

THE CREDIT UNION REFLECTION



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SUPREME COURT OF VIRGINIA AFFIRMS STATE CORPORATION COMMISSION DECISION

The decision in *Virginia Bankers Association v. State Corporation Commission, et al.*, was handed down by the Supreme Court of Virginia on February 13, 2004. In an order of less than two pages, the Justices stated that "(o)n appeal, the Commission's findings 'are presumed to be just, reasonable, and correct,' " citing previous case law. Further, the Court held that "(t)he Commission's order is entitled to the respect due judgements of a tribunal informed by experience, and its decision will not be disturbed when 'based upon the application of correct principles of law.' "

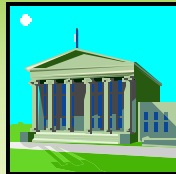
The Court cited the record in the case and concluded that the Bureau of Financial Institution's approval of DuPont Community CU's field of membership expansion request was appropriate. It also noted that there is a deferential standard of review afforded to

the Commission, that the evidence supported the decision, and that the correct principles of law were applied.

This was the first credit union case in memory to be heard by the Supreme Court of Virginia. The VBA appealed the decision of the Commission to affirm an approval by the Commissioner of Financial Institutions of a multiple jurisdiction community field of membership. On May 16, 2002 Commissioner Joe Face approved a request to expand the field of membership of DuPont Community CU, Waynesboro, Virginia. The expanded field of membership included five counties and five cities that constitute the Central Shenandoah Valley Region, a designated planning district under Virginia's Regional Cooperation Act. The VBA filed a petition with the Commission for it to review the Commissioner's decision. When the Commission affirmed the Bureau's approval of DuPont Community CU's request, the VBA appealed this decision to the Supreme Court of Virginia.

A written legal brief was filed as required in September 2003 by the VBA. The State Corporation Commission, DuPont Community CU, and the Virginia Credit Union League filed written briefs in response in October 2003. These briefs were reviewed by the Justices, and on January 14, 2004 counsel for both sides appeared before the Court. They were provided fifteen minutes each to present their oral arguments for the most important points of their cases. Questions from the Justices centered mainly on the concept of "well defined local community, neighborhood, or rural district" in the field of membership statute in the Virginia Credit Union Act.

COMMISSION CONSIDERS "SERVING UNDERSERVED AREAS" REGULATION



On November 21, 2003 the State Corporation Commission issued an Order directing that notice be given to the public of a proposed regulation. This regulation, if adopted, would permit certain Virginia state-chartered credit unions to provide financial services in "underserved areas." The regulation proposes that any multiple-group state-chartered credit union in Virginia shall have the power to include in its field of membership individuals and organizations in one or more underserved areas to the same extent as permitted to federal credit unions in the Federal Credit Union Act.

The Commission's proposed regulation was published in the Virginia Register on December 15, 2003 and also posted to the Commission's website. Interested parties were given the opportunity to request a hearing and to file comments by January 9, 2004. The notice resulted in twelve responses received. Ten, including two from federal credit unions, were in favor of the regulation. Two were opposed. None of the respondents asked for a hearing, and there were no proposed changes to the wording of the regulation.

The supporting comments generally centered on the parity issue and the necessity for the regulation as another stop gap to preserve dual chartering. The Virginia Credit Union League noted that there are 13 Virginia federal credit unions providing financial services in over two dozen underserved areas that include 2.5 million Virginians. The League asserted that there certainly are state-chartered credit unions that could also provide low-cost financial services to underserved areas where these services are most needed. Echoing this thought, Navy FCU stated its belief that the proposed regulation "would benefit the citizens of the Commonwealth of Virginia, especially those most in need of reasonably priced financial services."

In opposition the Virginia Bankers Association expressed concern that the regulation would permit credit unions to serve anyone in large geographic areas, including those who are not underserved. This distinction is important according to the VBA because it believes the NCUA, using its underserved authority, has ignored the requirement of a "local community, neighborhood, or rural district." The VBA also believes this is an exploitation of the credit union's "tax subsidy." Another commenter in opposition to the regulation also stated that any field of membership expansion allowable under the proposed regulation "carries with it an expansion of the credit union tax subsidy paid for by all Virginia taxpayers."

