Bringing Vitality to Our CFDD

Kim Lancaster, CCE, CICP
CFDD National Chairman

Thank you so much for allowing me to serve as your new CFDD National Chairman. A number of great men and women have been so honored and I feel privileged to be among them.

For my theme this year, I have chosen: Bringing Vitality to Our CFDD Organization. Webster defines vitality as an exuberance in physical and mental strength; to have a meaningful purpose or existence; to grow and live; to be a force of one.

CFDD’s exuberance for the education of its membership comes full circle at each NACM Credit Congress and through the awarding of scholarships and honoring those whom we esteem. They represent our organization not only within their own chapters, but to the outside world as well. Those individuals who have been awarded scholarships this year are developing their future and working towards professional excellence. We should aspire to be like them, to grow like them and to have the same spirit and passion.

As I look at my time with my local chapter in Dallas, I can honestly say, in 1993, I never dreamed I would be your National Chairman.

But with this great joy comes an even deeper commitment today for CFDD as a whole. Our continued growth requires an exuberance to maintain the spark for CFDD.

Each of us must look inside ourselves and ask: How can I bring this zest, spirit and vigor to my chapter, our CFDD family and our organization?

Here are a few things to think about as we begin a new year and a new journey. To have a meaningful purpose: Why did you join CFDD? What were you looking for when you joined? For me, my first meeting in September 1993 happened because Diana LeBlanc, a credit manager at a plumbing/HVAC company in my CBA class, invited me. She said, “Kim, I want you to come to this meeting with me. It’s pretty cool. There are a bunch of credit folks who come and I think you will like it.” I went and here I am today, your National Chairman with five sets of professional credentials behind my name, because I went to that first meeting.

CFD holds the key to your strength: mentoring, education, networking and our Scholarship Fund support the growth of our membership. For me, local and national scholarships helped me build my foundation in education and I was pleased to serve as a CAP teacher for nine years.

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We have all heard the saying, “Bloom Where You Are Planted” or “Have a Servant Attitude.” Our organization is designed for you, as a member, to give back. As I look at my own personal journey, the biggest gift I could give was my time to CFDD, both locally and nationally. I served on the CFDD-National Board back in the 1990s and again on my present journey. I didn’t do it because no one else would, but because my calling is to serve something bigger than myself.

Finally, CFDD has an awesome family. Look around you—all forces of one. But, what if we all gave just a little more time, a little more energy, a little more support, a little more “let’s go big” and just see what happens to all of us and our chapters? Go big or go home.

I encourage all of you to maintain the vitality and enthusiasm we all share and spread it to every member of our CFDD family.

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The Collection Process—Part 2
Litigation Collection by Suit

An attorney hired for the collection of an overdue account is the agent of the creditor, even if the attorney is initially engaged by a collection agency. Should the attorney act in a manner inconsistent with appropriate legal standards, state or federal consumer protection laws, ethical standards or contract, the creditor may be liable as the principal for the attorney acting as its agent.

When an account is placed in the hands of an attorney for collection, with instructions to commence suit, the attorney should be furnished the following: credit application, any contracts, purchase orders, confirmations, correspondence (especially noting disputes or promises to pay), copy of the debtor’s checks (bank information), invoices, statements of account, ledger cards, proof of delivery, terms of sale, nature of merchandise or services rendered and the amount to be collected.

Two of the most important and often ignored elements of information are: (1) debtor’s full name and (2) its business nature. In the absence of credit applications and/or purchase orders, the name on the account may often be different than the actual name of the debtor. Unless the collection attorney conducts a due diligence investigation, such as an inquiry with the Secretary of State’s office, or other search, which takes time and may incur costs, the wrong party or worse, the wrong name may be used in a suit, that may ultimately render a subsequent judgment useless and uncollectible, as debtor’s assets may be held in its proper name, such as bank accounts, real estate or vehicles’ titles, while the judgment is in a different name.

The debtor’s business nature, that is, whether it is a proprietorship, partnership, corporation, limited liability partnership or limited liability company, may be overlooked. This information is vital for the proper designation of a named party to a suit.

Upon receipt of these papers, the attorney will be in a position to commence the action by naming the proper party in the complaint and causing service of process upon the correct debtor by a summons or such other process as may be required by the law of the state in which the action is to be commenced, together with a statement of the account or such other papers as may be required by law.

