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June 7, 2010

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Reg reform/interchange talk heats up

NAFCU took advantage of last week's congressional recess to continue its ongoing grassroots efforts on interchange as lawmakers ready themselves to meet this week and begin reconciling House and Senate versions of financial services regulatory reform.

The House-Senate conference committee is slated to hold its first meeting Wednesday. Lawmakers are striving to send a final bill to the president by July 4.

Language on debit interchange, added to the Senate version of the reform bill without a public vetting, is among the items the panel is expected to decide.

NAFCU has been encouraging its members to contact lawmakers and inform them of their opposition to the interchange language, which stands to be particularly harmful to credit unions without guaranteeing any benefit to consumers. "Merchants may see their fees reduced under this language, but there is no stipulation that any of this savings must or should be passed on to consumers," said Brad Thaler, NAFCU's director of legislative affairs.

Thaler reminded that a Government Accountability Office report last year said it was doubtful consumers would benefit from caps on credit-card interchange fees. The report did not examine debit interchange in depth.

"We don't think Congress should allow price caps on debit interchange without hearings and a full review of how it would affect card issuers and consumers," said Thaler.

❑ Concerns shared with Obama, Fed, NCUA

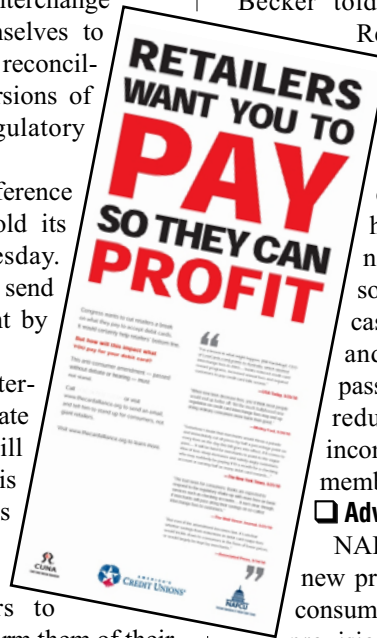
In June 2 letters, NAFCU President Fred Becker told President Obama, Federal Reserve Board Chairman Ben Bernanke and NCUA Chairman Debbie Matz of the consequences the interchange language may hold for consumers. Interchange fees help defray day-to-day maintenance costs of card systems and some losses due to fraud. "In the case of credit unions, all savings and all costs are ultimately passed on to members. Thus any reduction in interchange fee income will ultimately harm our member-owners," Becker wrote.

❑ Advertising for impact

NAFCU last week also backed a new print ad that illustrates the anti-consumer nature of the interchange provisions. The ad (shown, courtesy of the Electronic Payments Coalition) ran in select markets and says in large bold type, "Retailers want you to pay so they can profit." It also pulls corroborating quotes from a number of publications, including *USA Today*, *The Motley Fool*, *The New York Times* and others.

The interchange issue isn't isolated to credit unions or even card-issuing depository institutions. As reported June 1 in *The Washington Post*, nearly all states, and even the U.S. Treasury, use prepaid debit cards to deliver benefits payments, and interchange price caps could make such programs expensive to continue.

Credit unions are encouraged to maintain their contacts with lawmakers on financial services regulatory reform. For more, visit www.nafcu.org/legislation and click on the link for "Contact Congress."



1Q credit union member shares soared, loans down

Credit unions saw member shares rocket and loans decline amid ongoing economic challenges in a first quarter that also brought a positive return on assets and a continued strong capital position, according to first-quarter data released last week by NCUA.

The first-quarter share growth shows last year's flight to safety continues, said NAFCU Director of Research Tun Wai. "Total savings growth continues to outpace loan growth," he said. "In these uncertain times, however, members are also continuing to view credit unions as a safe haven for their savings."

According to NCUA Chairman Debbie Matz, the overall results bear out expectations of a tough 2010 ahead for the industry. "As long as serious economic issues persist, credit unions will be challenged," Matz said in announcing the data. "NCUA is taking administrative actions wherever necessary to uphold safety and soundness standards. We are working diligently to ensure that credit unions main-

tain strong balance sheets so that they can continue to serve members well through the economic recovery and beyond."

NCUA noted a 1.5 percent increase in credit unions' first mortgage loans but said there were declines in most other categories, including credit cards, new auto loans and other real estate loans. While delinquencies and charge-offs were down overall, credit unions in some states were seeing growing losses in real estate and business loan portfolios.

