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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.

Has your credit union identified all personnel and vendors that will be impacted by the TILA-RESPA Integrated Disclosure Rule?

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

December 5, 2014

Compliance News

CFPB Issues New Mortgage Servicing Proposed Rule

Last week, the CFPB issued a new proposed mortgage servicing rule, which would require additional measures for credit unions in complying with the agency's existing mortgage servicing rules. The original mortgage servicing rules became effective January 10 of this year. The proposed rule is 492 pages long, and would:

- Require servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan:** Currently, a mortgage servicer must give the borrower certain foreclosure protections, including the right to be evaluated under the CFPB's requirements for options to avoid foreclosure, only once during the life of the loan. Under the proposed rule, servicers would have to give those protections again for borrowers who have brought their loans current at any time since the last loss mitigation application.
- Expand consumer protections to surviving family members and other homeowners:** If a borrower dies, CFPB rules currently require that servicers promptly identify and communicate with family members, heirs, or other parties, known as "successors in interest," who have a legal interest in the home. The proposal would expand the circumstances in which consumers would be considered successors under the rules to include instances when a property is transferred after a divorce, legal separation, through a family trust, between spouses, from a parent to a child, or when a borrower who is a joint tenant dies.
- Require servicers to notify borrowers when loss mitigation applications are complete:** The proposal would require servicers to notify borrowers promptly that the application is complete, so that borrowers know the status of the application and their protections.
- Protect struggling borrowers during servicing transfers:** The proposal clarifies that generally a transferee servicer must comply with the loss mitigation requirements within the same timeframes that applied to the transferor servicer. If the borrower's application was complete prior to the transfer, the new servicer generally must evaluate it within 30 days of when the prior servicer received it. For involuntary transfers, the proposal would give the new servicer at least 15 days after the transfer date to evaluate a complete application. If the new servicer

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needs more information in order to evaluate the application, the borrower would retain some foreclosure protections in the meantime.

- **Clarify servicers' obligations to avoid dual tracking and prevent wrongful foreclosures:** The rules currently prohibit a servicer from proceeding to foreclosure once they receive a complete loss mitigation application from a borrower more than 37 days prior to a scheduled sale. The Bureau is proposing to clarify what steps servicers and their foreclosure counsel must take to protect borrowers from a wrongful foreclosure sale; servicers who do not take reasonable steps to prevent the sale must dismiss a pending foreclosure action.
- **Clarify when a borrower becomes delinquent:** The proposal would clarify that delinquency, for purposes of the servicing rules, begins on the day a borrower fails to make a periodic payment. Under the proposal, when a borrower misses a payment but later makes it up, if the servicer applies that payment to the oldest outstanding periodic payment, the date of delinquency advances. The proposal also would allow servicers the discretion, under certain circumstances, to consider a borrower as having made a timely payment even if the borrower's payment falls short of a full payment by a small amount.
- **Provide more information to borrowers in bankruptcy:** Currently, servicers do not have to provide periodic statements or loss mitigation information to borrowers in bankruptcy. The proposal would generally require servicers to provide periodic statements to those borrowers, with specific information tailored for bankruptcy. Servicers also currently do not have to provide certain disclosures to borrowers who have told the servicer to stop contacting them under the Fair Debt Collection Practices Act. The proposal would require servicers to provide written early intervention notices to let those borrowers know about loss mitigation options.

The proposal would make additional changes including providing flexibility for servicers to comply with certain force-placed insurance and periodic statement disclosure requirements. The changes would clarify several early intervention, loss mitigation, information request, and prompt crediting of payment requirements, as well as the small servicer exemption. Further, the proposal would exempt servicers from providing periodic statements under certain circumstances when the servicer has charged off the mortgage. CUNA will be posting a Regulatory Call to Action shortly with more details on the proposal, which will have a 90-day comment period from the date the rule is published in the Federal Register. Click [here](#) for a summary of the proposal.

Source: CUNA

Credit Union Fined for BSA Violations – What CU's Should Know

A credit union was recently fined \$300,000 for Bank Secrecy Act violations. The over \$3 million credit union admitted it committed numerous anti-money laundering failures for several years. The violations involved transactions from known high-risk areas such as Central America, the Middle East and Mexico, according to an assessment of civil penalty filed recently by the Financial Crimes Enforcement Network.

Further investigation revealed the cooperative had contracted with a third-party vendor to provide services and sub-accounts to numerous money services businesses in locations outside its field of membership. The credit union willfully violated BSA reporting and recordkeeping requirements, including failure to comply with the USA PATRIOT Act regulations that require financial institutions to search their records to locate accounts and transactions of persons that may be involved in terrorism or money laundering, FinCEN said.

The \$300,000 fine came with a warning from federal officials that risky money services business customers are **flocking to smaller financial institutions** because big banks have increased scrutiny. "When a small institution opens its doors to the world, takes on greater risks than it can manage, and puts profits before AML controls, bad actors are bound to take advantage," FinCEN Director Jennifer Shasky Calvery said in a press release announcing the penalty.

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Bank Secrecy Act – Compliance Program

Credit unions must establish and maintain a written compliance program for fulfilling the requirements of the BSA that includes at least: (1) a system of internal controls; (2) designation of an individual to coordinate/monitor BSA compliance; (3) independent testing; and (4) training of appropriate personnel. In addition, an effective BSA compliance program should include written policies and procedures designed to detect and prevent money laundering activities. Failure to comply with the requirements of BSA and its implementing regulations can result in both civil and criminal penalties.

