

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

April 28, 2017

Compliance News

Notaries – To Serve or Not To Serve...Non-Members?

Many credit unions have one or more notaries public on staff for convenience of members. From time to time, the question arises as to whether a notary public must provide notary service to non-members, or provide notary service not in connection with a credit union transaction.

In Arizona, the Secretary of State has taken the position that “a notary public cannot refuse a notarization of a document if a reasonable request is made.” This position is likely based on § 41-313 of the notaries public statute that states “Notaries public **shall** perform the following notarial acts, **when requested**”

In Colorado, there is no express authority that requires a notary public to perform notary services to everyone. The Colorado Secretary of State states in an e-mail to the Association that “...our office does not interpret the Act as mandating that notaries provide services on demand.” The e-mail further states that “...an employer may in fact limit the notary to performing notarial acts within the scope of the employer’s business, such as only servicing customers with bank accounts.” The Secretary of State notes that the basis of any refusal should be “non-discriminatory.”

In Wyoming, the e-mail from the Wyoming Secretary of State’s office states that “We have nothing that covers this subject. We leave the decision up to the companies themselves. They should notarize for anyone, but there is nothing preventing them from doing so.” While this is somewhat of a mixed message, it appears the Wyoming Secretary of State will not take exception to refusing to provide notary service to non-members.

In light of this information, credit unions are highly encouraged to establish the credit union’s policy pertaining to notary services in accordance with state regulatory expectations. The policy should address notary service to non-members and notary service not related to a credit union transaction. In addition, credit unions should provide training to all relevant staff. Consistency of notary services will provide better service and minimize reputational risk.

CFPB Finalizes Extension of Prepaid Accounts Rule

The Consumer Financial Protection Bureau has [announced](#) a [final rule](#) delaying by six months the general effective date of the CFPB rule governing prepaid accounts. The rule will now take effect on April 1, 2018. The Bureau also reported it would revisit at least two substantive issues in the prepaid accounts rule through a separate notice and comment rulemaking process:

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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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Association Compliance Forums

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

- The linking of credit cards to digital wallets that are capable of storing funds
- Error resolution and limitations on liability for prepaid accounts that cannot be registered, have not yet been registered, or for which consumers have attempted but have not successfully completed the registration process

[Federal Register submission](#)

Ocwen Sued by CFPB

The CFPB has [announced](#) the filing of a lawsuit against Ocwen Financial Corporation and its subsidiaries for failing borrowers at every stage of the mortgage servicing process. The [Bureau's complaint](#) alleges that Ocwen, one of the country's largest non-bank mortgage loan servicers, allegedly mishandled basic functions like sending accurate monthly statements, properly crediting payments, and handling taxes and insurance. In addition, Ocwen also allegedly illegally foreclosed on struggling borrowers, ignored customer complaints, and sold off the servicing rights to loans without fully disclosing the mistakes it made in borrowers' records. The Bureau's announcement reported that the Florida Attorney General took a similar action against Ocwen in a separate lawsuit, and that many state financial regulators are also independently issuing cease-and-desist and license revocation orders against Ocwen for escrow management and licensing issues.

Source: CFPB

OFAC Publishes FAQs on List Removal Process

The Office of Foreign Assets Control (OFAC) has posted frequently asked questions (FAQs) and answers on how individuals and entities can request a removal from any OFAC sanctions list, including the Specially Designated National and Blocked Persons List (SDN List).

A person can petition OFAC for removal from any sanction list by sending a written request via e-mail (OFAC.Reconsideration@treasury.gov) or postal mail: Office of Foreign Assets Control, Office of the Director, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. OFAC doesn't accept removal requests by telephone.

Questions answered in the FAQs include:

- How do I file a request for removal from an OFAC sanctions list?
- Do I need to hire an attorney in order to file a petition for removal?
- How will I know if OFAC received my email petition?
- How long does the entire petition process take?
- Why do lawyers representing an SDN require OFAC authorization to get paid?
- What can you tell me about OFAC's listing process?
- If my petition for removal is denied, can I reapply?
- How can I obtain an update on the status of my petition?

