

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

May 26, 2017

Compliance News

HUD Charges Landlords with Discrimination Against Families with Children

HUD has [announced](#) that it is charging a group of New Hampshire landlords with housing discrimination for denying families with children the opportunity to rent certain apartments. HUD alleges that MSM Brothers, Inc., the owner of a 192-unit apartment complex in Dover, New Hampshire, and its on-site manager engaged in housing discrimination by limiting rental options for applicants with young children.

Source: HUD

A Group of District Attorneys Has Issued a Marijuana Position Paper

The National District Attorneys Association (NDAA), the largest organization representing state district attorneys, issued its perspective on the state legalization of marijuana. The summary of this 16 page perspective is as follows:

"Federal drug enforcement policy regarding the manufacture, importation, possession, use and distribution of marijuana should be applied consistently across the nation to maintain respect for the rule of law. The National District Attorneys Association (NDAA) supports ongoing research into medicinal uses of marijuana and its derivatives, carried out consistent with any other research regulated by the Food and Drug Administration (FDA). NDAA also supports research regarding the impact of marijuana use on driving, regulated by appropriate agencies."

Additional comments in the paper include:

- *"While the DOJ has recently chosen not to enforce federal laws prohibiting the manufacture, importation, possession, use, cultivation, and distribution of marijuana, those laws remain in effect. The DOJ could change its enforcement policy at any time. To maintain respect for the rule of law, it is essential that federal drug enforcement policy regarding the manufacture, importation, possession, use and distribution of marijuana be applied consistently across the nation."*
- *"...a state may choose to decriminalize possession of marijuana or otherwise step down as an enforcer of drug laws. However, state laws that authorize, license and regulate the possession, production, use and distribution of marijuana directly conflict with and are subject to preemption by the federal drug laws that prohibit those same activities."*
- The United States Supreme Court has held that a state law that empowers persons or entities to do what federal law prohibits is preempted. (*Michigan Cannery and Freezers Ass'n, Inc. v. Agric. Mktg. and Bargaining Bd.*, Ct. 2518, 2527-28 (1984).)
- *"While marijuana use has been shown to impair cognitive or executive function, driving performance, and increase crash risk, scientific studies have not yet demonstrated support for marijuana "per se" levels similar*

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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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to alcohol in impaired driving legislation.

- "One of the most significant concerns about legalizing marijuana for medical or recreational use is increasing its access to youth."

For more information, read the NDAA's [Marijuana Policy: The State and Local Prosecutors' Perspective, April 20, 2017](#)

New Delivery and Review Procedures for Audit Reports

NCUA recently notified all federally insured credit unions via a CU Express email that it has updated its policies regarding audit reports. The CU Express email notifies credit unions that audit reports done by independent auditors should be sent directly to NCUA examiners from the independent auditor rather than from credit union management. In addition, the CU Express notice identifies two alternate delivery methods for submitting audit reports:

1. Sending the report via a secure portal that verifies and validates the original source of the audit report. This ensures that the audit report is in its original form and has not been modified.
2. The NCUA Examiner conducts a physical inspection of the audit report at a time and place mutually agreeable to the parties involved.

So what's all this about? These new procedures are a result of two things: the extended examination cycle and a recommendation in NCUA's Office of the Inspector General Semiannual Report to Congress, April 1–September 30, 2016. The audit review typically happens during a credit union's annual exam but under the extended exam cycle it won't be possible for some credit unions. The recommendation made to Congress was that examiners could acquire completed audits directly from external auditors through an upload via an e-file system and therefore avoid potential manipulation of the completed audit.

The new procedures apply to both federal and state-chartered credit unions (those insured by the NCUSIF) so if there are questions about submitting completed audit reports those questions should be directed to your NCUA regional office or state supervisory authority.

Less than One Year Left to Comply with the New Beneficial Owner Due Diligence Rule

One year from now sounds like a really long time to be worrying about compliance today. But May 11, 2018 will be here before we know it. It's hard to believe a full year has passed since the final rule was issued. Keep in mind— FinCEN gave a two-year compliance period because financial institutions told the agency they would need that much time to comply with these new requirements. We are now half way through the compliance period. It's never too early to determine what changes will have to be made to policies, procedures and software systems.

