CREDIT UNION NewsWatch

CUNA
Credit Union National Association

DECEMBER 20, 2010

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

CUNA President/CEO Bill Cheney addresses reporters in a national press teleconference after the Federal Reserve unveiled its interchange fee proposal. CUNA has strong concerns that the Fed's plan to set debit interchange fees could drive up credit unions' costs for providing the service, and members' costs for using it. (CUNA Photo)

CUNA Leads Charge on Interchange Plan

Addressing reporters from national news publications, including *The Wall Street Journal*, *USA Today* and *The Washington Post*, CUNA President/CEO Bill Cheney expressed strong concern about the potential cost to credit unions and their members of the Federal Reserve Board's just-issued proposal to set debit interchange fees. Cheney quickly followed the Fed's announcement with a letter to the Fed and key federal lawmakers reiterating and underscoring CUNA's concerns on behalf of credit unions and consumers.

The Fed proposal, which was required by the recently enacted Dodd-Frank financial regulatory reform package, has offered two separate possibilities for the new interchange fee structure. One framework

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NCUA Actions Include Fiduciary Duties Rule

New standards that seek to help federal credit union directors better carry out their fiduciary duties by requiring that they not only carry out their duties in good faith, but have or gain an understanding of "basic finance and accounting practices," led the discussion during the National Credit Union Administration's (NCUA) most recent monthly meeting.

The rule also strips federal credit unions of the ability to indemnify officials or employees for liability associated with misconduct that is "grossly negligent, reckless, or willful" in connection with a decision that affects the fundamental rights of the credit union's members. This rule only applies to decisions affecting members' "fundamental rights," and also only applies if a court has determined that the official or employee acted in a grossly negligent or reckless manner, or willfully engaged in misconduct. The NCUA is also developing separate indemnification standards.

The agency also revised some of its credit union-to-bank conversion rules in a move that it hopes will protect the secrecy and integrity of the voting process and prohibit credit union employees from helping mem-

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NCUA Annual Report: Focus on Financial, Corporates

In its 2008-2009 annual report, entitled *Stability Through the Crisis*, the National Credit Union Administration (NCUA) noted that its "proactive approach" to the financial crisis that threatened both the credit union system and the economy as a whole "reaffirmed public trust in the credit union system's safety and soundness."

The report, which serves as the NCUA's official report to the President and Congress, detailed the NCUA's stabilization actions, actions that included increasing its Central Lending Facility (CLF) lending limit to $41.5 billion and creating the Temporary Corporate Credit Union Liquidity Guarantee Program. These and other actions, when combined with the NCUA's increased supervision regime, aided the credit union system's ability to withstand the recent economic shocks, the NCUA said.

The NCUA report also tabulates 10 years of financial trends for credit unions and the National Credit Union Share Insurance Fund. Turning to more recent financials, the NCUA reported operating fee revenues of $50.7 million and $81.7 million in 2008 and 2009, respectively. The NCUA backed a total of 7,554 federal credit unions, with those credit unions holding just over $884 billion in assets as of 2009.

CUNA Leads Charge on Interchange Plan

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would provide issuers with a safe harbor of 7 cents per transaction, and sets a maximum interchange fee cap of 12 cents per transaction. An alternative framework would simply cap the maximum interchange fee at 12 cents per transaction. These safe harbors and/or caps would be reevaluated by the Fed every two years. The Fed included costs related to switching and data processing, but did not include fraud prevention costs in its interchange rate determination. The proposal also does not require payment networks to establish a two-tiered system.

During the board meeting, Fed officials said that they could not predict how the new interchange rules, once implemented, would impact the finances of consumers or the competitive landscape for card issuers. The interchange changes also have the potential to drive up transaction costs for all consumers, and Cheney noted that the Fed's own document repeated these concerns.

Cheney urged credit unions to weigh in with the Fed while the proposal is out for comment. Fed officials said it was "unlikely" that the Fed would release its final rule by the statutory implementation date of April 21. The proposal will remain out for public comment until Feb. 22.

Fed Proposal
http://www.federalreserve.gov/newsevents/press/bcreg/20101216a.htm

NCUA Actions Include Fiduciary Duties Rule

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bers complete ballots or handling completed ballots.

