

THE CREDIT UNION REFLECTION

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DEPUTY COMMISSIONER LATHAM SPEAKS TO NACUSAC

Deputy Commissioner George Latham recently spoke to the National Association of Credit Union Supervisory and Auditing Committees (NACUSAC) at their annual conference in Boston. He gave a state regulator's perspective on oversight committees. Mr. Latham's presentation followed that of new NCUA Board member Geoff Bacino who gave his take on the regulator's role. Mr. Bacino focused on the latest NCUA initiatives, and advised how a supervisory committee can work effectively with the regulator.

Mr. Latham's comments first examined differences in the states' approach to examination and regulation compared to NCUA. Primarily, state chartered credit unions have to comply with their state Code or laws, he said. Complying with NCUA insurance regulations will take a back seat to making sure the requirements of state law are met. "I don't know how many times over the years I've heard, 'But NCUA does it this way,'" Latham said. "My feeling is that if you want to do it NCUA's way, get a federal charter! It's almost an insult to state regulators that their credit unions know more about NCUA regulations than they do about the state law." Latham noted that there are instances when NCUA insurance regulations are more conservative than the state law. In those instances state chartered credit unions will comply with state law by complying with the insurance regulation. Regulators invariably will go with the more conservative approach.

For an example Mr. Latham pointed out the different reserving requirements of Prompt Corrective Action (PCA) and various current state laws that have not been changed since PCA was implemented. Not only may reserve transfers still be required in state chartered credit unions, but also transfers may be required whether the PCA net worth ratio is 7.0% or not. In addition, the reserve transfer amount will probably be higher than PCA requires. Since state-chartered credit unions have a primary responsibility to comply with state law, they may be disadvantaged compared to their federal counterparts in reserve requirements until state laws are changed.

Other differences noted by Mr. Latham in the states' approach to examination and regulation compared to NCUA are:

- openness to alternative methods of funding the Allowance for Loan Loss account
- flexibility in tailoring examination reports as needed for individual credit unions
- different analysis of small employee group and community field of memberships
- availability of regulatory flexibility already (NCUA is proposing a regulatory flexibility rule that will do what most states already do)
- less likelihood to merge or liquidate small credit unions compared to NCUA which has merged a large number of small credit unions in 2001.

Mr. Latham then addressed the question of how differences in regulatory style between NCUA and the states affect a credit union's working relationship with its regulator. He noted that better accessibility to the state regulator is most frequently cited. State regulators are locally oriented, while NCUA by nature has a national focus. NCUA's organizational structure and the number of credit unions they regulate restrict access and the ability to communicate with them.

NCUA is also perceived by state regulators and state-chartered credit unions to intrude into state credit union regulation too much. NCUA's authority as an insurer sometimes gets confused with regulation. Mr. Latham noted that NCUA and all state regulators are primarily concerned with safety and soundness. "We recognize a public trust placed in us to assure the public that when their funds are placed in a depository institution, they will not lose their money. This safety and soundness concern was present before there was ever any deposit or share insurance, and remains despite the existence of share insurance."

Mr. Latham noted extreme budgetary differences between NCUA and the states. NCUA has a current annual budget of about \$130 million. The average state regulator's budget is less than \$1 million (Virginia's is about \$650,000). With the funding they have NCUA can do so many things--and some would argue they do too much. With smaller budgets state regulators can give closer attention to their constituents.

Finally, Mr. Latham pointed out that NCUA deals only with credit unions as a regulator and an insurer. This fact allows NCUA to promote and champion the industry. State regulators usually regulate banks, thrifts, and other financial service providers in addition to credit unions. They can not favor one industry over another. They must consider the import of their decisions on all the industries they regulate.



