

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

October 21, 2016

Compliance News

NCUA's BSA Policy for Federally Insured Credit Unions

NCUA's rule 748 requires federally insured credit unions to establish a BSA compliance program.

At a minimum your BSA Compliance program must provide for:

- A designated BSA compliance officer who has been appointed by the credit union's board of directors;
- A system of internal controls to ensure ongoing compliance;
- Independent testing to be conducted by qualified, unbiased credit union personnel or outside parties; and
- Training for appropriate personnel.

NCUA requires credit unions' compliance programs to be:

- In writing,
- Approved by the credit union's board of directors, and
- Reflected in the minutes of the credit union's meeting.

BSA Compliance Officer: The credit union's board of directors must designate a qualified BSA officer. "Qualified" means the BSA officer is expected to be fully knowledgeable of the Bank Secrecy Act and all related regulations, as well as understand the credit union's products, services, members, geographic locations and the money laundering and terrorist financing risks associated with each of those activities.

The BSA compliance officer should be in a position to regularly apprise the senior management staff and the board of directors of ongoing compliance with the BSA.

While the BSA officer is responsible for coordinating and monitoring day-to-day BSA compliance, the board of directors is ultimately responsible for the credit union's compliance and is responsible for ensuring that the BSA compliance officer has sufficient authority and resources to effectively administer the compliance program.

Internal Controls: A system of internal controls refers to the policies and procedures the credit union puts in place to limit and control risks associated with BSA. The level of sophistication of your internal controls will be commensurate with the size, structure, risks and complexity of your credit union. A large, complex credit union is more likely to have departmental internal controls that will uniquely address the risks to a particular department or line of business.

The following are examples of some of the items that may be included in your internal control procedures:

- Identify your credit union's products, services, members, and branches

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Association Compliance Forums

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[BSA Compliance Officer Forum](#)

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that you consider more vulnerable to abuse by money launderers or other criminals, and provide a program to manage the higher risk;

- Inform the board of directors and senior management of your compliance initiatives, identify compliance deficiencies, corrective actions taken, and notify the board and the senior management of SARs that have been filed;
- Provide for program continuity despite changes in management or employees;
- Meet all of the BSA recordkeeping and reporting requirements;
- Implement risk-based Member Due Diligence policies & procedures;
- Identify reportable transactions and accurately file all required reports, such as SARs, and CTRs;
- Provide for the segregation of duties where you can;
- Provide for sufficient controls and monitoring systems for timely detection and reporting of suspicious activity;
- Include adequate supervision of employees who handle currency, complete reports, grant exemptions, etc.;
- Train all employees to be aware of their specific responsibilities under BSA.

Independent Testing: It is recommended that an audit of the BSA compliance program be conducted by the internal audit department, outside auditors, consultants, or other qualified independent parties. "Qualified" means someone who understands the requirements of BSA. Credit unions that do not have any of these options available to them may comply with this requirement by using qualified credit union staff who are not involved in the function being tested, or audited. The persons conducting the test should report directly to the board of directors or to a designated board committee comprised primarily or completely of outside directors.

Training: At a minimum, the credit union's BSA training program must provide training for all personnel whose duties require knowledge of the BSA. The training should be tailored to the person's specific responsibilities. An overview of the BSA requirements typically should be given to new staff during employee orientation. And, the BSA compliance officer should receive periodic training that is relevant and appropriate to the activities and overall BSA risk of the credit union.

While the board of directors may not need the same degree of training as credit union personnel, they need to understand the importance of BSA regulatory requirements, the ramifications of noncompliance, and the risks posed to the credit union. Without a general understanding of the BSA, the board of directors cannot adequately provide BSA oversight, approve policies, or provide necessary resources.

