

# CREDIT UNION NewsWatch



JUNE 7, 2010

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



CUNA President/CEO Dan Mica, testifying on small business lending before the House Financial Services Committee, told federal lawmakers that credit unions could do a lot for the U.S. economy by lifting the statutory cap on member business lending. Committee Chairman Barney Frank (D-Mass.) said his panel would consider an administration proposal to that effect—in a markup—“fairly soon.” (CUNA Photo)

## MBL Action: Also a CUNA, CU Focal Point

While CUNA has lit a fire under efforts to remove interchange fee language from the financial regulatory reform package, CUNA is concurrently maintaining a strong push for increasing the cap on member business lending.

Recently, CUNA President/CEO Dan Mica testified on the merits of lifting the cap before a House Financial Services Committee hearing on small businesses. Chairman Barney Frank (D-Mass.) during that hearing indicated that his panel will hold a vote on MBL legislation “fairly soon.”

The Obama administration has also voiced support for raising credit unions’ business lending capacity, with the U.S. Treasury Department proposing an increased cap of 27.5% of total assets, up from >> See page 2

## No Holds Barred in Interchange Fight

CUNA and credit union members, employees, and advocates continue to target legislation that would change the structure of interchange fees. More than 200,000 individuals, as of Friday, have responded to CUNA’s Action Alert and reached out to their elected officials, urging them to remove proposed interchange changes from the Congress’s financial regulatory reform package.

CUNA’s grassroots action on interchange will also be felt via radio ads this week, with a national fly-in of credit union advocates set to follow. Those interchange advocates, who represent the ranks of credit union leagues and individual credit unions nationwide, will take the case for eliminating proposed changes to interchange directly to the halls of Congress on June 9 and 10.

CUNA President/CEO Dan Mica, along with other CUNA representatives, took the credit union case to the U.S. Treasury Department last week, telling Assistant Treasury Secretary for Financial Institutions Michael Barr that the interchange provisions are the “most serious threat” currently facing credit unions. That was followed up by a similar meeting with a key White House official.

State treasurers have also opposed the interchange changes, and the issue has seen blitzkrieg of See page 2

### 2 | Fed Over-draft Rules:

Agency adds clarifications



### 3 | NCUA May Split Insurance, Corporate Assessments:

Benefits to CU balance sheets are two-fold



### 6 | Interchange NO Change:

See CUNA resources on grassroots action plan

### 7 | New FASB Rule:

What it will mean to CUs



# >> Governmental Affairs

## Fed Clarifies Some Overdraft Rules

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

The Fed made slight alterations to Reg E, which requires consumers' affirmative consent (opt-in) before institutions can charge overdraft fees for ATM and one-time debit card transactions.

The Fed has clarified that its final rule does not provide any exceptions for allowing overdraft fees for ATM and one-time debit card transactions to be imposed without consumer consent. According to the Fed, adopting exceptions to the fee prohibition would undermine the consumer's ability to understand the institution's overdraft practices and to make an informed choice. The prohibi-

tion applies to all financial institutions.

The Fed release also addressed opt-in confirmation, stating that institutions must provide their consumers or members with written documentation of their opt-in choice in written form. These disclosures may not be made orally, the Fed said.

Overall, the Fed said that its Regulation E final rule applies "solely to overdraft fees imposed in connection with ATM and one-time debit card transactions," not overdraft fees that are related to check, ACH and recurring debit card transactions.

Addressing Reg DD, the Fed clarified that section 230.11(c) of that rules does not require institutions "to exclude from the consumer's balance funds that may be transferred from another

account" under retail sweep programs. Consumers that take part in retail sweep programs "may reasonably expect to see a single balance combining the funds in the transaction sub-account and the savings sub-account when they request an account balance."

The Fed also amended the effective date of Section 230.11(a)(1)(i), which requires financial institutions to use the term "total overdraft fees" on their periodic statements, pushing it back to Oct. 1. The remainder of the rule will come into effect on July 1. 🏠

 **Fed Reg E Clarifications**  
<http://edocket.access.gpo.gov/2010/2010-3720.htm>

**Fed Reg DD Clarifications**  
<http://edocket.access.gpo.gov/2010/2010-3719.htm>

## MBL Action Also a CUNA, CU Focal Point

 From page 1

the current 12.25% ceiling. The Treasury proposal would limit the growth of a credit union's MBL portfolio to no more than 30% annually, and would impose other capitalization, loan ratio, and underwriting and management requirements on credit unions that wished to lift their own current MBL cap.

