

CREDIT UNION NewsWatch



JULY 19, 2010

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



Dan Mica hands over the reins—and the key—to the Credit Union National Association to new CUNA President/CEO William "Bill" Cheney during the opening of the General Session at The 1 Credit Union Conference sponsored by CUNA and the World Credit Union Council in Las Vegas last week. (WOCCU Photo)

CUNA's Cheney Takes Helm at Key Time for CUs

William "Bill" Cheney's arrival in Washington to take the helm at CUNA coincides with a vital time for credit unions. Cheney became CUNA president and CEO July 5, just prior to the Senate vote on financial regulatory reform and to a potential vote on member business lending legislation.

Cheney has said of the many legislative, regulatory and financial challenges facing credit unions right now, "We can't miss a beat, either in Washington or Madison (Wis.), as we represent and serve credit unions." Cheney said that advocacy on behalf of credit unions will continue to be one of CUNA's top priorities. However, Cheney also said that his vision for CUNA extends well beyond these clear regulatory priorities, with a basic emphasis

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MBL, Interchange Latest

With a Senate vote on small business lending legislation potentially scheduled for this week, legislation that would lift the member business lending cap for credit unions beyond the current 12.25% limit was recently brought to the fore by Sen. Mark Udall (D-Colo.).

In remarks delivered on the Senate floor, Udall said that his legislation, which would lift the MBL cap to 27.5% of a credit union's total assets, would "safely and soundly increase small business lending by credit unions without costing Americans a dime."

"Best of all, this legislation could lead to large-scale job creation in my home State of Colorado and all around our great country," Udall added. CUNA has estimated that lifting the MBL cap to 25% of a credit union's assets would result in over \$10 billion in new funds for small businesses, creating as many as 108,000 new jobs.

The small business legislation, publicly opposed by the Independent Community Bankers of America (ICBA), would provide small banks with \$30 billion in funds to lend to small businesses. The ICBA has refused to accept this legislation due to the potential inclusion of Udall's MBL legislation.

The Senate vote on the small business provisions was shelved last week in favor of a final vote on financial regulatory reform. The final regulatory reform bill, which passed the Senate by a 60 to 39 vote, contains language that

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2-3 | CUNA Confidential:

A close look at NCUA's merger guidance

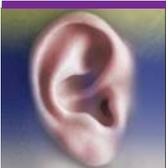
6 | Interchange Exemption:

Frank underscores those under \$10B in assets exempt



8 | Design Debut:

New CUNA website looks good, functions better



A Close Look at NCUA Merger, P&A Guidance



Mary Dunn, Senior Vice President and Deputy General Counsel

Early this year, CUNA formed a Mergers Task Force, which prepared a comprehensive report detailing credit union concerns with the National Credit Union Administration's (NCUA) existing merger process. The CUNA task force provided recommendations to improve and streamline the process. The report, submitted to the agency in May, included the work of a wide array of credit union experts (see task force membership below), including NCUA senior officials. CUNA is encouraged that many of the issues raised in its task force report are addressed in the NCUA's July 2 letter to credit unions (LTCU 10-CU-11, NCUA's Merger and Purchase and Assumption Process).

However, for some issues, the information provided by NCUA falls short of what CUNA and the task force had requested. CUNA will continue its work to identify weaknesses in the guidance and also asks credit unions to send comment, or ask for more information, by contacting task force liaison Mary Dunn at mdunn@cuna.com or Dennis Tsang at dtsang@cuna.com.

The Guidance

Specifically LTCU 10-CU-11 provides federally insured credit unions with an overview of the merger process in general as well as details on how and why the agency selects a partner for an assisted merger or purchase and assumption (P&A). Also, the guidance includes information on: the P&A process and the various types of mergers; criteria used to evaluate mergers and P&As; identification of merger and P&A partners; and selection of an acquirer in the circumstances when NCUA is involved in making the choice.

Credit union concerns have generally

focused on the lack of transparency in how the agency determines which credit unions should be merged, which credit unions may be chosen as an acquirer, and what the qualifications are for credit unions selected as acquirers.

Options

The guidance covers the options available when a credit union's board of directors determines it is no longer feasible for its credit union to continue as a going concern, or when NCUA or the respective state supervisory authority (SSA) for a state-chartered credit union determines a credit union's problems cannot be resolved in a way that would permit it to continue as an independent entity. The options in these cases include: a voluntary merger in which the respective board of directors determines the merger partner without NCUA's involvement; an involuntary liquidation, in which NCUA decides to close the credit union; an involuntary liquidation followed by a P&A; or an assisted merger.