The sampling methodology for potential low-income credit unions was also revised, with the NCUA prospectively permitting federal credit unions to use "statistically valid" random samples of data on member incomes from loan files or surveys. Currently, sample data must be actual income data that is drawn from a minimum of 50% of a credit union's membership, plus one additional credit union member.

Credit unions in general, and the insurance fund that backs their deposits, were also addressed, with the agency reporting that the level of shares represented by low-ranked CAMEL 4 and 5 credit unions has declined significantly since its peak in May, when those institutions held 6.2% of total shares. The monthly National Credit Union Share Insurance Fund (NCUSIF) report for November showed that while, at 372, there are 21 more CAMEL 4 and 5 credit unions than in May, they represent 5.1% of total shares.

The share insurance fund sustained no losses during November, and also maintained the previous month's equity ratio of 1.29%.

Changes to the NCUSIF itself were also proposed during the meeting, with the NCUA moving to temporarily provide full NCUSIF coverage for non-interest-bearing transaction accounts held by members or depositors.

NCUA Hearing Presages New Bill

National Credit Union Administration (NCUA) Chairman Debbie Matz discussed the recent past, the present, and the future of the credit union system during a recent Senate hearing. Matz was the sole witness during the Senate Banking Committee hearing, which was the first credit union-centric hearing held in Congress in several years.

After detailing the corporate credit union crisis and covering the NCUA's ongoing response to those troubles, Matz turned to the legislative future. She encouraged lawmakers to approve legislation to increase the member business lending cap, saying that business lending, when done properly, is an important tool for credit unions and their members. Matz said that the number of credit unions that have experienced problems is small.

The NCUA in prepared testimony also requested that Congress amend the Federal Credit Union Act by changing the net worth definition to allow certain NCUA-established loans and accounts to apply as net worth and by clarifying that the NCUSIF equity ratio is based on NCUSIF-only, unconsolidated financial statements. The Senate late last week passed S. 4036, which carried these provisions as well as ordered a government study of the NCUA's supervision of corporate credit unions and its implementation of prompt corrective action for all credit unions. The bill was expected to pass the House quickly.

The NCUA testimony also suggested that the NCUSIF itself could also be streamlined by giving the agency the option of making premium assessments on federally backed credit unions in advance of anticipated expenditures.

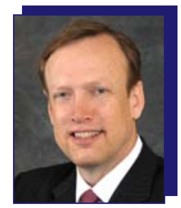
The agency also previewed its legislative priorities for the upcoming 112th Congress, including extending the statute of limitations for actions that the NCUA makes as conservator or liquidating agent of a credit union. The agency will also pursue the authority to perform its own examinations of third-party vendors that provide services to NCUSIF-backed credit unions.

Matz covered her own agency's work, noting that the NCUA is developing new regulations on natural person credit union risk concentrations. Those regulations will be released during the first quarter of 2011. The agency is also drafting revisions to some due diligence standards, and may need to enhance its own Office of Capital Markets to deal with credit ratings issues. However, any action related to its Office of Capital Markets is not pending, Matz said.

NCUA Chairman Debbie Matz, right, speaks with Sen. Tim Johnson (D-S.D.) prior to a Senate hearing this month on the state of the credit union industry. Matz covered the corporate credit union crisis, the NCUA's response to that crisis, and legislative priorities for credit unions during her testimony. Hearing webcast is at http://bit.ly/gkZjuX (Photo provided by NCUA)

As CUs Tighten Belts, NCUA Should Too

CUNA continues to urge the National Credit Union Administration (NCUA) to employ greater budgetary restraint and consider employing pay freezes similar to what the Obama administration has proposed for civilian government workers even if the agency determines it does not fall under that pay-freeze plan. As an independent agency, the NCUA may have flexibility about abiding by the administration directive and the NCUA is currently determining their status under the proposal.



Bill Cheney
CUNA President/CEO

At its November open board meeting, the NCUA approved a $25 million—or 12%—increase for its 2011 budget over its 2010 funding plan. The total budget for 2011 will be just over $225 million, and part of that would go to fund pay increases.

