



# UPDATE<sup>®</sup>

**Credit CARD Act rule on gift cards out** p.2

**March 29, 2010**

## In This Issue

### Reg reform moves to full Senate

NAFCU works to negotiate fixes . . . p.1

### Housing finance reforms eyed

Rep. Paul Kanjorski, D-Pa., said CU lending will be supported . . . . . p.2

### End of FFELP near

NAFCU urges preservation of student lending program . . . . . p.2

### Anticipating 'legacy assets' plan

Plan may be ready in June . . . . . p.3

### Risk statement effective in May

Liquidity risk emphasized . . . . . p.3

### Clarification sought

NAFCU urges NCUA to clarify LICUS' ability to participate in CDC . . . . . p.3

### Homes sales down

New-home sales at historic lows . . . p.4

### HAMP effectiveness at issue

IG office notes assisted borrowers could default again . . . . . p.4

### Holding onto TARP funds

Some community banks have yet to pay dividends for TARP . . . . . p.4

### Expanding VITA

IRS, NCUA look to grow program by modifying agreement . . . . . p.4

Free NAFCU/Fannie webcast . . p.2

Corporates' use of MCS noted . . p.3

Tracy FCU conserved . . . . . p.3

More banks close . . . . . p.3

## NAFCU pressing for reg reform fixes

As the most recent proposal to restructure financial services moves toward Senate action, NAFCU continues its efforts to mitigate the potential increase in regulatory burden for credit unions.

The Senate Banking Committee approved a reform package presented by Chairman Chris Dodd, D-Conn., on a party-line vote of 13-10 last Monday after about 20 minutes of discussion. Members refrained from acting on the roughly 400 amendments filed, opting to leave that debate for the Senate floor. The panel did approve a 114-page manager's amendment to improve the package.

NAFCU President Fred Becker wrote Dodd and Ranking Member Richard Shelby, R-Ala., last week on key issues, which NAFCU lobbyists will pursue as the measure is considered. Additionally, he launched an e-mail late Wednesday urging association members to contact key senators and seek their support for amendments to ensure all credit unions are excluded from direct oversight of the proposed new consumer entity; and to press for a continued federal preemption for credit unions and other institutions.

NAFCU is also urging that no credit union be required to pay for the wind-down of large, highly complex firms.

### Views shared with Treasury

NAFCU sought to further advance credit unions' interests in a March 25 roundtable discussion with Treasury Secretary Tim Geithner and military advocacy groups on consumer protections for service members under regulatory reform. In that meeting, Javier Sanchez, NAFCU's military liaison, touted the strong consumer protections provided by credit unions.

Sanchez focused on credit unions' efforts to bring troops and their families into a

### Comments on reg reform\*

♦ "I do not believe Montana's community banks and credit unions caused the economic crisis, and I do not believe they should have to pay for the sins of Wall Street."

— Sen. John Tester, D-Mont.

♦ Removing consumer protection from safety and soundness regulation "puts consumers at greater risk."

— Sen. Judd Gregg, R-N.H.

♦ "The bill is not perfect . . . I am hopeful that bipartisan conversations will continue."

— Sen. Tim Johnson, D-S.D.

♦ "The bill we passed is a good starting point . . ."

— Sen. Bob Menendez, D-N.J.

♦ "We will have reform this year."

— Chris Dodd, D-Conn., Chairman

\*excerpts from *Wall Street Journal* blog

secure, well-regulated financial system so they don't turn to payday lenders and other predatory outfits. He also noted the financial education that credit unions provide. He told Geithner that, through safe products, education and their relationship with the Defense Department, credit unions offer great consumer protections and contribute to troops' national readiness.

Thursday's meeting was led by Geithner and Michael Barr, Treasury's assistant secretary for financial institutions. Participants also included, among others, David Julian, director of personal finance for DoD; Marcus Beauregard, director of DoD's financial readiness campaign; leaders from the Navy-Marine Corp Relief Society; the National Military Reserve Family Association; CUNA; and the Consumer Federation of America.

Congress is slated to remain in recess through April 9. The Senate will take up the reform package in the weeks following.

## Credit CARD Act rule on gift cards final

The Federal Reserve Board last week issued a final Credit CARD Act rule that, effective Aug. 22, will govern how issuers of electronic gift cards set fees and expiration dates for the cards.

The final rule, issued under Regulation E, implements the gift card provisions in the law. It covers network-branded gift cards and retail gift cards.

