

STATEMENT OF POLICY OF THE COLORADO FINANCIAL SERVICES BOARD

Field of Membership Overlaps

Colorado credit union law generally does not restrict state-chartered credit unions from having overlapping fields of membership. The only provision of state law that directly addresses the issue is C.R.S. 11-30-101.7(5)(d), which requires the Financial Services Board (“Board”), before it can approve a community charter application, to determine that “the members of other credit unions within the ...community...are specifically excluded from membership, except as otherwise provided by the board for good cause.”

The Board believes that “good cause” should be deemed to exist with respect to any community charter application in which neither a credit union other than the applicant nor the State Commissioner of Financial Services (“Commissioner”) makes a compelling argument to the Board that overlap protection through an exclusionary clause is necessary in order to prevent an unsafe and unsound condition in a credit union other than the applicant. The Board’s basis for determining that “good cause” exists is its belief that credit unions can compete and cooperate at the same time and that credit union members will not be lured away by other credit unions unless they are not being served adequately.

The Board also believes that it is not appropriate to grant community fields of membership that constitute “exclusive franchises” for a particular credit union in a particular well-defined geographic community. Therefore, it will not use exclusionary clauses to provide overlap protection of one community charter credit union from another, in cases where well-defined communities are wholly or partially overlapping.

Colorado law, specifically C.R.S. 11-30-103(2), also provides that “small groups which the Commissioner determines to lack the potential membership to organize their own credit union may be eligible for membership in an existing credit union if such small groups have a common bond of employment or association.” The Board believes that this language should not be read narrowly to mean that a particular small group cannot be served by more than one credit union.

The Board thus believes that any small group should have the option of being served by more than one credit union, unless the creation of an overlap would, in the opinion of the Commissioner, result in an unsafe and unsound condition in the credit union being overlapped. For instance, if a large credit union accepted into its field of membership a small group that constituted all or a significant part of a small credit union’s field of membership, it is possible that the Commissioner may object on the basis of safety and soundness.

Any small group also should have the right to disaffiliate with one credit union and affiliate with another without regulatory interference.

The Board believes that the existing Small Group Affidavit form (for groups 1,000 or less) should be modified to delete the certification that the small group is not included in the field of membership of another state-chartered credit union and to add a disclosure of any other credit union(s) where the group has membership eligibility. This would effectively end the long-standing Division of Financial Services practice of automatically providing overlap protection to other state-chartered credit unions but not to federal credit unions with respect to small groups.

Finally, the Board wishes to advise all Colorado credit unions of its position that all instances of field of membership overlap should be resolved cooperatively by the credit unions involved with the top priority placed on serving the best interest of Colorado credit union members and potential members. If such an approach is taken, the Board believes that the result will be the best possible credit union service to existing members and the extension of credit union service to greater numbers of Colorado citizens.

In taking this position, the Board recognizes that state and federal regulatory efforts to restrict overlaps at best only affect a very small portion of the financial services competition that every credit union faces. Moreover, such credit union movement trends as immediate family member eligibility, "once-a-member-always-a-member" bylaws provisions and continual advances in technology have rendered overlap protection efforts much less effective. Therefore, it is simply no longer an appropriate role of state government to intervene in these matters, unless the state regulator concludes that there is a clear threat to the safety and soundness of a particular credit union.

This statement of policy amends and supersedes the original Board policy approved on April 19, 1996.

Approved this _____ day of _____ 2002.

COLORADO FINANCIAL SERVICES BOARD

By _____
Edwin R. Bigby, Jr.
Chairman