CUNA
Credit Union National Association

CREDIT UNION NewsWatch

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

October 19, 2009

CUNA Testifies on Interchange

Altering interchange fees could reduce consumer choice, testifies Mark Caverly (second from right), executive vice president of Local Government FCU on behalf of CUNA before the House Financial Services Committee. (CUNA Photo)

CUNA continues to detail the positive effects that interchange has had on the credit union system, with Local Government FCU Executive Vice President Mark Caverly recently testifying that these proceeds support credit union card programs and "cover some of the costs associated with risk of non-payment that the card issuers assume, the risk of fraud and other data breaches that occur at merchants, and the administrative costs" of card programs.

Changing the current interchange fee regime, as has been proposed by merchants, would "reduce consumer choice for payment options, allow merchants to discriminate against credit unions and other small issuers," and allow merchants to assess deceptive and perhaps illegal surcharges on their customers, Caverly added.

The benefits that merchants receive from accepting credit union cards "far exceeds" interchange fees received by Caverly's Raleigh, North Carolina-based, $957 million in assets credit union. LGFCU, which currently maintains 173,000 debit card and 16,000 credit card accounts for its 178,000 members, receives just over 14% of its monthly income from interchange fees, Caverly added.

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21-Day Rule Fix Moves in House

CUNA-supported legislation to clarify that the 21-day notification requirement of the Credit Card Accountability, Responsibility and Disclosure (CARD) Act applies only to credit card accounts was approved by the House of Representatives early last week. CUNA is optimistic that the Senate could vote on the bill before the end of the year.

H.R. 3606, the CARD Act Technical Corrections Act, introduced by Rep. Peter Welch (D-Vt.) last month, would specify that Section 106 of the CARD Act, which prevents creditors from treating payments as being late unless the creditor ensures that statements are delivered to consumers no later than 21 days before the payment due date, applies to credit card accounts and not all open-end loans.

CUNA President/CEO Dan Mica commended the legislators for their "vital action" that could "save credit unions and their consumer members both money and peace of mind." But, he added, "Senate action is still urgently needed for consumers and credit unions to realize relief." Mica encouraged Senators "to take similar action as soon as possible."

CUNA's Senior Vice President for Compliance Kathy Thompson said, however, that while credit unions should be encouraged by the results of the House vote, they must continue with their compliance efforts on the 21-day requirement, as there is no bill comparable to H.R. 3606 in the Senate at this point.

Inside

NCUA's Upcoming Proposal Will Shape Corporate CUs' Future

Mary Dunn, CUNA Senior Vice President and Deputy General Counsel

The proposed rule on corporate credit unions that the National Credit Union Administration (NCUA) board is expected to issue at its Nov. 19 meeting, with a 90-day comment period, is likely to be one of the most significant regulations issued during Chairman Debbie Matz' tenure. It will shape the future of corporate credit unions. There's no question future credit union support for their corporates is critical, but it is the upcoming decisions made by the federal regulators that will set the safety and soundness standards the corporates will have to meet going forward.

This article is a CUNA preview of NCUA's plan for the corporate system. Chairman Matz initiated three recent Town Hall-style meetings as a forum to review NCUA's actions under its Corporate Stabilization Program, including its development of the proposed corporate regulation. NCUA General Counsel Bob Fenner briefed participants on particulars of the proposal, and this report is based on that information, as well as his discussions with CUNA's Council Forum, and CUNA conversations with senior agency staff.

What NCUA Says

The NCUA has been laboring to produce the corporate credit union proposal for months, following an Advanced Notice of Proposed Rulemaking issued in January seeking comment on the rule of corporate credit unions, including their membership structure, size, and types of services offered. The ANPR, inspiring almost 500 comment letters, also sought specific recommendations in several major areas: capital, permissible investments, management of credit risks and liquidity, and corporate management.

These core safety and soundness issues will be the key components of a new rule. However, NCUA staff has told CUNA that the proposal is still being developed. They've also made it clear to us that changes have been made as a result of comments at the Town Hall meetings, as well as the written comments.

First and foremost, a new corporate structure will address capital, which has been a major area of concern for a number of the corporate credit unions. Using the Basel I standards for banks as a guide, Fenner said the proposal contains a 5% Tier I capital requirement for a well-capitalized corporate credit union and a 4% Tier I requirement for an adequately capitalized corporate credit union. Capital will be built from retained earnings and paid-in-capital from member credit unions, although the proposal will not directly require member credit unions to provide capital to their corporate.