Under the rule, financial institutions, including credit unions, will be barred from charging dormancy, inactivity and service fees on gift cards unless the consumer has

not used their cards for at least one year. In addition, charging such fees more than once a month is prohibited, and consumers must be provided with clear and conspicuous disclosures about the fees. Expiration dates for funds attached to gift cards must be set for at least five years after the card is issued or from when funds were last loaded on the cards.

Last Wednesday, the NAFCU Compliance Blog noted the Federal Reserve's final rule, which will be published soon in the *Federal Register*.

## Housing finance reform to support CU lending

A reformed housing finance system will continue to support lending by credit unions and community banks, Rep. Paul Kanjorski, D-Pa., said last week.

Kanjorski made the comment in remarks for a March 23 House Financial Services Committee hearing on housing finance reform, the first in a series of hearings to be held on this topic.

As debate on housing finance takes place, Kanjorski said, his goals will be to "establish a more stable, long-term funding source to help average Americans buy a home; limit taxpayer risk through strong regulation; and ensure that the housing finance system continues to support community bank and credit union lending."

Committee Chairman Barney Frank, D-

Mass., read aloud most of a NAFCU letter sent the previous day recognizing that Fannie and Freddie will likely transition to a new model; NAFCU urged that their roles not be compromised. A video clip of Frank with the letter was posted at CNBC.com.

Treasury Secretary Tim Geithner, who testified at the hearing, said Treasury will release questions to the public for comment on housing finance reform by April 15.

Geithner said the reform plan – still not expected to be released until next year – will address not only the entities involved in housing finance but the government's role in it. Any restructuring of Fannie Mae and Freddie Mac, he added, will be accomplished as part of a reform of the wider housing finance system.

## FFELP elimination near final passage

Senate Republicans were able to identify minor problems with a health care reconciliation package Thursday that delayed somewhat a vote on final passage, but the measure went back to the House and was expected to pass with student loan revisions intact.

Presuming enactment, the package will bring the end, as of July 1, of the Federal Family Education Loan Program, which has allowed credit unions and other lenders to offer government-backed student loans to their members and customers. Those loans will now all be provided directly by the federal government.

NAFCU urged the preservation of the FFELP, since it has allowed credit unions to provide personalized service to members seeking federal education loans.

The package has no impact on private

student lending, the subject of a Federal Reserve Board final rule last year regarding disclosure and branding. That rule took effect Feb. 14. For the final rule, go to [www.nafcu.org/regulation](http://www.nafcu.org/regulation) and get Final Regulation 09-EF-13.

## Credit CARD Act comments due

NAFCU members have until April 2 to submit their comments to the association on the Federal Reserve's proposed Credit CARD Act amendments to Regulation Z affecting late-payment and penalty fees, and rate hikes.

The law sets an effective date of Aug. 22. The proposal would, among other things, ban penalty fees exceeding the amount of the transaction at issue. For more, visit the Regulation section of NAFCU's Web site ([www.nafcu.org](http://www.nafcu.org)).

## Free Fannie Mae webcast tomorrow

**NAFCU members can still register for the tomorrow's free webcast** on how to become a Fannie Mae-approved mortgage provider and the benefits they can enjoy through the association's alliance with the entity.

The NAFCU webcast, exclusively for members, features Fannie Mae Affinity Relationship Manager Tammy Trefny and Credit Risk Manager Tom Ruggieri. They will discuss the approval process for becoming a Fannie Mae-approved seller and the benefits of the NAFCU/Fannie Mae Affinity agreement.

This webcast was originally slated for Feb. 11 but was rescheduled due to the area's heavy snowstorms. It is slated to run tomorrow from 2-3:30 p.m. Eastern. For more, visit [www.nafcu.org/fanniema](http://www.nafcu.org/fanniema).

## Matz hires Colford

**Christopher Colford has been hired to handle communications strategies and programs** for NCUA Chairman Debbie Matz, the agency announced recently.

Colford will be Matz's senior advisor for communications. He has held positions previously with McKinsey & Company and Hill & Knowlton Public Affairs Worldwide.

During the Clinton administration, he served as special assistant to then-Securities and Exchange Commission Chairman Arthur Levitt.

## NAFCU UPDATE

Chair, Board of Directors

**Bradley W. Beal**

President

**Fred R. Becker Jr.**

### Editorial staff

Executive Editor

**Jay H. Morris**

Editor

**Susan M. Broaddus**

Associate Editor

**Chrisalyn M. Santos**

NAFCU UPDATE® is published weekly by the National Association of Federal Credit Unions to provide member-federal credit unions and their officials with the latest information that has an impact on their operations. Comments and inquiries should be directed to Editor. Fax to NAFCU's business offices: 703-524-1082. Phone: 703-522-4770. Send e-mail to [update@nafcu.org](mailto:update@nafcu.org). For daily news, visit NAFCU's Web site at [www.nafcu.org](http://www.nafcu.org).