In major balance sheet categories:

- ◆ assets grew an annualized 5.86 percent to \$897.6 billion;
- ◆ loans declined an annualized 4.76 percent to \$565.7 billion;
- ◆ shares grew an annualized 10.94 percent to \$773.2 billion;
- ◆ investments grew an annualized 15.3 percent to \$218.8 billion;
- ◆ first-quarter net income totaled \$1.06

FICU loans, shares January-March**

Loan type	Total	Change
Unsecured credit card	\$ 33.9 billion	- 2.9%
Other unsecured loans/LOC	\$ 24.8 billion	+ 2.7%
New-auto	\$ 70.9 billion	- 5.7%
Used-auto	\$ 97.8 billion	+ 0.3%
1st mortgage real estate	\$217.9 billion	+ 0.4%
Other real estate	\$ 90.8 billion	- 1.8%
Share category	Total	Change
Share drafts	\$ 86.3 billion	+ 1.3%
Regular shares	\$213.1 billion	+ 6.7%
Money market	\$167.5 billion	+ 5.7%
Share certificates	\$221.3 billion	+ 2.0%
IRA/Keogh	\$ 74.5 billion	+ 1.5%
Other shares	\$ 8.4 billion	+ 8.6%

**from call report data *not annualized

billion.

The data show return on average assets at an annualized 0.48 percent and net worth to total assets at 9.87 percent (down 3 basis points from December). The average loan-to-share ratio on March 31 was 73.16 percent, down from 76.06 percent Dec. 31.

FASB proposes fair value for loans

The Financial Accounting Standards Board recently released an exposure draft that would require credit unions to report the fair value of the loans they're holding. The proposal would also require credit unions to measure their 1 percent share insurance fund deposit at redemption value.

The proposal, out for comment until Sept. 30, would require that most financial instruments held for collection or payment of contractual cash flows be measured both at amortized cost and at fair value. This information would be required in the credit

union's statement of financial position, and it would be used to determine net income and "comprehensive" income.

Under current, generally accepted accounting principles, loans held for investment and held-to-maturity debt securities can be measured at amortized cost; loans held for sale can be measured at the lower of cost or fair value; and trading securities are measured at fair value. The FASB proposal removes any flexibility in the application of fair value to loans held for investment.

NAFCU is preparing a Regulatory Alert.

Flood insurance authority lapses again

Congress failed to complete action prior to last week's recess on a bill to extend the National Flood Insurance Program beyond May 31, so the program again is working with no authority to issue new policies.

Despite the lapse, credit unions still have to keep up with flood insurance reviews for loans secured by property located in flood plains and issue notices of required coverage and policy lapses. They can issue new loans without the required coverage but are expected to take risk mitigation measures.

During the current lapse, NFIP will issue no new policies or increases in coverage.

Rep. Barney Frank, D-Mass., recently introduced H.R. 5255 to extend the NFIP through September and continue a pilot program on mitigation of "severe" repetitive loss properties.

The Federal Emergency Management Agency has put together a document explaining how to proceed during lapses such as this. To download, visit www.fema.gov/pdf/nfip/w_10063.pdf.

Member Call-In today

NAFCU members will hear the latest regarding regulatory reform this afternoon during a NAFCU Member Call-In.

Interchange will be a key topic of the call, which features NAFCU President Fred Becker and senior staff. The free call runs 4-5 p.m. Eastern. Registration is required; dial the NAFCU Member Service Center at 800-344-5580, or visit www.nafcu-training.org/callin.

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Corporate CU share guarantee extended

NCUA last week extended the expiration date of the Temporary Corporate Credit Union Share Guarantee Program from June 30, 2012, to Sept. 30, 2012.

With this extension, all investments made in participating corporates before this Sept. 30 and having maturities of up to two years are fully guaranteed. Deposits placed previously remain covered as well.

On May 20, the NCUA Board extended the Temporary Corporate Credit Union Liquidity Program. That extension, to Sept. 30, 2011, covers new issuances maturing by Sept. 30, 2012.

The two changes are part of NCUA's plan to wind down these temporary programs as the agency nears a final rule on corporate credit unions and works out a plan for resolving the corporates' legacy assets (*UPDATE* May 24).

