

## Compliance News

### CFPB 2015 List of Rural and Underserved Counties Now Available

CFPB recently posted a list of counties determined to be “rural” in connection with applying several regulatory provisions during 2015. Rural counties are generally defined by using the USDA Economic Research Service’s urban influence codes, and underserved counties are defined by reference to data collected under the Home Mortgage Disclosure Act. See the 2015 list of rural or underserved counties: [consumerfinance.gov/guidance/#compliance](http://consumerfinance.gov/guidance/#compliance)

### Nussle Highlights CU Help in Restoring Members’ Credit

Credit union programs that help members avoid the quicksand of predatory payday lenders were under the spotlight in *The New York Times* Monday thanks to a letter to the editor by Credit Union National Association President/CEO Jim Nussle.

Nussle, noting a recent *Times* editorial that raised questions about how to protect the best interest of consumers who need help restoring credit, told the *Times*’ extensive readership that credit union programs build experience in saving, not just borrowing.

"Unlike predatory payday lenders, credit unions have programs that actually help members out of a hole instead of keeping them trapped in one," [Nussle wrote](#) .

To illustrate the credit union difference, Nussle cited two programs used by credit unions: One directs loan payments into savings accounts once a loan is repaid; another links credit unions with employers, and repayments are made by payroll deduction, and again, once the loan is repaid, payments continue as deposits to the member’s savings account.

"These and other lending programs for members with troubled credit have interest rates significantly below what predatory lenders charge," Nussle underscored.

He added, "It's unfortunate that quick, short-term access to money is needed today by some people, but they shouldn't be ripped off in the process. Credit unions demonstrate that access to this credit doesn't have to be predatory."

Nussle took the leadership position at CUNA on Sept. 20. He is a former member of the U.S. Congress, serving from 1991 to 2007, and was director of the Office of Management and Budget from 2007 to 2009.

*Source: CUNA News Now*

### Looking at Compliance as Risk-Based or Rules-Based

Anti-money laundering rules under the Bank Secrecy Act (BSA) in the United States have generally used a more rules-based approach than much of the world, according to the World Council of Credit Unions’ Michael Edwards, but that may be changing thanks to new international guidance released last week. Edwards, World Council’s vice president and chief counsel, spoke at the Credit Union National Association’s BSA Conference.

Like in other countries, BSA rules in the United States are primarily based on international standards from the Financial Action Task Force (FATF), a Paris-based organization that writes anti-money laundering and countering the financing of terrorism (AML/CFT) standards at the global level. The FATF has recently updated its guidance on the risk-based approach (RBA) to AML/CFT in order to better address the main weakness of rules-based

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AML/CFT approaches, namely that bad actors are more easily able to circumvent rules-based compliance systems than those based on RBA principles.

"An RBA to AML/CFT means that countries, competent authorities, institutions and organizations are expected to identify, assess and understand the money laundering/terrorism financing risks to which they are exposed and take AML/CFT measures to those risks in order to mitigate them effectively," reads the official RBA definition from the task force.

Since 1988, the FATF has issued international AML/CFT guidance, including its "[40 Recommendations](#)," which serve as the high-level principles for AML/CFT compliance around the world. The FATF most recently revised the 40 Recommendations in 2012, and on October 24th of this year [released updated guidance](#) on the RBA to AML/CFT for banks and credit unions.

"The FATF has reinforced and reinvigorated their RBA concept compared to their earlier guidance because they thought most countries hadn't done it right, and I think that includes the United States. That's because the default compliance approach in the U.S. across all different types of regulation is a heavily rules-based system, rather than a principles-based one," Edwards said.

"The FATF is trying to move countries away from a check-the-box type AML/CFT approach where criminals can learn the rules, and slip between the cracks in those rules, to a more flexible RBA where regulated institutions use judgment to go after the actual money laundering risks present in their lines of business in ways that might not be predictable to bad guys."

An RBA defines money laundering and terrorist financing risk as a function of three factors: threat (the persons or activity that can cause harm), vulnerability (things that may be exploited by the threat) and consequence (the impact of harm that may be caused).

