



UPDATE[®]

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Jan. 4, 2010

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More challenges, successes await CUs

NAFCU has identified nine top priorities for 2010, and these will all factor into the association's work this year in advocating for added flexibility for credit unions in serving their 90 million member-owners.

"Last year was difficult, but 2010 is expected to be even more difficult as the economy continues its slow road to recovery and Congress considers unprecedented changes in the financial industry regulatory structure," said NAFCU President Fred Becker. He added that NAFCU will continue to remind members of Congress and the administration that credit unions were not responsible for the current financial crisis.

The House on Dec. 11 passed H.R. 4173, its regulatory reform package, and the Senate Banking Committee is poised this month to move forward on its version. The reforms would affect how financial services are administered, how disclosures are made and how examiners evaluate credit union, bank and thrift regulatory compliance and risk management.

As always, Becker said, preserving credit unions' federally tax exempt status is chief on this year's priorities list. Also ongoing is the need to guard credit unions' independent federal regulatory and share insurance structure, promote data security, ensure credit unions the best educational opportunities and devise products and services to enhance their operations and service.

As for regulatory reform, Senate Banking Chairman Chris Dodd, D-Conn., and Ranking Member Richard Shelby, R-Ala., issued a statement Dec. 23 signaling agreement on key issues.

NAFCU will remain close to the reform developments and strongly advocate that credit unions be exempt from the CFPA, Becker said, and to hold back those seeking to squelch CUs' growth and expansion.

"The unfolding economic crisis has focused more consumer attention on credit unions," Becker said. "It is vital that credit unions remain a strong, viable choice for consumers."

NAFCU 2010 top priorities

- ◆ Continue to champion the preservation of the federal tax exemption for all credit unions and maintain FCUs' status as federal instrumentalities of the U.S. government.
- ◆ Enhance the value of the federal charter by spearheading measures such as greater member business lending authority and modernized capital standards that preserve mutuality.
- ◆ Advocate to maintain an independent federal regulatory structure and share insurance fund for credit unions to promote safe, sound operations and recognize credit unions' unique nature.
- ◆ Maintain NAFCU's leadership role in pressing for improved transparency in the National Credit Union Administration's actions, with continued focus on a resolution of the corporate credit union system that preserves natural person credit unions' access to essential services.
- ◆ Advance the value of credit union membership by educating Congress and the public about credit unions' service to communities, their work to thwart predatory lending, focus on members' data security and contributions to financial literacy.
- ◆ Ensure that legislative and regulatory efforts do not bring unintended consequences and burdens to credit union operations and member service.
- ◆ Continue to enhance NAFCU's strong relationship with members of Congress through NAFCU/PAC and its political activities.
- ◆ Continue to grow credit union mortgage market share by emphasizing the value of the credit union difference.
- ◆ Give the nation's credit unions opportunities to improve growth and productivity, educate staff and attain ever-higher best practices through NAFCU programs and those of its subsidiary, NAFCU Services Corporation.

Becker urges more biz-lending dialogue with CUs

NAFCU President Fred Becker, following a Dec. 22 meeting at the White House with President Obama, representatives from 11 community banks and one credit union, said more credit unions would appreciate the opportunity to meet with the president to discuss how to expand lending to small businesses.

NAFCU has been in touch with the administration and White House on how to increase credit unions' role in small-business lending. Becker said the fact that a credit union representative – Bill Bynum, president of HOPE Community CU in Madison, Miss. – was in the Dec. 22 meeting was a positive step to that end.

"There are many good stories out there about credit unions serving the needs of small businesses," Becker said. "Credit unions want to do more."

□ Obama recognizes constraints

After the meeting, Obama said he recognized "regulatory restraints" to efforts to help small businesses and that the administration wants to find ways "to cut some of the red tape." He also said it seemed "fair to say" that most at the meeting "were not engaged in some of the hugely risky activities that helped to precipitate the financial crisis."

