CREDIT UNION NewsWatch
CUNA
Credit Union National Association
MARCH 22, 2010
Legislation, Regulation, And Innovation *Online* From the Credit Union National Association

National Credit Union Administration Chairman Debbie Matz (right) talks with CUNA SVP and Deputy General Counsel Mary Dunn (left) immediately after the board meeting that saw action on proposals to tighten RegFlex rules, as well as some merger and conversion rules. The agency has proposed a significant rewrite of portions of Sections 701, 708a, and 708b of its rules to address the fiduciary duties of federal credit union directors, credit union-to-bank mergers, and charter and insurance conversions. Steve Bosack (pictured center) is Matz's chief of staff. (CUNA Photo)

NCUA Scrutinizes Merger Rules

The National Credit Union Administration (NCUA) has proposed significant changes to rules that address credit union-to-bank mergers.

Under proposed rules released at last week's NCUA board meeting, federal credit union directors would be required to carry out duties related to mergers and credit union to bank conversions "in good faith." The NCUA has also proposed some changes to its current standards governing "the information that credit unions seeking to convert must disclose to members," including the approval of conversion proposals, the certification of member votes on conversion proposals, and the guidelines on how votes must be completed.

Rules governing the disclosure of a merger plan to credit

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CUNA Works for CU Changes to Reform Bill

The situation surrounding legislation that would alter the structure of federal financial regulation continues to evolve, and CUNA is responding to recent developments and watching for any future action.

Responding to Chris Dodd's (D-Conn.) Senate regulatory reform package, which was unveiled early last week, CUNA encouraged Dodd to consider adding language that gives his proposed Bureau of Consumer Financial Protection (BCFP) "the authority

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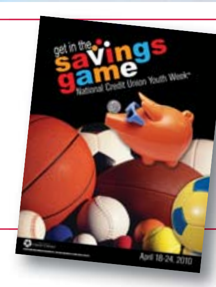

Banker Attacks on MBLs Don't Stand Up to Scrutiny


Dan Mica

The banking industry has had to lay low for a while in their scurrilous attacks on credit unions. Public anger against banks in the wake of the country's economic crisis—and conversely, the goodwill garnered by credit unions helping their communities through tough times— has made the usual attacks impolitic. However, as credit unions seek to do more for their communities by providing more credit to small business members, the bankers and their lobbying groups have opted to step up their attacks against credit unions. Apparently they believe if banks aren't lending to communities, then no one should be giving those communities the funds they need to survive and grow.

CUNA, leagues and credit unions disagree, of course, and are working hard for legislation that would increase the statutory cap on MBLs to 25% of a credit union's assets, up from 12.25%. As readers here know, CUNA has estimated that change could bring up to $10 billion into small businesses in the first year after the cap is lifted. It could also mean the creation of about 108,000 jobs nationally that first year, all at no taxpayer cost.

On these pages we'll go over the shots bankers are taking trying to derail credit union momentum on MBLs. Each banker claim is followed by the hard facts that will help us all provide policy makers with a reality check that counters those specious arguments.

Banker Claim: There is no evidence to support the contention that credit for small businesses is in short supply—community banks have been lending throughout the economic crisis.

Fact: There is no doubt that there has been a reduction in the demand for business credit as a result of the recession. However:

▶ A recent study by the National Federation of Independent Business reported that a mere 40% of small business owners attempting to borrow in 2009 had all of their credit needs met. The current level of borrowing success is significantly lower than in the mid-2000s when up to 90% had their most recent credit request approved.

▶ Many small business owners are telling policy makers that they are being turned away by their banks — a primary reason that Congress has held several hearings on this subject.

▶ Both large and small banks are turning away business borrowers. Bank business loan portfolios are shrinking, while credit union MBL portfolios are growing. Allowing credit unions to extend MBLs to those who need credit will add fuel to a self-sustaining economic expansion.

Banker Claim: MBLs are incompatible with CUs' statutory mission of serving only consumers.

Fact: Credit unions have been making MBLs since their inception in the early 1900's. In the first 90 years of their existence, there was no such lending cap. Today's ceiling was an arbitrary limit imposed by Congress in response to banker pressure prior to votes which passed the CU Membership Access Act in 1998 (CUMAA).

Another important point to make involves the credit union tax status. That status is based on credit unions' structure as not-for-profit, democratically controlled cooperatives—and that structure is unchanged over the past 100 years. The tax exemption has nothing to do with the breadth or volume of credit union product and service offerings—a fact clearly spelled-out by Congress in CUMAA. And again, for most of their history, credit unions have been tax exempt with no business lending cap.

