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NAFCU acts on interchange immediately following reg reform passage

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Reg reform awaits president’s signature

A sweeping financial regulatory reform package containing harmful debit interchange language passed the Senate Thursday by a vote of 60-39 and now moves to the president’s desk for signature.

The final conference report on H.R. 4173, the Wall Street Reform and Consumer Protection Act, requires the Federal Reserve to set price caps on debit interchange fees for financial institutions with \$10 billion or more in assets. NAFCU President Fred Becker said the bill’s “small issuer exemption” will provide no relief to credit unions of any size.

At present without regulatory change, NAFCU expects that card companies will eventually apply any caps set by the Fed to all issuers. With that in mind, the association has urged the Fed to consider all incremental costs involved in debit transactions in making its determination (more p.2).

The Fed is expected to issue final rules implementing the interchange provisions no later than nine months after the presi-

dent signs H.R. 4173 into law.

☐ Creation of CFPB

H.R. 4173 also establishes a Consumer Financial Protection Bureau that will be housed at the Fed. The entity’s rule making authority will extend to all credit unions. Treasury will determine the effective date and full scope of the bureau within 18 months of the reform bill’s enactment. Some provisions, including rule-making authority, will take effect sooner.

The measure contains provisions that were supported by NAFCU. They include:

- ◆ making permanent the \$250,000 federal share and deposit insurance limit;
- ◆ exempting credit unions with less than \$10 billion in assets from the examination and enforcement authority of the CFPB;
- ◆ including NCUA on the proposed Financial Services Oversight Council, which would have veto authority over CFPB rules presenting safety and soundness issues.

NAFCU will “remain fully engaged” as the package moves to the regulatory phase, Becker said last week.

CUs to connect at NAFCU Annual Conference

Credit union representatives from across the country arrive at Chicago’s Navy Pier this week to make connections with their peers and the industry’s leading experts during NAFCU’s 43rd Annual Conference and Exhibition.

The conference runs from Wednesday until Saturday and boasts educational sessions tailored to meet the needs of credit unions. Also slated during the conference are the popular CEOs Forum, Chairs Caucus and Senior Management Forum.

Conference general sessions open with a

keynote address Wednesday by NFL great Mike Ditka. The Exhibition Hall opens the same day, where credit unions can confer with the more than 100 companies providing innovative products and services.

Attendees will hear from NCUA Chairman Debbie Matz on Thursday. The agency’s board members, Michael Fryzel and Gigi Hyland, speak Friday. Award-winning journalist Bill Kurtis is slated to round out the event with an address on July 24.

For more on NAFCU’s Annual Conference, visit www.nafcu-annual.org.

NAFCU writes Bernanke, Geithner on reform

NAFCU on Thursday urged the Federal Reserve Board to factor in all incremental costs related to debit interchange when it sets a “reasonable and proportional” fee level and urged Treasury to take as much time as is allowed to carry out the transfer of authorities and staff to the newly created Consumer Financial Protection Bureau.

H.R. 4173 requires the Fed to consider what is a reasonable, proportional fee for debit interchange and to apply any resulting limits only to card issuers with \$10 billion or more in assets. This ostensibly exempts smaller credit unions and banks, but NAFCU expects card companies to adjust their fees according to the Fed’s price caps to ensure all cards equal acceptance.

“It is the same model that has worked to the advantage of small institutions for decades. However, because those fees will now be artificially capped, small institutions will suffer,” said NAFCU President Fred Becker in a letter to Federal Reserve Board Chairman Ben Bernanke.

Senate work to resume on biz lending

NAFCU last week urged Senate leaders to allow an amendment by Sen. Mark Udall, D-Colo., raising credit unions’ member business loan cap to be taken up in connection with H.R. 5297, which would create a \$30 billion fund to encourage banks to lend to small businesses.

No new progress was made on the underlying bill last week, and the Senate is set to resume work on H.R. 5297 this week.

Udall, arguing for his amendment, on Wednesday said it would “ramp up small business lending without costing taxpayers a dime.” Noting the measure has been reviewed by the Senate Banking Committee, Treasury, NCUA and credit unions, Udall said the MBL provision is “about real people and real businesses” and also addresses concerns regarding credit union safety and soundness.

