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**March 15, 2010**

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## NAFCU watches for Dodd's reg reform bill CFPA, large-firm wind-down costs unresolved

Senate Banking Chairman Chris Dodd, D-Conn., said he plans to unveil a draft financial industry regulatory reform bill today, and NAFCU is continuing its efforts to ensure against credit unions being unfairly subject to added regulatory burdens.

It remains unclear how the package will ultimately address consumer protections, but recent reports indicate that Dodd is focused on placing the proposed Consumer Financial Protection Agency within the Federal Reserve with some independent rulemaking and enforcement authorities. Also, the proposal may not extend the new agency's authority to unregulated entities such as payday lenders and non-federally regulated mortgage brokers – a troublesome notion for NAFCU.

NAFCU President Fred Becker wrote Dodd and Senate Banking Ranking Member Richard Shelby, R-Ala., March 9 urging that bad actors within the financial services industry be included within the CFPA's purview. "We hope that any final bill will be one that recognizes the good actors such as credit unions while reining in the unregulated entities in the financial services marketplace before they prey on consumers once again," said Becker.

### ☐ At an impasse

In an announcement last week, Dodd spoke of the work that the banking panel has undertaken to forge a consensus bill. "Together we have made significant progress and resolved many of the items, but a few outstanding issues remain," said Dodd. Sen. Bob Corker, R-Tenn., indicated that he and Dodd have come to an impasse on the issue of the proposed CFPA. The pair began negotiating to craft a bipartisan reform measure in February, and Corker

has expressed concerns about creating an independent CFPA and separating responsibility for consumer protection from safety and soundness. He said that he plans to continue working with the committee to shape bipartisan financial regulatory reform.

Dodd is hoping the measure moves through Senate Banking prior to the Easter recess. The Senate schedule is filling up quickly, which will make it difficult for consideration of the package otherwise, according to NAFCU Director of Legislative Affairs Brad Thaler. Dodd plans to hold a committee markup next week.

### ☐ Systemic risk still at issue

In regulatory reform negotiations last week, the panel was still hammering out details on covering the costs of closing large, at-risk financial firms. Any exemption from such fees was still under consideration.

NAFCU is continuing to urge a \$50-billion-in-assets threshold, indexed to inflation, for institutions subject to such fees, as is provided in H.R. 4173.

The National Military Family Association has echoed NAFCU's concerns regarding the costs of winding down at-risk financial firms. Writing to Dodd and Shelby, Mary Scott, chairman of NMFA's board of governors, said, "military credit unions and their members should not be penalized for poor management by other financial institutions. We urge you to protect the financial needs of our service members and their families, especially in a time of war, by excluding non-for-profit institutions from your legislation."

The Senate regulatory reform bill that is expected today is a substitute to the one Dodd unveiled in November.

## NAFCU: MBL efforts bolstered by 100 cosponsors

With the list of H.R. 3380 cosponsors rising to 100 last week, NAFCU lobbyists are seeing growing opportunity in efforts to win action on a credit union member business loan cap lift.

H.R. 3380 sponsors Paul Kanjorski, D-Pa., and Ed Royce, R-Calif., recently circulated a new "Dear Colleague" letter in an effort to win additional cosponsors. Ten more signed on March 9, bringing the total to 100. In the Senate, Majority Leader Harry Reid, D-Nev., has also signed on as a cosponsor to S. 2919. Both bills would raise the MBL cap from 12.25 percent to 25 percent of credit union assets.

NAFCU is continuing to seek inclusion of

an MBL cap lift in any final jobs legislation, and the piecemeal approach now being taken between the House and Senate offers multiple opportunities for doing so. In the House Ways and Means Committee, Acting Chairman Sander Levin, D-Mich., is working on a package of up to \$13 billion in small-business tax incentives. The committee is also looking at a Senate-passed bill providing some \$140 billion in tax breaks, health care measures and unemployment benefits.

"We see real opportunity in the current climate for getting some forward movement on an MBL cap lift," said NAFCU Director of Legislative Affairs Brad Thaler.

## Geithner testifies on fiscal 2011 budget

Treasury Secretary Tim Geithner last week testified before a House Appropriations subcommittee on his department's fiscal 2011 budget plan, including a proposed increase to \$250 million in the Community Development Financial Institutions Fund appropriation.