Click [here](#) for the FAQs.

271 Individuals Added to Syrian Sanctions List

In one of the largest sanctions actions in its history, OFAC designated [271 employees](#) of Syria's Scientific Studies and Research Center (SSRC), the Syrian government agency responsible for developing and producing non-conventional weapons and the means to deliver them. The action was taken in response to the April 4, 2017 sarin attack on innocent civilians in

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



Put a CCRS at Your Fingertips!

Easily apply [Consumer Compliance Rating System](#) (CCRS) expectations with AffirmX. CCRS is a supervisory policy for evaluating a financial institution's adherence to consumer compliance requirements. By adding AffirmX to your team of experts, a credit union can meet examiner expectations to proactively prevent, self-identify, and correct compliance issues. 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.

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

Loan Workouts and Non-accrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans

Lending Policies

Credit unions are required to adopt policies that govern loan workout arrangements and non-accrual practices. A credit union's written non-accrual standards must include the discontinuance of interest accrual on loans that are past due by 90 days or more and requirements for returning such loans, including MBLs workouts, to accrual status.

To set NCUA's supervisory expectations and assist credit unions in compliance, [appendix to Part 741](#) thoroughly addresses the loan workout account management and reporting standards credit unions must implement in order to comply with the rule. It also explains how credit unions report their data collections related to TDRs on Call Reports.

Written Loan Workout Policy and Monitoring Requirements

The credit union's board and management must adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to

Khan Sheikhoun, Syria, by the regime of Syrian dictator Bashar al-Assad. This action was taken pursuant to E.O. 13582, which targets the Government of Syria and its supporters. As a result of this action, any property or interest in property of the designated persons in the possession or control of U.S. persons or within the United States must be blocked, and U.S. persons are generally prohibited from dealing with them.

Source: OFAC

Marijuana: Is there a future for the “Cole Memos”?

With the new administration, and particularly new Attorney General Jeff Sessions, there has been a lot of speculation about the future of the marijuana-related “Cole Memos” (named after their author, former Deputy Attorney General James Cole).

These memos were issued by the Department of Justice (DOJ) in August 2013 and February 2014 recommending that prosecuting marijuana businesses may not be the best use of the DOJ’s resources in states where such businesses are legal and where there are robust regulatory and law enforcement systems.

It has been largely due to these memos that many financial institutions have determined that serving these businesses, although federally illegal, are worth the risk.

Last week, the Department of Justice issued another memo providing [an update on the Task Force on Crime Reduction and Public Safety](#). This Task Force was established in February to identify ways in which the federal government can more effectively combat various crimes, including drug trafficking.

Subcommittees of this Task Force will, among other things:

- Review existing policies in the area of “marijuana to ensure consistency with the Department’s overall strategy on reducing violent crime and with Administration goals and priorities”;
- “Explore our use of asset forfeiture and make recommendations on any improvements needed to legal authorities, policies, and training to most effectively attack the financial infrastructure of criminal organizations”.

Over the past few months, Attorney General Sessions has made a number of comments about the marijuana issue, such as:

- He may have some different ideas than set out in the Cole memorandum;
- Experts are saying there is “more violence around marijuana than one would think”; and
- The federal law will be enforced in states where they may have repealed their own anti-marijuana laws.

The DOJ also notes that their efforts to combat crime will require access to “complete, accurate, and timely crime data.” They will be examining reporting and information sharing issues and make recommendations for improvements.

Initial recommendations from the Task Force to Attorney General Jeff Sessions are due no later than July 27, 2017.

Source: CUNA Compliance Blog

ensure the policy is consistently applied. The loan workout policy and practices should be commensurate with the credit union’s size and complexity, and must be in line with the credit union’s broader risk mitigation strategies.

