

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

October 13, 2017

### Compliance News

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#### CUNA Files Suit Against Equifax

CUNA has made good on its promise to go after Equifax over the credit-rating bureau's recent data breach.

Last week, the credit union industry trade association filed a class-action lawsuit in a Georgia District Court against Equifax, alleging that financial institutions have suffered and will continue to suffer financial losses and increased data security risks as a result of the breach. According to the complaint, Army Aviation Center Federal Credit Union and Greater Cincinnati Credit Union joined CUNA as plaintiffs in the suit.

Army Aviation Center Federal Credit Union, headquartered in Daleville, Alabama, has \$1.2 billion in assets and about 98,000 members. Greater Cincinnati Credit Union is a state-chartered credit union headquartered in Cincinnati, Ohio.

"We filed this lawsuit because our member credit unions are very concerned with the effects of this breach, everything from reissuing compromised cards to adding uncertainty to the loan underwriting process," CUNA President/CEO Jim Nussle said in an announcement after the filing. "Credit unions will bear substantial costs dealing with the fallout from this breach, and this lawsuit is a step toward recouping costs and requiring stronger data security measures in the future."

The Equifax breach, announced September 7, was first thought to affect 143 million U.S. consumers. Compromised information primarily includes names, Social Security numbers, birth dates, addresses and in some cases

### Your Credit Union's Regulatory Compliance Support Staff

#### Mark Robey

**Sr. VP of Regulatory Affairs**

Phone: 800-477-1697, ext. 3327

Direct: 720-479-3327

#### Melia Heimbuck

**Director of Compliance Operations**

Phone: 800-477-1697, ext. 3325

Direct: 720-479-3325

#### Julie Kappenman

**Director of Association Compliance Services**

Phone: 800-477-1697, ext. 3324

Direct: 720-479-3324

#### Donna Gibbs

**Coordinator Association Services/Compliance**

Phone: 800-477-1697, ext. 3281

Direct: 720-479-3281

### InCompliance Implementation Materials

The Association's InCompliance Materials are provided to help your credit union meet the challenges of implementing new and changing regulations. InCompliance publications provide you with a brief summary of the rule to quickly assess its impact, a detailed analysis for compliance staff charged with implementation, sample policies, implementation checklists and, as appropriate, sample forms. In addition, these materials are updated with Q&As (InResponse), and other materials such as charts and matrices as questions are raised and issues are identified.

Visit [mwcu.com](http://mwcu.com) to register

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Please provide the subscriber's name, credit union, title

driver's license numbers. The breach also jeopardized credit card numbers for about 209,000 people, as well as dispute documents for about 182,000 consumers. A subsequent forensic investigation announced on October 2 found that an additional 2.5 million U.S. consumers were affected, bringing to the total to 145.5 million people.

In an announcement before the filing, CUNA said credit unions and other financial institutions will likely have to shoulder these costs over the long term. They will also suffer reputational harm and have to bear the burden of notifying consumers of potential fraudulent activity.

The complaint gave more detail about the expenses CUNA thought credit unions will have to bear.

"These costs include, but are not limited to, canceling and reissuing an untold number of compromised credit and debit cards, reimbursing customers for fraudulent charges, increasing fraudulent activity monitoring, taking appropriate action to mitigate the risk of identity theft and fraudulent loans and other banking activity, sustaining reputational harm and notifying customers of potential fraudulent activity," it claimed.

"Equifax's data security deficiencies were so significant that, even after hackers entered its systems, their activities went undetected for at least two months, despite red flags that should have caused Equifax to discover their presence and thwart, or at least minimize, the damage," it alleged.

At least three credit unions have brought their own suits against Equifax so far. Madison, Wis.-based Summit Credit Union filed a class-action lawsuit against Equifax on September 11; Colorado Springs, Colo.-based Aventa Credit Union and New Castle, Pa.-based First Choice Federal Credit Union, along with the New Orleans-based Bank of Louisiana, filed their own class-action complaint against Equifax on September 22.

Summit Credit Union has \$2.8 billion in assets and about 167,000 members. Aventa Credit Union has \$175 million in assets and about 23,700 members; First Choice Federal Credit Union has \$44 million in assets and about 6,700 members.

*Source: CU Times*

### State Department Revoking Sudan Sanctions

The State Department [issued a statement](#) announcing the decision to revoke economic sanctions with respect to Sudan and its government, in recognition of the Government of Sudan's sustained positive actions to maintain a cessation of hostilities in conflict areas in Sudan, improve humanitarian access throughout Sudan, and maintain cooperation with the United States on addressing regional conflicts and the threat of terrorism. The revocation will be effective October 12, 2017.

