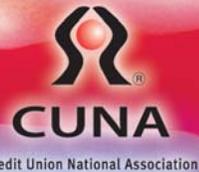


# CREDIT UNION NewsWatch



APRIL 5, 2010

Legislation, Regulation, and Innovation *Online* from the Credit Union National Association



During a March 25 CUNA audio conference, John Wade (right) of the U.S. Small Business Administration (SBA) answers credit unions' called-in questions on how to start or increase an SBA lending program, as CUNA Deputy General Counsel Mary Dunn listens. Wade coordinates the approval process for non-traditional lender applicants at SBA, including credit unions, in SBA's 7(a) Loan Guaranty Program. After remarks by CUNA President/CEO Dan Mica, participants also heard from SBA Administrator Karen Mills. From the National Credit Union Administration, Chairman Debbie Matz, OEI Director Melinda Love, and staff attorney Frank Kressman presented the regulator's perspective. (CUNA Photo)

## Debate Resumes, CUNA Seeks Reg Reform Changes

Debate over the Senate's version of financial regulatory reform will begin anew later this month, and while Sen. Christopher Dodd's (D-Conn.) bill passed out of the banking committee on a party line vote, there have been indications that elements of the bill will satisfy the wishes of members of both parties.

Ranking minority member Richard Shelby (R-Ala.) has indicated that bipartisan dialogue would continue before the package is taken up by the full Senate.

>> ▶ See page 6

## Grassroots MBL Drive: The Time is Right

While members of the U.S. Congress have left Washington until April 12, member business lending is being discussed in their home districts as credit union advocates unite to form a grassroots campaign.

CUNA has sought to coordinate these activities with a trove of online resources, including congressional communiqués and background information for concerned credit union members, officials, and league employees.

CUNA's information centers on the safety and sound financial judgment that credit unions represent and specifically addresses small businesses and their needs for funding. And, according to CUNA, credit unions have been there when small businesses have needed funding, with the amount of business lending done by credit unions growing by 15% last year.

CUNA has estimated that lifting the current member business lending cap of 12.25% to 25% of credit unions' assets would allow credit unions to extend up to \$10 billion in additional business loans to their members, helping them to create 108,000 jobs in the first year following enactment.

>> ▶ See page 6

### 2 | CUNA Confidential

More need-to-know on new overdraft rules



### 6 | Obama alters Fed student lending

CU's, banks have new rules for student loans

### 7 | CUNA to Fed: Change Reg E rule

CU's overdraft fees okay in select situations

### 8 | Crimes Against CUs

FBI reports crime against CUs in 2009





## More Need-to-Know On New Overdraft Rules



Jeffrey Bloch  
Senior Assistant General Counsel

*Credit unions are obviously spending a lot of time and resources addressing how to comply with the Federal Reserve Board's rules restricting overdraft protection programs (which may also be called courtesy pay or bounce protections programs). The Fed's amendments to Regulation E (which implements the Electronic Funds Transfer Act) become effective on July 1 for the new accounts and on Aug. 15 for existing accounts.*

Here's a quick review of the overdraft rule before addressing recent questions raised by credit unions:

▶ A credit union cannot assess any fee or charge on a member's account for paying an ATM or a one-time debit card transaction unless the credit union has obtained the member's consent.

▶ To obtain that consent, the credit union must provide the member a notice in writing (or electronically, if the member agrees), which is segregated from all other information, explaining the credit union's overdraft service. The Fed has provided a model consent form, which the credit union is required to substantially follow.

▶ The consumer has to be given a reasonable opportunity to affirmatively consent, that is "opt in" to the credit union charging a fee for covering overdrafts triggered by ATM or one-time debit transactions – and of course the member has to actually consent to the service fee.

▶ And the credit union has to provide the member who opts in with a written confirmation (which can be electronically provided, if the member consents), which includes a statement of the member's right to revoke his consent at any time.

The questions below are based on numerous questions the credit unions understandably continue to have about the new requirements and restrictions. **Important note:** Based on further discussions with the Fed, the third question revises an answer CUNA previously gave regarding transfer fees.

