Regulatory Compliance News

MOUNTAIN WEST Credit Union Association

October 14, 2016

Compliance News

NCUA: Bureau Should Exempt CUs from Payday Loan Rules

The NCUA reports that Chairman Metsger has submitted a letter to the CFPB requesting an exemption from the final CFPB payday lending rule for NCUA's payday alternative loan rules. "We respectfully request the Bureau exempt FCUs completely from its final rule for loans made under and consistent with NCUA's PALs regulation," Metsger said in his letter. "As the prudential regulator for federal credit unions, NCUA already ensures that members receive the type of protections the Bureau is seeking to address. The Bureau should therefore defer to determinations of the FCU prudential regulator about this product."

Source: NCUA

NCUA Issues Recommendations for Examination Flexibility

NCUA released its report detailing 10 recommendations from the internal working group charged with the task of evaluating the agency's examination and supervision program. For a rundown of the recommendations see below but if you want to go straight to the nine-page report, click here. The NCUA Board will vote on the 10 recommendations when it votes on the agency's 2017-2018 operating budget, currently set for November 17, 2018.

1. Extend the exam cycle for low risk federal credit unions with assets less than $1 billion.
2. Adjust the exam cycle for federal credit unions that don't meet the requirements for an extended exam cycle.
3. Continue enhanced exams at small federal credit unions.
4. Enhance coordination between NCUA and state supervisory authorities in the examination of federally insured state chartered credit unions.
5. Establish a joint working group for increased collaboration between NCUA and state supervisory authorities.
6. Establish applicable provisions for all federally insured credit unions (3 parts: random sampling examinations for small credit unions; measurement of exam cycle; authority to conduct more frequent exams).
7. Enhance examination planning and notice procedures.
8. Optional survey for the credit union at exam completion.
9. Reduce onsite examination presence.
10. Improve consistency of examiner training.

In addition to the release of the report, NCUA has made available a list of FAQs, a summary of stakeholder comments, and separate flowcharts illustrating the requirements credit unions would need to meet for an extended exam cycle (FCU/FISCU). Those materials may be accessed from

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Association Compliance Forums

Click on one of the below links to subscribe

Compliance Forum

BSA Compliance Officer Forum

Please provide the subscriber's name, credit union, title and email address. The subscriber will receive a welcome e-mail that details how to access the forum.

NCUA's Exam Flexibility Initiative information page, found here.

Source: NCUA

Partial Exemption from Early Intervention Requirements for Borrowers in Bankruptcy

The new mortgage servicing rule states that while any borrower on a mortgage loan is a debtor in bankruptcy, a servicer, with regard to that mortgage loan:

- Is exempt from the live contact requirements;
- Is exempt from the written notice requirements if:
  - no loss mitigation option is available *(a loss mitigation option is available if the owner or assignee of a mortgage loan offers an alternative to foreclosure that is made available through the servicer and for which a borrower may apply, even if the borrower ultimately does not qualify),* or
  - if any borrower on the mortgage loan has provided a Fair Debt Collection Practices Act (FDCPA) notification - notifying the servicer that the borrower refuses to pay a debt or that the borrower wishes the servicer to cease further communications, with respect to that mortgage loan.

If there is an available loss mitigation option and/or no borrower on the mortgage loan has provided a FDCPA notice, the servicer must comply with the written notice requirements as follows:

- If a borrower is delinquent when the borrower becomes a debtor in bankruptcy, a servicer must provide the written notice no later than the 45th day after the borrower files a bankruptcy petition.
- If the borrower is not delinquent when the borrower files a bankruptcy petition, but subsequently becomes delinquent while a debtor in bankruptcy, the servicer must provide the written notice no later than the 45th day of the borrower's delinquency.

A servicer must comply with these timing requirements regardless of whether the servicer provided the written notice in the preceding 180-day period.

No Payment Request: The written notice may not contain a request for payment.

Frequency: A servicer is not required to provide the written notice more than once during a single bankruptcy case.

Multiple borrowers: If any of the borrowers is a debtor in bankruptcy, a servicer may provide the written notice to any borrower.

Resuming contact: A servicer must resume compliance with the live contact and written notice requirements after the next payment due date that follows the earliest of the following events: (A) the bankruptcy case is dismissed; (B) the bankruptcy case is closed; and (C) the borrower reaffirms personal liability for the mortgage loan.

