

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

October 28, 2016

### Compliance News

#### A Reminder to be Wary of UDAAP When Collecting Debts...

Recently the CFPB entered an enforcement action against one of the nation's largest credit unions, citing unfair and deceptive practices in connection with the credit union's debt collection practices. The CFPB alleged that the credit union engaged in deceptive acts when employees threatened legal action they did not intend to take to coerce members into paying their delinquent accounts. They also found that the false threats the credit union's debt collectors made to contact the delinquent members' commanding officers was a deceptive practice, as were the collectors' statements about the negative impact of the delinquency on a member's future credit. The credit union also froze account access at the member level and disabled electronic account services for many delinquent members without providing adequate notice, which the CFPB said was an unfair act or practice under UDAAP that caused substantial injury to members.

It is a good reminder for credit unions to review the existing guidance we do have on UDAAP and ensure that debt collection practices conform to these standards. In 2013, the CFPB published a [bulletin](#) titled "Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts." The bulletin summarizes the applicable standards and provides examples of unfair, deceptive, and/or abusive acts in the context of debt collection. These include things like falsely representing the character, amount, or legal status of the debt; threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue; and misrepresenting whether information about a payment or nonpayment would be furnished to a credit reporting agency. In light of the CFPB's recent consent order against a credit union, we recommend that credit unions review this bulletin and ensure that credit union staff are not engaging in debt collection practices that could potentially violate UDAAP.

*Source: CUNA Compliance*

#### NCUA Launches New Examiner's Guide

The National Credit Union Administration recently launched the [online Examiner's Guide](#), a new, interactive tool on [www.ncua.gov](http://www.ncua.gov) for examiners that provides up-to-date, comprehensive supervisory guidance on key regulatory and supervisory issues affecting the credit union system.

"Providing greater clarity on how NCUA evaluates credit union operations will reduce potential conflicts that may arise in the examination process and improve overall safety and soundness," NCUA Board Chairman Rick Metsger said. "Making NCUA's operations more effective and efficient is

### 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

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the goal of my Continual Quality Improvement initiative, and the online *Examiner's Guide* is another example of how the agency can use technology to achieve this goal. I encourage credit union managers, compliance experts and staff to review the new material and format."

The guide's new online format allows readers to easily navigate to topics of interest, search for content using keywords and connect more easily to resources provided by NCUA and other regulatory agencies. The guide also includes a feedback button, allowing stakeholders to provide input and suggestions for additional clarification. Additionally, the new format allows NCUA to update the *Examiner's Guide* continuously, such as in the event of a new law or regulation, changes in agency policy, new products and services or changes in the broader economy.

With the launch of the [online Examiner's Guide](#) NCUA is issuing updated guidance on four topics: interest rate risk, risk-focused examinations, total analysis process and fidelity bond coverage.

Updating the content of the *Examiner's Guide* has been an agency-wide effort, involving NCUA field staff and subject matter experts from across the country, as well as input from state regulators.

Over the course of the next year, the agency will issue updated guidance on other topics. Eventually, the online *Examiner's Guide* will include updated guidance on such supervisory areas as member business lending, consumer and real estate lending, internal controls, asset-liability management, investments and fraud, among others. Until that time, [existing guidance found in the previous version of the Examiner's Guide](#) remains in effect.

NCUA's *Examiner's Guide* provides relevant, accurate guidance that examiners can refer to during an examination. The guide itself does not impose requirements on credit unions, though it does discuss requirements related to a law or regulation.

### 30 Credit Unions Agree to Late-Filing Penalties for First Quarter of 2016

Thirty federally insured credit unions subject to civil monetary penalties for filing late Call Reports in the first quarter of 2016 have consented to penalties totaling \$20,036, the National Credit Union Administration announced today.

In the first quarter of 2015, 15 credit unions consented to penalties.

Individual penalties ranged from \$151 to \$6,734. The median penalty was \$274. The Federal Credit Union Act requires NCUA to send any funds received through civil monetary penalties to the U.S. Treasury.

"I'm disappointed the number of late filers has risen," NCUA Board Chairman Rick Metsger said. "While we are still far below the levels of late filers of just a few years ago, the goal remains full compliance. I'd remind credit unions that the NCUA offers support if they run into problems meeting the Call Report filing deadline, and we hope they will take advantage of that assistance."

