

# CREDIT UNION NewsWatch



MAY 3, 2010

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



NCUA Chairman Debbie Matz (center) listens to staff present a plan at an April 28 open board meeting to permit corporate credit unions to use capital levels disclosed on Nov. 30, 2008 call reports when determining compliance with certain capital-based requirements and limitations in the NCUA's corporate guidelines. Also at the meeting, the NCUA proposed a 28% annual rate cap for some small loans. (CUNA Photo)

## NCUA Proposes Small, Short-Term CU Loans

The NCUA at its April 29 board meeting proposed to allow federal credit unions to charge up to 10% more than the NCUA's conventional loan ceiling to credit union members that request short-term, small dollar loans.

These loans, intended as an alternative to costly and sometimes predatory payday loans, would be between \$200 and \$1000, and could only be taken out one at a time. Members would need to pay off these loans within six months and credit unions would not be permitted to make over three of these loans to a member in any rolling six-month period.

The proposal will remain open for comment for 60 days.  
The NCUA during the meeting also agreed to continue to

>> See page 7

## Reg Reform: Fits and Starts

After many delays, U.S. Senate debate on financial regulatory reform legislation finally took a step forward last week when Senate Republicans, along with one Democrat, abandoned efforts to filibuster.

The process for offering potential amendments to the legislation will begin Tuesday, and CUNA continues to work to resolve issues that are of importance to credit unions. Among those issues are the proposed legislation's current treatment of remittances and the National Credit Union Administration's (NCUA) regulatory authority. Specifically, CUNA has suggested that lawmakers narrow the legislation's definition of remittances, as the current definition is "overly broad" and would make it far more difficult for credit unions to continue to offer any form of international electronic fund transfer services to their members.

CUNA has urged Congress not to limit the NCUA's oversight of credit unions to credit unions with under \$10 billion in assets, and has maintained contact with federal authorities, including representatives of the U.S. Treasury, as this financial reform legislation has moved through the House and, now, the Senate.

The Senate legislation, as introduced by Sen. Chris Dodd (D-Conn.), would allow the Federal Reserve to continue to oversee both large banks and smaller state-

See page 6



### 2-3 | CUNA Confidential:

UNtruths about Truth  
in Lending

### 6 | New Rules for Garnishments:

CUs could see new  
restrictions from Fed

### 7 | Newest in UBIT:

Memo gives CUs strong  
backing

### 8 | Direct Deposit Push

Treasury wants to bring  
increased focus





## FIVE UNTRUTHS ABOUT TRUTH IN LENDING

It's understandable if your credit union has been focusing its resources on other upcoming compliance requirements, especially the overdraft restrictions that are effective in July. However, the Federal Reserve Board (Fed) is overhauling all of Regulation Z for the first time in over a quarter of a century, starting with open-end lending rules. Credit union management must make sure that the appropriate time and attention is being given to complying with the new rules, which implement the Truth in Lending (TIL) Act requirements.

CUNA knows that the mere mention of TIL makes eyes glaze over. But in two months—by July 1—your credit union has to make sure that its open-end loans comply with the comprehensive changes made to account-opening disclosures, periodic statements, change-in-terms disclosures, and advertising, as well as credit card applications and solicitations.

There are plenty of resources available (see box, including CUNA's May 25 webinar) to provide details of the changes in the format, timing and contents of required disclosures. Here we want to get you focused on the big picture, so your credit union doesn't fall into the trap of untruths! Now is the time to make sure that you aren't deceived by any of these "untruths" and that your credit union is ready for the Reg Z open-end changes coming this summer.

**Untruth #1: Our data processor and forms supplier are taking care of everything that needs to be done by July 1 on the new Truth in Lending changes.**

Your data processor and forms supplier are of course key players in your compliance plan. Your first questions to both of them should be: Are you ready and will my credit union be in compliance with the new Reg Z rules in coming



**"Compliance will require management to review what your credit union is actually doing and make some necessary operational changes in order to comply with the Regulation Z open-end lending revisions – actions that your data processor and forms provider can't do for you."**

– Mike McLain, Senior Compliance Counsel  
Questions? Send to [cucomply@cuna.com](mailto:cucomply@cuna.com)

weeks?