**Q. Are all member accounts subject to this new requirement?**

**A. No.** Regulation E only covers "consumer accounts," so the rules only apply to accounts established primarily for personal, family or household purposes. So a member business account is not covered. Furthermore, Regulation E defines a consumer as a natural person, so trust and estate accounts should also be excluded. Therefore, it is a business decision for the credit union to decide how it will handle overdrafts of these accounts.

Note that Regulation E covers all consumer accounts. Although the examples often cite overdrafts from checking/ share draft accounts, if a member through an ATM could overdraft his savings account for instance, that account would also be subject to the opt-in compliance requirements if the credit union wants to charge a fee.

Credit unions have asked if they have to provide the opt-in consent option to all members with ATM and debit cards. The answer is no– it's a business decision of the credit union to whom it wants to provide the overdraft protection service within its membership.

**Q. When an overdraft to an account is triggered by an ATM or one-time debit transaction, and the member has already agreed that the overdraft will be covered by a transfer from another account at the credit union or a line of credit, is the member's opt in/consent required by the new Regulation E rules in order to charge a fee?**

**A. No.** The definition of "overdraft services" in the new rules specifically excludes a service that transfers funds from a line of credit or from another account held individually or jointly by the member.

**Q. If the credit union charges a fee for making a transfer from a savings account or a line of credit to cover an overdraft due to an ATM or one-time debit transaction, can the credit union charge a transfer fee to the checking account that has experienced the overdraft?**

**A. Yes** – and this is different from an earlier CUNA answer. Earlier CUNA said that, consistent with the Fed's repeated statements that the assessment of any fees on the checking account would be prohibited without the accountholder's prior consent, credit unions should charge any transfer fee to the savings account or line of credit, rather than to the checking account. Because of the compliance and data processing problems that could arise if the Fed's strict interpretation stood, CUNA explained further to the Fed credit unions' current practices. The Fed staff has orally assured us that a credit union can continue to charge properly disclosed transfer fees to the checking account.

CUNA cautions that transfer fees should continue to be reasonable to address costs incurred by the credit union and that these fees must be properly disclosed and comply with the other requirements of Truth in Lending or Truth in Savings rules, depending on whether the other account is a line of credit or savings account.

**Q. What changes can a CU make in the Fed's "Model Consent Form for Overdraft Services" (A-9 provided in the final regulation)?**

**A.** The Fed says that “the opt-in notice...may not contain any information that is not specified or otherwise permitted by [the regulation] and must be in a form substantially similar to Model Form A-9.” The credit union may deviate from the model as needed to accurately describe the credit union’s overdraft program (the credit union’s “standard overdraft practices,” the credit union’s overdraft fee structure, and how the member will exercise an opt-in, whether by mail, telephone number, website, etc.).

Although the model form provides for a member to check either that he does or does not want the overdraft service for ATM and one-time debit transactions, the Fed makes clear in the supplementary information section accompanying the regulation that the credit union does not have to include the line for the member to decline to opt in. CUNA has pointed out that a credit union may want its revised overdraft program for existing members to start on the same date (no later than Aug. 15, but maybe earlier, such as July 1, to correspond to the requirements for new accounts). If it wants to do so, then the credit union should put a specific date on the consent form of when the opt-in program will start, and eliminate the line about opting out. But note that the Fed has said that “if an existing account holder contacts [the credit union] before August 15, 2010 to express a desire not to opt in, the Board expects that the institution would honor the consumer’s choice at that time.” This is equivalent to providing an opt-out, and credit unions have said that it’s their common practice to honor members’ requests to opt out of their overdraft protection programs, so we assume that procedures already exist to provide a case-by-case opt out now.

The model form doesn’t include information about the member’s right to revoke his opt-in consent. This will be provided in the written confirmation that is required to be sent to members after they opt in. If the credit union is going to comply with the written confirmation requirement by sending back the member’s completed opt-in form (rather than some other written acknowledgement), then remember to add the revocation information to your consent notice. (And, no, there isn’t any model confirmation form.)

