



Regulatory Roundup: June 2008

NCUA Nominee Mike Fryzel Hearing

Mike Fryzel, nominated to be the next NCUA Board chairman, performed well at his June 3 confirmation hearing before the U.S. Senate Banking Committee. He noted his commitment to safety and soundness, independence, and obligation to report to Congress from time to time. Fryzel's appearance before the committee was largely uneventful, but Committee Chairman Chris Dodd, D-Conn., did ask about the credit union tax exemption, regulation apart from banks, and "broadening" of the credit union common bond. No word yet on a Senate confirmation vote for the NCUA seat.

MCUL Assists Credit Union in Section 208 Parity Application for New Power

Use of the Michigan Credit Union Act's Section 208 provision permitting state-chartered credit unions to apply for powers not currently permitted in the Act is now underway. With the assistance of MCUL Regulatory Affairs staff, a letter was drafted to OFIR Commissioner Ken Ross for use by the credit union requesting authority to fund employee benefit plans with common stocks. Federal credit unions currently enjoy this authority under NCUA regulations, making parity the basis for the request. The letter was mailed May 20.

Foreclosure Topic of Discussion for State and Federal Issues Working Groups

The State and Federal Issues Working Groups are scheduled to meet jointly at the Michigan Credit Union Center in Northville Twp. June 23 to discuss Michigan's foreclosure statute and whether changes are needed. Feedback from credit union officials indicates the current redemption period is too long resulting in a roadblock that hinders bona fide attempts to work with troubled borrowers.

June InfoSight Newsletter Features Regulator Suggestions Regarding Troubled Mortgages

After a positive reception to the InfoSight Newsletter's first audio podcast in May, the June issue features an interview with NCUA Principal Examiner John Karisny, who was a member of the Regulator Panel at the MCUL's Mortgage Lending Summit in early May. Karisny is a Specialized Lending Subject Matter Examiner with a strong background in mortgage lending. Several issues and best practice suggestions from the Mortgage Lending Summit are addressed in the podcast.

NCUA Examiners to Meet Relationship Managers

MCUL Relationship Managers for Southeast Michigan had a rare opportunity to meet and mingle with NCUA Examiners for the region. This event was requested in conjunction with the MCUL's regulatory advocacy efforts to facilitate stronger communications between the League and the regulators. Short presentations about the MCUL's chapter structure, the backgrounds and experience of the Relationship Managers and the services they offer, especially for troubled credit unions, followed with an opportunity to meet and interact with the examiners. The meeting took place at an NCUA examiner training event on June 13 in Livonia.

MCUL Working with Regulators for More Director Interaction

In its ongoing effort to offer opportunities for regulators to interact with credit union directors, the MCUL is now planning two events with the regulators to do just that. On Sept. 24, the National Association of State Credit Union Supervisors (NASCUS), in conjunction with OFIR and the MCUL, will offer its Director's College featuring former NCUA board member Dennis Dollar. The day-long event will take place at the community room at Michigan First CU (MW) in Lathrup Village.

In addition, this year's Fall Leadership Conference at the Grand Traverse Resort will be featuring an interactive breakout session with both OFIR and the NCUA. Short presentations on director-relevant topics will be made followed by a question and answer session. Directors are encouraged to bring their concerns and issues to this session. Marketing material for both events will be forthcoming from MCUL Education.

NCUA Proposed Regulations

All proposed regulations are available at:

http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html

Credit Cards and Overdraft Services — Unfair or Deceptive Acts or Practices

The NCUA has issued a uniform proposed rule based on Section 5 of the Federal Trade Commission Act authorizing it to prohibit activities it deems as unfair and deceptive. This proposal addresses certain credit card and overdraft practices and is slightly different than what Congress has proposed in recent legislation. The proposal is uniform in that substantially the same rule is being issued concurrently by the Federal Reserve and the Office of Thrift Supervision. The OCC, the FDIC and the Federal Trade Commission were also consulted, but have not yet issued their own proposals. State-chartered credit unions will be impacted by any Federal Trade Commission proposal.

The Agencies would prohibit seven different practices regarding consumer credit card accounts and two provisions related to overdraft services in connection with consumer deposit accounts. This lengthy proposal is under review by CUNA's Consumer Protection Subcommittee which will issue its comment ahead of the Aug. 4 deadline. The proposal may be obtained at this link with a summary beginning on page 13:

http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/P-706%20web.pdf.

Organization and Operation of Federal Credit Unions — Underserved Areas

This proposal would amend the NCUA Chartering and Field of Membership Manual to update and clarify the process of approving credit union service to “underserved areas.” For an area to be “underserved,” the Credit Union Membership Access Act (CUMAA) requires the NCUA Board to determine that a local community, neighborhood or rural district is an “investment area” as defined in the Community Development Banking and Financial Institutions Act of 1994 (CDFI Act), 12 U.S.C. 4702(16). Further the area must be “underserved . . . by other depository institutions,” which by definition, includes insured credit unions 12 U.S.C. 1759(c)(2)(A).

