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NAFCU weighs in on overdraft proposal

The Federal Reserve Board’s proposed regulatory changes regarding overdraft protection do not reflect the real costs and risks credit unions take on when addressing accounts with insufficient funds, NAFCU said last week.

In a March 31 official comment, NAFCU Associate Director of Regulatory Affairs Dillon Shea said the association is concerned about the scope of the Federal Reserve’s proposed amendments to Regulation E and Regulation DD that pertain to overdraft protection.

A key problem is that the proposal does not account for financial institutions not having real-time knowledge of consumer purchases, Shea said. Given this, the Fed Board should amend the rule to “provide a narrow exception in instances where institutions approve a transaction when adequate funds exist and are then contractually obligated to pay that transaction at a later

date when there are insufficient funds available.”

Shea pointed to the board’s recent proposed changes to Regulation Z regarding penalty fees as a useful template to address this. Using this approach, an institution would generally remain prohibited from assessing overdraft fees on consumers who have not opted in. However, in cases where an approved transaction settles on insufficient funds, the institution should be authorized to assess a fee determined by the board as “reasonable and proportional” to the violation.

Another option would be to authorize institutions to assess a fee that equals the amount of the overdraft. “Given that the board has recently proposed this structure for penalty fees on credit cards, NAFCU believes implementing a similar fee structure for overdraft penalties in these narrow circumstances is reasonable,” Shea said.

CUs urged to contact senators on reg reform

As Congress continues its recess this week, NAFCU is encouraging its members to contact their lawmakers and urge them to exclude all credit unions from authority of a proposed consumer financial protection entity and to preserve federal preemption under any regulatory reform package.

NAFCU President Fred Becker recently initiated this call to action regarding a Senate Banking Committee-approved reform bill that consolidates some bank regulatory functions, creates a systemic risk oversight council and establishes a Bureau of Consumer Financial Protection within the Federal Reserve Board.

The House and Senate are in recess through April 9. In a communication to members late March 24, Becker wrote that the real work on the measure is expected to

occur in April and May. “This means the time to weigh in with your senator is now,” he wrote.

Credit unions are being urged to press for amendments that would exempt credit unions outright from authority of the proposed Bureau of Consumer Financial Protection; with respect to the bureau’s examination and enforcement powers, exempt all credit unions regardless of asset size; and retain the current federal preemption for NCUA and other federal regulators. The White House reportedly is pressing for final Senate action on the bill by the end of May.

Credit unions with questions about the legislation can e-mail NAFCU’s Brad Thaler at bthaler@nafcu.org or Jennifer Wahlen at jwahlen@nafcu.org.

NAFCU Board nominating ballots sent to members

NAFCU's nominating committee mailed a slate of candidates to members last week for two at-large and the Region II and V seats affected in this year's NAFCU Board of Directors elections.

The committee's slate includes three incumbents and one new candidate:

- ◆ At-Large - Bob Marquette of Members 1st FCU (Pa.);
- ◆ At-Large - Ed Templeton of SRP FCU (S.C.);
- ◆ Region II - Charlie Thomas of Mid-Atlantic FCU (Md.); and

◆ Region V - Richard Harris of Caltech Employees FCU (Ca.).

The current Region V director, NAFCU Chair Brad Beal, will step down this year as he is completing his third consecutive, three-year term, the maximum permitted under NAFCU's bylaws.

Whether or not listed on the committee slate, each candidate must receive at least five nominating ballots in order to be included on this year's official election ballot. Names in addition to the above may be submitted, but they also need at

least five nominating ballots.

Nominating ballots are due back to the NAFCU Secretary by 5 p.m. Eastern on April 13. Official election ballots will be sent to members April 26 and will be due back to the NAFCU Secretary May 24.

This year's board election results will be announced July 22 during the NAFCU Annual Business Meeting, held in conjunction with the Annual Conference & Exhibition this July in Chicago.

For more, visit www.nafcu.org/2010elections.

