

ALABAMA CREDIT UNION ADMINISTRATION  
MONTGOMERY, ALABAMA

\_\_\_\_\_  
In the Matter of )  
)  
)

ALABAMA ONE CREDIT UNION )  
TUSCALOOSA, ALABAMA )  
)

(Insured State Credit Union) )  
)  
)  
\_\_\_\_\_ )

ORDER TO  
CEASE AND DESIST

2015: 002

The Alabama Credit Union Administration (“Administration”) has supervisory authority over Alabama One Credit Union, Tuscaloosa, Alabama (“Credit Union”). The Administrator (the “Administrator”), with the approval of a majority of the Credit Union Board of the Administration (“Credit Union Board”), may issue an order to cease and desist (“Order”) pursuant to Code of Alabama Annotated Section 5-17-8 (1980).

The Administrator and Credit Union Board have found that the Credit Union and/or one or more of the Credit Union’s officers, directors, committee members, or employees (individually and collectively, “Institution-Affiliated Parties”) have engaged in unsafe or unsound practices and violations of law, rule or regulation, have committed fraudulent or questionable practices in the conduct of the Credit Union’s business, and have violated conditions duly imposed in writing by the Administrator, thus leading to the issuance of this Order.

The Administrator and Credit Union Board have determined that the requirements for issuance of an Order under the Code of Alabama Annotated Section 5-17-8 have been satisfied. Pursuant to the authority vested by Code of Alabama Code Section 5-17-8, the Administrator hereby orders the following:

## ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Credit Union, its Institution-Affiliated Parties, and its successors and assigns cease and desist from the following unsafe and unsound practices and violations of law and regulation:

(a) operating with a board of directors (“Board”) that has failed to provide adequate supervision over and direction to the management of the Credit Union, has failed to oversee compliance by the Credit Union with lawful orders issued by the Administration, and has authorized direct violations of duly authorized directives, prohibitions and recommendations of the Administration;

(b) operating with inadequate management that has failed to demonstrate the ability to correct problems and implement appropriate risk management practices;

(c) violating laws, regulations, statements of policy and/or conditions imposed in writing by the Administrator, as more fully described in the Letter of Understanding of Agreement, in the Report of Examination including the Documents of Resolution, and Examiner Findings;

(d) operating without proper expertise, policies, procedures and controls in place over the Member Business Loan portfolio;

(e) operating with ineffective monitoring and testing of the internal control environment;

(f) operating with unsafe and unsound loan underwriting and administration practices;

(g) offering, granting or issuing member business loans to the membership;

(h) granting, renewing, or extending loans, mortgage or otherwise, to credit union members disguised as straw borrowers;

(i) modifying, extending, deferring, or renewing business loans for which the borrower is not exhibiting the ability to perform according to the terms of the loan contract;

IT IS FURTHER ORDERED, that the Credit Union, its Institution-Affiliated Parties, and its successors and assigns, take affirmative action as follows:

**BOARD OF DIRECTORS**

1. (a) As of the effective date of this Order, the Board shall improve oversight of the affairs of the Credit Union, assuming full responsibility for the approval of sound policies and objectives for the supervision of all of the Credit Union's activities, consistent with the role and expertise commonly expected for directors of financial institutions of comparable size. This improved oversight shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: reports of income and expenses; reports of the Credit Union's payment and/or reimbursement of expenditures of executive officers or directors; new, overdue, renewal, insider, charged off, and recovered loans; investment activity; other real estate owned; adoption or modification of policies and procedures; individual committee reports; audit reports; internal control reviews including management's responses; and compliance with all applicable laws, rules, regulations and this Order. Board meeting minutes shall document these reviews and approvals, including the action taken by each director with respect to each agenda item.

(b) Within 90 days from the effective date of this Order and continuing while this Order is in effect, the Board shall participate in training for each member of the Board. The training shall include, at a minimum:

(i) Specific training in the areas of lending, operations, and compliance with laws, rules, and regulations applicable to credit unions of comparable size and complexity chartered in the State of Alabama; and

(ii) Specific training in the duties, responsibilities, and obligations of the Board in connection with the safe and sound operation of the Credit Union, and the potential liability of individual members for violations thereof.

(c) Upon completion of any of the aforementioned training, the Board shall document the training activities in the minutes of the next Board meeting following completion of any such training. The acceptability of the Board's actions as required by this paragraph shall be determined by the Administration and NCUA at subsequent examinations and/or visitations.

