

# CREDIT UNION NewsWatch



JANUARY 24, 2011

Legislation, Regulation, And Innovation Online From the Credit Union National Association



Ohio CU League (OCUL) President Paul Mercer (left), shown here in his Columbus office with CUNA President/CEO Bill Cheney, spearheaded CUNA's Supervisory Issues Working Group to study the numerous concerns credit unions around the country raise regarding regulatory policies and examination practices. The group drafted a 24-item examination bill of rights. See pages 2-3 for full story. (OCUL Photo)

## CUNA Urges Major Reg Review

CUNA urges the National Credit Union Administration (NCUA) and other independent agencies to follow the "principles and basic approach to regulation" reflected in President Barack Obama's executive order to review regulatory regimes.

The Obama administration early last week called on regulators to coordinate, simplify, and harmonize regulations where possible to reduce costs and promote certainty for businesses and the public. Federal agencies also were urged to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness.

A CUNA letter to the Obama administration and the NCUA noted regulatory reform is critical for credit unions that "are being subjected to an ever-increasing regulatory load" while they deal with the problems inflicted by an ongoing economic crisis that they did not create.

CUNA President/CEO Bill Cheney urged a review of the collective impact of regulation on credit unions and suggested that the Consumer Financial Protection Bureau, which is currently under development, would be ideal for this role.

CUNA added that working with members of Congress to reduce regulatory burdens, while maintaining consumer protections and important safeguards, will benefit both the economy and the nation.

## NCUA Sets Final Overdraft, NSF Fee rules

The National Credit Union Administration (NCUA) recently finalized a rule that requires credit unions to include overdraft and returned-item fees for both the statement period and for the year-to-date on their members' periodic statements. The interim final rule also addressed disclosures for balance information and sweep accounts that are established to facilitate compliance with monthly limitations on savings accounts under Regulation D. The disclosure rule, adopted at this month's open board meeting, was unchanged from the NCUA's earlier proposal, released in August. NCUA staff cited a desire to remain consistent with the Federal Reserve's standards. 🏠

 **NCUA Performance Budget 2011**  
<http://www.ncua.gov/GenInfo/BoardandAction/Draft-BoardActions/2011/Jan13/Item2-11-0113.pdf>

**NCUA Overdraft Release**  
<http://www.ncua.gov/GenInfo/BoardandAction/Draft-BoardActions/2011/Jan13/Item1b11-0113.pdf>



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## New Resource to Help Credit Unions with Examination Concerns



Mary Dunn,  
CUNA SVP and Deputy  
General Counsel

CUNA has just released a comprehensive resource for credit unions to help in managing examination issues and addressing supervisory concerns. The new 64-page, user-friendly document is entitled, "CUNA's Supervisory Issues and Examinations: Guidance for Credit Unions During The Current Economic Times and Beyond," and is the culmination of the work of CUNA's Supervisory Issues Working Group. The group was organized in July 2010 by CUNA

Chairman Harriet May and President/CEO Bill Cheney to look into the numerous concerns credit unions around the country are raising regarding regulatory policies and examination practices they feel are amiss.

The guidance, available free to CUNA members, starts with a premise that a healthy, robust credit union system depends on a reasonable balance between the regulators and the regulated performing their duties competently and professionally. In other words, regulators must be able to do their jobs fairly on the one hand, and credit union managers and officials must be able to perform their duties independently on the other.

The CUNA guidance seeks to enhance credit unions' understanding of their responsibilities and rights, as well as promote greater awareness of the proper role of the examiner. While not intended to be an exhaustive manual, this new CUNA resource does address a range of supervisory issues that have surfaced as regulators' concerns about managing risks in the current uncertain economic environment have grown.

Credit unions have some options in responding to most supervisory issues and the guidance seeks to address the alternatives available to credit union officials when they feel an examiner has overstepped his or her authority.

A cornerstone of the guidance is the CUNA list of 24 "Credit Union Examination Rights." These rights are presented with a commentary in the guidance and are highlighted here on page 3 as a quick reference for credit unions. The list of rights was developed based on NCUA's Examiners Guide, the Federal Credit Union Act and other key documents.