A merger may be performed voluntarily by a credit union or involuntarily as required by NCUA. Voluntary mergers generally do not involve financial assistance from NCUA and the agency's role is limited. Similarly, NCUA's unassisted supervisory mergers do not involve financial assistance and the agency may or may not participate in the identification process.

Assisted Mergers

Unlike voluntary and unassisted supervisory mergers, NCUA's role concerning assisted mergers and P&As is much greater. It includes identification and selection of a continuing credit union partner, since assisted mergers and P&As generally involve financial assistance

from NCUA. Also, P&As can involve NCUA retaining some of a failing credit union's assets, liabilities, contracts or off balance sheet items.

However, the degree of involvement and approach taken largely depends upon the unique set of circumstances in each case, such as: the potential loss to the National Credit Union Share Insurance Fund (NCUSIF); size, complexity, and financial stability of the acquired credit union; or degree of urgency.

For assisted merger and P&A applications, NCUA will consider these factors: the safety and soundness of the continuing credit union; the compatibility of the field of membership (FOM) between the acquired and continuing credit unions; and whether sufficient notice was sent by the acquired credit union to its membership about this action.

In evaluating a potential merger, the CUNA task force report urged NCUA to focus on the impact to the members of both the acquired and continuing credit unions as well as the effect on the NCUSIF.

Potential Merger Partners

The guidance describes how potential merger partners are selected. NCUA generally develops a potential partner list of those credit unions having the ability to manage the combined credit unions both financially and operationally. NCUA also identifies specific criteria of a continuing credit union for its candidate list, including: selected financial criteria such as CAMEL ratings, asset size, or net worth; whether the management of the continuing credit union can handle the size and complexity of the acquired credit union; the FOM of the acquired credit union; and/or a listing of credit unions that have

expressed interest to be a continuing credit union partner.

Depending on the troubled credit union's condition and other factors unique to each case, a wider geographic search, one that is regional or national, may be warranted, according to NCUA. Factors dictating a wider search include a review of whether: the troubled credit union's assets are large and/or problems are complex; the troubled credit union requires specific or special expertise, such as designations, diversified groups in the FOM, and/or location restrictions; there is an insufficient number of interested candidates and/or bids from the initial local search; and/or NCUA finds the requested assistance from interested acquirers is unreasonable and/or unjustified.

According to the guidance, NCUA generally tries to contact as many credit unions as practical to ensure a competitive bidding process which will result in the least cost to the NCUSIF. While there are no set limits for the number of contacted credit unions, there are practical limits for onsite due diligence, and the limits are also influenced by the rate of deterioration of the troubled credit union and the likelihood of such actions creating the membership to panic and cause a run on shares at the troubled credit union.

Once NCUA develops the potential partner list, a bidder's meeting is held when practical or warranted by the circumstances. Before providing an interested party with a bidders' packet, NCUA will obtain a signed confidentiality agreement from that bidder. The burden of completing a due diligence review and determining the amount of assistance, if any, is the responsibility of the bidder credit union under NCUA's process.

Each of NCUA's regional offices presently maintains a manual listing of credit unions that have expressed an interest in expanding their respective FOMs through mergers and/or P&As.

National Registry

The CUNA Merger Task Force report requested information on how credit unions can be placed on a potential acquirer's list, as many of the credit unions that we have spoken with indicated that they were not aware of such a list. As discussed below, CUNA strongly encouraged NCUA to develop a nationwide listing of interested credit unions.

The agency guidance indicates NCUA is developing a new automated national registry for identifying potential credit union partners and providing greater opportunity for more interested credit unions to be involved. The registry information could potentially include asset size range, geographic limitations, FOM, and minimum net worth limits. The guidance states that the registry could be used by NCUA or SSAs to identify potential merger partners, and if NCUA needs to expand beyond the local geographic area for assisted mergers and P&As. The national online registry, when available, will replace the manual list that is currently at each regional office.

Merger Partner

Finally, NCUA's guidance provides information on how it selects a merger partner. After receiving all properly submitted bids, NCUA evaluates each bid to determine the amount and type of assistance requested by each bidder. Each bidding credit union must provide justification for its assistance request and complete information to support its valuation of the acquired credit union.