□ MBL efforts buoyed

Becker has urged that the administration and the White House support either the elimination of, or increase in, the 12.25-percent-of-assets member business loan cap for credit unions.

Credit unions' case for more MBL authority got a boost late Dec. 21, when Sen. Mark Udall, D-Colo., and six cosponsors offered S. 2919, the Small Business Lending Enhancement Act of 2009. The bill would raise the credit union member business loan cap to 25 percent of assets and exclude from it all loans under \$250,000.

Becker anticipated a Senate MBL cap lift emerging in a Dec. 18 report to members. On its introduction, he thanked the sponsors for their confidence and support in proposing the increase. He said the fact there is an MBL cap lift bill in each the House and Senate "sends a strong signal that Congress will recognize the great resource that credit unions represent to small business and to our nation's recovery overall."

S. 2919 is cosponsored by Sens. Charles Schumer, D-N.Y., Joseph Lieberman, I-Conn., Olympia Snowe, R-Maine, Barbara Boxer, D-Calif., Susan Collins, R-Maine, and Kristen Gillibrand, D-N.Y.

NAFCU weighs in on e-gift proposal

NAFCU, in a Dec. 18 comment letter, expressed its concerns over the Federal Reserve Board's proposed rule implementing new changes for electronic gift cards.

The proposed rules are issued under Regulation E to implement the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009.

Chief among the association's concerns, wrote NAFCU Associate Director of Regulatory Affairs Dillon Shea, is a requirement that credit unions disclose any dormancy, inactivity or service fees, a 1-800 number and a Web site address (if one exists) on all e-gift cards. For cards that have an expiration date that differs from the funds' expiration date, a clear disclosure in close proximity to the expiration date would also be required. "Coupled with the items already necessary to make the card function, there simply is very little room remaining for all of the disclosures," Shea noted.

In view of this, NAFCU recommends a requirement for a Schumer Box-like disclosure included with the card.

The Fed's proposal also sets a new five-year expiration date for all gift cards that cannot be reloaded with additional funds. It would also require new disclosures in close proximity to the expiration date for cards that can be reloaded.

Ultimately, NAFCU believes the costs associated with the proposal outweigh any potential benefits.

Input sought on FOM proposal

NAFCU wants members' input by Feb. 5 on NCUA's chartering and field of membership proposal to redefine and streamline the criteria for a well-defined local community and define what is a "rural district."

NAFCU is seeking the input as it prepares its official comment. "We will be paying special attention to whether this proposed rule is overly restrictive," said Carrie Hunt, NAFCU's senior counsel and director of regulatory affairs.

The proposal was released as Interpretive Ruling and Policy Statement 09-1. Comments are due to NCUA March 1.

Tinker FCU's Kloiber named to Fed council

Michael Kloiber, president and CEO of NAFCU-member Tinker FCU at Tinker Air Force Base, Okla., was named last month to the Federal Reserve Board Thrift Institutions Advisory Council.

The TIAC has 12 representatives from savings and loan institutions, mutual savings banks and credit unions. Members serve two years.

The TIAC meets with the Fed Board to discuss issues for thrift institutions, the housing industry, mortgage finance and more.

Kloiber will be one of two credit union voices on the TIAC: Randy Smith, president and CEO of Randolph-Brooks FCU (Universal City, Texas), is serving a term that continues through 2010. Smith is a NAFCU Board member.

The Hill recognizes NAFCU

NAFCU was featured in *The Hill* newspaper Dec. 18 for its triumphs in representing credit unions on Capitol Hill last year despite a challenging legislative climate.

The paper highlighted NAFCU grassroots support that helped prevent ongoing financial services reform from placing onerous restrictions on credit unions. It said NAFCU twice defeated mortgage cramdown legislation and that lawmakers have cited small banks and credit unions as presenting persuasive arguments against it.