The guidance discusses the authority and duties of credit union examiners, and addresses real problems credit unions have reported in connection with examinations.

To ensure the guidance relates to credit unions' experiences, the CUNA Supervisory Issues Working Group directed that a new site be included on CUNA's home page that would allow credit unions to provide information in confidence about their latest examination experiences, positive or negative through a survey. The findings of the survey are highlighted in the guidance. The website and the survey will be accessible indefinitely through the "Top Initiatives" area of CUNA's home page, [www.cuna.org](http://www.cuna.org) and CUNA will continue to report to regulators and the credit union system on any material concerns credit unions may raise.

The guidance also discusses how to handle disagreements with examiners and regulators on supervisory issues, again drawing from key documents such as NCUA's Examiner's Guide, the Federal Credit Union Act, as well as NCUA Letters to Credit Unions.

▶ See page 3

### CUNA Supervisory Issues Working Group Members:

- Chairman Paul Mercer, President/CEO, Ohio CU League
- Stacy Augustine, SVP, Policy and Public Advocacy/General Counsel, Northwest CU Association
- Roger Ballard, President/CEO, Kinecta FCU, California
- Dave Chatfield, former President/CEO, Calif./Nev. CU Leagues
- Mary Ann Clancy, General Counsel, Mass./N.H./R.I. CU Leagues
- Patrick Drennen, President/CEO, 1st Gateway CU, Iowa
- John Kozlowski, General Counsel, Ohio CU League
- Michael Lanotte, SVP/General Counsel, CU Association of New York
- Kyle Markland, President/CEO, Affinity Plus FCU, Minnesota
- Marla Marsh, President/CEO, Kansas CU Association
- Keith Peterson, SVP, Summit CU, Wisconsin
- Rod Staatz, CEO, State Employees' CU, Maryland
- Thomas Wolfe, Counsel, Calif./Nev. CU Leagues



## CUNA Names 24 CU Exam Rights

As part of its comprehensive guidance to member credit unions regarding supervisory and examination trouble spots, CUNA, with state league and credit union leaders, developed a Credit Union Bill of Examination Rights. The document, though not legal advice, informs credit unions that in the examination process, they have the right to:

1. Manage risk without being directed by examiners to eliminate it.
2. Respectful conduct from their examiner.
3. Be examined by well-trained, competent examiners who understand the unique characteristics of credit unions.
4. Meet and discuss examiner findings, conclusions, directives and administrative actions with the examiner.
5. Question, and seek corrections to, examiner findings, conclusions, and directives.
6. Provide alternative and/or additional data, conclusions, and solutions to address problems identified by the examiner.
7. Know the specific authority or legal basis for an examiner's directive.
8. Receive clearly written examination reports, notices, etc., on a timely basis.
9. Receive exam reports, findings, directives, and administrative actions that are based on all relevant facts.
10. Be evaluated on their own strengths and weaknesses and not solely on the basis of regulator concerns about trends.
11. Be evaluated for progress toward objectives that are realistic and achievable, proportionate to the risk presented.
12. Examination findings and directives that are risk prioritized.
13. Appeal examiner findings, conclusions, or directives without retaliation from their regulator.
14. Have instructions on how to appeal, detailed on every exam report form provided to credit unions.
15. Record meetings with examiners and other agency personnel.
16. Have a representative, such as an attorney, present during meetings with the examiner and other regulatory personnel.
17. Have any published orders—such as consent orders—address only facts and not conjecture or speculation by the examiner.
18. Have confidential, non-discoverable communications with their legal counsel regarding examination issues.
19. Develop and use “high-level” policies, which should be separate and distinct from detailed procedures.
20. Have a lead examiner that is state or federal, consistent with the credit union's charter type.
21. Know the timing of when NCUA will publish a Letter of Understanding and Agreement.
22. Defer to their CPA if there is a disagreement between the officials and their regulator regarding issues related to U.S. generally accepted accounting principles.
23. Have communication (i.e., discussion of draft findings) with their examiner prior to final issuance of the examination report.
24. Have directives from examiners (including verbal and written comments) be consistent with regulatory requirements, policies, and Letters to Credit Unions. For example, there were inconsistencies noted between how examiners treated the assessment's effect on credit union earnings and an NCUA letter to credit unions on the subject.

