

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

December 23, 2016

Compliance News

Closed Credit Union Gets \$500K AML Penalty

The Financial Crimes Enforcement Network (FinCEN) has announced its assessment of a \$500,000 civil money penalty against a credit union in New York for significant violations of anti-money laundering (AML) regulations. The credit union was liquidated by the NCUA in 2015 as insolvent with no prospects of returning to viability. FinCEN's assessment is a claim against any assets remaining after the completion of the liquidation process. In 2011, the credit union took on a lot of new business with money services businesses without revising its AML program to handle the additional business and the change in customer activity it entailed. As a result, it failed to detect and report significant volumes of suspicious activity, and when it was forced to file late SARs on that activity, the SARs were inadequately completed.

Source: FinCEN

BSA Reporting – Human Trafficking Red Flags

Human trafficking is one of the fastest growing crimes. Because credit unions are on the front lines of the financial system, we can help combat this growing problem by not only reporting suspicious activity that may indicate this crime is taking place, but also offer law enforcement early indicators of new trends in methods being used by criminals.

Human Trafficking: *The act of recruiting, harboring, transporting, providing or obtaining a person for forced labor or commercial sex acts through the use of force, fraud or coercion.*

According to federal law enforcement reports, **victims** of human trafficking come from all walks of life and are entrapped in many different settings. Anyone can be a victim, regardless of their race, color, national origin, disability, religion, age, gender, sexual orientation, gender identity, socioeconomic status, or citizenship status. While there is no defining characteristic that all victims share, traffickers frequently prey on individuals who are poor, vulnerable, living in an unsafe situation, or are in search of a better life. Many children and teenagers fit these characteristics. These victims are deceived by false promises of love, a good job, or a stable life and are lured into situations where they are forced to work under deplorable conditions with little or no pay. Whether made to work in agriculture, a factory, or a strip club, forced into commercial sex, or abused in a home as a domestic servant, federal law recognizes these individuals as victims of human trafficking.

Traffickers are similarly diverse. There are traffickers working alone to deceive and prey on victims; businesses that enslave their workers; families who have been in the business of human trafficking for

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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. We will be publishing revised materials updating the mortgage loan and mortgage servicing rules, and new materials for the CFPB Prepaid Accounts final rule soon.

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generations or have just begun exploiting a family member; criminal networks; and front businesses that appear legitimate at first glance but disguise human trafficking.

Federal law enforcement agencies have identified several financial activities and patterns that may indicate that an individual or business is involved with human trafficking, and have urged all financial institutions to be aware of and report these red flags:

- Credit and debit processing for even dollar amounts, when such amounts are atypical for the type of business;
- Multiple accounts established for different businesses, but having persons with the same signatory powers on each account;
- Use of electronic funds transfers from business accounts to pay for extravagant trips and the leasing of high-end luxury vehicles;
- Wire transfers from one business account to the account of another business when the two entities have no apparent commercial relationship;
- Credit card payments to online escort services for advertising, including small posting fees to companies such as Craigslist, as well as to more expensive advertising and website hosting companies;
- Deposit of checks written in even amounts and with seemingly non-applicable phrases written in the remarks or memo field.

FinCEN provided several more red flags in its 2014 Advisory: [Guidance on Recognizing Activity that May be Associated with Human Smuggling and Human Trafficking – Financial Red Flags](#)

Source: CUNA Compliance Blog

NCUA December Board Action Bulletin

The NCUA Board has [announced](#) it unanimously approved three items at its December 15, 2016, meeting:

- A [final rule](#) providing regulatory relief to federal credit unions by eliminating the full occupancy requirement in the current occupancy rule;
- An [interim final rule](#) amending the agency's Freedom of Information Act (FOIA) regulation to provide greater agency transparency and to comply with changes in federal law; and
- A request from the Texas Credit Union Department to revise its [member business lending rule](#) to provide parity with NCUA's rule.

Source: NCUA

Back to Basics: RESPA's Anti-Kickback Provisions

With all the talk about TRID over the past year, it is easy to forget about plain old RESPA requirements. However, RESPA is still alive and well and credit unions need to ensure that they are still complying, so for this installment of Back to Basics, we will discuss RESPA's Section 8 anti-kickback provisions.

Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback, or anything of value in exchange for referrals of settlement services in connection with any loan covered by RESPA. The Act also prohibits fee splitting and receiving unearned fees for services not actually performed. These restrictions apply in any situation where settlement services are related to a federally related loan. The rendering of services by a mortgage broker is a "settlement service" for purposes of the rule.

To make this clear, let's discuss some examples. Let's suppose a real

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InfoSight Highlight

Newly Updated! Member Business Lending

Any loan, line of credit, letter of credit (including any unfunded commitments), and any interest a credit union obtains in such loans made by another lender to individuals, sole proprietorships, partnerships, corporations or other business enterprises for commercial, industrial, agricultural, or professional purposes (not for personal expenditures) is considered a commercial loan under NCUA rules.

There are certain loans that are excluded from the commercial loan definition:

- Loans secured by a lien on a one-four family residential property (whether or not it is the borrower's primary residence).
- Loans fully secured by credit union shares or other financial institution deposits;
- Loans secured by a vehicle manufactured for household use;
- Loans that would otherwise meet the definition, but when aggregated (outstanding balances plus unfunded commitments), less any portion secured by shares in a

estate agent hosts an open house for brokers, and a mortgage lender offers to pay for lunch at the open house. This would violate RESPA because the mortgage lender has just provided a thing of value (lunch) in consideration for the referral of business in violation of RESPA's anti-kickback provision. Now, what if instead, the lender gave the real estate agent marketing materials, such as desk calendars, pens, and notepads, all of which promote the mortgage lender company's name. While this seems like it would be a "thing of value" on par with lunch, there is actually an exception in RESPA for normal promotional and educational activities that are not conditioned on the referral of business and that do not defray expenses that otherwise would be incurred by persons in a position to refer settlement service business. Likewise, if the mortgage lender had attended the open house to market its services or make a presentation, then paying for the lunch could be also be lawful.

Now consider another example: what if the real estate agent and the mortgage lender agree to place a joint advertisement in the paper together and both split the cost of the advertisement 50/50. Provided the ads were of equal size and the fees were split evenly, this would not be a RESPA violation. Nothing in RESPA prevents joint advertising, provided each party is paying their pro-rata share.

These are just a few examples to illustrate Section 8 kickbacks. Please refer to [CUNA's RESPA E-guide](#) for more information. It is very important to be mindful of potential kickbacks when engaged in activities with other settlement service providers, as violations of Section 8 can be subject to criminal and civil penalties.

Source: CUNA Compliance Blog

Bureau Reveals Fair Lending Focus Areas for 2017

The CFPB has posted a [Bureau Blog article](#) announcing the key areas on which its fair lending team will focus in 2017:

- **Redlining** - It will continue to evaluate whether lenders have intentionally avoided lending in minority neighborhoods.
- **Mortgage and Student Loan Servicing** - It will determine whether some borrowers who are behind on their mortgage or student loan payments may have more difficulty working out a new solution with the servicer because of their race or ethnicity.
- **Small Business Lending** - Congress expressed concern that women-owned and minority-owned businesses may experience discrimination when they apply for credit, and has required the CFPB to take steps to ensure their fair access to credit.

Regulation Z Threshold Changes Effective 1/1/2017

Back in June, 2016, the CFPB issued [notification](#) of several threshold changes that will be effective on 1/1/2017, which were also published in the [Federal Register](#) at that time. The Bureau is amending the regulatory text and official interpretations for Regulation Z, which implements TILA, to update the dollar amounts of various thresholds that are adjusted annually based on the annual percentage change in the Consumer Price Index. Specifically, for open-end consumer credit plans under the CARD Act, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged in 2017. The adjusted dollar amount for the safe harbor for a first violation penalty fee will remain unchanged at \$27 in 2017; the adjusted dollar amount for the safe harbor for a subsequent violation penalty fee will remain unchanged in 2017 from the corrected amount of \$38 applicable in 2016, as discussed in this

credit union to a borrower or associated borrower, equal less than \$50,000.00; and

- Loans made by a federally insured credit union to another federally insured credit union and to a credit union service organizations (CUSOs).

A member business loan means any commercial loan, except that the following commercial loans are not considered member business loans and are not counted towards the aggregate limit.

- Any loan in which a federal or state agency fully insures repayment, fully guarantees repayment or provides an advance committee to purchase the loan in full; and
- Any non-member commercial loan or non-member participation interest in a commercial loan made by another lender, provided the credit union acquired the non-member loans and participation interests in compliance with all relevant laws and regulations.