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NAFCU's 2009 in review

-Triumphs garnered amid immense obstacles

In a recent communication to members, NAFCU President Fred Becker described last year as “unrelenting and unyielding.” A lengthy recession, the initial steps toward regulatory restructuring of the financial services system and the conservatorship of the two largest corporate credit unions were just a few of the chal-



From left: NCUA Chairman Debbie Matz addresses credit unions at NAFCU's Congressional Caucus. Mark Colley of Tulsa Postal & Community FCU greets Rep. Al Green, D-Texas following a House Financial Services Committee hearing on overdraft protection legislation. NAFCU President Fred Becker speaks before NAFCU's Annual Conference. (Tkatch photos)

lenges credit unions faced. At every turn, another legislative or regulatory proposal seemed to emerge that, while well-intentioned, threatened in some way to hamper credit unions' ability to serve members. Meanwhile, share insurance and stabilization fund assessments took their toll on credit union balance sheets.

NAFCU led the way as an advocate of credit unions, working fiercely against regulatory reforms that would put the institutions at a disadvantage. The association also grew its educational offerings and created new tools for credit unions to enhance their visibility.

☐ Challenges in reform

Congress made advances on a number of reform fronts last year, including credit card practices. NAFCU's legislative efforts ensured a minimal impact on credit union credit card operations, seeking and winning a revision to the Credit CARD Act that ensures that the statute applies only to credit card accounts and not all open-end credit.

Meanwhile, lawmakers made strides on regulatory reform of the financial services system, including a proposal to bolster consumer protections by proposing the creation of a Consumer Financial Protection Agency to assume the consumer protection responsibilities of all the current federal financial institution regulators, including NCUA.

At this writing, the Senate Banking Committee had begun weighing the CFPB and other elements of reform.

NAFCU was successful in winning a provision in the House-passed H.R. 4173, the Wall Street Reform and Consumer Protection Act, that effectively excludes all credit unions from paying into a dissolution fund for the wind-down of large firms. It also won a clarification by Rep. Gary Peters, D-Mich., that another provision dealing with Troubled Assets Relief Program shortfalls only affects institutions that do pay into that fund.

As for CFPB, challenges remain: Among other significant issues, H.R. 4173's exemption from primary CFPB examination authority only applies to credit unions with less than \$10 billion in assets. This exemption would not grow with inflation, and it does not capture the three largest credit unions today. NAFCU will continue to strongly advocate for a CFPB exemption for credit unions in the coming year. It will also urge that NCUA, which opens its Office of Consumer Protection this month, retain oversight of consumer practices at federally insured credit unions.

☐ Stabilizing the corporates

With the conserved U.S. Central FCU and Western Corporate FCU reporting an impairment of 69 basis points last year, NAFCU saw the potential cost to natural

person credit unions and immediately sought a remedy to ease the burden.

Acting in concert with NCUA, the association won inclusion of provisions in The Helping Families Save Their Homes Act to create the corporate credit union stabilization fund, spread over several years any required payments to that fund and future share insurance premiums, increase NCUA's borrowing authorities and continue the \$250,000 federal share and deposit limit through 2013.

☐ MBL: A top priority

Last year's economic conditions led to shrinking liquidity sources for small businesses. Lawmakers sought ways to free up capital for small business, and NAFCU seized opportunities to inform lawmakers of how credit unions could do more to help.

The association made numerous and repeated contacts with lawmakers, the Small Business Administration and the president about raising the credit union member business lending cap and ways to expand credit unions' access to SBA programs. In fact, NAFCU President Fred Becker and Mark Sekula, senior vice president of business services at Randolph-Brooks FCU, were among 100 select attendees at a small business forum hosted by the Treasury Department and the SBA on small businesses' need for capital.

At present, NAFCU continues to push

for lawmakers' support for H.R. 3380, the Promoting Lending to America's Small Businesses Act, and S. 2919, The Small Business Lending Enhancement Act. Both measures would raise the MBL cap from 12.25 percent of total assets to 25 percent.

