

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

October 27, 2017

### Compliance News

#### In This Issue:

- **Can the Credit Union Extend a Loan to the Personal Representative of an Estate?**
- **CFPB Updates Mortgage Servicing Materials**
- **FTC Guidance on COPPA and Voice Recordings**
- **CUNA Final Rule Analysis of Payday Rule Available**
- **CU PolicyPro Updates**

#### Advocacy Highlight

- **TCPA Petition: It's Time to Submit Comments to the FCC**

#### InfoSight

- **SAFE Act – Registration of MLOs (Regulation G)**

#### Can the Credit Union Extend a Loan to the Personal Representative of an Estate?

Generally, yes. In Arizona and Colorado, the duly appointed personal representative of an estate generally has the powers over property of the estate, in trust for the beneficiaries and creditors of the estate, that the deceased person had prior to death. See A.R.S. § 14-3711 et seq. and C.R.S. § 15-12-711. In Wyoming, a fiduciary, including a personal representative, is required to obtain court approval to mortgage property or pledge assets as security unless the will contains express authority to do so. See Wyo. Stat. § 2-3-501 and § 2-7-609 (“When power to sell, mortgage, lease, pledge or exchange property of the estate is given to any personal representative under the terms of a will, the statutory requirements for such purposes do not apply.”). Credit unions in Arizona and Colorado should always review the letters testamentary or letters of administration to ensure the personal representative’s authority has not been restricted by the court. In Wyoming, the credit union may want to ask for a court order or other court document proving the personal representative is vested with such authority. Credit unions dealing with fiduciaries in good faith, and without notice or knowledge that the fiduciary is exceeding his authority or lacks authority, are generally protected as if the fiduciary had such authority. Finally, always seek the advice of qualified legal counsel for specific questions.

#### CFPB Updates Mortgage Servicing Materials

To support implementation of the Interim Final Rule for Mortgage Servicing issued on October 4, 2017, the Bureau has updated the Executive Summary of the 2016 Mortgage Servicing Rule and Version 3.0 of the Small Entity Compliance Guide.

### 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

### 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

You can access these materials on the dedicated Mortgage Servicing implementation [webpage](#).

Source: CFPB

### CFPB Issues Additional Rules Related to Mortgage Servicing

This week the Consumer Financial Protection Bureau (CFPB) published both an interim final rule and a proposed rule in the Federal Register related to mortgage servicing. The **interim final rule** has an effective date of October 19, 2017; however, comments will be accepted until November 15<sup>th</sup>. Comments will be accepted on the **proposed rule** until November 17<sup>th</sup>.

#### **Interim Final Rule – Early Intervention Requirements**

Currently, Section 1024.39 of Regulation X requires a credit union to take the following steps when it comes to a borrower who is delinquent on the mortgage secured by their primary residence:

- Make a good faith attempt to establish live contact with the delinquent borrower within 36 days; and
- Provide the borrower with a written notice of delinquency within 45 days.

In August 2016, the CFPB issued several amendments to the mortgage servicing rules. Among these were new exceptions to the early intervention requirements. First, a credit union is exempt from the 36-day live contact requirement if the borrower has filed for bankruptcy or has made a cease communication request under the Fair Debt Collection Practices Act (FDCPA). Second, for borrowers who have filed for bankruptcy, the credit union is exempt from the written notice requirement if no loss mitigation options are available to the borrower or if they have made a cease communication request under the FDCPA. Finally, for borrowers who have made a cease communication request under the FDCPA, the credit union is exempt from the written notice requirement if no loss mitigation options are available to the borrower or if they are a debtor in bankruptcy.

If one of the exceptions does not apply to a borrower who has made a cease communication request under the FDCPA, the credit union must continue to provide the written notice of delinquency. However, the credit union is prohibited from providing the written notice more than once during any 180-day period. The interim final rule clarifies that the credit union has 10 days from the end of any previous 180-day period to provide a subsequent written notice of delinquency.

#### **Proposed Rule – Periodic Statements for Borrowers in Bankruptcy**

Currently, Section 1026.41 of Regulation Z requires a credit union to provide a periodic statement in connection with a closed-end consumer credit transaction secured by a dwelling.

In the CFPB's August 2016 amendments to the mortgage servicing rules, the Bureau clarified that a credit union must continue to provide a modified periodic statement to a borrower who has filed for bankruptcy unless:

- The borrower has agreed to surrender the property as part of the bankruptcy proceeding; or
- The borrower has requested in writing that the credit union cease providing a periodic statement.

