

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

August 25, 2017

Compliance News

TRID Amendments Published August 11

On August 11th, the CFPB published the TRID rule amendments announced on July 7th. The amendments will be effective October 10, 2017, with compliance required by October 1, 2018, as to loans for which applications are received on or after October 1, 2018 (except for two provisions that will apply to all loans regardless of when applied for). The Bureau is also publishing its [proposed rule](#) relating to when a creditor may compare charges paid by or imposed on the consumer to amounts disclosed on a Closing Disclosure or corrected Closing Disclosure, instead of a Loan Estimate, to determine if an estimated closing cost was disclosed in good faith. Comments on the proposal will be accepted through October 10, 2017.

Source: CFPB

Labor Shows Intent to Delay Parts of Fiduciary Rule

In a court filing last week, the Department of Labor said it has submitted to the Office of Management and Budget a proposal to delay implementing the remaining parts of its fiduciary rule for 18 months, reports [CNBC.com](#). If approved by the OMB, the move would push out the effective date to July 1, 2019, from January 1, 2018.

Source: CNBC.com

ESIGN Reminders

The Electronic Signatures in Global and National Commerce Act of 2000 ("ESIGN") promotes the use of electronic signatures and records in commercial transactions by granting them the same legal validity and enforceability as paper records and handwritten signatures.

When credit unions are required by law or regulation to make information available to a consumer in writing, the information can be delivered electronically as long as the credit union complies with ESIGN's requirements. The federal ESIGN statute doesn't affect the content or timing of any disclosures required to be provided to consumers by the Truth in Lending Act, Truth in Savings Act, Electronic Fund Transfers Act, or any other consumer protection laws.

Pre-Consent Disclosures

ESIGN requires "affirmative consent" to conduct business electronically – in other words, consent must be a voluntary "opt-in." Businesses cannot convert consumer accounts to online accounts without first obtaining consumers' affirmative consent.

Prior to consenting, consumers must be provided with a clear and conspicuous statement informing them of their rights regarding the transaction, as well as a statement of hardware and software

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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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requirements for access and retention of electronic records.

There are also subsequent disclosure requirements when changes to hardware or software create a "material risk" that the member will not be able to access or retain an electronic record of the transaction. In this case, the credit union would have to provide the member with a statement of the revised hardware and/or software requirements, as well as the right to withdraw consent without the imposition of any fees or conditions not originally disclosed.

Affirmative Consent

Once the pre-consent disclosure requirements are satisfied, a consumer must consent electronically, or confirm his or her consent electronically in a manner that "reasonably demonstrates" that s/he can access information in the electronic form that will be used to provide the information that is the subject of the consent." So, the member has to do more than click "I agree" to receive online disclosures. The credit union's consumer consent process must also include a method for members to "demonstrate" that they can access the required disclosures in the electronic format that the credit union plans to utilize.

Record Retention

An electronic record will satisfy a statute or regulation's record-keeping requirements if the record accurately reflects the information in the contract or other record and remains accessible to anyone who is legally entitled to access, in a form that is capable of being accurately reproduced for later reference (whether by transmission, printing or otherwise). ESIGN doesn't prescribe how long to keep records available online. [The Federal Reserve Board's previous electronic communication regulations (eliminated in 2007) required retention of electronic disclosures posted on a website for at least 90 days. But, these provisions no longer exist.]

Note that ESIGN does *not* apply to:

- Wills, codicils, or testamentary trusts;
- Laws governing adoption, divorce, or other matters of family law;
- All articles of the UCC (except Section 1-107, Section 1-206 and Articles 2 and 2A);
- Court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;
- Any notice of: (1) the cancellation or termination of utility services (including water, heat, and power); (2) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; (3) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or (4) recall of a product, or material failure of a product, that risks endangering health or safety; or
- Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

What about state law?

ESIGN generally preempts state e-signature laws, except with regard to a state that has adopted the Uniform Electronic Transactions Act (UETA) as approved by the National Conference of Commissioners on Uniform State

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

Loans – Mortgage Servicing

The Mortgage Servicing Rules published by the Consumer Financial Protection Bureau (CFPB) are based on the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) amended the Real Estate Settlement Procedures Act (RESPA) of 1974, which is implemented by Regulation X, and the Truth in Lending Act (TILA), which is implemented by Regulation Z, with regard to the servicing of certain residential mortgage loans.