But as you will see below, compliance will require management to review what your credit union is actually doing and make some necessary operational changes in order to comply with the Regulation Z open-end lending revisions – actions that your data processor and forms provider can't do for you.

**Untruth #2: The Federal Reserve Board**

**didn't eliminate multi-featured open-end lending (MFOEL), so my credit union doesn't have to make any changes in our MFOEL program.**

This untruth really has us worried. Back in 2007, the Fed proposed a change that would have spelled the demise of credit unions' open-end lending programs (and these MFOEL plans are basically a unique credit union product). The Fed took the position three years ago that every sub-account in an open-end lending plan would have to be self-replenishing – so that, for instance, as a car loan was paid off, the member could request additional advances.

After extensive lobbying by CUNA and CUNA Mutual Group, the Fed relented, and in the final regulation that's effective July 1, the open-end lending plan will be viewed as a whole, which permits some features to be used infrequently. But there was a price to be paid for saving MFOEL.

What has changed is that thorough "underwriting" generally can only be done at the time a plan is opened and is not permitted for each advance. Your credit union may only "verify" creditworthiness after the plan is established, and only in certain situations and only "occasionally and routinely." And verification may not be done as a condition of granting a member's request for a particular advance under the plan.

In order for MFOEL programs to be compliant with the new rules, changes will need to be made in credit union policies and procedures to make a clear distinction between "underwriting" and "verification." There is not a specific safe harbor spelling out what these distinctions must be, so judgment will be required. Procedures need to be changed, and staff re-trained so they don't ask a member to "fill out an application" when

the person wants an advance.

Given that credit unions can only occasionally and routinely verify credit information, such as income and employment, credit unions need to have plans where most transactions require little verification, such as a line of credit or a share draft overdraft sub-account.

However, certain types of advance requests that are done only occasionally are allowed to trigger a greater level of verification. Identifying these types of advances will require new policy—such as an advance over a certain dollar amount (which would address automobile loans), or a request through certain media that could involve fraud (such as a fax request), or when a certain time has elapsed since the last plan advance (such as two years).

Routine updating of creditworthiness is permissible under the new Regulation Z requirements. Therefore, a credit union may establish policies and procedures to pull credit reports on a regular basis, such as annually, to determine a member's continuing creditworthiness. Such information could be used to reduce a credit limit or terminate a particular open-end sub-account.

### **Untruth #3: We can make an automobile loan a closed-end sub-account under our open-end lending program.**

**No — there is no such thing as having closed-end loans under a MFOEL program!**

The account opening language and disclosures for MFOEL programs are based upon open-end lending rules. If a credit union were to provide a closed-end loan under its MFOEL program, it would not be in compliance with Regulation Z because it would have failed to provide the proper disclosures at the correct time. This could create the risk of increased regulatory scrutiny, the loss of the secured interest in collateral and possible litigation.

So how does the credit union make a loan secured by an automobile under its MFOEL program? First, credit unions have to understand that they now have to do a complete job of underwriting the

plan when the overall agreement is first entered into with the member, even if a sub-account for an automobile loan is not initially opened. Upon getting a request for an automobile loan under the plan, the credit union will be able to, in accordance with its policy and established procedures, verify certain information including the value of the collateral and establish an appropriate repayment schedule.

A vehicle-secured advance is a permissible sub-account and does not need to be self-replenishing. But remember, credit unions need to have MFOEL plans where most transactions require little verification. So a sub-account such as a line of credit should be opened at the same time, or already be active, when the automobile loan sub-account is established.

### **Untruth #4: We can just rely on our credit card vendor to handle all the Reg Z compliance requirements of the new Credit CARD rules.**

**Sorry again, but no.** The CARD Act, for example, prohibits a credit union from opening a new credit card account, or increasing the credit limit for an existing account (whether initiated by the member upon request or by the credit union unilaterally), unless it first considers the consumer's ability to make the required payments. And there are stringent restrictions on issuing credit cards to people under 21 years of age.

Also, while the next college semester has yet to begin, remember there are restrictions on marketing *any* open-end loan to college students—not just credit cards. Policies and procedures have to be in place to address all these situations.

And come Aug. 22, there are other rules, ones that have yet to be finalized. Every six months credit unions will have to review credit card accounts that have had an increase in the annual percentage rate (looking back to any APR increase since Jan. 1, 2009) due to the credit risk of the member, market conditions, or other factors and determine if a decrease in the APR is warranted.

