

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

November 18, 2016

### Compliance News

#### NCUA's Field of Membership (FOM) Rule

On October 27, 2016, NCUA finalized the Field of Membership Rule containing several key changes that will enable credit unions to serve even more people. CUNA has put together a [Final Rule Analysis](#) discussing these changes in greater detail. Some important changes in the new rule include:

- Modernizing the definition of “multiple common bond” to streamline the process for adding new groups to a charter;
- Enlarging the pool of potential members by expanding the areas that may be served by a community charter;
- Updating the process of defining an “underserved area;”
- Revising the “rural district” definition to include populations of up to 1 million people; and
- Expanding the definition of a “trade, industry or profession” as a single common bond.

*Source: CUNA Compliance Community*

#### FAQs for Consecutive Day Closings – ‘Tis the Season

‘Tis the season when many credit unions are beginning to plan their holiday schedules. With the national holidays of Thanksgiving on the 24th and Black Friday on the 25th, inevitably the question about consecutive day closings gets a lot of discussion during the month of November. Let’s take a moment to discuss this topic FAQ style.

#### **My credit union would like to close for Thanksgiving on Thursday, November 24th and remain closed until the following Monday, November 28th. Can we do that?**

Under Federal law, the answer is yes. There is no rule, regulation or guidance from the NCUA which says that your credit union may not be closed for four consecutive days or more.

#### **Are you sure? I’ve heard repeatedly that there is a Federal law that says financial institutions cannot be closed for four consecutive days or more?**

While CUNA’s compliance staff hears this assertion a lot, it simply isn’t true. There is no Federal law that prohibits a financial institution from being closed for a certain period of time. The confusion may stem from a couple of historical observations:

- The Emergency Banking Act of 1933 called for a mandatory four-day shutdown of United States banks so inspectors could determine that they were financially sound to continue operations.
- Some states had post-Great Depression era laws that dictated when a

### 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

### Association Compliance Forums

Click on one of the below links to subscribe

[Compliance Forum](#)

[BSA Compliance Officer Forum](#)

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financial institution must be open. These laws were put on the books in an effort to instill confidence in the nation's banking system and to ensure depositors had ready access to their money. However, most of these state laws have since been repealed.

### **What do you mean, most of these state laws have been repealed?**

While it is true that there is no Federal law that mandates the days that your credit union must be open for business, you are encouraged to investigate as to whether a provision of your state code speaks to this. In some states there are. For example, Section 37.002 of the Texas finance code provides that an office or operation may not remain closed for more than three consecutive days without the banking commissioner's approval. Please check with local counsel or your state trade association to get an idea of what the law provides for in your jurisdiction.

### **What are some of the other items my credit union should consider in determining our holiday schedule?**

Well first would be member service. By being closed for an extended period of time, is the credit union making it challenging for a member to gain access to their funds? Given this is 2016 and we live in an era of credit cards and ATM machines, this is probably not as much of a factor as it once was. However, still something for the credit union to consider.

Also, be careful not to overlook some of your other obligations under Federal law. For example, Regulation CC provides for the following:

- Electronic payments (e.g., wire transfers) must be made available for withdrawal not later than the business day following the date of deposit; and
- Checks must be made available for withdrawal not later than the 2nd business day following the date of deposit.

Regulation CC defines the term business day as any calendar day other than Saturday, Sunday or a specified legal public holiday.

In addition, don't forget about NACHA's new same day rule for ACH payments that went into effect on September 23rd. It provides that a receiving depository institution must make an ACH credit available no later than the end of its processing day.

These examples are by way of reminder that even if your credit union is closed for an extended period of time, you should still consider if staff must be present to clear checks, release funds availability holds or perform other required functions.

*Source: CUNA Compliance Community*

### **OFAC Fall Symposium**

OFAC has issued a [save-the-date invitation](#) for its 2016 Fall Symposium to be held in Washington, D.C. on December 7. The event will provide a comprehensive review of current U.S. economic sanctions. It will include presentations on OFAC regulations, as well as targeted reviews of sanctions concerns for new and updated OFAC-administered programs. In addition to formal presentations by key personnel, OFAC staff will be available throughout the day to answer individual questions from participants.

### **OFAC Sanctions Russian Individuals**

If a full suite of compliance services is not what you are looking for, we now offer self-assessment tools, individual loan reviews, and a basic annual compliance package that includes ACH, BSA, SAFE Act, and Website compliance.

For more information about our compliance services, please contact Melia Heimbeck at: [mheimbeck@mwcua.com](mailto:mheimbeck@mwcua.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 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.

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

### **Advocacy Highlight**

#### **Problems Completing Chapter 13 Bankruptcy Form B410A?**

CUNA recently was made aware that various mortgage loan servicers, large and small credit unions and banks are struggling to complete and automate the Chapter 13 Bankruptcy Form B410A—Mortgage Proof of Claim Attachment. This form requires information concerning

OFAC has announced its designation of [six individuals](#) who represent Crimea and Sevastopol in the Russian State Duma (Parliament). The six were sanctioned for being responsible for or complicit in actions or policies that undermine democratic processes or institutions in Ukraine and actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine.

Source: OFAC



### Training & Events Calendar

#### **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](#)

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

#### **October 31, 2016~CFPB**

[RFI for Small Dollar Proposed Rule](#)



### **Compliance Calendar**

#### **November 24**

- Thanksgiving Day – Federal Holiday

#### **December 1**

- Overtime Rule (DOL)– Effective Date

#### **December 26**

- Christmas Day (observed)– Federal Holiday

mortgage loan payment history from the first date of default for mortgage loans secured by the debtor's principal residence.