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

Compliance Videos

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 Calendar

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

January 29, 2017

- 5300 Call Report Due to NCUA

April 10, 2017

- Fiduciary

April 30, 2017

- 5300 Call Report Due to NCUA

notice. For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages in 2017 will be \$20,579. The adjusted points and fees dollar trigger for high-cost mortgages will be \$1,029. For the general rule to determine consumers' ability to repay mortgage loans, the maximum threshold for total points and fees for qualified mortgages in 2017 will be 3 percent of the total loan amount for a loan greater than or equal to \$102,894; \$3,087 for a loan amount greater than or equal to \$61,737 but less than \$102,894; 5 percent of the total loan amount for a loan greater than or equal to \$20,579 but less than \$61,737; \$1,029 for a loan amount greater than or equal to \$12,862 but less than \$20,579; and 8 percent of the total loan amount for a loan amount less than \$12,862.

Source: CFPB



Training & Events Calendar

January 4

Webinar: [Top 10 HMDA Issues for 2016 Reporting: Checkup for March 1 Submission](#)

January 5

Webinar: [Cross Selling Products & Services: Compliance with TCPA & FCRA](#)

January 9

Webinar: [ADA Website Compliance Requirements & Common Errors](#)

January 12

Webinar: [Account Documentation Series: Compliance & Due Diligence at Account Opening](#)

January 18

Webinar: [Identifying Fraudulent Transactions: Including Recent FinCEN Advisory on Email Fraud Schemes](#)

January 19

Webinar: [ACH Specialist Series: Direct Deposit Tax Refunds – Posting & Exceptions](#)

Three Compliance Lunch & Learn Sessions Set for February 2017

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We're starting off 2017 with a set of three Compliance Lunch & Learns for credit union members in Denver, Phoenix and Tucson. The topic for this set of sessions is Business/Entity Accounts.

- On **February 8, Tucson** will host the first Lunch & Learn at Pima Federal Credit Union.
- On **February 9, Phoenix** will hold the second session in the Arizona Central Credit Union building.
- On **February 23, Denver** will host the third round of Lunch & Learn sessions at the Sterner Center at the Mountain West offices.

Discussion and presentation in Tucson and Phoenix will be led by Arizona attorney Jeremy Goodman, Goodman Law PLLC. Colorado attorney Bob Wilson of Berenbaum Weinshienk PC will lead the discussion at Denver's

July 30, 2017

- 5300 Call Report Due to NCUA

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

October 29, 2017

- 5300 Call Report Due to NCUA

CUNA Comment Calls – Due Dates on Proposed Rules

December 9, 2016~NCUA

[Field of Membership](#)

December 12, 2016~CFPB

[Consumer Response Company Response Survey – Follow-up](#)

December 16, 2016~NCUA

[Private Flood Insurance](#)

Effective Dates New and Revised 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](#)

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.

session. Cost for Lunch & Learns at all locations is \$35. To register for any of the Lunch & Learns, email Jodi Weiser at Training@mwcu.com. We hope to see you in February!

Advocacy Highlight

Patent Infringement

Patent trolls are known for sending vague letters with meritless infringement claims to businesses, including credit unions, in hopes of extorting a settlement to avoid the nuisance of a lawsuit. A new law empowers the state attorney general to investigate patent trolls, bring lawsuits against them, and gave businesses that were targeted by patent trolls the right to sue for damages, costs, and attorneys' fees.

Legislation was enacted in Arizona, Florida, Kansas, Minnesota, South Carolina, Rhode Island and Wisconsin earlier this session.

MBL Motion to Dismiss Hearing

On December 15, 2016, a motion to dismiss the Independent Community Bankers of America's (ICBA) lawsuit over NCUA's recent member business lending (MBL) regulation was held in the United States District Court Eastern District of Virginia in Alexandria, VA. The court heard arguments from the U.S Attorney, who is representing NCUA and ICBA's attorney. The court indicated that they will likely rule on the motion sometime after Jan. 1.

The ICBA filed its suit against the NCUA's member business lending rule in September, and the NCUA filed its motion to dismiss in response. CUNA and the National Association of Federal Credit Unions filed an amicus brief last month supporting the NCUA's motion to dismiss.

Source: CUNA Advocacy

Wishing Everyone a Happy Holiday Season!

Please note this will be the final newsletter for 2016

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

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