



UPDATE[®]

NCUA releases NAFCU-sought guidance on assisted mergers p.2

July 12, 2010

In This Issue

Lawmakers return from recess

NAFCU continues press on interchange, MBL p.1

Flexibility urged on short-term loans

NAFCU urges NCUA to better define finance charge, provide options to encourage participation p.2

Alert notes Internet gambling law

Rules prohibiting illegal online gambling kicked in June 1. p.2

Closed NCUA Board meeting set

Special meeting slated July 30 . . . p.2

Homebuyer tax credit extended

Law moves loan closing deadline to Sept. 30, IRS reports p.3

FHFA proposal notes GSEs

Proposed rule would codify terms of conservatorships, receiverships . . . p.3

Employee coaching webcast aired

Archived file will remain available for six months p.4

Comments on ACH sought

NACHA proposal addresses applications for check conversions p.4

FHA multifamily policies in revision

Mortgagee letter provides details; more to come p.4

☞ NFIP extension signed p.2

☞ Hearing today on plaintiff status in WesCorp suit p.3

☞ Reg Z, BSA on tap Wednesday. . . p.3

☞ 1,043 entries on 'Great CU'. . . . p.4

Senate back to face reg reform, MBL

One of the first issues the Senate faces upon its return today is the House-passed regulatory reform bill, which still contains debit interchange measures that could, if enacted, contribute further to the squeeze on credit union margins.

The other key issue is credit union member business lending, and NAFCU is working to build support for a cap lift being advanced by Sen. Mark Udall, D-Colo., in connection with a small-business lending package

Congress was on recess throughout last week, and NAFCU was urging members to keep up their contacts with senators on both the reform and MBL issues. While different in subject matter and scope, each is key to credit unions' bottom lines at a time when current regulatory costs – corporate credit union stabilization among them – are placing steady, downward pressure on credit union balance sheets.

☐ Next steps on H.R. 4173

The Senate is scheduled to resume today at 2 p.m., and one of the first things awaiting action is a potential motion for cloture on H.R. 4173, the Wall Street Reform and Consumer Protection Act.

As it has said all along, NAFCU remains opposed to any financial reform package addressing interchange fees, and this one does. If cleared, it would lay the groundwork for federal price caps on debit interchange fees that, despite an exemption for institutions smaller than \$10 billion in assets, are expected to lead to reduced fee income across the industry. To make up for that, many credit unions will likely impose new fees on members or quit their debit card programs.

NAFCU President Fred Becker discussed the problems with the interchange language in interviews July 1 with *The*

Atlantic (online) and Medill News Service. He also talked about it June 29 in an on-air interview with Fox Business News.

The latest action on H.R. 4173 was the House vote June 30 on passage; the measure cleared on a vote of 237-192. This week, Senate Majority Leader Harry Reid, D-Nev., is expected to seek a vote on cloture to avoid a filibuster. To pass, the motion would require 60 affirmative votes.

NAFCU is urging credit unions to keep letting their senators know the impact of the interchange provisions and seek their removal.

☐ MBL amendment in the wings

In addition to H.R. 4173, the Senate will be working on H.R. 5297, a small-business lending bill that Udall has targeted with his MBL cap lift provision.

Backed by NAFCU, the Udall amendment would implement provisions that closely mirror Treasury's proposed compromise on credit unions' MBL authority. It would allow an increase from the current MBL limit, 12.25 percent of assets, to 27.5 percent for eligible credit unions. It also would require compliance with additional safety-and-soundness rules from NCUA.

The amendment is cosponsored by Sens. Barbara Boxer, D-Calif., Kirsten Gillibrand, D-N.Y., Joe Lieberman, I-Conn., Bernie Sanders, I-Vt., Charles Schumer, D-N.Y., Daniel Inouye, D-Hawaii, and Senate Majority Leader Harry Reid, D-Nev. NAFCU is urging members to seek additional support and cosponsors for the measure.

To contact senators on H.R. 4173 or the Udall MBL amendment, dial the U.S. Capitol Switchboard at 202-224-3131. To send an e-mail, visit NAFCU's website at www.nafcu.org/legislation and proceed to "Contact Congress."

NAFCU urges NCUA to provide maximum flexibility on short-term loans

NAFCU last week said it supports NCUA's efforts to encourage credit unions to make small-dollar loans but said the agency's proposed rule needs to be more flexible if the intent is to maximize participation.

NAFCU noted that, since the loans contemplated by the rule would generate little if any income, NCUA should be flexible on loan limits and terms.

