Spring Volume 5.3 STATE CORPORATION COMMISSION
BUREAU OF FINANCIAL INSTITUTIONS

Quarterly Newsletter

# THE CREDIT UNION REFLECTION

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## COMMISSION JUDGES DECIDE ON DUPONT COMMUNITY CU CASE

The Commission recently reached a decision in the Virginia Bankers Association’s (VBA) appeal of the approval of DuPont Community CU's field of membership expansion. On May 16, 2002 Commissioner E. J. Face, Jr., approved DuPont Community CU’s request to expand its community to five counties and five cities in the Shenandoah Valley. On June 7, 2002 the VBA appealed the Commissioner’s decision to the State Corporation Commission. In response to a Commission Order directing the filing of briefs, four interested parties filed briefs by the mid-November deadline.

The Order, dated March 12, 2003, affirms the Bureau's decision and dismisses the VBA's petition. The VBA filed a notice of appeal to the Virginia Supreme Court before the deadline to file ended April 11, 2003. Nevertheless, since Bureau staff has labored over community field of membership applications to ensure that Virginia's field of membership statutes were being complied with, the Commission's decision is a welcome affirmation that Bureau staff appears to be doing things right.  The Bureau's next step will be to analyze new community field of membership requests in light of NCUA's new field of membership rules adopted in March 2003 to see if they fit for Virginia state-chartered credit unions.

## TO CHARTER FEDERAL OR STATE

THAT IS THE QUESTION.............

To paraphrase Bill Shakespeare.  NASCUS's accreditation program (Virginia recently became the 27th state to earn NASCUS accreditation) highlights another distinction between federal and state chartering. The dual-chartering system is viable and strong because of programs like accreditation. The Bureau frequently responds to the question, "what is the difference between the federal and state charters?"

The most frequent response heard over the years has been the ease of contacting the regulator--you can pick up the phone and talk to your state regulator, but it may be difficult to locate someone to talk to about your question at NCUA.  The federal regulator covers the entire United States with a "one size fits all" approach.  Each state just regulates credit unions organized its state.  Thus the state regulator can focus more on local issues. What works in Chesapeake or Roanoke or Fairfax may not work in Des Moines, Iowa or Los Angeles. Historically the states have been the breeding ground for new innovations and products, which once found to be viable on the local or state level are often adopted at the federal level.

This local/national distinction can also be seen in budgets and resources:  NCUA's annual budget this year is about $140 million, while the Bureau's credit union budget is only about $840,000.  The 47 state regulators of credit unions with state credit union laws have budgets that total no more than about $70 million. Some might take those figures and say that the states do a more efficient job of regulation and supervision.  The states may of necessity--due to limited resources--focus more on real examination, regulatory, and supervisory issues. Certainly NCUA has many more resources, and should be accountable as to how they use them. The assessment to be a Virginia state-chartered credit union is less expensive for institutions with assets between approximately $35 million to $815 million.  While it is cheaper to be a federally chartered credit union in Virginia if your assets are less than $35 million, the maximum difference in assessments is no more than $2,000.  However, by law federally chartered credit unions pay no sales taxes.

Another distinction is that NCUA not only regulates federally chartered credit unions, it also administers the insurance fund for all federally insured credit unions. Thus, NCUA wears two hats: one as regulator, the other as insurer. NCUA is frequently criticized for confusing its roles and infringing on the primary state regulator's "turf." Finally, state laws and federal laws will differ to some degree, although for the most part they will probably be very similar. Virginia's law appears to be more conservative than federal law in the investment area. In the past NCUA may have approved some investments that have wound up costing the insurance fund; these investments have not been allowed in Virginia.

Another statutory difference is that the Federal Credit Union Act mandates that NCUA promote, or be a "cheerleader," for the credit union industry. The Virginia Bureau of Financial Institutions regulates not only credit unions, but banks and non-depository institutions as well, so there is no statutory mandate to favor one industry over another. The Bureau endeavors to show an even-handed, no favoritism approach to regulation.