❑ Defeating cramdown

NAFCU has steadily maintained that mortgage cramdowns should be limited to subprime or nontraditional mortgages, and the association pressed its case in twice defeating efforts to pass legislation creating broad cramdown authority for bankruptcy judges.

As lawmakers considered legislation related to housing and foreclosures, attempts were made to add provisions allowing mortgage cramdowns. NAFCU led the way in defeating these in May.

The threat arose anew as the House debated H.R. 4173, but it was defeated again following an intensive lobbying effort of NAFCU and its members. *The Hill* newspaper pointed to NAFCU's work regarding mortgage cramdowns as a triumph, particularly given the year's challenging legislative environment.

❑ Consistent Capitol Hill presence

NAFCU and its representatives appeared before Congress several times last year to advance credit union interests on issues ranging from overdraft protection to pandemic preparedness.

Jim Bedinger of Chicago Patrolmen's FCU testified for NAFCU before a House panel on corporate credit union stabilization. David Wright of Services Center FCU testified before a Senate subcommittee on share insurance. NAFCU Board Secretary Ed Templeton, president and



NAFCU's Anthony Demangone testifies on pandemic preparedness before the House Small Business Committee. (NAFCU photo)

CEO of SRP FCU in North Augusta, S.C., spoke to a Senate Banking subcommittee about the benefits of raising the member business lending cap. NAFCU Director of Regulatory Compliance Anthony Demangone testified twice, once before the House Small Business Committee regarding pandemic planning and later before the House Financial Services Committee regarding the compliance burden presented by the Credit CARD Act's 21-day notice requirement.

Mark Colley, president and CEO of Tulsa Postal & Community FCU in Tulsa, Okla., addressed overdraft protection legislation before the House Financial Services Committee.

Seokula, testifying before the House Small Business Committee, also addressed SBA programs and the constraints that the current MBL cap places on credit unions with sufficient capital to do more business lending. Dawn Donovan, CEO of Price Chopper Employees FCU in Schenectady, N.Y., testified before the same committee in delivering NAFCU's message on financial services regulatory reform.

❑ Expansions in education

Despite tough economic times, NAFCU sought and found opportunities last year to expand its services to the credit union community. Its credit union locator Web site, CULookup.com, which is cosponsored by NAFCU Services and the Preferred Partners, received numerous mentions from national and local media outlets,

including the CBS "Early Show," *Women's Day* magazine and *Consumer Reports* magazine, that raised the profile of credit unions before a national audience.

NAFCU also launched an online volunteer and staff training program and partnered with DDJ Myers to bring the best in executive coaching to credit unions through the Advancing Leadership Series.

The association continued to lead the way in credit union education, keeping its conference pricing at 2008 levels and extending that policy through 2010.

❑ Looking ahead

It would be nice to think 2010 will mean some easing in legislative and regulatory challenges facing credit unions, but NAFCU believes those challenges will only continue and expand. As they do, NAFCU will be with credit unions each step of the way, fighting the imposition of CFPA, encouraging a lift of the business lending cap and vigilantly watching regulatory reform for other additions that might prove harmful for credit unions. The association will also continue to provide credit unions with timely educational resources to aid in their decision-making.

This year brings new opportunities for credit unions to take advantage of every means of assisting their members through these challenging times, and NAFCU has positioned itself to take advantage of every opportunity to provide its members with steadfast representation.

As promised during last year's Annual Conference, NAFCU will continue to be for credit unions what it always has been: your direct connection to education, advocacy and advancement. ♦



NAFCU Annual Conference attendees check out one of the event's many exhibitors. (Tkatch photo)



David Wright of Services Center FCU (far right) speaks with (left) Sens. Tim Johnson, D-S.D., and Mike Crapo, R-Idaho. (Tkatch photo)

529 accounts can be insured by NCUSIF

Qualified tuition savings program accounts, or 529 accounts, may be federally insured as public units or on a pass-through basis as long as membership and traceability requirements are met, NCUA said in a recent legal opinion letter.