The proposal, released in May, is intended to give credit unions a safe way to offer short-term loans to members who might otherwise look to high-cost payday lenders. NCUA says it would not affect current small-dollar programs.

The proposal offers two alternatives for such loans: an annual percentage rate cap of 28 percent (1,000 basis points above the usury limit) and maximum application fee of \$20; or an APR of up to 36 percent and no application fee. Loans would be limited to amounts from \$200 to \$1,000, have maturities of one to six months and

would not roll over.

In an official comment letter, NAFCU Associate Director of Regulatory Affairs Dillon Shea suggested that NCUA clearly define what is a "finance charge" under its regulations in a way that encourages small-dollar lending rather than deferring to the Federal Reserve Board's Regulation Z.

Barring that, Shea urged that NCUA:

- either set a 28 percent APR with a \$20 application fee (since the higher 36 percent APR, inclusive of all fees, may not be enough to encourage credit union participation) or permit credit unions to choose between the two options proposed;
- ensure, for clarity, that the rule specifies that existing programs will not have to change;
- rather than a dollar cap, set any loan limit based on a percentage of credit union assets;
- do not require use of payroll deduction or direct deposit, as this violates a

Regulation E prohibition affecting extensions of credit and would be unfair where the borrower's employer doesn't offer such arrangements;

- do not prohibit balloon payments, since some loans are so small that a large payment may be better for the member.

Regarding balloon payments, Shea said the proposed prohibition on rollovers should offer sufficient protection. "A blanket prohibition on a balloon payment will only serve to encourage members and prospective members to seek loans from other lenders who are subject to little if any regulatory oversight," he wrote.

Shea also urged clarification that the rule's best practices provisions are suggestions, not requirements; elimination of any length of membership requirement; and that NCUA work with the Defense Department to ensure against conflicts with the DoD's rule on consumer credit protecting service members from loans with an APR above 36 percent.

Internet gambling rule overview in NCUA alert

Credit unions can get an overview of their due diligence requirements under the Unlawful Internet Gambling Enforcement Act from a June Regulatory Alert from NCUA.

NCUA Regulatory Alert 10-RA-08 notifies credit unions they must establish and perform due diligence steps under the law, which was allowed to take effect June 1. The final two pages of the guidance provide an overview of related examination procedures.

NAFCU has long urged clarifications to this law to prevent credit unions from being put in the position of policing their members' account activity for illegal online gambling. NAFCU and others were successful in getting the Federal Reserve and Treasury to postpone implementation, but bills in the House to further delay compliance requirements and revise the statute itself have yet to receive action.

Credit unions with any of the law's targeted payment systems must establish required due diligence measures on commercial accounts. Targeted payment systems include the automated clearinghouse, card systems, check collection systems,

money transmitting businesses and wire transfer systems.

The NCUA, Federal Reserve Board, FDIC, Comptroller of the Currency and Office of Thrift Supervision produced an 11-page overview on the rules.

The alert was sent to NCUA Express subscribers June 22. The NCUA alert and guidance are at www.ncua.gov/Resources/RegulatoryAlerts/2010.aspx#top.

NCUA sets closed meeting

NCUA scheduled a special closed board meeting for 10 a.m. July 30, the agency said last week. An agenda has yet to be published, but this will be the third special session of the NCUA Board scheduled in six weeks' time.

The June 24 closed meeting dealt with the conservatorship of Arrowhead Central CU in San Bernardino, Calif. Results for the June 17 and 30 meetings had not been posted as of mid-afternoon Wednesday.

In announcing June's three closed sessions, NCUA withheld the specifics for reasons related to examination, operating or condition reports; financial speculation; and an institution's financial stability.

NFIP extension OK

The National Flood Insurance Program is authorized to write new policies and increase coverages through Sept. 30 under a NAFCU-backed extension signed by the president July 2.

NAFCU twice urged congressional action, writing of the need for action on its own and in concert with other trades. The extension is retroactive to May 31, the last lapse date.

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Plaintiff status in WesCorp suit up

A bid to retain plaintiff status in a suit against Western Corporate FCU will be heard today in federal court.

The seven federally insured credit unions that last year filed against several former and current WesCorp employees and officers have asked the Central District Court of California to deny NCUA's motion to intervene as plaintiff.

In their June 21 filing, the credit unions argue that naming NCUA as a plaintiff in the WesCorp lawsuit would present a conflict. NCUA filed its motion in December, noting that as the WesCorp's conservator, it should determine how to proceed with any action.