Exception: With respect to a mortgage loan for which the borrower has discharged personal liability, a servicer:

- Is not required to resume compliance with the live contact requirements; and
- Must resume compliance with the written notice requirements if the borrower has made any partial or periodic payment on the mortgage loan after the commencement of the borrower's bankruptcy

results. Through a partnership with AffirmX LLC, the MWCUA is making available an online cybersecurity assessment tool that automates the process of calculating various cybersecurity risks and generating a report that summarizes the results. For a **limited time, AffirmX's Cybersecurity Risk Assessment Tool** is available for only $600 (normally $1,000) for the first year. Pricing options for this special offer are:

- Option 1 - $600 for the first year, $1,000 for the second and third year if the Credit Union pays each year

- Option 2 - $600 for the first year, $800 for the second year and $1,000 for the third year if the Credit Union pays all three years up front

AffirmX's Cybersecurity Risk Assessment Tool utilizes a smart questionnaire to guide you through the FFIEC Inherent Risk Profile, assessing how each of your products and services affect your institution's risk profile. It also guides credit unions through the FFIEC Cybersecurity Maturity Assessment which identifies risks and determines their cybersecurity maturity.

The tool is delivered through AffirmX's online Risk Intel Platform, which applies a **risk-scoring algorithm to assign risk ratings** to each category of the assessment. Those responses and scores **generate a comprehensive, written report** that allows a credit union to identify specific areas and levels of risk and to identify whether incident response programs and internal controls are appropriate to address those levels of inherent risk. These reports can be used to demonstrate to the examiner that a credit union has completed the required risk assessment and how responses were developed.

MWCUA's special pricing opportunity is available **until October 14th**. For information about this special offering, please contact Melia Heimbuck: mheimbuck@mwcua.com

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infoSight
Your Online Compliance Resource

InfoSight Highlight

Share Insurance: Common Misunderstandings

Common misunderstandings regarding NCUA Share Insurance affect all ownership categories:

- Many members do not realize that placing funds in different types of deposit accounts (for example, share, share draft, share certificates) does not provide for separate insurance coverage. All types of deposit accounts that a depositor has in the same ownership category are combined and insured up to case.

Bankruptcy case revived: If the borrower's bankruptcy case is revived, for example if the court reinstates a previously dismissed case or reopens the case, the partial exemption requirements once again apply. However, a servicer is not required to provide the written notice more than once during a single bankruptcy case.

For more information you may review CFPB's final mortgage servicing rule here.

CFPB Issues Prepaid Card Rule

The CFPB has issued its final prepaid card rule under Regulation E (Electronic Fund Transfer Act) and Regulation Z (Truth in Lending Act), as well as the official interpretations to these regulations. The final rule amends Regulation E to address disclosures, limited liability and error resolution, and periodic statements for prepaid card accounts. The rule also adds new requirements regarding the posting of account agreements.

In addition, the final rule regulates overdraft credit features that may be offered in conjunction with prepaid accounts. Subject to certain exceptions, such credit features will be covered under Regulation Z where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with a prepaid card.

The new rule will generally apply to prepaid accounts starting Oct. 1, 2017; the requirement for submitting agreements to the CFPB will take effect in October 2018. To read more on the Prepaid Card Rule, click here.

CFPB Structure Unconstitutional

The U.S. District Court of Appeals for the D.C. Circuit's decision that the Consumer Financial Protection Bureau's (CFPB) structure is unconstitutional reinforces several CUNA concerns about the bureau as well, said CUNA President/CEO Jim Nussle. *The Hill* reported that the court made a 2-1 ruling in the case brought against the bureau by PHH Corp.

"I applaud the ruling from the U.S. Court of Appeals for D.C. Circuit regarding the PHH case against the Consumer Financial Protection Bureau, in that it will establish a meaningful check and balance and bring needed accountability to the director's role," Nussle said. "This ruling confirms CUNA's concern that the structure of the CFPB is flawed and that an unchecked, independent director who answers to no one can't lead to good public policy. CUNA continues to support a 5-person commission for the CFPB instead of its current structure."