## SEG ACTIVITY STILL STRONG

The Bureau approved fourteen SEGs for three credit unions during the first quarter of 2003. A total of 1,933 new potential credit union members were approved for the quarter. Since legislation to permit SEG expansion went into effect on July 1, 1999 there have been 225 SEGs approved for total new potential membership of 44,121. The average group size has been about 196. At the end of the first quarter, two SEGs were outstanding pending a request for additional information. Because of its size, one of these SEGs was published in the Bureau’s Weekly Information Bulletin and thus subjected to a 15-day comment period

While six of the SEG requests were processed in one day or less, the average processing time was about four days. Delays in processing were in all cases caused by review staff being at a conference.

One merger occurred involving a Virginia state-chartered credit union. On January 31, 2003 The Portsmouth Post Office CU merged into Northern Star CU. The Bureau is currently finalizing another state-chartered credit union merger into a federal credit union. There have been inquiries, so the Bureau is also aware of three other potential mergers involving state-chartered credit unions. These are all expected to be completed in the second quarter. Currently there are 69 Virginia state-chartered credit unions. Completion of the proposed mergers would reduce that number to 65.

# COMMISSIONER FACE ATTENDS SUPERVISORS' MEETING IN WASHINGTON , D.C.

Commissioner Joe Face traveled to Washington, D.C. March 26-27 to take part in a series of bank regulatory meetings organized by the Conference of State Bank Supervisors (CSBS). Mr. Face, who has served as Virginia's Commissioner of Financial Institutions since July 1, 1997, discussed myriad issues currently facing the nation's banking industry, such as payday lending, predatory lending, privacy, interstate banking and federal preemption of state banking laws.

"Through CSBS, state bank regulatory agencies and state-chartered banks continue to champion a system that offers competitive chartering options, as well as efficient and effective supervision," Mr. Face said.

While in Washington, Mr. Face joined bank commissioners from other states in meetings with Federal Reserve Chairman Alan Greenspan, Federal Deposit Insurance Corporation Chairman Don Powell, Treasury Department Assistant Secretary for Financial Institutions Wayne Abernathy, House Financial Services Committee Chairman Michael Oxley (R-Ohio) and Ranking Member Barney Frank (D-Mass.), and representatives of the Senate Banking Committee. Sen. Chuck Hagel (R-Neb.), who serves on the Senate Banking Committee, addressed the group at dinner Wednesday evening.

Mr. Face noted that the mission of CSBS is to advance and strengthen all state banking departments and to ensure the continued viability of state-chartered banks, which comprise 71 percent of the bank charters nationwide," he added.

CSBS serves the banking industry by optimizing the authority of individual states to determine the activities of their financial institutions; enhancing the professionalism of state banking departments and their personnel; and ensuring that all banks continue to have the choice and flexibility of the state charter in the new era of financial modernization. The organization was founded in 1902.

The creation of the Virginia State Corporation Commission in the early years of the 20th century was a decisive shift in the organization of state government. Regulatory decision making moved from the legislature to a permanent body which could hire specialists and conduct inquiries. The SCC was organized as a separate department of state government with its own legislative, administrative, and judicial powers. As the decades went by, the Commission was given increased regulatory authority over diverse business and economic interests. Because of its unique structure and duties, it has been described as the “fourth branch of government” and “the most powerful regulatory body in America.”

In 1901 there was significant support for the creation of a regulatory body that could control railroad companies and fix rates to protect the people of Virginia. A. Caperton Braxton, chairman of the corporations committee at the constitutional convention in 1901, advocated the formation of a government organization with the authority to administer equal justice between two opposite interests.

The 1902 constitution authorized the appointment of three commissioners by the Governor and confirmed by the General Assembly for the regulation of transportation and transmission companies. Instead of applying the accepted doctrine of the separation of powers in government, the framers of the constitution authorized an organization with its own legislative, administrative, and judicial powers. The Commission could make its own rules and enforce them. No state court except the Virginia Supreme Court could review or reverse any of its rulings.

When the General Assembly convened in January 1903, the legislature provided $500 for the Commission to prepare offices and authorized it to hire a clerk, a first assistant clerk, a bailiff, and a stenographer “who shall also have a typewriter.”