NAFCU urges care with fiduciary rules

NAFCU has voiced doubts that NCUA needs to establish federal standards regarding fiduciary duties for federal credit union directors and urged revisions to a proposed rule to clarify expectations and avoid giving rise to future lawsuits.

Carrie Hunt, NAFCU's senior counsel and director of regulatory affairs, said that while it may be beneficial to have federal standards on fiduciary duties, there are also strong arguments against it. For example, NCUA sets out a basic standard to act in good faith, but it's unclear how the agency would treat a violation of that standard.

Hunt added that the scope and standard of care NCUA sets by regulation, while it might not create a cause of action, would be used by courts to determine whether a director has met his fiduciary duty. Also, how NCUA will examine fiduciary duty responsibilities is unclear, she added.

Hunt also noted the following:

- ◆ NCUA proposes to assign directors a standard of care to always act in the interests of the members, including when the credit union's continued existence is at stake, but Hunt said there are subtleties in this area of law that remain unsettled.

- ◆ NCUA should withdraw language making the ultimate management of a credit union non-delegable from directors to credit union personnel.

- ◆ Hunt said a financial literacy requirement for directors is ripe for interpretation and could lead to more lawsuits.

As to NCUA's proposed revisions on conversions and mergers, NAFCU offered recommendations to clarify requirements to obtain a "merger value" of the credit union and provisions addressing incentive compensation to encourage member participation in the vote for conversion.

RESPA 'required use' revision eyed

The Department of Housing and Urban Development is seeking input by Sept. 1 on possible revisions to strengthen the "required use" prohibition set under the Real Estate Settlement Procedures Act.

The prohibition, set under Section 8 of the RESPA rule, bars requiring borrowers to obtain residential mortgage settlement services from specific providers for a fee. Currently, this prohibition doesn't factor into situations where the borrower is offered discounts or rebates for the purchase of multiple settlement services. HUD revised this in 2008 but withdrew the revisions in response to litigation.

Now, HUD says it has received complaints over borrowers committing to use a builder's affiliated mortgage lender to get construction discounts or discounted upgrades, all without having enough time

to review or compare. To address this, HUD has issued an advance notice of proposed rulemaking.

The ANPR was published in the June 3 *Federal Register*. NAFCU is preparing a Regulatory Alert for members.

Fed issues final Regs E, DD revisions

Clarifications to Federal Reserve Board Regulations E and DD revisions regarding a ban on some overdraft fees were published in the May 28 *Federal Register*.

The Fed clarified Reg E to state that the prohibition on assessing overdraft fees without consumer consent applies to all institutions, including those with a policy and practice of declining ATM and one-time debit-card transactions on insufficient funds.

NAFCU is preparing a Final Regulation.

FTC urged to exempt FCUs from merger notice

NAFCU has urged the Federal Trade Commission to consider exempting credit union mergers subject to NCUA approval from premerger notification requirements.

The FTC currently subjects credit unions to the premerger notification requirements set under the Hart-Scott-Rodino Act. The notification serves federal antitrust laws, but NAFCU President Fred Becker, in a recent letter to FTC Commissioner Julie Brill, noted that NCUA-approved mergers of federal credit unions are unlikely to violate such laws regardless of how the market may be defined.

Becker said premerger notifications currently cost credit unions from \$45,000 to \$280,000 where the size of the transaction exceeds \$63.4 million. This, plus the legal costs in satisfying the rule, can be prohibitive to the potential merger of credit unions, which are not-for-profit and are barred from raising capital from sources other than retained earnings.

The FTC can, under the Hart-Scott-Rodino Act, provide a regulatory exemption from premerger notifications where mergers are not likely to violate antitrust laws.

The statutory exemption for banking-agency-reviewed merger requests requires an analysis of potential antitrust concerns, but Becker said it is not "necessary or advisable" to apply such a rule to credit unions given their not-for-profit nature. The statute also explicitly exempts from the requirement mergers between depository institutions that require approval of federal bank and thrift regulators.

NAFCU also favors a statutory exemption but strongly recommends that FTC use its current authority to establish a similar result by regulation, Becker wrote.

"We believe parity on this issue is important and should be granted," the NAFCU president said.

NCUA speakers highlight concentration risk

Concentration risk has been a major contributor to industry failures in recent years, and some of those failures were tied to heavy real estate portfolio concentrations, NCUA speakers in a NAFCU webcast told credit unions last week.



