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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.

Does your plan address developing the procedures and training necessary when your members shop for settlement services?

Check out today's lead article below.

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

December 12, 2014

Shopping for Settlement Service Providers

Since it is the holiday season it seems like a good time to talk about shopping....for settlement service providers. In preparing for the new TILA-RESPA rule credit unions will have to decide if they will allow their members to shop for settlement service providers. Before making the decision and developing the process, they need to be aware of the requirements related to allowing members to shop.

A credit union permits a member to shop for a settlement service if the credit union permits the member to select the provider of that service, subject to reasonable requirements. So the question is what are reasonable requirements? The commentary provides clarification on this question. The credit union is allowed to impose reasonable requirements regarding the qualifications of the provider. For example, the credit union may require that a settlement agent chosen by the member must be appropriately licensed in the relevant jurisdiction. If however, the credit union requires the member to choose a provider from a list of servicers provided by the credit union, the credit union is not permitting the member to shop for a settlement service.

The changes to the TILA-RESPA rule include specific disclosure requirements the credit union needs to follow when allowing its members to shop for service providers. The first disclosure requirement to be aware of involves the identity of the settlement services. The credit union is required to identify the settlement services for which the member is permitted to shop on the loan estimate form.

The second disclosure requirement involves providing the member with a written list identifying available providers of settlement services. The credit union is required to identify at least one available provider for each settlement service for which the member is permitted to shop. The settlement servicers provided on the written list must correspond to the settlement services for which the member may shop. It is important to note the credit union does not comply with the identification requirements unless it provides sufficient information to allow the member to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. Also, a credit union does not comply with the availability requirement if it provides a written list

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consisting of only settlement service providers that are no longer in business or that do not provide services where the member or property is located. The credit union may also identify on the written list providers of services for which the member is not permitted to shop, provided that the credit union clearly and conspicuously distinguishes those services from the services for which the member is permitted to shop. In addition, the regulation does not prohibit credit unions from including affiliates on the written list, but if the credit union includes affiliates they must also comply with the requirements under 12 CFR 1024.15, affiliated business arrangements. In addition, it should be noted that the written list is a “referral” under 12 CFR 1024.14(f) and the credit union would be subject to those requirements as well. This written list must be provided separate from the loan estimate disclosures but is required to be delivered or placed in the mail not later than the third business day after the credit union receives the member’s application.

The third requirement relates to the disclosure that needs to be included on the written list of providers. The regulation requires the credit union to include on the written list of providers a statement that the member may choose a provider that is not included on that list. The regulation allows but does not require the credit union to include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider.

If the credit union is planning on allowing its members to shop for service providers it needs to be aware of all of the requirements so it can develop an adequate process and training plans to comply with all of the requirements associated with allowing its members to shop for settlement services.

Compliance News

New BSA/AML Exam Manual

A revised Bank Secrecy Act/Anti-Money Laundering (BSA/AML) examination manual was unveiled December 3 by the Federal Financial Institutions Examination Council (FFIEC).

The updates clarify supervisory expectations regarding compliance and incorporate regulatory changes since the manual was last updated in 2010.

The [revision](#) was conducted by the National Credit Union Administration, along with the Federal Reserve Board, Federal Deposit Insurance Corp., Office of the Comptroller of the Currency of the State Liaison Committee—all members of the FFIEC. The Financial Crimes Enforcement Network (FinCEN), BSA administrator and Office of Foreign Assets Control collaborated on the revisions, which incorporated comments from the financial services industry and examination staff.

Some of the significant revisions include:

- New suspicious activity report (SAR) e-filing requirements, guidance on the extension of SAR filing for continuing activity, clarification of prohibitions on disclosing a SAR and guidance on sharing SARs with affiliates;
- Currency transaction reporting (CTR): Revised to incorporate new CTR e-filing requirements and new guidance issued by FinCEN since 2010 related to currency transaction aggregation for businesses and exemptions;
- Clarified monitoring and reporting obligations under the BSA for international transportation of currency or monetary instruments;
- Incorporated NACHA, the Electronic Payments Association modifications related to international automated clearing house transactions and further defined third-party service providers;
- Replaced electronic cash section and included an expanded discussion of risk factors and risk mitigation related to prepaid access; and
- Incorporated new FinCEN regulations for money services businesses (MSB) related to certain foreign-located persons engaging in MSB activities; new regulations related to prepaid access programs; and guidance regarding virtual currency administrators and exchangers.