In its first year of service, the Commission reported that it granted 482 charters to corporations and generated $488,271 in revenue for the Commonwealth while spending a budget of under $24,000. Processing consumer complaints was a significant Commission activity from the very beginning, the SCC reported. “A very large number of complaints against railroads were informally brought to the attention of the Commission…and all...were promptly taken up by the Commission and proper relief given in all cases in which the complaints were just [sic] founded.”

Within three years the Commission’s regulatory authority was broadened by the General Assembly with the creation of the Bureau of Insurance. That same year, the SCC was also authorized to investigate cases of suspected arson. The regulation of banking was added in 1910, and fixing the rates of public utilities began in 1914. The supervision of the sale of securities (Blue Sky Law) started in 1918 and the regulation of transportation by motor vehicle began in 1923.

Since the beginning of the Commission, the legislature has approved more than 60 expansions of SCC authority. Some of the unusual areas of authority were the licensing of dams, the registration of laundry marks, the regulation of parachute jumping, and the regulation of sight-seeing and charter party boats. The Commission even had control over the tolls charged on Richmond's Boulevard Bridge. Built in 1925 by a development company, the bridge was privately owned until 1969. When the owners wanted to reduce the toll from a dime to a nickel, they had to seek the permission of the SCC. In a 1975 *Richmond Times-Dispatch* series on the SCC, former Commissioner H. Lester Hooker was asked why the General Assembly continued to hand the regulatory agency new responsibilities. "Well, you know," he replied, "anything they didn't know what to do with, they'd give to the SCC." Former Wisconsin Public Service Commissioner Arthur L. Padrutt, testifying to a legislative panel in the 1970s offered a summary of the SCC and its activities: "One can view it only with a sense of fatigue."

With its impact on so many business and economic interests in Virginia, the SCC confronted its share of controversy in its first century. During the first decade, there were continual disputes between shippers and railroads. In 1918, the SCC was criticized by its own Commissioners for having an inadequate staff for complex regulatory tasks, a criticism that reflects a persistent challenge for the Commission. As new problems arose with new industries, there was a need for new regulations, and the Commission was given more authority. Controversy was often followed by a period of stability.

Despite the dramatic industrial, social, and demographic transformation in Virginia, the foundation of the State Corporation Commission has not changed since the first three commissioners took the oath of office on March 2, 1903. It remains an independent department of state government that promotes and protects the public interest. It continues to be vested with legislative, administrative, and judicial authority. No other state in the country consolidates so many regulatory functions into one organization. While always open to adapting to change, the stability of the SCC provides an opportunity for all to be heard on any matter within the Commission's authority, and to do so in a timely manner. Its tasks may be highly technical in nature, but the SCC has maintained a simple structure to meet the demands of an evolving regulatory environment. --*adapted from a story by the SCC's Andrew Farmer*

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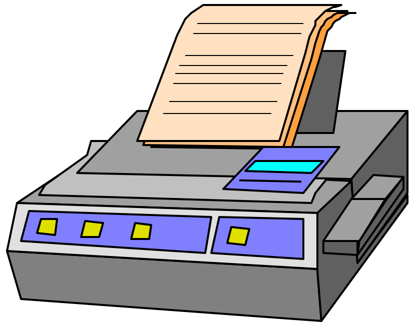

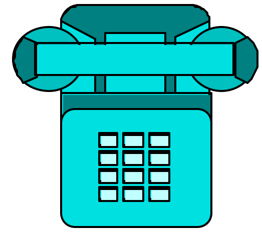

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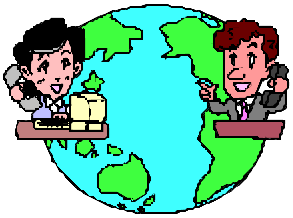
(applications or notices for mergers, relocations, name changes, and branch openings and closings)

*The mission and purpose of the Credit Union Section is to effectively and efficiently supervise, regulate, and educate 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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**IMPORTANT INFORMATION INSIDE**