

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

November 4, 2016

Compliance News

Treasury Designates Financial Supporters of al-Qaida in the Arabian Peninsula

Sanctions Imposed in Coordination with Parallel Enforcement Action by the United Arab Emirates

On November 1, 2016, the United States, in close partnership with the United Arab Emirates (UAE), took action to disrupt the operations and support networks of al-Qaida in the Arabian Peninsula (AQAP). Specifically, Treasury's Office of Foreign Assets Control (OFAC) designated the Al Omgy and Brothers Money Exchange (Al Omgy Exchange) and the company's two owners Said Salih Abd-Rabbuh al-Omgy and Muhammed Salih Abd-Rabbuh al-Omgy pursuant to Executive Order (E.O.) 13224, which targets terrorists and those providing support to terrorists or acts of terrorism. As a result of today's action, all property and interests in property of Al Omgy Exchange, and Said and Muhammed al-Omgy subject to U.S. jurisdiction are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

Acting under its authorities, the Central Bank of the UAE recently took swift action to eliminate any access to the UAE financial sector by Al Omgy Exchange in advance of the OFAC action.

"Today's action reflects the strength of the U.S. partnership with the United Arab Emirates to degrade AQAP's capabilities to execute violent attacks and to identify and disrupt its financial and support networks," said Adam J. Szubin, Acting Under Secretary for Terrorism and Financial Intelligence. "Al Omgy Exchange and its owners are responsible for financially facilitating and supporting AQAP and its violent attacks. Treasury will continue to work with our allies to protect the international financial system by exposing and taking action against AQAP supporters."

For more on this action, click [here](#).

Source: US Department of the Treasury

CFPB Puts 44 Mortgage Lenders and Brokers on Notice That They May Be Required to Report Mortgage Data

Recently, the CFPB issued warning letters to 44 mortgage lenders and mortgage brokers. The CFPB has information that appears to show they may be required to collect, record, and report data about their housing-related lending activity, and that they may be in violation of those requirements.

"Financial institutions that fail to report mortgage information as required make it harder to identify and address discriminatory lending," said CFPB Director Richard Cordray. "No mortgage lender that is required to report

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their loan data can avoid this responsibility.”

The Home Mortgage Disclosure Act, which was originally enacted in 1975, requires many financial institutions to collect data about their housing-related lending activity, including home purchase loans, home improvement loans, and refinancings that they originate or purchase, or for which they receive applications. Annually, these financial institutions must report to the appropriate federal agencies and make the data available to the public. The public and regulators can use the information to monitor whether financial institutions are serving the housing needs of their communities, to assist in distributing public-sector investment so as to attract private investment to areas where it is needed, and to identify possible discriminatory lending patterns.

Data transparency helps to ensure that financial institutions are not engaging in discriminatory lending or failing to meet the credit needs of the entire community, including low- and moderate-income neighborhoods. Financial institutions that avoid their responsibility to collect and report mortgage loan data hinder regulatory efforts to enforce fair lending laws.

The CFPB identified the 44 companies by reviewing available bank and nonbank mortgage data. The warning letters flag entities that meet certain requirements to collect, record, and report mortgage lending data. The letters say that recipients should review their practices to ensure they comply with all relevant laws. The companies are encouraged to respond to the Bureau to advise if they have taken, or will take, steps to ensure compliance with the law. They can also tell the Bureau if they think the law does not apply to them. The CFPB, in sending these letters, made no determination that a legal violation did, in fact, occur. [Click here to view a sample letter.](#)

In October 2015, the CFPB finalized a rule updating the reporting requirements of the Home Mortgage Disclosure Act regulation. The rule will improve the quality and type of data that is collected and reported, including shedding more light on consumers’ access to credit. Most of the provisions of the final rule will take effect on Jan. 1, 2018.

In October 2013, the CFPB released [a bulletin](#) putting mortgage lenders on notice about the importance of submitting correct mortgage loan information.