Form 410A, Mortgage Proof of Claim Attachment, requires the creditor or servicer to provide a loan history that reveals when payments were received, how they were applied, when fees and charges were incurred, and when escrow charges were satisfied.

It is our understanding that credit union core processors may not be capable of providing the information needed to accurately complete form B410A. In addition, we believe this problem is compounded in many instances where the loan is sold on the secondary market or where servicing is transferred to a second party because much of the information necessary to complete the proof of claim form is not provided to the secondary market or to the new servicer.

CUNA needs your help in order to resolve these issues concerning completion of the proof of claim form. You can respond to this post in the Compliance Community or submit comments to [cucomply@cuna.coop](mailto:cucomply@cuna.coop).

- Is your credit union capable of accurately completing Chapter 13 Bankruptcy Form B410A, or are you struggling to complete this form?
- If you are having problems completing this form, what is the reason you are unable to complete the form. Is it because your core processor doesn't permit collection of the required information? Or is there some other reason?
- Is the problem related to a new servicer or a loan that has been sold?

It would certainly help if you could provide as much detail as possible regarding any problems you are experiencing with completion of the proof of claim form.

Source: CUNA Compliance

### **CUNA Tells CFPB to Take a Breather**

In a letter addressed to CFPB Director Richard Cordray, CUNA urged the CFPB to impose an immediate moratorium on all of its pending and future rulemakings. Citing American voters' message to federal policymakers that they want their voices to be heard, CUNA noted that consumers have been harmed by policies that make safe credit harder to access.

CUNA pointed out to the CFPB that policies coming out of Washington that limit consumers' ability to obtain safe credit, or make it difficult and more expensive to access products and services from their community financial institution such as their credit union, are not

**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

**April 10, 2017**

- Fiduciary

**September 15, 2017**

- Same-day ACH – Phase 2

**October 1, 2017**

- Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z

**October 19, 2017**

- Amendments to 2013 Mortgage Rules under RESPA/Reg X and TILA/Reg Z

**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.

**Effective Dates  
New and Revised Rules****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](#)

**October 1, 2017 ~ CFPB**

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

**October 19, 2017~CFPB**

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

**Compliance Videos****Q3 and Q4 2016 Overview**

In this [newly released video](#), Glory LeDu reminds us of the regulatory

making their lives better.

The letter reminded Director Cordray that unnecessary, overly burdensome, and duplicative regulations keep consumers from fully accessing the high-quality products and services that credit unions provide. It stated, “Too many resources credit unions would otherwise apply to more fully serving their members are spent on complying with broad sweeping rules that should instead be focused on those abusing consumers. In 2014, the total financial impact of regulations and lost revenue on credit unions was \$7.2 billion - a cost coming out of the pockets of consumers across America.”

In the letter CUNA outlined specific rulemakings that have not only harmed credit unions as a result of excessive regulatory burden, but the members they serve.

It notes that unfortunately CFPB rulemakings on mortgage reporting, underwriting and servicing, remittances, and other already consumer friendly credit union financial products has stifled credit unions’ ability to effectively and efficiently serve their members. The letter further expresses the grave concern that these rules have impeded credit unions’ ability to serve members with lower credit scores, or those facing financial difficulties.

CUNA’s letter ended by stating that in light of these consumer concerns in conjunction with the pending change in the administration in 2017, it makes the most sense for the CFPB to cease its pending rulemaking affecting credit unions.

**Marijuana Legalized in California, Maine, Massachusetts and Nevada; Rejected in Arizona**

On November 8, 2016, voters in California, Maine, Massachusetts and Nevada voted to legalize the use of recreational marijuana while Arizona voters rejected legalization. Medicinal marijuana was also legalized in Arkansas, Florida and North Dakota.

Many in the marijuana movement believe legalization in California, due to its large economy, will lead to intense pressure for federal legislation. Currently, marijuana businesses operating under state laws that have legalized medicinal or recreational marijuana have, for the most part, been denied access to the mainstream financial system because institutions that provide financial services can be prosecuted under federal law. This has led many of these businesses to operate using large amounts of cash, creating safety risks and making taxation difficult.

Legislation previously introduced in the House and the Senate provides a safe harbor for depository institutions providing financial services to a legitimate marijuana-related business, prohibiting a federal banking regulator

changes that became effective in the 3<sup>rd</sup> quarter of 2016 and provides an overview of those that are coming up in the 4<sup>th</sup> quarter, including FinCEN Member Due Diligence, NACHA Same Day ACH rules as well as the Military Lending Act and the Overtime Rule from the Department of Labor.

### **Member Business Lending**

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

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*Please note there will not be a Regulatory Compliance Newsletter  
November 25, 2016*

from:

- Terminating or limiting the deposit or share insurance of a depository institution solely because it provides financial services to a marijuana-related legitimate business; or
- Prohibiting, penalizing, or otherwise discouraging a depository institution from offering such services. Financial institutions would still be required to comply with current FinCEN guidance.

CUNA provided technical assistance to lawmakers on the legislation. CUNA and the leagues also supported a successful National Conference of State Legislators resolution urging Congress to help legal cannabis businesses access banking services and let states determine their own path forward on cannabis regulation.

*Source: CUNA Advocacy*

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

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