To help credit unions comply, review CUNA's Member Due Diligence compliance tools:

[Customer Due Diligence Checklist](#)

[Final Rule Summary : Customer Due Diligence \(May 2016\)](#)

[CUNA's CDD Compliance Chart \(May 2016 Amendments\)](#)

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

Home Ownership and Equity Protection Act (HOEPA)

The CFPB issued the 2013 HOEPA rule with expanded coverage to HELOCs. The rule applies to loans for which a credit union receives an application on or after January 10, 2014.

The Home Ownership and Equity Protection Act of 1994 (HOEPA) amended the Truth in Lending Act (TILA) by requiring additional disclosures for consumer credit transactions that are secured by a principal dwelling (i.e., refinancings and home equity installment plans) that bear rates or fees above a certain percentage or amount, as well as reverse mortgages; and prohibiting specific acts and practices. The loans are called "Section 32 Mortgages," as the rules for these loans are contained in Section 32 of Regulation Z, which implements the TILA. For purposes of the 2013 HOEPA rule Section 32 loans are now defined as "high-cost" mortgages.

In general HOEPA applies to the following types of consumer credit transactions that are secured by a consumer's principal dwelling. These types of transactions must be tested against the HOEPA coverage tests. If they meet any of the coverage tests, they must comply with the restrictions on loan terms and other protections

Advocacy Highlight

Supreme Court Rules on Fair Debt Collection Practices Act Issue

Earlier this week, the Supreme Court ruled on a Fair Debt Collection Practices Act question. In the case, *Midland Funding, LLC v. Johnson*, the Court held that the filing of a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair or unconscionable debt-collection practice. The ruling reversed a lower court decision, in a 5-3 decision.

This case addresses questions about whether in the context of an ordinary civil action, collecting a debt that is known to be time barred is "unfair." The Supreme Court notes that this question of unfairness has in certain courts been based on whether a consumer might unwittingly repay a time-barred debt. It then goes on to express the concern that not allowing collection on this type of debt can significantly diminish force in a Chapter 13 bankruptcy.

In its analysis, the Supreme Court ultimately found that to determine whether a statement is misleading normally "requires consideration of the legal sophistication of its audience." It then goes on to note that Chapter 13 bankruptcy includes a trustee who is likely to understand that a proof of claim is a statement by the creditor that he or she has a right to payment that is subject to disallowance, including disallowance based on untimeliness.

The CFPB in its outline of SBREFA proposals has also recently discussed limiting the ability to collect on time-barred debt. This has been an issue of discussion at previous [Credit Union Advisory Council \(CUAC\)](#) meetings with the CFPB. During the meetings, credit unions expressed concerns that the membership as a whole could be harmed if the ability to collect on rightfully owed debts was arbitrarily curtailed.

CUNA has met with the CFPB on [similar debt collection issues in the past](#) and will continue to work with the CFPB to ensure credit union issues are fully understood.

CUNA Urges CFPB to Increase Exemption Threshold for Remittance Rule

This week, CUNA's Senior Director of Advocacy and Counsel, Luke Martone [sent a letter](#) to the Consumer Financial Protection Bureau in regard to their assessment of the remittance transfer rule. As the CFPB does their mandatory review of the rule, CUNA urges the Bureau to increase the threshold from 100 to 1,000 remittances annually.

The letter gives background on the rule and demonstrates how the rule is unintentionally harming consumers, and urges the Bureau to use its authority to increase the safe harbor threshold. Unfortunately, the harm is generally in the form of decreased availability of remittance services and/or increased prices where such services are available.

It is clear the remittance rule has had the unintended consequence of decreasing the availability of remittance transfer services. Based on CUNA's extensive outreach over the past three and a half years, there is consensus that a substantial number of credit unions have been forced

relating to high-cost mortgages. These transactions are:

- Purchase-money mortgages
- Refinances
- Closed-end home equity loans
- Open-end credit plans (HELOCs)

To determine if a loan is covered by HOEPA there are three separate coverage tests, based on:

APR Test

- APR (as of the date the interest rate for the transaction is set or locked) exceeds the APOR for a comparable transaction on that date by more than:
 - 6.5% for first lien generally
 - 8.5% for first lien less than \$50,000 and secured by personal property
 - 8.5% for subordinate lien transaction

Points and Fees Test

- Exceeds 5% of the total loan amount for a loan greater than or equal to \$20,579.
- 8% of the total loan amount of \$1,029 for a loan amount less than \$20,579.

