regulated by governments.

The Credit Union Act, 1998 (Act) provides the overall framework for the incorporation and regulation of credit unions in Saskatchewan. The Act describes the responsibilities, obligations, and powers of credit unions, the Registrar of credit unions, and the Credit Union Deposit Guarantee Corporation (CUDGC).²

As allowed under the Act, Justice has appointed an individual as the Registrar of credit unions. The Registrar is also an employee of the

¹ Ministry of Justice and Attorney General, *2009-10 Annual Report*, p. 7.

² CUDGC is incorporated under *The Business Corporations Act*. CUDGC is not a Crown agency.

Saskatchewan Financial Services Commission (Commission). Although the Act gives CUDGC certain specific regulatory responsibilities, the ultimate authority for regulating credit unions lies with the Registrar. The Registrar determines who can carry on business as a credit union and maintains a register of incorporated and approved credit unions in the province.

To clarify their respective regulatory mandates under the Act, the Registrar, CUDGC and Credit Union Central of Saskatchewan (SaskCentral)³, have signed a Memorandum of Understanding setting out the following roles and responsibilities.

SaskCentral is responsible for liquidity management, trade association, compliance support, and complaint resolution. CUDGC is responsible for deposit protection, monitoring and enforcing sound business practice as specified under the Act. The Registrar is responsible for ultimate regulatory administration, policy development and enforcement, and protection of consumers and the public interest.

CUDGC guarantees the depositing public the full repayment of money deposited in credit unions. Therefore, it must ensure that credit unions carry proper capital to manage their business risks. To ensure credit unions are operating in a sound and prudent manner, CUDGC consults with the Registrar and credit unions to establish standards of sound business practice. All credit unions must follow these sound business practices.

CUDGC can direct credit unions to take immediate action on matters that may put depositors' monies at risk. The Registrar has the ultimate responsibility to ensure CUDGC is fulfilling its duties under the Act. Lack of effective supervision could result in loss of deposits and public confidence.

Assigning roles and responsibilities

During the course of our audit, we became aware of unclear assignment of roles and responsibilities.

³ CUCS is the trade association and primary service supplier for credit unions and is now called SaskCentral.

As we stated earlier, Justice has appointed an individual as Registrar of credit unions in accordance with *The Credit Union Act, 1998* (Act). The Minister has also appointed a Deputy Registrar of credit unions under the Act. The appointed Registrar and Deputy Registrar are employees of the Commission. The Act states:

Notwithstanding any other provision of this Act or the regulations or of any other Act or law, where, pursuant to *The Saskatchewan Financial Services Commission Act*, the Saskatchewan Financial Services Commission **is assigned the performance** of all or any of the responsibilities imposed on the registrar and the exercise of all or any of the powers given to the registrar by this Act or the regulations: **[emphasis added]**

(a) any reference with respect to those responsibilities or powers in this Act or the regulations to the registrar is to be interpreted as a reference to the Saskatchewan Financial Services Commission; and

(b) this Act and the regulation are to be interpreted subject to the provisions of *The Saskatchewan Financial Services Commission Act*.

The Commission's *2009-10 Annual Report* describes that the Commission regulates the credit union system. Because the Registrar has no specific resources and employees, it uses the Commission's resources and employees to oversee regulation of credit unions. For example, Commission employees review standards and reports relating to credit unions and attend meetings relating to operations of credit unions. Yet the Chair of the Commission advised us that the Registrar's roles and responsibilities to regulate credit unions have not been assigned to the Commission.

Also, the Registrar has delegated to an employee of another government agency the corporate registry functions conferred upon the Registrar under the Act. However, the Registrar does not have documentary evidence that the delegated work is done on time and complies with the law. Lack of clear roles and responsibilities increases the risk that regulatory supervision may not be proper and timely.

- 1. We recommend that the Ministry of Justice and Attorney General and the Saskatchewan Financial Services Commission formally assign roles and responsibilities to supervise regulation of credit unions.**

Audit objective, criteria, and conclusion

The objective of this audit was to assess whether the Registrar of credit unions had adequate processes for the year ended December 31, 2010 to fulfill its responsibilities to supervise the regulation of credit unions. Our audit did not examine the Credit Unions Deposit Guarantee Fund⁴ nor the Credit Union Deposit Guarantee Corporation (CUDGC).

To conduct this audit, we followed the *Standards for Assurance Engagements* published in the *CICA Handbook – Assurance*. To evaluate the Registrar's processes, we used criteria based on the work of other auditors and current literature listed in the selected references. The Registrar agreed with the criteria (see Exhibit).