#### **MANAGEMENT**

2. (a) Within 60 days from the effective date of this Order, the Credit Union shall recruit and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Credit Union. Each member of management shall be provided appropriate written authority from the Board to implement the provisions of this Order. Each management role as described below must be filled by a separate individual. At a minimum, management shall include the following:

(i) A chief executive officer with proven ability in managing a credit union of comparable size and in effectively implementing lending, investment and operating policies in accordance with safe and sound practices and in ensuring compliance with all applicable laws, rules, regulations and regulatory orders, directives, prohibitions and recommendations;

- (ii) A senior lending officer with appropriate compliance, lending, collection, and loan supervision experience;
  - (iii) A chief operating officer with appropriate experience in managing the operations of a credit union of similar size and complexity in accordance with sound practices.
- (b) The qualifications of management shall be assessed on its demonstrated ability to:
- (i) Comply with the requirements of this Order;
  - (ii) Operate the Credit Union in a safe and sound manner;
  - (iii) Comply with applicable laws and regulations; and
  - (iv) Restore all aspects of the Credit Union to a safe and sound condition.
- (c) During the life of this Order, the Credit Union shall notify the Administration and NCUA, in writing, of the resignation or termination of any of the Credit Union's directors or senior executive officers. Prior to the addition of any individual to the Board or the employment of any individual as a senior executive officer, the Credit Union shall provide the Administration and NCUA with 30-days written notice and obtain approval from the Administration and NCUA, and shall comply with the requirements of 12 U.S.C. § 1790a and 12 C.F.R. §701.14 for prior notification and approval. If the Administration or NCUA issues a notice of disapproval with respect to the proposed individual, then such individual may not be added to the Board or employed by the Credit Union.

### **MEMBER BUSINESS LENDING**

3. Within 30 days from the effective date of this Order, the Credit Union shall:
- (a) develop and implement an exit strategy, with approval by the Administration and NCUA, to reduce member business loan concentrations, whether to a single member or to

associated borrowers, including but not limited to those borrowers as set forth in Confidential Addendum A to this Order, provided under separate cover and incorporated herein by reference (the “Confidential Addendum”);

(b) obtain a current appraisal by a qualified appraiser with the expertise to appraise undeveloped land and such buildings as present on that certain property as set forth in the Confidential Addendum and incorporated herein by reference, to ascertain the current fair value of such property and, if no such compliant appraisal can be obtained, the Credit Union shall reduce the value of the property to zero until such a qualifying appraisal shall be obtained.

#### **INDEPENDENT REVIEW**

4. The Supervisory Committee shall engage an independent third party to conduct a comprehensive loan review of all loan transactions and extensions of credit involving Danny Ray Butler, directly or indirectly, including but not limited to any alleged “straw buyer or borrower” transactions involving Mr. Butler. The independent review shall include, at a minimum, the following:

(a) Within 14 days from the effective date of this Order, prior to the commencement of the independent review, the Supervisory Committee shall submit to the Administration for approval the name and qualifications of the professionals (i.e. law firm and/or auditing firm) selected to conduct the independent review. The professionals selected to conduct the review shall be qualified professionals with experience in conducting independent fraud reviews at credit unions or financial institutions of comparable complexity. Those conducting the independent review shall report directly to the Supervisory Committee;

(b) Within 14 days from the Administration’s notification of approval as set forth in paragraph 4(a), prior to the commencement of the independent review, the independent

professionals shall detail a thorough description of the scope of the review, which shall be submitted to the Administration for approval;

(c) The independent review shall include factual findings with supporting documentation, as well as an analysis of any risks, including internal controls, credit and compliance risks;

(d) Within 90 days from the date of the Administration's notice of approval required under paragraph 4(b) above, the independent review shall be completed in accord with the approved scope of review, and the results of the review shall be presented to the Administration and reported to the Supervisory Committee and the Board; and

(e) The Supervisory Committee shall report its findings to the Board, and the Board shall be responsible for, and shall specifically approve any corrective action, based upon the results of the review.

#### **SAR AND CTR PROCEDURES**

5. (a) Within sixty (60) days from the effective date of this Order, the Credit Union shall establish and implement monitoring and reporting procedures for Suspicious Activity Reports ("SARs") and Currency Transaction Reports ("CTRs") to ensure that all appropriate Credit Union employees are aware of the procedures, including accurate recordkeeping, form completion and the detection and reporting of known and/or suspected criminal activity, and their responsibilities in implementing the procedures.