Angus (Center) and Bryant (right) discussed credit union risk trends in last week's webcast. NAFCU Director of Regulatory Compliance Anthony Demangone facilitated. (NAFCU photo)

Both NCUA Director of Risk Management Wendy Angus and Loss Risk Analysis Officer Christine Bryant suggested that credit unions review NCUA Letter to Credit Unions 10-CU-03 to see how examiners will focus on concentration risk.

Bryant said credit union management should report issues related to concentration risk to their boards. She also urged that credit unions plan for what happens once they've hit their concentration risk limit. Agency examiners will view simply raising the limit as a red flag, she added.

NCUA is anticipating higher losses from member business lending portfolios this year, Bryant noted. Examiners will be looking at whether credit union employees

assigned to MBL understand underwriting such loans, she added.

The agency is also seeing a 22 percent default rate for mortgage loan modifications, according to Bryant. She said NCUA examiners

will be closely eyeing such modifications to see whether they are geared toward helping members versus delaying eventual charge-offs.

Angus, referring to material loss reviews of last year's credit union failures, cited risk concentrations and several costly fraud cases among the reasons for the failures. She said credit unions will see an increase in administrative enforcement actions. Angus explained that these actions will not be enforced from a "gotcha" perspective but with the intention of helping credit unions.

Last week's webcast will be archived for six months. For more information, visit www.nafcu.org/archivedwebcasts.

GSE program aimed at bolstering data quality

Fannie Mae and Freddie Mac have launched a new initiative to help credit unions and other lenders bolster the quality and consistency of the loan delivery data they provide to the government-sponsored enterprises.

The Uniform Mortgage Data Program, recently announced by the Federal Housing Finance Agency, will be available through the GSEs to give lenders uniform guidance on the collection of appraisal and loan delivery data. The program builds on principles outlined in Fannie Mae Lender Letter LL-2010-03: An Introduction to Fannie Mae's Loan Quality Initiative and reflects the GSEs' work with industry participants.

The UMDP implements two of Fannie's Loan Quality Initiative objectives: electronic submission of appraisal data and collection of additional loan data in an updated, industry-standard format.

The FHFA said the current delivery portal, CDD, will continue to be supported for early adopters until the new one, UCDP, is available. Fannie customers currently

working on integrating to CDD will be transitioned to the jointly developed UCDP.

The agency also noted that the uniform loan delivery data set has aligned Fannie and Freddie on the majority of the core data elements and their definitions; instances where data differences persist are a matter of proprietary business or credit policy.

NAFCU is offering a free, member-only webcast on Fannie's Loan Quality Initiative June 16; the webcast runs from 2-3:30 p.m. Eastern. The featured speaker Fannie Mae Senior Product Development Manager Elizabeth Myers, will help credit unions prepare for the 2010 updates to Fannie's guidelines and provides an overview of the initiative. Register at www.nafcu.org/fanniemaec.

Input to NAFCU due June 10

Members, don't forget to provide comments on NCUA's proposal on short-term, low-dollar loans allowing an APR 1,000 basis points above the usury cap. For more, go to www.nafcu.org/regulation.

CULookup.com adds geomapping, more

CULookup.com has added geomapping and shared-branching information, a development that makes the site the most user-friendly and full-featured credit union locator site.

"CULookup.com is a great tool for prospective and existing members. With the addition of the shared-branching feature, consumers can easily find credit union kiosks as close as the corner 7-Eleven," said NAFCU President Fred Becker.

The site is developed, underwritten and maintained by NAFCU Services Corporation, NAFCU's wholly owned subsidiary.

FHFA rule targets underserved markets

The Federal Housing Finance Agency is proposing a rule establishing a duty for Fannie Mae and Freddie Mac to serve very low-, low- and moderate-income families in three underserved markets.

The three underserved markets targeted in the proposal are manufactured housing, affordable housing preservation and rural markets.

The proposal, once published in the *Federal Register*, will carry a 45-day public comment period.

Bank closures at 78

The number of failed banks insured by the FDIC rose to 78 over the Memorial Day holiday weekend with the closure of the Sun West Bank of Las Vegas.

The FDIC reported a total of five bank failures May 28, and one was closed the week before. In all, the six latest failures are expected to cost FDIC's Deposit Insurance Fund about \$323 million.

NCUA staff, in a report to the board May 20, said there were 12 credit union failures from January through April. The agency last month also announced the closure of Convent FCU (New York). It had \$173,000 in assets.