The CFPB's proposed rule will provide a credit union with a single statement cycle from the time of the borrower's bankruptcy filing to

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 Heimbeck at: [mheimbeck@mwcu.com](mailto:mheimbeck@mwcu.com) or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



#### **InfoSight Highlight**

##### **SAFE Act – Registration of Mortgage Loan Originators (Regulation G)**

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) requires residential mortgage loan originators who are employees of agency-regulated institutions to be registered with the Nationwide Mortgage Licensing System and Registry (Registry). As part of this registration process, residential mortgage loan originators must furnish to the registry information and fingerprints for background checks. The SAFE Act generally prohibits employees of agency-regulated institutions from originating residential mortgage loans unless they register with the registry.

The National Credit Union Administration (NCUA), along with the other federal financial institution regulators and the Farm Credit Administration (the Agencies), issued final rules requiring residential mortgage loan originators who are employees of financial institutions, Farm Credit System institutions, and certain of their subsidiaries (agency-regulated institutions) to meet the registration requirements of the SAFE Act.

Those not regulated by an Agency must be licensed and registered under State law (i.e., CUSOs and their

transition from the regular periodic statement format to the modified periodic statement format.

### FTC Guidance on COPPA and Voice Recordings

According to the Federal Trade Commission (FTC), when a credit union collects an audio file containing a child's voice solely as a replacement for written words, such as to perform a search or fulfill a verbal instruction or request, but only maintains the file for the brief time necessary for that purpose, the FTC would not take an enforcement action against the credit union for not obtaining parental consent.

The FTC issued this Children's Online Privacy Protection Act (COPPA) Enforcement Policy in response to several inquiries about the practice of collecting audio files containing a child's voice. The agency recognizes the value of using voice as a replacement for written words, particularly in instances of children with disabilities or who have not yet learned to write. Additionally, if the audio file is immediately deleted, the FTC believes there is little risk that it will be used to contact an individual child.

COPPA requires operators of commercial websites or online services directed to children to provide notice of their information practices to parents and to obtain verifiable parental consent before collecting a child's personal information.

For more information and to review the important limitations on this Enforcement Policy, you can view the [FTC policy here](#).

*Source: CUNA Compliance Blog*

### CUNA Final Rule Analysis of Payday Rule Available

CUNA's Final Rule Analysis of the Consumer Financial Protection Bureau's (CFPB) short-term, small-dollar loan rule is now available. CUNA prepared the [analysis](#) so credit unions can [start to digest](#) the rule and figure out how it will affect small-dollar lending at their institution.

The rule was [finalized Oct. 4](#), and contains a number of CUNA-backed improvements over the originally proposed version.

The final rule exempts loans issued in accordance with NCUA's Payday Alternative Loan (PAL) program, as well as most accommodation loans.

Other types of loans specifically exempted:

- Certain purchase money security interest loans;
- Real estate secured loans (including personal property used as a dwelling);
- Credit card accounts;
- Student loans;
- Non-recourse pawn loans;
- Overdraft services and overdraft lines of credit;
- Wage advance programs; and
- No-cost advances.

Credit unions making short-term loans with terms of less than 45 days that require the consumer to pay all or most of the debt at once will still be impacted by the rule, and thus will be subject to strict underwriting requirements.

Long-term balloon loans are also within the scope of the rule, as are high cost loans (with an annual percentage rate that exceeds 36%) that also

employees). Employees who originate residential mortgage loans for the CUSO and the credit union are subject to both the State licensing system and the requirement under these final rules.

Effective July 21, 2011, the SAFE Act (Regulation G) is administered and enforced by the Consumer Financial Protection Bureau (CFPB).

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

## Compliance Videos

### Quarterly Update for Q2 and Q3 2017

This [video](#) reviews of a few important laws and regulations that will impact our credit unions in the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2017. League InfoSight CEO Glory LeDu covers the **DOL – Fiduciary Rule** effective 6/9/17, Phase II of the **NACHA Same Day ACH**, the changes to the **DOD - Military Lending Act** related to credit cards, and an overview to the 1<sup>st</sup> set of changes made to **Mortgage Servicing**.