NCUA Chairman Debbie Matz also called for action on the measure.

Modeled on Treasury’s proposed compromise on MBL, the amendment is cosponsored by Senate Majority Leader Harry Reid, D-Nev.

The banking industry is threatening to oppose all of H.R. 5297 if the credit union MBL provision is included. NAFCU

Becker asked the Fed to examine online, signature-authorized and PIN-authorized debit transactions and take into account costs related to fraud and its prevention. He also urged consideration of other costs, including those related to set-up and maintenance and routine operations.

Becker also wrote Treasury Secretary Tim Geithner on the CFPB, which will be established within the Federal Reserve. The bureau will come into being the day after the president signs H.R. 4173, but the legislation provides a transition period for shifting regulatory authorities and personnel to the new entity.

Geithner can determine when this shift occurs, but H.R. 4173 does require that it occur within six to 12 months of enactment; or, if that is not feasible, within 18 months. NAFCU is urging Geithner to opt for the longest transition period allowed. Becker said it is “critically important” that credit unions have as much time as possible to prepare for the coming changes.

emphasized the bankers’ hypocrisy in seeking movement on the allocation of federal funds for their industry while attempting to block an MBL cap lift, which would help facilitate more loans to small businesses at no cost to taxpayers.

House approves flood insurance bill

NAFCU President Fred Becker applauded members of the House Thursday for passing H.R. 5114, a bill that would reauthorize the National Flood Insurance Program for five years and make key structural changes to the program.

The House Thursday voted 329-90 to approve H.R. 5114, the Flood Insurance Reform Priorities Act, introduced by Rep. Maxine Waters, D-Calif. The current extension lasts through this September. H.R. 5114 would extend that further to Sept. 30, 2015, phase in actuarial rates, boost maximum coverage limits and phase out premium subsidies for second and vacation homes. It would also delay implementation of new flood insurance rate maps so property owners in newly classified areas would not be immediately affected.

The bill next heads to the Senate, where its future remains uncertain.

Yellen notes bank failures, housing decline

Bank failures in the Fed’s 12th district have generally involved community banks with large exposures to commercial real estate problems that led to their collapse, San Francisco Federal Reserve Bank President Janet Yellen answered in a Senate Banking Committee hearing on nominations to the Fed Board.

Yellen is nominated to a Fed Board term that lasts through January 2024 and a four-year term as the board’s vice chairman. Discussing bank failures, she said regulatory oversight had been careful and appropriate but that there is a need for more stringent capital requirements and more timely action.

Yellen also noted the Fed’s failure in recognizing and responding to the housing bubble, securitization problems and weak underwriting standards that fueled the financial crisis.

The hearing also included Sarah Bloom Raskin and Peter Diamond, both nominated to Fed Board posts.

ABA chief to retire

American Bankers Association President Ed Yingling plans to retire Dec. 31, the ABA said in a press release.

Yingling has been with ABA, which has led banking industry attacks on credit union’s tax-exempt status, growth and services, since 1985. He plans to continue working on industry issues.

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Webcast delves into Reg Z, BSA manual changes

Coming regulatory challenges arising from Regulation Z amendments affecting credit card accounts and recent Bank Secrecy Act manual changes were detailed by NAFCU's on-staff compliance experts during a webcast last week.

NAFCU Compliance Counsel Sarah Loats described new Reg Z provisions on "reasonable and proportional" credit card penalty fees that take effect Aug. 22. She said credit unions can either determine the fees based on the costs they incur due to account violations or use the rule's safe harbor.

After Aug. 22, credit unions must also have reasonable policies and procedures for reviewing credit card interest rate increases that occurred since Jan. 1, 2009, and, if appropriate, reduce the rate, said NAFCU Regulatory Compliance Counsel Steve Van Beek.