The Treasury Department's Office of Foreign Assets Control has [posted a notice](#) that it has published new [Frequently Asked Questions](#) regarding action by the State Department to revoke the sanctions, as well as a [new general license](#) authorizing certain transactions pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000.

*Source: U.S. Department of State*

### CFPB Issues Last-Minute Tweak and Proposal for Servicing Rule

With less than two weeks to go before implementation (if taking advantage of the Bureau's guidance suggesting that implementation three days early

and email address. The subscriber will receive a welcome e-mail that details how to access the forum.



### Put a CCRS at Your Fingertips!

Easily apply [Consumer Compliance Rating System](#) (CCRS) expectations with AffirmX. CCRS is a supervisory policy for evaluating a financial institution's adherence to consumer compliance requirements. By adding AffirmX to your team of experts, a credit union can meet examiner expectations to proactively prevent, self-identify, and correct compliance issues. AffirmX is the leading cloud-based compliance solution that delivers a near-real time risk-based dashboard of your compliance operations. AffirmX provides document review for all areas of regulatory compliance, including ACH, Advertising, BSA, Deposits, Loans, and Operations, as well as helps you create and manage your Cybersecurity Risk Assessment.

For more information about our compliance services, please contact Melia Heimbuck at: [mheimbuck@mwcu.com](mailto:mheimbuck@mwcu.com) or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



### InfoSight Highlight

#### Advertising: Telephone Consumer Protection Act

A new summary and FAQs were added to the Advertising Channel. The Telephone Consumer Protection Act of 1991 places certain restrictions on the way credit unions are allowed to communicate with their members. The regulation protects consumers from unwanted telemarketing calls which means that the consumer must authorize express written consent prior to credit union contact. In 2015, the FCC approved additional TCPA rules which pose challenges to credit union's using automatic telephone dialing technology. The new rules translate to consumers having an easier time revoking their consent to be contacted, creating limitations on the amount of informational, non-telemarketing calls made to members, and TCPA protections applying to text messages. As such, consumers have more protections and credit unions face a higher risk of being non-compliant. Since communication is a vital part of day-to-day business; whether it be calling a member to discuss about a promotional CD rate, making a collection call or even calling to inform a member about fraud on an account; understanding the key factors of TCPA helps credit unions acknowledge expectations associated with the Act, some they may have not considered before. There are a few exemptions for some

is a good idea), the CFPB has [announced](#) an interim final rule tweaking one of the early intervention (§ 1024.39 of Regulation X) changes effective October 19. The change only affects servicers who are subject to the Fair Debt Collection Practices Act with respect to mortgage loans on which consumers have invoked their cease communication rights, and it provides a 10-day window for delivery of a modified written early intervention notice under certain specific situations. The interim rule, which has been posted to BOL's Regulations pages for Regulation X, is effective October 19. Comments on the interim rule are due within 30 days of *Federal Register* publication.

The Bureau also announced a proposed rule that would amend new § 1026.41(e)(5) to adjust the timing requirement for the transition to and from modified periodic statements or coupon books in connection with a consumer's bankruptcy case, in order to alleviate unintended challenges in implementation. Comments on the proposal will be accepted for 30 days following publication in the *Federal Register*. Any final rule will be effective April 19, 2018.

- [Interim final rule](#) amending § 1024.39(d)(3)(iii) of Regulation X
- [Proposed rule](#) to amend § 1026.41(e)(5) if Regulation Z

*Source: CFPB*

### **Institutions Affected by Hurricanes Encouraged to Contact FinCEN**

FinCEN has [posted a notice](#) that financial institutions affected by Hurricanes Harvey, Irma, and Maria should contact FinCEN and their functional regulators as soon as practicable to discuss any delays in their ability to file required Bank Secrecy Act reports. Institutions seeking to contact FinCEN should call the FinCEN Resource Center at 1-800-949-2732 and select option 8 or e-mail the Resource Center at [FRC@fincen.gov](mailto:FRC@fincen.gov).

*Source: FinCEN*

### **NCUA Proposes Advertising Rule Change**

The NCUA has published [\[82 FR 46173\]](#) a proposed rule that would amend its rules at 12 CFR part 740 (Accuracy of Advertising and Notice of Insured Status) to add a fourth version of its official advertising statement -- Insured by NCUA -- to those allowed for use by federally-insured credit unions, to expand a current exemption from the advertising statement requirement for radio and television advertisements to those under 30 seconds in duration (currently, only those under 15 seconds are exempted), and to remove a requirement that the advertising statement appear on statements of condition. Comments are due by December 4, 2017.