Source: NCUA

CFPB Issues Notice Regarding New URLA and Collection of Expanded HMDA Information About Ethnicity and Race

The Bureau recently issued a notice pursuant to section 706(e) of the Equal Credit Opportunity Act concerning the new Uniform Residential Loan Application (URLA) and the collection of expanded Home Mortgage Disclosure Act (HMDA) information about ethnicity and race in 2017. Read more about this recent update [here!](#)

OFAC and Commerce Ease Cuba Restrictions

The U.S. Department of the Treasury has [announced](#) the amendment of

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InfoSight Highlight

FinCEN BSA Leadership Expectations

An Effective BSA/AML Program Tested by a Competent, Independent Party

The appropriate involvement of a credit union's leadership in its BSA/AML program should be at least commensurate with the credit union's level of risk exposure. This includes ongoing risk assessment, sound risk-based member due diligence, appropriate detection and reporting of suspicious activity, and independent program testing. BSA/AML compliance officers should be familiar with guidance by federal functional regulators, self-regulating organizations, and FinCEN as well.

FinCEN stresses that compliance program testing must be independent. Credit union leadership needs to ensure that the party testing the program (whether external or internal) is independent, qualified, unbiased, and does not have conflicting business interests that may influence the outcome of the compliance program test. Ensuring the integrity and independence of the compliance program testing enables the credit union to locate and take appropriate correct actions to address deficiencies.

Understanding How BSA Reports Are Used

All credit union staff should have an understanding of how information collected through the credit union's BSA/AML program is used, and the purpose that BSA reports serve. Reporting provides law enforcement with important information that safeguards the nation's interest, and helps to confront serious threats, both domestic and abroad. Reporting also helps the credit union protect itself and aid law enforcement in protecting the institution from bad actors, including inside threats, frauds, and cyber-related threats. BSA regulations have the deterrent effect on those who would abuse the financial systems, and force illicit actors to behave in ways that expose them to scrutiny. The advisory lists four main ways that financial institutions can inform staff of the how reporting is used:

- Serving as tips to initiate investigations;

the OFAC Cuban Assets Control Regulations (CACR) to implement the new U.S. policy direction towards Cuba. Among other things, these amendments authorize certain transactions related to Cuban-origin pharmaceuticals and joint medical research; add, expand, and clarify authorizations relating to trade and commerce; authorize certain civil aviation safety-related services; further facilitate authorized travel to Cuba; and expand the authorizations for grants and humanitarian-related services designed to directly benefit the Cuban people. The amendment was published at [81 FR 71372](#) in today's *Federal Register*, and was effective on publication. OFAC also published new and updated [FAQs](#), a [Fact Sheet](#), and [updated Travel Guidance](#).

In a coordinated action, the Department of Commerce published a final rule at [81 FR 71365](#) amending a license exception to allow cargo aboard aircraft to transit Cuba when that cargo is bound for destinations other than Cuba. This rule also authorizes export and reexport of certain items sold directly to individuals in Cuba under a license exception. Finally, this rule revises the lists of ineligible Cuban officials for purposes of certain license exceptions. The Department of Commerce's rule was effective 10/17/16.

Source: U.S. Department of Treasury

TRID Guidance Documents Updated

The CFPB has posted updated versions of two "Know Before You Owe" (TRID Rule) compliance guides. October 7, 2016, versions of the *Small Entity Compliance Guide* and the *Guide to Loan Estimate and Closing Disclosure Forms* are now available on the Bureau's [TILA-RESPA Integrated Disclosure rule implementation](#) page.

CFPB Publishes Reg E Corrections

The CFPB published a final rule on October 12, 2016 with "clerical and non-substantive corrections" to errors in Regulation E. The errors included two erroneous cross-references to other sections of the regulation; text missing from a remittance transfer model disclosure regarding state regulatory agency contact information (A-37: Model Form for Error Resolution and Cancellation Disclosures – Short Form); and an incorrect heading within the commentary to section 1005.36. According the CFPB "no substantive change is intended by the corrections," which become effective on November 14, 2016. Click [here](#) for the Federal Register notice.

Source: CFPB

CFPB's Consent Order Against Credit Union Raises Additional Questions

This past week the CFPB has ordered a large credit union to pay \$28.5 million for improper debt collection practices in violation of UDAAP. Based on the consent order the CFPB reasoned that the credit union:

- Falsely threatened legal action and wage garnishment;
- Falsely threatened to contact commanding officers to pressure service members to repay;
- Misrepresented credit consequences of falling behind on a loan; and
- Illegally froze members' access to their accounts.