Rep. Paul Kanjorski (D-Penn.) and Sen. Mark Udall (D-Colo.) each have introduced legislation that would lift the MBL cap to 25% of assets, and Kanjorski's bill, HR 3380, currently has 122 cosponsors.

CUNA has estimated that lifting the MBL cap to 25% of a credit union's assets would create over 100,000 new jobs and inject over \$10 billion in funds into the economy in its first year, at no cost to taxpayers. 🏠

## No Holds Barred in Interchange Fight

 From page 1

coverage from both nationwide and regional press.

CUNA has said that the interchange amendment, which would direct the Federal Reserve to issue regulations to govern interchange fees charged for debit card transactions, forces the Fed into the role of a price-fixing body, when interchange fees should be driven by market forces. While the amendment does exempt credit unions with under \$10 billion in assets, that carve out will not provide the shelter that credit unions need from onerous interchange fee changes. The amendment would allow merchants to discount among preferred networks and also provide certain discounts for cash, check and certain debit card payments.

CUNA refutes merchants' arguments that government control of interchange fees would mean lower costs for consumers, noting that merchants groups directly opposed a proposed amendment that would have ensured that they did just that with the excess funds gained from interchange fee reductions.

The interchange legislation will be considered as part of an overall committee discussion on the financial regulatory reform legislation that has been approved by both the House and the Senate. Rep. Barney Frank (D-Mass.) has indicated that a final version of that legislation could be signed into law by President Barack Obama by July. (See important related material on



# >> Notes Bearing Interest

## Separating NCUA Assessments: Two-fold Benefit

A few weeks ago, National Credit Union Administration (NCUA) Chairman Debbie Matz told credit unions that the agency is “very mindful of the effect” that assessments have on their balance sheets. She indicated that the agency soon will consider an important change in its procedures: splitting the fees used to maintain its share insurance from those used for corporate stabilization funds.

Also important to credit union balance sheets, Matz says the NCUA will



Debbie Matz

also consider separating the timing of credit union payments for the National Credit Union Share Insurance Fund (NCUSIF) and the Temporary Corporate Credit Union Stabilization Fund.

Separating these two assessments—those that cover NCUSIF costs associated with problem natural person credit unions and those associated with

NCUA’s Corporate Stabilization Fund—would help improve the transparency of NCUA’s assessment process—and, at the same time, improve the accuracy of credit unions’ budget estimates, says Matz. However, credit unions should note that if the agency does pursue this new policy, it would not change the total assessment amount due. Rather it would clarify the amount of the assessment dedicated to natural person credit union losses versus corporate stabilization costs. ■

## NCUA Expenses \$170M for Future Losses

Mary Ann Woodson, CFO of the National Credit Union Administration (NCUA), reported last month that the National Credit Union Share Insurance Fund (NCUSIF) has increased by \$170 million its reserves for future credit union losses.

With the additional \$170 million, the NCUSIF reserves stand at \$896.3 million, and the equity ratio as of April was at 1.24%. However, NCUA staff said current reserves may not be sufficient to meet actual losses, based on current trends. NCUSIF has incurred \$177.4 million in total insurance loss expenses so far this year.

Staff reported there are currently 357 CAMEL 4 and 5 credit unions, which represent 5.94% of insured shares; and 1,720 CAMEL 3 credit unions, which represent 14.40% of insured shares. Combined, insured shares in CAMEL 3, 4, and 5 credit unions represent approximately 19.25% of insured shares. Twelve credit unions have failed year-to-date, and there were four additional failures since the previous month’s report. ■

## CUNA Advises CU on New UIGEA Rules

Unlawful Internet Gambling Enforcement Act (UIGEA) regulations went into effect on June 1, and credit unions and other financial institutions are now required to establish and implement policies and procedures to identify and block restricted internet gambling transactions.

The policies and procedures must generally demonstrate that the credit union is exercising enhanced due diligence when opening business accounts to prevent illegal Internet gambling operations from setting up accounts. The credit union must also have policies and procedures that prevent credit/debit card transactions from any type of account from being made to unlawful Internet gambling operations.