**Q.** Can the consent form be sent with the periodic statement or any other mailing?

**A.** Yes, as long as it is a separate document.

**Q.** We don’t have an overdraft program, and we don’t have real-time information about the member’s current checking account balance. So a member may use his debit card and by the time the transaction hits the checking account, there aren’t the funds in the account (but VISA rules require we cover the transaction). We usually transfer money from the member’s share account to cover the transaction, but if there isn’t money in the share account, we charge the member an

**NSF fee and take the checking account negative. Is it permissible to charge an NSF in this situation after the Regulation E rule goes into effect?**

**A.** No, since you are covering the overdraft (even if unwillingly) a fee cannot be charged unless the member opts in no matter what you call the fee.

**Q.** If a one-time debit transaction is converted into an ACH transaction, is it exempted from the overdraft rule?

**A.** No. If a transaction starts as a debit transaction it will still be subject to this rule. The Fed’s analysis will be “what does the consumer know,” and the consumer doesn’t understand the whole payments system – so the consumer doesn’t expect any fee if there are insufficient funds unless he has opted in to the overdraft program. This could be an operational problem for the credit union, which CUNA and the Fed may need to explore.

**Q.** Can a credit union charge for ATM or one-time debit card transactions that are declined?

**A.** Credit unions should not do so. The Federal Reserve Bank of Philadelphia recently stated: “The final rule does not address declined transaction fees. However, the supplementary information discussion in the *Federal Register* notice for the final rule notes that such fees could raise significant fairness issues under the Federal Trade Commission Act because the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction.”

We cover a number of additional new overdraft questions on CUNA’s website, addressing such issues as telephone numbers, written confirmations, minimum balance accounts, and record retention requirements. They will be found at the end of the updated version of CUNA’s “Frequently Asked Questions” (see “Resources” below). A summary of the Fed’s overdraft rules is also found on CUNA’s website. And as noted above, the Federal Reserve Bank of Philadelphia last week published an article containing a series of questions and answers on the Fed’s new rule in its quarterly *Consumer Compliance Outlook* (a free resource that credit unions may find useful). 

## Resources:

 **CUNA’s Frequently Asked Questions on the new overdraft rules**  
<http://tinyurl.com/yekc5or>

 **CUNA’s summary of the Regulation E amendments (which includes a link to the new regulation)**  
<http://tinyurl.com/yxsf4b>

 **Federal Reserve Bank of Philadelphia’s article on “Rules Regarding Overdraft Services: Questions and Answers”**  
<http://tinyurl.com/yel3q6x>

# 100s

## OF EDUCATIONAL OPTIONS



With more than 30 breakout sessions and the collective wisdom of credit union leaders from 60 countries, it's easy to see why The 1 Credit Union Conference is the ultimate in educational events. Join us in Las Vegas as America's Credit Union Conference and the World Credit Union Conference unite to create this insightful, invaluable and one-of-a-kind conference.

# 1 GLOBAL EVENT.

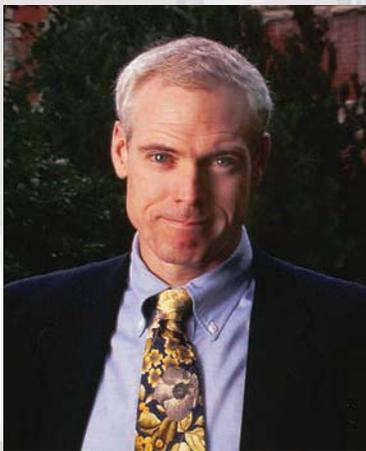


PHOTO BY JOEL GRIMES

### FEATURED KEYNOTE SPEAKER JIM COLLINS

*"HOW GOOD ORGANIZATIONS CAN  
BECOME GREAT"*

Jim Collins is both a student and teacher of great companies. He's authored or co-authored four books, including the bestseller *GOOD TO GREAT: Why Some Companies Make the Leap...And Others Don't*, which has sold more than 3 million copies and has been translated into 35 languages. Sharing thoughts from his work, he'll

cast his expertise within a framework for credit unions — how to sustain great results so credit unions can continue to capitalize on the historic opportunity for growth that the financial crisis has presented. Prepare to have your mind sharpened and your outlook changed by this amazing keynote presentation!