There will also be risk-based capital requirements so that, in total, a well-capitalized credit union would need to have a 10% net worth ratio and an adequately capitalized credit union would have an 8% net worth ratio. For well-capitalized credit unions, 150 basis points of their capital would be from retained earnings; for an adequately capitalized credit union, retained earnings would constitute 100 basis points of their capital.

NCUA staff has acknowledged that these capital requirements will be difficult for a number of corporates to attain and that there will be a transition period under which the requirements will be phased-in, over a three- to five- year period. (Agency staff indicated that other key aspects of the proposal would be phased-in as well.) The NCUA is also planning to propose a more stringent Prompt Corrective Action framework for corporate credit unions.

Over Concentration in Investments

Over concentration in particular investment categories, such as mortgage-backed securities, is another area the agency will address. The proposal will lay out permissible investment categories and limit concentrations in any category to five times capital or 25% of the corporate credit unions' assets. Government guaranteed investments would be exempt from these limits.

The NCUA is also planning new Asset Liability Management requirements, such as limiting the weighted life average of an investment to no more than two years and requiring the time frames for assets and liability to be more closely matched. Corporate credit unions will be required to have a specific investment action plan and to use outside analytics firms to produce the plan. The NCUA will also address credit risk and prohibit certain investments, such as collateralized debt obligations.

The proposal will also address sound principles of management and governance. It is likely to propose that only CEOs, COOs and CFOs of member credit unions be allowed to served on a corporate credit union's board and that board members would have six-year term limits. There would also be annual disclosures to member credit unions of the compensation of senior executives of the corporate. Also, there would be restrictions on indemnifications and golden parachutes that some had provided for senior executive staff members.

Uncertainty Persists

Even with this preview, however, there is still much uncertainty about the details of the proposal and how it will address issues such as field of membership, National Credit Union Share Insurance

Fund coverage of shares, and improved oversight of the corporate credit union

According to Matz, the NCUA wants to develop a rule that will provide a strong safety and soundness foundation on which the corporates operate but that "it is up to natural person credit unions to determine how many corporates there will be or if there will be any corporate credit unions."

Joint CUNA/NAFCU Task Force

What natural person credit unions need from their corporate credit union was also the central question for the Joint CUNA/NAFCU Task Force as it worked to produce its report sent to NCUA last month to assist the agency in developing the proposal. "We have gone over the report several times, and it has been very useful to our work on the proposal," one senior agency staff noted.

Among the many recommendations the Joint CUNA/NAFCU Task Force developed were strengthening the capital of corporate credit unions. The task force said that in the future corporates should be subject to a basic leverage capital requirement and a risk-based capital requirement. It recommends that contributed capital be required of member credit unions, and it supports a mandatory corporate specific prompt corrective action that would specify NCUA actions for corporate credit unions that are less than adequately capitalized.

Will the Right Balance Be Achieved?

Some question whether the NCUA envisions a future for corporate credit unions. Matz' own statements on the developing proposal indicate flexibility while emphasizing the need to address core safety and soundness concerns.

Here are Matz's own words:

The new rule will ensure that the corporate system continues to work going forward, so that we never again experience what occurred in the last year.

The NCUA's final corporate credit union rule will likely be issued by early spring of 2010. Only time will tell whether NCUA's proposal properly balances latitude for the corporates to succeed with strong supervisory requirements that will help protect them from failure.

CUNA Provides Tools for Grassroots Effort on Interchange

CUNA Senior Vice President of Political Affairs Richard Gose urges credit unions to get involved with communicating to federal lawmakers about interchange fees, and to get their members involved too.

"Minds are not made up on Capitol Hill on this issue," Gose said recently. "The topic is open for discussion and credit unions need to make sure their position is in the forefront of their lawmakers' minds."

CUNA launched an action call earlier this month that has resulted already in around 30,000 contacts to the House and Senate. That effort has been backed by Web stickers, statement stuffer artwork, and a postcard campaign—all aiming to energize members on this key issue.

With the newly launched postcard campaign, CUNA hopes to flood the Senate with cards in October. The postcards look like a credit card bearing the iconic credit union little guy and were mailed Oct. 12 to state credit union leagues for distribution to natural person credit unions.

Provided with the postcards is a CUNA letter to credit union management explaining the issue to their employees, and those tellers will then seek to briefly educate their credit union members on the interchange issue and distribute the postcards. The member-signed postcards will be forwarded to lawmakers on at least a weekly basis. Postcards may also be mailed individually, but all postcards will need to be mailed by November.

CUNA fiercely opposes a merchants' proposal to foster government intervention in setting interchange fees. Interchange fees reflect a merchant's fair share of the costs of the convenient card system and supports everything from re-issuing cards compromised by merchant data breaches to providing a call center to contact if a card is lost or stolen.