Leading up to its passage and beyond, CUNA has repeatedly voiced concerns that credit unions could be swamped by the compliance burden associated with the 2006 Unlawful Internet Gambling Enforcement Act. Shown here in 2008, CUNA’s now-chairman, Harriet May, greets House Financial Services Committee member Rep. Luis Gutierrez (D-Ill.) before testifying at a subcommittee hearing on issues regarding the problematic implementation of the law. CUNA Vice President of Legislative Affairs Ryan Donovan is far left in picture. (CUNA PHOTO)

Participants in card systems and money transfer business operators are covered by the rule. Participants in automated clearing house (ACH) systems, check collection systems and wire transfer systems are exempt from the rule, but there are a number of exceptions to those exemptions.

Credit unions and other financial institutions may also rely on procedures that have been established an outside payments system.



**CUNA e-Guide on Internet Gambling**  
[http://cuna.org/compliance/member/eguide/eguide\\_internetgambling.html](http://cuna.org/compliance/member/eguide/eguide_internetgambling.html)





# What do the faces of your credit union communicate?

## What do your members see when they interact face-to-face with your staff?

Staff reductions, salary freezes and benefit cuts during the recession have brought anxiety and stress, leaving employee morale at an all-time low.

Improve the way staff interacts with each other — and your members — to present a culture that can successfully face the future together.

## Productive. Committed. Loyal. Is this how you describe your employees?

Companies of fully engaged employees have a lower turnover risk, higher productivity levels and are more likely to attract top talent.

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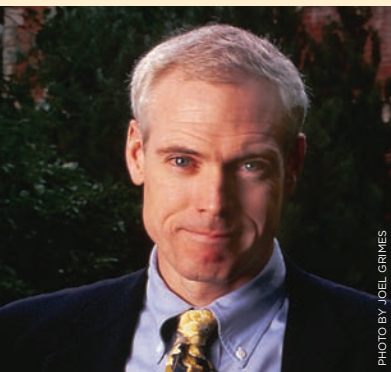


PHOTO BY JOEL GRIMES

### JIM COLLINS HOW GOOD ORGANIZATIONS CAN BECOME GREAT

Jim Collins, bestselling author of *GOOD TO GREAT: Why Some Companies Make the Leap...And Others Don't*, will kick off the conference with his keynote address focusing on how credit unions can produce great, sustained results and capitalize on the historic opportunity for growth that the financial crisis has presented.



### KEVIN CARROLL CREDIT UNIONS: UNCOMMON CATALYSTS TURNING DREAMS INTO REALITY

Kevin Carroll, author of *The Red Rubber Ball at Work*, will use his masterful storytelling skills during his closing keynote session to challenge and enlighten attendees. He'll help credit union leaders discover new ways of thinking and problem solving in order to build a productive, passionate team to better serve members.

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Register early to attend this popular series of learning and networking breakfasts for credit union CEOs and executives, an additional three-part event for only \$299. All well-known business authors, the presenters will lead these sessions with credit union leadership issues in mind. The series includes four books by the authors.

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# >> Special Report

## Interchange NO Change! Plan of Action

(See page 1 story)

**Goal:** To remove the interchange amendment from the financial reform Bill.

**Plan:** ▶ Generate as many contacts to the House and Senate conferees as necessary to get them to drop the Interchange amendment from the Financial Reform Bill.  
▶ Generate as many contacts to House and Senate asking members to urge conferees to oppose the Senate-passed amendment.

These contacts will be generated through emails, phone calls, in-district meetings, and a national Hike the Hill June 8-9.

### National Hike the Hill Resources

- \* Debit Interchange Provision FAQs  
[http://cuna.org/pol\\_affairs/download/intrchg\\_dir\\_provFAQ.pdf](http://cuna.org/pol_affairs/download/intrchg_dir_provFAQ.pdf)
- \* Straight to the Point (Interchange info sheet)  
[http://cuna.org/download/interchange\\_stp.pdf](http://cuna.org/download/interchange_stp.pdf)
- \* List of Senate & Likely House Conferees  
<http://cuna.org/download/SenateConfereesForH.doc>
- \* Sample Basic Talking Points (targeted for credit union members)  
[http://cuna.org/pol\\_affairs/member/download/sample\\_talking\\_points1.pdf](http://cuna.org/pol_affairs/member/download/sample_talking_points1.pdf)
- \* Sample Basic Interchange Introduction for Web Use (targeted for credit union members)  
[http://cuna.org/pol\\_affairs/member/download/sample\\_talking\\_points2.pdf](http://cuna.org/pol_affairs/member/download/sample_talking_points2.pdf)
- \* Click here for more CUNA Interchange Action Alert resources.  
[http://cuna.org/pol\\_affairs/dec\\_interchange.html](http://cuna.org/pol_affairs/dec_interchange.html)