The policy must do the following:

- Define eligibility requirements (i.e. under what conditions the credit union will consider a loan workout), including establishing limits on the number of times an individual loan may be modified. [Note: Broad-based credit union programs commonly used as a member benefit and implemented in a safe and sound manner limited to only accounts in good standing, such as Skip-a-Pay programs, are not intended to count toward these limits.]
- Ensure the credit union makes loan workout decisions based on the borrower’s renewed willingness and ability to repay the loan.
- Establish sound controls to ensure loan workout actions are appropriately structured, including a prohibition against any authorizations of additional advances to finance unpaid interest and credit union fees. The policy may allow a credit union to make advances to cover third-party fees, such as force-placed insurance or property taxes. However, the credit union cannot finance any related commissions it may receive from the third party.
- Ensure adequate controls and monitoring by the board of directors and management. Decisions to re-age, extend, defer, renew, or rewrite a loan, like any other revision to contractual terms, must be supported by the credit union’s management information systems.
- Ensure appropriate documentation showing the credit union’s personnel communicated with the borrower, the borrower agreed to pay the loan in full, and the borrower has the ability to repay the loan under the new terms.

If credit unions engage in restructuring activity on a loan that results in restructuring a loan more often than once a year or twice in five years, examiners will have higher expectations for the documentation of the borrower’s renewed willingness and ability to repay the loan. Examiners will ask credit unions to provide evidence that their policy of permitting multiple restructurings improve collectability.

NCUA does not intend for these minimum requirements to be an all-inclusive list.

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

Compliance Videos

First Quarter 2017 Recap and Second Quarter Outlook

This [new video](#) provides a recap from Glory LeDu, Director of League System Relations, of the first quarter

Government Shutdown Won't Impact CFPB, NCUA for Now

The NCUA and the CFPB will not close even if there is a lapse in federal funding at the end of the week and many agencies are forced to shut down most operations.

The two agencies are not subject to the appropriations process, so their funding is not contingent on a Continuing Resolution or an appropriations bill.

The current Continuing Resolution expires on Friday and if another one is not passed, large segments of the federal government would be forced to shut down. But not the CFPB and NCUA.

House Republicans would like to change that. In his Financial CHOICE Act, House Financial Services Chairman Jeb Hensarling (R-Texas) has proposed subjecting all financial regulators—including the NCUA and the CFPB—to the annual funding process. That would mean the agencies would close if appropriations lapsed.

Credit union officials have said they are concerned that the Community Development Financial Institutions program could face cuts in the Continuing Resolution that Congress will consider.

President Trump has proposed eliminating all funding for the program, which provides financial institutions, including credit unions with grants.

House Republicans also might try to add some restrictions on CFPB activities to the Continuing Resolution. In the past, they have proposed such measures, but the Senate has never accepted them.

Source: Credit Union Times

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](#)

April 26

Webinar: [BSA Compliance Hotspots: Regulators, Litigation, Policies & Procedures](#)

April 27

Webinar: [Form UCC-3 & Amending, Continuing or Terminating Security Interests](#)

May 3

Webinar: [Revisiting TRID Line-by-Line Part 1: Loan Estimate](#)

May 4

Webinar: [Complex ACH Origination Issues for ODFIs: Compliance, Exceptions, Monitoring](#)

compliance updates and gives a "sneak peek" of what is to come in the second quarter of 2017. Included are such topics as the NCUA changes to Member Business Lending, the Fixed Assets Rule and the Chartering and Field of Membership Manual as well as a minor revision to the CFPB's HMDA information. There were also annual updates from the CFPB, FRB and the IRS. The FFIEC has also updated the Uniform Interagency Consumer Compliance Rating System, which is mentioned in this video as well as covered in depth in a separate video (see below).

FFIEC Consumer Compliance

In this [new video](#), Glory LeDu explains the updates made to the Uniform Interagency Consumer Compliance Rating System by the Federal Financial Institutions Examination Council (FFIEC), as well as the CFPB's requirements for an effective Consumer Compliance Management System. Credit unions should review this video to determine how their current compliance management system stacks up, as examiners will be using this rating system to evaluate credit unions on compliance factors and will be assigning an overall Consumer Compliance Rating.

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

Update on the Federal Budget Process

This week the Congress will, among other items, be considering legislation to fund government operations through September 30th 2017, the end of this fiscal year. Current government funding ends Friday at midnight and action is necessary to avert a government shutdown.

