

THE BANKING AND INSURANCE BOARD MEETING
DIRECTOR'S CONFERENCE ROOM MARCH 20, 2014, THURSDAY 2:00 PM

AGENDA

- I. Approval of Minutes for meeting held on September 5, 2013.
- II. Old Business
 1. The Secure and Fair Enforcement for Mortgage Licensing Act or Safe Act was approved as P.L. No. 30-151 on May 25, 2010.

The Legislature adopted the Banking and Insurance Board proposed regulations under the Guam Secure and Fair Enforcement for Mortgage Licensing act of 2010. Governor Eddie Calvo signed the regulations into law on November 27, 2013 as P.L. No. 32-093.

The NMLS has provided the templates for the registration of applicants for mortgage loan originators that will do mortgage loan origination in Guam. The Insurance, Securities Banking and Real Estate Branch is working with the NMLS to complete the website requirements based on the Guam SAFE act and regulations thereto. The target date for website to be approved by the CSBS/NMLS is March 31, 2014.

Also the NMLS have started the Uniform State Test (UST) implementation. The UST was launched on April 1, 2013. The new UST material tests applicants on their knowledge of high level state-related content that is based on the Conference of State Bank Supervisors/American Association of Residential Mortgage Regulators (CSBS/AARMR) Model State Law which many states, including Guam adopted into the law. The UST replaces state specific test components for the states that adopt it. A candidate that passes the stand alone UST satisfies the testing requirement for the uniform and state component for states that adopted the UST. As of January 2014, 39 states have adopted the UST. The Commissioner can adopt the UST. However, the Commissioner prefers that the Banking and Insurance Board to adopt the UST. The materials for UST is attached.

2. Vincent Insurance Services Corporation. The main issue is whether or not the Commissioner has the authority to retroactively allow and approve the renewal of the certificates of authority. The company did not file audited financial statements in time for each renewal period. The filing was done as follows: Audited Financial Statements for 2004 to 2007 were filed on March 5, 2010; Audited FS 2008 to 2009 were filed on December 16, 2011; Audited FS for 2010 were filed on January 12, 2012.

The decision of the Commissioner and the hearing officer states that Vincent Insurance cannot be issued an insurance license retroactively. Counsel for Vincent Insurance has filed an appeal before the Banking and Insurance Board. A hearing will be held as soon

as a hearing officer for the Board can be arranged with the assistance of the Attorney General. The counsel for Vincent Insurance Services Corporation is also asking for a transcript of the records of the administrative proceedings. Without the transcript of records and hearing officer for the Board, the hearing cannot be scheduled.

3. In regards to the letter requiring the Government of Guam autonomous agencies to deposit funds (particularly TCDs) with eligible banks. The first request was sent to AG John Weisenberger on August 4, 2010. A follow up request for opinion was submitted to AG Leonardo Rapadas on April 2, 2013. There is no response at this time.
4. The Patient Protection Affordable Care Act (PPACA) became law on March 23, 2010.

Guam opted not to establish a Health Insurance Exchange (Market) on October 1, 2013. The letter of Governor Eddie Calvo to HHS Secretary Kathleen Sebelius is attached. The decision to opt out is based on the following:

- (i) The penalty imposed on individual who does not enroll into the state based market does not apply to Guam. This is called the individual mandate.
- (ii) The penalty that is imposed on a small employer having 2 up to 50 employees does not apply to Guam. This is called the employer mandate.
- (iii) All the fifty (50) states including the District of Columbia will receive a subsidy in the form of advance premium tax credit (APTC) for individuals who enroll into the exchange. Guam and the other territories, American Samoa, Northern Mariana Islands, Puerto Rico and US Virgin Islands will not also receive subsidy.
- (iv) Guam has a very small population. This will make the operation of the market not affordable because the cost to operate the market will need to be shouldered by an estimated population of around 20,000 individuals. The NAIC Report on the territories explains the problems that need to be solved by the Territories in the implementation of the Affordable Care Act. The report of the NAIC on the Territories is attached.