CUNA Grassroots Action Center
http://capwiz.com/cuna/home/

CUNA Testifies on Interchange, Consumer Choice

From page 1

Legislators during the hearing spoke both for and against the proposed interchange fee changes, and Rep. Maxine Waters (D-Calif.) said that while she understands credit union opposition and will take credit union concerns into account as legislation moves forward, she believes there "have to be some changes" to the current interchange fee structure. (See CUNA's grassroots call to action on interchange on this page.)

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The GAC is where credit unions stand strong. We need you and your board to join us in Washington. And we'll do our part by making this GAC (my last as CUNA CEO) the best yet." – Dan Mica

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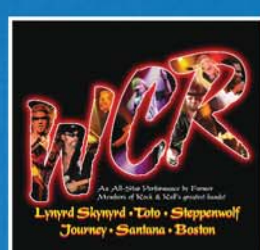

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>>Special Report

INTERVIEW: Fryzel on Alt. Capital, MBLs and More

Former National Credit Union Administration (NCUA) chairman and current board member Michael Fryzel told CUNA's *NewsWatch* that the board has an open mind on alternative capital, but wants to make sure that it is done "in the right way" if approved.

A joint alternative capital proposal from CUNA and the National Association of Federal Credit Unions, sent late last week to the agency, will be thoroughly reviewed by NCUA board members and other staff before any action is taken, he added.

The NCUA board is also developing new rules for corporate credit unions, which are expected to become permanent in early 2010. Fryzel noted that the agency's recent town hall meetings, which took place in three sites nationwide, have given the board "excellent" feedback.

Michael Fryzel

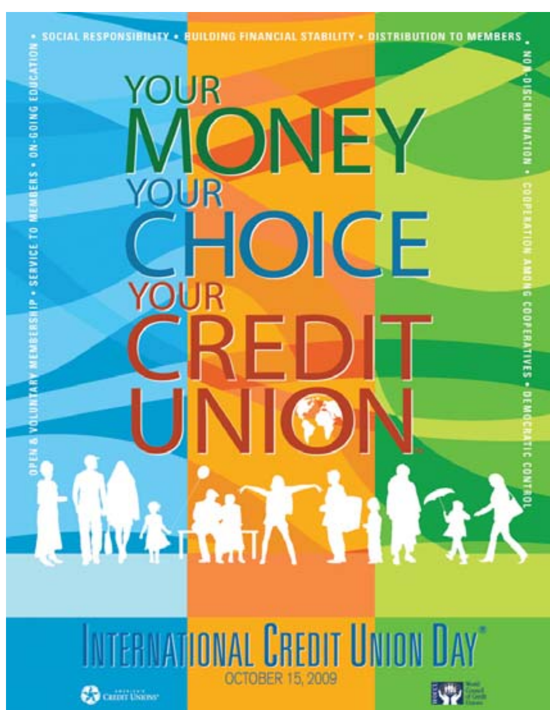
Fryzel said that the NCUA board also has an open mind toward lifting member business lending restrictions for credit unions, as long as those loans are made "carefully and with the full understanding of how difficult those loans can be."

However, the NCUA should be allowed to "put in place the necessary rules that will ensure the safety and soundness of the funds of the credit unions that are making those loans," Fryzel added.

Credit unions and the nation in general will likely face continued financial hardship in the near future, but if Fryzel's statements are any indication, the NCUA will be well equipped to handle these challenges. Fryzel said he believes the combination of himself, NCUA Chairman Deborah Matz, and board member Gigi Hyland gives credit unions the "most knowledgeable and credit-union-familiar board that has ever been in charge of the NCUA."

ICU Day Celebrates Choice

Credit unions celebrated choice during last week's International Credit Union Day—Oct. 15--noting that choice gave rise to the credit union as a not-for profit, cooperative alternative to for-profit, investor-owned banks and it is choice that credit unions continue to represent to consumers to this day.



"As we celebrate International Credit Union Day, we recommit to the credit union spirit of unity and service to members," CUNA President/CEO Mica said to mark the 61st ICU Day. "We also look to spread the credit union idea to the millions in the U.S. and abroad who are as yet unfamiliar with our philosophy and benefits so that they may discover what millions already know: When you are a member, it really is your credit union."

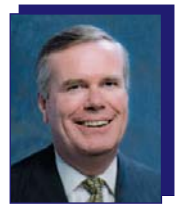
Rep. Brad Sherman (D-Calif.), a six-term congressman and member of the House Financial Services Committee, submitted a statement for the *Congressional Record* to honor the day. As part of his comprehensive remarks, Sherman noted credit union accomplishments not only in the United States, but globally as well.

