

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

February 3, 2017

Compliance News

NCUA Adjusts Civil Money Penalties

The NCUA has published at [82 FR 7637](#) an interim final rule amending its regulations at 12 CFR Part 747 to adjust the maximum amount of each civil money penalty within its jurisdiction, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The rule is effective upon publication, with a comment period of 30 days, ending on February 22, 2017.

The adjusted maximums reflect the application of a multiplier of 1.01636 to the maximum amounts in effect since mid-2016, when the first adjustments under the Adjustment Act were made. The multiplier is used to increase annually the maximums by the percentage by which the Consumer Price Index for Urban Consumers (CPI-U) for the year immediately preceding the year the adjustment is made exceeds the CPI-U for October of the prior year.

NCUA Releases Key Ratios Video

The NCUA has [released](#) a new YouTube video module to help credit union board members learn more about key ratios and how they directly affect a credit union's bottom line. The series of five videos, [Understanding Key Ratios](#), examines four key ratios, what they measure and what trends signal improving or declining financial health. The module is a follow-up to NCUA's

[Understanding Financial Statements](#) video module, which explores key line items of a financial statement. Understanding Key Ratios explains how those line items, when combined into ratios, provide quick snapshots into a credit union's financial health.

Source: NCUA

FTC to Host ID Theft Awareness Week Events

The Federal Trade Commission will mark Tax Identity Theft Week, January 30 – February 3, with a [series of events](#) to alert consumers and businesses about ways they can minimize their risk of tax identity theft, and recover if it happens. The week will feature special events for consumers, tax professionals, small businesses and veterans. The Commission will join with the IRS, the Department of Veterans Affairs, the AARP Fraud Watch Network and others to discuss tax identity theft, IRS imposter scams, cybersecurity and identity theft recovery.

Source: Federal Trade Commission

Question: Due to the New Member Due Diligence Requirements, Do I Have to Change My BSA Procedures to Update Member Information Regularly?

Answer: No. The rule does not require credit unions to update member

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

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.

Visit mwcua.com to register

Association Compliance Forums

Click on one of the below links to subscribe

[Compliance Forum](#)

[BSA Compliance Officer Forum](#)

Please provide the subscriber's name, credit union, title

information on a continuous or periodic basis. The updating requirement is event-driven and only occurs as a result of detecting unusual activity through normal monitoring.

The new procedures that you are required to have starting May 11, 2018 primarily address the new requirements for “beneficial owners” of “legal entity” members:

- Procedures to identify and verify beneficial owners of legal entity members;
- Procedures for making and maintaining a record of all the identification and verification information collected for beneficial owners of legal entity members;
- Appropriate risk-based procedures for conducting ongoing member due diligence, this will include, at a minimum:
 - Understanding the nature and purpose of member relationships to develop a member risk profile;
 - Conducting ongoing monitoring to identify and report suspicious transactions, and
 - On a risk basis, maintain and update member information - including information regarding the beneficial owners of legal entity members.
- Updated recordkeeping procedures to record, at a minimum:
 - Any identification information obtained, including the beneficial owner Certification Form, if applicable;
 - A description (type, identification number, place of issuance and dates of issuance and expiration, if any) of any document relied upon;
 - Any non-documentary methods used; and
 - Any measures taken in response to any substantive discrepancies, and the results of those actions.

“Beneficial owner”: The definition has two prongs – ownership criteria (25% or more equity interest) and/or control criteria (has significant responsibility to control the legal entity).

“Legal entity”: Accounts owned by legal entities, rather than natural person accounts.

Source: CU Compliance Community

A Closer Look at the MBL Guidance: Section 723.4 - Commercial Loan Policies

Now that the new MBL rule is in effect, credit unions need to ensure that they are in compliance and fully understand all of the new requirements. The lengthy guidance that NCUA published in December as part of its online examiner’s guide provides more detail about the rule and sheds some light on examiner expectations. Earlier this month we took a closer look at the Board and Management responsibilities in section 723.3 (available [here](#) in case you missed it). In this week’s installment, we will take a deeper dive into the commercial loan policy guidance in 723.4.

Section 723.4 has been of particular concern for credit unions, as it requires all credit unions to adopt and implement a board-approved commercial loan policy and establish detailed commercial lending procedures. At minimum, credit union commercial loan policies must address the following:

- Types of commercial loans permitted

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



Do all you can to prepare for 2017 NCUA exam priorities issued in [NCUA letter 17-CU-01](#) by adding AffirmX to your team of experts. AffirmX is the leading cloud-based compliance solution that delivers a near-real time risk-based dashboard of your compliance operations. AffirmX provides document review for all areas of regulatory compliance, including ACH, Advertising, BSA, Deposits, Loans, and Operations, as well as helps you create and manage your Cybersecurity Risk Assessment.