"If you really don't have an effective BSA compliance program you'll probably regret it sooner or later, either through unfavorable examinations or through something really bad happening that negatively affects your institution's reputation and results in the credit union being cut off from corresponding banking services," he said. "That's the biggest risk in my mind. If you get cut out of the payments system because you don't have an effective BSA program, your members aren't going to be able to use your services."

He said a risk matrix is one of the better ways for management to document its analysis of money laundering risks. A risk matrix defines various levels of risk by probability and severity categories. Credit Union of Ohio, of Hilliard, Ohio, \$134 million in assets, has developed a comprehensive risk matrix, available through CUNA's compliance file sharing group that Edwards cited as a good example for credit unions to follow.

Edwards also reminded those in attendance that there is no such thing as a BSA exemption, saying that no matter how low the risk might seem, there is still due diligence that must be done.

Credit unions, he said, have an advantage due to their field of membership requirement, which requires each new member to be verified to some extent before opening an account or receiving services.

*Source: CUNA News Now*

### Virtual Currencies Gain Momentum in Payments System

Currency followed a set of specific rules for most of mankind's history, but new virtual currencies are changing some of those rules. Todd Erickson, senior vice president and chief operating officer of First Flight FCU, Cary, N.C., with \$170 million in assets, spoke on virtual currencies at the Credit Union National Association's Bank Secrecy Act (BSA) Conference.

Brian Knight, general counsel for the National Association of State Credit Union Supervisors, advised that all in attendance, as well as the credit union system as a whole, learn everything they can about virtual currencies.

"If you are a financial services professional in this day and age, you need to know what these things are," he said. "Your credit union might not be dealing with them, your credit union might never be dealing with them, but I think the experts who have looked at this

### Identity Theft

Identity theft occurs when someone appropriates another individual's personal information without that person's knowledge, to commit fraud or theft. An identity thief steals another person's name, Social Security number, credit card number, or some other piece of personal information for his or her own use.

A credit union will suffer reputation risk if its procedures do not adequately protect its members and their accounts. A credit union may also suffer a financial risk if it allows an unauthorized person to access or open an account. By making certain that the credit union staff is following current law, a credit union will have significantly protected member information and helped to prevent identity theft.

Under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), both Federal and State chartered Credit Unions are required to develop policies and procedures meant to identify and mitigate identity theft. The four basic required elements of an identity theft prevention program must include:

- Identifying relevant "Red Flags" of identity theft;
- Detecting Red Flags that have been incorporated into the Program;
- Responding appropriately to any Red Flags that are detected; and
- Ensuring the Program is updated periodically to reflect changes in a credit union's risk profile.

### Disaster Recovery

The National Credit Union Administration (NCUA) expects all federally insured credit unions to have a comprehensive contingency plan that is regularly tested. This presentation provides the information your credit union's needs for a Disaster Preparedness and Recovery Plan. [Click here for the video.](#)



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

- NCUA Confirms No 2014 NCUSIF Premium
- Regulatory Relief For Credit Unions on Privacy Notices
- "Faster Payments" Update: Federal Reserve Banks, NACHA Same-Day ACH, and The Clearing House Association's Plans to Build a Real-Time Payments System
- CFPB Approves Regulation Z Mortgage Amendments
- CUNA Submits Comments on NACHA Compliance and Operations Topics Proposal

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can agree that it represents a change that cannot be undone. Something related to virtual currencies is going to change payments systems, it's going to change our industry."

Erickson, who is also a member of the Bitcoin Foundation's regulatory affairs committee, said the advent of virtual currencies such as bitcoin allows for "a publicly verifiable transfer of the ownership of an asset without requiring a trusted third party," such as a financial institution.

There is a difference between Bitcoin capitalized, which represents the decentralized, peer-to-peer system, and lowercase bit coins, which are the currency itself. Bitcoin transfers do not require any personal information for a transfer.

The Financial Crimes Enforcement Network (FinCEN) issued two administrative rulings Monday dealing with virtual currencies.

In the [first](#), FinCEN said that companies that make virtual currency-based payments to customers are classified as money transmitters, because the company is accepting standard currency as payment, then converting it for payment to vendors.

The [second](#) makes a similar ruling, calling companies that use trading platforms to connect virtual currency buyers and sellers money transmitters.