THE **1** ONE WORLD CREDIT UNION CONFERENCE ONE EVENT  
LAS VEGAS JULY 11 \* 14 **2010**



# 5 reasons to add the power of Hispanics to your business plan



**1** increase membership by attracting younger members

**2** serve the fastest growing demographic

**3** show the credit union difference to the Hispanic community

**4** build long term relationships with Hispanic families

**5** position your credit union as a trusted financial resource

## El Poder es Tuyo: "The Power is Yours"



Serving Hispanics provides credit unions the largest opportunity for growth. It is the fastest-growing, youngest and most underserved population. Engage your Hispanic members and potential members with a new, Spanish-language personal finance Web site – *El Poder es Tuyo*™.

This is the ONLY personal finance Web site available that is credit union specific and fully dedicated to providing financial guidance to first and second generation Hispanics.

## El Poder es Tuyo™

Spanish Web Site for Hispanic Members



Visit [cuna.org/onlineEDGE](http://cuna.org/onlineEDGE) and choose *El Poder es Tuyo*



Your Trusted Resource for Credit Union Success™

Personal Finance

CUNA and Coopera are partnering to provide products and services that help your credit union reach and serve the Hispanic community.



# >> Governmental Affairs

## Student Lending Changes Signed

With President Barack Obama signing legislation that eliminates government subsidies to credit unions and banks that take part in the Federal Family Education Loan Program, many education loans will be originated by the government starting on July 1.

CUNA has said that this change, which the government expects could save taxpayers \$68 billion and provide \$61 billion in Pell grants, could affect 1,000 credit unions that currently participate in publicly funded student lending. However, private student lending is still an option



for most credit unions, with a Fynanz Inc.-backed student lending co-op handling \$90 million in student loans in late 2009. Over 90% of those loans went to new credit union members, according to Fynanz, providing a valuable outlet for credit unions that are looking to expand their member base.

Earlier this year, CUNA Strategic Services Inc. (CSS) joined with Fynanz to help credit unions get a piece of the private student loan market, attract new members, and assist borrowers with financing tuition and achieving higher education goals. 🏠



### If You're Reading This...

...then you are successfully signed up for a free online subscription for CUNA's premier bi-weekly members' newsletter, *Credit Union NewsWatch*. Starting with this issue, NewsWatch is available online only...leaving behind the slow print-and-mail delivery system to get you the comprehensive news you need quickly—instantly online. Do your CU crew a favor. Send each team member the link and tell them to use their CUNA logon and password to sign themselves up for their own free subscription, delivered straight to their own inboxes.

**Don't let them miss an issue!**

**Get CUNA news at:**  
[http://cuna.org/newsnow/get\\_news.html](http://cuna.org/newsnow/get_news.html)

▶ From page 1

## Debate Resumes, CUNA Seeks Reg Reform Changes

Both Dodd and House Financial Services Committee Chair Barney Frank (D-Mass.) recently indicated that the reform package could be signed by President Obama by Memorial Day.

CUNA has also publicly commented on the legislation, which would substantially revamp the current financial regulatory regime. One item of concern for CUNA is the legislation's definition of remittances, which, according to CUNA, is "overly broad" and would make it "impossible" for credit unions to continue to offer international electronic fund transfer services to their members."

The World Council of Credit Unions (WOCCU) cosigned these statements, which were made in a March 25 letter to Dodd.

While Dodd's bill currently allows the National Credit Union Administration

(NCUA) to maintain its independence and excludes credit unions with \$10 billion or less in assets from the oversight authority of a proposed consumer watchdog, CUNA has encouraged Dodd to consider adding language that gives his proposed Bureau of Consumer Financial Protection (BCFP) "the authority to delegate examination authority for large credit unions to the prudential regulator."

CUNA also advocates "permitting the BCFP to delegate examination authority for large credit unions to NCUA."