The full implementation of the market requirements of the ACA include guaranteed accessibility, guaranteed renewability, no pre-existing condition exclusion, and the ten essential health benefits, namely:

1. Outpatient care—the kind you get without being admitted to a hospital
2. Trips to the emergency room
3. Treatment in the hospital for inpatient care
4. Care before and after your baby is born
5. Mental health and substance use disorder services: This includes behavioral health treatment, counseling, and psychotherapy

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6. Your prescription drugs
7. Services and devices to help you recover if you are injured, or have a disability or chronic condition. This includes physical and occupational therapy, speech-language pathology, psychiatric rehabilitation, and more.
8. Your lab tests
9. Preventive services including counseling, screenings, and vaccines to keep you healthy and care for managing a chronic disease.
10. Pediatric services: This includes dental care and vision care for kids

These ten (10) essential health benefits include dialysis and organ transplants. Without the individual mandate, employer mandate and federal subsidy, the cost of health insurance in Guam will up. These essential health benefits apply to individual and small group market only. In most of the 50 states the above essential health benefits are already covered by most large group health insurance policies. Upon, implementation, it is estimated that the rate increase could range from twenty to fifty percent (20-50%) over current premiums.

On November 14, 2013, the HHS gave each state insurance commissioner the option of delaying the implementation market reforms that are set forth in the Public Health Service Act. These market reforms are: fair health insurance premiums, guaranteed availability of coverage, guaranteed renewability of coverage, prohibition of pre-existing condition exclusions or other discrimination based on health status, etc. The delay in implementation of some market reforms for health insurance apply to insurance policy in effect on October 1, 2013. For example a policy that is effect from October 1, 2013 can be renewed on October 1, 2014 for another year until October 1, 2015, without including the essential health benefits. This delay is to allow individuals and employers to maintain their current health plans. This is also to prevent the sudden increase of health insurance premiums if full implementation is chosen.

To prevent the shock of sudden increase in health insurance premiums, the Commissioner issued Bulletin 2013-01. This allows the insurers and health maintenance organizations to renew health insurance plans with a gradual inclusion of the essential health benefits.

Also on March 3, 2014, the HHS issued another extension of the Transitional Policy through October 1, 2016. This extension allowed the states including Guam to extend the transitional policy beginning on or before October 1, 2016.

III. New Business

1. An Act to Adopt the Uniform Electronic Transactions Act UETA by Adding a New Division 11 to Title 13 of the Guam Code Annotated. The author of this proposed bill is Senator Michael F.Q. San Nicolas. From the 50 states plus District of Columbia only Illinois, New York and Washington have not adopted the UETA but have statutes pertaining to electronic transactions. The UETA was adopted by the National Conference of Commissioners on Uniform State laws in response to the federal law entitled Electronic Signatures in Global and National Commerce Act. The CRS summary of this law is attached.

The proposed bill contains substantially the language of the UETA. However, the reference to the provisions of the Guam Uniform Consumer Code have not been analyzed. The Board needs to discuss this bill and can vote to support or not to support this bill.

2. The National Insurance Producer Registry (NIPR) of the NAIC is assisting the Guam Insurance Commissioner to implement online renewal of all insurance agents, general agents and brokers. The NIPR is conducting weekly conference calls with the Insurance, Securities, Banking and Real Estate to do some testing. The aim of the testing is to see if the assignment of a national producer number (NPN) by the NIPR will flow into the records of the AS400 Insurance Program. Thereafter the testing will focus if the data that is entered into the Guam AS400 Insurance Program will integrate into the NIPR. The final test will be if an insurance agent that renews via the NIPR will then be integrated into the Guam AS400 Insurance Program. The target is to enable online renewal no later than June 1, 2014.

3. The Federal Reserve Board approved on July 2, 2013, a final rule that implements changes to the regulatory capital framework for all banking organizations including Community Banking Organizations. Community banking organizations must begin complying with the rule on January 1, 2015. The new capital rule Community Bank Guide is attached.

