

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

July 14, 2017

Compliance News

Bureau Guidance on Implementation of Servicing Rule Changes

The CFPB published [policy guidance](#) in a recent *Federal Register* concerning early compliance with its 2016 amendments to the Servicing Rules under Regulations X and Z. Responding to industry concerns about mid-week effective dates (both the October 19, 2017, and April 19, 2018, effective dates of the 2016 amendments fall on Thursday), the Bureau's guidance says the agency won't take action for violations of existing Regulation X or Regulation Z resulting from compliance with the amendments up to three days early. That will allow servicers to update their systems over the weekend prior to the effective dates, rather than mid-week.

Source: CFPB/Federal Register

Reminder: Annual Report of Blocked Property

The Department of the Treasury has posted a [reminder](#) that financial institutions are required to provide the Office of Foreign Assets Control (OFAC) a comprehensive list of all blocked property held as of June 30 of the current year by September 30. The annual reports must be filed using Form [TD F 90-22.50](#).

Source: OFAC

Department of Labor Continues Review of Fiduciary Rule

The Department of Labor has [announced](#) it will publish a Request for Information (RFI) related to its Fiduciary Rule. The RFI will be an opportunity for the public to provide data and information that may be used to revise the rule and associated exemptions. There will be a 15-day comment period on extending the January 1, 2018, applicability data of certain aspects of the rule, and a 30-day comment period on all other issues in the RFI, each period starting with publication of the RFI in the *Federal Register*.

Source: Department of Labor

Does Your Credit Union Offer "Age-Friendly" Financial Services?

The Federal Reserve Board's (Fed) recent [Consumer Compliance Outlook](#) newsletter highlights the need for financial institutions to "combat elder financial abuse." It is estimated that by 2060, one in five U.S. residents will be over the age of 65. This article describes the "typical victim of elder abuse as between the ages of 70 and 89, white, female, frail and cognitively impaired." Research shows that most often the perpetrators of elder financial abuse are family members (68%), friends and neighbors (17%), and home healthcare aides (15%).

The Fed recommends "age-friendly" financial services to help combat this growing crime against older Americans. Survey

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 Heimback

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.

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Association Compliance Forums

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research has indicated that older adults want:

- Low-cost checking accounts without minimum deposit requirements;
- Low-interest lending and credit products for emergency use;
- Assistance accessing public benefits and income supports;
- Help avoiding financial abuse and fraud through educational and legal training;
- In-person member service at physical branches; and
- Early intervention retirement planning.

Research by the San Francisco Federal Reserve found that many elderly consumers are "concerned about the safety of online banking, do not own a computer or smartphone, and/or may experience physical limitations that make them less likely to rely on computers for financial services." As a result, it is not surprising to find that more than half of consumers over 65 rely on tellers to access their accounts. The Fed emphasizes that staff training, especially teller training, is critical in the effort to combat elder financial abuse because front line staff are in the best position to observe suspicious conduct.

The Fed encourages credit unions to enhance their policies, procedures, and training to ensure your staff can identify and report suspected elder financial abuse.

Source: FRB/CUNA

McWatters Asks Cordray To Exempt Large CUs From CFPB Exams

NCUA Chairman McWatters has sent a [letter to CFPB Director Cordray](#) requesting that the CFPB provide a conditional exemption for credit unions with assets of more than \$10 billion from its examination and enforcement authority. Citing credit unions' unique role in the financial system by virtue of their being not-for-profit institutions owned and controlled by members, McWatters said shifting examination and enforcement authority to NCUA offers numerous benefits from the current system, in which credit unions face unnecessary examination burdens and aggressive punitive fines. Six federally insured credit unions—Navy Federal Credit Union, State Employees' Credit Union, Pentagon Federal Credit Union, Boeing Employees Credit Union, Schools First Federal Credit Union, and The Golden 1 Credit Union—have assets of \$10 billion or more.

Source: NCUA

CFPB Finalizes Update to TRID Rule

The CFPB announced on 7/7/17 a final rule updating its "Know Before You Owe" mortgage disclosure rule (a/k/a the TILA-RESPA Integrated Disclosure or TRID rule) with amendments that are intended to formalize guidance on the rule, and provide greater clarity and certainty. The CFPB is also releasing a limited follow-up proposal to address an additional implementation issue.

In addition to the clarifications and technical corrections, the final rule amendments also address other issues, including:

- Tolerance provisions for the total of payments that parallel the tolerances for the finance charge and disclosures affected by the finance charge,
- Adjustments to expand the provision granting a partial exemption from disclosure requirements of certain housing assistance loans,
- Extension of the rule's coverage to all cooperative units,
- Provisions allowing the sharing disclosures with real estate brokers and

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

What recent changes has NCUA made to Field of Membership?

NCUA recently issued a Final Rule which modernizes existing FOM definitions for federal credit unions. This Final Rule was approved October 27, 2016 at an open Board Meeting and was published to the *Federal Register* on December 7, 2016. The Final Rule became effective on February 6, 2017.