Exhibit —Audit criteria

To fulfill its responsibilities to supervise the regulation of credit unions, the Registrar needs adequate processes to:

- 1. Approve and register**
 - Issue certifications of incorporation in accordance with legislation
 - Maintain listing of registered credit unions
- 2. Ensure sound business standards**
 - Work with CUDGC to establish standards of sound business practice
 - Ensure CUDGC communicates established standards to all credit unions
 - Ensure CUDGC uses a risk-based framework to determine the level and frequency of attention required
- 3. Monitor performance**
 - Assess adequacy of CUDGC's work including monitoring compliance with the standards of sound business practice
 - Ensure timely financial reports from CUDGC and monitor its financial condition
 - Monitor complaints and ensure corrective action

We concluded that, for the year ended December 31, 2010, the Registrar had adequate processes to supervise the regulation of credit unions.

⁴ Credit unions pay an annual assessment to the Credit Unions Deposit Guarantee Fund, which is managed by CUDGC. The guarantee fund is a pool of money set aside to provide a guaranteed repayment of the full amount of funds on deposit in Saskatchewan credit unions.

Key findings

We provide below our detailed findings for each criterion.

Approve and register

Only incorporated credit unions approved by the Registrar can operate in the province. The Registrar issues certificates of incorporation once a new credit union has met all of the terms under *The Credit Union Act, 1998* (Act). While some existing credit unions have merged (i.e., amalgamated) to form new credit unions, no new credit union has been established in the province for some time. The Registrar has formally delegated credit union corporate registry functions to the Director of the Corporations Branch⁵ (Corporate Registry) of Justice. The Corporate Registry reviews bylaws and articles of amalgamation to ensure they comply with the Act. The Corporate Registry signs certificates of amalgamation. Although the Registrar has delegated in writing to the Director the corporate registry functions conferred on the Registrar under the Act, there was no documentary evidence of the Registrar's review of Corporate Registry's work. To ensure all delegated work is done on time and complies with the Act, the Registrar should periodically review the work delegated to others.

On behalf of the Registrar, the Corporate Registry maintains a list of incorporated (i.e., registered) credit unions in the province. At March 31, 2011, Saskatchewan had 61 registered credit unions. The public can obtain registry information about a credit union for a fee. To maintain their incorporation, the Registrar requires credit unions to submit their annual returns⁶ to the Corporate Registry. When the Corporate Registry does not receive returns within the allowed timeframe, it sends reminder letters to credit unions. We noted four instances where the Corporate Registry did not receive annual returns within the allowed timeframe. In one instance, the Corporate Registry did not receive the 2009 annual return in time but it did not send out the required reminder letter until October 2010. Lack of timely submission of credit union returns could result in outdated or inaccurate information available at the Corporate Registry. The Registrar

⁵ The Corporations Branch of the Ministry of Justice and Attorney General transferred to the Information Services Corporation on October 1, 2010 and is now called the Corporate Registry.

⁶ An annual return includes information about the directors of a credit union.

should follow up on credit unions that do not submit their annual returns on time.

When the Registrar becomes aware that a credit union, not registered under the Act, is operating in the province, the Registrar issues a cease and desist order. The order requires the unregistered credit union to stop accepting deposits from Saskatchewan residents and cease operations. It may also require the credit union to return all customers' deposits in full. During the audit period, the Registrar issued one cease and desist order.

Ensure sound business standards

As required under the Act, CUDGC, in consultation with the Registrar, establishes standards of sound business practices that credit unions must follow. CUDGC provides draft standards or revisions to the standards to the Registrar for review. The Registrar reviews the standards for consistency with standards issued by the regulator of banking institutions in Canada and makes CUDGC aware of any inconsistencies. Upon approval by the Board of CUDGC and filing with the Registrar, the standards become effective. The standards help protect customer deposits and contribute to prudent operation of credit unions.

CUDGC uses several ways of communicating the standards of sound business practices to credit unions. Current standards are posted on an intranet and each credit union has access. Also, CUDGC sends to all credit unions written communications about changes to existing standards. The Registrar also receives and reviews copies of such communications.

CUDGC uses a risk-based framework to supervise credit unions. CUDGC determines a credit union's risk level based on ongoing monitoring. This monitoring includes review of financial information and on-site reviews of operations. CUDGC determines the level and frequency of supervision based on risk level. Credit unions exhibiting unfavourable trends in financial performance, risk management practices or governance require additional supervisory attention. The Registrar reviews quarterly reports from CUDGC on its intervention activities for those credit unions that CUDGC determines are higher risk. Intervention activities include seeking additional information, discussing concerns with boards of directors and senior management, monitoring corrective actions, or placing high-risk

credit unions under CUDGC administration. Early detection of issues ensures early intervention to help resolve issues quickly resulting in lower risk of financial loss or loss of depositor confidence.