Banker Claim: Allowing increased MBLs will cause credit unions to reduce their lending to consumers.

Fact: The average loan-to-asset ratio at credit unions that offer business loans is 69%. Accounting for the roughly 5% of assets in fixed- and other assets, that leaves about 26% of assets in cash and investments. If an additional 12% of assets were eventually devoted to business lending as a result of lifting the cap, credit unions could fund the increase almost exclusively out of investment holdings.

Banker Claim: Pursuit of expanded MBL powers calls into question the credit union movement's commitment and ability to serve the needs of lower-income and un-banked populations.

Fact: Many modest means individuals run small businesses and need credit—especially true in recessions because unemployed and discouraged job seekers are more likely to form businesses during these events.

▶ Treasury's 2001 comprehensive analysis of credit union business lending showed that credit unions do a very good job of serving the business credit needs of low- and moderate-income business owners. The U.S. Treasury Department found that 45% of MBLs were made to members with household income of less than $50,000.

CU Business Lending: Safe & Sound
Business Loan Asset Quality Comparisons

	Net Chargeoffs: Credit Union MBLs	Net Chargeoffs: Commercial Bank Commercial & Industrial Loans
1997	0.18%	0.28%
1998	0.08%	0.43%
1999	0.12%	0.57%
2000	0.05%	0.01%
2001	0.10%	1.43%
2002	0.09%	1.76%
2003	0.08%	1.26%
2004	0.10%	0.50%
2005	0.05%	0.27%
2006	0.08%	0.30%
2007	0.09%	0.52%
2008	0.33%	1.01%
2009	0.59%	2.36%
Avg. since '97	0.15%	0.82%

Source: FDIC, NCUA, and CUNA E&S. 2009 results are annualized

▶ The Home Mortgage Disclosure Act (HMDA) clearly and consistently shows that compared to banks, credit unions make a greater percentage of their loans to lower income individuals and that lower income households are much more likely to be approved for loans, and much less likely to be denied a loan, at credit unions.

▶ Credit unions have repeatedly attempted to reach out to serve more individuals in lower-income households. However, bankers have used the courts to bar those efforts. This tactic of claiming we are not "doing enough" on the one hand while simultaneously erecting obstacles to the provision of credit union service does nothing to help these communities.

Banker Claim: Raising the cap would undermine credit union safety and soundness.

Fact: Credit unions have a long history of engaging in safe and sound business lending and in fact have a better safety record than do other institutions. Look at these numbers:

▶ Since 1997, MBL net charge-offs rates have been one-sixth the bank average (0.15% vs. 0.82%);

▶ In 2009 MBL net charge-offs averaged one-fourth the bank rate (0.59% vs. 2.36%); and

▶ MBL net charge-off rates are even lower than net charge-off rates on credit union consumer loans and essentially identical to the net charge-off rates on real estate loans at credit unions.

▶ Most credit unions have excess liquidity today which is depressing their overall earnings. Moving assets from low-yielding investments into higher-yielding MBLs, even after accounting for credit losses on those loans, will increase earnings, capital contributions, and overall safety and soundness.

▶ NCUA Chairman Debbie Matz emphasized in a February 24, 2010 letter to Treasury Secretary Geithner: "If legislative changes increase or eliminate the aggregate MBL cap, NCUA would promptly revise our regulation to ensure that additional capacity in the CU system would not result in unintended safety and soundness concerns."

Banker Claim: Raising the cap will harm community banks.

Fact: Credit unions hold just 4.5% of all small business loans at depository institutions. It took us 100 years to reach this market share. Even if that doubled, banks would hold an overwhelming 91% share.

Banker Claim: Raising the cap is unnecessary—few are near the 12.25% MBL cap.

Fact: For the past several years, MBLs have been the fastest growing component of credit union lending. From 2000 to 2009, MBLs grew at an annual rate of 25.1%, over three times faster than the 7.4% annual growth rate of all credit union loans. That growth in MBLs is now slowing as more and more credit unions approach the cap.

▶ There are nearly 350 credit unions now near the cap (i.e., non-grandfathered credit unions with MBL-to-asset ratios greater than 7.5% of assets).

▶ These credit unions account for approximately 60% of all business loans subject to the 12.25% cap, and they have been the major contributors to MBL growth over the past few years. Over the next few years, their MBL growth will dry up without an increase in the cap.