- The Bureau has taken the first step in returning to the membership a credit union it has operated in conservatorship for over two years. The Nansmond CU was placed in conservatorship by Order of the State Corporation Commission in February 1999. Since then the Bureau has restored accounting and other corporate records, reduced delinquency significantly, and trained a new manager. A Certified Public Accounting firm has issued an opinion audit on these records. In May 2001 a special membership meeting was held to elect a new board of directors. The five directors-elect will serve until the credit union's 2002 annual meeting. For the short term the Bureau will continue decision-making as the board-elect becomes experienced in operating and managing a credit union. If all goes well by the fall, the Bureau will ask the Commission to end the conservatorship.
- Last quarter's "Credit Union Reflection" reported that the U.S. Court of Appeals for the Fourth Circuit had affirmed a District Court's ruling in NHEMA v. Face, et. al. Both courts have held that federal law and agency action preempt Virginia's laws that limit the prepayment penalty a licensed lender may charge on a "alternative mortgage transaction." On June 7, 2001 the Bureau Defendants filed a petition in the United States Supreme Court, seeking review of the lower courts' rulings on grounds that (1) Congress did not intend to preempt states' pre-payment laws, and (2) the federal agency actions involved were not authorized. The Supreme Court grants a "Writ of Certiorari" in a small percentage of cases. The Bureau hopes that this preemption of state law will warrant review by the high court.

- The question has been posed about what kind of review the Bureau will do in the event a credit union seeks an overlap of an existing community field of membership. The answer is that the Bureau will do primarily a safety and soundness review since the "well-defined local community, neighborhood, or rural district" requirement of the law has been previously met.
- If your credit union seeks more powers, be sure to discuss them with the Bureau. Regulatory flexibility sought at the federal level may already be available to you at the state level. The Bureau is willing to listen. If your credit union is safe and sound, the Bureau may have latitude within the laws to allow what you want to do.
- As has been reported in the trade press, Fairfax County ECU is currently going through the process of converting to a federal credit union. There will be 72 Virginia state chartered credit unions when this process is complete. While the Bureau regrets losing a well managed and operated credit union, the right of a credit union's membership to determine its charter is recognized. It is expected that Fairfax County ECU will continue to thrive under a federal charter.

SELECT EMPLOYEE GROUP UPDATE SELECT EMPLOYEE GROUP UPDATE

During the first quarter of 2001 the Bureau approved 16 small employee groups (SEGs) to be added to the fields of membership of five credit unions. Eight other SEG expansion requests were filed but not yet approved at quarter end. All the requests were published in the Weekly Information Bulletin (<http://www.state.va.us/scc/division/banking/weekly.htm>) and were subject to a 15 day comment period. No comments or objections were received on any of the requests.

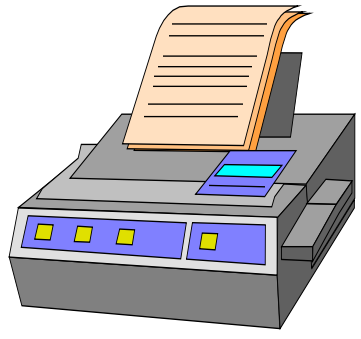
A total of 2,642 new potential credit union members were approved during the quarter. The average group size for the first quarter was about 165. Since legislation to permit SEG expansion went into effective July 1, 1999, 19,493 new potential credit union members have been approved for Virginia state-chartered credit unions. The average group size during this period has been about 197.

In addition to these SEG filings, the Bureau also approved a conversion to a community field of membership of the City of Portsmouth for The Navy Yard Credit Union. The Bureau also approved an expansion of the University of Virginia Community Credit Union's community field of membership to include Greene and Fluvanna Counties. These community field of membership approvals were the first under the new field of membership statute which became effective July 1, 1999.

After reviewing SEG activity for the past two years the Bureau has decided not to publish SEGs less than 600 in the weekly Bulletin anymore. The “Credit Union Request for Field of Membership Expansion” form (CCB-3308) still needs to be completed and filed with the Bureau, and the Bureau will process these requests promptly. SEGs of 600 or more will still be published, and a 15 day comment period still exists on published SEGs. This change in policy on SEGs by the Bureau does not affect publishing or procedures for community field of membership requests.

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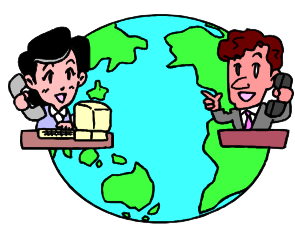


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