Monitor performance

CUDGC performs on-site visits of credit unions on a rotational basis. The Registrar receives and reviews a work schedule of CUDGC for these on-site visits. The work schedule shows that CUDGC plans to visit each credit union every three years or more frequently for high-risk credit unions. During these on-site reviews, CUDGC determines whether credit unions follow the standards of sound business practices. The Registrar reviews a copy of CUDGC review reports for credit unions that need to improve compliance with established standards. The Registrar follows up on compliance progress by reviewing the quarterly report on CUDGC's intervention activities.

Each quarter, the Registrar reviews CUDGC's board minute package. The board package includes year to date financial information on the credit union system and the guarantee fund. The Registrar also receives CUDGC's annual report on a timely basis. The Registrar participates on two committees with CUDGC that meet quarterly. SaskCentral also participates on one of these committees. These committees discuss matters, such as financial highlights, risk-based supervision, and key performance indicators.

All customer complaints generally go through SaskCentral. At times, credit unions themselves can also receive customer complaints. Often, customers send complaints directly to the Registrar (or the Saskatchewan Financial Services Commission). The Registrar forwards all complaints it receives to SaskCentral to investigate and address. The Registrar has established a complaint-handling policy. SaskCentral is required to inform the Registrar of the results of investigations of customer complaints. During the quarterly meetings with SaskCentral noted above, the Registrar discusses the nature of complaints, status of investigations and resolutions.

Selected references

Auditor General of New Brunswick. (2007). *Chapter 2 New Brunswick Credit Union Deposit Insurance Corporation*. Fredericton: Author. <http://www.gnb.ca/oag-bvg/2007v2/2007v2-E.ASP>

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Poprawa, A. (2009). *Regulation and legislation of cooperative banks and credit Unions*. New York: Author. <http://www.un.org/esa/socdev/egms/docs/2009/cooperatives/Poprawa.pdf>

Superintendent of Pensions—Processes to supervise pension plans—a follow-up

Background

About 47% of paid workers in Saskatchewan participate in registered pension plans.⁷ When a pension promise is made, this is the first step in the creation of a complex arrangement known as a pension plan. The appropriate management and oversight of this complex arrangement is critical to the fulfillment of the pension promise.

To help ensure that pension plans are well managed, the Government needs an adequate regulatory and supervisory framework. *The Pension Benefits Act, 1992* (Act) provides this framework. The Act applies to all private sector pension plans and some public sector pension plans. The Act sets out requirements for registration, amendment, and termination of pension plans. Justice appoints a Superintendent of Pensions (Superintendent) to administer and enforce the Act. The Superintendent is responsible to reduce the risk of financial loss or inequities to pension plan members. The Superintendent carries out this responsibility by supervising pension plans.

⁷ Financial Services Commission (2010): *A statistical perspective on pension plans registered in Saskatchewan*.

In 2004, we examined if the Superintendent had adequate processes to supervise pension plans. We reported the result of our work in our 2005 Report – Volume 1. We made four recommendations to help improve the Superintendent’s supervisory processes. In June 2005, the Standing Committee on Public Accounts agreed with our recommendations. In 2007, we followed up on the four recommendations. Our 2007 Report – Volume 3, Chapter 15 (pp. 297-300) reported the results of our follow-up. We continued to make two recommendations to help improve the supervision of pension plans.

In 2011, we performed a second follow-up. We describe below the two outstanding recommendations (in bold) and the Superintendent’s actions up to March 31, 2011.

Analyze key risks faced by all pension plans

We recommended that the Superintendent of Pensions expand its analysis of pension plan risks to include the key risks faced by all pension plans. (2005 Report – Volume 1)

The Superintendent established a comprehensive risk assessment process to identify and evaluate key risks faced by all pension plans. The Superintendent also provided guidance to staff on how to rank and prioritize the key risks to determine the supervisory methods the Superintendent would carry out to assess the pension plans’ management of those key risks. As part of this risk assessment process, the Superintendent identified and documented over 31 risks faced by pension plans. The Superintendent assessed all these risks and weighted them based on the likelihood of the risk occurring and the impact it would have if it occurred. The Superintendent used this weighting to rank all the risks and to determine the key risks faced by pension plans.

Status – Implemented.

Risk-based work plan

We recommended that the Superintendent of Pensions prepare a risk-based work plan to supervise pension plans. (2005 Report – Volume 1)

The Superintendent completed a comprehensive risk assessment based on all the key risks faced by pension plans. The Superintendent used this risk assessment to analyze possible supervisory methods available to cover off these risks. The Superintendent then decided which risks it would accept and which risks it would mitigate and by what supervisory method. The Superintendent based its work plan on these supervisory methods including on-site examinations for some of the higher-risk pension plans. The Superintendent documented what activities must be carried out, by whom, and the timeframe for completion. The Superintendent also established performance measures for some of its supervisory methods.

Status – Implemented.