After service of process, the debtor is allowed by the laws of all states a certain time period in which to answer or respond to the allegations of the complaint, and the answer may assert defenses to plaintiff’s claim, including a denial of the allegations of the complaint or any special defenses such as the expiration of the statute of limitations. In addition, the debtor may claim an offset or may counterclaim, which is an independent or new cause of action by the defendant against the plaintiff. This new action by the defendant may constitute a defense and may necessitate the filing of a reply by the plaintiff, or under the laws of some jurisdictions may be deemed to be denied without the necessity of any further pleading by the plaintiff.

Security for Costs
When a claim is placed in the hands of an attorney for suit, the attorney may request a payment or deposit for costs and expenses, or security for costs. In most states, at the time of commencement of suit it is necessary for the attorney to incur certain expenses or pay into court various fees. The following are some of the items for which advance payment may be requested: service of process, filing fees, premiums on court bonds, posting security for costs (particularly where plaintiff is a nonresident), trial fees, jury fees and charges for taxation of costs and entry of judgment. These requests for security for costs or advance for disbursements should be promptly complied with, not only to facilitate prompt proceedings against the debtor, but also because in many states it is improper for the attorney to advance fees or expenses of litigation for the client.

(continued)
Collection Fees
To avoid any problem, it is advisable for a creditor to establish the contingent rates that may be charged by an attorney in a collection matter at the time the matter is referred. Each attorney and creditor must make their own arrangements. In addition to the attorney’s contingent fee, there is usually a non-contingent suit fee, which is what the attorney charges for the commencement of litigation.

Need for Full Information
When the pleadings by all parties have been filed with the court and served upon each other, then the issues raised through the allegations of both the plaintiff’s Complaint and the defendant’s Answer to the Complaint typically constitute the legal and factual matters to be determined by the judge or jury. There may also be more complex pleadings, involving cross claims and counter claims that extend the pleading period.

Each party is entitled to conduct discovery, i.e., each can obtain information to prosecute or defend a suit by serving the other party with a variety of discovery demands. Discovery demands include Interrogatories (a series of written questions to be answered under oath), Requests for Admissions (a series of written fact questions to be admitted or denied), Requests for Production of Documents (a demand for the production of a particular documents), and Requests for Depositions (a demand for the production of a particular person to appear in person and give sworn testimony to oral questions). All discovery has a common purpose: to permit each party the opportunity to examine under oath the strengths and weaknesses of the other party’s case, which will narrow the issues to be determined at trial or encourage the parties to reach an amicable settlement.

Credit professionals should keep in mind the necessity of gathering together all of the information needed either by their collection bureau or by the attorney who is instructed to file suit, so that time will not be wasted in writing back and forth to obtain complete data. A credit grantor should maintain and retain a record of all communications and transactions it has with its customers in the ordinary course of business.

Plan to begin to collect such data after the account reaches the delinquency stage. Thus, there will be no delay in presenting the supporting documentation to the attorney once the decision is reached to force collections by a suit. It is important to send the collection bureau or attorney all information, including a record of conversations with the debtor, about the account that would have any bearing on a case in court, such as, statements that the goods or services were acceptable or that the business is experiencing cash flow problems. Collection attorneys frequently are faced with a counterclaim, a counter suit by the defendant for damages, when they go to court to try a collection case.

Another important benefit of having all of the documents delivered to the attorney is that after an answer is filed, the attorney may file a motion for summary judgment. Under this motion, an affidavit of the creditor is submitted along with the documentation, and the motion states that there is no genuine dispute as to any matter of fact, and the creditor is entitled to a judgment as a matter of law based upon the documentation and the facts stated in the affidavit. This requires the debtor to come forward with specific allegations of fact that deny that the obligation is due. Merely denying the indebtedness will not be sufficient in most states to defeat a motion for summary judgment. If sufficient facts are not stated in opposition to the motion, the creditor will be given a summary judgment at that point. If facts are stated which are sufficient to defeat the motion for summary judgment, it permits the creditor to identify the areas of dispute in order to be prepared for the trial.

Silent Auction
CFDD’s popular Silent Auction is on its way! You can help fellow credit professionals achieve their educational goals by donating and/or bidding on items for the Silent Auction. All proceeds raised will be used for the CFDD Scholarship Fund. Donations are welcome from individuals, chapters and corporations. Items should be new, with a starting value of $25.