The plan also addresses the use of Troubled Assets Relief Fund money in a program to provide capital to community banks for small business lending.

The CDFI funding proposal was well received by subcommittee Chairman José Serrano, D-N.Y., but Rep. Adam Schiff, D-Calif., expressed skepticism of the TARP plan, saying it doesn't offer enough incentives for the community banks to participate; he added they may not use the funds for their intended use.

There was no specific mention of a recently launched Community Development Capital Initiative targeting CDFI-certified credit unions serving low-income communities. However, Rep. Chaka Fattah, D-Pa., asked why credit unions could not be involved in more new lending programs, particularly since credit unions are more likely to lend than banks.

In other comments, Geithner said the administration may, for discussion purposes, release general reform principles on how to move forward on Fannie Mae and Freddie Mac, which remain under conservatorship, but that no specific action is planned until next year.

In other Hill news, the House Financial Services Committee held a hearing Tuesday

on the CDFI Fund and its efforts to serve distressed communities. Treasury Assistant Secretary for Financial Institutions Michael Barr cited North Side Community Development CU of Chicago as one example of a CDFI working to ensure innovative, responsible and affordable financial products and services to its community.

### Lawmakers discuss FHA reform bill

A House subcommittee hearing last week examined Federal Housing Administration program requests, which include raising maximum monthly premiums and authority to terminate lenders from FHA programs.

Those measures, along with a proposed indemnification requirement, are addressed in a discussion draft of the FHA Reform Act, posted online March 10.

FHA Commissioner David Stevens was among the witnesses at the House Financial Services Subcommittee on Housing and Community Development hearing. In January, he released a set of changes aimed at rebuilding FHA's reserves and promoting more private mortgage lending.

These include an increase to 2.25 percent in the up-front mortgage insurance premium a borrower must pay at loan settlement beginning April 5. The FHA also plans to seek comments on a proposal to set 580 as the minimum FICO score required to qualify for the minimum down payment of 3.5 percent; others would be required to pay 10 percent. The proposed changes will soon be published in the *Federal Register*.

## RegFlex, merger rules on the table

**A report on the share insurance fund plus proposed rules on RegFlex and mergers and conversions** to non-credit union charters are key items on the agenda of Thursday's open NCUA Board meeting.

The RegFlex proposal affects parts 701, 723 and 742 of the agency's rules and regulations; part 723 addresses member business loans. The mergers and conversions proposal, which also covers fiduciary duties, addresses parts 701, 708(a) and 708(b), and follows the agency's January 2008 advance notice of proposed rulemaking.

The board will also be asked to release the agency's 2010-2015 strategic plan for a 60-day comment period.

## CRA raised in hearing

**Treasury and Community Development Financial Institutions Fund officials said last week** that the Community

Reinvestment Act helps encourage investment in CDFIs but stopped short of agreeing that the CRA should be expanded.

House Financial Services Chairman Barney Frank, D-Mass., raised the issue in a March 9 hearing.

Frank has said he wants to expand the CRA to cover more institutions.

NAFCU continues to oppose the CRA expanded to cover credit unions.

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## NAFCU: Legacy assets key to corporates' future

NAFCU President Fred Becker last week conveyed general support for NCUA's proposed corporate credit union regulation, but he warned that the outcome for credit unions and the federal share insurance fund of a final rule will depend largely on NCUA's success in segregating the corporates' legacy assets.

"The future of the corporate credit union system is at a critical juncture," Becker said in an official comment letter on the proposed rule. "Accordingly, the path that the agency chooses to take will have long-term impact not only for corpo-

rate credit unions, but our industry as a whole."

Becker said credit unions are clearly concerned about their potential reinvestment in corporate credit unions if there is a chance that their capital will be further depleted by legacy assets. There also are concerns about how losses from such assets will affect the National Credit Union Share Insurance Fund, he added.

When the rule goes into effect, Becker said, "the resulting structure must pose the least risk to the share insurance fund and credit unions must see clear evidence of this loss mitigation." He told NCUA

that NAFCU welcomes the opportunity to comment on how NCUA's plan for segregating the legacy assets and implementing its rule will combine to provide a comprehensive solution.