▶ The cap also has a chilling effect on entry into the MBL arena: For many, even capped portfolios are not large enough to justify the sizeable up-front investment necessary provide this service.

Banker Claim: Tax-subsidized credit unions should not be granted an expansion of powers—especially now—tax subsidies contribute to the national debt during a time of extreme budgetary pressure.

Fact: Having credit unions pay federal income taxes will have no discernable effect on the federal budget deficit. The administration's estimate of the value of the credit union tax exemption was $650 million in 2009 – equal to 0.046% of the $1.4 trillion 2009 federal budget deficit. However, credit union small business lending does in fact produce greater capital expenditures, greater economic activity and ultimately more job creation.

The multiplier effect means that these new jobs lead to new spending which then sets in motion support to a self-sustaining economic recovery.

CUNA MBL Issues Summary
http://cuna.org/gov_affairs/legislative/issues/download/mbl.pdf

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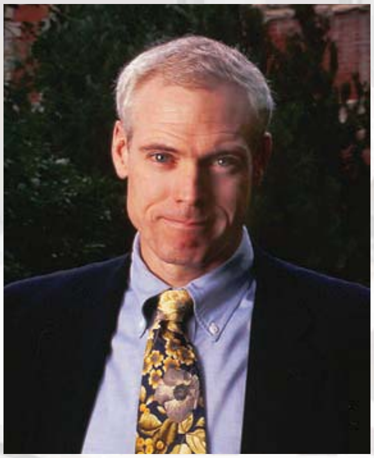

PHOTO BY JOEL GRIMES

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!

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Overdraft FAQ: A Compliance Resource

CUNA'S COMPLIANCE CHALLENGE

CUNA has sought to address a number of questions related to Regulation E's new overdraft rules, which require members to consent before being assessed fees on overdraft services for ATM and one-time debit card transactions.

The Reg E amendments, which become effective on July 1, require credit unions that want all opt-in decisions for existing accounts to become effective on the same date to state clearly on the opt-in/consent form that the member's decision will be effective on Aug. 15 or whatever earlier date that the credit union may select.

The CUNA FAQs also note that credit unions are authorized to charge a fee for transferring funds from another account or a line of credit to cover an overdraft created by ATM or debit card usage. However, CUNA said, credit unions must comply with Truth in Savings and Truth in Lending rules.

The FAQS also addresses questions about how the new overdraft restrictions affect nonsufficient fund fees and negative balance fees that are currently being charged by credit unions.

CUNA Compliance Pages
http://cuna.org/compliance/member/index.html

REVENUE AND EXPENSE
February 28, 2010

(In Millions)

	February		YTD	YTD
	Actual	Budgeted	Actual	Budget
Gross Income:				
Investment Income	16.4	18.0	34.2	36.1
Other Income	4.1	4.6	8.5	9.0
Less Expenses:				
Operating Expense	11.4	14.1	21.7	28.6
Insurance Loss Expense	1.5	62.5	1.5	125.0
Net Income (Loss)	7.6	(54.0)	19.5	(108.5)

The operating level of the National Credit Union Share Insurance Fund closed 2009 lower than previously estimated˜at 1.23% of insured shares rather than 1.24%. However, at the March 18 National Credit Union Administration (NCUA) open board meeting, NCUA Chief Financial Officer Mary Ann Woodson predicted that the insurance fund would return to a 1.26% operating level after credit unions make their 1% deposit. The NCUA chart above depicts actual and budgeted income and expenses for February 2010, as well as year-to-date.

NCUA Scrutinizes Merger Rules

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union members and the NCUA are also affected, and the NCUA has also proposed altering some of the steps that follow an approved merger or conversion vote.

CUNA is reviewing the NCUA's proposal to ensure that the changes do not make the credit union-to-bank conversion process so burdensome that it is never an option for credit unions.

NCUA Scrutinizes Merger
http://www.ncua.gov/GenInfo/BoardandAction/DraftBoardActions/index.aspx

CUNA Works for Changes

From page 1

to delegate examination authority for large credit unions to the prudential regulator" rather than limiting the National Credit Union Administration's (NCUA) authority to credit unions with under $10 billion in assets.

CUNA also promoted "permitting the BCFP to delegate examination authority for large credit unions to NCUA" and backed Dodd's call for greater protections for consumers of both regulated and unregulated financial products. However, CUNA is still concerned that some data collection provisions of the bill could prove onerous for credit unions.