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Ability to Repay – Cure Provisions After Loan Consummation

Credit unions that make closed-end consumer loans secured by a dwelling must comply with Consumer Financial Protection Bureau’s (CFPB) new Ability-to-Repay/Qualified Mortgage (ATR/QM) Rule for loan applications received on or after January 10, 2014. When a credit union complies with the Ability to Repay rules it has certain protections from legal liability. The rule requires the credit union assess a member’s ability to repay for virtually all closed-end residential mortgage loans secured by the member’s dwelling.

One criterion of a Qualified Mortgage (QM) is that the consumer must not be required to pay “points and fees” in excess of 3% of the loan amount (for loans of \$100,000 or more, with tiered thresholds applying to smaller loans).

What Happens if the Points and Fees Cap is exceeded inadvertently after consummation?

The CFPB allows for a post-consummation cure for loans that exceed the points and fees limit for a Qualified Mortgage so the safe harbor provisions of the regulation will still apply. Regulation Z provides credit unions with the ability to refund points and fees that exceed the applicable QM limit, with interest, so that the mortgage can still be considered a QM. To be able to use the cure provision the following conditions must be met:

- The loan has to meet all of the other QM criteria;
- The loan refund has to be made to the member 210 days after consummation and prior to the occurrence of any of the following events:
 - Any type of action by the borrower in connection with the loan;
 - Any written notice from the borrower that the transaction’s total points and fees exceed the applicable limits; or
 - The borrower becomes 60 days past due on their loan.
- The credit union has policies and procedures to address a review of certain mortgage loans to determine if points and fees exceed the applicable limit for a Qualified Mortgage and subsequently addresses the refund to the borrower in accordance with the regulations;
- The credit union issues the borrower a refund in a manner mutually agreeable to the borrower and

According to the FFIEC, credit unions should direct questions about the revisions to the NCUA.

Source: CUNA

Judge Denies Target's Motion to Dismiss Data Breach Lawsuit

A U.S. District judge has denied a motion from Target to dismiss the lawsuit against the company as a result of last year's data breach.

U.S. District Court Judge Paul Magnuson said Tuesday that three of the four counts in the plaintiff's complaint against Target will stand.

"The Credit Union National Association is encouraged by the positive development in this case," said Eric Richard, CUNA's general counsel. "Although any recovery for credit unions from this litigation remains uncertain and potentially years away, we are glad the court understands the basic reality that merchants owe a duty of care to financial institutions. CUNA will continue to work with litigators across the country to pursue every legal avenue for credit unions as a result of the failure of merchants to safeguard the data of their customers."

The plaintiffs, which include a number of financial institutions and at least one credit union, have claimed Target:

- Was negligent in failing to provide sufficient security to prevent the hackers from accessing customer data;
- Violated Minnesota's Plastic Card Security Act (PCSA), which states that "Whenever there is a breach of the security of the system of a person or entity that has violated this section ... that person or entity shall reimburse the financial institution that issued any [credit or debit cards] affected by the breach for the costs of reasonable actions undertaken by the financial institution as a result of the breach;
- Was negligent by violating the PCSA; and
- Failed to inform plaintiffs of its insufficient security, which constitutes a negligent misrepresentation by omission.

According to Magnuson's ruling, "Plaintiffs have plausibly pled a claim for negligence, a violation of the PCSA, and negligence per se. Plaintiffs failed to plead reliance; however, and therefore their negligent misrepresentation claim must be dismissed without prejudice."

A CUNA survey identified that after the Target breach, credit unions reissued roughly 4.6 million credit and debit cards. Credit unions not only covered the cost of fraud, but also the costs of blocking transactions, reissuing cards, increasing staff at call centers and monitoring members' accounts. The per-card cost was approximately \$5.68 for the Target breach.

Source: CUNA

FHA Clarifies: New Mortgage Fees to Apply to New Mortgages Only

Housing officials and lending groups have been told that new U.S. Department of Housing and Urban Development (HUD) fees on mortgages will apply only to new loans, according to a report from *Politico*.