As to the future role of corporates, Becker said natural person credit unions will ultimately determine corporates' overall nature and extent, but he said NAFCU believes the corporate system "should continue to provide, at a minimum, a central depository for payment systems functions." He added that membership in corporates should not be a factor in access to such functions.

## NAFCU sends NCUA input on merger processes

NAFCU President Fred Becker on Thursday provided NCUA Chairman Debbie Matz several suggestions for helping to make the facilitated-merger process, and purchase-and-assumption process, more open and accessible to credit unions interested in assisting these efforts.

"First and foremost, I would like to express my sincere appreciation for your time and attention to this matter," wrote Becker. "For a number of years, NAFCU has been requesting that NCUA review and reveal the general process it follows in these merger situations; thus, we are appreciative that you are willing to address our concern."

Becker wrote Matz in January on this issue. Matz responded last month with an invitation for suggestions from NAFCU on how to make the merger process more efficient.

Matz also said the agency does have a process for inviting potential merger partners and P&A proposals, but this is not formalized in regulation. On Thursday, Becker urged that that process be made public. In the meantime, he suggested the following:

- ◆ issue specific guidance for credit unions interested in merging with other credit unions or participating in a P&A;
- ◆ have the NCUA regional offices make a depository available on a quarterly basis for credit unions;
- ◆ publish a priority list of charter types NCUA prefers in different circumstances;
- ◆ in requests for proposals, provide a timeline for the merger process;

- ◆ allow public review and comment before setting a uniform process for all regions.

Becker said the above would benefit credit unions as well as NCUA, allowing capable institutions to participate in the assisted merger process and helping to make that process more efficient and productive.

### BSA guidance clarifies customer due diligence

The Financial Crimes Enforcement Network and federal financial regulators, including NCUA, recently released guidance to clarify and consolidate their expectations for obtaining beneficial ownership information for certain accounts.

The guidance relates to Bank Secrecy Act/anti-money laundering compliance program requirements.

Information on beneficial ownership in account relationships is one more tool that can be used to better understand and address money laundering and terrorist financing risks, guard against criminal activity and help law enforcement, FinCEN noted.

The guidance doesn't replace or revise previously issued rules or guidance. It addresses types of customer due diligence procedures and their applicability to private banking and foreign correspondent accounts. It notes that covered institutions (including credit unions) are prohibited from opening and maintaining correspondent accounts for foreign shell banks.

### Credit CARD Act on CAC agenda

**The Federal Reserve Board's Consumer Advisory Council is slated to meet March 25** to discuss recently proposed Credit CARD Act rules and foreclosure mitigation.

The council will discuss recently proposed Regulation Z amendments released to implement Credit CARD Act provisions set to take effect Aug. 22. In addition, it will discuss the administration's Making Home Affordable program and other mortgage loss-mitigation efforts.

The March 25 meeting is open to the public, but registration is required by March 23. For more, go to [www.federalreserve.gov/newsevents/press/other/other20100310a1.pdf](http://www.federalreserve.gov/newsevents/press/other/other20100310a1.pdf).

### CDFI Fund seeking comments

**The Community Development Financial Institutions Fund is taking comments until May 7** on issues related to the fund's activities and statutory authorities.

The request for comments, published in the March 8 Federal Register, addresses CDFI Fund financial and technical assistance awards, Native initiatives and Bank Enterprise Awards. The fund is considering whether to seek technical or substantive revisions to the program's underlying statute.

## CUs' share of consumer credit down to 9.52%

January was not a strong month for credit union consumer credit portfolios as the industry's share of the total market fell 4 basis points to 9.52 percent.

The Federal Reserve's consumer credit report for January, released March 5, showed that financial services institutions overall performed better than credit unions. The former's consumer credit total fell by \$3.8 billion in January on a non-seasonally adjusted basis, or 1.8 percent. NAFCU Staff Economist Katrin O'Connor said that compared with a 7.1 percent drop for credit unions.

Total consumer installment credit for overall financial institutions increased 2.4 percent to \$2.46 trillion, on a seasonally adjusted, annualized basis.