*Source: NCUA*

## **CUNA Advocacy Report**

The [CUNA Advocacy Update](#) is published at the beginning of every week and keeps you on top of the most important changes in Washington for credit unions--and what CUNA is doing to monitor, analyze, and influence government agencies and federal law. Additional Advocacy efforts may also be found under CUNA's [Removing Barriers](#) blog.

of the calls made by credit unions, but in an environment where member contact is a day-to-day occurrence it is best to fully assess this rule in order to remain compliant.

InfoSight -- [AZ](#), [CO](#), [WY](#)

## **Advocacy Highlight**

### **SBA Office of Advocacy Reiterates Credit Union Concerns about Small Business Loan Data Collection**

In a [letter](#) in response to the CFPB's Request for Information concerning small business loan data collection, the Small Business Administration Office of Advocacy raised several concerns about a rulemaking in this area's potential impact on small businesses and small financial institutions.

In its letter, the SBA Office of Advocacy stated, "Advocacy encourages the CFPB to develop a workable size standard, conduct additional small entity outreach and publish an Advance Notice of Proposed Rulemaking (ANPRM) prior to going forward with a Small Business Regulatory Enforcement Fairness Act panel."

It further noted, "At Advocacy's roundtable, the participants stated that the SBA size standards are complex and confusing. Advocacy encourages the CFPB to perform outreach with small entities and to work with Advocacy and SBA's Office of Size Standards to develop a workable solution."

Other notable parts of the letter included the following recommendations:

- Advocacy appreciates the fact that the CFPB published a Notice and Request for Information for section 1071 and that the CFPB extended the comment deadline by sixty days. However, this is a complicated issue that will be costly for small entities.
- At Advocacy's roundtables, the participants stated that it will be costly to develop a computer system to collect the information that is required. According to the participants, it will be far more costly than the Home Mortgage Disclosure Act (HMDA) rulemaking. In HMDA, small entities added to an existing system. To comply with the requirements of section 1071, small entities will need to build an entirely new system.
- The CFPB convened a SBREFA panel for the HMDA rulemaking because of the anticipated economic impact. Advocacy encourages the CFPB to convene a SBREFA panel for the rulemaking on section 1071. Prior to convening the SBREFA panel, Advocacy encourages the CFPB to have several pre-panel meetings/conference calls with the small entity representatives (SERs) in order to obtain information about the possible economic impact. Prior outreach will help make the SERs' input at the SBREFA panel more meaningful.
- In addition, Advocacy asserts that an Advanced Notice



Training & Events Calendar

**October 16**

Webinar: [Planning & Compliance Considerations for the New Fannie Mae & Freddie Mac Uniform Residential Loan Application](#)

**October 26**

Webinar: [Job-Specific BSA Training for Frontline: CTRs, SARs, CIP & More](#)

**October 30**

Webinar: [Preparing for the Impact of New Prepaid Card Rules Under Regulation E – Deadline April 1, 2018](#)

**November 7**

Webinar: [CFPB's TRID Amendments: Understanding the Clarifications & New Expectations](#)

**November 8**

Webinar: [When a Depositor Dies: Next Steps & Best Practices](#)

**November 9**

Webinar: [Auditing for Reg E Compliance](#)

**November 14**

Webinar: [Account Documentation Series: Accepting Powers-of-Attorney on Deposit Accounts](#)

**November 15**

Webinar: [ACH Specialist Series: Federal Government ACH Payments: Reclamations & Garnishments](#)

**November 16**

Webinar: [Required Compliance for the Board & Senior Management](#)

**November 29**

Webinar: [OFAC Sanctions Compliance: Update, Expectations & Best Practices](#)

**November 30**

Webinar: [Robbery Preparedness for All Staff](#)

**December 6**

Webinar: [Job-Specific BSA Compliance for Lenders](#)

**December 12**

Webinar: [All About 1099 Reporting Part 2: Forms 1099-INT & 1099-MISC: Vendor Payments, Prizes & Interest on Deposit Accounts](#)

**December 13**

Webinar: [ACH Risk Management & Assessment: Risks, Controls & Ratings](#)

**December 14**

Webinar: [Real Estate Series: Mortgage Loan Disclosure Timing Issues](#)

**December 19**

Webinar: [The ALLL with TDRs & Foreclosed Assets](#)

of Proposed Rulemaking (ANPRM) may be helpful. At Advocacy's August 4 roundtable, the small business representatives alluded to the differences between consumer and commercial lending. Moreover, when asked about less costly alternatives, they stated that they were not ready to have a meaningful discussion on alternatives. The consideration of meaningful alternatives is a crucial part of the RFA. An ANPRM could assist the CFPB in learning more about the challenges associated with commercial lending and in ascertaining less costly alternatives.