A provision in this year's Transportation, HUD and Related Agencies Appropriations Act (S. 2438) would charge lenders an administrative support fee. The fee would fund an enhanced quality assurance program for single-family loans, and it was estimated that it would raise approximately \$30 million per year.

The Credit Union National Association joined with nine other financial services organizations last month in [writing a letter](#) to Senate and House leadership expressing concerns with the provision, particularly that mortgages originated last year would be included in the fee.

According to *Politico's* report, Obama administration officials have informed stakeholders that the fees would only be collected on new loans, not past mortgages. The cost for the fees, expected to be passed on to homebuyers, is estimated to be \$40 for every \$100,000 borrowed.

credit union, and in an amount that is not less than the sum of the following:

- o The dollar amount by which the transactions' total points and fees exceeds the applicable QM limit; and
- o Interest on the dollar amount, calculated using the contract interest rate applicable during the period from consummation until the payment is made to the borrower.



The [CUNA Regulatory Advocacy Report](#) 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. You can view the current report and past reports from the archive.

Be sure to visit CUNA's [Risk-Based Capital blog](#) for the latest from CUNA staff and guest bloggers.

Advocacy Highlights

Federal Reserve Board Approves Changes to Reserve Bank Posting Rules for ACH and Commercial Checks

The Federal Reserve Board (Fed) approved [new rules](#) for posting automated clearing house (ACH) and commercial check transactions. The new plan changes the times when the Reserve Banks will post ACH debit transactions and commercial checks that are processed overnight. The Fed noted the changes, adopted as originally proposed, are intended to enhance the efficiency of the payments system. The changes "to these posting rules are intended to align them with current operations and processing times and to strategically position the rules for future advancements in the speed of clearing and settlement."

Under the new set of rules, ACH debit transactions processed overnight will post at 8:30 AM ET to banks' Federal Reserve accounts. The change makes the posts better align with the time that ACH credit transactions post and is 2 1/2 hours earlier than the 11 AM ET time set by the Fed's former rule. For commercial checks, the Fed adopted moving the posting time for receiving most credits for deposits and debits for presentments to 8:30 AM ET, and establishing two other posting times at 1:00 PM and 5:30 PM ET. The posting rule changes for ACH debit and commercial check transactions will become effective July 23, 2015.

CUNA had urged the Fed to minimize the costs and impact on credit unions, corporate credit unions, and other payment providers that may be affected, and to provide at least six months or more for implementation. The Fed cited concerns from smaller institutions and credit unions, including CUNA's comment letter, and performed additional analysis to address concerns regarding smaller institutions. In addition, last week, the agency adopted a set of principles for establishing future posting rules for the Reserve Banks' same-day ACH

Source: CUNA



[Training & Events Calendar](#)

December 15

Webinar: [Managing the Force-Placed Flood & Hazard Insurance Processes](#)

December 16

Webinar: [Denied Loan Requirements: Consumer, Commercial & Residential](#)

December 17

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

January 6

Webinar: [CFPB Rules for Mortgage Loan Originator Compensation](#)

January 13

Webinar: [HMDA: What to Know Now & What's on the Horizon?](#)

CUNA Schools and Webinars

January 21

Webinar: [BSA Training for the Frontline and Beyond](#)

January 21

Webinar: [2015 ACH Rule Changes](#)

January 22

Webinar: [Service Members Civil Relief Act](#)

service. It also adopted [companion amendments](#) to Regulation J.

Source: CUNA



[Compliance Calendar](#)

[December 25](#)

♦ [Christmas Day – Federal Holiday](#)

[December 31](#)

♦ [SAFE Act Audit Deadline](#)

[December 31](#)

♦ [ACH Compliance Review Deadline](#)

[January 23](#)

♦ [5300 Call Report Due to NCUA](#)

CUNA Comment Calls – Due Dates on Proposed Rules

December 1, 2014~CFPB

[Policy on No Action Letters](#)

December 19, 2014~NCUA

[Proposed Interagency Flood Insurance Rule](#)

December 30, 2014~NCUA

[Proposed Corporate Credit Unions Rule](#)

January 1, 2015~IRS

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

January 1, 2015~FHFA

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

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](#)

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

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