The letter deals with the coverage of qualified programs established by the states under section 529 of the federal tax code.

“Because 529 account funds are maintained in a state-sponsored trust, NCUA may treat the state or, under certain conditions, a participant as the owner of the funds to determine share insurance coverage,” NCUA Associate General Counsel

Sheila Albin wrote Dec. 4.

There are two scenarios for coverage of 529s, Albin wrote:

- ◆ If 529 participants are members of the credit union holding the account, and each person’s interest can be ascertained, the member’s interest in the account will be aggregated with other single-ownership accounts and covered to the standard maximum share insurance amount.

- ◆ If participants are not members of the credit union, or if each participant’s interest cannot be ascertained, the funds will be insured as public units or government deposits.

Cross-border transaction guidance released

NCUA and the federal bank and thrift regulators issued interagency guidance on how U.S. financial institutions should conduct cross-border transactions.

The Dec. 18 guidance references a May 2009 paper by the Basel Committee on Banking Supervision. In the paper, the committee outlined the inherent risks in cover payment arrangements in cross-border funds transfers where an originator’s bank does not send all the transaction information to an intermediary bank (cover intermediary). In these scenarios, the latter institution is then unable to effectively filter or monitor transactions. The lack of trans-

parency can impair the cover intermediary’s risk management and compliance.

The guidance also clarifies the U.S. federal banking supervisors’ perspective on certain points in the paper, including expectations for intermediary banks on Office of Foreign Assets Control sanctions screening and transaction monitoring. It also discusses banking supervisors’ approach to reviewing institutions’ risk management practices with respect to cross-border funds transfers, including cover payments.

The guidance is online at federalreserve.gov/boarddocs/srletters/2009/sr0909a1.pdf.

FFIEC proposes reverse mortgage guidance

Guidance for credit unions, banks and thrifts regarding compliance and reputation risks associated with reverse mortgages was proposed by the Federal Financial Institutions Examination Council, which includes NCUA, and is out for comment until Feb. 16.

The proposed guidance, published in the Dec. 16 *Federal Register*, addresses general features of reverse mortgages; legal issues; consumer protections, information and counseling; and conflicts of interest.

It applies to proprietary reverse mortgage products and those offered under the Home Equity Conversion Mortgage program of the Department of Housing and Urban Development. Under the guidance, those offering proprietary reverse mortgages would be encouraged to follow or adopt relevant HECM requirements for mandatory counseling, disclosures, affordable origina-

tion fees, restrictions on cross-selling of ancillary products and reliable appraisals.

If adopted, the guidance will be issued to regulated institutions, which “will be expected to use the guidance in their efforts to ensure that their risk management and consumer protection practices adequately address the compliance and reputation risks raised by reverse mortgage lending,” the FFIEC notice states.

NCUA intervenes in WesCorp suit

NCUA, as conservator of Western Corporate FCU, on Dec. 30 filed papers in Los Angeles superior court to intervene as plaintiff in a lawsuit filed by seven credit unions against current and former WesCorp employees and officials.

NCUA says it should replace the current plaintiffs and decide whether to take such action. See the Jan. 11 *UPDATE* for more.

Fed proposes Reg D term deposits

The Federal Reserve Board is proposing to allow term deposits at the Fed by credit unions, banks, thrifts and other eligible institutions under Regulation D but maintained apart from required reserves.

The proposal, out for a 30-day comment period, is presented as a possible tool for the Federal Reserve in its conduct of monetary policy.

If offered, the term deposits could be used to collateralize discount window advances. However, they could not be withdrawn prior to maturity, would not satisfy required reserve balances or contractual clearing balances and would be unavailable to clear payments or cover daylight or overnight overdrafts.

The Fed is making its proposal under the same regulatory relief statute, sought by NAFCU, that gave rise to the Fed’s payment of interest on Regulation D reserves.

