



The Update—a Newsletter of

Virginia Association of Community Banks

August 2010

VACB Member Outreach Comes to Richmond

VACB has been holding member outreach meetings across the state, in an effort to increase awareness of the Association's advocacy and to highlight activities currently underway for the members. The first meeting kicked off in Abingdon in January and our latest luncheon will be held on Thursday, August 12th in Richmond.

The main purpose of these meetings is to share information about the Association's history, and it's current role in the banking environment in Virginia. A briefing on political developments at both

the state level and in Washington is part of the program. This is a way to share information with bankers from different areas of the state.

The meetings are an opportunity for bank staff to become more aware of VACB and the actions the Association is taking on their behalf. The Association provides a unified voice that enables bankers to be heard, both locally and nationally.

VACB Community Bank Member Testifies on Capitol Hill



VACB member Jeff Dick, CEO and Chairman of MainStreet Bank in Herndon was called upon by ICBA to testify Monday, July 19th during a joint agency hearing on the Community Reinvestment Act (CRA).

Jeff, who testified on behalf of the Independent Community Bankers of America (ICBA), said that he and ICBA strongly support a tiered CRA regu-

latory system with a streamlined examination for community banks to minimize regulatory and paperwork burdens. He also said that to be equitable, community banks should be evaluated against their peers, not in the same context as banks hundreds of times their size and stretching from coast to coast. "As current regulations recognize, assessing the CRA performance of a \$500 million bank using the same criteria for a \$500 billion bank is inappropriate," he said.

First National Bank Introduces New Student Loan Product

First National Bank in Altavista launched a new consumer loan product for current and prospective customers seeking financing for higher education expenses.

The new program, FNB Student Loan, is a credit based loan used by borrowers to fund the gap created when the cost of attending a post-secondary educational institution is not fully covered by available resources such as grants, scholarships, federal student loans, cash and investments.

Aubrey H. Hall, III, Executive Vice President and Chief Lending Officer says "Customers and colleges in our surrounding market will benefit from this new product which offers a term of 15 years, rates as low as Prime + 2.5%, and no origination fees."

Federal loans and other forms of financial aid only cover a portion of the total costs of higher education, making programs such as the FNB Student Loan a key financing option.

"Launching this insured loan product diversifies our product offering, leverages our strong capital position, creates a new revenue stream and serves customers in need of additional financing to achieve their higher education goals," commented Rob Gilliam, President & CEO of First National Bank.

The loan program will be managed by Grad-Capital, LLC, a VACB Associate Member. Learn more about their services on the next page of this issue of the newsletter.

Don't Miss the Student Lending Open Door

by *W. Clark McGhee, President & CEO, GradCapital, LLC*

Alexander Graham Bell is quoted as saying that "Sometimes we stare so long at a door that is closing that we see too late the one that is open." Banking institutions should carefully consider the door that opens to the growing opportunity presented by the Private Student Loan market.

So where can we find an open door? In the same room where the Federal Government recently announced the closing of another door. As a part of Health Care Reform, the Federal Student Lending program was reformed. Banks and other financial institutions were shut out from participating in the Federal Family Education Loan Program ("FFELP"). Consequently, many FFELP lenders are now exiting student lending entirely, leaving students and schools clamoring for education financing. All of this activity further masked an opportunity which exists for banks, both large and small.

School tuitions continue to increase as operating costs at the schools increase and state governments are unable to contribute at their historical levels. Families have traditionally funded the cost of college attendance through school endowments and scholarships, home equities, 529 plans, and investments... all of which have experienced significant declines in value. So families are increasingly turning to borrowed funds to cover what the traditional sources don't.

The best option that students have for these borrowings is the FFELP program. These loans are available without regard to credit, have standard rates and fees, and tend to have relatively low fixed interest rates. Students should take full advantage of this program, but as you know, the Federal government has legislated banks out of the FFELP picture. However, it is important to note that the FFELP program only provides approximately half of the cost of education at a public institution and a quarter of the cost of a private institution. So both borrowers and schools are becoming reliant on "Private Student Loans".

Private Student Loans are credit based, and typically have variable interest rates. They are specifically designed to supplement federal loans when federal loans and other resources aren't enough to cover the full cost of education.