(b) Within 30 days after completion of the independent review required pursuant to Paragraph 4 of this Order, the Credit Union shall prepare and file any additional SARs and CTRs necessary based upon the results of the independent review. Documentation supporting any

determination made pursuant to this paragraph shall be retained in the Bank's records for such period of time as may be required by any applicable law, rules and regulations.

(c) Provided, however, that no term of this Order shall in any way abridge or obviate the Credit Union's ongoing obligations to file SARs, CTRs or any other report or filing required of it by applicable law, rule or regulation, which obligations shall continue unmodified.

### NET WORTH

6. (a) Within 30 days from the effective date of this Order and continuing for so long as this Order remains in effect, the Credit Union shall have and maintain a Net Worth Ratio of no less than 7% or a Net Worth Ratio to be considered "Well Capitalized", calculated in accordance with 12 CFR § 702.102. The Net Worth Ratio should exclude the special reserve established for those certain relationships set forth in the Confidential Addendum and incorporated herein by reference from both the numerator and denominator in the calculation.

(b) The Net Worth Ratio to be maintained during the life of this Order pursuant to this paragraph shall be in addition to a fully funded allowance for loan and lease losses ("ALLL"), the adequacy of which shall be satisfactory to the Administration as determined at subsequent examinations and/or visitations.

(c) If the Net Worth Ratio is less than the percentage required by this Order, as determined as of the date of any Consolidated Reports of Condition and Income or at an examination by the Administration, the Credit Union shall, within 30 days from receipt of a written notice of the deficiency from the Administration, present to the Administration a plan to increase the Credit Union's Net Worth Ratio or to take other measures to bring the Net Worth Ratio to the percentage required by this Order. After the Administration responds to the plan, the

Board shall implement the plan, including any modifications and/or amendments requested by the Administration.

**CHARGE-OFF LOSS AND DOUBTFUL**

7. From the date of this Order and for so long as this Order is in effect, the Credit Union shall, within 30 days from the receipt from the Administration of any official Report of Examination or Document of Resolution relative to the Credit Union (individually and collectively, a "Report") eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" and 50 percent of those assets or portions of assets classified "Doubtful" in such Report that have not been previously collected or charged-off. If an asset is classified "Doubtful", the Credit Union may, in the alternative, charge-off the amount that is considered uncollectible in accordance with the Credit Union's written analysis of loan or lease impairment. Such analysis shall be accomplished in accordance with generally accepted accounting principles, the Federal Financial Institutions Examination Council's ("FFIEC") *Instructions for Preparation of Consolidated Reports of Condition and Income (FFIEC 031 and 041)*, <http://www.ffiec.gov/>, Interagency Statements of Policy on the ALLL, and other applicable regulatory guidance that addresses the adequacy of the Credit Union's ALLL. Elimination of any of these assets through proceeds of other loans made by the Credit Union is not considered collection for purposes of this paragraph.

**NO ADDITIONAL CREDIT**

8. (a) Continuing from the effective date of the PWL and LUA, the Credit Union shall:
- (i) Cease offering, granting, or issuing member business loans ("MBLs") to the membership;

(ii) Cease modifying, extending, deferring, or renewing business loans which are non-performing or for which the borrower has otherwise failed to exhibit the ability to perform according to the terms of the loan contract.

(b) Beginning with the effective date of this Order, with regard to any other loan that is not an MBL, the Credit Union shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Credit Union that has been charged off or classified, in whole or in part, "Loss" "Substandard" or "Doubtful" or is otherwise non-performing and uncollected. The requirements of this paragraph shall not prohibit the Credit Union from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

#### **NON-PERFORMING ASSET REDUCTION**

9. (a) Within 90 days from the effective date of this Order, the Credit Union shall submit a written plan to the Administration to reduce (a) those certain loans and relationships as set forth in the Confidential Addendum and incorporated herein by reference, and (b) any other non-performing assets, including but not limited to all other real estate owned and all non-performing loans. The plan shall address each asset so classified with a balance of \$50,000 or greater and provide the following:

- (i) The name under which the asset is carried on the books of the Credit Union;
  - (ii) Type of asset;
  - (iii) Actions to be taken in order to reduce the classified asset; and
  - (iv) Timeframes for accomplishing the proposed actions.
- (b) The plan shall also include, at a minimum:

(i) A review of the financial position of each such borrower, including the source of repayment, repayment ability, and alternate repayment sources; and

(ii) An evaluation of the available collateral for each such credit, including possible actions to improve the Credit Union's collateral position.