At credit unions, total consumer lending fell from \$237.2 billion in December to \$235.8 billion in January on a non-seasonally adjusted basis. Non-revolving credit union consumer lending dropped by \$0.8 billion to \$200.9 billion during January, while revolving credit fell by \$0.5 billion to \$34.9 billion.

Credit unions' share of non-revolving credit declined 17 basis points to 12.54 percent; their share of revolving credit rose 2

basis points to 3.98 percent.

Over the coming months, consumer credit is expected to remain volatile with an overall downward trend, O'Connor said.

### Q&A on mortgage licensing act online

Credit unions may see a final regulation from NCUA in the near future regarding their responsibilities under the Secure and Fair Enforcement For Mortgage Licensing Act, but in the meantime they can look to an online Q&A for background.

The FDIC has already approved a final regulation, and the other federal financial institution regulators, including NCUA, are expected to follow suit once a review is completed at the Office of Management and Budget.

The draft rule will be finalized by the agencies once the Office of Management and Budget completes a review.

For more details, go to [www.ffiec.gov/safeact.htm](http://www.ffiec.gov/safeact.htm).

The NAFCU Compliance Blog also addressed this issue Friday. To see/join the conversation, go to [www.nafcucplianceblog.typepad.com](http://www.nafcucplianceblog.typepad.com).

## February job report shows outlook for gains

**February's better-than-expected employment report indicates that the labor market is on track to produce jobs again soon, NAFCU Staff Economist Katrin O'Connor said.**

The Bureau of Labor Statistics reported March 5 that non-farm payrolls in February dropped by 36,000. O'Connor noted that job losses were less severe than expected, and "that's a step in the right direction."

Average hourly earnings for all employees increased by 0.1 percent from \$22.43 in January to \$22.46 in February. Year over year, average hourly earnings were up 1.9 percent.

The unemployment rate, which is derived from a separate survey, remained unchanged in February at 9.7 percent.

"Additionally, strong gains in temporary service jobs, a leading indicator for job creation, continued in February."

She said payrolls are expected to slowly improve throughout 2010 but that the unemployment rate will likely remain elevated "for some time."

## 7(a) guarantee, fee waiver reset

**The Small Business Administration resumed its 90 percent 7(a) loan guarantee and its fee waiver**, two provisions strongly backed by NAFCU last week under recently enacted reauthorization legislation that will also support about \$1.8 billion more in small business loans.

The reauthorization of higher guarantee levels expires March 28 for

7(a) loans. Fee relief is available until the additional funding runs out or the end of the fiscal year, Sept. 30, whichever comes first. NAFCU is urging Congress to make the higher guarantee permanent.

The higher guarantee helps maximize a credit union's small-business lending capacity: Each 7(a) loan dollar guaranteed by SBA is excluded from a the member business loan cap.

## ID theft prevention firm settles with FTC

LifeLock Inc., an identity theft protection provider, has agreed to pay \$12 million to the Federal Trade Commission and a group of state attorneys general related to charges the company falsely claimed it could guarantee protection against ID theft.

FTC charged that the company's fraud alerts only protected consumers from certain kinds of ID theft and gave them no protection against the misuse of existing accounts, which the FTC says is the most common type of ID theft. As part of the settlements, LifeLock is barred from making deceptive claims or misrepresenting the "means, methods, procedures, effects, effectiveness, coverage or scope of any identity theft protection service."

"While LifeLock promised consumers complete protection against all types of identity theft, in truth, the protection it actually provided left enough holes that

you could drive a truck through it," said FTC Chairman Jon Leibowitz. Illinois Attorney General Lisa Madigan said the settlement will prevent LifeLock from misrepresenting that its services offer absolute prevention of ID theft because "there is unfortunately no foolproof way to avoid ID theft." She also noted that consumers can take steps to lessen the chances their personal information will be compromised.

Credit unions can educate members about ID theft prevention with statement inserts from NAFCU. "Protecting Yourself from Identity Theft" tells members of the warning signs of ID theft. Another useful insert, "ID Theft: What To Do If You Become a Victim," informs members of immediate actions to take if their identity is compromised.

For more information on NAFCU's statement inserts and other materials, visit [www.nafcuc.org/inserts](http://www.nafcuc.org/inserts).