

THE CREDIT UNION REFLECTION

Highlights

- ☛ Commission approves "Serving Underserved Areas" Regulation
- ☛ Commissioner Face Highlights Bureau Activity

Inside

- ☛ SEGs
- ☛ Bureau Statistics
- ☛ Administrative Letter (BFI -AL-1610)

COMMISSION APPROVES "SERVING UNDERSERVED AREAS" REGULATION

In the Winter 2004 edition of the "Credit Union Reflection" it was reported that the State Corporation Commission was considering a regulation to permit Virginia state-chartered credit unions to provide financial services in "underserved areas." After reviewing public comments, the Commission adopted, effective March 1, 2004, Regulation 10 VAC 5-40-40, "Serving Underserved Areas." This regulation allows any multiple-group state-chartered credit union in Virginia to amend its articles of incorporation or bylaws, pursuant to Section 6.1-225.16 of the Code of Virginia, to include in its field of membership individuals and organizations in one or more underserved areas to the same extent, and subject to the same conditions, as authorized for federal credit unions in the Federal Credit Union Act (FCUA).

The regulation cites 12 U.S.C. Section 1759, which is the membership statute in the FCUA. The Bureau will look to this statute and NCUA's "Chartering and Field of Membership Manual" for guidance in approving requests from Virginia state-chartered credit unions to serve underserved areas. This statute allows a federal credit union to include in its field of membership "any person or organization within a local community, neighborhood, or rural district" if two conditions are met:

- (1) The local community, neighborhood, or rural district must be an "investment area" as defined in the Community Development Banking and Financial Institutions Act of 1994 (CDFI), and meets such other requirements as the NCUA Board may impose; and

- (2) The local community, neighborhood, or rural district must be underserved based on data of the NCUA Board and federal banking agencies.

The credit union must also establish and maintain an office or service facility in the local community, neighborhood, or rural district.

Therefore, in its review of requests to serve underserved areas, the Bureau will look at evidence that the proposed area is an investment area, and that it is underserved. The Bureau will also require a business plan that identifies the credit and depository needs of the community, and how the credit union will market to those needs. Finally, the Bureau will request that each credit union provide a procedure it will use to ensure that new members from the underserved area are qualified, and that data is available to assure that service to the underserved is provided as intended.

For Virginia state-chartered credit unions that are interested in serving underserved areas, links to the CDFI and which identify underserved areas and empowerment zones are available on NCUA's website by clicking the "Credit Union Development" link, then the "Serving the Underserved" link (<http://www.ncua.gov/CreditUnionDevelopment/UnderServed/underserved.html>). A mapping program is available on the CDFI website <http://www.cdfifund.gov/> but note that you must register to use the mapping program. These links should be helpful to credit unions in developing the necessary evidence for the Bureau to approve these requests.



COMMISSIONER FACE HIGHLIGHTS BUREAU ACTIVITY IN SPEECH TO VCUL ANNUAL MEETING DELEGATES

On April 2, 2004, Commissioner of Financial Institutions Joe Face addressed the attendees at the Virginia Credit Union League's 70th Annual Meeting in Norfolk, Virginia. In telling Virginia's volunteer and professional credit union workers "My goal is to make the state charter the best charter!" Mr. Face drew attention to proactive achievements of the Bureau to become the preferred charter.

He noted that a theme in the comments on the underserved regulation was that well-managed state-chartered credit unions should have the ability to operate competitively under similar rules and regulations as federally-chartered credit unions. Mr. Face agreed and stated that the Bureau is constantly taking what it thinks to be a proactive approach by reviewing and monitoring Virginia law and regulation, as well as federal law and regulation, in an effort to maintain the competitiveness of the Virginia state credit union charter. As a matter of fact, the Bureau believes that Virginia credit union law and regulation is already similar or even less restrictive than federal law or regulation in some circumstances. In other words, it seems Virginia state-chartered credit unions may often already be permitted to engage in many of the activities allowed federal credit unions, without the need of a State Corporation Commission regulation.

Mr. Face encouraged the credit union representatives he was addressing that if at any time there is a specific “authority” any state credit union is interested in obtaining, or if some current restriction in Virginia law seems to prevent a credit union from engaging in a certain activity, to let the Bureau know.

Mr. Face noted the Bureau’s involvement with a number of national associations of state-regulatory, legislative, and governmental agencies, including NASCUS for state credit union regulators. These associations are a forum for new and different ideas as well as to support each other. Within the last few years a group known as the State Financial Regulators Roundtable (SFRR) has been meeting. This group of state regulators meets quarterly to discuss issues of concern regarding state regulated depository and non-depository institutions, so that state regulators can make sure regulated institutions get quality supervision and regulation. Perhaps more importantly, these meetings make it possible for state regulators to allow state-chartered institutions to have a competitive regulatory environment in order to prosper. Mr. Face noted that he recently served as the Chairman of SFRR, and the chairmanship has rotated to NASCUS this year.