Without significant upfront investment in systems or infrastructure, you can establish a program to offer this product to your customers and prospects – both students and schools. You can tailor the program to meet a risk profile suitable to your institution, including requiring co-borrowers on the credit. You can gain "certification" of the loan by the school, meaning that the school reviews the loan to ensure that the student is enrolled at their institution and that the loan amount is appropriate given the full cost of attendance. You can source much of the business through schools inside or beyond your footprint. You can remain compliant with changing regulations by partnering with entities that specialize in the market. You can even insure the loans against default, death, or bankruptcy of the borrower.

The traditional avenues for loan growth are less available to most institutions, but the Private Student Loan door is wide open. GradCapital just launched a program for First National Bank headquartered in Altavista, VA. Additionally, nearly 200 financial institutions across the US are offering or have recently begun offering Private Student Loans to their customers. Perhaps your institution should consider walking through that open door and taking advantage of the opportunity it provides.

GradCapital, LLC can help you. We have a deep understanding of the core competencies necessary to allow your institution to take advantage of this opportunity. We have a track record of building and managing successful Private Student Loan businesses and as a result have close relationships with college financial aid offices and outside service providers across all disciplines. Our banking backgrounds include many consumer credit asset classes, and therefore we understand that Private Student Lending is a consumer credit vehicle rather than a need-based vehicle. We understand the balance sheet management functions of banking institutions, compliance requirements and marketing opportunities that exist within your footprint, and can bring strong credit risk and analytical disciplines to bear in order to allow your institution to successfully enter this business. **Call Clark McGhee for more information, 804-562-9469.**

Certain Bankruptcy Settlement Terms Now Mandatory: Richmond and Alexandria Bankruptcy Courts Require Use of Standardized Order in Many Settlements of Chapter 13 Lift-Stay Motions

Contributed by Spotts Fain

The Richmond and Alexandria divisions of the Bankruptcy Court now require use of a standardized order in any settlement of a motion for relief from the automatic stay in a Chapter 13 case that provides for the debtor to cure a post-bankruptcy arrearage. This requirement went into effect April 1, 2010. A copy of the standardized order (the "Standard Order") follows this article. The Norfolk and Newport News divisions of the court do not require use of the Standard Order, although they may in the future.

Any creditor who deals regularly with bankruptcy filings in Richmond and Alexandria will likely face a situation that requires use of the Standard Order. Settlements in which a Chapter 13 debtor promises to cure a post-bankruptcy arrearage are common, and the number of Chapter 13 cases has been rising in the Richmond and Alexandria courts every year since 2006. Indeed, the Bankruptcy Court noted in its decree dictating use of the Standard Order that "[t]he number of motions for relief from stay has increased significantly as has the number of consensual resolutions of the motions in Chapter 13."

At first glance the Standard Order seems to hold the promise of lower legal costs for creditors and debtors. After all, it means that settlement orders no longer have to be made from scratch, with all the details negotiated by the competing lawyers. However, there are several good reasons to believe that the Standard Order may actually increase legal costs, particularly for creditors. First, if the creditor needs to supplement or revise the Standard Order to make the terms more appropriate to the situation at hand – such as by requiring the debtor to maintain insurance on the collateral and provide evidence of the same on demand – then a court hearing to inform the court of the new terms and explain the reasons for the same is necessary. As a result, the creditor's lawyer may need to attend a hearing that would not have been necessary in the days before the Standard Order, thereby adding to the creditor's legal costs.

Second, while the Standard Order requires the debtor to make his regular monthly payments as they become due in the future, it also provides that such requirement expires one year after the court enters the order. So, in other words, if the debtor stops making

his regular monthly payments more than one year after the court enters the Standard Order, then the creditor's remedy is to go back to square one and file another motion for relief from stay; relief will not be granted based on the Standard Order that the court has already entered. This, quite obviously, will also add to the creditor's legal costs.