The credit unions filing the lawsuit are claiming that gross mismanagement and breaches of fiduciary duties cost them an aggregate \$4.25 million in capital losses. In addition to WesCorp employees and officers, the credit unions are also suing RiskSpan Inc., the firm WesCorp hired to value its investments in mortgage-backed securities.

Reg Z, BSA changes on tap Wednesday

Credit unions can still register for NAFUCU's July 14 webcast, "Complying by August 22 with Regulation Z's Credit Card Rules and Preparing for BSA Manual Changes."

Featuring NAFUCU's on-staff compliance experts, Wednesday's program will focus on:

- a Reg Z requirement to review credit card accounts that have been subject to an annual percentage rate increase since Jan. 1, 2009;
- Reg Z requirements for reasonable and proportional penalty fees (including the safe harbor fee and new prohibited fees); and
- May 2010 revisions to regulators' Bank Secrecy Act/Anti-Money Laundering Examination Manual.

Speakers will answer viewer questions. For more, go to www.nafcu.org/regz.

NCUA releases merger guidance sought by NAFUCU

Guidance and information on a future registration process – both urged by NAFUCU – regarding NCUA-assisted mergers was released July 2 by the agency as Letter to Credit Unions 10-CU-11.

The letter gives an explanation of the purchase-and-assumption process and types of mergers; criteria used to evaluate mergers and P&As; identification of merger/P&A partners; and how NCUA chooses the acquirer when necessary.

NAFUCU President Fred Becker welcomed the guidance, which the association has been urging from the agency for the past several years. It wrote NCUA on this matter in 2005 and, more recently, in letters this January and March to NCUA Chairman Debbie Matz.

"NAFUCU believes that from a fairness perspective, this guidance to credit unions is a helpful starting point in assisting credit unions to understand and become involved in the assisted merger process," NAFUCU President Fred Becker said. "However, there are still many areas in the assisted merger process that are left to the discretion of the agency."

He welcomed credit unions' input on the NCUA letter and the process it details regarding assisted mergers.

Homebuyer credit deadline moved to September

Credit union members still waiting for approvals of mortgage applications made on or before April 30 recently got some good news: IRS extended to Sept. 30 the closing deadline on loans eligible for the first-time homebuyer credit.

The president signed the Homebuyer Assistance and Improvement Act of 2010, which extended the closing deadline from June 30. This means eligible homebuyers who had their applications in by April 30 remain eligible for the credit if they close on those loans by Sept. 30.

IRS says special filing and documentation requirements must be met.

"To avoid refund delays, those who entered into a purchase contract on or before April 30, but closed after that date, should attach to their return a copy of the pages from the signed contract showing all parties' names and signatures if required by local law, the property address, the purchase price, and the date of the contract," the IRS

As noted in the letter, NCUA looks to a number of criteria in evaluating mergers and P&As. It considers whether the continuing credit union can safely absorb the financial and operational impact presented by the acquired credit union; if the acquired institution's field of membership is compatible with that of the acquiring institution under NCUA's chartering and FOM manual; whether the required membership notice being sent properly informs members.

Other factors, such as the existence of an emergency or lack of other alternatives, are also studied.

The letter also explains the differences between voluntary mergers, unassisted supervisory mergers and assisted mergers and P&As.

It also notes NCUA's plan to establish an automated national registry to help credit unions identify potential merger or P&A partners. NCUA and state supervisory authorities will have access to the registry. Until it's active, NCUA recommends that interested credit unions contact their NCUA regional offices.

NAFUCU recommended creation of such a registry earlier this year.

For the letter, go to www.ncua.gov/letters/2010/CU/10-CU-11.pdf.

said in a statement.

For more, visit www.irs.gov/irs/article/0,,id=225078,00.html.

FHFA seeks to codify terms of conservatorships

The Federal Housing Finance Agency, seeking to promote clarity regarding conservatorships and receiverships of government-sponsored enterprises, is issuing a proposal for comment to codify the status and priority of claims and other issues.

FHFA Acting Director Ed DeMarco said the intent of the proposed rule, which would apply to Fannie Mae, Freddie Mac and the Federal Home Loan Banks, is to "provide clarity to the regulated entities, creditors and the markets."

He said it has no impact on the current conservatorships and does not reflect on any GSE's condition.

To download, go to www.fhfa.gov/webfiles/15890/Proposed_Rule_on_C.pdf.