During the first quarter of 2004, the Bureau approved sixteen SEGs for three credit unions, adding 4,096 new potential credit union members. Due to the size of the groups requiring publication and 15 days notice in the Bureau’s Weekly Bulletin, three of these approvals were actually not made until the second quarter; however, the rest were all approved within a day or two. Each SEG averaged about 256 members. Since legislation to permit SEG expansion went into effect on July 1, 1999 there have been 262 SEGs approved for total new potential membership of 87,650. The typical SEG averages about 190-200 potential members.

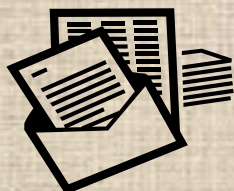
Two credit unions merged during the first quarter of 2004. As reported in the Winter edition of the “Credit Union Reflection” Times-World ECU, Roanoke, Virginia, which was chartered in 1941 and had assets of \$1 million, merged into Member One FCU, also of Roanoke. After several years of discussion and planning by the boards, Lynchburg General CU merged into V.B.H. ECU to form one credit union of nearly \$4 million in assets. Both of the sponsor hospitals are owned by Centra Health in Lynchburg, so administratively the merger was sensible, and the combined credit unions still have one common bond. Finally, Southern States ECU, which was chartered in 1940 and has about \$27.5 million in assets, converted to a federal charter during the first quarter. These charter changes leave 64 Virginia state-chartered credit unions with total assets of \$3.94 billion as of March 31, 2004.

Subsequent to the Supreme Court of Virginia’s decision in January 2004 in the DuPont Community CU case, Northern Star CU, Portsmouth, has requested an expansion of their community field of membership to include Chesapeake and Suffolk. This request was received in the second quarter of 2004, and is still being reviewed by Bureau staff. No other community field of membership activity has occurred.

BUREAU STATISTICS SHOW HIGH DEGREE OF FAILURE FOR SMALL GROUP CREDIT UNIONS

Figures noted above show that SEG approvals averaged 256 members in the first quarter of 2004, and that typically SEGs have about 190-200 members. This small number of members per SEG illustrates the feasibility of adding SEGs to the field of membership of existing credit unions. Section 6.1-225.23:1 of the Code of Virginia encourages the Bureau to charter new credit unions when practicable and consistent with reasonable safety-and-soundness standards. However, if the Bureau finds that the formation of a separate credit union by a group desiring credit union services is not practicable or is inconsistent with reasonable safety-and-soundness standards, it may authorize the group to be included in the field of membership of an existing state credit union if certain findings are met.

Historically and in general, chartering SEGs has proven to be an unsuccessful venture. Bureau statistics indicate that when SEGs charter their own credit union they have had an 80% failure rate. Since 1974, when the Bureau first started approval of SEG additions to existing credit union fields of membership, the Bureau has also chartered 30 new credit unions, the last being chartered in 1983. Only six of these credit unions still exist. Of the 24 failures only six had more than 600 members when they liquidated or merged, and the largest of the 24 credit unions had only \$2 million in assets after 16 years in business. In addition, since 1974 nearly seventy other state-chartered credit unions have merged or liquidated; the average size of all these credit unions at the end was about \$1.3 million, and they had about 675 members. From a safety-and-soundness standpoint, history suggests that it is better to add SEGs to existing credit union fields of membership rather than to charter a new credit union.



ADMINISTRATIVE LETTER BFI-AL-1610

PREPAYMENT PENALTIES IN ALTERNATIVE MORTGAGE TRANSACTIONS

Prior to December 18, 2003, the Bureau was subject to an injunction entered by the United States District Court for the Eastern District of Virginia, Richmond Division. That injunction barred the Bureau from enforcing Virginia law limits on prepayment penalties in “alternative mortgage transactions” (AMTs) entered into by non-depository housing creditors. On December 18, 2003, the parties to the case in which the injunction was issued appeared before the Court to be heard on certain motions.

After argument the Court ruled that the Bureau was not barred from enforcing Virginia law prepayment penalty limits with respect to AMTs entered into on or after July 1, 2003, the effective date of revised regulations of the Office of Thrift Supervision. Therefore, the Bureau will resume enforcement of those laws in

connection with AMTs closed on or after July 1, 2003 by mortgage lenders licensed under the Virginia Mortgage Lender and Broker Act.

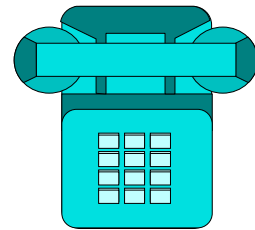
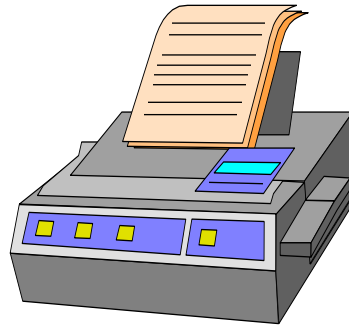
The mission and purpose of the Credit Union Section is to effectively and efficiently supervise, regulate, and assist credit unions chartered by the Commonwealth of Virginia in order to:

- 1. Protect the financial interests of credit union members.*
- 2. Ensure compliance with applicable laws.*
- 3. Ensure adherence to safe and sound operating procedures and principles.*

These three objectives are to be pursued so as to safeguard a financial environment within Virginia worthy of the public's confidence in credit unions and the financial system as a whole.

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