Regulatory Compliance News

MOUNTAIN WEST
Credit Union Association

May 5, 2017

Compliance News

Availability of Oral Disclosures under the DoD's Military Lending Act (MLA) Rule

The MLA requires a statement of the MAPR and a clear description of the covered borrower's payment obligation to be provided to the covered borrower orally. Creditors may satisfy this requirement by providing the information to the covered borrower in person at a face-to-face meeting or through a toll-free telephone number. The toll-free number must be provided on the loan application used to apply for the loan or on a written disclosure provided by the creditor to the covered borrower.

The DoD's Official Interpretation states that the required disclosures must be available from the time the creditor provides the toll-free number. For example, if the toll-free telephone number is provided on the loan application, the disclosures provided through the toll-free number must be available from the time the application is provided to the covered borrower. The Interpretations also state that the oral disclosures provided through the toll-free number must only be available for a time period reasonably necessary to allow a covered borrower to contact the creditor in order to listen to the disclosures.

However, if the oral disclosures are the same for every covered borrower, there would be no need to limit their availability for any particular time period.

What's the Difference Between the ECOA and the FHA?

The Equal Credit Opportunity Act (ECOA) and its implementing regulation (Regulation B) prohibit a credit union from discriminating against an applicant on one of the nine prohibited bases in any aspect of a credit transaction. The nine prohibited bases are: race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of a right under the Consumer Credit Protection Act. It is also important to note than the ECOA applies to both consumer and commercial creditors, and to all parts of the credit transaction process, from advertising, to application, to underwriting and servicing.

The Fair Housing Act (FHA), on the other hand, only applies to residential lending. Under the FHA, it is unlawful for any lender to discriminate in its housing-related lending activities on one of seven prohibited bases: race, color, national origin, religion, sex, familial status (defined as children under the age of 18 living with a parent or legal custodian, pregnant women, and people securing custody of children under 18), and disability/handicap. So one of the key differences between the FHA and ECOA is that the FHA has fewer protected classes (it excludes marital

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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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status, age, receipt of public assistance and the exercise of a right under the Consumer Credit Protection Act). The other main difference is that the FHA only applies to mortgages and housing-related lending. So, for example, a credit card offer that unfairly discriminates against women would violate the ECOA but not the FHA.

See the link below for a chart comparing the protected classes under both Acts. Credit unions need to ensure that everyone across the organization, from lending officers, to marketing personnel and tellers are familiar with the fair lending laws and that no one in the institution is relying on one of the prohibited bases when making credit decisions.

ECOA_vs_FHA_chart.pdf

Source: CUNA Compliance Blog

Q&A About the Beneficial Owner Certification Form

Question: Regarding the Beneficial Owner Certification Form going into effect next year, as required by the FFIEC's Customer Due Diligence rule, who has to fill it out, and what information is needed?

Answer: Under the new CDD rule, effective May 11, 2018, credit unions will be required to identify and verify the beneficial owners of business-type accounts. One way to accomplish this is by using the new Beneficial Owner Certification Form, contained in Appendix A of the rule. The person opening the new account (on or after May 11, 2018) on behalf of a legal entity must complete this form. A natural person must be authorized to open the account, rather than the entity itself.

Legal entities include:

- Corporations;
- Limited Liability Companies;
- Other entities created by filing a public document with a Secretary of State or similar office; and
- General partnerships or any similar business entities formed in the U.S. or a foreign country.

This requirement won't apply to sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

The form requires the person opening the account to provide their name and title, as well as the name, address, date of birth, and identification number for each of the entity's "beneficial owners."

Credit unions may also use their own forms, as long as they meet the requirements in the CDD rule. They also may obtain the information by any other means – provided the person opening the account and providing the information certifies its accuracy.