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@mwcu.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



InfoSight Highlight

Advertising Deposit Accounts

All deposit advertisements should include either the NCUA official sign or an abbreviated statement, both of which can be found in Section 740 of NCUA Rules & Regulations.

A Credit Union can choose one of the following options to comply with this Regulation:

- Use the statement, “This Credit Union is federally-insured by the National Credit Union Administration.”
- Use the short statement, “Federally Insured by NCUA”; or
- Display the official sign in their advertisements.

The official advertising statement must be in a size and print that is clearly legible. However, if the NCUA official sign in the advertisement is so small that the NCUA's sign and the two lines of small type become indistinct, the credit union should use the NCUA official advertising statement or the short statement.

It should be credit union policy to:

- Not use any misleading or inaccurate advertisements;
- Include specific rate information whenever rates are included in advertisements;

- Trade area
- Portfolio concentration limits
- Single borrower limits
- Qualifications/experience requirements for lending staff
- Loan approval process
- Underwriting standards
- Risk management processes

The guidance also goes into great detail regarding the expectations for underwriting standards. The commercial loan policy should address the financial analysis and depth of review to support the credit decision. The policy should address a credit union's borrower analysis, due diligence requirements to evaluate the borrower's ability to service the debt, requirements for financial projections, the quality of the financial information or statements used to make the credit decision (using the level of assurance provided by a preparer and the required professional standards supporting the preparer's opinion), and the type of collateral allowed, LTV limits, personal guarantees and methods used for valuing the types of collateral.

Credit unions must also establish policies and procedures to identify and manage risk. At minimum, such policies should address:

- Use of loan covenants;
- Requirements for periodic loan relationship review;
- A credit risk rating system; and
- The tracking and reporting of any exceptions to the policy

Credit unions are also required to develop a formal credit risk rating system to identify and assign a credit risk rating to each commercial loan in the portfolio. It is important to note that this is not a one size fits all approach; the scope and scale of a credit risk rating system will depend on the variety of product types and the complexity of the commercial loan portfolio. CUs must assign a credit risk rating at loan inception and review ratings as often as necessary. The criteria used to assign each rating should be risk sensitive, suitable for the types of loans underwritten, and should produce a consistent and repeatable assessment of risk, and the system should have an adequate number of ratings to differentiate the varying levels of risk. The guidance also notes that more complex portfolios may benefit from a dual rating system, which is explained in greater detail in the guidance.

To check out NCUA's online examiner's guide, click [here](#).

CFPB Says Bank Tricked Consumers into Overdraft Service

Last week, the CFPB announced a lawsuit against TCF National Bank for "tricking" consumers into signing up for overdraft services. TCF is headquartered in Wayzata, Minn., and operates approximately 360 retail branches across MN, WI, IL, MI, CO, AZ and SD. The suit seeks redress for consumers, injunctive relief and penalties.

According to the CFPB's complaint, TCF violated Regulation E's overdraft opt-in provisions for ATM and one-time debit card transactions. As you'll recall, Regulation E prohibits a financial institution from charging overdraft fees for ATM and one-time debit card transactions unless the institution:

- Provides the consumer with a notice in writing (or electronically, if the consumer agrees) segregated from all other information, describing the

- Provide additional information in advertisements that contain or advertise information about rates or bonuses; and
- Not state that a deposit with the credit union is safer than a deposit with an insured savings and loan association or bank.

What do credit unions have to do to comply with the advertising rules?

If a deposit account advertisement will state a rate of return, the advertisement must reflect the rate as an "annual percentage yield", using that term. A credit union may also use the abbreviation "APY", as long as the full term "annual percentage yield" appears at least once in the advertisement.

The only other rate that a credit union can include in a deposit advertisement is the dividend rate related to the APY. A credit union must use the actual term "dividend rate". It must appear with the APY and cannot be shown more conspicuously. Deposit advertising should not include the term "annual percentage rate" in any context.

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

Compliance Videos

Q4 2016 Overview and Q1 2017 Changes Coming

In this [NEW video](#), Glory LeDu reminds us of the regulatory changes that became effective in the 4th quarter of 2016 (which includes the DELAY of the DOL Overtime rules). Glory also provides a review of the changes effective in the 1st Quarter of 2017 including the updates to Member Business Lending and the new requirements for HMDA reporting for 2017. This also includes the updated threshold changes effective on 1/1/2017.