CUNA also encouraged Dodd to work to streamline regulatory and reporting burden for credit unions, and CUNA continues to analyze the content of Dodd's bill as Senate debate and votes start this week. Both the House and Senate have been working to address the causes that launched the ongoing financial crisis through legislative means, and comprehensive regulatory reform is the next step of the legislative puzzle.

Another pending financial regulatory change involves member business lending for credit unions, and CUNA continues to work to add provisions that would increase the member business lending cap to 25% of a credit union's assets to still-developing congressional jobs bills. Legislation in the House has 104 co-sponsors and a virtually identical bill in the Senat4e has 11 co-sponsors.

CUNA Legislative Issues
http://cuna.org/gov_affairs/legislative/issues/2008/index.html

Cybercrime: Lessons to Protect Small Biz Members

Recent reports about cyberattacks against online banking customer accounts belonging to small and mid-size businesses may be of great interest to credit unions.

The numbers are stunning. Fourth-quarter 2009 figures from the Federal Deposit Insurance Corp. reported cyberthieves stole more than $150 million from small and midsize business bank accounts during that period. And *Computerworld* recently noted several banks are fighting lawsuits from business customers seeking to recoup some of their losses. Businesses do not have the deposit reimbursement protections for online banking fraud that consumer deposits do if funds are stolen from their accounts Instead, they often must eat the losses caused by fraud—a situation that sparks lawsuits. Typically the suits claim the banks failed to detect and stop transactions that were patently fraudulent.

Almost all the incidents reported to FDIC involved malicious software (malware) on online banking customers' computers. The malware tricks a target into visiting a malicious website or downloading a Trojan program that provides access to the business' banking passwords, according to David Nelson, FDIC examination specialist who spoke at an RSA conference in San Francisco this month. (*IDG News Service* March 8).

CUNA Mutual Group's Ken Otsuka, a risk manager/product expert, recently provided the following security tips for *NewsWatch* readers.

For third-party providers of electronic funds transfer services:

▶ Take advantage of the authentication methods third-party providers of electronic funds transfer services offer;

- Restrict IP addresses of credit union users with third-party vendors;
- Utilize the strongest form of multi-factor authentication offered, such as token devices. Hackers have even compromised the security provided by one-time password tokens.

▶ If offered, take advantage of days and hours restrictions to access the third-party vendor's ACH and wire systems. Hackers have accessed these systems 24 hours a day, seven days a week. Credit unions don't need this round-the-clock access.

▶ Prohibit telecommuting employees from accessing the third-party vendor's systems using their home computer because it may already be infected with malware;

▶ Implement monetary limits for creating ACH credit files and wires;

▶ Implement dual control so that one employee cannot enter and approve ACH credit files and wires; and

▶ Dedicate a computer in the credit union to access the third-party provider's ACH and wire systems and prohibit employees from using the terminal for checking email and general Internet usage.

For credit union online banking systems:

▶ Generate random passwords from the computer system and mail to member's address of record provided it has not been changed in the last 30 days;

▶ Avoid resetting member online banking passwords based on telephone requests from members – generate another random password and mail to member's address of record;

▶ Require an enrollment process for online banking transaction services (bill pay, ACH, and wires) rather than allowing immediate access; and

▶ Implement monetary and frequency limits for online banking payment services.

Members also play an important role in reducing fraud. Otsuka recommended credit unions pass along these tips to members:

▶ Install up-to-date software on home computers to prevent infection from viruses, spyware and malware and update the signature files at least weekly;

▶ Use strong passwords with a minimum of seven characters, alphanumeric, and include special symbols (such as, !,@,#,$,%,<,/);

▶ Never use computers accessible to the public, such as in libraries and hotels, to access accounts; and

▶ Be careful when using a wireless network—make sure it's secure before accessing accounts online.