What loans will the Mortgage Servicing Rule apply to?

Generally the Mortgage Servicing Rules apply to closed end consumer credit transactions that are secured by a dwelling and which the credit union services.

Are there exemptions to the Rule?

Small servicers are exempt from certain parts of the rule; however, if you service mortgage loans there are parts of the rule that apply to all servicers regardless of size. Your credit union qualifies as a small servicer if the credit union, together with any affiliates, service 5,000 or fewer mortgage loans and are the servicer for all of them. If the credit union services any mortgage loan it (or an

Laws (NCCUSL). If a state's legislature has made any exceptions to the scope of UETA, these exceptions will be preempted by the federal statute to the extent that they are inconsistent with ESIGN.

Both UETA and ESIGN validate the use of electronic records and signatures, however, they are not identical.

This is just a snapshot of ESIGN for “back-to-basics” purposes. For more detailed information, including FAQs, visit CUNA’s e-Guide, accessible via the Compliance Resources drop down menu on [CUNA’s Compliance Community](#) (compliancecommunity.cuna.org).

Source: CUNA Compliance Community

CUNA - Back to Basics: Demand Letters and UDAAP: Posted by Michael Christians on 8/22/17

In the Back to Basics blog post, I’d like to discuss the deceptive prong of the Consumer Financial Protection Bureau’s (CFPB) prohibition against unfair, deceptive and abusive acts and practices (UDAAP). Specifically, I want to identify language that may be included in your credit union’s demand letters that likely won’t pass the UDAAP smell test.

The CFPB considers an act or practice to be deceptive when:

- The act or practice misleads or is likely to mislead the consumer;
- The consumer’s interpretation is reasonable under the circumstances; and
- The misleading act or practice is material.

In July 2013, the Bureau issued a bulletin (2013-07) identifying several debt collection practices it considers to be in violation of UDAAP. Among these, the CFPB states that it is deceptive for a creditor to “threaten any action that is not intended or the covered person or service provider does not have authorization to pursue.”

With that background, consider the following example:

A member is 60-days delinquent on his mortgage loan with your credit union. You send the member a demand letter that contains the following language:

You have 30 days to cure this default by paying the full amount due on your loan. If you do not cure this default, the credit union will take all legal action available to it, up to and including foreclosure.

Does this paragraph of your demand letter put your cooperative at risk of a UDAAP violation?

In my opinion, absolutely. Remember that Section 1024.41 of Regulation X (the Real Estate Settlement Procedures Act) prohibits a creditor from proceeding to foreclosure until a borrower is at least 120-days delinquent. In the example above, the member is 60-days delinquent and you’ve given him 30-days to cure the default. You’ve also threatened foreclosure if the member fails to cure the default within the stated time frame (90-days). However, you are prohibited under Federal law from proceeding to foreclosure until the member is at least 120-days delinquent. Thus, you are threatening an action that you do not have authorization to pursue. This is in direct contradiction to bulletin 2013-07 and will likely be identified as a deceptive act or practice.

Additional information about UDAAP is available in CUNA’s E-Guide to Federal Laws and Regulations at [cuna.org](#). As always, CUNA members may

affiliate) did not originate or does not own, the credit union does not qualify as a small servicer, even if it services 5,000 or fewer loans overall.

Requirement for policies and procedures.

The credit union should establish policies and procedures designed to achieve the following objectives in regards to mortgage loan servicing:

- Accessing and providing timely and accurate information;
- Properly evaluating loss mitigation applications;
- Facilitating oversight of, and compliance by, service providers;
- Promptly facilitating transfer of information during servicing transfers;
- Informing members of the written error resolution and information request procedures; and
- Set standards for record retention and service file creation.

Effective on April 19, 2018, the credit union will also need to include the following within their policies and procedures:

- Promptly facilitating communication with potential and confirmed successors in interest, and
- Confirming a successor in interest’s identity and ownership interest.