Also effective in August is a new

CARD Act provision that penalty fees and charges imposed on credit card accounts must be “reasonable and proportional” to reflect costs or to act as a deterrent (and in no case will a penalty be able to exceed the dollar amount of the violation). The Fed also plans to issue a listing of what fees are considered acceptable.

### **Untruth #5: Once we get through the next couple of months, things will settle down with Truth in Lending.**

**Don't count on it.** First, litigation to challenge compliance with the open-end rules has to be expected. The complex TIL rules have always been a target for lawyers looking for class-action lawsuits and as counterclaims in collection cases.

Second, there are more Reg Z amendments coming. The Fed has already proposed changes in closed-end mortgage and HELOC disclosures, which could be finalized this summer (probably effective sometime in 2011); additional proposed revisions to other mortgage-lending requirements, such as the right of rescission, may accompany the final rules. And additional proposals on other closed-end lending rules may come sometime in 2011. 🏠

#### **RESOURCES:**

CUNA's May 25, 2010 webinar on “Regulation Z —July 1 Open-End Credit Provisions”

[http://training.cuna.org/elearning/webinar/EW5250\\_fact.html](http://training.cuna.org/elearning/webinar/EW5250_fact.html)

CUNA's e-Guide to Federal Laws and Regulations: “Truth in Lending/Reg Z” (with a detailed summary, resources, frequently asked questions)

[http://www.cuna.org/compliance/member/eguide/eguide\\_regz.html](http://www.cuna.org/compliance/member/eguide/eguide_regz.html)

“No Time to Relax Just Yet,” on Reg Z changes effective in July, *Credit Union Magazine*, April 2010

[http://cuna.org/compliance/member/download/comp\\_mat\\_2010\\_04.pdf](http://cuna.org/compliance/member/download/comp_mat_2010_04.pdf)

CUNA Mutual Group's information on Regulation Z developments (some information is client-password protected)

[www.loanliner.com/regz](http://www.loanliner.com/regz)

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### 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.

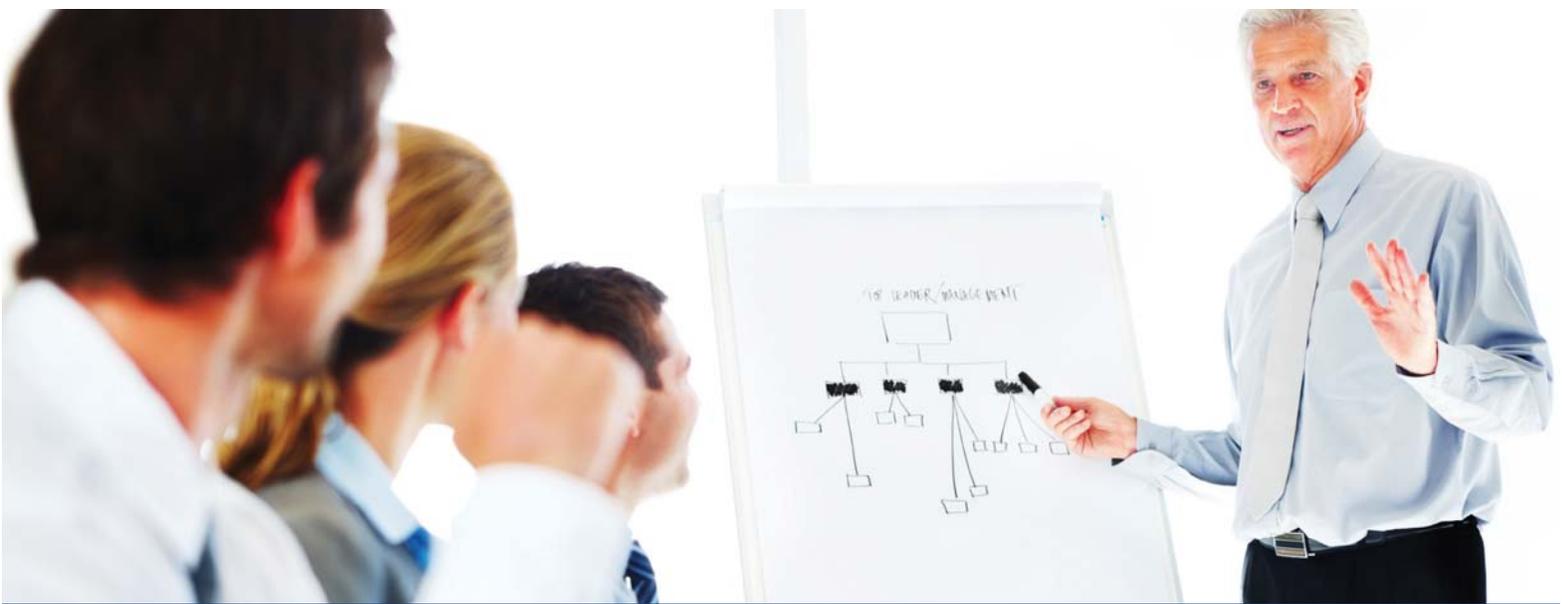
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# >> Governmental Affairs