Bitcoins are already becoming a widely used payment method, Erickson said. According to Coinometrics, a website that measures the use of virtual currencies, bitcoin transactions add up to approximately \$289 million per day, just below that of Discover (\$299 million) and more than Western Union (\$219 million).

However, bitcoins are not recognized as legal tender by any country. They are recognized by the Internal Revenue Service as an asset, similar to real estate or other property. Germany ruled last year that bitcoins are a "unit of account," meaning they can be used in private transactions.

*Source: CUNA News Now*

### **Faster Payments Systems: A CUNA Update for CUs**

There are a number of recent developments in payments innovation of which credit unions and other financial institutions should be aware, efforts that are intended to move the system toward faster payments and improved payments security.

"As more information becomes available, credit unions and other financial institutions should continue to assess how 'faster payments' could potentially affect their institutions, including with operations and implementation, risk management, new products and services, data security, compliance, IT, and other areas," writes Dennis Tsang, Credit Union National Association assistant general counsel, in this week's *Regulatory Advocacy Report (RAR)*.

Just last week, Tsang notes, The Clearing House Association announced a plan to build a real-time payments system. The association, which represents the largest commercial banks, said in a press release that it is taking on a multi-year effort to build a real-time payments system to better meet consumers' and businesses' expectations "in a digital age." The system, the association said, would incorporate strong data security safeguards to protect account information, building on The Clearing House initiative to develop and implement tokenization.

Also, the head of NACHA, the Electronic Payments Association, says same-day Automated Clearing House (ACH) payments are key to the future of the payments system.

In a recent letter published in *American Banker*, NACHA President/CEO Jan Estep said the organization is working on a phased-implementation approach to move the ACH network from next-day settlement to same-day settlement during three different phases. While entities such as the Federal Reserve have stressed the need for real-time payments, Estep said that it is only part of the solution.

NACHA is expected to issue a same-day ACH proposed rule in the coming months. Last week, CUNA's Tsang attended the NACHA Alliance meeting that focused on same-day ACH



## **2014 Compliance Calendar**

### **October 17**

- [Master Card Limitation of Liability Change](#)

### **October 24**

- [5300 Call Report Due to NCUA](#)

### **October 31**

- [Credit Card Qtrly Agreement Submission Due to CFPB \(10,000 or more open credit card accounts\)](#)

### **November 2**

- [Daylight Savings Time Ends](#)



### **November 11**

- [Veterans' Day – Federal Holiday](#)

### **November 27**

- [Thanksgiving Day – Federal Holiday](#)

### **December 25**

- [Christmas Day – Federal Holiday](#)

### **December 31**

- [SAFE Act Audit Deadline](#)

### **December 31**

- [ACH Compliance Review Deadline](#)

## **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](#)

## **2014 CUNA Comment Calls - Due Dates on Proposed Rules**

### **October 13, 2014~NACHA**

- [NACHA Compliance & Operational Topics](#)

### **October 15, 2014~CFPB**

- [Proposed Regulation on HMDA \(Reg C\)](#)

### **November 7, 2014~DOD**

- [Proposed Rule Re Military Lending Act](#)

### **December 1, 2014~CFPB**

- [Policy on No Action Letters](#)

and other upcoming developments.

Also, Tsang notes in the *RAR*, the Federal Reserve Banks [announced](#) last month that they have completed research on their "payment system improvement" initiative.

In the coming months, the Fed banks plan to use research conclusions and stakeholder feedback to prepare and share a roadmap for payment system improvements.

*Source: CUNA News Now*



### [Training & Events Calendar](#)

#### **November 4 – 6**

[Regulatory Compliance School - Phoenix](#)

#### **[November 19](#)**

[Webinar: Robbery Preparedness for All Staff](#)

#### **[November 25](#)**

Webinar: [Ability to Repay & Qualified Mortgages: Lessons Learned the Hard Way & 2015 Changes](#)

## **[CUNA Schools and Webinars](#)**

### **[November 7](#)**

[Information & Technology Compliance eSchool](#)

### **[December 12](#)**

[Webinar: IT Compliance & Enterprise Risk Management](#)

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

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