In a December 13 letter to NCUA Chairman Debbie Matz, CUNA President/CEO Bill Cheney underscored that although credit unions are well capitalized generally, the past three years have been "very trying" for credit unions. He urged the NCUA to exhibit the same "belt tightening" that credit unions have endured.

The Ohio League's Paul Mercer in a separate letter protested the NCUA's recent practice of denying credit unions a voice in the budgetary process. Mercer urged the NCUA to revisit its 2011 budget and "adjust it to reflect the difficult prioritization and fiscal restraint required of all organizations in this economy."

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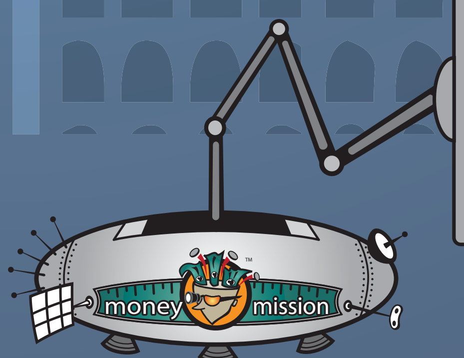

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- The 2011 economic forecast: What will be the pace of recovery?
- Strategies for advancing legislation favorable to credit unions
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CUNA

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MARY MATALIN
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Compliance Challenge

CUNA'S COMPLIANCE CHALLENGE

Q Will the SAFE Act require employees engaged solely in making mortgage underwriting decisions to register on the federal registry once it's up and running?

A The answer depends on whether the employees' duties fit the definition of mortgage loan originator (MLO). The Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) will require credit unions and their employees who are MLOs to register on the Nationwide Mortgage Licensing System & Registry (NMLS). Under the Act and regulations, 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.

An employee who only makes the decision about whether an applicant qualifies for a mortgage loan will not meet the two-pronged MLO definition. These employees meet the first prong of the test. They may not communicate with applicants directly; nevertheless, the agencies still consider their activities to fall within the definition of "taking an application" (i.e., receiving information provided in connection with a loan request to be used to determine whether the consumer qualifies for a loan). However, since these employees don't "offer or negotiate the terms of the loan," they wouldn't meet the second prong of the MLO definition.

Credit unions should be sure to refer to Appendix A to NCUA's Part 761 which contains examples of MLO activities. The appendix is designed to help credit unions figure out which employees fall within or outside of the definition of mortgage loan originator.

CUNA's e-Guide--Mortgage Staff Registration/SAFE Act
http://www.cuna.org/compliance/member/eguide/eguide_mlr.html

Interagency SAFE Act regulation
http://edocket.access.gpo.gov/2010/pdf/2010-18148.pdf

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

NCUA: Gift Cards as Incentive Carries a Risk

The National Credit Union Administration (NCUA), in a recent legal opinion letter, said that credit unions can use gift cards as a perk intended to increase attendance at annual meetings. Such a giveaway meets a federal credit union's incidental powers authority, which holds that certain activities are permissible when it is "convenient or useful" to the performance of one of the credit union's express powers. But what may be done and should be done aren't always the same things, the NCUA warns.

Although allowed, "a gift card incentive may be objectionable on safety and soundness or corporate waste grounds," the NCUA opinion says. The end-cost of the gift-card giveaway could come as a shock because the credit union cannot predict how many members will end up attending the annual meeting.

In light of this potential cost variability, it is up to the credit union's examiner and the NCUA's regional director "to determine if the proposed $25 gift card incentive is objectionable on safety and soundness or corporate waste grounds," the NCUA said. "Any incentive offered by a federal credit union to increase participation at its annual meeting must be reasonable."

The incentive should not be used to influence the outcome of a vote, if there is a vote held during the meeting, the NCUA reminded.

NCUA Legal Opinion Letter
http://ncua.gov/Resources/RegulationsOpinionsLaws/OpinionLetters/2010/10-1038.pdf

Fed to Extend TILA, Consumer Leasing Act

The Federal Reserve Board is proposing to expand the coverage of consumer protection regulations to credit transactions, as well as double the dollar amount of consumer leases that would be covered. The proposed rules would amend Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing) to implement a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Starting July 21, 2011, the Dodd-Frank Act requires that the protections of the Truth in Lending Act (TILA) and the Consumer Leasing Act (CLA) apply to consumer credit transactions and consumer leases up to $50,000, compared with $25,000 currently. This amount will be adjusted annually to reflect any increase in the Consumer Price Index.