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

Compliance Videos

Quarterly Update for Q2 an Q3 2017

This [video](#) reviews of a few important laws and regulations that will impact our credit unions in the 2nd and 3rd quarters of 2017. League InfoSight CEO Glory LeDu covers the **DOL – Fiduciary Rule** effective 6/9/17, Phase II of the **NACHA Same Day ACH**, the changes to the **DOD - Military Lending Act** related to credit cards, and an overview to the 1st set of changes made to **Mortgage Servicing**.

Mortgage Servicing Rule

This [video](#) provides more detailed information from Glory LeDu, CEO of League InfoSight, regarding the upcoming **Mortgage Servicing Rules, effective 10/19/2017**. Be sure to review this video to ensure you are in compliance with these upcoming changes.

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

CFPB Launches New Web Form for Regulatory Inquiries

direct specific inquiries to cucomply@cuna.coop.

Source: CUNA Compliance Community

CUNA Engaged with Congressional Efforts to Exempt CUs from MLA

While the Department of Defense (DOD) has affirmed the Military Lending Act's (MLA) effective date for credit card accounts of Oct. 3, CUNA is engaged with legislators to build support for efforts to exempt credit unions from the rule. Rep. Paul Cook. (R-Calif.), member of the House Armed Services Committee, [circulated](#) a Dear Colleague letter requesting DOD exempt credit unions from the MLA regulation as amended in July 2015.

Cook's letter aligns with CUNA's position over the past few years that the provisions of the MLA should not apply to credit unions, as they are not engaged in the predatory practices the rule is focused on.

Going forward, CUNA and leagues will continue engagement with policymakers to build support for Cook's effort. CUNA will also continue its push to the DOD for changes to the MLA, as well as necessary interpretive guidance.

While CUNA supports the goal of protecting servicemembers, it believes the requirements of the MLA are having unintended consequences by forcing credit unions to cut back on, or eliminate, products designed to provide servicemembers and families with access to credit.

CUNA joined with the Defense Credit Union Council in May to [share data](#) showing the MLA changes have caused military credit unions to decrease offering consumer-friendly products such as the Payday Alternative Loan program.

CUNA also joined with other financial services trade organizations in June to [ask for an interim rule](#) to fix a number of issues with the rule. An opinion piece [appearing](#) in *Stars and Stripes* in July supported CUNA's suggested changes.

Source: CUNA News

Here's What You Need to Know About the New FFIEC HMDA Examiner Transaction Testing Guidelines

The Federal Financial Institutions Examination Council (FFIEC) members announced new [FFIEC Home Mortgage Disclosure Act \(HMDA\) Examiner Transaction Testing Guidelines \(Guidelines\)](#) for all financial institutions that report HMDA data. The Guidelines will apply to the examination of HMDA data collected beginning in 2018 and reported beginning in 2019.

The Guidelines will help ensure accurate data and address reporting burden concerns.

When examining financial institutions, federal supervisory agencies with HMDA supervisory authority may verify the accuracy of HMDA data within a sample of reported transactions. If examiners find that the number of errors in the sample exceeds certain thresholds, an institution will be directed to correct and resubmit its HMDA data.

In light of the new data fields that will be required beginning in 2018, the Guidelines:

- Eliminate the file error resubmission threshold under which a financial institution would be directed to correct and resubmit its entire Loan

The CFPB announced a change to the process for submitting questions to the Bureau on regulations. The new web form [available here](#) replaces the email address (CFPB_RegInquiries@cfpb.gov) previously used by the CFPB to accept questions and suggestions.

As before, responses to questions submitted via the new web form are not official agency interpretations and should not be relied on for compliance purposes. Submissions should receive a response within 10-15 days.

Source: CUNA Removing Barriers 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.



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 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](#)

Application Register (LAR) if the total number of sample files with one or more errors equaled or exceeded a certain threshold;

- Establish, for the purpose of counting errors toward the field error resubmission threshold, allowable tolerances for certain data fields;
- Provide a more lenient 10 percent field error resubmission threshold for financial institutions with LAR counts of 100 or less, many of which are community banks and credit unions.