CUNA supports legislation that would change the bureau's leadership to a 5-person board, rather than a single director, believing that the change would bring additional accountability to credit unions and consumers and reduce ideologically driven regulatory burden.

The court's decision does not shut down the CFPB, rather it allows the bureau to function by giving the president the power to remove and supervise the director.

Source: CUNA Advocacy

the insurance limit for that ownership category.

For example: If Mary Jones has three accounts in her name alone at a credit union – a share account, a share draft account, and a share certificate – the funds in all three accounts will be added together and insured up to $250,000 in total, NOT $750,000.

- Many members do not know that outstanding official items such as interest and cashiers checks are deposits that will be combined with their other deposits in the same ownership category when calculating insurance coverage.

  For example: John Smith has a single account in his name alone with a credit union for $250,000. Every month he receives a check for $200 representing the interest earned on this account. Until this check is presented and has cleared, John Smith has $250,200 in the single account category. If his credit union should fail and this check is outstanding, he will be uninsured for $200.

- Members may not realize when they have deposit accounts that fail to meet the requirements for insurance coverage in different ownership categories. There are specific requirements that must be met to qualify for share insurance coverage under each of the different ownership categories. When the requirements for a specific ownership category are not met, the insurance coverage will change to a different ownership category, most often the single account category.

Common misunderstandings about single accounts:

- Owners of sole proprietorships often do not realize that deposit accounts belonging to the sole proprietorship are added together with any other single accounts they may have in their name alone at the same credit union and the combined total is insured to a maximum of $250,000.
- Some estate executors are under the mistaken impression that accounts held in the name of a decedent or by the executor or administrator of a decedent's estate are fully insured regardless of the deposit amount. In fact, such accounts are insured up to a maximum of $250,000 only, and insured in the name of the decedent.

InfoSight -- AZ, CO, WY

Compliance Videos

Compliance Connection on YouTube

Compliance videos are now on YouTube and are found on the Compliance Connection!

Burma Sanctions Terminated

The U.S. Department of the Treasury has announced that President Obama has issued an Executive Order terminating a Burma-related sanctions program, and Burma-related financial sanctions administered by OFAC are no longer in effect. This Executive Order terminates all OFAC-administered restrictions and authorizations under the Burma sanctions program pertaining to banking with Burma. This includes the OFAC general licenses issued in 2012 and 2013 that authorized certain correspondent account activity with Burmese banks. FinCEN also issued an exception to the prohibition imposed by the USA PATRIOT Act which allows financial institutions to maintain correspondent accounts for Burmese banks under certain conditions.

Treasury also released a Fact Sheet and an FAQ on the termination. OFAC posted an SDN List Update with all of the resulting deletions from the Specially Designated Nationals List.

The termination of the Burma sanctions program does not impact Burmese individuals or entities blocked pursuant to other OFAC sanctions authorities, such as counter-narcotics sanctions. They remain on the SDN List, and their property and interests in property remain blocked. Further, pending or future OFAC enforcement investigations or actions related to apparent violations of the Burmese Sanctions Regulations (BSR) when in effect may still be carried out.

Source: US Department of the Treasury

Mountain West Credit Union Association

Training & Events Calendar

October 17
Webinar: Countdown to the New Overtime Rules: How to Bring Your Credit Union into Compliance by the December 1 2016 Deadline

October 20
Webinar: Conducting the 2016 ACH Audit

October 24
Webinar: New CFPB Amended Rules for Mortgage Foreclosure & Bankruptcy Protections – Preparing Now for the 2017 Effective Date

November 3
Webinar: Cyber Series – Member Authentication & Validation

November 9
Webinar: Form 1099 Reporting: Third-Party Vendors, Foreclosures, Debt Forgiveness & More

November 15
Webinar: Recognizing & Responding to Elder Fraud: What Every Staff Member Should Know

November 15-16 – Phoenix
IRA School: Essentials & Advanced

December 6

Advocacy Highlight

Citing CUNA Information, SBA Urges Credit Union Exemption from CFPB Payday Rule

The U.S. Small Business Administration Office of Advocacy (SBA) filed its comment letter on the CFPB's Payday, Vehicle Title, and Certain High-Cost Installment Loans. The SBA conducted three roundtables in the month of September to determine the impact of the rule on small businesses. CUNA has been advocating for credit unions on this issue for months. Many credit unions and Leagues, together with CUNA attended these roundtables which also included representatives from payday lenders, online lenders, banks, tribal representatives, trade associations representing small businesses, and various government representatives.