CUNA has also asked Dodd to remove language that would amend the Federal Credit Union Act. 🏠

📎 **CUNA-WOCCU Letter**  
[http://cuna.org/download/congress\\_letter\\_032410.pdf](http://cuna.org/download/congress_letter_032410.pdf)

📎 **CUNA Letter on BCFP**  
[http://cuna.org/download/congress\\_letter\\_031810.pdf](http://cuna.org/download/congress_letter_031810.pdf)

▶ From page 1

## Grassroots MBL Drive: The Time is Right

The direct approach isn't just being promoted by CUNA. National Credit Union Administration (NCUA) board member Michael Fryzel, speaking at the Illinois Credit Union League's Legislative Conference, recently encouraged credit union advocates to share their story with their elected representatives.

While the grassroots efforts continue, support for MBLs continues to increase, with Florida gubernatorial candidate Alex Sink personally writing NCUA Chairman Debbie Matz to back helping credit unions' attempts to further assist small businesses. 🏠



# >> Regulatory Affairs

## Opt-in Unnecessary in Some Overdraft Situations

CUNA is urging the Federal Reserve Board to change its recent Regulation E overdraft rule to allow credit unions to charge members an overdraft fee in certain, specific situations, even if the member does not opt-in to the program.

Although opt-in is generally required under the plan, CUNA suggests it could be set aside in these situations: where an intervening transaction reduces the account balance after the debit transaction is authorized, but before it is paid, or when merchants request authorization for a transaction in an amount less than the actual total of the purchase. Card network rules require credit unions and others to pay these transactions even if they result in an overdraft and regard-



less of whether the member opts-in.

CUNA also recommends that the Fed further clarify any potentially murky sections of its upcoming rules by publishing and maintaining a list of frequently asked questions.

These overdraft rules become effective on July 1, although fees may be charged without the opt-in for current accounts until Aug. 15. The CUNA letter responds to the Fed's recently proposed clarifications to the rules that prohibit fees for overdrafts in connection with ATM and one-time debit card transactions, unless the consumer agrees or "opts-in".

 **CUNA Comment Letter**  
[http://cuna.org/reg\\_advocacy/comment\\_letters/cl\\_033110.html](http://cuna.org/reg_advocacy/comment_letters/cl_033110.html)

## Gift Card Rules Effective Aug. 22

The Federal Reserve Board recently announced Aug. 22 as the effective date for its new final rules to restrict the fees and expiration dates that may apply to gift cards, and to require that gift-card terms and conditions be clearly stated.

If the Aug. 22 date rings a bell, it may be because that is also the effective date for the Fed's Regulation Z rules that address credit card penalty fees and require credit card issuers to review rate increases every six months.

Both sets of regulations are promulgated under the Credit Card Accountability, Responsibility and Disclosure (CARD) Act of 2009. These are the final two sets of rules expected to implement the CARD Act. The Fed's CARD Act rules apply to credit unions and all other financial institutions.

 **Fed Gift Card Rules**  
<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20100323a1.pdf>

## CU Exemption in FTC Loan Rescue Rule

Consumers need protection from unscrupulous parties who take advantage by offering loan modification and foreclosure rescue services that impose high costs without providing any benefits, CUNA said, declaring its support for a Federal Trade Commission proposal to establish such protections. CUNA also commended the agency plan for a provision that would, in effect, exempt from the rule the state-chartered credit unions that fall under FTC authority.

Specifically, the FTC's proposed rule would "exempt those that hold or service a loan secured by a home" from the burdens imposed by the new FTC protections.

In its recent comment letter, CUNA strongly encouraged the FTC to retain the state credit union exemption in the final rule to help ensure that "state-chartered credit unions are not needlessly subjected to new regulatory burdens that will add to their compliance costs."

"Credit unions have not been the source of problems for home loan borrowers and do not need additional rules to ensure they act in their members' best interests," CUNA added. Federally chartered credit unions are not regulated by the FTC.