## New Resource to Help Credit Unions with Examination Concerns

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In developing the list of rights, the CUNA Supervisory Issues Working Group, with considerable assistance from credit union league attorneys who were members of the group, revised and updated CUNA's 1991 Bill of Examination Rights. That document was drafted by CUNA's initial Examination and Supervision Subcommittee, which was chaired by former Virginia League President Gene Farley.

Based in large measure on directives to examiners found in NCUA documents, the list of rights in the guidance addresses the types of processes, procedures and professionalism that credit unions should expect throughout their examination.

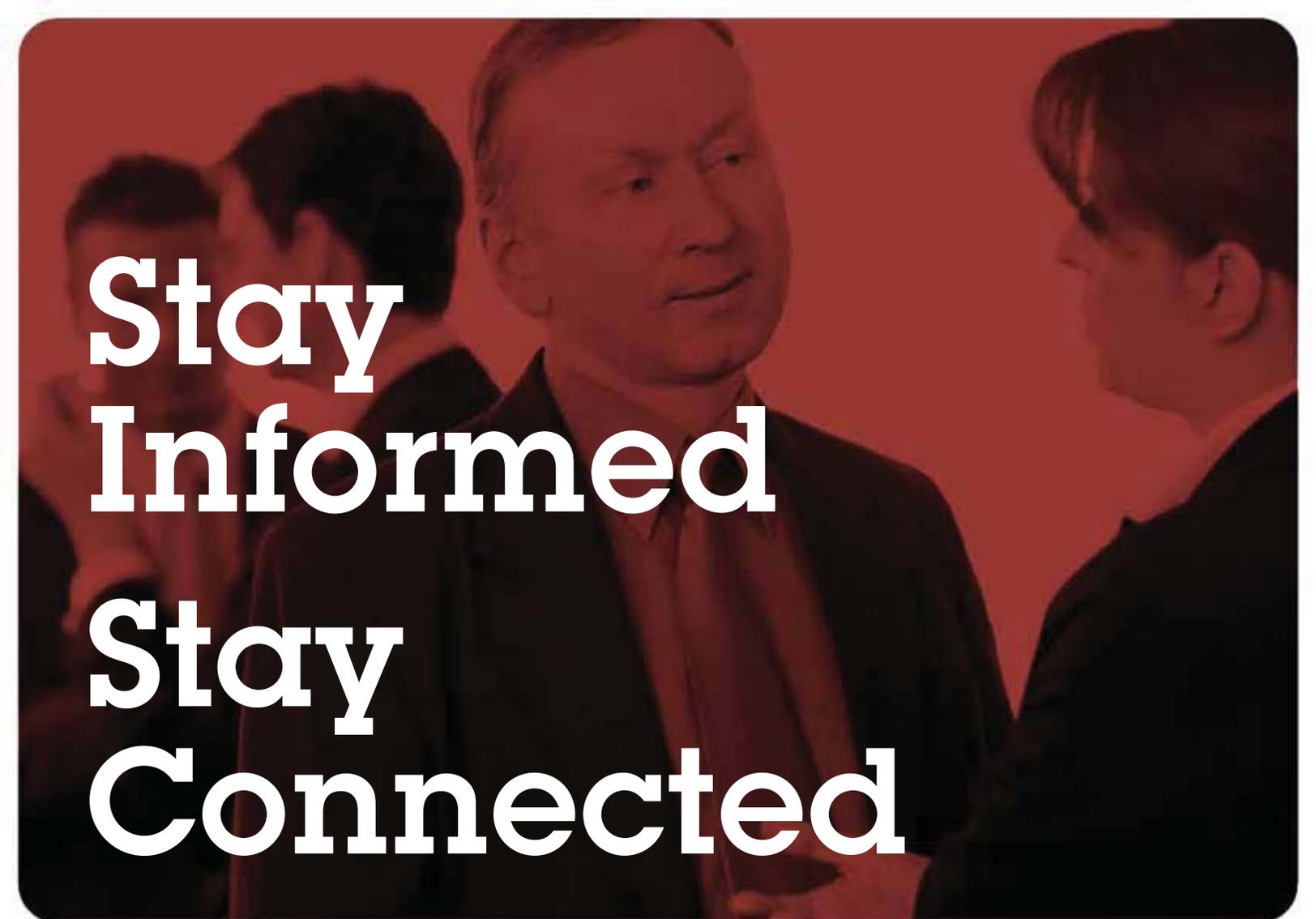
Through its review, it became clear to the CUNA working group that credit unions often do not understand how they can appeal examiner decisions and findings that they dispute. Further, regulators are often not as transparent as they should be regarding this process. In light of this, the guidance addresses the appeals processes that are available to credit unions.