At the same time, the Guidelines ensure HMDA data integrity by maintaining field error resubmission thresholds that safeguard the accuracy of each data field, and thus all data, reported under HMDA. Furthermore, under the Guidelines, examiners may direct financial institutions to change their policies, procedures, audit processes, or other aspects of its compliance management system to prevent the reoccurrence of errors.

All federal supervisory agencies with HMDA supervisory authority will use the same Guidelines.

The Guidelines represent a joint effort by the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, and the Office of the Comptroller of the Currency to provide—for the first time—uniform guidelines across all federal HMDA supervisory agencies. This collaboration began with the CFPB issuing a Request for Information, and holding outreach meetings in which the other supervisory agencies participated. The agencies then worked together to develop the Guidelines.

What is HMDA?

HMDA was enacted in 1975. On July 21, 2011, the Dodd-Frank Act transferred HMDA rulemaking authority from the Federal Reserve Board to the CFPB. In October 2015, the CFPB finalized changes to Regulation C implementing HMDA that, among other things, expanded the number of data fields reported.

Thanks to HMDA, each year the public has access to home mortgage application and loan information from thousands of financial institutions. In recent years, HMDA public data have contained roughly between 12 to 19 million records per year. The data includes loan-level information about the lender, loan, property, and applicant. The purposes of HMDA data are to:

- Help show whether lenders are serving the housing needs of their communities;
- Give public officials information that helps them make certain housing-related decisions;
- Shed light on lending patterns that could be discriminatory.

The HMDA data are available to the public from the FFIEC and tools to search and analyze HMDA data are available from the [CFPB](#).

Source:CFPB Blog

Effective Dates New and Revised Rules

September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

April 1, 2018 ~ CFPB

[Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z](#)

CUNA Comment Calls – Due Dates on Proposed Rules

July 26, 2017~CFPB

[Temporary HMDA Threshold Increase](#)

July 28, 2017~CFPB

[Proposed Amendments to Prepaid Accounts Rules Under Reg E and Reg Z](#)

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](#)

August 14, 2017~NCUA

[Corporate Credit Union Proposal](#)

August 28, 2017~NCUA

[National Credit Union Share Insurance Fund Equity Distributions](#)

August 31, 2017~CFPB

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

Regulatory Compliance School Sept. 13 & 14 – Denver Registration Deadline Aug. 30

Register now for this year's Regulatory Compliance School in **Denver, CO on Sept. 13-14**. (*Registrations will be accepted after the **August 30 deadline**, assuming seats are still available.*) Don't miss your chance to learn the most up-to-date compliance regulations and what's new in the credit union industry. Speakers Bruce Jolly and David Reed 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



MOUNTAIN WEST
Credit Union Association

Training & Events Calendar

August 30

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

September 7

Webinar: [Responding to Official Demands for Member Funds: Subpoenas, Garnishments, Summonses & Levies](#)

September 12

Webinar: [Regulator Issues for the Credit Analyst](#)

September 13

Webinar: [Minor Accounts: Ownership, Documentation & Access](#)

September 20

Webinar: [Supporting Documentation for the ALLL: Current Rules & Future Expectations Under CECL](#)

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

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:

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

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

union is operating within the current laws. To register for the **Sept. 13-14 Regulatory Compliance School** in Denver, CO, [click here](#).

Compliance Lunch & Learn September 21 - Grand Junction, CO

Compliance professionals on the Western Slope can join their compliance peers in Grand Junction, CO on **September 21, 2017** for the next Compliance Lunch & Learn. This two-hour program includes a presentation, networking time, lunch and an open-forum discussion on Power of Attorney, Trusts & UDAAP. Mark Robey will provide an overview of opening, maintaining and closing accounts for trusts, and will discuss various power of attorney issues. Julie Kappenman will review recent regulatory activity. Mark and Julie will also lead a discussion about the Unfair Deceptive and Abusive Acts and Practices Act (UDAAP). Cost is \$35; **registration deadline is September 15**. To register, email Jodi Weiser at jweiser@mwcu.com.

Regulatory Compliance School October 25 & 26 – Phoenix 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 October 11, 2017**. To register for the **Oct. 25-26 Regulatory Compliance School** in Phoenix, AZ, [click here](#).

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

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