The proposal’s first part clarifies the procedure for establishing that an “underserved area” qualifies as a local community. The second addresses the application of the economic distress criteria that determine whether an area combining multiple geographic units is sufficiently “distressed” to qualify as “underserved.” The third would update the documentation and clarify the scope requirements for demonstrating that a proposed area has “significant unmet needs” for loans and applicable financial services. The final part recognizes that meaningful data from the NCUA and the federal banking agencies will be available to assess whether an area is “underserved by other depository institutions.”

For a copy of this proposal, go to

http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/IRPS%2008-2%20Proposed%20Rule%205-16-08%20FINAL.doc.

Incidental Powers — Examples in Three Categories

The NCUA proposes to amend Part 721, its regulation governing federal credit union (FCU) incidental powers, with new descriptions of permissible activities under the categories of correspondent services, operational programs and finder activities. These amendments will provide useful information to FCUs by clarifying and updating the illustrations regarding permissible activities. The Office of General Counsel from time to time opines on the legality of certain activities and whether the activity would fall under any of the pre-approved incidental power categories. This proposal seeks to clarify and provide examples of three activities that have been recognized as permissible since 2001 — correspondent services with foreign credit unions, finder activities and payroll services. The proposal describes how these activities may be pursued. A copy is available at

http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/Proposed%20Rule.pdf.

NCUA Letters to Credit Unions

All NCUA Letters are available at <http://www.ncua.gov/letters/letters.html>

Letter No. 08-CU-11 (NCUA Web Site Enhancements)

This Letter expresses the NCUA’s concerns over the growing level of fraud and need for the credit union community and the general public to be informed of the evolving methods of fraud in order to work together to detect, prevent and reduce these schemes. The NCUA has now created a Fraud Information Center on the opening page of its Web site at

<http://www.ncua.gov/index.html>.

Letter No. 08-CU-12 (Suspected Money Laundering in the Residential Real Estate Market)

This Letter advises federally insured credit unions of the availability of a report on mortgage loan fraud issued by the Financial Crimes Enforcement Network (FinCEN) based on the submission of SAR reports. The report describes the typical kinds of frauds reported, the number

experienced by national banks and credit unions, and the findings observed from sampled narratives. It can be found at <http://www.ncua.gov/letters/2008/CU/08-CU-12.pdf>.

Letter No. 08-CU-13 (Environmental Liability — Risk Management Guidelines)

This Letter addresses a situation where environmental contamination is discovered on real property financed by the credit union. Typically this involves commercial real estate, but may also include residential property as well. This Letter indicates that environmental liability is an element of risk in the lending process and provides considerations to address, including ways to mitigate the risks. This Letter can be found at <http://www.ncua.gov/letters/2008/CU/08-CU-13.pdf>.

Letter No. 08-CU-14 (Hybrid ARM Products — Consumer Information)

The Letter contains the final “Interagency Illustrations of Consumer Information for Hybrid ARM Products,” particularly those products that offer a low introductory “teaser” rate that could lead to payment shock when associated interest rates reset. These Illustrations were developed in 2007 to help implement consumer information recommendation of the recently issued “Interagency Statement on Subprime Mortgage Lending” (see Letter to Credit Unions 07-CU-09). It should be noted these Illustrations are not required disclosures or model forms and credit unions may choose whether or not to use these Illustrations in implementing the recommendations of the Subprime Statement. Additionally, credit unions may tailor these Illustrations to their particular circumstances or provide in an alternate format. This Letter and its attachment may be found at <http://www.ncua.gov/letters/2008/CU/08-CU-14.pdf>.

NCUA Legal Opinions of Interest

All Legal Opinions available at:

http://www.ncua.gov/RegulationsOpinionsLaws/opinion_letters/2008Letters.htm

08-0139 — Permissibility of Borrowing Funds to Purchase Investments

The question in this opinion was whether a federal credit union is permitted to borrow funds to purchase investments. NCUA Associate General Counsel Sheila Albin responded in the affirmative in her letter of April 18, 2008, subject “of course to the general limits on borrowing and general statutory and regulatory investment provisions applicable to any investment.” The question came from a federally insured state chartered credit union which was looking to establish parity with federal law under a state parity provision. The Opinion can be found at http://www.ncua.gov/RegulationsOpinionsLaws/opinion_letters/2008/08-0139.pdf.

08-0302 — Conflict of Interest under Member Business Loan (MBL) Rule

The question in this opinion was whether there existed an inherent conflict of interest that prevented the credit union from using the services of a particular CUSO to satisfy the MBL rule’s direct experience requirement in Part 723. Generally speaking the answer is “no,” so long as the CUSO is independent as to each transaction. However, in this situation, the CUSO was paid only or primarily when a loan was funded. This situation therefore creates an inherent conflict of interest as the CUSO has a direct interest in recommending a loan be funded and not denied. The Opinion can be found at http://www.ncua.gov/RegulationsOpinionsLaws/opinion_letters/2008/08-0302.pdf.

OFAC Updates SDN List

Credit unions are reminded that the OFAC SDN lists have been updated through the end of May with new entries from Columbia, Venezuela, Belarus, Saudi Arabia, Pakistan, Kurdistan, Libya and Turkey. The list can be found at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/t11sdnew.pdf>.