

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

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Compliance News

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Preparing for the \$50 Million Asset Level

Reaching \$50 million in assets is a significant milestone for credit unions. While a credit union of this size is still considered a small entity by NCUA's standards, there are some changes for management to be aware of when reaching this asset level. The first is a regulatory change and part of NCUA's liquidity rule. Section 741.12 of NCUA's rules and regulations requires federally insured credit unions with assets of at least \$50 million to have a fully developed, written contingency funding plan (CFP) commensurate with its complexity, risk profile, and scope of operations. This plan needs to clearly set out strategies for addressing liquidity shortfalls in emergency situations. The CFP may be a separate policy or may be incorporated into an existing policy such as an asset/liability policy, a funds management policy, or a business continuity policy.

The second change is also regulatory and part of NCUA's capital adequacy rule. Under Section 702 of NCUA's rules and regulations, a federally insured credit union is defined as "complex" and a risk-based net worth requirement is applicable if the credit union's quarter-end total assets exceed \$50 million dollars and its risk-based net worth requirement exceeds six percent. Credit unions over \$50 million in assets will need to determine their risk-based net worth requirement in addition to calculating their net worth ratio on a quarterly basis to ensure adequate net worth levels are maintained. The good news is the definition of "complex" will change effective January 1, 2019 and the risk-based capital ratio measure will be applicable only if the credit union's quarter-end total assets exceed \$100 million dollars.

One other change to be aware of is that credit unions over \$50 million in assets will move from the \$10-\$50 million peer group to the \$50-\$100

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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.

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million peer group. Although this is not regulatory, it is important for management to understand when performing peer group ratio analysis. This change may appear to indicate changes in the credit union's financial performance when it is simply due to a change in the credit union's peer group.

Credit unions approaching \$50 million in assets should review their liquidity policy and make any needed changes to comply with the increased regulatory requirements. They should also calculate the credit union's risk-based net worth requirement to determine if they will be considered complex under the capital adequacy rule. Finally, it would be beneficial to determine how a new peer group will affect any financial ratio analysis. These steps will help prepare credit unions for the changes that will occur at the \$50 million dollar asset level

A Closer Look at RESPA's 120-Day Foreclosure Restriction

In the event a member breaches a term of their mortgage loan agreement unrelated to the delinquency of a periodic payment, must the credit union wait 120 days before initiating a foreclosure action?

By way of reminder, Section 1024.41 of Regulation X provides as follows:
A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- *A borrower's mortgage loan obligation is more than 120 days delinquent;*
- *The foreclosure is based on a borrower's violation of a due-on-sale clause; or*
- *The servicer is joining the foreclosure action of a subordinate lienholder.*

In its final mortgage servicing rule dated August 2, 2016, the Consumer Financial Protection Bureau ("CFPB") gave a standardized definition of "delinquency" for purposes of the Regulation X servicing provisions. A borrower is now considered delinquent *beginning on the date a periodic payment sufficient to cover principal, interest, and, if applicable, escrow, becomes due and unpaid, until such time as no periodic payment is due and unpaid.*

What about other breaches of the mortgage loan agreement unrelated to payment delinquency? For example, if the member fails to keep the subject property adequately insured? Does the same Section 1024.41 restriction apply in this scenario?

The regulatory text is silent on the issue, as is the official commentary and the CFPB's small entity compliance guide. However, you'll find the answer in a CFPB fact sheet dated August 4, 2016. It reads as follows:

The definition of delinquency does not address whether a borrower can be delinquent under the specified mortgage servicing provisions due to other breaches of the mortgage loan obligation, such as a failure to pay property taxes or maintain required insurance outside of escrow, committing waste or violations of law on the property, or failing to occupy the property when required by the mortgage loan. Although a breach other than the failure to meet the periodic payment obligation will not begin a period of delinquency under the specified mortgage servicing provisions, a servicer may be able to exercise its rights to accelerate payment for such a breach if permitted by the mortgage loan contract and other applicable law. The 2016 Mortgage Servicing Rule does not prohibit a servicer from accelerating the mortgage

and email address. The subscriber will receive a welcome e-mail that details how to access the forum.



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For more information about our compliance services, please contact Melia Heimbuck at: mheimbuck@mwcu.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



InfoSight Highlight

Fair Housing Act

The Federal Fair Housing Act (FHA or Act) is Title VIII of the Civil Rights Act of 1968, as amended. The FHA makes it unlawful for any person to be subjected to discrimination because of race, color, religion, sex, handicap, familial status (having one or more children under the age of 18 living with a parent, individual who has legal custody or designee of a parent or legal custodian), or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions. "NCUA's Rules and Regulations, 12 CFR Section 701.31 entitled "Nondiscrimination Requirements," implements the provisions of the FHA for federal credit unions, summarizing the prohibitions on discrimination in real estate lending and appraisals. The requirements for state chartered credit unions are located in the Department of Housing and Urban Development's (HUD's) Fair Housing Act regulations at 24 CFR Part 110.25 (a), which are similar to NCUA's requirements.