NCUA generally awards the bid to the selected bidder with the "no cost" or "least cost" proposal. Other factors considered include: the effect on the bidding credit union's safety and soundness; the "fit" between the bidder and the acquired credit union's FOM or special circumstances; the ability of management to integrate both credit unions; the ability of the bidding credit union to provide the same or

enhanced services; and other additional offerings by the bidding credit union.

In selecting a partner, the report emphasizes the need to consider the impact to the NCUSIF, transparency regarding the methodology used to determine merger partners, and details on the weight given to physical proximity.

Positive Developments

The guidance provides more transparency into NCUA's process and development, at least, is positive. The CUNA report includes additional areas of concern and recommendations not addressed in NCUA's guidance that we will continue to pursue. These include: clarity on due diligence; details about costs and loss sharing; merger accounting; coordination with the state regulators; a study and report on merger issues in the credit union system; and additional information about mergers and data on NCUA's website.

CUNA Next Steps

CUNA urged NCUA to address its approach on mergers by developing a document credit unions could use to understand NCUA's process better. We are encouraged by the information that NCUA provided and appreciate its efforts to clarify the merger process. We will continue to monitor the process and work with NCUA to ensure credit unions have sufficient clarity on the merger process.

The Mergers Task Force was led by Ohio CU League President Paul Mercer and was further comprised of other credit union leaders, including: Mary Ann Clancy, SVP/general counsel of the Massachusetts, New Hampshire and Rhode Island CU Leagues; Doug Fecher, president/CEO of Wright-Patt CU, Ohio; John Hirabayashi, president/CEO of Community First CU, Fla.; George McNichols, president/CEO of Hoosier Hills CU, Ind.; and John Sackett, board of directors member and treasurer, Royal CU, Wis. 📍



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- Creating Your Team's Culture
- Coaching Your Team to Success
- Negotiating Skills: Getting to the Win-Win
- Becoming Your Members' Financial Advocate

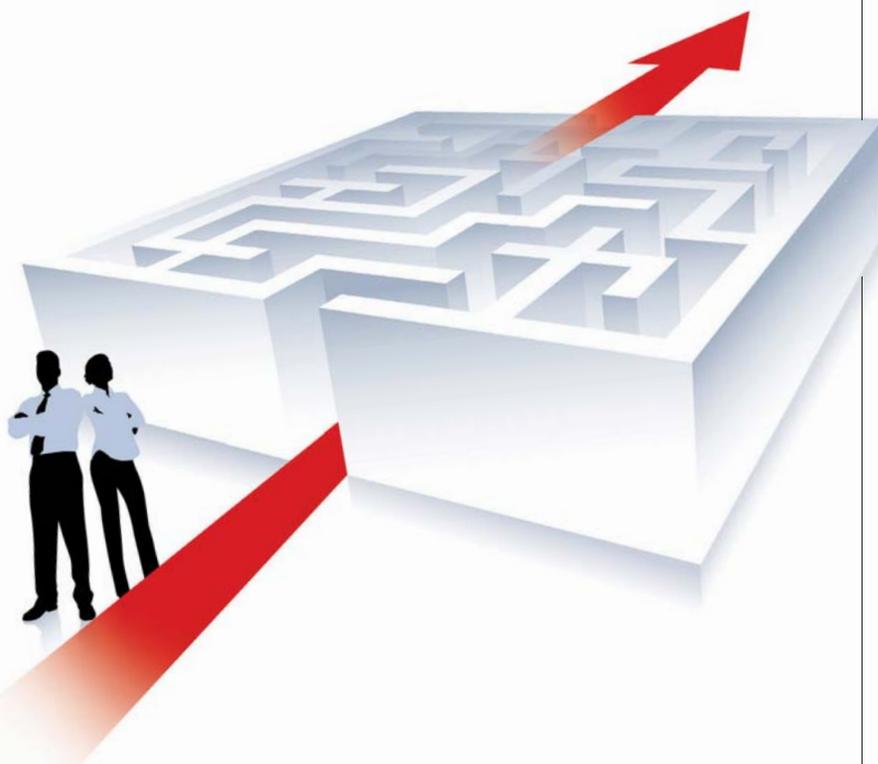
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>> Governmental Affairs

Frank Emphasizes CU Exemption from Interchange Rule

While the Senate last week successfully passed comprehensive regulatory reform that included authority for the Federal Reserve to set interchange fees, Rep. Barney Frank (D-Mass.) in recent weeks has publicly reassured credit unions and other small institutions that the built-in exemptions for financial institutions with under \$10 billion in assets will be followed.