 **CUNA Comment Letter**  
[http://cuna.org/reg\\_advocacy/comment\\_letters/cl\\_032510.html](http://cuna.org/reg_advocacy/comment_letters/cl_032510.html)

## Get Connected With CUNA's Online Daily

*CUNA News Now* provides critical, fast-breaking credit union news each morning—free, online.

By reading *NewsNow*, credit union leaders get the information edge—from legislation to regulation, compliance to competition. *News Now's* team is connected to the newsmakers in Washington, in your state, and around the world.

Get the headlines delivered daily to your e-mail box. Subscribe at: [http://cuna.org/newsnow/get\\_news.html](http://cuna.org/newsnow/get_news.html).





# >> Notes Bearing Interest

## FBI Identifies Crime-Against-CUs Numbers

Last year, credit unions contacted the Federal Bureau of Investigation (FBI) 490 times to report federal crimes. The breakdown was as follows: 470 robberies, 14 burglaries and six larcenies. The 490 total is about eight percent of the total 6,062 crimes reported to the FBI by all U.S. financial institutions last year. The crime numbers, however, do not give a full picture of crimes against credit unions and banks, says the FBI, because not all such crimes are reported.

Still, the numbers are interesting to read. Loot taken totaled nearly \$46 million in 5,514 (91%) of the 6,062 incidents. A slim 17% or thereabouts—just \$8 million—was recovered after the incidents. The most popular day for crimes was Friday, and the most popular time period for them was 9 a.m. to 11 a.m.

The crimes resulted in 140 injuries. Those most often injured were employees (79), perpetrators (27) and customers (21). All the deaths reported (21) in the act of the crime were perpetrators. ☹



### Bank Crime Statistics 2009 Violations by Type of Institution

	Robberies	Burglaries	Larcenies
Commercial Banks	5,316	85	13
Mutual Savings Banks	51	0	0
Savings and Loan Associations	106	1	0
<b>Credit Unions</b>	<b>470</b>	<b>14</b>	<b>6</b>
Total	5,943	100	19
Grand Total—All Violations:	6,062		

#### Loot Taken

Loot was taken in 5,514 (91 percent) of the 6,062 incidents. Loot taken is itemized as follows:

Cash	\$45,869,730.73
Securities—Face Value	\$25,400.00
Checks (Including Traveler's Checks)	\$42,712.24
Food Stamps	\$16,775.00
Other Property	\$23,431.00



#### FBI 2009 Crime Statistics

[http://www.fbi.gov/publications/bcs/bcs2009/bank\\_crime\\_2009final.htm](http://www.fbi.gov/publications/bcs/bcs2009/bank_crime_2009final.htm)



# >> CUNA Notebook

## Comments Coming Due

The **National Credit Union Administration (NCUA)** has proposed changes to its policies on federal community credit union applications and field of membership (FOM) expansion. Key among the changes are proposed objective and quantifiable criteria to assist credit unions and the NCUA to determine whether a local community exists for the purpose of charter and FOM applications. Comments are due to NCUA by **April 15**.

The **Federal Reserve Board** has requested comment on its third set of Regulation Z rules proposed to implement the Credit CARD Act of 2009, which prohibits and restricts a number of credit card practices. This plan includes provisions intended to protect credit card users from unreasonable penalty fees and that require card issuers to reconsider interest rate increases every six months after the increased rate becomes effective. It would implement parts of the CARD Act that become effective on Aug. 22. Comments are due to the Fed by **April 14**. ☹



#### CUNA Comment Call

[http://www.cuna.org/reg\\_advocacy/reg\\_call/rcc\\_031210.html](http://www.cuna.org/reg_advocacy/reg_call/rcc_031210.html)



## Starting in June

Hear from CUNA economists, **Bill Hampel, Mike Schenk & Steve Rick**, during this new series.

#### Each month, they'll tackle:

*The Current Economy & Its Effect on Credit Unions*  
*1 Hot Economic Issue Your Credit Union Can't Ignore*

**Sign up today to hear more details!**



#### CUNA Pressing Economic Issues Series

[http://training.cuna.org/pressing\\_econ\\_issues.html](http://training.cuna.org/pressing_econ_issues.html)