What the consent order fails to address is whether the credit union was limiting services to a member who has caused a loss to the credit union as authorized by the FCU Act. The CFPB claims that the credit union violated UDAAP when the credit union froze electronic account access and

- Expanding existing investigations;
- Promoting international information exchange; and
- Identifying significant relationships, trends and actors.

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

Compliance Videos

Compliance Connection on YouTube

Compliance videos are now on YouTube and are found on the [Compliance Connection!](#)

Advocacy Highlight

TCPA Oral Arguments Held Wed. Oct. 19

Oral arguments in the case challenging the Federal Communications Commission's (FCC) July 2015 TCPA Order were held October 19th. CUNA staff planned to attend the hearing held at the D.C. Circuit Court of Appeals. The three judge panel included the Honorable Srinivasan, Pillard, and Edwards, and each side had 20 minutes for the argument.

CUNA has been closely following this case and filed a joint Amici Brief highlighting credit union concerns with the Order. Some of the specific consequences of the Order that the brief takes issue with include:

- The inability to use automated calling methods delay the institution's ability to contact credit union members about fraud and identify theft and other important account information that can help members avoid hardship or embarrassment;
- The expanded scope of the definition of autodialer, which effectively prohibits financial institutions from using many efficient dialing technologies. The brief argues that this leaves financial institutions with no useful guidance as to the kinds of dialing devices they may use to contact their members or customers with communications that must be made promptly and in substantial volume;
- The Order provides a strong disincentive for a financial institution to make calls to its customers or members as a result of the onerous guidance about calling reassigned numbers. The potential liability for calls made in good faith to parties who have consented to receive them, but whose telephone number has subsequently been reassigned without notice to the financial institution, threatens to curtail important and valued communications;
- The problematic guidance about how a consumer can revoke consent. The brief notes that the TCPA Order requires financial institutions to receive revocations through any and all communication channels by which institutions receive communications and by any employee who works for the institution or, potentially, who works for a

disabled electronic services for about 700,000 accounts after consumers became delinquent on a credit union credit product. This meant delinquency on a loan could shut down a consumer's debit card, ATM, and online access to the consumer's checking account. The only account actions consumers could take online would be to make payments on delinquent or overdrawn accounts. In addition to the civil money penalty and required remunerations to affected members, the CFPB has now ordered the credit union to "ensure consumer account access" and has prohibited the credit union from blocking its members' account access if they are delinquent on one or more accounts.

In direct conflict with this are several NCUA legal opinion letters where the agency has said that nothing in the FCU Act or NCUA's regulations precludes a federal credit union from restricting the availability of certain services (e.g., ATM services, credit cards, loans, share draft privileges, preauthorized transfers, etc.) to members provided there is a rational basis for doing so and as long as the members are aware of the policy. The NCUA opinion letters also state that "any policy limiting services an FCU provides to a member who causes a loss may also be restricted by contract, state, and other federal laws." What has yet to be determined is whether UDAAP is one of these "federal laws" that could restrict a credit union's ability to limit member services. CUNA has reached out to NCUA for clarity on this issue and is continuing to study the matter and will report any new developments.

While there are only a limited number of credit unions under CFPB's supervision, CUNA is hearing rumblings of inquiries about whether and/or how the CFPB's order could impact other institutions' business practices. CUNA realizes that as a business decision some credit unions may choose to suspend certain services to members that are in default of their loan obligations. Being mindful that suspension of services to members may also be impacted by contract and other state laws, CUNA recommends credit unions consult with local counsel on this matter while the issue continues to evolve.

Source: CUNA Compliance Blog



Training & Events Calendar

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 10

Webinar: [Developing a Risk-Based Compliance Audit Process for Deposits](#)

November 14

Webinar: [Nonresident Alien Accounts: W-8sm W-8BENs, BSA, Rules & More](#)

partner of the institution; and

- The practical limitations of the financial institutions exemption. The exemption is of particular concern to small financial institutions, and as articulated in the TCPA Order, offers very limited relief. The brief states some small financial institutions have even concluded that the restrictions established by the FCC in the TCPA Order result in a de facto ban on their ability to utilize the exemption.

