

MEMORANDUM

To: Subscribers to *NAFCU's Regulatory Document Series*

From: Sheshunoff Information Services

Subject: Highlights

Enclosed is the latest update to your *NAFCU's Regulatory Document Series* manual.

This update includes the following Letters to Credit Unions issued by the National Credit Union Administration (NCUA):

- *Letter to Credit Unions No. 08-CU-14* provides federally insured credit unions with the final Interagency Illustrations for Consumer Information for Hybrid Adjustable Rate Mortgage Products. The illustrations were produced to assist credit unions in implementing the consumer information recommendations contained in the Interagency Statement on Subprime Mortgage Lending. The illustrations demonstrate the type of consumer information contemplated in the interagency statement, but are not required disclosures or model forms.
- *Letter to Credit Unions No. 08-CU-13* informs federally insured credit unions of the potential liability involved when environmental contamination is discovered on real property financed by the credit union. The letter notes that all credit unions granting real estate-secured loans need to be aware of the issue and those granting member business loans secured by real estate should establish policies and procedures to ensure that liability is minimized. Appendices to the letter provide guidance for an environmental risk management program and a list of resources.
- *Letter to Credit Unions No. 08-CU-12* announces the release of the Financial Crimes Enforcement Network's (FinCEN's) report entitled, *Suspected Money Laundering in the Residential Real Estate Industry: An Assessment Based Upon Suspicious Activity Report Filing Analysis*. The report identifies several types of transactions and associated illicit activities that may be perpetrated by persons or groups looking to launder funds through residential real estate transactions.
- *Letter to Credit Unions No. 08-CU-11* describes enhancements to the NCUA web site which will provide a centralized location for NCUA-related fraud issuances, information on reporting fraud, and links to other anti-fraud resources.
- *Letter to Credit Unions No. 08-CU-10* summarizes the Financial Crimes Enforcement Network's recently released update to its November 2006 mortgage fraud assessment. The updated study includes an analysis of suspicious activity reports (SARs) filed from March 2006 through March 2007.
- *Letter to Credit Unions No. 08-CU-09* provides federally insured credit unions with the new questionnaire that NCUA field staff will use to complete the evaluation of credit union third-party relationships. The questionnaire contains the three elements of an effective program: risk assessment and planning; effective due diligence; and risk measurement, monitoring, and control.
- *Letter to Credit Unions No. 08-CU-08* announces the revision of NCUA's Electronic Payment Systems (EPS) Questionnaires as a result of significant technology changes and the increased utilization of electronic payment systems by credit unions. The revised questionnaires replace the

Automated Clearinghouse (ACH) and Wire Transfer Control questionnaires previously used by examiners to review a credit union's electronic payment systems program.

- *Letter to Credit Unions No. 08-CU-07* states that the Federal Financial Institutions Examination Council (FFIEC) has released an updated "Business Continuity Planning Booklet." The booklet provides guidance for examiners, credit unions, and technology service providers to identify business continuity risks, evaluate controls, and implement risk management practices, and also includes an appendix addressing pandemic planning.
- *Letter to Credit Unions No. 08-CU-06* announces NCUA's plans to release an online version of the 5300 Call Report in the latter part of 2009 that will replace the existing software. For the March 2008 cycle, several important changes are outlined, the most significant of which is the addition of all account numbers in both the software and the hard copy form.
- *Letter to Credit Unions No. 08-CU-05* encourages federally insured credit unions servicing securitized subprime adjustable-rate residential mortgages to utilize the HOPE NOW alliance's loan modification standards to report foreclosure prevention efforts. This reporting format will assist industry efforts to measure foreclosure prevention and help foster more transparency.
- *Letter to Credit Unions No. 08-CU-04* includes a report highlighting credit union financial trends for 2007. As indicated by high net worth levels, the financial condition of the industry remains sound. The majority of the loan growth came from the real estate sector. Although delinquency increased significantly, the increases do not threaten the overall safety, soundness, and stability of the industry.
- *Letter to Credit Unions No. 08-CU-03* notifies credit unions that FinCEN released an administrative ruling to clarify the currency transaction report (CTR) filing obligations when reporting transactions involving sole proprietorships and legal entities operating under a "doing business as" (DBA) name. The ruling, FIN-2008-R001, replaces a previous ruling, FIN-2006-R003.
- *Letter to Credit Unions No. 08-CU-02* announces the 2008 Community Development Revolving Loan Fund Technical Assistance Grant Program. As a result of NCUA's ongoing efforts to provide credit unions with the resources that build capacity and enhance services to members, Congress has again appropriated funds to the Community Development Revolving Loan Fund (CDRLF). For 2008, the CDRLF received a \$975,000 appropriation for technical assistance grants.
- *Letter to Credit Unions No. 08-FCU-02* informs federal credit unions that in accordance with the provisions of the Federal Credit Union Act, the NCUA Board determined at its January 2008 meeting to continue the current 18 percent rate as the permissible interest rate ceiling for loans made by federal credit unions.
- *Letter to Credit Unions No. 08-FCU-01* establishes the operating fee schedule for fiscal year 2008 and indicates when credit unions will receive their 2008 operating fee invoices, how the fee is calculated, and when the fee is due.
- *Letter to Credit Unions No. 08-CU-01* includes interagency guidance to assist credit unions with their pandemic planning efforts. The guidance will also be incorporated into the FFIEC Information Technology Booklet.
- *Letter to Credit Unions No. 07-CU-13* provides all federally insured credit unions with the guidance given to NCUA field staff regarding the evaluation of credit union relationships with third parties.
- *Letter to Credit Unions No. 07-CU-12* explains that the NCUA is modifying the CAMEL Rating System by eliminating the CAMEL Matrix. This change will be effective with NCUA examination and supervision contacts with December 31, 2007, effective dates and thereafter.