Remittance fix urged for Senate reg reform

NAFCU President Fred Becker last week urged the leaders of the Senate Banking Committee to narrow provisions in the committee-approved regulatory reform bill to prevent everyday transactions from being treated as international remittances.

The provisions on remittances are in the manager's amendment that cleared March 22 as part of the committee-approved regulatory reform bill. The provisions set numerous disclosure and error resolution requirements for providers.

Becker, writing to Senate Banking Chairman Chris Dodd, D-Conn., and Ranking Member Richard Shelby, R-Ala., said these provisions cover more than what are usually defined as "remittances," as they extend to all international electronic

fund transfer services offered to credit union members in the normal course of business. This could include transfers that someone overseas initiates to take care of regular household financial obligations.

"NAFCU is concerned that the overly broad definition of a 'remittance' would affect all international electronic transfers of funds, including those that are not in fact transfers of money from immigrants in the United States back to their families in other countries," wrote Becker.

If enacted, he said, the current provisions could "force credit unions to terminate their international electronic transfer programs, and oblige their members to seek these same services at more costly non-traditional financial institutions."

HAMP, FHA changes to aid homeowners

Unemployed homeowners or those whose homes are worth less today than what they owe on them are the target of changes ahead for the Home Affordable Modification Program and Federal Housing Administration programs.

Some parts of the revamp will be implemented over the coming weeks, according to the Treasury and the Department of Housing and Urban Development. The rest are expected to be in place by the fall.

The revisions will make use of a \$50 billion allocation from the Troubled Assets Relief Program. The administration says this set of changes could help up to 3 to 4 million homeowners through 2012.

Briefly, the changes to HAMP allow reductions in mortgage payments for unemployed homeowners for at least three

months (up to six months for some borrowers) while they look for jobs. Principal write-downs are possible.

FHA programs are also being revised to make it easier for lenders and borrowers to restructure underwater mortgages.

Foreclosure mitigation hearing set

House Financial Services Chairman Barney Frank, D-Mass., plans a committee hearing April 13 to hear from Bank of America and other large banks on what they're doing to help homeowners avoid foreclosure.

Frank said the panel will urge banks to cooperate with the recently unveiled HAMP and FHA changes. Representatives of JPMorgan Chase, Citigroup and Wells Fargo are slated to testify.

Oral arguments set in Hudson Valley case

NAFCU will support Hudson Valley FCU later this month in a suit challenging New York's mortgage recording tax.

The association is seeking a state supreme court judgment in New York County to declare that the future imposition of New York's recording tax on mortgages to federal credit unions is unlawful and unconstitutional.

NAFCU filed a motion and brief as amicus curiae in this case to uphold federal credit unions' tax-exempt status. While this is one case affecting one credit union, NAFCU wrote, the imposition of mortgage tax would set a precedent that could be followed with respect to other FCUs in New York and elsewhere.

Arguments are set to be heard April 13 by Justice Judith Gische.

NAFCU UPDATE

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Becker marks Financial Literacy Month

NAFCU President Fred Becker gave a shout-out to the Move Your Money Campaign in a new Huffington Post blog entry Thursday that also marked the first day of Financial Literacy Month and NAFCU's foray into the realm of social media.

The launch on April 1, also April Fool's Day, seemed "the perfect time to help folks get smart about their financial choices and revisit the Move Your Money campaign," Becker wrote. "When it was launched, it ignited a firestorm among many who sought better service, products and rates from local financial institutions like credit unions."

Becker pointed to recent Forrester Research survey findings ranking credit unions at the top tier of firms noted for their attention to consumer advocacy. He also cited consumers' surprise at still-rising

bank credit card rates despite the Credit CARD Act and directed users to CULookup.com, a NAFCU Services-run credit union locator site.

☐ NAFCU on Twitter, Facebook

NAFCU also on Thursday launched a Twitter account and Facebook page, both with the aim of drawing attention to credit unions' efforts to promote financial awareness. Becker's new blog entry on Huffington was NAFCU's first "tweet."

These two social media sites will be used by NAFCU to share news from the association about credit unions, products and events. "Using social media is a natural extension of our current outreach efforts with our members as well as the public," said Becker.