Another key aspect of the guidance is a list of recommendations for improvements in the examination process. Finally, the guidance also provides a detailed list of additional resources and provides the links for ready access.

“I commend the CUNA Supervisory Issues Working Group for developing this guidance, which is very timely and fills a significant void in terms of resources for credit unions on examination issues,” CUNA President/CEO Bill Cheney said.

“We hope the guidance will be useful to credit unions and help them as well as potentially assist examiners as we all work our way through these economic times and beyond,” Ohio CU League President Paul Mercer emphasized. 🏠

 **Guidance For CUs During The Current Economic Times And Beyond**  
[http://www.cuna.org/initiatives/exam\\_supervisory.html](http://www.cuna.org/initiatives/exam_supervisory.html)



# Stay Informed Stay Connected

Connect with your informed and knowledgeable peers in this online space created just for credit union volunteers. This portal will allow you to reach out to fellow CUNA Volunteer Network members at any time and any place. Plus, you'll enjoy benefits such as:

- Access to a List Serve of knowledgeable peers
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- Access to *Directors Newsletter*
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- White papers and case studies
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# CREATING THE CREDIT UNION FUTURE

CUNA GOVERNMENTAL  
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FEBRUARY 27 – MARCH 3  
WASHINGTON, D.C.

## SPEAKER HIGHLIGHTS:

You'll hear from Washington's most influential policymakers.



**Rep. Spencer Bachus (R-AL)**

*Chairman, House Financial Services Committee*



**Sen. Roy Blunt (R-MO)**  
*Newly-elected US Senator*



**Sen. Mike Crapo (R-ID)**  
*Senior member, Senate Banking Committee*



**Rep. Barney Frank (D-MA)**  
*Senior Democrat, House Financial Services Committee*



**Rep. Shelley Moore Capito (R-WV)**  
*Chairman, House Financial Institutions Subcommittee*



**Rep. Steve Stivers (R-OH)**  
*House Financial Services Committee*



**Sen. Mark Udall (D-CO)**  
*Lead Sponsor, 2010 Senate MBL Bill*



**Rep. Debbie Wasserman Schultz (D-FL)**  
*House Appropriations Committee*



**Elizabeth Warren**  
*Special Advisor-Consumer Financial Protection Bureau*

## THESE SPEAKERS JOIN AN INSPIRING LIST OF KEYNOTERS, INCLUDING:

- Chesley B. "Sully" Sullenberger, III, "Miracle on the Hudson" pilot
- Mark Halperin, Editor-at-large and senior political analyst, TIME
- John Heilemann, National political correspondent and columnist, New York magazine
- Arianna Huffington, Co-founder and editor-in-chief of The Huffington Post
- Mary Matalin, Republican strategist and political contributor, CNN

# VISIONARY

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## Take 10 Steps Toward SAFE Act Registration

The Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) will require credit unions and their employees who are mortgage loan originators to register on the

Nationwide Mortgage Licensing System & Registry (NMLS). The NMLS is an Internet-based system developed and maintained by the Conference of State-Bank Supervisors.