## Fed Plans to Limit Garnishments

Federal agencies, including the U.S. Treasury Department, the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, and the Office of Personnel Management, have proposed implementing “statutory restrictions on the garnishment of federal benefit payments.”

The proposed rule would require both federal- and state-chartered credit unions, and all other financial institutions that receive garnishment orders, to determine “whether any federal benefit payments were deposited to the account within 60 calendar days prior to receipt of the order.”

If so, those firms must “ensure that the account holder has access to an amount equal to the sum of such payments in the account or to the current balance of the account, whichever is lower,” the release said. 🏠

## Pre-Paid Card Rules Restrict Terms

In a recently published final rule analysis, CUNA reported that recent changes by the Federal Reserve Board’s rules will “restrict the fees and expiration dates that apply to gift cards, certificates, and general-use prepaid cards that are sold or issued to consumers primarily for personal, family, or household purposes.”

These new rules, which were introduced as part of the recently passed CARD Act, will become effective on Aug. 22. Specifically, the rules will “prohibit dormancy, inactivity, and service fees on gift cards unless there has been at least one year of inactivity on the card, no more than one such fee is charged per month, and the consumer is given clear and conspicuous disclosures about the fees.”

According to CUNA, these rules are intended to protect consumers from certain unexpected costs and will also require that gift card terms and conditions be clearly stated. See CUNA’s full analysis of this rule below. 🏠

🏠 **Pre-Paid Card Rules Restrict Terms**  
[www.cuna.org/reg\\_advocacy/index.html](http://www.cuna.org/reg_advocacy/index.html)



A roomful of credit union-friendly potential candidates listen with attention as Richard Gose, CUNA SVP Political Affairs, discusses the fine points of campaign management at a CUNA Campaign School in Columbus, Ohio on April 23. Attendees included candidates for local office. The session was cosponsored with the Ohio CU League, and is the ninth such school held around the country by CUNA during this 2009-2010 election cycle. (CUNA Photo)

## Reg Reform: Fits and Starts

▶ From page 1

chartered banks while also adding authority over some non-bank financial firms to the Fed’s list of responsibilities. Dodd has also proposed an independent Bureau of Consumer Financial Protection (BCFP) to write and regulate rules for financial firms.

Democrats late last week assured their Republican colleagues that the legislation, as currently written, would not provide for future taxpayer-funded bailout of failing financial institutions.

CUNA continues to watch this legislation for any relevant developments.

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# >> Regulatory Affairs

## UBIT Ruling Gives CUs Strong Backing

State-chartered credit unions may now “have a good defense against civil tax penalties” that the U.S. Internal Revenue Service (IRS) could try to impose on credit unions that do not declare Unrelated Business Income Tax (UBIT) due on income from the sale of certain financial products, a recent memo concluded.

The memo covers recent decisions

in federal court cases involving Bellco CU and Community First CU that may give other credit unions the “substantial authority” to avoid paying UBIT on sales of credit life and disability insurance and Guaranteed Asset Protection coverage. Mutual funds, stocks, annuities, and other financial products are also covered by these decisions.

CUNA’s Eric Richard said that the

memo, which was prepared at the request of and with the support of the UBIT Steering Committee, “should be helpful to credit unions in having a dialogue with their outside auditors about what, if any, UBIT liabilities need to be accounted for in their financial statements and in their tax filings.”