(c) In addition, the Credit Union's plan shall contain a schedule detailing the projected reduction of total classified assets on a quarterly basis. Further, the plan shall require the submission of monthly progress reports to the Board and mandate a review by the Board.

(d) The Credit Union shall present the plan to the Administration for review and approval. Within 15 days from the Administration's response, the plan, including and incorporating any modifications or amendments requested by the Administration, shall be adopted by the Board and the approval shall be recorded in the Board minutes. The Credit Union shall then immediately implement the plan.

(e) For so long as this Order remains in effect, the Credit Unions shall supplement, in writing, the plan to provide for any additional non-performing assets or assets classified, in whole or in part, "Doubtful" or "Loss" in any subsequent Report. Such supplements shall be provided to the Administration no more than 90 days following the receipt of such Report by the Credit Union.

#### **LIQUIDITY AND FUNDS MANAGEMENT**

10. (a) From the effective date of this Order, and continuing for so long as this Order remains in effect, the Credit Union shall adopt and implement a written plan to improve liquidity, contingency funding, interest rate risk, and asset liability management.

(b) The plan shall incorporate the guidance contained in *Liquidity Risk Management*, FIL-84-2008 (Aug. 26, 2008). The plan shall provide restrictions on the use of brokered and internet deposits consistent with safe and sound practices.

(c) A copy of the plan shall be acceptable to the Administration at the initial review and at subsequent examinations and/or visitations. The Credit Union shall adopt, implement, and follow the plan, and its implementation shall be in a form and manner acceptable to the Administration at the initial review and at subsequent examinations and/or visitations.

### **CONFLICTS OF INTEREST**

11. Within 90 days from the effective date of this Order, the Credit Union shall submit to the Administration for approval its written policies and procedures designed to bring to the attention of each member of the Board conflicts of interest that may exist in approving loans or other transactions including, but not limited to, the payment of professional fees or other fees for services rendered or the entry by the Credit Union into any vendor contract in which officers, directors, or employees of the Credit Union or their family members (individually and collectively, "Insiders") are involved. Such policies and procedures shall, at a minimum, ensure that each member of the Board has been apprised of any potential conflict prior to making a decision or acting specifically on any loan or other transaction in which Insiders and/or their business associates are involved, directly or indirectly. A potential conflict shall be deemed to exist whenever there is any direct or indirect business, familial, social or legal relationship involving Insiders. Within 15 days from the Administration' response, the plan, including any requested modifications or amendments, shall be adopted by the Board and the approval shall be recorded in the Board minutes. The results of any deliberations by the Board regarding potential conflicts shall be reflected in the minutes of its meetings.

### **ALLOWANCE FOR LOAN AND LEASE LOSSES**

12. Immediately upon the issuance of this Order, and continuing while this Order is in effect, the Credit Union must determine the Credit Union's ALLL reserve adequacy and must maintain an adequate ALLL in accordance with generally accepted accounting principles. Provisions for loan losses must be based on the inherent risk in the Credit Union's loan portfolio. The Credit Union must also adhere to the guidance set forth in the *Interagency Policy Statement on the Allowance for Loan and Lease Losses* Accounting Bulletin 06-01. The Board must document and support in writing any decision to not require provisions for ALLL in the Board meeting minutes.

### **EXTERNAL LOAN REVIEW**

13. Within 90 days from the effective date of this Order, an external independent review of the Credit Union's loan portfolio, performed by an independent loan review professional approved by the Administration, shall be performed and shall encompass a minimum of thirty three percent (33%) of the total loan portfolio on an annual basis.

### **OTHER REAL ESTATE**

14. Within 90 days from the effective date of this Order, the Board shall develop a written policy for managing the other real estate owned of the Credit Union. Such policy shall be consistent with all applicable laws, regulations, and other regulatory guidelines regarding appraisals, including, but not limited to, the *Interagency Appraisal and Evaluation Guidelines* (December 2, 2010). The Credit Union shall submit the policy to the Administration for review and approval. Within 15 days from the Administration's response, the policy, including and incorporating any modifications or amendments requested by the Administration shall be

approved by the Credit Union, which approval shall be recorded in the Board meeting minutes. Thereafter, the Credit Union shall implement and fully comply with the policy.

### **RESTRICTIONS OF CERTAIN PAYMENTS**

15. While this Order is in effect, the Credit Union shall not pay any bonuses to employees or officers and shall not authorize any salary increases or funding of any supplemental plans for officers without the prior written approval of the Administrator. All requests for prior approval shall be received at least 30 days prior to the proposed bonus payment, salary increase, or supplemental plan funding date.