(From left) Demangone, Van Beek and Loats confer on the details of Wednesday's webcast on Regulation Z and the BSA/AML manual. (NAFCU photo)

The first review must be conducted by Feb. 22, 2011, and then no later than every six months thereafter, he explained. If an interest-rate reduction is warranted, credit unions are not required to lower the rate to the level it was prior to the increase, but credit unions must continue

to review accounts until the rate drops to that original level or lower. Van Beek said the reviews could go on indefinitely.

NAFCU Director of Regulatory Compliance Anthony Demangone said the changes to the Bank Secrecy Act/Anti-Money Laundering Examination Manual, released this May, stress the institution board's role in ensuring a "culture of compliance" in regard to the BSA.

On NCUA's current regulatory enforcement stance, he noted that examiners will check on credit unions' progress in rectifying issues and will "drop the hammer" for inadequate progress.

NAFCU recently sent members its Final Regulation detailing all the Credit CARD Act rules taking effect Aug. 22.

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

FinCEN study: CTR filing efficiency up

The Financial Crimes Enforcement Network's efforts to address currency transaction report filing issues have helped reduce the number of unnecessary filings and increase the number of "higher value" filings, a new study from the agency shows.

The Bank Secrecy Act requires that depository institutions file a CTR on any currency transaction of more than \$10,000, with some exceptions. FinCEN published a rule in December 2008 to help financial institutions better understand these exceptions; the agency subsequently implemented amendments to the CTR Exemption Rules on Jan. 5, 2009, which made it clear that financial institutions were not required to file a Designation of Exempt Person for certain types of customers, such as a bank, government agency or government authority. Such filings offer little to no value to law enforcement, FinCEN said.

The agency's study shows that overall CTR filings fell nearly 12 percent, from 15.5 million in 2008 to 13.7 million in 2009. A key reason: DOEP filings fell 44 percent to the lowest levels ever. More specifically, DOEP filings for bank, government agency or government authority customers dropped nearly 75 percent in 2009. FinCEN said it expects these types of filings to "fall to zero over time."

FinCEN Director James Freis said the study provides "substantial evidence" that the agency's efforts to address CTR filing issues "have been effective."

FHFA targets private-label MBS parties

The Federal Housing Finance Agency issued 64 subpoenas to different entities looking for documents related to private-label mortgage-backed securities purchased by Fannie Mae and Freddie Mac, which both remain under the FHFA's conservatorship.

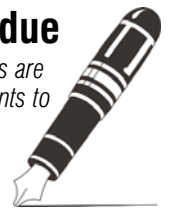
"The documents will enable the FHFA to determine whether PLS [private-label securities] issuers and others are liable to the Enterprises for certain losses they have suffered on PLS," the FHFA said in a statement last week. "If so, the Conservator expects to recoup funds, which would be used to offset payments made to the Enterprises by the U.S. Treasury." Treasury has invested a combined \$145 million in the two entities through purchases of senior preferred stock.

FHFA's subpoenas seek loan files and transaction documents pertaining to loans securing the PLS to trustees and servicers controlling or holding the documentation.

The FHFA released a two-page Q&A document with its announcement.

Comments due

Large-print deadlines are for member comments to NAFCU.



Aug. 2 Real Estate Settlement Procedures Act

The Department of Housing and Urban Development is seeking input on how it can revise the definition of "required use" so it covers abusive incentive schemes but not benefits, discounts and packages. HUD's proposal picks up where it left off in 2008 when it withdrew a final rule on the subject in response to legal challenges. Comments are due Sept. 1 to HUD.

Aug. 20 Fair value accounting

The Financial Accounting Standards Board is proposing to expand fair value accounting to credit union loans and require credit unions to measure their 1 percent NCUSIF deposit at redemption value. The proposal also would require that derivatives instruments be measured at fair value. Comments are due Sept. 20 to FASB.

Find NAFCU's Regulatory Alerts at www.nafcu.org/regulation.

Discounts available on coaching sessions

Credit union executives still have time to receive registration savings toward an upcoming NAFCU-DDJ Myers course that can help them deepen their leadership presence, which in turn can have a positive impact their credit unions' bottom lines.