4. ATM machines will need to support Microsoft Windows 7 operating system. The deadline that is set by Microsoft is April 8, 2014. On this day, Microsoft will cut off support for any ATM that cannot support the Windows 7 Operating system. The article on the ATM is attached.

5. Citibank has stopped taking deposits and has closed all deposit accounts, savings, checking and time certificate of deposits (TCD) as of February 28, 2014. All TCD's of insurance companies shall be transferred to FDIC insured banks that are licensed in Guam. No new loans will be transacted. The outstanding loans will be serviced in Guam until these loans are sold or transferred to the Citibank Head Office. ATM facilities have been disabled. ATM licenses will be canceled after the filing of Citibank's gross receipts taxes. Citibank has not made any decision to discontinue the credit card transactions.

BANKING AND INSURANCE

BOARD OF DIRECTORS MINUTES

March 20, 2014, Thursday, 2:00 P.M.

Director's Conference Room, Department of Revenue and Taxation
1240 Army Drive, Barrigada, Guam 96913

Attendance:

Artemio B. Ilagan, Chairman, and Insurance and Insurance Commissioner

Members:

Edelfrida A. Ada
Mark O. Fish

Cesar Garcia
Danilo Rapadas

David Silva

Absent: William West Cassidy Rose Fejeran

Also Present:

John Q. Carlos, Regulatory Programs Administrator
Teresa Santos, Regulatory Examiner II
Nemencio David E. Briones, Regulatory Examiner I

Call to Order:

Chairman Ilagan inquired if the publication requirements for the Board Meeting have been met. Mr. Carlos confirmed that the publication requirements were met. Chairman Ilagan acknowledged the presence of the five Board Members and called the Banking and Insurance Board Meeting to order at 2:07 P.M.

Approval of Minutes:

The minutes of the prior board meeting held on September 5, 2013, was presented and opened for review and discussion. A motion to approve the minutes was made by Ms. Ada and seconded by Mr. Rapadas. The minutes were unanimously approved.

Old Business:

1. **The Secure and Fair Enforcement for Mortgage Licensing Act or Safe Act** was approved as P.L. No. 30-151 on May 25, 2010. The Legislature adopted the Banking and Insurance Board proposed

regulations under the Guam Secure and Fair Enforcement for Mortgage Licensing act of 2010. Governor Eddie Calvo signed the regulations into law on November 27, 2013 as P.L. No. 32-093. NMLS have started the Uniform State Test (UST) implementation. The Commissioner can adopt the UST. However, the Commissioner prefers that the Banking and Insurance Board to adopt the UST.

Ms. Ada inquired if Uniform State Test (UST) is a Standard Test and Chairman Ilagan stated that thirty nine (39) agencies have adopted UST standard and we do not have one for Guam. A motion to accept was done by Ms. Ada and seconded by Mr. Rapadas.

2. **Vincent Insurance Services Corporation.** The main issue is whether or not the Commissioner has the authority to retroactively allow and approve the renewal of the certificates of authority for captive company. The decision of the Commissioner and the hearing officer states that Vincent Insurance cannot be issued a captive insurance license retroactively. Counsel for Vincent Insurance has filed an appeal before the Banking and Insurance Board. A hearing will be held as soon as a hearing officer for the Board can be arranged with the assistance of the Attorney General. The counsel for Vincent Insurance Services Corporation is also asking for a transcript of the records of the administrative proceedings.

Chairman Ilagan stated that our agency does not have somebody and the resources to transcribe the records. A question of how long it will take to get the transcript was brought by Mr. Fish. Mr. Carlos replied that it will take some time to finish the transcript because it was a 2 day session.

Mr. Rapadas recommended asking Vincent Insurance if they are willing to pay for the cost of the transcript just to get it done. Chairman Ilagan and Mr. Fish agreed to this idea. Chairman Ilagan asked Mr. Carlos to ask Vincent Insurance if they will agree to pay for the cost of the transcript of records.