## NAFCU eager to see 'legacy assets' plan

NAFCU welcomes the opportunity to review NCUA's plan for dealing with corporate credit unions' "legacy assets," which NCUA Chairman Debbie Matz said may be brought before the agency board before the end of June.

"We look forward to vetting NCUA's proposal for resolving these assets," said Carrie Hunt, NAFCU's senior counsel and director of regulatory affairs. "We would like to see the plan earlier, but we want the agency to get it right."

NAFCU has pressed NCUA to address the matter of legacy assets as soon as possible in order to give natural person credit unions the information they will need to decide the extent of their support for corporates in the future, under pending revised rules for the corporate system. It is also urging that any plan for dealing with these assets limit costs to the National Credit

Union Share Insurance Fund as much as possible.

Matz, in written comments, addressed the legacy assets issue during a March 23 meeting of the Missouri Credit Union Association. She didn't state whether the plan for resolving the legacy assets would be released to credit unions in June or later, or whether that will occur during an open board meeting or in some other venue. The board's June open meeting is slated for the 17th; the next is set for July 29.

Matz did say that those working on the issue are focusing on removing the riskiest assets from ongoing corporates "while carrying forward the most valuable pieces of the corporate system." The plan would enable natural person credit unions to determine which corporates they will support and ensure those corporates move forward with "clean balance sheets," she said.

## Interagency statement on risk effective May 21

A recent interagency statement on funding and liquidity risk was published in the March 22 *Federal Register* and takes effect May 21, but agencies are accepting comments on the statement until April 21.

In comments last September, NAFCU urged against a one-size-fits-all approach for all credit unions, banks and thrifts. The agencies, in the final statement, said they "recognize that a depository institution's approach to liquidity risk management will depend on the scope of its business operations, business mix, and other legal or operational constraints."

The statement, proposed last July,

emphasizes the importance of cash flow projections, diversified funding sources, stress testing, a cushion of liquid assets and a formal, well-developed contingency funding plan as primary tools for measuring and managing liquidity risk.

Emerging amid last year's worsening financial market turmoil, the statement reiterates the importance of effective liquidity risk management in financial institution safety and soundness.

The joint statement was released by NCUA and the others members of the Federal Financial Institutions Examination Council.

## LICU capital rule clarification sought

NAFCU urged NCUA last week to clarify the ability of low-income credit unions participating in the Treasury Capital Development Program to redeem matching secondary capital early.

NAFCU was writing NCUA on an interim final rule approved last month to facilitate low-income credit unions' participation in the CDC. The CDC is open to community development financial institution-certified credit unions, and by current definitions, all low-income credit unions are eligible to seek such certification.

The interim final rule allows an LICU to

redeem secondary capital from the government plus secondary capital accepted to match those funds anytime after the capital has been on deposit for two years. Tessema Tefferi, NAFCU's associate director of regulatory affairs, said the association appreciates the need for the rule changes to facilitate CDC participation, but it's unclear how this rule applies where government-funded secondary capital is only matched partially.

Tefferi said NAFCU is asking NCUA to clarify the rule to avoid ambiguity and confusion about the eligibility of partially matching funds for early redemption.

## MCS available in notice period

**A corporate can use funds in a member credit union's capital share account** to cover losses exceeding retained earnings and paid-in capital even if the member has provided notice it intends to withdraw them, NCUA said in a recently released legal opinion letter.

For the opinion, go to [www.ncua.gov/news/express/xfiles/10-0147.pdf](http://www.ncua.gov/news/express/xfiles/10-0147.pdf).

## Tracy FCU placed in conservatorship

**NCUA placed the \$24-million-in-assets Tracy FCU of Tracy, Calif., in conservatorship**, the agency announced recently.

NCUA said it took the action to preserve member assets and ensure uninterrupted credit union service. Conservatorship enables the credit union to continue normal operations with expert management in place "correcting previous service and operational weaknesses," NCUA said. It notes that member funds are insured to \$250,000.

Tracy FCU has 5,900 members. Its financial performance reports show net losses in each of last year's four quarters.

## 7 more banks closed by FDIC

**The FDIC on March 18 closed seven more federally insured banks** and estimated aggregate costs to the Deposit Insurance Fund of about \$1.28 billion. The closures bring the year's total to 37.

Through February, NCUA reports that six credit unions have failed, with cost to the National Credit Union Share Insurance Fund totaling about \$6.7 million.