Since the FCC issued its Order, CUNA has: written to Congress numerous times with its TCPA concerns; outlined credit union concerns to the National Credit Union Administration and the Consumer Financial Protection Bureau; met with the FCC to discuss concerns; hosted a webinar on potential issues for credit unions; and requested congressional oversight and hearings to be held on this matter. The U.S. Senate Commerce Committee and House Energy and Commerce Subcommittee on Communications and Technology conducted hearings.

Many cases around the country have stayed TCPA decisions to see how the D.C. Circuit rules. We will be monitoring any additional actions after the arguments and keeping credit unions updated.

Pending Regulatory Comment Calls:

CUNA intends to comment on the following pending regulatory proposals. Please consider whether and how these proposals would affect your credit union, and contact the CUNA staff listed with each proposal with your feedback.

We encourage Leagues and credit unions to use PowerComment to file comment letters with regulators. Below are the current proposals, Comment Period Deadlines, and Contact information.

<u>CIP/AML & Beneficial Ownership Requirements for Banks Lacking a Functional Federal Regulator</u>	October 24, 2016	FinCEN	<u>Luke Martone</u>
<u>Amendments Relating to Disclosure of Records and Information</u>	October 24, 2016	CFPB	<u>Luke Martone</u>

November 15

Webinar: [Recognizing & Responding to Elder Fraud: What Every Staff Member Should Know](#)

November 15-16 – Phoenix

IRA School: [Essentials & Advanced](#)

November 16

Webinar: [What the Board Needs to Know to Manage IT](#)

November 17

Webinar: [Handling ACH Exceptions & Returns: Unauthorized, Revoked or Stop Payment](#)

November 22

Webinar: [Trust Accounts: Opening, Transacting, Deposit Insurance & More](#)

December 6

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

December 13

Webinar: [Loan Review: Consumer, Commercial & Real Estate](#)

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](#)

Three Compliance Lunch & Learn Sessions Set for November

Just announced! The next **Mountain West Compliance Lunch & Learns** for credit union members will be held in Denver, Phoenix and Tucson. The topic for this set of sessions is **Special Account Issues**, discussing conservatorships, estates, small estate proceedings and more. Choose from the following dates and cities:

- **November 1, Denver:** Led by Colorado attorney Bob Wilson of Berenbaum Weinshienk PC
- **November 2, Tucson:** Led by Arizona attorney Jeremy Goodman, Goodman Law PLLC
- **November 3, Phoenix:** Led by Arizona attorney Jeremy Goodman, Goodman Law PLLC

Cost for Lunch & Learns is \$30. To register for any of the Lunch & Learns, please e-mail Jodi Weiser at jweiser@mwcuca.com

Plus! We have partnered with the ACUIA to hold the Phoenix Lunch & Learn in conjunction with their Region 2 Annual Meeting. If you are already planning to attend that event, no separate registration is required for the Phoenix Lunch & Learn. Simply visit www.ACUIA.org to register for the event. Or, you can register just for the Phoenix Lunch & Learn by e-mailing jweiser@mwcuca.com.

[Request for Information: Payday Loans](#)

November 7, 2016 CFPB

[Leah Dempsey](#)

[Indemnification Payments](#)

November 21, 2016 FHFA

[Andy Price](#)

[FHLB Membership for Non-Federally-Insured CUs](#)

November 28, 2016 FHFA

[And Price](#)

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

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](#)



Compliance Calendar

October 3

- [NACHA's Network Quality Rule](#)

CUNA Webinars

July 7, 2016 - July 7, 2017

CFPB's Payday, Small Dollar and Vehicle Title Proposed Rule – Recorded

CUNA Comment Calls – Due Dates on Proposed Rules

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

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

December 26

- Christmas Day (observed)– Federal Holiday

January 2, 2017

- New Year's Day (observed) – Federal Holiday

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

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