The NAFCU social media links are at twitter.com/nafcu and facebook.com/nafcu.

Higher 7(a) guarantees, fee relief through April

The president signed a NAFCU-backed measure on March 26 that extends a higher guarantee and fee relief under the Small Business Administration 7(a) loan program through April, a move that SBA estimates will support about \$1.4 billion in small-business lending overall.

Higher guarantees and fee relief for SBA 7(a) and 504 loans were created under the American Recovery and Reinvestment Act. The authority allows a 90 percent guarantee under the 7(a) program and waive of borrower fees on most 7(a) and 504 loans.

The recently signed legislation allocates an aggregate \$40 million toward the guarantee and fee relief; SBA says it will continue these special provisions through April 30 or until the new money runs out.

Retroactive relief is not available for loans already funded during loan "queue" periods in effect during temporary suspensions of the recovery act provisions. It is up to borrowers and their lenders whether to go into the queue and wait for the special provisions or to just go ahead and submit their applications under the normal terms of the 7(a) program.

NAFCU, in numerous letters to and meetings with lawmakers and SBA Administrator Karen Mills, has urged that the 90 percent 7(a) guarantee be made permanent or at least extended through this year.

Any portion of a loan guaranteed by the SBA is excluded from a credit union's MBL cap.

SBA warns of abuses in loan assistance offers

Credit unions, especially those offering business loans to their members, may want to let their members know about a Small Business Administration alert regarding firms using abusive tactics and charging high fees to those seeking to work with SBA.

SBA, in its alert, said its office and that of its inspector general have received several complaints about such tactics, which often include promises of SBA aid where none is guaranteed.

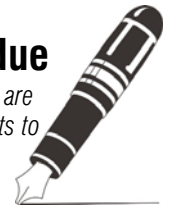
SBA notes that it "does not endorse or

give preference to specific private companies of their clients." It adds that, when working with a third party, a small business should check with an SBA district office; seek references, check with colleagues and others such as the Better Business Bureau; and "clearly establish and document" charges, required actions and services promised.

Credit unions can have members report suspected abuses to SBA's OIG at 800-767-0385; or online via "Report Fraud Waste or Abuse" at www.sba.gov/ig.

Comments due

Large-print deadlines are for member comments to NAFCU.



April 27 Reg Flex

The agency proposes to eliminate exemptions affecting federal credit unions' fixed-asset investments, member business loans, securities investment stress testing and delegations of investment authority to third parties. Comments are due May 24 to NCUA.

May 3 Fiduciary duties/mergers and conversions

NCUA proposes revisions affecting FCU directors' financial knowledge and indemnification. It also wants to revise requirements regarding proposed conversion to a mutual savings bank; and conversion to a bank charter through merger. The latter hasn't been specifically addressed in NCUA rules before. Comments are due May 28 to NCUA.

Comments are also due to the Federal Reserve by April 14 for its Credit CARD Act proposal affecting late fees, penalty fees and interest rate changes.

Find NAFCU's Regulatory Alerts at www.nafcu.org in "Regulation."

BSA webcast near

Credit unions still have time to register for NAFCU's April 7 Bank Secrecy Act webcast for volunteers. NCUA Program Officer Judy Graham is the speaker. For more information, go to www.nafcu.org/webcasts.

Hearing eyes crisis

A hearing on subprime lending, securitization and government-sponsored enterprises will be held April 7-9 by the Financial Crisis Inquiry Commission, created last year to investigate causes of the financial and economic crisis. For more, go to www.fcic.gov.

Final 4Q GDP estimate reinforces NAFCU forecast

The final estimate of fourth-quarter real gross domestic product was not as strong as expected, supporting NAFCU's view that the pace of economic activity will likely slow over the near term.

The Bureau of Economic Analysis' third and final estimate for fourth-quarter real GDP growth came in at 5.6 percent, 0.3 percent below the second estimate. NAFCU Staff Economist Katrin O'Connor said the data still represented the strongest surge in GDP since the third quarter of 2003.