### **STRATEGIC PLAN**

16. Within 90 days from the effective date of this Order, the Credit Union shall prepare and submit to the Administration an acceptable written business/strategic plan covering the overall operation of the Credit Union. At a minimum, the plan shall establish objectives for the Credit Union's earnings performance, growth, balance sheet mix, capital adequacy, and reduction of nonperforming and underperforming assets, together with strategies for achieving those objectives. The plan shall also identify capital/net worth, funding, managerial, and other resources needed to accomplish its objectives.

### **VIOLATIONS OF LAW, REGULATION, AND CONTRAVENTION OF POLICY**

17. Within 30 days from the effective date of this Order, the Credit Union will eliminate and/or correct all violations of laws, regulations, non-compliant LUA concerns and/or contraventions of statements of policy in the LUA, and all Reports of Examination, including DORs, and shall adopt and implement appropriate procedures to ensure future compliance with all such applicable federal and state laws, regulations, and/or statements of policy.

### **PROGRESS REPORTS**

18. Within 30 days from the end of the first quarter following the effective date of this Order, and within 30 days from the end of each quarter thereafter, the Credit Union shall furnish written progress reports to the Administration detailing the form and manner of any actions taken to secure compliance with this Order and the results thereof. Such reports shall include a copy of the Credit Union's Consolidated Reports of Condition and of Income. Such reports may be discontinued when the corrections required by this Order have been accomplished and the Administration has released the Credit Union in writing from making further reports. All progress reports and other written responses to this Order shall be reviewed and approved by the Board and made a part of the appropriate Board meeting minutes and shall be subject to Code of Alabama Annotated Section 5-17-32.

### **MEMBER NOTIFICATION**

19. Within 60 days from the effective date of this Order, the Credit Union shall provide a copy of the Order or otherwise furnish a description of the Order to each of its members. The description shall fully describe the Order in all material respects. The description and any and all accompanying communications, statements, or notices shall be sent to the Administrator, at least twenty (20) days prior to dissemination to the Credit Union's members. Any changes requested to be made by the Administrator shall be made prior to dissemination of the description, communication, notice, or statement.

## GENERAL PROVISIONS

20. All actions required of the Board or the Supervisory Committee hereunder shall be approved in writing by the Board or Supervisory Committee, as applicable, and the actions and votes of each Board or Committee member shall be recorded and maintained.

The provisions of this Order shall not bar, estop, or otherwise prevent the Administration or any other federal or state agency or department from taking any other action against the Credit Union.

The Administrator of the Administration, with the approval of a majority of the Credit Union Board of the Administration, ex parte without notice, may appoint the Administrator as conservator and immediately take possession and control of the business and assets of the Credit Union in any case in which any one of the following occurs:

1. The Administration determines that the action is necessary to conserve the assets of the Credit Union or the interests of the members of the Credit Union.
2. The Credit Union, by resolution of its board of directors, consents to the action by the Administration.
3. There is a willful violation of this Order after it is final.
4. There is concealment of books, papers, records, or assets of the Credit Union or refusal to submit books, papers, records, or affairs of the Credit Union for inspection to any examiner or to any lawful agent of the Administration.

This Order shall be effective ten (10) days after it is delivered to the Credit Union. The provisions of this Order shall be binding upon the Credit Union, its directors, members of the Supervisory Committee, and employees, and any successors and assigns thereof.

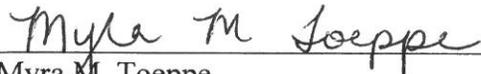
The Credit Union shall have ten (10) days from the receipt of this Order to make a written notice of appeal to the Credit Union Board pursuant to Code of Alabama Annotated Section 5-17-8 (1980). This Order shall remain in full force and effect during the pendency of any appeal hereof.

The provisions of this Order shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside in writing.

Dated this 2<sup>nd</sup> day of April, 2015.

  
Sarah H. Moore  
Administrator  
Alabama Credit Union Administration

The undersigned, as Regional Director of the Region III office of the National Credit Union Administration, acknowledges this Cease and Desist ORDER issued by Alabama Credit Union Administration and considers its acceptance by the Board of Directors of Alabama One Credit Union, Tuscaloosa, AL, as their commitment to the National Credit Union Administration to comply with the terms of the ORDER.



---

Myra M. Toeppe  
Regional Director, Region III  
National Credit Union Administration