The SBA Office of Advocacy letter highlights a number of the same concerns [raised by CUNA](#) and credit unions. CUNA participated in several SBA Office of Advocacy roundtables on this issue and will continue to engage with them about concerns of how a rule in this area could harm small credit unions and limit access to credit for members.

**TCPA Petition: FCC Opens CUNA's Petition for Comment**

The [FCC opened](#) CUNA's Telephone Consumer Protection Act (TCPA) [Petition](#) for comment. This comes only a week after CUNA's Petition was filed.

Comments will be due in 30 days on November 6, 2017. CUNA will be working to educate stakeholders about this petition and seeking support for our efforts to be able to better communicate with credit union members.

Notably, the FCC's comment submission is different than the financial services agencies credit unions usually contact. Because of the unique comment process and the importance of this petition, CUNA will be holding a webinar on Wednesday – October 11 at 3:00 PM ET. The webinar will highlight the regulatory relief goals of the petition and how the comment process will work – [Register Now!](#)

ICYMI – *It's been a busy 7 days in CUNA's Advocacy Department*

- [Filed the TCPA Petition](#) with the FCC
- [Filed a lawsuit](#) against Equifax
- Held a [member-call](#) on Equifax litigation
- Consumer Protection Subcommittee [met with the NCUA & CFPB](#)
- The finalized [Small Dollar Rule had MAJOR improvements](#) from the proposed rule
- Sent [multiple letters to Capitol Hill](#) prior to hearings with Equifax's former CEO/Chairman

*Source: CUNA Removing Barriers Blog*

## Recorded Webinars:

Webinar: [CTR Technical Changes: New Data Fields, Amendments & Alternate Model Reporting](#)

Webinar: [New MLA Requirements for Credit Cards, Effective Oct 3, 2017](#)

## Save The Date – Compliance Lunch & Learns

Mark your calendars and set reminders on your smart phones! Check out the following Compliance Lunch & Learn dates and times. More information to come. Cost is \$35/ person. If you have any questions, please send an email to Jodi Weiser at [jweiser@mwcua.com](mailto:jweiser@mwcua.com).

**Nov. 14** - Phoenix, AZ: 11:30 am – 1:30 pm

**Nov. 15** – Tucson, AZ: 11:30 am – 1:30 pm

**Nov. 16** – Denver, CO: 11:30 am – 1:30 pm

## CUNA Comment Calls – Due Dates on Proposed Rules

**September 18, 2017~DOL**

[DOL Overtime Rule RFI](#)

**September 29, 2017~CFPB**

[Federal Mortgage Disclosure Requirements Under TILA \(Reg Z\)](#)

**September 29, 2017~NCUA**

[Emergency Merger CC](#)

**November 3, 2017~NCUA**

[Regulatory Reform Agenda](#)

## Effective Dates New and Revised Rules

**September 15, 2017~NACHA**

[Same-day ACH \(NACHA\) – Phase 2](#)

**April 1, 2018 ~ CFPB**

[Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z](#)



## Compliance Calendar

**September 15, 2017**

[Same-day ACH – Phase 2](#)

**September 30, 2017**

[New Call Report Form](#)

**October 3, 2017**

[MLA – Limitations on Terms of Consumer Credit Extended to Service Members & Dependents](#)

**October 19, 2017**

[Amendments to 2013 Mortgage Rules under RESPA/Reg X and TILA/Reg Z](#)

**October 29, 2017**

5300 Call Report Due to NCUA

**November 10, 2017**

Veterans' Day Observed (FRB will be open)

**November 23, 2017**

Thanksgiving Day – Federal Holiday

**December 25, 2017**

Christmas Day – Federal Holiday

**January 1, 2018**

[HMDA/Reg C](#)

**March 16, 2018**

[Same-day ACH - Phase 3 \(Final phase\)](#)

**April 1, 2018**

[Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z](#)

**April 19, 2018**

[Amendments to 2013 Mortgage Rules under RESPA/Reg X and TILA/Reg Z](#)

**May 11, 2018**

[Customer Due Diligence/CDD](#)

Please respond to [Mark Robey](#) with any questions or concerns regarding content of this newsletter.

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