Despite the downgrade, the overall picture of fourth-quarter economic activity remained positive. Consumer spending rose 1.6 percent, contributing 1.16 percent to GDP growth. Exports and fixed investment in equipment and software rose 22.8 percent and 19 percent, contributing 2.36 percent and 1.13 percent, respectively.

In addition, investment in residential housing rose for the second straight quarter,

rising 3.8 percent and contributing 0.1 percent to GDP, while the change in private inventories added 3.79 percent to GDP.

While the data confirm that economic activity in the fourth quarter was robust, real GDP for 2009 overall contracted by 2.4 percent, the strongest drop since 1946. The bottom line, according to O'Connor: GDP got a major boost in the fourth quarter from businesses that were replenishing their stockpiles and making key investments. But she said that pace of investment is not likely to be maintained in coming quarters.

O'Connor said exports are expected to continue to support real GDP growth due to improvements in the global economy. "A turnaround in the labor market is essential for the recovery to gain momentum, as this will provide the necessary boost to both consumer and business confidence that will ensure a sustainable growth in spending."

CDC application deadline moved to April 30

Credit unions have until the end of this month to apply to the Treasury Community Development Capital Initiative supporting community development activities.

The program uses money from the Troubled Assets Relief Program to provide capital to community development financial institution-certified institutions. These include CDFI-certified credit unions designated as low-income by NCUA.

Applications for funding were originally

due April 2; that's now pushed to April 30. Applicant credit unions must also submit a secondary capital plan to NCUA by May 10.

NCUA last month revised its secondary capital rules for low-income credit unions to facilitate participation in the CDCI. Those that do not have CDFI certification should get their certification applications in to the CDFI Fund at Treasury by April 16.

Inserts focus on mid-life, retirement planning

NAFCU unveiled three new financial literacy statement inserts

recently that credit unions can use to educate their members on financial planning for their middle years into retirement.

The inserts are the following:

- ◆ "Financial Basics for the Mid-Life Years"
- ◆ "Financial Basics for Those Nearing Retirement"
- ◆ "Financial Basics for Retirement"

Taken together, the inserts offer tips on personal financial issues to be faced as time marches on: planning for children's higher education expenses, saving for retirement, helping adult children (and elderly parents), estate planning and more.

NAFCU also has a youth financial literacy series addressing financial basics for children, teenagers and adults.

NAFCU's insert copy, reviewed for regulatory compliance purposes, is also available for use in e-mail and on Web sites. For more, visit www.nafcu.org/inserts.

Matz: Merger policy statement in works

An NCUA working group is developing a public policy statement

on mergers and purchase-and-assumption activities which hopefully can be released in the near future, NCUA Chairman Debbie Matz said in a letter last week to NAFCU President Fred Becker.

Matz was responding to Becker's March 10 correspondence on this issue, in which he outlined, at the agency's request, several recommendations for making NCUA's assisted merger process more efficient. Matz had noted in her Feb. 22 request that the agency was reviewing its processes. She said that, once final, they would be shared with an eye toward transparency.

One of Becker's recommendations was that there be an opportunity for notice and comment before a uniform policy for the regions is set.

HEL rate change must adhere to agreement

A federal credit union can add a floor, or fixed minimum, rate to an existing home equity loan only if the original loan agreement left room for such a change or the borrower agrees to it, according to a March 3 NCUA legal opinion letter.

"An FCU may add a floor rate to an existing home equity loan if the original agreement disclosed the possibility of adding the rate and any associated triggering event or the borrower agrees to the addition in writing," wrote NCUA Associate General Counsel Sheila Albin.

Albin said FCUs generally may not change the terms of a home equity plan

after it is opened.

Regulation Z prohibits changes in annual percentage rate on such plans unless they are based on a publicly available index not under the FCU's control, she wrote. "In other words, an FCU cannot change the APR on a home equity plan unless the plan has a variable rate. The regulation, however, does not prohibit rate changes that are set forth in a home equity agreement, such as stepped-rate or preferred rate plans."

She added that said any written agreement on a change in terms is also governed by Reg Z.