CFPB Finds Qualified Students Were Blocked From Affordable Loan Repayment Plans; Updates Student Loan Servicing Exam Procedures

The Consumer Financial Protection Bureau (CFPB) announced in its Supervisory Highlights report that recent supervisory actions returned more than \$11 million to more than 225,000 harmed consumers. The CFPB also uncovered student loan servicer violations, such as failing to enroll qualified borrowers in affordable federal loan repayment plans, and is issuing updated procedures for student loan servicing exams. The report also outlines violations found in auto loan origination and servicing, debt collection, and mortgage origination. Additionally, the report provides information on compliance with CFPB rules and regulations, new exam policies, and best practices for better communication with non-English-speaking consumers.

“Our examiners continue to find sloppy or callous practices among some student loan servicers and other financial institutions that violate the law

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.

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InfoSight Highlight

Security Program

Part 748 of the NCUA Rules and Regulations requires each federally-insured credit union to develop a comprehensive written security program (including administrative, technical, and physical safeguards appropriate to their size, complexity, and the nature and scope of their operations) within 90 days of the date it is insured by the National Credit Union Share Insurance Fund (NCUSIF). The security program and associated procedures will be evaluated during examinations by the NCUA or state credit union regulator.

What does the credit union need to do?

The credit union must develop and have the board approve a written security program. The program must provide for and address the following areas:

- Protecting each credit union office from robberies, burglaries, and larcenies.
- Ensuring the security and confidentiality of member records, and protecting against anticipated threats or hazards to the security or integrity of such records and unauthorized access or use of such records that could result in substantial harm or serious inconvenience to a member, as provided in Appendix A of Part 748 of NCUA’s Rules and Regulations.
- Assisting in the identification of persons who commit or attempt such crimes.
- Preserving vital records, as defined in Part 749 of the NCUA Rules and Regulations.

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

Compliance Videos

Q3 and Q4 2016 Overview

In this [newly released video](#), Glory LeDu reminds us of the regulatory changes that became effective in the 3rd quarter of 2016 and provides an overview of those that are coming up in the 4th quarter, including FinCEN Member Due Diligence, NACHA Same Day ACH rules as

and put consumers at risk,” said CFPB Director Richard Cordray. “If their practices hurt consumers, they need to rethink and change their practices in light of the actions and observations found in this report.”

The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the CFPB to supervise banks and credit unions with more than \$10 billion in assets and certain nonbanks, including mortgage companies, private student lenders, and payday lenders. The CFPB has issued rules to supervise the larger participants in certain markets including consumer reporting, debt collection, student loan servicing, international money transfers, and auto finance.

The 13th edition of the Supervisory Highlights Report, is focused on supervisory work generally completed between May and August 2016. It includes issues CFPB examiners found in student loan servicing, auto loan origination and servicing, debt collection, and mortgage origination. Supervisory actions in the areas of deposits, mortgage servicing, and credit cards returned \$11.3 million to consumers. Specific issues uncovered by CFPB examiners being addressed through supervisory or enforcement action include:

- **Student loan servicers unfairly denying or failing to approve qualified students’ affordable payment plans:** Eligible borrowers with federal student loans have a legal right to affordable payments based on their monthly income. A recent Bureau [report](#) found student loan borrowers may face needless hurdles and wrongful rejections when trying to enroll in these plans. CFPB examiners have found that one or more servicers are regularly and illegally denying applications from qualified borrowers. These practices could trap borrowers in payment plans they cannot afford, delay access to important benefits, increase costs for consumers, and contribute to avoidable defaults. The Department of Education has issued [guidance](#) saying servicers must be more actively engaged with borrowers who do not have complete applications.
- **Auto loan servicers illegally keeping borrowers’ belongings:** CFPB examiners found one or more auto loan servicers refused to return personal belongings from a borrower’s repossessed car unless the borrower paid a storage fee. If borrowers did not pay the fee in the allotted time, usually 30-45 days, depending on the state, the companies would dispose of the property instead of returning it to the borrower. It is an illegal and unfair practice to refuse to return a consumer’s personal property until a fee is paid.
- **Debt collectors charging illegal fees, misleading consumers:** Examiners found one or more debt collectors charged illegal payment processing fees and made misleading collection calls about consumers’ credit scores or reports. For instance, some debt collection employees misled consumers by falsely claiming immediate payments were needed to prevent damage to the consumer’s creditworthiness. The CFPB also found one or more collectors revealed information about debts to consumers’ friends and family during debt collection attempts, and failed to investigate consumer reporting disputes. These actions violate the Fair Debt Collection Practices Act and the Fair Credit Reporting Act.

