

190

Days Until
Aug 1, 2015

With one of the most sweeping regulatory changes for credit unions in decades less than three months away, MWCUA is dedicated to helping you prepare. Each week we will present a topic, question, or idea taking you one step closer to successful implementation.

Has your compliance team presented your plan for implementing the TILA-RESPA Integrated Disclosure Rule to the board and is the plan on schedule?

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

January 23, 2015

Compliance News

Supreme Court TILA Disclosure Ruling – How it Affects Credit Unions

A new ruling from the Supreme Court will make it even more important for credit unions to provide thorough Truth in Lending disclosures as part of their mortgage closing process.

In [Jesonoski v. Countrywide Home Loans](#), the court unanimously agreed with homeowners Larry and Cheryl Jesonoski that U.S. law only required they notify Bank of America in writing within three years of closing that they were rescinding their mortgage because of disclosure problems.

The law did not, as Bank of America argued, require the homeowners to have sued within three years to rescind, the court said.

“Section 1635(a) explains in unequivocal terms how the right to rescind is to be exercised,” wrote Justice Antonin Scalia for the court. “It provides that a borrower “shall have the right to rescind . . . *by notifying the creditor, in accordance with regulations of the Board, of his intention to do so*” (emphasis added).

The language leaves no doubt that rescission is affected when the borrower notifies the creditor of his intention to rescind, according to the court.

It follows that so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely, the court said. The statute does not also require him or her to sue within three years. Analysts speaking to media outlets said the ruling would have only a limited impact now. However, it would likely take on more importance if another economic downturn led more homeowners to leave mortgages on properties that had fallen below their loan balances.

Source: Credit Union Times

RBC2 Improves: Still Solution in Search of Problem

While the National Credit Union Administration's revised risk-based capital (RBC2) proposal contained many changes wanted by the Credit Union National Association, the organization believes further changes are needed.

Compliance Team

[Mark Robey](#)

Sr. VP of Regulatory Affairs

Phone: 800-477-1697, ext. 3327

Direct: 720-479-3327

[Melia Heimbeck](#)

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](#)

Compliance Coordinator

Phone: 800-477-1697, ext. 3281

Direct: 720-479-3281



Don't let compliance get in the way of serving your members! Get the most advanced cloud-based, near real-time compliance solution available to credit unions through AffirmX. With AffirmX you will know your compliance risks AND have access to experts that help you manage those risks. This innovative tool combines call-report data, onsite visits, and document review in the areas of Operations, Lending, BSA, Deposit and Advertising. Stay current on your consumer regulatory compliance risks with one easy-to-read dashboard that saves you time and money. If a full suite of

The proposal was approved by the NCUA board January 15 by a 2-1 vote, with board member J. Mark McWatters casting the dissenting vote.

CUNA President/CEO Jim Nussle called the proposal a "solution in search of a problem," particularly given the likely costs to credit unions.

NCUA Director of Examination and Insurance Larry Fazio estimated that the one-time costs for credit unions to read the rule and make the appropriate operational changes to be approximately \$5.1 million. He also estimated an annual cost of less than \$1 million from credit unions in labor for new call report requirements.

The rule does contain many improvements sought by CUNA in its original comment letter, and in its advocacy efforts throughout last year.

These include:

- Lowering the requirement to be well-capitalized to 10%, from the originally proposed 10.5%;
- Lowering of risk weights for mortgage loans, member business loans, long-term investments and credit union service organizations. CUNA pushed for a lower weight for mortgage servicing assets as well, but this was not lowered;
- Removal of interest-rate risk from the proposal. The NCUA has said interest-rate risk may be addressed in a separate rulemaking, which CUNA is against;
- Removal of the individual minimum capital requirement; and
- Changing the implementation period to Jan. 1, 2019. An 18-month period was originally proposed.

"The changes respond to the major criticisms we levied against the original proposal. As a result, it is a step toward a more palatable final rule, and the entire NCUA board is to be commended," Nussle said. "However, RBC2 is far from perfect, and CUNA and the leagues will again provide analysis and support for credit unions to generate comments to drive further improvements."

The 90-day comment period for the proposal will not start until it is published in the Federal Register.

For more information, check's CUNA's Risk-Based Capital [Action Center](#), Risk-Based Capital [blog](#).

Source: CUNA

Palm Springs FCU Gets \$50K from NCUA for Data Breach

Palm Springs (Calif.) FCU will receive payment of up to \$50,000 for costs associated with a data breach caused when a thumb drive given to an examiner was lost during an examination. The agency announced the reimbursement during its open board meeting Thursday.

The NCUA funds are intended to pay the credit union for activities such as credit report monitoring for members, credit union staff time associated with the breach and legal fees.

The agency noted in a release, "To date, the related costs associated with the data breach are approximately \$36,000. Payments will come from NCUA's existing operating funds. In the event costs ultimately exceed \$50,000, subsequent board action would be required."