The assessment of penalties primarily rests on three factors: the credit union's asset size, its recent Call Report filing history and the length of the filing delay. Of the 30 credit unions agreeing to pay penalties for the first

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## InfoSight Highlight

### UDAP/UDAAP

#### UDAAP - Unfair, Deceptive and Abusive Acts or Practices

Section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) essentially maintains the FTC Act's definitions of "unfair" and "deceptive," while also adding a third element, "abusive" (making the acronym UDAAP), and a sixth financial regulatory body, the Consumer Financial Protection Bureau (CFPB), to enforce UDAAP for institutions with over \$10 billion in assets. (Prudential regulators have UDAAP supervision and enforcement authority for depository institutions of \$10 billion or less.) The FTC Act empowers the CFPB to serve as a new rule-maker and enforcer of UDAAP. The CFPB has unlimited authority to write rules on unfair, abusive or deceptive practices relating to consumer financial products.

The Bureau may take enforcement action to prevent:

- A covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law
- In connection with any transaction with a consumer for a consumer financial product or service, or
- The offering of a consumer financial product or service.

#### What is Abusive?

The Dodd-Frank Act also prohibits conduct that constitutes an abusive act or practice. An Act or practice is abusive when it:

- Materially interferes with the ability of a consumer to understand a term or condition of the product or service; or
- Takes unreasonable advantage of:
  - A lack of understanding on the part of the consumer about the risks, costs, or conditions of the product or service;
  - The inability of the consumer to protect the interests of the consumer in selecting or using the

quarter of 2016:

- Twenty had assets of less than \$10 million;
- Nine had assets between \$10 million and \$50 million; and
- One had assets greater than \$250 million.

No credit unions with assets between \$50 million and \$250 million were subject to civil monetary penalties for filing late Call Reports in the first quarter. Five of the late-filing credit unions had been late in a previous quarter.

A total of 40 credit unions filed Call Reports late for the first quarter of 2016. NCUA consulted regional offices and, when appropriate, state supervisory authorities to review each case. That review determined mitigating circumstances in three cases that led to credit unions not being penalized. Another six credit unions received a requested waiver. One credit union paid a civil monetary penalty to its state regulator.

NCUA informed the remaining credit unions of the penalties they faced and advised them they could reduce their penalties by signing a consent agreement. NCUA also said it would initiate administrative hearings against credit unions that did not consent.

NCUA sends reminder messages about Call Report filing deadlines that include information on how to receive technical support to handle filing problems. The agency also has created an automated reminder email system that contacts credit unions that have not filed their Call Reports and confirms successful filing.

NCUA's Office of Small Credit Union Initiatives has dedicated an Economic Development Specialist to assist small credit unions in filing Call Reports on time. Credit unions that would like assistance should send an email to [OSCUIConsulting@ncua.gov](mailto:OSCUIConsulting@ncua.gov). NCUA also has produced a [video](#) describing how to file Call Reports.

### **Ransomware Is a Serious and Growing Threat**

Businesses and individuals face a dangerous and growing threat to the safety of their personal information and data in the form of ransomware.

Ransomware is a form of malware that targets critical data and systems for the purpose of extortion. Once active on a victim's network or computer, the ransomware encrypts and holds critical and sensitive data hostage until payment is made. A countdown clock usually accompanies the ransom demand and the cybercriminal usually requires payment in bitcoin or another anonymous form of payment. After receiving payment, the cybercriminal may provide an avenue for the victim to regain access to the system or data.

According to the U.S. Federal Bureau of Investigation, ransomware victims in the United States have paid more than \$209 million in ransom payments in the first three months of 2016, compared with \$25 million *in all of 2015*. The ransom demands vary greatly, but averages about \$500 for individuals and \$10,000 for businesses.

Ransomware is primarily delivered through spear-phishing emails. In fact, a recent study by the threat-management company PhishMe found that ransomware attacks make up 93 percent of phishing emails.

However, ransomware is also evolving and becoming increasingly more sophisticated. According to the FBI's Cyber Division, in newly identified

product or service; or

- The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

**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**

### **CUNA Supports FinCEN Proposal for Non-Federally Regulated Institutions**

This week, CUNA filed a letter with FinCEN in support of its proposal that would align certain requirements of "banks lacking a federal functional regulator" with those of federally-regulated banks. The proposed rule that would remove the anti-money laundering program exemption for banks that lack a federal functional regulator, which includes roughly 125 privately insured credit unions (PICU).

CUNA supports the proposed rule as issued. CUNA believes it should reduce confusion that has popped up from time to time regarding BSA-related expectations and requirements of PICUs. Further, it is CUNA's understanding that most—if not all—PICUs are required by their state financial regulator to comply with BSA requirements that parallel those required of federally insured credit unions by NCUA.

