

# UPDATE<sup>®</sup>

The news you need, every week



National Association of Federal Credit Unions • 3138 10th St., N. • Arlington, VA 22201 • (800) 336-4644 • www.nafcu.org

2010 assessments estimate still between 15-40bp p.2

May 24, 2010

## In This Issue

### Reg reform passes Senate

NAFCU will keep seeking removal of interchange . . . . . p.2

### Frank: MBL mark-up ahead

House Financial Services to soon consider MBL . . . . . p.2

### Action urged on NAFCU-backed bill

Measures would create licensing for Internet gambling . . . . . p.2

### New service debuted

Have NAFCU speak to your board remotely . . . . . p.2

### SAFE Act final rule available

National registration system online next year . . . . . p.3

### Corporate liquidity program extended

New issuances extended to Sept. 30, 2011 . . . . . p.3

### New York Times analyzes CU failure

"Exotic" instruments off-limits for FCUs, rules differ for states . . . . . p.4

### WSJ: FDIC sitting with CDOs

Agency sees potential write-offs . . . p.4

### Examiners focus on risk

Flash notes stronger regulatory emphasis on safety and soundness . . . . . p.4

### Loan modifications up

HAMP reports 13 percent jump . . . p.4

☛ New HR director at NCUA . . . . . p.2

☛ MBL opinion released . . . . . p.3

☛ Comments due . . . . . p.3

## NAFCU opposes S. 3217 over interchange

NAFCU President Fred Becker said Thursday that the association cannot support the Senate-passed financial industry regulatory reform bill due to its language on interchange fees.

The provisions, proposed by Sen. Dick Durbin, D-Ill., would require the Federal Reserve to decide what amount of fees would be reasonable and proportional for debit card transactions. They were added to S. 3217, the Restoring American Financial Stability Act May 13 and remained unchanged in the final bill, which the Senate cleared last night on a vote of 59-39.

In approving the package, the Senate amended the House-passed H.R. 4173, the Wall Street Reform and Consumer Protection Act, by inserting the text of S. 3217, which is headed to a House-Senate conference.

NAFCU, in a statement anticipating this development, said it would now focus its efforts and those of its members toward the House and urge removal of the interchange language in conference.

Becker said NAFCU has supported efforts for financial regulatory reform in order to encourage economic recovery and address the financial turmoil brought on by Wall Street and bad actors. "However, we must oppose S. 3217 because it includes the restrictive measure on interchange fees," he said. "While we appreciate Sen. Durbin's efforts to address credit unions' concerns, it did not go far enough. NAFCU will continue to work to eliminate any provision that would lead to a federal cap on interchange fees as this legislation moves forward."

The Senate rejected a motion to cut off debate on the bill Wednesday, but it cleared it Thursday on a vote of 60-40. It then proceeded to a series of votes that ended with the final vote on passage.

House Financial Services Chairman Barney Frank, D-Mass., in a CNBC interview earlier in the day, said the president will be able to sign the bill by July 4. He said he had been in talks with lawmakers in preparation for a House-Senate conference on regulatory reform.

As cleared Thursday, the reform bill leaves unresolved two other key issues raised by NAFCU:

☐ **CFPB authority:** The exception from Consumer Financial Protection Bureau authority remains at the \$10-billion-or-less assets level and covers only examination and enforcement. NAFCU will continue to seek inflation indexing, removal of CFPB back-up exam authority and NCUA authority to promulgate consumer rules for credit unions.

☐ **Financial Stability Oversight Council:** NAFCU will also continue to press for the inclusion of NCUA in the group of regulators making up the council, which would have veto authority over objectionable rules of the CFPB.



NAFCU held a webcast last week on the SAFE Act featuring NCUA Staff Attorney Regina Metz (right). She also presented the NCUA Board with a briefing on the SAFE Act final rule the following day. For more on the board meeting, see story on p.3.

## NCUSIF/stabilization estimate still 15-40bp

At the present time, it still appears that this year's aggregate assessments for the National Credit Union Share Insurance Fund and Temporary Corporate Credit Union Stabilization Fund will amount to a range of 0.15 percent to 0.4 percent of total insured shares, NCUA staff told the agency board during Thursday's open meeting.

A more up-to-date estimate regarding stabilization assessments, at least, is expected this summer, said NCUA Deputy Executive Director Larry Fazio.

The NCUSIF ended the month of April at an operating level equal to 1.24 percent of insured shares, according to preliminary highlights provided Thursday by Mary Ann Woodson, NCUA's chief financial officer.