Mr. Silva inquired about the purpose of an appeal. Chairman Ilagan stated that this is the procedure. There are certain steps they need to follow before they take their case to court.

3. **In regards to the letter requiring the Government of Guam autonomous agencies to deposit funds (particularly TCDs) with eligible banks.** The first request was sent to AG John Weisenberger on August 4, 2010. A follow up request for opinion was submitted to AG Leonardo Rapadas on April 2, 2013. There is no response at this time.

Chairman Ilagan stated Ms. Shannon Taitano from the AG's office has not responded to us and we are still waiting for her response.

4. **The Patient Protection Affordable Care Act (PPACA)** became law on March 23, 2010. Guam opted not to establish a Health Insurance Exchange (Market) on October 1, 2013. On November 14, 2013, the HHS gave each state insurance commissioner the option of delaying the implementation market reforms that are set forth in the Public Health Service Act. This delay is to

allow individuals and employers to maintain their current health plans. This is also to prevent the sudden increase of health insurance premiums if full implementation is chosen.

Also on March 3, 2014, the HHS issued another extension of the Transitional Policy through October 1, 2016. This extension allowed the states including Guam to extend the transitional policy beginning on or before October 1, 2016.

Chairman Ilagan stated that HHS focused is at how the delay of implementing of some market reforms for health insurance is going to effects the States. It is not relevant for HHS what is going to happen to the Territories. Chairman Ilagan stated that until now we are still waiting for the response of the HHS.

Mr. Carlos suggested that knowing the HHS had move back the implementation of market reforms and the application of essential health benefits act by two (2) year period may be Guam could ask the US Government to give subsidies to reduce the premiums and for this period insurance companies in Guam can implement essential health benefits gradually, not a full implementation to prevent the sudden increase of health insurance premiums.

New Business:

1. An Act to Adopt the Uniform Electronic Transactions Act UETA by Adding a New Division 11 to Title 13 of the Guam Code Annotated. The author of this proposed bill is Senator Michael F.Q. San Nicolas. The proposed bill contains substantially the language of the UETA. However, the reference to the provisions of the Guam Uniform Consumer Code (UCC) has not been analyzed. The Board needs to discuss this bill and can vote to support or not to support this bill.

Mr. Fish wanted to know who is behind this bill or the entities or group of people pushing this bill. He was wondering why it is being pushed here in Guam. He was doubtful if they are going to use it in the banking industry because they like to do hands on contract. He was also concern that on legal contracts in most States, you need to have signatures to be notarized.

Mr. Rapadas stated that in Federal side there is certain guidelines that you need to follow and if you follow those guidelines it's considered legal and binding even it was done electronically.

Mr. Fish asked if this has been compared against Guam UCC, and he reminded everybody that Guam UCC is an outdated code with no electronic writes, coverage, and all of these things. Chairman Ilagan responded that they have not done it, not personally and Mr. Carlos confirmed that they have not done it.

Mr. Fish suggested that at this point board should table it and tell Senator San Nicolas that we got a lot of questions including whether necessary leg work has been done to compare this against existing Guam UCC. It was seconded by Mr. Rapadas and all board members agreed.

2. The National Insurance Producer Registry (NIPR) of the NAIC is assisting the Guam Insurance Commissioner to implement online renewal of all insurance agents, general agents and brokers. The target is to enable online renewal no later than June 1, 2014.

Chairman Ilagan informed the board that they are now on the final phase and they are still having some test. Hopefully by next month everything will be clear and set to go by June 1st.

Mr. Silva has a concern regarding the tax clearance requirement. Insurance companies need to complete and submit tax clearance form in order to do their license renewal. Because it is only good for 30 days and it shortens the window. Also, if the system is not reliable that worries him.

Mr. Carlos stated that we have brought this issue to NIPR and they agreed that tax clearance for this year will be manually submitted. This means, after insurance companies submitted their completed tax clearance form with the ISB starting May 1, 2014, as far as tax clearance requirement that is sufficient for them.