Part 748 of the NCUA Rules and Regulations (§741.214 for state-chartered credit unions by reference) requires all credit unions to establish and maintain procedures reasonably designed to assure and monitor their compliance with the BSA and its implementing regulations. This includes establishing an effective Customer Identification Program (CIP) that is part of the overall BSA program. A credit union must develop and administer a program which assures and monitors compliance with BSA record keeping and reporting requirements. Such a program also can protect a credit union against possible criminal and civil penalties and asset forfeitures. Section 748.2 establishes four minimum requirements for a compliance program.

At a minimum, a credit union's internal compliance program must be written, approved by the board of directors, and noted in the board's meeting minutes. The program must include:

- A system of internal controls to ensure ongoing compliance;
- Independent testing of compliance;
- Daily coordination and monitoring of compliance by a designated person; and
- Training for appropriate personnel.

Internal Controls

Credit unions must have appropriate internal control procedures to allow them to detect money

Federally chartered credit unions are required to designate a person responsible for ensuring day-to-day compliance with BSA requirements, but this credit union failed to designate a person responsible to oversee BSA compliance, and no staff member was assigned or technically competent to oversee ongoing compliance efforts, FinCEN said.

“The staff did not have sufficient resources or technical expertise to administer a program capable of ensuring compliance with the BSA,” FinCEN said. “These MSBs were located outside of its geographic field of membership and were engaged in high-risk activities, such as wiring millions of dollars per month to high-risk foreign jurisdictions,” the FinCEN document said.

The credit union neglected AML compliance responsibilities and lacked sufficient staff expertise and technical infrastructure to sufficiently monitor the vendor’s contract, the agency said.

Source: Credit Union Times

Advocacy Highlights

CUNA Seeks Input on NCUA’s Proposed Corporate Rule

CUNA is asking credit unions to send input on NCUA’s pending corporate credit union proposal. The proposed rule would make numerous changes to the definition section of part 704 and makes other more substantive changes to several sections. According to NCUA, it is meant to “streamline and clarify” the corporate credit union rule while adding a measure of regulatory relief. Click [here](#) for CUNA’s Regulatory Comment Call on the proposal.

Military Lending Act Proposal

The Department of Defense (DOD) recently issued a proposal to amend its rule that implements the Military Lending Act (MLA). The proposal would also amend provisions of DOD’s rule regarding the manner in which a creditor can assess whether a consumer is a “covered borrower.” In addition, the proposal would modify disclosures that a creditor must provide a covered borrower, as well as implement enforcement provisions of the MLA.

Source: CUNA



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 current reports 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



[Training & Events Calendar](#)

December 8

Webinar: [New CFPB Rules for Annual Privacy Notices: Effective Immediately](#)

December 9

Webinar: [Residential Appraisal Review](#)

December 10

Webinar: [Self-Examination for Fair Lending Compliance](#)

December 16

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

laundering. These procedures must provide, among other things, a credit union with the ability to identify and report: (1) currency transactions in excess of \$10,000 (2) transactions suspicious in nature.

Senior management responsibilities for internal controls should demonstrate their commitment to compliance by:

- Establishing a comprehensive compliance plan that is approved by the board of directors and fully implemented by credit union staff.
- Instituting a requirement that senior management be kept informed of compliance efforts, audit reports, identified compliance deficiencies, and the corrective action taken.
- Making BSA compliance a condition for employment.
- Incorporating compliance with the BSA and its implementing regulation into job descriptions and performance evaluations of credit union personnel.

Independent Testing

Compliance with the BSA should be independently tested at least annually by the internal audit department, outside auditors, or consultants. The audit program should, at a minimum, be able to:

- Attest to the effectiveness of internal procedures for monitoring compliance with the BSA by, for example:
 - Sampling large currency transactions traced to CTR filings;
 - Testing the validity and reasonableness of exemptions granted; and
 - Reviewing a sample of SARs filed for completeness and accuracy.
- Assess employees’ knowledge of regulations and procedures.
- Assess adequacy of training programs.

Audit findings should be incorporated into a report for senior management and board review. Appropriate follow-up should be ensured.

Compliance Officer

A credit union must designate a credit union employee as the BSA compliance officer. This officer should have day-to-day responsibility for the BSA compliance program.

Training

Senior management must ensure that appropriate credit union personnel are trained in all aspects of the regulatory requirements of the BSA and the credit union’s internal policies and procedures to ensure compliance. Under BSA, “appropriate” credit union personnel to train will include all staff, including Board and Supervisory Committee members.

An effective training program includes provisions to

December 17

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

January 6

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

CUNA Schools and Webinars

December 8-11

[Enterprise Risk Management Certification Institute](#) – Las Vegas

December 12

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

2014 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](#)

ensure that:

- All credit union personnel who have contact with members – tellers, member service representatives, lending officers, etc. – receive appropriate training.
- Such training is ongoing and incorporates current developments such as new and different money laundering schemes involving credit unions. It also can include examples of money laundering cases, tailored to the audience, and the ways in which such activities can be detected or resolved.



2014 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](#)

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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