The NCUSIF's insurance loss expense from January through April totaled \$177.3 million, well below a budgeted \$250 million. The agency is still budgeting \$750 million for insurance losses for the year.

The provision for natural person credit

union losses, or reserves, rose about 23.2 percent, or \$169.6 million, to a total of \$896.3 million April 30. Of that, \$596.9 million is unallocated to specific cases, Woodson said.

She added there have been 12 natural person credit union failures this year, seven dealt with through involuntary liquidation and five through assisted merger.

NCUA Chairman Debbie Matz pointed again to the agency's plan to consider making separate NCUSIF and stabilization assessments this year. She said this will give credit unions more specific information for budgeting purposes.

There were no projections on a year-end NCUSIF level, but NAFCU continues to urge the agency to consider setting the NCUSIF normal operating level below 1.3 percent and, if it dips below 1.2 percent, that assessments be spread out as permitted by law to lessen the impact on credit unions.

## Treasury open to MBL; Frank says mark-up ahead

NAFCU President Fred Becker last week applauded House Financial Services Chairman Barney Frank, D-Mass., for announcing plans to hold a committee mark-up soon on credit union member business lending.

In a May 18 hearing on small-business lending initiatives, Frank pressed Gene Sperling, counselor to Treasury Secretary Tim Geithner, for a position on credit union MBL. Sperling said Treasury would support a compromise that also addressed safety and soundness. He said Treasury would soon send a proposal to the committee; Frank said there will be a mark-up.

Treasury has said it could support a two-tiered structure for the MBL cap, and Sperling said this could include going as high as 27.5 percent of assets on the MBL cap. NCUA Chairman Debbie Matz suggested a two-tiered system in February.

NAFCU has continuously pressed for greater MBL authority for credit unions in discussions with NCUA, lawmakers and Treasury officials, pointing out it can help boost lending to small businesses, and create jobs without cost to taxpayers.

NAFCU has testified on this issue. It pressed anew for action in a letter entered into the May 18 hearing record.

## Action urged on Internet gambling bills

Lawmakers are working on NAFCU-backed legislation to require licensing and more for Internet gambling operations as a June 1 compliance deadline nears on federal rules that require depository institutions to help thwart illegal online betting.

House Financial Services Chairman Barney Frank, D-Mass., is the sponsor of one of the two bills being eyed. His H.R. 2267 would create the federal framework for Internet gambling operations to obtain licenses; Rep. Jim McDermott, D-Wash., has proposed H.R. 4976 to require licensing

and the payment of taxes on gambling winnings. Frank pressed for action on both.

Treasury and the Federal Reserve Board are the agencies responsible for promulgating rules under the current statute, the Unlawful Internet Gambling Enforcement Act. The rules had been set to kick in last Dec. 1, but concerns raised by Frank, other lawmakers and industry groups such as NAFCU spurred them to extend that to June 1.

NAFCU has also urged a later deadline of Dec. 1, 2010, as proposed by Frank.

## Becker broadcasts live to CU board

**NAFCU President Fred Becker debuted a new member service recently** that allows association staff to speak remotely to CUs' boards.

In speaking May 14 before the board planning session of Campus FCU, Becker discussed a range of issues, including the regulatory reform bill.

The NAFCU president also updated the Campus FCU board on matters such as National Credit Union Share Insurance Fund and corporate stabilization fund assessments. He also spoke of the tools NAFCU has available to help credit unions attract new members.

NAFCU-member credit unions interested in having Becker speak to their boards via webcast should contact NAFCU Executive Vice President Patrick Morris at 703-842-2279 or pmorris@nafcu.org. Credit unions may also use NAFCU's webcast studio for their own meetings and presentations by contacting Morris.

## New HR head at NCUA

**Lorraine Phillips has joined NCUA as director of its Office of Human Resources**, the agency announced last week.

As OHR's director, Phillips will oversee recruitment and merit promotion, position classification, compensation, employee records, training, employee benefits, performance appraisal, incentive awards, adverse actions and grievance programs.

## 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. For daily news, visit NAFCU's website at www.nafcu.org.

## SAFE Act rule detailed, registration system online next year

The NCUA Board by notation vote on April 10 gave its approval to an interagency rule implementing the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, but the registration system credit unions will rely on to comply won't be operational until next year, agency staff said Thursday.