The Final Rule amends NCUA's FOM rules to allow greater flexibility for community charters and select employee group (SEG) based credit unions, increased opportunities to serve underserved areas, expansion of population limits, a new streamlined application process, expansion of persons eligible for membership, and more. These changes ultimately help to improve access for consumers and allow credit unions to better serve their communities.

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

other agents, and clarifying how a creditor may provide separate disclosure forms to the consumer and a seller.

The final rule will be effective 60 days after it is published in the *Federal Register*, with compliance optional (except for compliance with the amended escrow cancellation notice requirement under § 1026.20(e) and the partial payment policy disclosure requirement under § 1026.39(d)(5)) for any application received before October 1, 2018. Compliance will be mandatory for any application received on or after October 1, 2018, and for all loans with respect to the amended escrow cancellation notice and disclosure of partial payment policy beginning October 1, 2018.

The CFPB is also issuing a proposal addressing when a creditor may use a Closing Disclosure or corrected Closing Disclosure, instead of a Loan Estimate, to determine if an estimated closing cost was disclosed in good faith and within tolerance. Apparently, the changes in this area included in its 2016 proposal were interpreted in two very different ways.

Comments on the revised proposal will be due 60 days after its publication in the *Federal Register*.

[Final Rule amending the TRID Rule](#)
[Proposal on use of closing disclosure](#)
[Executive Summary](#)

FinCEN Proposes Special Measure Against Chinese Bank

FinCEN published a [Notice of Proposed Rulemaking](#) in the July 7, 2017, Federal Register under Section 311 of the USA PATRIOT Act, that would prohibit the opening or maintaining of a correspondent account in the United States (the fifth special measure in Section 311) for, or on behalf of, Bank of Dandong. Comments on the proposal will be accepted through September 5, 2017. FinCEN has found that the Bank of Dandong, located in China, is a financial institution of primary money laundering concern because it serves as a conduit for North Korea to access the U.S. and international financial systems, including by facilitating millions of dollars of transactions for companies involved in North Korea's weapons of mass destruction and ballistic missile programs.

Source: FinCEN



[Training & Events Calendar](#)

July 18

Webinar: [Creating an Effective Suspicious Activity Program: Efficiency, Examinations & Fraud](#)

July 19

Webinar: [Regulation E Fundamentals: Back to Basics](#)

July 20

Webinar: [Working with Troubled Members: Loan Extensions, Deferments, Re-Aging, Refinancing & Incentives](#)

July 24

Webinar: [Special Rules for Credit Card Compliance: Changes in Terms, APR Increases, Protected Balances, Offsets, Fee Limits & More](#)

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

Proposal to Amend Prepaid Rule Published

The CFPB has [published](#) in a recent *Federal Register* its [previously-announced](#) proposal to amend its Prepaid Rule. Comments on the proposal will be accepted through August 14, 2017.

Source: NCUA

Department of Labor Sends Request For Information to the Office of Management and Budget

Last week the [Department of Labor](#) (DOL) sent a Request for Information (RFI) to the Office of Management and Budget (OMB) for the overtime rule which was finalized in 2016. CUNA previously commented on this [rule](#) and has been following the litigation surrounding it, which led to a nationwide [injunction](#) of the rule in December 2016.

Many stakeholders thought that the DOL would withdraw entirely the DOL's appeal of the injunction once the new Secretary was in place, leaving the rule unenforceable. However, last week the DOL filed a brief asking the court not to invalidate its ability to use salary levels to determine qualification for overtime. The brief stated, "The Department requests that this Court not address the validity of the specific salary level set by the 2016 final rule (\$913 per week), which the Department intends to revisit through new rulemaking."

July 25

Webinar: [20 UCC Provisions You Must Know When Cashing or Depositing Checks](#)

July 26

Webinar: [E-Compliance Rules, Policies & Best Practices for Email, Web, Mobile & Social Media](#)

July 27

Webinar: [Risk Management Series: Conducting a Fair Lending Risk Assessment](#)

August 2

Webinar: [Advertising Compliance: Website, Print, TV & Radio](#)

August 15

Webinar: [TILA Rules for Non-Mortgage & Non-Credit Card Lending](#)

August 16

Webinar: [Job-Specific BSA for Deposit Operations: SAR Monitoring, 314\(1\) Requests & CIP](#)

August 21

Webinar: [Revisiting Your HMDA Policies to Include Comprehensive Changes Effective Jan 1, 2018](#)

August 22

Webinar: [New Compliance Officer Boot Camp](#)

August 24

Webinar: [When a Borrower Dies: Next Steps & Best Practices](#)

August 30

Webinar: [Comparing Regulation E with Visa & MasterCard Rules](#)

September 27

Webinar: [Step by Step SAR Completion: Dos & Don'ts](#)

September 28

Webinar: [Record Retention & Destruction Rules: Compliance & Best Practices](#)

October 16

Webinar: [Planning & Compliance Considerations for the New Fannie Mae & Freddie Mac Uniform Residential Loan Application](#)

October 26

Webinar: [Job-Specific BSA Training for Frontline: CTRs, SARs, CIP & More](#)

October 30

Webinar: [Preparing for the Impact of New Prepaid Card Rules Under Regulation E – Deadline April 1, 2018](#)

November 8

Webinar: [When a Depositor Dies: Next Steps & Best Practices](#)

November 9

Webinar: [Auditing for Reg E Compliance](#)

November 16

It appears that the DOL plans to propose a new rule, but is now waiting for the court to rule on the issue of whether it can set salary thresholds. In the past, the DOL Secretary has indicated that he supports an increase to the current salary threshold to qualify for overtime, but has other concerns about the final rule in its current form. CUNA plans to review and comment on the RFI once it is published in the Federal Register.