Please send all Silent Auction items by August 19 to:
NACM-CFDD
Melanie Brohawn
8840 Columbia 100 Parkway
Columbia, MD 21045
410-740-5560
MelanieB@nacm.org

Silent Auction
2016 CFDD National Conference

#1 Bidder
Reminder
to All CFDD Chapters
As CFDD chapters elect new boards of directors, please keep CFDD National in the loop!

Please send an email to National (cfdd@nacm.org), with contact information for all newly installed board members.
We appreciate your help in this matter.
Lost Documents in Suits
The loss or destruction of an original document on which a claim is based, or which is necessary for proof of the claim, is not necessarily fatal to the successful prosecution of the suit. The original document is, of course, the best evidence, and no substitute for the original document will be accepted if the document itself can be produced. But if it can be proved that the original document has been lost or destroyed, secondary evidence of the contents of the document is admissible. Such secondary evidence may be a copy of the missing paper or, if no copy exists, the contents of the instrument may be proved by the oral testimony of witnesses who are familiar with its terms and provisions.

Confession of Judgment
Confessions of judgment (or cognovits) are provisions in a note, guarantee or other agreement that permit the holder to have a judgment automatically entered upon the other party’s default. Confessions of judgment are allowed only in certain states, and in order to receive the benefits, strict compliance with the laws is required.

A practice in some jurisdictions is to obtain a confession of judgment from the debtor upon the sale of merchandise or loan of money. The confession is a security device which assures creditors of an easy means of entering a judgment without the necessity of going to trial. Since a confession of judgment can usually be entered without any notice of suit to the debtor, this practice has become subject to criticism as violative of constitutional rights of due process (notice and opportunity to be heard).

If a confession of judgment is used as a security device in consumer transactions, the creditor should be certain that the execution of the confession meets the requirements of the Truth in Lending Act, which requires adequate disclosure to the debtor of the meaning of the document.

Excerpted from the NACM Manual of Credit and Commercial Laws, Volume I, General Business Law, Chapter 10, Collections. For the full text of this chapter or information on contracts, escheatment, letters of credit, secured transactions, credit applications, negotiable instruments, bankruptcy, antitrust, SOX and many other relevant topics, please consult the Manual. The current edition of all four volumes of the Manual of Credit and Commercial Laws is available at the NACM Bookstore.
The CFDD Annual Awards and Installation Luncheon at the 120th NACM Credit Congress held at Caesars Palace in Las Vegas offered the perfect occasion to recognize and honor the achievements and contributions of CFDD members. It also provided a chance to support membership through the group’s Scholarship Award Program, as well as meet CFDD’s new leadership team.

Charlene Gothard, CBF, Senior Credit Representative, Purina Animal Nutrition LLC, stepped down as national chairman and assumed the role of immediate past chair, making way for the new national chairman, Kim Lancaster, CCE, CICP, Corporate Credit Manager with Standard Supply and Distribution Company.

“Kim, your dedication and support of CFDD has shone brightly throughout this year by your contributions to the newsletter, outreach to members, your work on so many of our projects, your support to me and as a friend and mentor,” Gothard told Lancaster at the luncheon. “CFDD has been a part of my family for many years now. I have my family, my church, my work and my CFDD family. My life has been blessed with great friends from this organization across the country. I will cherish the memories of this past year and when I look back, it will be one of the best years of my life.”

NACM Chairman Gary Gaudette, CCE, ICCE, Senior Treasury Analyst with Hypertherm, Inc., thanked Gothard for her service with a certificate of appreciation and a pin before addressing the assembly. “The strength of CFDD is truly from your network,” he said. “You come together to learn and to exchange ideas. You learn from each other about how problems have been solved or how challenges have been met. You fine tune your credit skills and expand not only your knowledge, but also your professional network at every educational event you attend.”
Upon assuming the chair, Lancaster announced the theme for her leadership term: Bring Vitality to Our CFDD Organization. “CFDD’s exuberance for the education of its membership comes full circle at each NACM Credit Congress and this luncheon through the awarding of scholarships and honoring those whom we esteem and who represent our organization not only within their own chapters but to the outside world as well,” she said. “Each of us must look inside ourselves and ask: How can I bring this zest, spirit, vigor to my chapter, our CFDD family and our organization?”

“CFDD holds the key to your strength: Mentoring, education, networking and our scholarship fund support the growth of our membership,” Lancaster said. “As I look at my own personal journey, the biggest gift I could give was my time to CFDD, both locally and nationally. I didn’t do it because no one else would, but because my calling is to serve something bigger than myself.”