Frank offered his public assurance when speaking before the House, following that chamber's passage of the reg reform package. Prior to that, Frank expressed similar thoughts in a letter to his House colleagues.

CUNA has said that Frank's comments serve as excel-

lent notice of the Congress's strong intent to exempt credit unions and community banks from the reaches of the provision that requires the Fed to set interchange fees.

Frank has also said that credit unions and other small issuers would continue to be permitted to issue their debit cards without any market penalties.

CUNA is disappointed by the successful passage of the interchange fee legislation, but will discuss the new rules with regulators and will work to ensure that the interchange fee, which will be established by the Fed, will reflect the true costs that credit unions incur when running their debit and credit card programs. 🏠

▶ CUNA, Fed Seek CU Thoughts on HMDA

CUNA and the Federal Reserve have asked credit unions to comment on Home Mortgage Disclosure Act (HMDA), portions of which require credit unions and others to collect and report data on home mortgage loans, home improvement loans. Specifically, CUNA and the fed are seeking input on the costs, benefits and privacy issues associated with the HMDA.

The Fed has asked for input on what types of data should be excluded or eliminated, and if any existing data elements should be modified. The Fed has also requested comment on whether some types of institutions or mortgage loans should be excluded from HMDA reporting.

The first in a series of HMDA hearings took place late last week, and subsequent hearings are scheduled for Aug. 5, Sept. 16 and Sept. 24.

CUNA's Cheney Takes Helm at Key Time for CUs

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on helping credit unions help their members.

The new CUNA leader hit the ground running last week. Cheney was quick to act to refute an *American Banker* article with claims of poor credit union performance, saying that credit unions are "coping with today's economic challenges and continue to shine." While getting out the credit union message in the press, Cheney was also proactive on the political front, urging Senate leaders Harry Reid (D-Nev.) and Mitch McConnell (R-Ky.) to ignore the "stunning hypocrisy" of the banking industry's attempts to "hold hostage" small business lending legislation. The Independent Community Bankers of America (ICBA) recently said that it would oppose legislation that would help community banks provide an extra \$30 billion in loans to small businesses through a government-backed lending fund if that legislation included an amendment that would lift the member business lending cap for credit unions.

The small business lending provision, as well as the MBL legislation, had not been voted on as of last week, while Cheney led his first The 1 CU Conference in Las Vegas. 🏠



Sign up for CUNA's "Election Watch" delivery via email using the following link. Throughout the 2010 election year, CUNA will keep you up to date on all U.S. House and U.S. Senate elections.



CUNA Comment Call

http://cuna.org/reg_advocacy/reg_call/rcc_070710a.html



>> Notes Bearing Interest

▶ The Front Burner

The most viewed news stories on cuna.org during June 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.

10 NCUA orders corrective actions

Sperry Associates FCU, of Garden City Park, N.Y., has been ordered by the National Credit Union Administration to take a series of corrective actions.

9 New interchange language, same concerns, says CUNA

CUNA said that credit unions “would almost certainly” have to oppose a final financial regulatory reform bill unless lawmakers remove or significantly change even the modified debit interchange provisions put forward yesterday by House conferees.

8 Financial institution gets \$1M fine for BSA violations

The Financial Crimes Enforcement Network revealed that it assessed a \$1 million civil money penalty against a savings bank in New Jersey for violating a number of Bank Secrecy Act requirements.

7 Interchange amendment report: Negative in five areas

The interchange amendment in the Senate version of the regulatory reform bill would have negative consequences in five areas, according to an independent industry study.

6 White House official, CUNA meet on interchange

A key White House official met with CUNA to hear the credit union position on pending legislation that would allow the government to set interchange fees.

5 CUNA ‘disappointed’ by bill’s interchange treatment

CUNA President/CEO Dan Mica said that he was “disappointed” that House and Senate regulatory reform conferees allowed legislation that would enable government intervention in interchange fee negotiations to remain in the final version of financial regulatory reform.

4 Frank underscores CU exemption from interchange rules

House Financial Services Committee Chairman Barney Frank (D-Mass.), a central figure in the recently completed House-Senate financial regulatory reform conference report, assured his colleagues that the Federal Reserve’s new rules governing interchange fees would not apply to credit unions or other small institutions with under \$10 billion in assets.

3 Fed releases Reg DD, E clarifications

The Federal Reserve in June clarified some aspects of its Regulation E, Electronic Fund Transfers, and Regulation DD, Truth in Savings that address overdraft services.