There is considerable overlap between the FHA and the Equal Credit Opportunity Act (ECOA), which prohibits discrimination with respect to any aspect of a credit transaction on the basis of sex, race, color, religion,

loan in such circumstances. If a servicer properly accelerates a mortgage loan, the periodic payment used to calculate the period of delinquency is the total amount due after acceleration. However, if the borrower reinstates the mortgage loan or cures the arrearage following acceleration, the borrower is no longer delinquent and the delinquency period ends.

In summary, yes, the 120-day foreclosure restriction also applies in the case of a non-payment related breach of the mortgage loan agreement. Returning to the earlier example, if the member fails to keep the subject property adequately insured, the credit union must first accelerate the debt. If the member fails to pay the accelerated amount within 120 days, then the credit union may proceed to foreclosure.

Source: CUNA Compliance Community

Arbitration Rule Signed by President

The resolution to repeal the Consumer Financial Protection Bureau's Arbitration rule has been signed into law by the President.

Last week, the [CUNA-League System showed its force on Capitol Hill](#) when the Senate passed a resolution to repeal the Consumer Financial Protection Bureau's arbitration rule under the Congressional Review Act (CRA). The [House of Representatives](#) passed their resolution in July.

CUNA was an early opponent of the rule and was integral in the resolution passing the Senate. CUNA's opposition and concerns with the rule were expressed to [the CFPB](#), Treasury, [Congress](#), and [in the media](#) (on [more than one](#) occasion).

CUNA appreciates Congress and the President recognizing that this rule ignored the different size and member-ownership structure of credit unions and instead treated them as akin to abusive Wall Street banks. This rule was just the latest example of the one-size-fits-all rulemaking coming from the CFPB and thankfully Congress and the President acted to remedy the situation.

Source: CUNA

OFAC Amends Global Terrorism Sanctions Regulations

The Department of the Treasury's Office of Foreign Assets Control (OFAC) is [amending the Global Terrorism Sanctions Regulations, 31 C.F.R. part 594 \(GTSR\)](#), to apply the blocking provisions of the GTSR to foreign persons that have been identified by OFAC as officials, agents, or affiliates of Iran's Islamic Revolutionary Guard Corps (IRGC). This amendment took effect upon publication in the Federal Register on Tuesday, October 31, 2017. OFAC is amending the GTSR pursuant to section 105(b) of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA) as it relates to officials, agents, or affiliates of the IRGC. Further information about CAATSA, including updates to two frequently asked questions related to section 105 of CAATSA, can be found on OFAC's CAATSA [page](#).

OFAC Announces Joint Terrorism Sanctions

OFAC [sanctioned seven individuals and three entities of the North Korean regime](#) in response to the regime's ongoing and serious human rights abuses. Treasury took this action in conjunction with the State Department's "Report on Serious Human Rights Abuses and Censorship in North Korea," which has been submitted in accordance with the North Korea Sanctions and Policy Enhancement Act of 2016.

national origin, marital status, age, receipt of public assistance, or the exercise, in good faith, of rights granted by the Consumer Credit Protection Act. The FHA works in conjunction with the ECOA to prohibit discrimination by anyone who is in the business of providing loans for housing. The ECOA and the FHA should be read together in order to fully understand the scope of a credit union's fair lending obligations.

HUD has primary FHA regulatory and enforcement authority over credit unions. The Department of Justice (DOJ) brings suits on behalf of individuals based on referrals from HUD.

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 2nd and 3rd 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 1st 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

Summary of Interim Final Rule: CFPB Mortgage Servicing Under RESPA (Reg X)

On October 16, the Consumer Financial Protection Bureau (CFPB) issued an interim final rule to clarify a provision in the 2016 Mortgage Servicing Final Rule, relating to Regulation X, the Real Estate Settlement Procedures Act (RESPA), regarding the time period within which written early intervention notices must be delivered to borrowers who have exercised their right to cease communications under the Fair Debt Collection Practices Act (FDCPA). RESPA provides that a FDCPA-subject servicer must provide a written early intervention notice on a periodic basis, no more than once every 180 days.

During the public comment period, mortgage servicers expressed concern that the 180-day requirement, read in conjunction with other RESPA notice requirements, would

OFAC also deleted several entries from its list of Transnational Criminal Organizations designees.

Source: OFAC



Training & Events Calendar

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.

necessitate such notice to occur exactly on the 180th day only. As this interpretation was unintended by CFPB, the interim final rule clarifies that such notice under RESPA for borrowers who have initiated a cease communication under their FDCPA rights, may be delivered within a 10-day window, which occurs at the end of the 180-day period.

Small servicers under \$10 billion in assets that service fewer than 5,000 loans—all of which they or an affiliate owned or originated, continue to be exempt from the mortgage servicing requirements, including this interim final rule.

The interim final rule was effective on October 19, 2017, with comments accepted until November 15, 2017.

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

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

- 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](#)

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

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

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

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

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