CFDD’s luncheon also gave members a chance to acknowledge the organization’s fundraising successes. Over the past year, CFDD’s chapters awarded 25 scholarships for programs such as local and national conferences, seminars and CAP/ACAP classes totaling $7,655. Taken together, CFDD Chapters and CFDD National have awarded 61 scholarships at a total value of $24,300, which brings the cumulative total from 1990 to present to 7,754 scholarships worth $1,760,534. At Credit Congress this year, CFDD awarded 36 scholarships in the amount of $16,645.
Auctions, Donations, Dessert
What Does It All Mean?

There are three fundraising events taking place at our NACM/CFDD National Conference September 21-23 in Louisville, Kentucky. All proceeds raised go toward the National Scholarship Fund, which benefits you!

The Silent Auction contains items donated by a company, a CFDD chapter or an individual. The items are bid on at a casual, fun, open-house-style event. The bidding pace can be fast and furious, so be prepared. During this time, hors d’oeuvres are served with a cash bar. Bid often and bid high!

Donated items will be accepted until August 19 and should be sent to Melanie Brohawn, NACM-CFDD, 8840 Columbia 100 Parkway, Columbia MD 21045.

Individual chapter donations must also be received by Melanie, our CFDD administrator, before September 10. These are voted on by each chapter’s board of directors and can be any amount the chapter would like to donate.

*On closing night, anything goes and our most popular fund raiser of all is the Dessert Auction.* A captain is assigned to each table. The captain passes around an envelope and those seated at the table make a donation to the Scholarship Fund. The table with the highest donation is the winner and gets first pick of the desserts. The best, most decadent desserts go first, with last place getting the Twinkies!

These are important and fun events for CFDD. We not only fund our scholarship opportunities, but also raise our spirits while connecting with each other. It’s a truly enjoyable experience and the Dessert Auction winning table gets bragging rights that carry on to the next year. *Who will be Table No. 1 this year? Make it your table!*

*Submitted by Ellen Wodiuk, CCE, ICCE, Vice Chairman, Education, Programs & Chairman Elect and Client Services Specialist at the Law Office of Mark A. Kirkorsky.*

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**CITY OF LOUISVILLE**

Join us September 21-23 at the Seelbach Hilton in Louisville for informative educational sessions and productive, entertaining networking opportunities. Add us to your calendar today!

We invite you to attend these valuable sessions:

- Credit Applications and Credit Terms: The First Lines of Defense
- Cyber Security: Is Your Company at Risk?
- The Seven Cs of Effective Business Communication
- Tips and Tricks to Make Life Easier in Excel
- Economic Outlook
- Social Media as a Tool to Identify and Evaluate Credit Risk: The Technology, Best Practices and Legal Considerations for the Credit Team
- Key Bankruptcy Issues from The Vendor’s Perspective: A Point-Counterpoint Discussion
- Best Practices Roundtable

**Thanks to Conference Sponsors Denver and Louisville Chapters!**

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**Registration**

**Early Bird Deadline:** August 5, 2016  
**Register now** to save!

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<td>Non-Member</td>
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<td>Additional Friday Dinner Ticket</td>
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**Hotel**

The Seelbach Hilton, 500 Fourth Street, Louisville, KY 40202. The special conference room rate is $159 a night for single/double occupancy and applies to rooms with one queen bed or two double beds.

**Refund Policy:** All cancellations and requests for refunds must be made in writing to conventions_info@nacm.org. Registration fees, less a $50 processing charge, will be refunded for written cancellations received by NACM-CFDD on or before August 19, 2016. Between August 20 and August 26, 2016, only 50 percent of the fee will be refunded for written cancellation requests. Due to financial obligations, no refunds will be issued for cancellations received after August 26, 2016; however, substitutions may be made at anytime.
CFDD National Silent Auction
CFDD National Conference
September 21-23, 2016 • Louisville, KY

We are seeking donations from CFDD members, member companies and chapters for the CFDD-National Silent Auction. All proceeds go to our Scholarship Fund—which, in turn, benefits YOU! Let’s make this a great event and aid in awarding more scholarships to our members.

All donations are tax deductible. Some items of interest are, but are not limited to:

• Gift cards (starting at $25) to national chain restaurants and stores
• Electronics
• Jewelry
• Purses

We ask that all donations be received by September 1, 2015. If you have questions, please contact: Melanie Brohawn, 410-740-5560, MelanieB@nacm.org

We look forward to receiving your donation and seeing you in Louisville in September!