Prepayment Penalty Coverage Test

- Prepayment penalty is charged more than 36 months after consummation or account opening or;
- Prepayment penalties that exceed more than 2% of the amount prepaid

The following mortgage loans are exempt from HOEPA's high cost mortgage loan requirements:

- Reverse mortgages
- Construction loans
- Loans originated and directly financed by a Housing Finance Agency (HFA), as defined in 12 CFR 266.5
- Loans originated under the U.S. Department of Agriculture's (USDA's) Rural Development Section 502 Direct Loan Program

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 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).

out of the market due to the compliance resources necessary to continue offering the service.

While CUNA supports the objective of the rule, there are significant concerns regarding the unintended consequences the rule is having on consumers and those entities—including credit unions—striving to meet their needs. CUNA will continue to work with the CFPB and Congress on common-sense regulations and reforms.

Protecting the Credit Union Tax Status

Protecting the credit union tax status is one of CUNA's highest priorities. The House Ways and Means Committee held a hearing to discuss how tax reform will grow the economy and create jobs. Prior to the hearing, [CUNA sent a letter](#) to the leadership of the Committee, Chairman Kevin Brady and Ranking Member Richard Neal, urging the Committee to protect the federal tax status of credit unions in the context of comprehensive tax reform.

CUNA's letter reminds the committee of H.R. 1, the Tax Reform Act of 2014, which retained the credit union exemption from federal income tax and demonstrated the Committee's understanding that the structure and mission of credit unions are the bedrock upon which the tax status is based and what makes credit unions unique within the financial services sector.

The letter elaborates on a number of reasons why Congress should preserve the credit union tax status:

- the tax treatment for credit unions continues to serve the purpose for which it was conveyed;
- the tax status represents good public policy, because it causes the creation of substantial benefits to the public, far in excess of its cost; and,
- taxing credit unions would represent a tax increase on 110 million Americans—taxpayers who paid a total of \$1.2 trillion in taxes in 2014—and would likely lead to the elimination of many, if not most, credit unions.

CUNA and America's credit unions are very appreciative of the work done in 2014, and look forward to working with both sides of the Ways and Means Committee. CUNA will not stop advocating on behalf of America's credit unions and their 110 million members.

Source: CUNA Removing Barriers Advocacy Blog

CUNA Advocacy Report

The [CUNA Advocacy Update](#) is published at the beginning of every week and keeps you on top of the most important changes in Washington for credit unions--and what CUNA is doing to monitor, analyze, and influence government agencies and federal law. Additional Advocacy efforts may also be found under CUNA's [Removing Barriers](#) blog.



[Training & Events Calendar](#)

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.



Compliance Calendar

May 29, 2017

- Memorial Day Holiday

July 4, 2017

- July 4th Holiday

July 30, 2017

- 5300 Call Report Due to NCUA

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 31

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

June 7

Webinar: [Report Writing for Auditors – Tips, Tools & Best Practices](#)

June 8

Webinar: [Revisiting TRID Line-by-Line Part 2: Closing Disclosure](#)

June 13

Webinar: [Traditional & Roth IRA Plan Establishment & Required Amendments](#)

June 14

Webinar: [Reporting Member Credit & Effectively Managing Credit Disputes](#)

June 20

Webinar: [Supervisory Committees: Understanding Expectations & Avoiding Landmines](#)

June 21

Webinar: [Adverse Action in Mortgage Lending: Are You in Compliance?](#)

June 22

Webinar: [New BSA Officer Training](#)

June 28

Webinar: [Top 10 Things You to Know About the CFPB's Amendments to Mortgage Servicing Requirements before Oct. 19](#)

June 29

Webinar: [Same-Day ACH: Preparing for Processing Debits, Effective Sept. 15, 2017](#)

July 10

Webinar: [Wire Transfer Security Controls: Regulatory Guidance, Risk Management & Monitoring](#)

CO Compliance Lunch & Learn Set for June 29

Colorado compliance professionals, get ready for the next Compliance Lunch & Learn, on Thursday, June 29, 2017 in the Sterner Center at the Mountain West offices in Denver, CO. 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, attorney Bob Wilson, will discuss recent enforcement actions and violations, agency enforcement authority, and share best practices to help your credit union avoid liability. Cost is \$35 per person (includes lunch). The program takes place from 11:30 am – 1:30 pm. To register, contact Jodi Weiser at jweiser@mwcu.com.

May 11, 2018

- [Customer Due Diligence/CDD](#)

Effective Dates New and Revised Rules

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](#)

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](#)

May 23, 2017~CFPB

[Review of Remittances Rule](#)

May 25, 2017~CFPB

[Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure \(Reg C\) October 2015 Final Rule](#)

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

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