NCUA Staff Attorney Regina Metz said the final rule, once implemented, will require all credit union employees, including volunteers, that act as residential mortgage loan originators to register with a Nationwide Mortgage Licensing System and Registry, obtain a unique identifier and maintain the registration. This doesn't affect persons who perform only administrative or clerical functions related to mortgage loans.

For purposes of this rule, residential mortgages include first and second mortgages, and refinancings. Metz noted that of all federally insured credit unions, just



*The NCUA Board (right) was briefed last week on the final SAFE Act rule by Lisa Dolan (far left) of NCUA's Office of Examination and Insurance and NCUA Staff Attorney Regina Metz. (NAFCU photo)*

about 5,400 provide residential mortgages; of those, about 3,900 issue more than five a year. Only credit unions making more than five such loans yearly are required to register, but all credit unions that originate residential mortgages must have policies and procedures in place to assure compliance.

Metz gave a similar overview to credit unions participating in a NAFCU webcast one day prior to the open board meeting. She noted in both discussions that, once the national registry is up and running, credit unions will have 180 days to

ensure employees affected are registered.

The final rule is available at [www.ncua.gov](http://www.ncua.gov); it's 128 pages long. Appendix A, which begins on page 124, provides an explanation of "mortgage originator activities" making a person subject to the registration requirement.

Federal banking regulators and the Farm Credit Administration had all adopted the final rule by late April; the Office of Thrift Supervision was waiting for results of a review by the Office of Management and Budget.

Metz said the final rule could be published in the *Federal Register* within weeks. NAFCU is preparing a Final Regulation for its members.

There were a total of 250 viewers for the May 19 NAFCU webcast on this final rule; the webcast file will remain available online for six months at [www.nafcu.org/archivedwebcasts](http://www.nafcu.org/archivedwebcasts).

## Corporate liquidity guarantee extended

NCUA's board on Thursday extended the date for new issuances under the Temporary Corporate Credit Union Liquidity Guarantee program to Sept. 30, 2011, but it reined in the maturity date of new issuances to Sept. 30, 2012.

The program originally contemplated an end maturity date of June 30, 2012, and the agency decided later it would go another five years to allow corporates access to longer-term stable funds at lower cost.

NCUA now wants to bring this program

in line with the planned phaseout of other stabilization efforts; for new issuances, it has revised the end maturity date to Sept. 30, 2012, to "focus on shorter-term borrowing needs."

While seeking to wind down this program, staff said it's still important to provide alternative liquidity sources as the agency moves toward adoption and implementation of a final corporate credit union rule and as NCUA addresses corporates' legacy assets.

## MBL exception only for borrower's residence

An exception for a dwelling-secured loan from member business loan regulations applies only if it involves a one-to-four-family dwelling that serves as the member's primary residence, NCUA said in a recent legal opinion.

NCUA explained the exception in a letter to a firm asking whether a line of credit to a company to fund mortgage loans for its customers, or homebuyers, who are or will be members of a federal credit union might qualify if the notes and mortgages are assigned to the FCU as collateral.

"The term 'borrower' in the exception

refers to the MBL borrower and not persons without an obligation to the FCU under the MBL . . .," wrote NCUA Associate General Counsel Sheila Albin in the April 29 opinion letter. "The homebuyers are not obligated to repay the MBL and assignment of the homebuyer's note and mortgage as collateral does not qualify the line of credit for an MBL exception."

The company also planned to sell the loans on the secondary market, according to background in the letter. The opinion was sought by Cullen and Dykman LLP, a firm in Garden City, N.Y.

### Comments due

*Large-print deadlines are for member comments to NAFCU.*



#### May 24 (today) Garnishment orders

Regulators have proposed guidance addressing an exemption for federal benefits and retirement payments from garnishment. The rule would apply to federal retirement, Social Security, Railroad Retirement, Supplemental Security Income, veterans' benefits and other federal payments made electronically. Comments are due June 18 to NCUA.

#### June 10

##### Short-term, low-dollar loans

The proposed rule, released by the NCUA Board April 29, would permit federal credit unions to charge an annual percentage rate 1,000 basis points above the regulatory usury ceiling, now set at 18 percent. This 28 percent APR could apply on loans of \$200 to \$1,000 that mature after one to six months. Comments are due to NCUA July 6.

*Find NAFCU's Regulatory Alerts at [www.nafcu.org](http://www.nafcu.org) in "Regulation."*

## In the press

### *Article: CDO investments not allowed for FCUs*

A *New York Times* article on what went wrong at Eastern Financial Florida CU emphasizes that federal credit unions must adhere to NCUA restrictions on investments, but federally insured, state-chartered credit unions can go outside those rules where individual states allow.