Employee coaching webcast archived

If you didn't get to see it live, you can still order the file from last week's webcast with Dee Dee Myers, "Enhance Productivity and Improve Performance with Employee Coaching."



Webcast speaker Dee Dee Myers (right, with NAFCU Events & Education Director Alyssa Kolat) will discuss executive leadership next month in Baltimore (more at www.nafcu.org/leadership).

During this 90-minute program, Myers, head of DDJ Myers Ltd., gave participants a thorough overview of the value of coaching in helping to build and expand employees' skills, and in turn help enhance their credit unions' success. Myers noted this is one area in which usual job functions and authority roles get set aside. A supervisor or CEO providing the coaching isn't directing

but serving the needs of his or her "clients," meeting them on their own personal and professional grounds.

Myers said credit unions can coach employees one by one, or they can create or contract with an institutional program that can provide coaching to 20 or 30 people. Whoever

coaches, whether it's someone in-house or from outside, they need to have a year or more of experience leading this kind of program, she said.

The webcast is being archived and will remain available for 60 days. Go to www.nafcu.org/archivedwebcasts.

NAFCU seeks members' input on ACH rules

NAFCU is asking members to provide their input by July 22 to the association's official comment on a NACHA proposed rule to enhance automated clearinghouse applications for check conversion transactions and more.

The proposal, released last month, would expand the scope of the telephone-initiated entry (TEL) application so it could be used for recurring consumer transactions. In other changes, NACHA proposes:

- to eliminate the requirement that originating credit unions have opt-out procedures for accounts receivable and back-office conversion transactions;
- to increase the dollar limit for accounts receivable, back-office conversion and point of purchase check conversion transactions from \$25,000 to \$50,000;
- to change authorization and identification requirements for the collection of serv-

ice fees related to certain checks and ACH debits returned unpaid; and

- to expand the scope of the destroyed check entry application to permit its use for certain damaged checks that cannot be imaged or other check images that cannot be processed.

NACHA hopes the requirements on service fees would align its rules more closely to the requirements of the Federal Reserve Board's Regulation E, which applies to electronic funds transfers. NAFCU is asking members for their views on this approach.

NAFCU is also seeking input on whether the proposed dollar limit on check conversions is high enough.

NAFCU published a Regulatory Alert for members; comments are due to NACHA Aug. 6. For the alert, go to www.nafcu.org/regulation.

FHA revises rules on multifamily programs

The Federal Housing Administration said it will make changes to its multifamily insurance programs to update underwriting practices, increase lender and underwriter quality and align standards for loan applications, submissions and approvals.

The policy changes, detailed in the July 6 FHA Mortgagee Letter 2010-21, affect all multifamily rental programs. The letter's

provisions begin taking effect in 60 days.

The FHA plans additional mortgagee letters by December regarding other program changes. It also noted a "multifamily credit watch" that will to be set by regulation.

The credit watch system will be modeled on the one used in the single-family program; for more on that, see HUD's July 7 announcement at www.hud.gov.

1,043 submit entries on 'great' CUs

"The Great Credit Union Contest" drew 1,043 entries from credit union members around the country by the contest deadline of July 7. Entries were made via CUlookup.com, the credit union locator site maintained by NAFCU Services. The contest will award Discover® gift cards and more to more than 50 winners.

Winners will be announced during NAFCU's Annual Conference & Exhibition this month in Chicago. For more on the conference, go to www.nafcu-annual.org.

NAFCU: Labor market weak through 2010

NAFCU expects private-sector job gains to be slow throughout this year before picking up significantly in 2011, with credit union loan demand remaining below potential over the period.

The Bureau of Labor Statistics reported that non-farm payrolls in June dropped by 125,000. "While the decline in non-farm payrolls was the result of 225,000 temporary employees being released from jobs related to the 2010 Census, private-sector hiring was slightly lower than expected," noted NAFCU Staff Economist Katrin O'Connor.

Job losses were led by the government sector (-208,000), then construction (-22,000), financial activities (-15,000), information (-8,000) and retail trade (-6,600). All other sectors reported job gains; total private-sector payroll employment increased by 83,000 in June.

Average hourly earnings fell 0.1 percent to \$22.53 in June but rose 1.7 percent year over year.

The unemployment rate declined only slightly from 9.7 percent to 9.5 percent, according to the Household Survey, the result of 652,000 persons leaving the workforce.

O'Connor said 14.6 million in the labor force are unemployed; 45.5 percent of them have been out of work more than half a year.