The proposal will be published soon in the *Federal Register*.

2 new regs in effect

NCUA final rules took effect Jan. 1 regarding overdraft disclosures and the asset base for federal credit union operating fees.

The first, provided under NCUA’s truth in savings rule, affects electronic disclosures and subjects all credit union overdraft fees to disclosure on periodic statements. The second, regarding operating fees, excludes federal credit union investments in the Credit Union System Investment Program and the Credit Union Homeowners Affordability Relief Program from the calculation of total assets upon which their operating fees are based.

A final rule also kicks in Feb. 14 under the Higher Education Opportunity Act. The Federal Reserve Board rule revises Regulation Z to require new disclosures for private student loans at application or solicitation, at approval and after consummation.

Go to www.nafcu.org/regulation for more.

Winner chosen in NAFCU events/education survey

Bill Witting, chief financial officer of Ohio FCU in Cleveland, is the first winner of NAFCU's 2010 Events and Education survey and has received a free registration to next month's NAFCU-DDJ Myers Strategic Leadership Development course.

Responses to the survey will aid in the development of NAFCU's educational offerings. NAFCU will select a winner from survey participants to attend each one of its events for next year. The grand prize includes free hotel accommodations and registration for NAFCU's 43rd Annual Conference & Exhibition in Chicago.

Witting, during the NAFCU-DDJ Myers

course, plans to focus on how his personal leadership style supports his role in the credit union. "I'm looking forward to attending to learn new tools for effectively communicating strategic changes that we are making at our credit union," he said.

NAFCU's 2010 conferences are priced at 2008 rates and are open to members and non-members.

Also, those purchasing NAFCU's 2010 unlimited webcast subscription package will have access to the live and archived webcasts for a flat rate.

For more on the survey and conference offerings, go to www.nafcu.org/events.

CUs, city partner on payday loan alternative

Six San Francisco-area credit unions, including one NAFCU member, teamed up recently with the city of San Francisco to launch a new short-term loan program aimed at providing a consumer-friendly alternative to for-profit payday loans.

NAFCU-member San Francisco FCU, Patelco CU, Spectrum FCU, Mission Area FCU, Redwood CU and Northeast Community FCU will be offering Payday Plus SF, a low-cost alternative to the types of payday loan products popular at check cashing servicers and payday lenders.

Through Payday Plus SF, eligible borrowers can get short-term loans up to \$500, with low interest rates, financial counseling and an extended repayment term. The pro-

gram seeks to help borrowers avoid high-interest-rate payday loans, some of which charge up to 400 percent annual interest.

Other key elements include:

- ◆ a maximum APR of 18 percent;
- ◆ the ability for borrowers to build credit as the loan is repaid over a period of up to 12 months;
- ◆ increased ability to reduce existing debt;
- ◆ a limit of three loans per year, with each loan paid in full before another loan is granted; and
- ◆ financial education offerings.

Under the partnership, the city will help market the program and refer potential participants to the credit unions that offer it.

All paper checks to Cleveland Feb. 26

The Federal Reserve Bank of Atlanta will stop accepting paper checks for processing after 12:01 a.m. Eastern time on Feb. 26, according to a the Federal Reserve.

After that, paper forward and return items that previously would have been processed in Atlanta should be delivered by mail or courier to the Cleveland office.

Mailing to the Cleveland office should begin Feb. 25, the Fed noted. Anything mailed after Feb. 26 will be sent to the Cleveland office. Credit and availability will be based on when items arrive.

HMDA exemption unchanged in 2010

The asset-size exemption for Home Mortgage Disclosure Act reporting remains at \$39 million for 2010, the Federal Reserve Board recently announced.

The Fed adjusts the exemption based on its review in the fall of the consumer price index for urban wage earners and clerical workers.

NAFCU held a webcast Dec. 2 regarding HMDA compliance for those working on their 2009 mortgage loan/application registers; go to www.nafcu.org/archivedwebcasts.