TILA requires creditors to disclose key terms of consumer loans and prohibits creditors from engaging in certain practices with respect to those loans. Private education loans and loans secured by real property, such as mortgages, are subject to TILA regardless of the amount of the loan.

The CLA requires lessors to provide consumers with disclosures regarding the cost and other terms of personal property leases, such as an automobile lease. The Fed said comments must be submitted by Feb. 1, 2011.

Regulation Z Proposal
http://edocket.access.gpo.gov/2010/pdf/2010-31529.pdf

Regulation M Proposal
http://edocket.access.gpo.gov/2010/pdf/2010-31530.pdf

>>Special Report

The Front Burner

The most viewed news stories on cuna.org last month reveal the hottest issues for credit unions. Stories about the corporate credit union system, and elections results with CUNA analysis, dominated November's list of readers' top 10. Access the complete stories at www.cuna.org/newsnow/top10.

10 Counterfeit checks reported by CUs in five states
Credit unions from New York, Pennsylvania, Washington, Iowa and California reported counterfeit checks scams, according to the New Jersey Credit Union League .

9 Constitution Corporate to be liquidated
Constitution Corporate FCU (Constitution) will be liquidated on Nov. 30, the National Credit Union Administration (NCUA) announced Friday.

8 Restitution, employment ban ordered for two by NCUA
Two former credit union employees were banned from future work at any federally insured financial institution and ordered to pay substantial restitutions, under prohibition orders issued by the National Credit Union Administration.

7 WesCorp risk management was inadequate, NCUA says
The National Credit Union Administration has found that the management of failed Western Corporate FCU "did not implement appropriate risk management practices to adequately limit or control significant risks in its investment strategy" before its ultimate conservatorship in early 2009.

6 Study pinpoints what prompts a switch in FIs: Free checking
Offering a free checking account is the top reason consumers say they would switch financial institutions, according to new research by Raddon Financial Group. Of consumers surveyed, 39% said they would switch if free checking changed.

5 NCUA to create 'loan loss' resolution tool
Saying it was 'taking a page' from the Federal Deposit Insurance Corp.'s recent action plan to increase available tools to resolve large, complex financial institutions, the National Credit Union Administration announced its own Loss Share Program.

4 Filene Study: Adapt services to retain young adults
Attracting more Gen Y members is more than a marketing strategy for credit unions, it's a matter of survival, according to a just-published report from the Filene Research Institute.

3 Projected corporate fund assessment a concern: CUNA
While the National Credit Union Administration's proposed National Credit Union Share Insurance Fund assessment of 0 to 10 basis points "is right within the range" that CUNA expected, CUNA is "troubled with the projected corporate stabilization assessment," said the group's leader.

2 Fitch withdraws ratings of three more corporates
Ratings organization Fitch says it has affirmed and then withdrawn its ratings for three corporate credit unions under conservatorship.

1 How did CUs fare? CUNA election analysis
With the makeup of the 112th Congress falling into place after Tuesday's midterm elections, the CUNA has analyzed the near future for credit unions and legislation in general.

Bachus Featured at GAC

Just weeks after taking the gavel as chairman of the House Financial Services Committee for the 112th session of Congress, which convenes in January, Rep. Spencer Bachus will address thousands of credit union representatives convened for CUNA's Governmental Affairs Conference (GAC). The conference is Feb. 27 to March 3 in Washington, D.C.


Spencer Bachus

CUNA's GAC will be an opportunity early in the new Congress for Bachus to offer his perspective on the committee's agenda in the year ahead and what it will mean for the nation's credit unions. More speakers from Capitol Hill, the administration and the federal agencies, will be announced in the weeks to come.

Government Commission Intros Fin. Lit. Strategy

The Financial Literacy and Education Commission (FLEC) unveiled its 2011 National Strategy for Financial Literacy, a framework the group hopes will provide a foundation for "an overarching" plan to educate Americans about financial matters. The 2011 strategy focuses on financial education to boost effective financial decision-making, and cites policy, education, practice, research and coordination as "action areas" that the FLEC stakeholders can address to reach the stated objectives. FLEC is comprised of representatives from the National Credit Union Administration and 19 other agencies of the government.