Some problems found during CFPB supervisory examinations are resolved without an enforcement action. Where Bureau examiners find violations of law or other significant problems or weaknesses, they alert the institution to these concerns, direct the institution to change its conduct, and outline necessary remedies.

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.

Compliance Connection on YouTube

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

Advocacy Highlight

Marijuana Legalization on the Verge in Several States

With most of the nation’s attention focused on the hotly contested presidential election, voters in Arizona, California, Maine, Massachusetts and Nevada will vote on referendums legalizing the use of recreational marijuana. Recreational marijuana use has already been legalized in Alaska, Colorado, Oregon, Washington and Washington, D.C. and medicinal marijuana has been legalized in 25 states.

According to a recent New York Times article, if the initiative is approved in California, which has the largest economy of the states, pressure for federal legislation will intensify greatly. 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.

As a result of pressure from marijuana businesses, states that have legalized marijuana, and financial institutions that are interested in servicing these very lucrative businesses, two important memos were issued by the Department of Justice (DOJ) in August 2013 and February 2014. The purpose of these memos was to update the federal government’s position on the prosecution of these state sanctioned marijuana businesses.

These memos clarify that as long as the businesses are operating in states that allow marijuana-related activities and those states have strong and effective state regulatory and enforcement systems, the DOJ doesn’t believe it is an efficient use of federal resources to investigate and prosecute marijuana businesses.

The two problems CUNA has with this guidance are:

1. It does not address the federal law violations, and
2. The memos include some due diligence requirements, which are impossible for credit unions to comply with, without further guidance.

Field-of-Membership Rule Provides Greater Flexibility and Consumer Choice

More Americans will become eligible for credit union products and services under a final rule (Part 701) approved by the Board to modernize NCUA's field-of-membership regulations.

"This comprehensive rule expands consumer access to credit and provides them a safe place to invest their life savings," NCUA Board Chairman Rick Metsger said. "Congress passed the Federal Credit Union Act and the Credit Union Membership Access Act to improve access for consumers to a national system of not-for-profit cooperative credit. But, the world has changed since we last put in place rules to implement these laws. We cannot anchor our regulations to the past; we have to keep pace with how consumers access financial services today."

In recent years, several states have updated their field-of-membership rules for state-chartered credit unions. Within the requirements of federal law, NCUA Board Member J. Mark McWatters said that the final rule would similarly enhance consumer access to credit by sensibly and reasonably updating NCUA's rules.

"Our field-of-membership final rule is consistent with both the letter and spirit of the law," McWatters said. "During our deliberations, I carefully examined the Federal Credit Union Act and the requirements of the Administrative Procedure Act. Based on more than 30 years of legal experience working with issues of complex statutory interpretation, I am confident that the final rule we've approved today follows the law. More importantly, these changes will expand access to affordable financial services for consumers, including those in underserved communities." Consistent with the limitations of the Federal Credit Union Act, the final rule updates key definitions and makes more than a dozen changes to NCUA's chartering and field-of-membership rule for federal credit unions by:

- Allowing greater flexibility to community charter credit unions in how they define the local communities they serve;
- Providing credit unions with better opportunities to serve underserved areas by updating the process for defining those areas;
- Enhancing access to credit union services for residents of rural areas by allowing rural district credit unions to serve up to 1 million people;
- Streamlining paperwork for multiple common-bond credit unions that seek to serve additional groups, such as including independent contractors with a strong dependency relationship with an employee group; and
- Expanding credit union access for honorably discharged members of the armed services by allowing them to join credit unions serving their active-duty counterparts.