Democrats and Republicans have been working for weeks to try and whittle down points of contention among the parties so that a bill with bipartisan support can be enacted into law before this week's deadline. If this doesn't happen, a government shutdown is possible or Congress may enact a short-term "continuing resolution" to fund government operations at essentially the same levels as present.

One issue of concern to CUNA in this process is funding for the Community Development Financial Institutions (CDFI) Fund. In FY2016, the CDFIF was funded at \$233.5 million. CUNA, its state partners, individual credit unions, and concerned credit union members, have engaged in a large lobbying and grassroots effort to convince Congress to fully fund the CDFIF as part of a bill to fund the federal government for the remainder of fiscal year 2017. This funding is critical given the fact that the Administration requested that the Fund be eliminated.

CUNA sent a letter to all House Appropriations Committee

May 11

Webinar: [Surviving an FFIEC IT Security Exam](#)

May 16

Webinar: [Legal & Compliance Issues in Obtaining Priority in Collateral, Including Purchase Money Security Interests](#)

May 17

Webinar: [Conducting an RDC Risk Assessment: Compliance Findings & Regulatory Guidance](#)

May 18

Webinar: [HMDA Data Collection Rules: Preparing for the Extensive Jan 1, 2018 Changes](#)

May 23

Webinar: [How to Handle Unauthorized Electronic Fund Transfers Under Reg E](#)

May 24

Webinar: [Account Documentation Series: Non-resident Alien Accounts](#)

May 31

Webinar: [Mastering Escrow Compliance: Analysis, Rules, Forms & Accounting](#)

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.*

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

Compliance Lunch & Learns Coming to AZ in May

Mountain West will be hosting another round of Compliance Lunch & Learns taking place in Arizona in May. We'll hold the first session in Tucson, AZ on Tues., May 9 and the second session in Phoenix, AZ on Wed., May 10. This two hour program includes a presentation, networking time, lunch and an open-forum discussion on Unfair Deceptive and Abusive Acts and Practices Act (UDAAP). Our presenter, Sara Regan, will discuss recent enforcement actions and violations, agency enforcement authority, and share best practices to help your credit union avoid liability. The presenter is Sara Regan, General Counsel for Desert Schools FCU.

Cost is \$35 per person (includes lunch). The program takes place from 11:30 am – 1:30 pm in both locations. To register, contact Jodi Weiser at jweiser@mwcu.com.

members, as well as a letter to their Senate counterparts on March 30, 2016, urging them to fully fund the CDFI Fund. There are 288 CDFI credit unions in the U.S. and this is great news for not only them, but the credit union movement as a whole.

Another issue that CUNA is advocating is the retention of report language that was included in last year's House-passed Financial Services and General Government Appropriations Act for Fiscal Year 2017 (H.R. 5485). This language would direct the CFPB to report to the Senate and House Appropriations Committees, Senate Banking Committee and House Financial Services Committee on how it has used its section 1022 exemption authority under the Dodd-Frank Act to tailor its rulemakings to community financial institutions within 120 days of the bill's enactment. This language is nearly identical to language included in two CUNA letters to the CFPB last year. The House letter received 329 signatures and its Senate companion received 70 signatures.

The original House bill passed last year includes significant relief for banks and credit unions, including:

- Changing the leadership structure of the CFPB to a five-person board and placing the bureau under the appropriations process;
- Requiring the CFPB to study the use of arbitration prior to issuing any new regulations. This would affect the bureau's recent proposal on arbitration;
- Allowing for residential mortgages held in portfolio by lenders to be recognized as qualified mortgages for the purposes of the CFPB's mortgage lending rules. These efforts would especially help community bankers and credit unions who have decreased their mortgage lending business in recent years due to onerous regulatory requirements;
- Supporting efforts to clarify the definition of "points and fees" for qualified mortgages in order to improve access to credit for low and moderate income borrowers; and
- Stopping the CFPB from proceeding with its short-term, small-dollar loan proposal.