FLEC 2011 Strategy
http://bit.ly/egK2U4

>>CUs In The News

CUs Top Satisfaction Indexes—Again

Barely a week apart, two consumer satisfaction surveys came out placing credit unions at the pinnacle. Late last week, the American Customer Satisfaction Index (ACSI) announced that credit unions continued in the top spot of its survey scoring an 80. While a slight drop from their score of 84 the past two years, credit unions till scored above banks. In fact, while banks overall scored a 72, some big banks fared significantly lower: Citigroup at 69, Bank of America at 68 and JPMorgan Chase at 67.

About a week prior to the ACSI release, Prime Performance 2010 Bank and Credit Union Satisfaction Survey announced that credit unions and small banks led their larger rivals in meeting the needs of their members/customers. That study also indicated credit unions and small banks have the friendliest personnel; their members/customers are more likely to recommend others use their financial institution, they are more likely to believe employees want to help them; and they are more apt to believe credit union and small bank employees enjoy their jobs.

CUNA President/CEO Bill Cheney's comments about the results were reported widely in national media. Cheney noted that CUNA was not surprised at the findings that shone the spotlight on member satisfaction and it was fine to be included with small banks, but also noted the "very real and fundamental difference between banks and credit unions, regardless of size: Credit unions' not-for-profit, cooperative structure."

>>CUNA Notebook

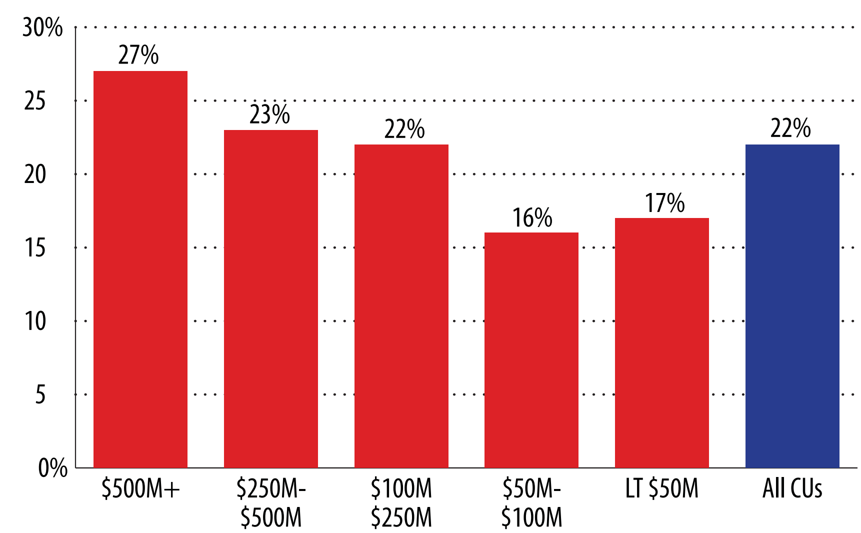
Loyalty Equals Higher Loan Volume

Credit unions repeatedly rank highest on consumer satisfaction surveys (see story above) and, of course, satisfaction breeds member loyalty. But what does member loyalty bring to the credit union?

CUNA's CU Member Satisfaction, Growth, and Loyalty recently released benchmarking report shows that its member survey clients say 22% of their members are in the "truly loyal" classification. CUNA also reports that members that fall into this highest loyalty category carry outstanding loan balances at their credit unions that are nearly 70% higher than those found among less loyal members. The "truly loyals" carry about $7,749 in loan balances versus $4,613 for more fickle members.

To be counted as truly loyal, members had to satisfy these three requirements: They "definitely would"; recommend their credit union to others; contact their credit union the next time they need a financial product or service; and choose the credit union as their primary financial institution.

The CUNA report, designed to help each credit union discover its strengths and weaknesses, provides the first glimpse at CUNA's 2010 member statistics data. The link below carries information for an member credit union interested in purchasing the report.



Source: CUNA Credit Union Member Satisfaction, Growth and Loyalty Benchmarking Report