The National Credit Union Administration (NCUA) and the federal banking agencies published SAFE Act regulations in July. The NCUA's rules apply to federal credit unions, federally insured state-chartered credit unions, and privately insured state-chartered credit unions when certain conditions are met and formal agreements are reached between the NCUA and the state regulator.

The interagency regulations were effective on Oct. 1. Credit unions were required to establish written policies providing a basic framework for compliance with the SAFE Act by that Oct. 1 effective date. However, when that date rolled around, the NMLS wasn't ready to accept registrations from credit unions and banks. The regulatory agencies recently announced that they expect the NMLS to begin accepting initial registrations on or around Jan. 31—just a week from now. Once the registry launches, credit unions and their mortgage loan originators (MLOs) have 180 days to complete initial registration on the new system.

In the meantime, the NMLS has pub-



Valerie Moss  
CUNA Director of Compliance  
Information

lished information on its website (see resource links) to help institutions and their MLOs prepare for this new federal registration process. The NMLS "Getting Started Guide for Financial Institutions" suggests the following steps credit unions can take to get ready to register on the new system.

**Step 1: Determine if your credit union is required to be registered with NMLS.** If your credit union offers residential mortgage loans and employs individuals required to be federally registered as mortgage loan originators, your credit union must register with NMLS. Residential mortgage loans include: first mortgages, second mortgages, home equity lines of credit (HELOCs), refinanced mortgage loans, reverse mortgages and land purchased for the construction of a residence.

**Step 2: Get prepared.** A credit union is required to register with NMLS by submitting Form MU1R into the registration system. When creating an NMLS account, the credit union must identify two individuals as "NMLS Account Administrators." These Account Administrators will have primary responsibility for the credit union's account on NMLS, are authorized to speak to the NMLS Call Center on behalf of the credit union, and can set up additional sub-users for the institution's account. The credit union's designated account administrators should take a look at Form MU1R and begin to gather the information that his or her institution will have to submit. Detailed instructions are available on the NMLS website.

**Step 3: Determine who needs to be registered. Determine which employees meet the definition of mortgage loan originator.** A mortgage loan originator (MLO) is an individual who

1) takes a residential mortgage loan application; and 2) offers or negotiates terms of a residential mortgage loan for compensation or gain. A credit union's account administrators and MLOs should take a look at the registration information required from each individual on Form MU4R.

Remember that credit union MLOs will only have to register on the NMLS and will not have to obtain a state license. MLOs who are not employed by banks or credit unions will have to be state licensed and registered on the system.

**Step 4: Choose a workflow.** The registration process can be accomplished several ways. The NMLS has developed three sample workflows to help institutions develop a process that suits their needs. Credit unions may review the sample workflows and choose the one, or a variation of one, that is best. For example:

- ▶ Workflow 1: MLO completes MU4R, institution pays fees;
- ▶ Workflow 2: Institution completes MU4R and pays fees; or
- ▶ Workflow 3: MLO completes MU4R and pays fees.

**Step 5: Obtain two-factor authentications for all institution users.** All account administrators and other users associated with a credit union's NMLS account must utilize a second authentication factor beyond the user name and password provided by NMLS before they are able to log in to their NMLS account. Users who are required to have two-factor authentication must use a security credential from VeriSign. (See resource link.)

**Step 6: Gather the necessary data from your MLOs to create their accounts.** The NMLS allows institutions to upload MLO in-

>> ▶ See page 7



## Take 10 Steps Toward SAFE Act Registration

formation in bulk (aka, batch upload) in order to create their accounts on the system. The batch upload process requires a credit union to compile basic identifying and contact information on each MLO. Credit unions should collect the necessary information on its MLOs, build the batch upload file, and save the file so that it's ready when the registry opens.

Please note: A credit union won't be able to upload its bulk file until the credit union files its MU1R through NMLS.

Also: Steps 7-10 can only be accomplished once the NMLS Federal Registry opens on or after Jan. 31.