Source: Credit Union Magazine/CUNA

Consumer Financial Protection Bureau Issues $1.25 Million Fine to Servicemember Auto Lender for Violating Consent Order

The Consumer Financial Protection Bureau (CFPB) recently took action against Security National Automotive Acceptance Company (SNAAC), an auto lender specializing in loans to servicemembers, for violating a Bureau consent order. In 2015, the CFPB ordered SNAAC to pay both redress and a civil penalty for illegal debt collection tactics, including making threats to contact servicemembers' commanding officers about debts and exaggerating the consequences of not paying. SNAAC violated the 2015 order by failing to provide more than $1 million in refunds and credits,

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 Heimbuck at: mheimbuck@mwcua.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325

InfoSight Highlight

Record Retention

What are the management's and the board of directors' roles for a record retention program?

Management and the board of directors must establish written policies and procedures for the development and maintenance of a record retention program. The documentation provides proof that credit unions are in compliance with the laws and rules regulating record retention, and the maintenance enables credit unions to adapt to changed circumstances and new technological advances.

In developing a vital records preservation program, the board of directors written policies must include the following:

- Specific guidelines and a schedule for the retention/destruction of records
- Classification of records (from inconsequential to vital)
- A schedule for the storage and destruction of records; and

A records preservation log detailing for each record stored, its name, storage location, storage date, and name of the person sending the record for storage.

affecting more than 1,000 consumers. Today's consent order requires SNAAC to make good on the redress it owes to those consumers and pay an additional $1.25 million penalty.

"This company violated a Bureau order when it failed to get money back to servicemembers it had hounded with illegal debt collection tactics," said CFPB Director Richard Cordray. "We are making sure this company finally rights its wrongs."

SNAAC, based in Mason, Ohio, is an auto-finance company that operates in more than two dozen states and specializes in loans to servicemembers, primarily to buy used vehicles. In June 2015, the CFPB sued SNAAC for aggressive collection tactics against consumers who fell behind on their loans. If servicemembers lagged behind on payments, SNAAC's collectors would threaten to contact—and in many cases did contact—their chain of command about their debts. Also, the company exaggerated the consequences of not paying. For instance, they told some consumers that failure to pay could result in action under the Uniform Code of Military Justice, demotion, discharge, or loss of security clearance. But these consequences were extremely unlikely. The CFPB alleged that SNAAC's aggressive tactics, which took advantage of servicemembers' special obligations to remain current on debts, victimized thousands of borrowers.

In October 2015, a CFPB consent order found that SNAAC had indeed engaged in unfair, deceptive, and abusive acts and practices while collecting on these auto loans. The order required SNAAC to pay $2.275 million in consumer redress through credits and refunds, and a $1 million civil penalty. Consumers with an account balance were to receive credits to their accounts, and consumers with a zero balance were to receive cash refunds. While SNAAC submitted two plans that claimed to provide the full amount of redress ordered, both were designed to underpay such redress. Acting on a tip from a servicemember's father, the CFPB discovered that SNAAC had issued worthless "credits" to hundreds of consumers and failed to provide proper redress to many more.

The CFPB is issuing today's consent order against SNAAC for violating the terms of the 2015 consent order by failing to properly give refunds or credits to affected borrowers. In today's order, the CFPB found that the company had failed to meet its obligation to pay redress to consumers by:

- Issuing worthless "credits" to settled-in-full accounts: In purporting to provide redress, SNAAC treated accounts that were settled-in-full as having a positive account balance. Instead of providing refunds to consumers with settled-in-full accounts, SNAAC issued worthless account "credits." Those consumers received no benefit from such a "credit" because they no longer owed SNAAC money and could not use such a credit toward any new or existing loan.
- Issuing worthless "credits" to discharged accounts: SNAAC also issued worthless account "credits" to consumers whose debts had been discharged in bankruptcy, and who no longer owed SNAAC money on their auto loan. SNAAC had no legal claim to any unpaid balance, and these consumers received no benefit from the "credits." SNAAC had, in fact, already stopped collections on these accounts.
- Failing to properly give redress to consumers making payments under settlement agreements: Some SNAAC consumers were making payments under settlement agreements, but SNAAC based redress on the original, higher account balance in place before it agreed on a

It is recommended that credit unions include in these procedures a method for using duplicate records to restore vital member services in the event of a catastrophic act. Credit unions which have some or all of their records maintained by an off-site data processor are considered to be in compliance for storage if the service agreement specifies the data processor safeguards against the simultaneous destruction of production and back-up information.