Mr. Carlos briefed the board that the way it will work out is the applicant will go to the website and types in his license number whatever is indicated in his previous license, then there will be blanks, information on his previously issued license and then he needs to type in all the information that pertains to his own personal license. When an applicant has multiple licenses such as; surplus line broker's, broker's, and producer's license the applicant needs to submit one application. The Sub-Agent's Appointment has to be submitted in batches by the carriers or by the general agents.

3. The Federal Reserve Board approved on July 2, 2013, a final rule that implements changes to the regulatory capital framework for all banking organizations including Community Banking Organizations. Community banking organizations must begin complying with the rule on January 1, 2015. The new capital rule Community Bank Guide is attached.

Mr. Ilagan asked if there any questions or discussions on this topic. None of the board members had given any additional discussion on this topic

4. ATM machines will need to support Microsoft Windows 7 operating system. The deadline that is set by Microsoft is April 8, 2014. On this day, Microsoft will cut off support for any ATM that cannot support the Windows 7 Operating system. The article on the ATM is attached.

Mr. Rapadas stated that their new NCR deposit machine is not deposit ready yet, but it will be ready pretty soon and all old ATM that they have are being replaced now.

5. Citibank has stopped taking deposits and has closed all deposit accounts, savings, checking and time certificate of deposits (TCD) as of February 28, 2014. All TCD's of insurance companies shall be transferred to FDIC insured banks that are licensed in Guam. No new loans will be transacted. The outstanding loans will be serviced in Guam until these loans are sold or transferred to the Citibank Head Office. ATM facilities have been disabled. ATM licenses will be canceled after the filing of Citibank's gross receipts taxes. Citibank has not made any decision to discontinue the credit card transactions.

Mr. Rapadas stated that anybody who has Citibank card would not be able to pay it online anymore or all their customers have to do it through Shell Stations. He thinks Citibank eventually will close all their business.

Other Matters:

1. Mr. Fish talked about the new towing regulation, there has been a new law passed which really tightens restriction on towing companies. The new law requires them to provide certain notices to the lien holders, the owners, and the insurance companies within certain timeframe.

Mr. Carlos stated that with this new law you have to notify not just the registered owner but also the legal owner and insurance company. There has been an oversight hearing on all the towing companies for the legislature and they were informed to comply, otherwise they will not be able to renew their license.

Mr. Fish added that the Revenue and Taxation should develop fee structure that could set maximum towing fee. The agency needs to step forward, meet with bankers and insurance companies to get this thing under control.

2. Mr. Rapadas discussed the topic on MSB (Money Service Business). He stated that this is the area that the Commissioner should look at because they are high risk type of business.

Mr. Fish stated that in terms of consumer protection, there should be more stringent requirements for submissions, reviews, and due diligence in connection with the issuance of MSB license. Like in the old days of the ATM if you want to put an ATM in the market you have to get a vending machine license.

3. Mr. Silva requested that the Insurance Commissioner Office to reach out with the Insurance Commissioner of Saipan with regards to file and use or file and approved of policy forms and rates.

Mr. Carlos noted the board that Guam statute is different. It requires prior approval. He gave an example about Health Insurance Company, if ISB allows them to file and use or file and approved insurance company can change the benefits and they can charge high premium; when the time comes after six (6) months to review how you are going to reinstitute those type of policy. There is

lots of time that we see policies not in compliance. In the absence of review you are not able to catch which policies are not in compliance.

Mr. Silva insisted that the Commissioner still have to work with Saipan Insurance Commissioner. He stated that ISB has a system that is not working.

Commissioner Ilagan noted that all we need is the support from the Legislature, to mention all of the money generated from insurance and banking industry should go to the Banking and Insurance Fund for regulatory purposes, ISB will have enough resources.

A motion to adjourn the Meeting was made by Mr. Rapadas; the motion was seconded by Ms. Ada. The Banking and Insurance meeting was adjourned at 3:08 P.M.