### Mortgage Servicing Rule

This [video](#) provides more detailed information from Glory LeDu, CEO of League InfoSight, regarding the upcoming **Mortgage Servicing Rules, effective 10/19/2017**. Be sure to review this video to ensure you are in compliance with these upcoming changes.

### Member Business Lending

[This video](#) provides the details you will need to know to comply with the NCUA's Member Business Lending rules.

## Advocacy Highlight

### TCPA Petition: It's Time to Submit Comments to the FCC

On September 29, [CUNA submitted a Petition for Declaratory Ruling](#) to the Federal Communications Commission (FCC) seeking relief from the onerous compliance complexities associated with the Telephone Consumer Protection Act (TCPA). The FCC then opened the petition up for comment only a week after CUNA submitted – appearing to take credit union concerns seriously and seek public comment.

### Why did CUNA submit this petition:

Credit unions have been expressing serious concerns over the past few years about ambiguities in how to comply with this outdated statute and the FCC's interpretations of it. This has resulted in credit unions being forced to curtail consumer friendly communications and leaves credit unions vulnerable to liability traps, which can put the resources of their membership in jeopardy.

### Why we need your credit unions to submit comments:

have a leveraged payment mechanism in place that allows the credit union to initiate a transfer of money from the member's account to satisfy the loan obligation.

Credit unions originating these types of loans must conduct an ability-to-repay test to determine upfront that borrowers can make his or her payments for major financial obligations, required payments under the loan and meet basic living expenses during the term of the loan and for a period of time thereafter.

In addition, the credit union must also consider the member's previous borrowing history related to covered loans.

Finally, the rule prohibits a credit union from making repeated attempts to withdraw payment from a member's account after its second consecutive attempt to do so has failed due to lack of sufficient funds. The rule also imposes a number of new disclosure requirements.

Most of the rule becomes effective 21 months from the date of publication in the *Federal Register*.

Source: CUNA

### CU PolicyPro Updates

CU PolicyPro announced its October 2017 content updates which include 21 policy updates. The following documentation is available online to help understand the updates and incorporate them into your CU Policies Manual:

- [Update Overview](#)—Lists all of the updated policies and provides a brief overview of what was updated and why it was updated.
- [Video Webinar](#)—Updating Your Working Manual—This recorded webinar walks you through the update process, including manually inserting the updated content into your policies. Please note this webinar was recorded using the content from a previous update; however, the methodology will be the same for any update.
- [Alphabetical Policy Listing](#)—An updated version of the alphabetical policy listing, which is helpful for finding particular policies.

As with all the policies, you may need to modify these updates to meet your specific needs and ensure they comply with state law regulations.

If you have any questions, please contact the CU PolicyPro support team at [policysupport@cusolutionsgroup.com](mailto:policysupport@cusolutionsgroup.com).



#### 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

CUNA hopes you and your credit union will take the time to file a substantive comment with the FCC on how the TCPA has adversely affected the way you communicate with your member-owners by November 6.

Please visit [CUNA's Grassroots Action Center](#) to submit your comments due November 6<sup>th</sup>. On CUNA's Grassroots Action Center you will find talking points about the petition as well as a portal to submit comments directly to the FCC.

#### What's next?

CUNA is currently in the process of reaching out to Members of Congress and is also working with coalition partners to back the petition.

CUNA is excited about the opportunity for the credit union system to participate and inform the FCC on how the TCPA affects the way they communicate with their member-owners.

Source: CUNA Removing Barriers Blog

### 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.



### Compliance Calendar

#### 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



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](#)

### Don't Miss November Compliance Lunch & Learns

If you haven't already registered for the upcoming November Compliance Lunch & Learns, now's the time to act. There's still space for more people to join us for a Customer Due Diligence (CDD) discussion with experts and your peers. Cost is \$35/ person. To register, or if you have any questions, please send an email to Jodi Weiser at [jweiser@mwcu.com](mailto:jweiser@mwcu.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

• 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](#)

### CUNA Comment Calls – Due Dates on Proposed Rules

**November 3, 2017~NCUA**  
[Regulatory Reform Agenda](#)

### Effective Dates New and Revised Rules

**April 1, 2018 ~ CFPB**  
[Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z](#)

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

Sign up to receive Regulatory Compliance News by sending an email to [Donna Gibbs](#).

Archived Regulatory Compliance Newsletters can be accessed [here](#) or on our website [www.mwcu.com](http://www.mwcu.com) – Compliance News.

If you're having trouble viewing content, please check your viewer's settings.