Almost from the outset the NCUA has said the lost stored data was the result of a failure to follow longstanding agency policies on securing sensitive data. The agency has said the thumb drive did not include passwords or personal identifications numbers--PINs--and that the NCUA has received no indication of any unauthorized access to members' accounts or attempts to gain improper access.

The agency statement declares: NCUA takes its responsibilities for the security of credit union members' personally identifiable information very seriously and is committed to ensuring data shared in exams is protected at all times. The agency is taking appropriate action with staff involved in the incident and is reinforcing

compliance risk assessments isn't what you are looking for, we now offer a basic annual compliance package, including BSA, ACH, SAFE Act, and Website compliance for one low price.

For more information about our compliance services, please contact Melia Heimbeck at: mheimbeck@mwcua.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



Credit Cards

Credit card programs are governed by the open-end credit provisions of Regulation Z.

The Federal Reserve Board (FRB) amended Regulation Z and the Official Staff Commentary (OSC) to the regulation in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the Credit Card Act).

Note: Under the Dodd-Frank Act, the Consumer Financial Protection Bureau (CFPB) has inherited oversight of Regulation Z.

How Do the Credit Card Rules Under Regulation Z Affect Credit Unions?

Credit unions that offer credit cards must comply with the open-end (not home-secured) credit provisions of Regulation Z.

Credit Cards: FAQs

Question: Can the credit union extend a credit card account to a non-working spouse under Regulation Z's Ability to Repay?

Answer: Effective May 3rd, 2013 with a mandatory compliance date of November 4, 2013, assuming an applicant is age 21 or older the Final Rule states, in determining a consumer's ability to repay, the final rule permits issuers to consider income or assets to which an applicant or accountholder who is 21 or older - thus subject to 1026.51(a) - has a reasonable expectation of access.

Furthermore the Official Interpretations to this section goes on to state for instance; Assume that an applicant is not employed and that the applicant is age 21 or older, if a non-applicant's salary or other income is deposited regularly into a joint account shared with the applicant, a card issuer is permitted to consider the amount of the non-applicant's income that is being deposited regularly into the account to be the applicant's current income for purposes of the regulation.

Question: Do the Ability to Repay Rules Contain

training on protecting sensitive information and reviewing regulations, policies and procedures in this area. NCUA is also moving as quickly as possible to consider and adopt additional safeguards to protect electronic data.

Source: CUNA News Now

CFPB Releases New Toolkit for Prospective Homebuyers

On the heels of a report declaring that nearly half of mortgage borrowers do not shop around, the Consumer Financial Protection Bureau (CFPB) unveiled a toolkit designed to help potential homebuyers assess mortgage options. The "Owning a Home" [toolkit](#) contains resources about understanding loan options, a portal to check interest rates and more.

"'Owning a Home' has great new tools to help consumers throughout the home buying experience, from the very start of the process all the way to the closing table," said Richard Cordray, CFPB director, as he announced the toolkit. He added that in addition to the tools helping consumers decide how much they can borrow, get a grasp on new mortgage disclosure forms and other information, the bureau plans to add additional tools over the course of this year.

One feature Cordray highlighted while speaking at the Brookings Institution is the Rate Checker. It incorporates information from lenders' internal rate sheets, which is used to calculate available interest rates for specific consumers.

"Borrowers looking to buy a single-family home can use the Rate Checker to input their own information and find out what interest rates they are likely to be offered from lenders in their area," he said. "By plugging in their credit score, their location, and information about the loan they are seeking, they can see the rates that lenders are offering to borrowers like them."

The CFPB [report](#), "Consumers' mortgage shopping experience," features data from the 2013 National Survey of Mortgage Borrowers, an initiative from the CFPB and Federal Housing Finance Agency to better understand mortgage markets. The survey results come from more than 5,000 respondents who answered approximately 100 questions pertaining to the entire mortgage process.

The report found:

- Almost half (47%) of consumers who take out a mortgage only seriously consider a single lender or mortgage broker. This tendency is somewhat higher among first-time homebuyers;
- The primary source of information for borrowers is a lender or broker, followed by a real estate agent;
- A sizable share of borrowers report that outside factors, such as a lender or broker's reputation and geographic proximity, are very important in their decision makers. These borrowers are much less likely to shop around; and
- Borrowers who prioritize the terms of the loan over the characteristics of the lender and who are more confident in their knowledge about the mortgage process are more likely to shop around.

Source: CUNA News Now

Advocacy Highlights

Reminder: Comments Due to CUNA March 9 on Prepaid Financial Product Protections

Comments on a Consumer Financial Protection Bureau (CFPB) proposal to create consumer protections for prepaid financial products are due to CUNA March 9.

The proposal, if approved in final form, would amend Regulation E (which implements the Electronic Fund Transfer Act), Regulation Z (which implements the Truth in Lending Act) and the official interpretations to the regulations.