In addition, CUNA supports the proposed rule because it will ensure that other—non-PICU—banks lacking a federal functional regulator (i.e., private banks and certain trust companies) will adhere to established requirements pertaining to anti-money laundering, customer identification, and beneficial ownership. Applying uniform standards across the entire banking system will improve FinCEN's ability to combat financial crime.

To further FinCEN's effectiveness at combating financial crime, we ask it to consider expanding the scope of the proposed rule beyond "banks lacking a federal functional regulator" to also apply to certain payment and acceptance services, such as PayPal, Western Union, Apple Pay, and others. Expansion of the beneficial ownership requirements to such entities would further enhance the overall transaction system compliance profile, while ensuring entities that fall outside the traditional banking model comply with the same standards as the banking system.

### **Both House and Senate Address De-risking with Chairman Metsger**

instances of ransomware, cybercriminals are bypassing the need for victims to click on a link in an email. Instead, they are seeding legitimate websites with malicious codes to take advantage of unpatched software that may be present on a victim's computer.

### Small Financial Institutions Are Especially Vulnerable

The rising threat of ransomware is a particular concern for smaller financial institutions like credit unions. A recent report by Beazley Breach Response notes the rising threat to small banks and credit unions with less than \$35 million in annual revenue. They found that 81 percent of hacking and malware breaches at financial institutions in 2016 occurred in these small financial institutions, compared to 54 percent of the incidents reported in 2015. Beazley said its team handled 86 ransomware attacks during the first six months of 2016, versus 43 for all of 2015.

### Ways to Prevent Ransomware

Fortunately, there are ways to mitigate the risk ransomware poses to your credit union. The FBI, U.S. Computer Emergency Readiness Team and the Federal Financial Institutions Examination Council have put out guidance and best practices on how to help protect your systems from this growing threat.

Some of the basic defenses against ransomware include:

- Educating all staff on the risks and how to use email and the web safely;
- Making sure to regularly back-up critical systems and data;
- Maintaining up-to-date firewalls and anti-malware systems and protections;
- Limiting the ability of users or IT systems to write onto servers or other systems;
- Having a robust patch-management program;
- Using web- and email-protection systems and software; and
- Removing any device suspected of being infected from your systems.

### Additional Resources

For additional information on ransomware and its growing threat to financial institutions, visit:

- *Beazley Breach Insights*, "[Hackers Target Smaller Financial Institutions](#)"
- Federal Bureau of Investigation, "[Incidents of Ransomware on the Rise: Protect Yourself and Your Organization](#)"
- The United States Computer Emergency Readiness Team, "[Ransomware](#)" and "[Ransomware and Recent Variants](#)"
- Federal Financial Institutions Examination Council, "[Cyber Attacks Involving Extortion](#)"

Source: NCUA



### Training & Events Calendar

#### November 3

Webinar: [Cyber Series – Member Authentication & Validation](#)

#### November 9

Webinar: [Form 1099 Reporting: Third-Party Vendors, Foreclosures, Debt Forgiveness & More](#)

Congressman Blaine Luetkemeyer (R-MO) and Senator Jeff Flake (R-AZ) wrote Chairman Metsger with concerns about the lack of supervisory guidance on the practice of de-risking. Their letter asks that the NCUA provide a written response to concerns about certain credit union accounts being closed due to the nature of the businesses the members operate. In the 114th Congress, Congressman Luetkemeyer was also the lead sponsor of legislation to limit Operation Chokepoint. While credit unions are committed to combating money laundering, lawfully abiding credit union members' accounts should not be wrongfully terminated.

### 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.

<a href="#">Request for Information: Payday Loans</a>	November 7, 2016	CFPB	<a href="#">Leah Dempsey</a>
<a href="#">Indemnification Payments</a>	November 21, 2016	FHFA	<a href="#">Andy Price</a>
<a href="#">FHLB Membership for Non-Federally-Insured CUs</a>	November 28, 2016	FHFA	<a href="#">Andy Price</a>

### 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



**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](#)

**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](#)

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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

**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](#)

[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](#)

**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 1**

- Overtime Rule (DOL)– Effective Date

**December 26**

- Christmas Day (observed)– Federal Holiday

**January 1, 2017**

- Member Business Loans; Commercial Lending (NCUA) – Effective Date

**January 1, 2017**

- HMDA – Reg C, excludes low volume depository institutions from coverage – Effective Date

**January 2, 2017**

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

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