Third, the Standard Order, unlike many settlement orders of the past, is not a true "drop dead" order – meaning one in which the automatic stay is lifted with little or no further action by the creditor or the court if the debtor fails to make the agreed payments. Rather, under the Standard Order, if the debtor misses a payment, the creditor must wait fifteen (15) days, then send the debtor a notice of default that, in short, details the default and tells the debtor that he has fourteen (14) days to either cure the default or file an objection with the court (either on the ground that there actually is no default or that there is some other reason that relief from the automatic stay should not be granted). Only if and when the debtor fails to timely cure the default or file an objection can the creditor submit to the court a separate proposed order that terminates the stay. If, on the other hand, the debtor files a timely objection, then another court hearing is required to resolve the objection. At that hearing, the court can take whatever action it deems appropriate under the circumstances, which might or might not involve terminating the stay.

While it is true that even "drop dead" orders typically provided for the debtor to receive a notice of default and an opportunity to cure (although not necessarily the twenty-nine (29) days effectively provided by the Standard Order), the additional steps provided by the Standard Order – i.e., a possible court hearing regarding the debtor's default and the preparation of a separate order that actually terminates the stay – once again portend greater legal costs for creditors. The Standard Order attempts to offset these greater costs by allowing the creditor and the debtor to negotiate, in advance, the reasonable attorney fees that the creditor can recover if it ultimately has to issue a notice of default and prepare an order terminating the stay. However, one has to wonder about the prospect of actually collecting those fees from a defaulting debtor. Moreover, nothing is said in the Stan-

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Standard Order about the attorney fees that the creditor will incur if the debtor files an objection and there is another court hearing.

In addition to the prospect of increasing the creditor's legal costs, the Standard Order also likely means increased time delays in getting stay relief if and when the debtor fails to comply with the settlement terms. Again, the creditor will now effectively have to give the debtor twenty-nine (29) days to cure a default, whereas a ten-day or fifteen-day cure period was often used in the past. And if the debtor files a timely objection to the creditor's notice of default, it could be two weeks or more before a court hearing is held on the objection.

So, in sum, the Standard Order seems to give the debtor's interests more protection than they have traditionally received. An unintended consequence of this might ultimately be that creditors become less inclined to settle and choose, rather, to pursue court rulings on their lift-stay motions. Of course, a lawyer experienced in bankruptcy law and in practice in the Richmond and Alexandria bankruptcy courts will be of help in choosing the creditor's best route in light of the Standard Order.

To see a copy of the Standard Order, please click on the link below.

[Standard Order.pdf](#)

Additions & Promotions

Highlands Community Bank in Covington has promoted **Bryan Thompson** to Assistant Vice President.

StellarOne Bank in Christiansburg has named **Michael D. Williams** Director of Wealth Management.

Bank of Hampton Roads in Norfolk has promoted **Katie B. Weeks** to Executive Vice President and Director of Human Resources.

Welcome New Associate Member

Corporation Service Company
2711 Centerville Road
Wilmington, DE 19808
(800) 927-9801 ext. 3389
www.cscglobal.com

Corporation Service Company (CSC) is the world's leading provider of Uniform Commercial Code (UCC) lien searching, filing, tracking, and online portfolio management services available via CSC's state-of-the-art Web technology.

Jen Mathews
Financial Marketing Director

VACB Fall Internal Audit Seminar Scheduled for Late September

VACB will hold its Fall Internal Audit Seminar on Thursday, September 30 and Friday, October 1 at Hotel Sierra, located at Short Pump Town Center.

Our featured presenters and collaborators are with the firm of Dixon-Hughes, a VACB Associate Member. Representatives from the Federal Reserve Bank of Richmond will be on the agenda as well, to provide a regulatory update as well as discuss BSA Examiner expectations with audit attendees.

In addition, other topics will include ALLL & Loans, Liquidity and Interest Rate Risk Management, Conducting an IT Audit and Remote Deposit Capture.

Brochures will be mailed shortly, but it's not too early to make your room reservations. VACB has reserved a limited number of rooms for the nights of September 29 & 30.

The rate is \$129 for a single room. Reservations MUST be made directly with the Hotel Sierra by calling toll free at (800) 4 SIERRA or directly to the hotel in Richmond at (804) 360-7021, and referencing the Virginia Association of Community Banks room block. **This block of rooms will only be held until Friday, September 3, 2010.** If you have any questions, please call us at 804-673-8250.