According to the May 14 article, Florida, Michigan and California all permit FISCUs to invest in “exotic” instruments not permitted for FCUs.

NCUA addresses this by requiring FISCUs with nonconforming investments to keep a special reserve equal to the excess of book value over the current market value of the investment. If the market value can’t be determined, the reserve must equal full book value.

NAFCU raised the question of whether that’s enough more than a year ago, when it wrote NCUA seeking information about any special measures it was taking to mitigate risk to the fund from FISCUs’ nonconforming investments.

That letter went six weeks before Eastern Financial Florida was placed in conservatorship.

The May 14 *NYT* article (“A Credit Union That Played With Fire”) describes the EFFCU failure as a sort of case study

### *WSJ reports: CDOs a problem for FDIC*

FDIC now owns more than 250 collateralized debt obligations that had been bought by small and now defunct banks, and it’s concerned about potential write-offs, according to a May 18 *Wall Street Journal* article.

“The agency hopes to auction off any CDOs that have value this summer. If it can’t unload them, the FDIC could be forced to write off their value, saddling taxpayers with the losses,” according to the article (“Toxic CEOs Beset FDIC as Banks Fail”).

The CDOs held by the FDIC have a book value of about \$400 million, the article states, but a staffer was quoted saying many of them “will have little or no market value.”

These are the same type of investment that have caused the Securities and Exchange Commission to file suit against

and points to it as a challenge to the notion that “only savvy investors” bought CDOs.

Drawing on the NCUA Inspector General’s material loss review, the article notes that EFFCU’s investments in CDOs occurred just as the mortgage-backed securities market began its decline. The investments lost value quickly after the credit union bought them, and even the fact that it reserved for 100 percent of mark-to-market losses wasn’t enough to mitigate the damage, it said.

The article explores a number of issues surrounding this case and suggests that this credit union relied too much on ratings agency determinations in making investment decisions.

As to whether NCUA may pursue action against the CU’s executives or firms that sold the investments, the article quotes NCUA spokesman John McKechnie saying, “We always consider potential claims of third-party liability in cases of this magnitude.”

The *NYT* article doesn’t mention this, but the NCUA IG also found that Eastern Financial Florida CU was the only state-chartered, federally insured credit union that was investing in CDOs (at least, at the time).

Goldman Sachs and are one of the key instruments some lawmakers want to put under regulatory scrutiny through the financial industry regulatory reform bill.

According to the *WSJ* article, some of the previously bank-owned CDOs were “trust preferred securities,” which reportedly have contributed to the failures of some 200 banks since early 2009. “More than 1,500 banks issued such securities between 2000 and 2008 after regulators ruled that they could be counted as capital, making their balance sheets appear healthier,” it states.

**Don’t forget . . .** to register for NAFCU’s June 9 member call-in. Learn about the latest developments in Washington, including financial regulatory reform. To register for the free call, visit [www.nafcu-training.org/callin/](http://www.nafcu-training.org/callin/)

### *Flash: NCUA examiners step up focus on risk*

**More than three-quarters of NAFCU members believe NCUA has placed stronger emphasis on safety and soundness** in its examinations, the latest *Flash Report* says.

The greater emphasis represents a contrast from a year before, when consumer compliance issues were the dominant focus for examiners.

A majority of *Flash* respondents (73.2 percent) noted that the most apparent way that NCUA examiners have shown a stronger emphasis on safety and soundness is by focusing more on concentration risk.

Two-thirds of respondents said they observed increased scrutiny regarding the fixed-rate, longer-term mortgages being kept on their books; 59.6 percent noticed more attention given to due diligence for member business loans.

Most credit unions (71.4 percent) also said more documentation was needed to be prepared for an exam.

### *HAMP modifications jump 13% in March*

**Permanent mortgage loan modifications for homeowners in the Home Affordable Modification Program increased** nearly 13 percent in March, according to a report released last week by the Treasury and Department of Housing and Urban Development.

The agencies said the report features information on servicer-specific conversion rates to permanent modifications and how servicers rated in giving homeowners timely decisions regarding their HAMP applications. The data showed wide variation among servicers in these areas, which further demonstrates the need for transparency regarding servicer performance, the agencies said.

Phyllis Caldwell, chief of Treasury’s Homeownership Preservation Office, said the administration is focused on holding servicers accountable for their performance in HAMP.