As of this writing the Judges of the SCC are considering the comments and legal counsel's recommendation. A decision whether to approve the regulation or not is anticipated by March, 2004.

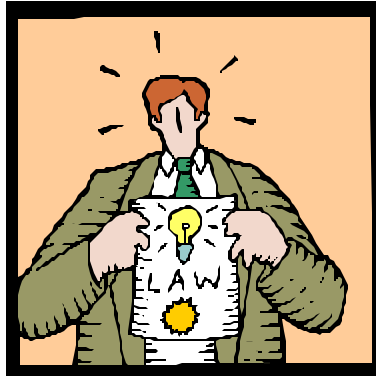
SEG AND MERGER ACTIVITY

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Small Employee Group (SEG) additions to credit union fields of membership slowed down significantly at the end of 2003. During the fourth quarter of 2003 the Bureau only approved two SEGs for two credit unions, adding 128 new potential credit union members. Since legislation to permit SEG expansion went into effect on July 1, 1999 there have been 246 SEGs approved for total new potential membership of 83,554. This translates into an average group size of about 340. However, this figure is inflated by about one-half dozen large groups over the past four and one-half years. The typical SEG averages about 190-200 potential members.

One merger involving a Virginia state-chartered credit union was completed during January 2004. Times-World ECU, Roanoke, Virginia, which was chartered in 1941 and had assets of \$1 million, merged into Member One FCU, also of Roanoke. This merger leaves 66 Virginia state chartered credit unions with total assets of \$3.87 billion as of December 31, 2003.

FINANCIAL INFORMATION SAFEGUARDS RULE



Have you developed a comprehensive security program to ensure the security and confidentiality of customer information? If not, you may be in violation of the Federal Trade Commission's (FTC) Safeguards Rule (Rule), which went into effect May 23, 2003.

Financial institutions covered by the Rule include companies that broker, make or service consumer loans, transfer or safeguard money, prepare individual tax returns, provide financial advice or credit counseling, provide real estate settlement services, and/or collect consumer debts. Such companies must comply with the Rule.

According to the FTC's May 23, 2003 press release, financial institutions subject to the Rule must implement an information security program as follows:

- Designate an employee or employees to coordinate the program;
- Identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of customer information and assess the sufficiency of any safeguards in place to control the risks;
- Design and implement safeguards to address the risks and monitor the effectiveness of these safeguards;
- Select and retain service providers that are capable of maintaining appropriate safeguards for the information and require them, by contract, to implement and maintain such safeguards; and
- Adjust the information security program in light of developments that may materially affect the program.

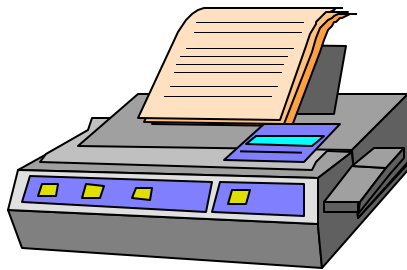
Each information security program must include these basic components; however, companies are allowed to select specific safeguards that are appropriate to their size and complexity, the nature and scope of their operations, and the sensitivity of the customer information maintained.

Check out the FTC's Web site (www.ftc.gov) to find more information about the Safeguards Rule and tips on developing your information security program. (*Thanks to Nancy Walker for this news item.*)

The mission and purpose of the Credit Union Section is to effectively and efficiently supervise and regulate 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 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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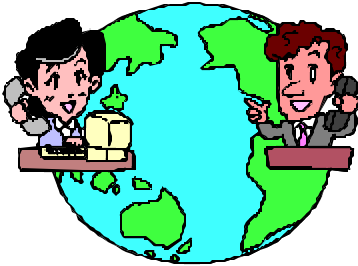
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