SBA paid particular concern to the impact on credit unions noting that the CFPB needs to recognize the NCUA's expertise in the area of credit unions and exempt small credit unions from the proposed rule. It further noted that the proposed rule adds unnecessary complexity and new compliance burdens to consumer friendly credit union small dollar loans.

The SBA was highly critical of the CFPB's estimates of the impact on small businesses as well as the impact on consumers and urged the CFPB to make significant changes to its approach. SBA clearly articulated its concern with the rule stating that "the CFPB has underestimated the potential economic impact of this rulemaking on small entities". SBA is concerned that the proposed rule may force legitimate businesses to cease operation and that imposing the proposed regulation will not alleviate a consumer's financial situation. SBA notes "the consumer will still need to pay his/her bills and other expenses. Imposing these strict regulations may deprive consumers of a means of addressing their financial situation."

Other issues addressed by the SBA in its letter are as follows:

- The Ability-to-Repay requirements will be burdensome and calls for them to be eliminated;
- Requests the credit check requirement be eliminated citing the costs to consumers and it being an unnecessary hurdle for lenders;
- Encourages the CFPB to reconsider the 30-day cooling off period or alternatively, implementing a shorter cooling off period.
- Encouraged the CFPB to provide an exception for emergency situations and provide clear guidance on what qualifies as an emergency;
- Encouraged the CFPB to recognize the states' ability to make the appropriate choices for their citizens and

Webinar: Cyber Series: Meeting Federal Requirements for Tech-Based Marketing Websites, Social Media, Robo Calls & More

December 14
Webinar: Essential Compliance Training for the Board & Senior Management

December 15
Webinar: Powers of Attorney In-depth: Good Faith, Fraud & Fiduciary Capacity

December 21
Webinar: Emerging Need & Regulatory Expectations for Enterprise Risk Management Framework

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CUNA Webinars

July 7, 2016 - July 7, 2017
CFPB's Payday, Small Dollar and Vehicle Title Proposed Rule – Recorded

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CUNA Comment Calls – Due Dates on Proposed Rules

September 19, 2016~CFPB
CFPB Small Dollar Proposal

October 11, 2016
Amendments to TRID Rule

October 17, 2016
FinCEN Requirements for Privately Insured Credit Unions

October 31, 2016~CFPB
RFI for Small Dollar Proposed Rule

CUNA
Credit Union National Association

Compliance Calendar

October 3
- NACHA's Network Quality Rule

October 24
- 5300 Call Report Due to NCUA

October 31
- Credit Card Quarterly Submission Due to CFPB

November 6
- Daylight Savings Time Ends

November 11
- Veterans' Day – Federal Holiday

November 24
- Thanksgiving Day – Federal Holiday

exempt from the rule small businesses;
- Encouraged the CFPB to include an adequate estimate of the aggregate impact that the Ability-to-Repay requirements will have on the revenue stream of small entities;
- Called for CFPB to reconsider its proposal and develop requirements that protect consumers without jeopardizing their access to legitimate credit.
- Requested a minimum of 24 months for implementation.

A link to the letter can be found here

CUNA Advocacy Report

The Regulatory Advocacy Report is now combined with CUNA's Legislative Update into a comprehensive CUNA Advocacy Update. The new 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.

Prior CUNA Regulatory Advocacy Reports have been archived and are available here.

Effective Dates
New and Revised Rules

September 23, 2016~NACHA
Same-day ACH (NACHA) – Phase 1

October 3, 2016~DoD
Limitations on Terms of Consumer Credit Extended to Service Members & Dependents

December 1, 2016~DOL
New Overtime Rules

January 1, 2017~CFPB
HMDA – Regulation C

January 1, 2017~NCUA
Member Business Loan Rule

April 10, 2017~DOL
Fiduciary

September 15, 2017~NACHA
Same-day ACH (NACHA) – Phase 2

December 26 • Christmas Day – Federal Holiday **January 2, 2017** • New Year's Day (observed) – Federal Holiday	

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