Member Business Lending

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

Advocacy Highlight

Bankers' Lawsuit Against NCUA Dismissed

The U.S. District Court for the Eastern District of Virginia granted NCUA's motion to dismiss the Independent Community Bankers of America's (ICBA) lawsuit against NCUA for its recent member business lending (MBL) rule. The court in a written opinion found that ICBA lacked standing and timeliness for the claim. Furthermore, the judge stated that even if the ICBA had established standing and timeliness, it still would have found that the rule satisfied the requirements established by the Administrative Procedures Act and existing case law.

CUNA and NAFCU filed an amicus brief supporting NCUA's rulemaking authority. Dan Berger, president/CEO of

institution's overdraft services.

- Provides a reasonable opportunity for the consumer to affirmatively consent (or opt-in) to the service for ATM and one-time debit card transactions.
- Obtains the consumer's affirmative consent (separately from other consents or acknowledgements).
- Provides the consumer with confirmation of his or her consent in writing (or electronically, if the consumer agrees), which includes a statement informing the consumer of the right to revoke such consent.

The CFPB also alleged that the bank's practices violated the Dodd-Frank Act's (DFA) prohibition on unfair, deceptive, or abusive acts or practices (UDAAP). Under the DFA, an act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.

An act or practice is deceptive when: (1) it misleads or is likely to mislead the consumer; (2) the consumer's interpretation is reasonable under the circumstances; and (3) the misleading act or practice is material.

And, an act or practice is abusive when it: materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or takes unreasonable advantage of: (1) a consumer's lack of understanding of the material risks, costs, or conditions of the product or service; (2) a consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or (3) a consumer's reasonable reliance on a covered person to act in his or her interests.

According to the complaint:

- TCF required staff to meet opt-in specific performance goals and offered substantial bonuses to employees who got consumers to sign up for the service. In order to maximize opt-ins, staff were instructed to "say as little as possible" in trying to get customers to opt-in.
- For existing customers, TCF telemarketing calls pitched the overdraft service by asking consumers whether they wanted their account to "continue working as it does today." TCF considered a consumer's "yes" an opt-in to the overdraft service. They didn't explain that the "yes" was an authorization for the bank to charge fees in connection with ATM/one-time debit overdrafts.
- For new customers, TCF staff described the Reg E opt-in notice as "a federally-prescribed notice describing our overdraft service." Further, the customer was not given the opportunity to make the opt-in election at the time s/he received the notice. Instead, TCF placed the "overdraft fee acknowledgement" immediately after a series of mandatory items the consumer had to initial in order to open the account, giving the impression that the Reg E opt-in was mandatory rather than voluntary.
- For consumers who questioned the opt-in, staff were instructed to "sell" the product by suggesting a hypothetical situation, such as an emergency where a consumer would need access to otherwise unavailable funds.

According to the CFPB, these practices constitute Reg E and UDAAP violations. To read the complaint in its entirety, [click here](#).

Source: CU Compliance Community

NAFCU, and Jim Nussle, president/CEO of CUNA stated "The court made the right decision in granting NCUA's motion to dismiss ICBA's groundless lawsuit. We had maintained all along that this was nothing more than a frivolous and ill-conceived effort by the bankers. Today's decision is a clear message that NCUA acted well within its statutory authority when it issued its member business lending rule. The CUNA/League system and NAFCU applaud today's ruling because it is a huge win for Main Street businesses which look to credit unions to secure much-needed access to capital. Perhaps the bankers should put more effort into serving their own customers instead of filing meritless lawsuits that only result in wasted time and money."

The ICBA can appeal the court's decision to dismiss the case, but we would expect the appellate court to also find the lawsuit meritless.

States Seek to Strengthen Data Breach Notification Laws

In response to well-publicized data breaches, state lawmakers are considering legislation that would strengthen existing data breach notification laws. Recently, legislators in Connecticut, Georgia and Oklahoma have introduced legislation that imposes new notification requirements in the event of breaches.

In Connecticut, H 6708 would require those who store personal information to notify the police when breaches occur. Current law only requires notification to those who have been compromised. Georgia legislation, H 82, would require notification when personal information is released to unauthorized persons whether it was released intentionally, inadvertently, or accidentally. Oklahoma's bill, S 614, would require retailers to notify each financial institution that issued a credit or debit card that was compromised in a breach. Also, violations of the provisions of the Oklahoma's Data Breach Notification Act could lead to damages for the costs of reissuing cards, stopping payments, closing accounts and notifying customers.