**CUNA Board Meeting Summary**

[http://www.cuna.org/reg\\_advocacy/member/ncua\\_board/ncua\\_boardsumm.html](http://www.cuna.org/reg_advocacy/member/ncua_board/ncua_boardsumm.html)

## ▶ CUs Need Some FOM Rules Eased

CUNA in a recent comment letter suggests that the NCUA provide greater leeway for field of membership (FOM) applications that involve multiple political jurisdictions and rural districts. CUNA opposes FOM changes that would prevent credit unions from using narrative information to demonstrate the existence of a community.

CUNA also expressed concern at new emergency merger definitions that would give the NCUA additional latitude to require a credit union that is at or near 4% net worth to be merged.

Despite these concerns, CUNA said it supports the NCUA’s goal of insulating the agency and credit unions from further legal challenges related to its FOM policies and procedures. The letter strongly backs the NCUA’s proposed treatment of single political jurisdictions and the NCUA’s “grandfathering approach” that would allow future credit union applications “to be approved based on areas NCUA has already permitted.”

## NCUA Proposes Small, Short-Term CU Loans

▶ From page 1

permit corporate credit unions to use the capital levels disclosed on their November 30, 2008 call reports when determining “their compliance with certain capital-based requirements and limitations” in the NCUA’s corporate guidelines. This waiver will extend until one year after the effective date of the new corporate regulations, which are expected to be made final later this year.

The NCUA also covered its National Credit Union Share Insurance Fund during the meeting, with NCUA staff reporting slight increases in the number of CAMEL Code 3, 4 and 5 credit unions, with the percentage of total insured shares held by those credit unions decreasing slightly since the start of 2010.



NCUA Chairman Debbie Matz (left) discusses the new small-loan proposal. She says she hopes new APR guidelines will make small loans more attractive to credit unions and consumers. (CUNA Photo)



# >> Notes Bearing Interest

## Treasury Ponders Direct Deposit-Only Policy

CUNA was there, just more than four and a half years ago, when the U.S. Treasury Department, the Federal Reserve Banks, and national partners--including CUNA--kicked off a national Go Direct automatic deposit campaign with a swing band, barbershop singing group, Go Direct cookies, and senior citizens groups attending.

Now the government is considering taking the push for direct deposit of government benefits check much further. Making a bid that to do so would represent a huge initiative to "go green," the Treasury is proposing to

require individuals currently receiving social security, supplemental security income, veterans, railroad retirement and office of personnel management benefits to receive those

payments electronically as of March 1, 2013.

CUNA has backed direct deposit of government checks because electronic payments are safer, more convenient, and less costly than paper checks. Now, the government says, in addition to those goals, the greater direct deposit push should save more than \$400 million in funding and 12 million pounds of paper in the first five years alone.

Treasury will issue a notice of proposed rule-making seeking public comment on its electronic payments initiative. The proposal has no immediate impact on the Go Direct campaign and credit union partners are asked to continue urging members' direct deposits. 🏠



 **GO DIRECT**  
<http://www.godirect.org/>



# >> CUNA Notebook

## Webinar: Developing Outstanding Member Service

May 5 (11:00 a.m.–12:30 p.m. CT, 12:00–1:30 p.m. EDT, 10:00–11:30 a.m. MDT, 9:00–10:30 a.m. PDT)

**About this Session:** Learn to fulfill your members' needs, increase exposure to your credit union's products and services, and develop a successful sales culture. This program will help you and your credit union get organized, plan for successful member interactions, and become outstanding at member service.

### Topics and Objective:

- ▶ Get organized and learn time-management skills
- ▶ Understand key skills for successful member interactions
- ▶ Plan successful member interactions in person or on the phone
- ▶ Describe and model outstanding member service

 **Register here:**  
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May 5	Consumer Lending Regulations, Part 1
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May 19	Mortgage Lending Regulations, Part 1
May 26	Mortgage Lending Regulations, Part 2
Jun 2	NCUA Requirements & Guidance, Part 1
Jun 16	NCUA Requirements & Guidance, Part 2
Jun 23	Deposit Account Regulations, Part 1
Jun 30	Deposit Account Regulations, Part 2
July 7	General Operations Regulations, Part 1
July 14	General Operations Regulations, Part 2

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