Silent Auction Donation Form

Donor’s Name ________________________________________________________________

Title __________________________________________________________________________

Company _______________________________________________________________________

Address _______________________________________________________________________

Phone Number __________________________________________________________________

E-mail Address __________________________________________________________________

CFDD Chapter ___________________________________________________________________

Item Description & Retail Value
[Minimum value of $25 please] ____________________________________________________

Please send all donations to:

NACM – CFDD
Attn: Melanie Brohawn
8840 Columbia 100 Parkway
Columbia, MD  21045

Please mark all donations for CFDD National Conference to ensure proper storage.
The Distinguished Member Achievement Award (DMA) was established in 1988 to recognize outstanding individual achievement in the NACM Credit and Financial Development Division. Each chapter is invited to nominate one candidate per year.

Distinguished Member Achievement Award
Class A—Barbara Davis, CCE, Portland
Class C—Denise Kephart, CBA, Omaha

The National Mentor Award was established in 2003 to recognize participation in and promotion of the credit profession and CFDD through the mentoring process.

National Mentor Award
Wendy Bartlett, CCE  Dallas/Ft. Worth

NACM Credit Congress
Brett Hanft, CBA  Portland
Diane Kemp, CBF  Birmingham
Kim Lancaster, CCE, CICP  Dallas/Ft. Worth
Lori Nissen, CCE  Minneapolis/St. Paul
Sheila Roames, CCE  Phoenix
Kelly Shock, CCE, CCRA  Dallas/Ft. Worth
Yvonne Vigil
Debra Yount, CCE  Kansas City

National Membership Awards
Class A—Seattle —3%
Class B—Louisville —15%
Class C—Evansville —15%

National Program Awards:
Outstanding Regular Monthly Meeting:
Class A—Portland
Class B—There is a tie between the Kansas City Chapter and the Louisville Chapter

National Program Awards:
Outstanding Seminar/Workshop
Class A—Portland
Class C—Salem/Albany

National Publicity Awards
Class A—Portland
Class B—Kansas City
Class C—Salem/Albany
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CHECK OUT NACM’S LINEUP OF PROGRAMS AND EVENTS

Jul 20  Webinar: Credit Resources—What to Look for in Credit Reports and Examining Other Resources Available

Jul 21  Webinar: Trade Credit Financing

Aug 10  Webinar: Correspondent Banking Relationships

Aug 15  Webinar: Learning to EXCEL with NACM: Part 3

Sep 7  Teleconference: Loose Lips Sink Ships

Sep 14  Webinar: Show Your Value: Creating Effective Receivables Reports

Sep 15  Webinar: Doing Business in the Middle East

Monthly Credit Survey

You are invited to participate in the monthly Credit Managers’ Index (CMI) survey of U.S. credit and collection professionals. Each time you take the survey, you receive 0.1 point toward your NACM Career Roadmap. Contribute to the CMI and have your experience count.

The results from the survey are processed and presented each month in NACM’s eNews, Business Credit magazine and at www.nacm.org. Since its inception, the CMI has been a startlingly accurate economic predictor, most notably proving its worth during the recession.

The survey asks participants to rate whether factors in their monthly business cycle—such as sales, new credit applications, accounts placed for collections, dollar amount beyond terms—are higher than, lower than or the same as the previous month. The results reflect the entire cycle of commercial business transactions, providing an accurate, predictive benchmarking tool.

All credit and collections professionals are invited to take the survey each month during the timeframes listed below. NACM membership is not required.

Read more about the CMI here.

Upcoming Survey Dates

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<th>CMI Timeline</th>
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<td>September</td>
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CFDD Logo Items

Searching for that perfect gift that combines practicality, value and pride? Look no further than CFDD’s extensive selection of logo items! From mouse pads to flashlights, CFDD logo items can satisfy even the most discerning recipient. They also make great gifts for speakers and special guests. Don’t delay! Browse the CFDD logo item web pages, part of the online NACM Bookstore, and purchase merchandise that reflects your investment in the CFDD professional credit community!

CFDD logo items currently available:

- Acrylic Desk Tray ($10)
- Aluminum Card Case ($8)
- Business Card Album ($15)
- Can Holder ($2)
- Cork Mouse Pad ($5)
- Flashlight ($15)
- Luggage Grip ($2)
- Mesh Bag ($10)
- Robotic Book Light ($5)
- Stylus Twist Metal Pen ($10)