The final rule also modifies the type and extent of information that a federal credit union must submit to support an application to expand its field of membership.

The [final rule](#), will become effective 60 days after publication in the Federal Register. A [comparison chart](#) summarizes changes made to the previous rule.

Final Rule Adopts Inflation Adjustments to Civil Monetary Penalties

Additionally, credit unions must comply with the Bank Secrecy Act (BSA), which requires that funds suspected to be derived from illegal activities be reported to the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) bureau on the agency's Suspicious Activity Report (SAR). To assist with this compliance requirement, FinCEN issued guidelines in February 2014 entitled "BSA Expectations Regarding Marijuana-Related Businesses".

Legislation 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 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

Proposed Rule Would Amend Flood Insurance Regulations

The NCUA Board approved an interagency proposed rule (Part 760) that would implement statutory requirements for private flood insurance.

The proposed rule would require regulated lending institutions, such as credit unions, to accept flood insurance policies that meet the statutory definition of "private flood insurance" in the Biggert-Waters Flood Insurance Reform Act of 2012. It also would permit those lenders to accept private flood insurance policies that do not meet that definition on a discretionary basis, subject to certain restrictions.

NCUA is issuing the proposed rule along with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Farm Credit Administration.

Comments on the proposed rule must be received within 60 days of publication in the Federal Register.

The NCUA Board approved a final rule (Part 747) to amend its regulations and adjust the maximum amount of civil monetary penalties under its jurisdiction to account for inflation.

At its June open meeting, the Board approved an interim final rule making the adjustments. The final rule adopts those changes, which were required by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015.

NCUA last adjusted civil monetary penalties in September 2015. Previously, these inflation adjustments were made every four years. In November 2015, Congress enacted legislation requiring annual adjustments and providing for a one-time “catch-up” adjustment for 2016. Beginning in 2017, agencies must publish their inflation adjustment rules in the Federal Register by January 15th of each year.

Although the law requires NCUA to adjust the maximum levels for civil monetary penalties, NCUA is not required to assess the maximum level and retains discretion to assess at lower levels, as it has done historically. For example, the civil monetary penalties NCUA assesses for late filers are modest; the median penalty was \$274 for the first quarter of 2016. The Federal Credit Union Act requires NCUA to send any funds received through civil monetary penalties to the U.S. Treasury.

The [final rule](#) adopts the changes made in the interim rule, which became effective July 21, 2016.

Source: NCUA



[Training & Events Calendar](#)

Nov

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](#)

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](#)

Proposed Field-of-Membership Rule Responds to Stakeholder Suggestions

The NCUA Board approved a proposed rule (Part 701) that would make additional changes to the agency’s field-of-membership rule for federal credit unions.

The proposed rule responds to stakeholder suggestions received during the initial field-of-membership rulemaking, but which could not be incorporated because of the Administrative Procedure Act. Specifically, the proposed rule would:

- Raise the current population cap for a “well-defined local community” from 2.5 million people to 10 million;
- Allow the use of a narrative approach to create a new well-defined local community; and
- Correct an error in the final rule that inadvertently restricts fields of membership inside core-based statistical areas to not more than 2.5 million people in a metropolitan division, rather than the core-based statistical area.

The proposed rule also asks questions about possible alternative approaches to field-of-membership issues and gives stakeholders an opportunity to comment.

Comments on the proposed rule must be received within 30 days of publication in the Federal Register.

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](#).



Compliance Calendar

October 3

- [NACHA’s Network Quality Rule](#)

October 24

- 5300 Call Report Due to NCUA

October 31

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 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](#)

- [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

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](#)

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