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).

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

IRS Seeking Comments on 1098 Filings

The Internal Revenue Service has published [82 FR 19455] in a recent *Federal Register*, a notice and request for comments concerning the Mortgage Interest Statement -- Form 1098. In the notice, the IRS noted that the form has been altered to add information on the mortgage's outstanding principal balance and origination date, and information on the mortgaged property. Direct all written comments to Laurie E. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies

settlement with the borrower. As a result, in many instances, SNAAC issued credits that exceeded consumers' settlement balances, rather than refund any amount above what the consumers actually owed. And because their settlement balances were improperly credited, some consumers unwittingly overpaid SNAAC to settle their accounts.

Enforcement Action

Under the Dodd-Frank Act, the CFPB is authorized to take action against institutions engaged in unfair, deceptive, or abusive acts or practices, or that otherwise violate federal consumer financial laws. Under today's consent order:

- SNAAC must pay redress as promised to affected consumers
- SNAAC must pay the Bureau roughly $720,000, which the Bureau will send as refunds to about 925 consumers
- SNAAC must issue about $370,000 in new credits to over 1,000 consumers with remaining account balances as well as properly credit roughly 1,000 consumers making payments under settlement agreements
- SNAAC must also pay $75,000 to the Bureau to cover the costs of distributing these payments
- SNAAC must pay a $1.25 million penalty
- SNAAC must pay a penalty of $1.25 million to the CFPB Civil Penalty Fund, in addition to the $1 million penalty it paid under the 2015 consent order.

The text of the consent order is found here.

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

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

of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*.

Source: Internal Revenue Service

Credit Union Bills Advance in Alabama, Florida and Tennessee

Recently, the League of Southeastern Credit Unions (LSCU) successfully championed an Alabama bill, S. 27, that extends the credit union examination period to 18 months. After an extensive League lobbying effort, Governor Kay Ivey signed the bill this week. Previously, state-chartered credit unions were required to be examined annually. Reducing the frequency of examinations removes unnecessary pressure on credit union resources and permits credit unions to allocate those resources to member service.

In Florida, LSCU-supported legislation, H. 1347, that exempts credit unions from lawsuits under the Florida Deceptive and Unfair Trades Practices Act (FDUTPA) was sent to Governor Rick Scott. Currently, banks and savings and loans associations are exempted from FDUTPA, while credit unions are still subject to enforcement and lawsuits under the Act. The bill was bipartisan and supported by the overwhelming majority of lawmakers. LSCU is engaging with the Governor to ensure the measure is signed.

In Tennessee, legislation that increases the amount that a credit union can pay out from a deceased member's account or safe deposit box, was enacted. Previously credit unions could only pay out $10,000 but under H. 150, credit unions can pay out $15,000. The change gives credit unions greater flexibility to assist the families of deceased members.

Leagues in 10 states are seeking to advance 15 bills to modernize state credit union acts. CUNA has been working closely with these leagues and has provided research and technical support of these measures.

Source: CUNA Advocacy Removing Barriers

Compliance Calendar

April 30, 2017
- 5300 Call Report Due to NCUA

July 30, 2017
- 5300 Call Report Due to NCUA

May 24
Webinar: Account Documentation Series: Non-resident Alien Accounts

May 31
Webinar: Mastering Escrow Compliance: Analysis, Rules, Forms & Accounting

Compliance Lunch & Learn - Wyoming

Compliance professionals, get ready for the next Compliance Lunch & Learn, on Tuesday, May 23 in the private room at Applebee's in Cheyenne, WY. The session will feature a presentation, networking time, lunch and an open-forum discussion on Power of Attorney, Trusts & UDAAP, led by Mark Robey, SVP, Regulatory Affairs and General Counsel at Mountain West, and Julie Kappenman, Director of Association Compliance Services, at Mountain West. 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@mwcua.com

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 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

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