**Step 7:** Request an institution account on NMLS. To request an account, a credit union's account administrator(s) must complete the "Company Account Request Form." Once submitted, NMLS will review the form as part of the "NMLS entitlement process." Once the form is validated, an NMLS account will be established for the credit union and user names and passwords will be issued to the Account Administrators identified on the request form. The normal validation process will take 48 to 72 hours.

**Step 8:** Complete and submit Form MU1R. Once a credit union's account administrators receive their VeriSign tokens, user names, and passwords, they can log into the NMLS, create a Form

MU1R filing, complete the necessary fields, submit and pay the filing registration fee. NMLS processes all payments electronically and accepts credit cards and ACH payments.

**Step 9:** Repeat Steps 1 through 5 for each subsidiary which is required to register MLOs. Credit unions can skip this step—it is not applicable. The SAFE Act treats employees of depository institution subsidiaries the same as employees of the depository institution, if the subsidiary is owned by the depository institution and regulated by a federal banking agency. Credit union service organizations (CUSOs) don't fit this definition since the NCUA does not have direct regulatory oversight or enforcement authority over them. Therefore, CUSOs and their employees must comply with the SAFE Act's state licensing and registration requirements.

**Step 10:** Begin registering the credit union's MLOs. A credit union's account administrators will receive e-mail confirmation of a successful Form MU1R registration. Once successfully registered, the credit union can begin to register its MLOs, following the steps of the workflow the credit union has chosen (see Step 4).

Want more information? See the many resource links below and take advantage of NMLS training opportuni-

ties going on right now. The NMLS is currently sponsoring web-based workshops called "Introduction to the NMLS Federal Registry" throughout the month of January. The first sessions were Jan. 19 and 21 (as reported in CUNA's News Now) and additional sessions are scheduled for Jan. 26 and 28. The workshop provides an overview of the new registration process and covers steps outlined above in more detail. You can reach CUNA's compliance department at [cucomply@cuna.com](mailto:cucomply@cuna.com) 📧

### Resources

 **NMLS Getting Started Guide for Financial Institutions (a similar guide for MLOs will be coming soon)**  
<http://mortgage.nationwidelicencingsystem.org/fedreg/Pages/GettingStartedFedCo.aspx>

**Training Workshops on the Federal Registration process**  
<http://mortgage.nationwidelicencingsystem.org/news/events/Pages/FedRegIntro.aspx>

**NMLS Processing Fees**  
<http://mortgage.nationwidelicencingsystem.org/about/Pages/systemfees.aspx>

**Quick Guide: Choosing a VeriSign Security Credential**  
<http://mortgage.nationwidelicencingsystem.org/fedreg/Resources/VeriSign%20Security%20Credential%20Choices.pdf>

**NCUA SAFE Act Resources**  
<http://www.ncua.gov/Resources/SAFEAct.aspx>

**CUNA's e-Guide – Mortgage Staff Registration (SAFE Act)**  
[http://www.cuna.org/compliance/member/eguide/eguide\\_mlr.html](http://www.cuna.org/compliance/member/eguide/eguide_mlr.html)

## ▶ Seeking CU Comment...

These issues are open for public comment. Credit unions are asked to submit a copy of their comment to CUNA.

### NCUA

AGENCY DUE DATE	PROPOSAL	CUNA DUE DATE
January 24	Conversions of Insured CUs: Definition of Reg. Dir. <a href="http://www.cuna.org/reg_advocacy/reg_call/rcc_011311.html">http://www.cuna.org/reg_advocacy/reg_call/rcc_011311.html</a>	January 21
January 28	Corporate Credit Union Follow-up Proposal <a href="http://www.cuna.org/reg_advocacy/reg_call/rcc_120910.html">http://www.cuna.org/reg_advocacy/reg_call/rcc_120910.html</a>	January 14
<b>Federal Reserve Board</b>		
AGENCY DUE DATE	PROPOSAL	CUNA DUE DATE
February 22	FRB Proposal on Debit Interchange Fees/Related Issues <a href="http://www.cuna.org/reg_advocacy/reg_call/rcc_120910.html">http://www.cuna.org/reg_advocacy/reg_call/rcc_120910.html</a>	February 1



# >> Notes Bearing Interest

## ▶ The Front Burner

The most viewed news stories on [cuna.org](http://cuna.org) during December 2010 reveal the hottest issues for credit unions. Access the complete stories and register to receive daily credit union news headlines at [www.cuna.org/newsnow/top10](http://www.cuna.org/newsnow/top10).