## Share financial basics

**Tips on planning for one's middle years and retirement** are offered in three new NAFCU statement inserts; go to [www.nafcu.org/inserts](http://www.nafcu.org/inserts).

## Historic low for new-home sales in February

New-home sales fell unexpectedly in February to the lowest level on record since 1963, providing more evidence that the housing market remains on shaky ground, NAFCU Staff Economist Katrin O'Connor said last week.

The U.S. Census Bureau said new-home sales declined an annualized 2.2 percent in February and were down 13 percent from a year ago. O'Connor cited a number of factors for the decline, including strong competition from the existing-home sales market.

The median new-home price, non-seasonally adjusted, surged 6.1 percent last month and 5.2 percent from February 2009. "However, home prices tend to be volatile, and homebuilders will likely reduce prices

again to compete with the discounted prices for foreclosed homes."

While new-home sales should stabilize this year, sales are expected to remain very weak, she said.

### □ Dip in existing home sales

February was the third straight month of declining existing-home sales, O'Connor said. Data from the National Association of Realtors showed sales down 0.6 percent on a seasonally adjusted, annualized basis.

Of particular significance, O'Connor noted, was that year-over-year sales increased 7 percent and were up in every housing region from one year ago. "Though sales continue to be tepid, the data confirm that the market has made noticeable improvements over the last 12 months."

## IG office questions HAMP effectiveness

Treasury's current estimate of homeowners that will benefit from the Home Affordable Modification Program may represent a small fraction of future foreclosures, putting the program's effectiveness in question, the Office of the Special Inspector General for the Troubled Assets Relief Program says.

Treasury and the Department of Housing and Urban Development reported a 45 percent jump in permanent mortgage modifications from January to February. But last week's IG report says even Treasury describes as "disappointing" the 168,708 modifications facilitated so far.

A Treasury official currently estimates that the program will assist up to 2 million homeowners, which is about half of the program's original goal, according to the report. Even if the HAMP program accomplishes its current goal, it may simply stall foreclosures as large numbers of homeowners default again, the report noted.

The report recommended that Treasury focus on permanent modifications and track them to measure the program's success. Also, it suggested that Treasury re-examine the program's structure.

### Rule proposed on new CDFI fund

The Community Development Financial Institutions Fund recently published a notice of funds availability and a proposed rule in the *Federal Register* for implementing the Capital Magnet Fund.

The funds will be used to support CDFI-certified institutions as they provide financial assistance to stabilize or revitalize low-income areas or underserved rural areas. It includes a strong emphasis on affordable housing. (Go to [www.cdfifund.gov](http://www.cdfifund.gov))

Comments on the proposal are due May 14. Requests for financial assistance are due April 15. A total of \$80 million is appropriated for awards given in fiscal 2010; individual awards are capped at \$12 million.

## CUs learn compliance essentials at NAFCU Regulatory Compliance School



*Credit unions learned the latest regulatory compliance requirements at NAFCU's Regulatory Compliance School last week in National Harbor, Md. (Left) Students actively participated in classroom discussion. (Right) NCUA Staff Attorney Tonya Green focused her remarks on credit card rules. (NAFCU photos)*

## Community banks holding TARP money

**"Hundreds" of community banks are holding onto funds they have received through the Troubled Assets Relief Program** since it began providing assistance in late 2008, *The Washington Post* recently reported.

The March 18 report says that more than 10 percent of these 700 institutions also have yet to pay the quarterly dividend to Treasury required by the program.

The story refers to an analysis by Linus Wilson, a finance professor at the University of Louisiana at Lafayette. "Wilson calculated that banks now have missed a total of \$205 million in dividend payments to the government," the story says.

The report was published as Treasury is pressing Congress for authority to provide community banks capital assistance through TARP in hopes they will increase their lending to small businesses.

NAFCU is continuing to press Congress for a solution that would not cost taxpayers: Raise the credit union member business loan limit from 12.25 percent to 25 percent of credit union assets. Both H.R. 3380 and S. 2919 would implement that increase.

## NCUA, IRS seek to grow VITA program

**NCUA and the IRS, partners in the Volunteer Income Tax Assistance program, are working to modify their agreement** in order to address the needs of low-income persons and the creation of credit union relationships.

The two offices are working to include these modifications in their memorandum of understanding. The MOU revisions are aimed at providing a renewed emphasis on the IRS Financial Education and Asset Building Program.

NCUA Chairman Debbie Matz is encouraging credit unions to make full use of the VITA program, to seek VITA grants and to offer no-cost financial counseling and education to members.