The committee report also contained a number of other items of interest to credit unions, including:

- CUNA-supported language that would call for the Federal Communications Commission to revisit its Telephone Consumer Protection Act (TCPA) order, and address technical questions that may be impossible for financial institutions to resolve. This includes clearing up whether an exemption for financial institutions to contact consumers with additional information can actually be used, and urging the FCC to provide more flexibility to the requirements.
- Directing the CFPB to report to the Senate and House Appropriations Committees, Senate Banking Committee and House Financial Services Committee on how it has



Compliance Calendar

April 10, 2017

- [Fiduciary](#)

April 30, 2017

- 5300 Call Report Due to NCUA

July 30, 2017

- 5300 Call Report Due to NCUA

May 29, 2017

- Memorial Day Holiday

July 4, 2017

- July 4th Holiday

September 4, 2017

- Labor Day Holiday

September 15, 2017

- [Same-day ACH – Phase 2](#)

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

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 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](#)

Effective Dates New and Revised Rules

April 10, 2017~DOL

[Fiduciary](#)

September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

October 19, 2017~CFPB

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

used its section 1022 exemption authority to tailor its rulemakings to community financial institutions within 120 days of the bill's enactment;

- Directing the Government Accountability Office (GAO) to determine the impacts of the Foreign Account Tax Compliance Act on U.S. citizens living abroad. The GAO must also make recommendations on FATCA implementations, and both must be done within 180 days of enactment of the bill;
- Directing the Office of Critical Infrastructure Protection and Compliance Policy to report to several Congressional committees on ways to improve cybersecurity and an update on collaboration across the financial services sector within 60 days of the bill's enactment.
- Directing the CFPB to consider its recent actions related to auto lending that are reducing competition, regulating auto dealers, and raising costs to consumers.

The bill also contained funding of key programs that assist low-income credit unions that serve underserved areas and members of modest means, including:

- Maintaining the annual \$2 million for the NCUA's Community Development Revolving Loan Fund, which provides grants and loans to low-income designated credit unions; and
- Increasing the funding to \$250 million for the U.S. Treasury's Community Development Financial Institutions (CDFI) Fund, which awards funds to certified CDFIs.

The bill also maintained funding for the two Small Business Administration (SBA) programs that are crucial to credit unions:

- \$28.5 billion for the SBA's 7(a) program, which allows the government to guarantee up to 85% of loans, with the guaranteed portion not counting against credit unions' cap on member business lending; and
- \$7.5 billion for the SBA's 504 loan program, which is used for long-term, fixed-rate financing on major fixed assets, such as equipment and real estate.

Last year, the full Senate Appropriations Committee approved its version of the FY 2017 Financial Services and General Government (FSGG) appropriations bill. The Committee report included language urging Treasury to work with financial regulators to address student debt. Additionally, the bill itself contained:

- Funding for the Community Development Financial Institutions (CDFI) fund at \$234 million, \$500,000 more than FY16, and \$16 million less than the bill passed last week by the House Appropriations committee;
- Maintaining \$2 million for NCUA's Community Development Revolving Loan Fund (CDRLF); and
- Funding a new account called the Cybersecurity Enhancement Account. The Committee recommends \$47,743,000 for the initiative. It is "designed to bolster

April 1, 2018 ~ CFPB

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

CUNA Comment Calls – Due Dates on Proposed Rules

May 1, 2017~CFPB

Alternative Data

May 4, 2017~CFPB

CFPB's Amendments to Equal Credit Opportunity Act (Reg B) Ethnicity and Race Information Collection

May 9, 2017 ~ NCUA

Alternative Capital

the (Treasury) Department's cybersecurity posture and mitigate threats to the U.S. financial infrastructure." It will also "improve identification of cyber threats and better protect information systems from attack; provide a platform to enhance efficient communication, collaboration, and transparency around the common goal of improving not only the Cybersecurity of the Treasury Department, but also the Nation's financial sector."; and

- Prohibiting funds from being used to penalize financial institutions that provide financial services to certain persons in States and jurisdictions where marijuana is legal.

CUNA continues to monitor this process and lobby Congressional appropriators to achieve full funding for the CDFI Fund as well as achieving the maximum amount of regulatory relief possible through the appropriations process.

Source: CUNA Advocacy Removing Barriers

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

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