### 10 Fed offers two plans for interchange fees

The Federal Reserve has issued for public comment its proposed rules addressing interchange fees.

### 9 NCUA CU risk concentration regs out next year: Matz

The National Credit Union Administration (NCUA) is developing new regulations on natural-person credit union risk concentrations, and those regulations will be released during the first quarter of 2011, NCUA Chairman Debbie Matz said during a Senate hearing.

### 8 Agencies issue guidelines on real estate appraisals/evaluations

The National Credit Union Administration, in conjunction with other federal financial institution regulators, has emphasized that financial institutions are responsible for selecting appraisers and people performing evaluations based on their competence, experience, and knowledge of the market and type of property being valued.

### 7 New survey: CUs on top in customer satisfaction

Credit unions and small banks lead their larger rivals in customer satisfaction and loyalty, according to the Prime Performance 2010 Bank and Credit Union Satisfaction Survey.

### 6 Rep. Frank shares interchange concerns for CUs

The implementation of still-pending interchange regulations, if not properly crafted, "may have unintended consequences" for credit unions and consumers, Rep. Barney Frank (D-Mass.) recently said in a letter to the Federal Reserve.

### 5 CUNA to Fed: Interchange rules confirm CU fears

The Federal Reserve's proposed rule on interchange fees confirms the Credit Union National Association's (CUNA) "worst fears about the inadequacies of the purported protections" for credit unions and other smaller issuers of debit cards, CUNA President/CEO Bill Cheney has said.

### 4 Gift cards as meeting incentive? NCUA says yes but ...

In a legal opinion released this week, the National Credit Union Administration advised a federal credit union that sought to increase participation at its yearly meeting by giving \$25 gift cards to members in attendance.

### 3 NCUA tech amendments bill passed by House

The House approved a technical corrections bill that would provide the National Credit Union Administration with new tools to address both troubled individual credit unions and the larger corporate credit union crisis.

### 2 Scams zero in on home equity lines

Identity thieves are having a field day with scams, particularly lucrative ones aimed at home equity lines of credit. Others have stepped up their card scams, and phishing and vishing efforts to take advantage of consumers' good will and inattention to details during a busy holiday season.

### 1 Senators urge greater interchange consideration by Fed

In an action strongly encouraged by CUNA, 13 senators late last week wrote to the Federal Reserve to voice their concerns over proposed interchange regulations.

## NCUA Performance Budget 2011

The National Credit Union Administration (NCUA) named reducing losses to the National Credit Union Share Insurance Fund and improving the capital levels of corporate credit unions as its highest priority goals for 2011. The agency uses an annual performance budget to determine whether it has met its performance goals.

Other goals outlined in the 2011 list include fully staffing the NCUA's Office of the Chief Economist and Office of Consumer Protection, helping low-income and other credit unions to access services, developing a transparent and effective regulatory environment with easily understood regulations, and increasing its own examination staff.

 **NCUA Performance Budget 2011**  
<http://www.ncua.gov/GenInfo/BoardandAction/Draft-BoardActions/2011/Jan13/Item2-11-0113.pdf>

## Tech Assist-Related IRPS Approved

The National Credit Union Administration (NCUA) approved an interpretive ruling and policy statement (IRPS 11-1) that adds denials of technical assistance grant reimbursements to the set of issues that may be appealed during a credit union's challenge of material supervisory determinations made by agency staff.

The material supervisory determinations were previously limited to CAMEL ratings of 3, 4 or 5, adequacy of loan loss reserve provisions, loan classifications, and revocations of RegFlex authority for federal credit unions.

CAMEL ratings were also addressed by the NCUA's monthly insurance report, which noted that CAMEL 3, 4, and 5 credit unions represented 23.18% of insured shares during December. ■