2 Senate conferees accept House option on interchange

CUNA repeated its call for credit unions to oppose Congress’s final financial regulatory reform bill, as the House-Senate conferees voted to accept a House proposal that retained portions of that bill that would modify current interchange practices.

1 NCUA assesses 13-bp to repay corporate CU coverage

Credit unions will soon be charged an assessment of 0.134% of insured shares as the National Credit Union Administration collects a portion of the funds necessary to pay for the costs of the corporate stabilization.

RESPA ‘Required Use’ Comments Due Aug. 20

The Department of Housing and Urban Development (HUD) has initiated a rulemaking process intended to clarify a current prohibition against the “required use” of affiliated settlement service providers for residential mortgage transactions under the Real Estate Settlement Procedures Act (RESPA).

HUD wants to address practices in which certain homebuyers commit to using a homebuilder’s affiliated mortgage lender in exchange for construction discounts or discounted upgrades without sufficient opportunity to review the transaction or comparison shop among other lenders.

As the first step in this rulemaking process, HUD has issued an advance notice of proposed rulemaking (ANPR) in which the agency is soliciting comments and information on this issue. After reviewing this information, HUD may then issue a specific proposed rule to clarify these “required use” provisions.

CUNA is asking credit unions for comment by Aug. 20. Comments are due to HUD on Sept. 1. <#>

MBL, Interchange Latest

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would allow the federal government to intervene in the setting of interchange fees. While CUNA stridently opposed the inclusion of this interchange legislation in the final bill, CUNA will work with federal regulators to ensure that a provision that would exclude credit unions with under \$10 billion in assets from the terms of the bill is followed.

The regulatory reform bill, and, in turn, the interchange fee legislation, is expected to be signed Wednesday by President Obama.



Redesigned CUNA Website Debuts

CUNA went live this month with a major redesign enhancing the appearance, navigation and organization of its website. The changes make comprehensive improvements to *cuna.org*, the most widely read website in the credit union system.

The redesigned *cuna.org* features these major changes:

▶ **Better navigation.** Content is now grouped under four major categories: “Issues & Advocacy,” “Regulation & Compliance,” “Education & Training,” “Products & Services,” with drop down menus delineating the specific content in each area for faster navigation;

▶ **Improved integration.** The site has added more links making it easier for visitors to find what they are looking



for, regardless of where they start their search;

▶ **Increased automation.** System generated lists highlighting recent additions and popular pages keep the *cuna.org* fresh and help visitors stay on top of what’s new and what’s of current

interest;

▶ **Faster performance** through enhancements to the underlying technology and more interactive features;

▶ **Streamlined appearance.** A more attractive and contemporary design presents a stronger initial impression of CUNA and the credit union movement.

CUNA’s website attracts more than 100,000 visitors a month and receives about 45,000 page views per day. For many, the starting point is News Now, CUNA’s online daily news service, whose headlines will continue to be prominently featured on the home page along with a listing of CUNA’s top initiatives. 📍

CUNA website
www.cuna.org

Gift Card Provisions and the Aug. 22 Credit CARD Act Rules



Aug. 22, 2010 is a milestone day for regulatory compliance requirements. Both the new “gift card” rules and the next round of the Credit CARD Act rules become effective that day.

On July 22, CUNA offers an audio workshop during which Andrea Stritzke, vice president of regulatory compliance at PolicyWorks, will discuss these new requirements and what needs to be done to in compliance by the August deadline.

This audio conference will:

- ▶ Review the Gift Card rules that take effect Aug. 22; Show how these new rules will affect your Gift Card operations;
- ▶ Explain the Credit CARD Act rules that also take affect Aug. 22;
- ▶ Discuss what “reasonable and proportional” means as it relates to credit card fees; and

▶ Clarify what a credit union needs to do if it raised credit card rates after Jan. 1, 2009.

The July 22 audio conference is 1:00-2:30 p.m. (CT). 📍

Compliance Audio Conference
<http://cuna.org/training-education/event/T07220/>

▶ Insights on Accounting Changes

There are significant changes in the works for how credit unions account for the financial instruments they hold. As proposed, a new FASB “exposure draft” could cause most credit unions to incur significant compliance costs.

CUNA is offering a July 28 “hot topic” audio conference to help credit unions become more knowledgeable on critical accounting issues, including the proposed requirement to measure most financial assets and financial liabilities at their market value.

It is a 60-minute session that starts at 2 p.m. (CT).

Significant Changes to Accounting for Financial Instruments
<http://www.cuna.org/training-education/event/T07280/>