"The difference credit unions make in the United States by providing affordable and safe financial services to many Americans of moderate means has been significant and widely recognized. However, the contributions credit unions have made on an international scale are equally notable," Sherman noted to other House members.

World Council of Credit Unions (WOCCU) Chairman Barry Jolette also noted credit unions' far-reaching impact has gained even greater importance this past year in light of the global financial crisis, which continues to negatively affect members worldwide.

CUNA Speaks with Frank about CFPA


Dan Mica


Daniel Egan

CUNA President/CEO Dan Mica and League President Daniel Egan, Jr. spoke directly last week with House Financial Services Committee Chairman Barney Frank (D-Mass.) about credit union objections to an amendment to Consumer Financial Protection Agency (CFPA) legislation that would divide treatment of credit unions along asset size. Egan is president of the Massachusetts CU League, New Hampshire Credit Union League and Credit Union Association of Rhode Island.

Frank's panel adopted an amendment to the CFPA bill that would limit its examination and enforcement authority to CUs over $1.5 billion in assets and banks with more than $10 billion in assets. Below those thresholds enforcement authority would stay with their prudential regulator.

CUNA has declared it would be "compelled to oppose" H.R. 3126, the Consumer Financial Protection Agency Act, if it included the amendment that would treat credit unions differently based on asset size.

"A key principle of ours in approaching financial regulatory reform has been for examination authority to remain with credit unions' primary regulator. We cannot support legislation that would apply this principle only to a portion of the nation's credit unions, as envisioned in this amendment," Mica said, adding that "a basic premise of the credit union movement is to never be divided against itself in any way."

In their meeting, Mica said, Chairman Frank "indicated a willingness to work with us to see if we can find a mutually agreeable solution before the bill goes to the floor for a House vote."

CARD Act Oct. 20 Teleconference

There is one day left to sign up for CUNA's teleconference discussion of the Credit Card Accountability, Responsibility and Disclosure (CARD) Act, portions of which will become effective on Feb. 22, 2010. CUNA is offering the 90-minute information session at 2:00 p.m. (ET) on Oct. 20.

Topics covered during the audio conference call, which will be led by CUNA Senior Assistant General Counsel Jeff Bloch, will include minimum payment warnings on credit statements and interest rate increase prohibitions.

The call will also feature commentary from Federal Reserve representative Benjamin Olson, PSCU Financial Services' Steve Salzer, CUNA associate Michael McLain, and UW Credit Union Chief Credit Officer Mike Long.

Interested individuals can register for the audio conference at http://training.cuna.org/audio/T0102009_fct.html

Alternative Capital: United CU Front

CUNA President/CEO Dan Mica noted that there is no issue more important to credit unions today than that of secondary capital as CUNA and the National Association of Federal Credit Unions sent their joint proposal to the National Credit Union Administration board.

Mica and NAFCU President Fred Becker, in a joint letter, asked the NCUA board members to support the proposed alternative capital measure in "an expression of unity by the credit union community as it prepares to take the legislative proposal forward."

"We believe the time is exactly right to take this proposal to Capitol Hill, for credit unions now and into the future," said CUNA's Mica.

The two associations have agreed that alternative capital for federally insured credit unions should come from members, which could also include sponsor organizations and select employee groups. They also agreed that credit unions should be able to count in their net worth calculations assistance received from NCUA under section 208 of the Federal Credit Union Act.

Alternative capital would not be federally insured, and it would be subordinated to other claims against an insured credit union and the National Credit Union Share Insurance Fund.

>>Compliance

Internet Gambling Law and Business Accounts: What Must CUs Do?

CUNA's *Compliance Challenge* this month asks whether credit unions with business accounts should worry about complying with new Unlawful Internet Gambling Enforcement Act (UIGEA) regulations.

The answer is a resounding "yes," the CUNA compliance team says.

All credit unions must create and maintain policies and procedures that demonstrate that they are performing risk-based due diligence when opening so-called "commercial accounts." These procedures are meant to prevent illegal Internet gambling operations from setting up accounts at U.S. institutions.

All credit union accounts must also feature policies and procedures that prevent their members from making credit or debit card transactions with unlawful internet gambling sites. However, credit unions may rely on the established policies of a larger card network such as MasterCard or Visa, CUNA notes.

Portions of the UIGEA regulations also seek to ensure that credit unions notify all business account owners that unlawful Internet gambling transactions are prohibited through a term in the account agreement. This notification can also be handled via a simple notice sent to the member or other methods.

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

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