TCPA Ruling in Second Circuit is Good News for Credit Unions

Last month a decision handed down in the Second Circuit Court of Appeals held that the Telephone Consumer Protection Act (TCPA) does not allow consumers to revoke consent to receive automated or prerecorded cell phone calls if consent was previously given as part of a binding contract. In the case *Reyes v. Lincoln Automotive Financial Services*, Case No. 16-2104 (2nd Cir. June 22, 2017) the plaintiff-appellant argued that an automobile dealer violated the TCPA when they were contacted after sending a letter in the mail revoking consent to be called.

The district court granted summary judgment finding (1) the evidence of consent revocation was insufficient, and (2) in any event, the TCPA does not permit revocation when consent is provided as consideration in a binding contract. The Second Circuit then affirmed this ruling.

The question of what is a “reasonable” method to revoke consent has been a concern to credit unions after the July 2015 TCPA Order provided onerous guidance in this area. This is an issue CUNA [raised](#) in their Amici Brief, and something they have sought clarity on from the FCC. Last week’s ruling created helpful precedent in this area.

Several petitioners in the ongoing litigation challenging the FCC’s 2015 TCPA Order urged the D.C. Circuit this week to consider this decision by the Second Circuit prior to issuing its ruling in the case. In a letter to the court they wrote that, “Indeed, if the TCPA unambiguously provides that consent can be irrevocable in the context of a bargained-for exchange, then it is at minimum unreasonable to interpret the statute as prohibiting agreements to define mere methods of revocation,” further adding, “In holding that the TCPA clearly incorporates common-law rules of consent, *Reyes* confirms that the TCPA gives parties the right to agree to forms of effective revocation.”

CUNA is closely following the outcome of the litigation challenging the 2015 TCPA Order in the D.C. Circuit. CUNA believes the Second Circuit’s decision is a step in the right direction providing clarity on the issue of revoking consent and will continue to seek clarity on this, and other concerning aspects of the 2015 TCPA Order from the FCC.

Source: CUNA

Webinar: [Required Compliance for the Board & Senior Management](#)

November 29

Webinar: [OFAC Sanctions Compliance: Update, Expectations & Best Practices](#)

December 6

Webinar: [Job-Specific BSA Compliance for Lenders](#)

Recorded Webinars:

Available June 30

Webinar: [CTR Technical Changes: New Data Fields, Amendments & Alternate Model Reporting](#)

Available August 18

Webinar: [New MLA Requirements for Credit Cards, Effective Oct 3, 2017](#)

**Regulatory Compliance School
Sept. 13 & 14 – Denver
Now Open for Registration**

Credit union compliance professionals face a complex regulatory environment and challenging compliance issues. For those needing a refresher course or a solid understanding of the regulations and laws affecting their regulatory compliance responsibilities, plan to attend the Mountain West Regulatory Compliance School taught by compliance experts, Bruce Jolly and David Reed. This 2-day program will provide you with the latest information regarding operational compliance issues, and update you on current areas of concern expressed by regulators and examiners. Plan to attend this important program so you can stay up-to-date with the latest compliance regulations and ensure your credit union is operating within the current laws.

Registration deadline is August 30, 2017. To register for the **Sept. 13-14** Regulatory Compliance School in **Denver**, click [here](#).

CUNA Comment Calls – Due Dates on Proposed Rules

July 10, 2017~CFPB

[CFPB's Notice of Assessment of 2013 RESPA Servicing Rule and Request for Public Comment](#)

July 13, 2017~Federal Reserve

[Availability of Funds and Collection of Checks \(Reg CC\)](#)

July 14, 2017~CFPB

[CFPB's Request for Information Regarding the Small Business Lending Market](#)

July 17, 2017~NCUA

[2017 Regulatory Review](#)

July 24, 2017~Department of Treasury

[Request for Information About Regulations That Can Be Eliminated, Modified, or Streamlined in Order to Reduce Burdens](#)

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.



Compliance Calendar

July 30, 2017

- 5300 Call Report Due to NCUA

September 4, 2017

- Labor Day Federal Holiday

September 15, 2017

- [Same-day ACH – Phase 2](#)

September 30, 2017~NCUA

- [New Call Report Form](#)

October 1, 2017

- [Prepaid Accounts Under the Electronic Funds Transfer Act/Reg E and the](#)

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

August 7, 2017~NCUA

NCUA's Notice of Proposed Rulemaking Regarding Appeals Process

NCUA's Notice of Proposed Rulemaking Regarding Supervisory Review Committee; Procedures for Appealing Material Supervisory Determination

NCUA's Notice of Proposed Rulemaking Regarding Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions

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

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

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