CUNA ID Theft Resources
http://www.cuna.org/initiatives/idtheft.html

CUNA Offers Resources for MBL Drive

As CUNA continues to build support on Capitol Hill for an increase in the credit union member business lending cap, the group is also providing resources to support credit unions and the leagues in their own strong push to reach out to lawmakers and communities. The CUNA materials will be regularly updated. Among the items now available:

▶ Op-ed: CUNA offers a model "op-ed" for use in crafting a submission for consideration to local publications. Here:
http://www.cuna.org/pol_affairs/member/mbl_press_materials.html

Also, the League of Southeast CUs shares their version of an op-ed. Here:
http://www.cuna.org/pol_affairs/member/mbl_press_editorial.html

▶ Letter to the Editor: Here is an example. The Wisconsin CU League was successful in placing this letter in the Milwaukee Journal of Business, calling attention to the need for the U.S. Congress to give credit unions more business lending capacity. Here: *http://www.cuna.org/pol_affairs/member/download/mbl_mbiz031210.pdf*

▶ For bloggers: San Francisco Chronicle's "Local Mission" blog points out how a local credit union gave a small business owner a loan – when no one else would. Here:
http://missionlocal.org/2010/03/small-businesses-await-details-of-obama-loan-plan/

Watch CUNA's website for more: *www.cuna.org*

>>The Innovators

Youth Week: Saving's Got Game

This year's theme for CUNA's National Credit Union Youth Week--April 18-24--is "Get in the Savings Game." While the National Youth Saving Challenge, which runs all month, is meant to inspire young credit union members to concentrate on savings, the theme is meant to introduce the idea that savings is not a one-shot deal.

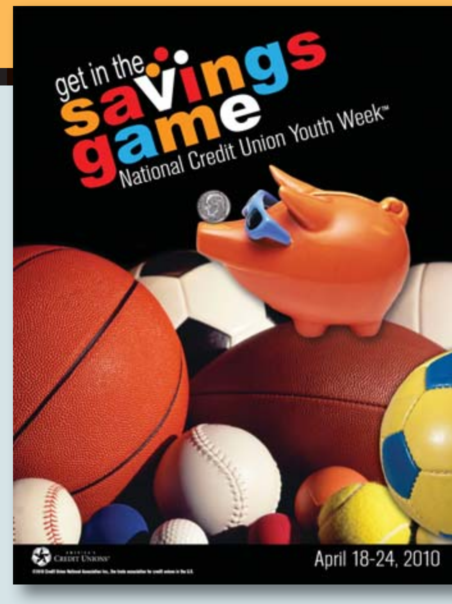
Lin Standke, CUNA Youth Week manager, makes an apt comparison between the Savings Challenge and Mother's Day.

"You celebrate your mom on Mother's Day, but you're thinking about her all year," she said. "That's really the lesson from this. The challenge is a designated event where people are inspired to save their money, but we really want them to make deposits all year long."

Credit unions can sign up now to join hundreds of their counterparts nationwide who join the effort to teach youth about the benefits of savings. Last year, nearly 140,000 young members deposited $26.5 million into their savings accounts during this national event. And 10,006 of those accounts were new ones.

Participation in the free Saving Challenge not only can help a credit union build a strong relationship with young members of their community, but also with their families—by reinforcing the benefits of credit union membership.

Only CUNA-affiliated credit unions are



eligible to participate in the Saving Challenge. Credit unions get a chance to win $100 for one of their young members.

Sign Up for Saving Challenge
http://finlit.cuna.org/member/savings_challenge_register.php

>>CUNA Notebook

CUNA President /CEO Dan Mica regales the crowd at a National Journal seminar on financial regulatory reform, Wednesday March 10. Enjoying Mica's remarks are (from left) co-panelists Bill Swindell of the National Journal, Jill Hershey of the Financial Services Roundtable, Camden Fine of the Independent Community Bankers of America and (far right) Travis Plunkett of the Consumer Federation of America. Mica said of financial reform that credit union regulation under proposals for regulatory reform should not be lumped in with institutions that "have been trying to put credit unions out of business for 100 years." About 200 staffers from Capitol Hill, Washington media and advocacy groups were present in the audience. (CUNA Photo)

Comments Due April 14 for Fed CARD Act plan

Credit unions and other interested parties have until April 14 to comment on the Federal Reserve Board's recently issued plan to implement provisions of the Credit Card Accountability, Responsibility and Disclosure (CARD) Act that go into effect Aug. 22.

This most recent plan, the third in a series of actions to implement the CARD Act, will prevent card issuers from charging inactivity fees, account closure fees, or multiple-penalty fees based on a single violation. In addition, the proposal outlines three alternatives for calculating penalty fees that are based on costs to the institution, the ability to deter repeated violations, and a list of "safe harbor" fees that will be provided by the Fed at a later time, after it receives comments on what these fees should be.

CUNA has issued a Comment Call on the Fed proposal, and will be accepting comments until April 6.

CUNA Comment Call
http://www.cuna.org/reg_advocacy/reg_call/rcc_031210.html