## ▶ The Front Burner

The most viewed news stories on [cuna.org](http://cuna.org) during March 2010 reveal the hottest issues for credit unions. Access the complete stories at [www.cuna.org/newsnow/top10](http://www.cuna.org/newsnow/top10). Register to receive CUNA daily headlines at [http://cuna.org/get\\_news/](http://cuna.org/get_news/)

**10 CUNA urges CU action against interchange amendments**  
CUNA urged credit union advocates to contact their U.S. senators and ask them to oppose amendments to financial regulatory reform legislation that would affect the debit and credit card system.

**9 Credit unions prepare full grassroots over interchange**  
Credit unions should be prepared for a full grassroots action alert to both the entire Senate and House on interchange legislation once a conference committee on the regulatory restructuring legislation is "instructed," CUNA advised its members.

**8 NCUA sounds alarm on fraudulent email to CU members**  
It's always "phishing" season, and the National Credit Union Administration has issued an alert about a new scam targeting credit union members.

**7 Compliance: Internet gambling rules take effect June 1**  
CUNA has confirmed with Federal Reserve Board staff that the Unlawful Internet Gambling Enforcement Act regulations are on track for mandatory compliance on June 1.

**6 Maine league: Auto dealer yanks ad misrepresenting CUs**  
An auto dealer's unauthorized ad insert that misrepresented some Maine credit unions and ran in several editions of the Portland Press Herald last week will no longer run, according to the dealer's attorney.

**5 NCUA to consider splitting share insurance, corp. fees**  
Telling credit unions that the agency is "very mindful of the effect" that assessments have on their balance sheets, National Credit Union Administration Chairman Debbie Matz said that her agency soon would consider splitting the fees used to maintain its share insurance and corporate stabilization funds.

**4 Cheney's experience good for CUNA CEO post**  
Bill Cheney—who will succeed Dan Mica on July 5 as the president/CEO of CUNA—brings to the position more than 25 years' experience in a variety of roles in the movement, according to the CUNA board chairman.

**3 Compliance: Beware five "Untruths" of new TIL rules**  
CUNA is alerting credit union management to give appropriate time and attention to assuring timely compliance with new Federal Reserve Board changes that implement the first changes in a quarter of a century to Truth-in-Lending Act rules

**2 Interchange vote forces CUNA to oppose Sen. reform bill**  
Late Thursday the U.S. Senate voted 64-33 in favor of including Sen. Richard Durbin's (D-Ill.) interchange amendment in S. 3217, the Restoring American Financial Stability Act.

**1 Three banned from future CU work**  
Three former credit union employees have been banned from future work at any federally insured financial institution under prohibition orders issued by the National Credit Union Administration.





# >> Regulatory Affairs

## CUNA Continues FASB Plan Review

CUNA staff is reviewing the Financial Accounting Standards Board's (FASB) recent proposed changes to accounting for financial instruments, and CUNA has said that it would do all it can to minimize the impact of this proposal on credit unions.


The FASB proposal would, among other things, greatly expand the range of financial instruments that are to be mea-

sured at market value, including loans.

The FASB exposure draft would also provide that loan loss reserves be measured on a forward-looking "expected loss" basis. This differs from the current method, which uses a historical "incurred loss" approach.

The proposed changes would modify U.S. Generally Accepted Accounting Principles (GAAP); credit unions over

\$10 million in assets are required to comply with GAAP.


If adopted, FASB expects the rule to take effect sometime in 2013. However, non-public entities with less than \$1 billion in assets will be permitted a four-year deferral from some requirements, including those that relate to loans. 

## CUNA to NCUA: Don't Box in Regflex

CUNA has urged the National Credit Union Administration (NCUA) to address potential changes to its RegFlex program in a "more targeted" manner that would not jeopardize the overall program.

The NCUA in March proposed eliminating RegFlex authority for credit unions in regard to the 5% limit on fixed-asset investments, the requirement for the personal guarantees of borrowers for member business loans (MBLs), stress testing of certain investments, and discretionary control of investments.

While CUNA agreed that all NCUA programs "should be monitored and reviewed periodically to ensure they are meeting their objectives," CUNA recommended that the NCUA consider whether the provisions regarding revocation of RegFlex authority for specific exemptions should be strengthened as opposed to eliminating RegFlex authority for all federal credit unions in key areas.