Data breach notification requirements are in 47 states statutes, leaving Alabama, New Mexico, and South Dakota as the only three states that currently do not have data breach notification laws. A notification bill is currently pending in New Mexico, however. State notification laws typically cover: who is required to comply with the law; what constitutes "personal information"; what is considered a breach; what are the requirements for notice; and any exemptions from the law.

CUNA and Ohio Talk Regulatory Reform on Capitol Hill

CUNA and the Ohio Credit Union League recently with several members of Ohio's congressional delegation,

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.



Training & Events Calendar

February 6

Webinar: [The New World of Debt Collection: What Recent CFPB Actions Indicate About the Future of Regulations & Enforcement](#)

February 7

Webinar: [Regulation E Series: Handling Provisional Credit Under Reg E; Rules, Best Practice & FAQs](#)

February 8

Webinar: [Real Estate Series: Understanding TRID Tolerance Cures](#)

February 9

Webinar: [Establishing Compliant E-SIGN Act Procedures for Electronic Documents & Statements](#)

February 13

Webinar: [Part 2 – New FFIEC Consumer Compliance Rating System, Effective 3-31-17: Violations of Law & Consumer Harm](#)

February 14

Webinar: [Military Lending Act: Exam Procedure Changes, Post Implementation Considerations & FAQs](#)

February 16

Webinar: [BSA Compliance Series: FinCEN's CCD Rules & BSA Compliance](#)

February 22

Webinar: [Flood Compliance in Lending Part 1: Loan Origination](#)

February 27

Webinar: [Everything You Need to Know About Reg CC: Holds, Funds Availability, Compliance & More](#)

MLO Training

Mountain West Credit Union Association has partnered with the Credit Union National Association (CUNA) to bring you an [8 Hour SAFE Comprehensive Mortgage Loan Originator Course](#). This course will cover the necessary Federal laws and regulations and meets the continuing education requirements of the SAFE Act inclusive of (3) hours federal laws & regulations, (3) hours ethics, consumer protection & fair lending, and (2) hours lending standards for the non-traditional mortgage product marketplace. Event pricing and registration is made available directly through the CUNA website – click on the location below for details. *Registration will require a CUNA username and password.*

- **March 9** - [Mortgage Loan Originator Training - Phoenix](#)
- **May 9** - [Mortgage Loan Originator Training - Denver](#)

including delegation members in the House and the Senate.

As part of the Campaign for Common-Sense Regulation, CUNA and the Ohio League raised issues around the need for regulatory reform and amending the Dodd-Frank Act to help credit unions better serve their members. Issues such as data security and potential repeal of the Durbin Amendment on interchange fees were the main issues discussed. With Finance and Ways and Means members, the credit union tax status was the key focus.

As the 115th Congress begins legislating, CUNA will continue to work with leagues to ensure credit union interests are protected. CUNA and the leagues are ready to work with Congress to achieve meaningful regulatory reform for credit unions.

Source: CUNA Advocacy



Compliance Calendar

January 20, 2017

- [Federal Credit Union Occupancy, Planning and Disposal of Acquired and Abandoned Premises: Incidental Powers](#)

January 29, 2017

- 5300 Call Report Due to NCUA

February 6, 2017

- [Chartering and FOM Manual](#)

February 20, 2017

- Washington's Birthday/President's Day – Federal Holiday

April 10, 2017

- [Fiduciary](#)

April 30, 2017

- 5300 Call Report Due to NCUA

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

Effective Dates New and Revised Rules

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 Comment Calls – Due Dates on Proposed Rules

February 1, 2017~CFPB
Consumer Access to Financial Records

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

October 29, 2017
• 5300 Call Report Due to NCUA

January 1, 2018
HMDA/Reg C

March 16, 2018
• Same-day ACH - Phase 3 (Final phase)

April 19, 2018
• Amendments to 2013 Mortgage Rules under RESPA/Reg X and TILA/Reg Z

May 11, 2018
• Customer Due Diligence/CDD

CUNA Comment Calls – Due Dates on Proposed Rules

February 1, 2017~CFPB
Consumer Access to Financial Records

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

Sign up to receive Regulatory Compliance News by sending an email to [Donna Gibbs](#).

Archived Regulatory Compliance Newsletters can be accessed [here](#) or on our website www.mwcua.com – Compliance News.

If you're having trouble viewing content, please check your viewer's settings.