During the "Building an Executive Presence" course, which is set for Aug. 11-13 in Baltimore, the coaches of DDJ Myers Ltd. will teach attendees how to enhance their executive presence. According to company founder and CEO Deedee Myers, leadership presence accounts for 93 percent of how listeners perceive ideas and strategic moves. Participants in the "Building an Executive Presence" course will learn, among other things, how to better manage conflict resolution, uncover an effective leadership style and make their enhanced leadership presence second nature. A full

course agenda is available online.

Credit unions that register for the course will receive two individual coaching sessions with a DDJ Myers certified executive leadership coach – one session prior to the event and another after.

The "Building an Executive Presence" course is a part of the NAFCU-DDJ Myers Advancing Leadership Series. NAFCU is offering a \$100 discount on the course until Aug. 6. Credit unions that register by Oct. 6 for the next course, "Applied Executive Communications," Oct. 27-28 in Salt Lake City, will receive a \$50 discount. Credit unions that register for both courses by Aug. 6 will receive \$200 off registration (use coupon code DISALS).

For more information on "Building an Executive Presence," visit www.nafcustraining.org/leadership.

Financial regulators address Gulf oil disaster

NCUA, federal banking agencies and state supervisors are working to assist financial institutions and their customers affected by the Deepwater Mobile Offshore Drilling Unit explosion and oil spill in the Gulf of Mexico, they said in a statement last week.

The agencies emphasized that financial institutions are encouraged to work with their customers and consider measures to assist creditworthy borrowers affected by the oil spill.

Regulators said there are things institutions can do to help individuals demonstrating they are affected. These include:

- ◆ temporarily waiving late payment charges, ATM fees and penalties for early

withdrawal of savings;

- ◆ expediting lending decisions when possible, consistent with safety and soundness;

- ◆ extending or restructuring borrower debt obligations in anticipation of the receipt of funds based on claims the borrower may have filed with British Petroleum; and

- ◆ easing credit terms or fees for loans to certain borrowers, consistent with prudent banking practice.

As in other disasters, examiners will consider the unusual circumstances of banks and credit unions in affected areas in determining the appropriate supervisory response to safety-and-soundness issues, the statement says.

Hearing held in WesCorp suit

Seven credit unions' bid to retain plaintiff status in a suit against Western Corporate FCU was heard last week in federal court.

The hearing was rescheduled from July 12.

The credit unions filed a suit last year against several former and current WesCorp employees and officers over losses they realized following the write-down of capital shares in WesCorp.

NCUA, citing its role as conservator of WesCorp, filed a motion in December seeking to intervene as plaintiff, but credit

unions on June 21 urged the Central District Court of California to deny that motion. They said allowing NCUA to intervene as plaintiff would present a conflict.

In their suit, the credit unions 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 the corporate credit union hired to value its investments in mortgage-backed securities.

NCUA notes Arrowhead firings

NCUA has terminated four executives from the conserved Arrowhead CU and, in a separate announcement last week, said the agency's board will hold a special closed meeting July 21.

The Arrowhead CU executives were placed on administrative leave June 25, the day NCUA took it into conservatorship, and were terminated July 13, the agency said.

NCUA said it placed the credit union into conservatorship "to restore normal operations with new management in place to correct financial statements and improve operational weaknesses."

The agenda for the July 21 closed board meeting involves supervisory actions. It's the third closed board meeting set for July. The other two are set for July 29, also the date of the board's next open meeting, and July 30.

CUs warned on HECM fraud

NCUA recently urged credit unions in NCUA Regulatory Alert 10-RA-09 to be on the lookout for possible signs of reverse-mortgage fraud targeting seniors.

The July alert, which includes a link to related guidance issued this April by the Financial Crimes Enforcement Network, addresses fraud initiated through the Federal Housing Administration Home Equity Conversion Mortgage program. It notes this kind of fraud may be initiated by the homeowner's family members, loan officers and others.

HECMs can only be issued by FHA-approved lenders. NCUA says a credit union's activities may intersect with HECM-related fraud in a number of ways, including through perpetrators' access to HECM loan files and services to persons seeking to receive, deposit or move funds related to mortgage fraud.

With this in mind, the alert urges credit unions to review examples of common fraud schemes (in the FinCEN guidance) and potential red flags for such activity.