The protections, proposed by the CFPB in November, were published in the Dec. 23 *Federal Register*, thereby establishing the comment deadline.

"The proposal would expressly bring such products within the ambit of Regulation E

Any Exception for Share-secured Credit Card Accounts?

Answer: No. The rule does not have an exception for share-secured credit card accounts. Therefore, a consumer would be required to have either an independent source of income sufficient to make the required payments or have a cosigner, guarantor or a joint applicant on the account.



This week's [Regulatory Advocacy Report](#) will bring you up to speed on the following issues:

- RBC2: First Look
- CFPB Now Accepting Applications for Advisory Board and Councils
- Final Reminder: CUNA Seeks Feedback by January 23 on Same Day ACH Proposed Rule, Small Credit Union Impact
- Summary of Last Week's NCUA Board Meeting
- CUNA Files Letter in Support of IRS Proposal on Discharge of Indebtedness
- NCUA to Make Cyber Security a Priority in 2015

Be sure to visit CUNA's [Risk-Based Capital blog](#)



Compliance Calendar

January 31

- Credit Card Quarterly Agreement Submission Due to CFPB (10,000 or more open credit card accounts)

February 16

- Washington's Birthday/President's Day - Federal Holiday

March 3

- Permissible Derivatives - Effective Date

March 8

- Daylight Savings Time Begins

March 30

- NACHA Operating Rules Changes

CUNA Comment Calls – Due Dates on Proposed Rules

January 1, 2015~IRS

[Removal of 36-Month Non-Payment Testing Period Rule](#)

January 12, 2015~FHFA

[Proposed Regulation on Federal Home Loan Bank Membership](#)

January 23, 2015~NACHA

[Same Day ACH Proposal](#)

as prepaid accounts and create new provisions specific to such accounts," reads the notice in the *Federal Register*. "The proposal would generally cover those prepaid accounts that are cards, codes, or other devices capable of being loaded with funds and usable at unaffiliated merchants or for person-to-person transfers, and are not gift cards."

The proposal would:

- Modify Regulation E to establish specific prepaid account requirements that would require financial institutions to provide certain disclosures to consumers prior to and after the acquisition of a prepaid account;
- Include an alternative to Regulation E's periodic statement requirement that would permit prepaid product providers to make available certain methods for access to account information in lieu of sending periodic statements;
- Apply Regulation E's limited liability and error resolution provisions to prepaid accounts with certain modifications, including applying these provisions after account registration;
- Require prepaid account issuers to provide the bureau with terms and conditions for such accounts, to be posted on a website maintained by the CFPB. Issuers would also be required to post the terms and conditions on their own sites or make them available upon request;
- Subject prepaid cards that access overdraft services or credit features to Regulation Z's credit card rules;
- Require that consumers consent to overdraft services or credit features and give them at least 21 days to repay the debt incurred in connection with using such services or features;
- Amend Regulation E to include disclosures about overdraft services or credit features that could be linked to prepaid accounts; and
- Amend the compulsory use provision under Regulation E to prohibit prepaid account issuers from requiring consumers to set up preauthorized electronic fund transfers to repay credit extended through an overdraft service or credit feature.

While only a limited number of credit unions offer prepaid cards, CUNA has a variety of concerns about the impact of the proposal on these financial products now and into the future, such as treating overdrafts on prepaid cards as a loan.

CUNA will be working with its consumer protection subcommittee, payments subcommittee and CUNA Council credit union members to identify all concerns and develop recommendations to modify or oppose various provisions in the proposal.

Source: CUNA

March 2, 2015~CFPB

[Safe Student Account Scorecard](#)

March 9, 2015~CFPB

[Prepaid Accounts](#)

Effective Dates

New and Revised Rules

August 1, 2015~CFPB

[TILA-RESPA Integrated Disclosure Rule](#)

December 31, 2015~IRS

["Foreign Account Tax Compliance Act" \(FATCA\) Rule](#)

CUNA Schools and Webinars

January 29

Webinar: [The Current State of UDAAP Unfair, Deceptive or Abusive Acts or Practices](#)

April 12 - 17

[Regulatory Compliance School – Las Vegas](#)



[Training & Events Calendar](#)

January 29

Webinar: [Member Complaint & Response Management](#)

February 4

Webinar: [Revisiting Your RESPA & TILA Policies to Include the New Integrated Disclosure Requirements](#)

February 12

[Compliance Networking Council – Denver, Rock Springs, Tucson](#)

February 24

Webinar: [FFIEC Guidelines & Recent Developments in Cyber Security Risk Management](#)

March 26 – 28

Mountain West 2015 Annual Meeting & Convention - Phoenix: www.mwcua.com/am

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

Sign up to receive Regulatory Compliance News by sending an email to [Donna Gibbs](#).

If you're having trouble viewing content, please check your viewer's settings.