- *Letter to Credit Unions No. 07-CU-11* highlights credit union financial trends for the first nine months of 2007 based on data compiled from the quarterly call reports submitted by all federally insured credit unions.
- *Letter to Federal Credit Unions No. 07-FCU-02* provides all federal credit unions with the guidance sent to NCUA field staff regarding reincorporating the Federal Credit Union Bylaws into the NCUA Rules and Regulations. The letter also addresses the standards for NCUA involvement and dispute resolution in bylaw matters.

The following NCUA Legal Opinion Letters have been added:

- *Legal Opinion Letter 08-0543* verifies that a federal credit union can use the names of its sponsor's subsidiaries in the names of its branch offices.
- *Legal Opinion Letter 08-0447* clarifies that the 95 percent condition for the allotment of space to credit unions in federal buildings is applied to the number of members who actually use the allotted space.
- *Legal Opinion Letter 08-0302* states that there is not an inherent conflict of interest where a credit union uses a credit union service organization (CUSO) to satisfy the direct experience requirement of the member business loan (MBL) rule. The MBL allows a credit union to use a third party to meet the two-year experience requirement, provided the third party is independent of the transaction. Thus, while it is not an inherent conflict of an interest, an analysis must be made to determine that the CUSO satisfies the independence requirement.
- *Legal Opinion Letter 08-0139* establishes that a federal credit union (FCU) may borrow funds to purchase investments, subject to the general limits on borrowing. Under the FCU Act, an FCU has the express power to borrow from any source, limited to 50 percent of paid-in and unimpaired capital and surplus.
- *Legal Opinion Letter 08-0417* verifies that a credit union's in-house counsel may perform the legal review that NCUA recommends for a credit union's third-party arrangements and contracts, assuming counsel has the experience for this purpose.
- *Legal Opinion Letter 08-0232* confirms that FCUs are depository institutions and they fulfill the Federal Credit Union Act definition of an FCU by accepting deposits, in the form of shares, from members and using those deposits to make loans and provide other member services.
- *Legal Opinion Letter 08-0218* clarifies that it is permissible for an FCU to obtain and administer benefits for the employees of a credit union service organization (CUSO) that is wholly-owned or majority-owned by the FCU if the CUSO pays for them, subject to certain conditions.
- *Legal Opinion 08-0132* establishes that a credit union will have to analyze and justify when a construction and development (C&D) loan may be properly reclassified to a member business loan (MBL). Although no simple formula or test is offered, the factors that NCUA will consider in determining whether reclassification is permissible are discussed.
- *Legal Opinion 08-0129* clarifies that although NCUA's appraisal regulation does not require a credit union to have a checklist or narrative in a real estate loan file to document its review of a real estate appraisal, the practice is recommended in interagency guidance.
- *Legal Opinion 08-0128* explains that it is not always necessary for a credit union to use the services of a third-party underwriter to satisfy the member business loan rule requirement of two years of direct experience. The letter outlines how a credit union may satisfy the direct experience requirement with an employee who has developed the requisite experience over time.

- *Legal Opinion 07-1024* establishes that an extension of consumer credit by a federal credit union that meets the definition of “open-end credit” under Regulation Z is a “line of credit” under NCUA’s regulations and is not subject to a maturity limit. This opinion supersedes a previous opinion and clarifies NCUA’s interpretation regarding application of the Regulation Z definition of open-end credit in determining if a loan product is a line of credit for purposes of NCUA regulations.
- *Legal Opinion 07-0812* provides that under federal law and NCUA’s record retention regulation, records can be preserved in any format that can be used to reconstruct the records, including in an electronic format.
- *Legal Opinion 07-0231* confirms that a federal credit union may replace the credit life insurance (CLI) policies it offers to borrowers with a debt cancellation (DC) program if it is permissible under applicable state law and the terms of the CLI contracts.
- *Legal Opinion 07-0562A* states that federal law preempts the notice provision in a California law directed at automobile sales finance lenders. The notice provision’s penalty, which is the loss of the right to collect a deficiency judgment, directly affects the terms and conditions of lending and is preempted. However, the substantive rights under state law regarding default or the circumstances for curing default are not preempted.
- *Legal Opinion 07-0633*. This legal opinion letter states that a federal credit union (FCU) may not replace its third-party collateral protection insurance (CPI) and private mortgage insurance (PMI) programs with internal programs because the FCU would be acting as an insurer, and FCUs may not engage in the business of insurance.

The following NCUA Regulatory Alerts have been added:

- *NCUA Regulatory Alert No. 08-RA-03* outlines recently released guidance from the Financial Crimes Enforcement Network regarding efforts to target foreign corruption and related money laundering. The guidance addresses the filing of SARs for financial transactions that may involve senior foreign political figures seeking to use the U.S. financial system to move funds related to political corruption.
- *NCUA Regulatory Alert No. 08-RA-02* advises credit unions that engage in residential mortgage lending and meet certain criteria that they must comply with Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). The alert provides the three criteria that necessitate a credit union collecting the HMDA data during calendar year 2008 and then submitting the data no later than March 1, 2009, to the Federal Reserve Board.
- *NCUA Regulatory Alert No. 08-RA-01* reminds credit unions of the filing deadline for 2007 HMDA data and also informs credit unions of the NCUA policy concerning late submission of required HMDA data.

This update also includes the May 2008 edition of the National Credit Union Administration Regulations, which supersedes the April 2006 edition. All amendments to NCUA regulations finalized through February 2008 have been incorporated into this edition.