Specifically, the NCUA could revise its RegFlex program by instituting increased safety and soundness procedures at credit unions with significant safety and soundness issues. 

 **CUNA Comment Letters**  
[http://cuna.org/reg\\_advocacy/comment\\_letters/comment\\_letters10.html](http://cuna.org/reg_advocacy/comment_letters/comment_letters10.html)

## ▶ Compliance: More on Opt-in, Reg Z

CUNA's compliance team reports that Regulation E does not require credit unions to send written confirmation to members that revoke opt-ins to their credit union's overdraft service for ATM and one-time debit card transactions.

According to CUNA, credit unions are only required to provide confirmation of a member's affirmative consent (opt-in) to the credit union's overdraft service for ATM and one-time debit card transactions. This is part of the four part opt-in process, which includes the notice, a reasonable opportunity to opt-in, the actual opt-in, and the credit union's confirmation of the member's opt-in.

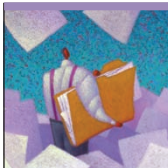
Regarding another Federal Reserve Board regulation, Reg Z, CUNA tells credit unions that they are not required to include repayment disclosures on periodic statements in all instances. Specifically, credit unions are not required to provide repayment disclosures for charge card accounts that require payment of outstanding balances in full at the end of each billing cycle.

Credit unions are also exempted from those disclosure requirements if the periodic statement in question refers to billing cycles that follow two consecutive billing cycles in which the member paid the entire balance in full, had a zero outstanding balance or had a credit balance, or billing cycles where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account.

See the CUNA webpage on compliance for more on these and other key topics.



 **CUNA Compliance Webpage**  
<http://cuna.org/compliance/member/index.html>



# >> Notes Bearing Interest

## CU Auto Loan Rates Featured as Sales Improve

As major news outlets, such as *The Wall Street Journal* on May 18, reported that U.S. auto sales could return to historic levels of near 17 million new vehicle sales over the next two years, *USA Today* featured a column pointing consumers to check out credit unions when searching for the for the best deal on auto loan rates.

New car sales, not surprisingly, took a hit the last few years while consumers struggled with turbulent economic conditions. However, projections released last month by A.T. Kearney

Inc. indicate that under an “optimistic” forecast sales could reach 16.8 million in 2012, 17.8 million in 2013 and 18.6 million in 2014.

As more Americans return to the new-car market, Sandra Block, *USA Today* personal finance columnist, wrote a column called, “Car dealers’ loans often aren’t the best deal, so shop rates first.” She noted that the Center for Responsible Lending, a consumer advocacy group, estimates that consumers spend more than \$20 billion a year in excess interest by borrowing through dealer-

ships instead of through a financial institution.

Block recommended consumers consider *MoneyAisle.com*, an auction site that allows consumers to solicit bids from financial institutions for certificates of deposit and high-yield savings accounts, and now on new and used autos loans.

More than 75 credit unions and banks have signed up *MoneyAisle* so far to offer auto loans, and the company expects to have 200 participants by the end of July. 🏠



# >> CUNA Notebook

## Unemployment Prompts Big Bankruptcy Jump

Bankruptcies were up 53% in 2009, and with an unemployment spike continuing, credit unions can expect bankruptcies to continue at higher rates. CUNA is offering a **JUNE 8** webinar to provide credit unions with essential updates in bankruptcy issues and to demonstrate how the newest rules directly affect credit unions. Those

who attend this webinar will discover new tools to reduce losses and comply with new requirements on creditors during the bankruptcy process. The webinar is designed to benefit credit union officers and staff responsible for collections, lending, and bankruptcy issues. 🏠



 **REGISTER HERE**  
<http://tinyurl.com/24bfj9c>

### ▶ CUNA REGULATORY COMMENT CALL

## CUNA Seeks ‘Small-Loan’ Comment by June 25

The National Credit Union Administration has proposed to allow federal credit unions (FCUs) to offer short-term, small-amount (STS) loans as a viable alternative to predatory payday loans that are offered by other financial service providers.

This proposed rule would permit FCUs to charge a higher interest rate than the current usury ceiling in the Federal Credit Union Act, but would impose limitations on the permissible term, amount, and fees for these types of loans. Comments are due to the NCUA by July 6 and are due to CUNA by June 25.

 **Read CUNA’s Comment Call**  
<http://tinyurl.com/2e8ej69>