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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.

Have you reviewed, discussed and evaluated implementation plans of third parties?

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

February 13, 2015

Compliance News

Data Security Efforts Heat Up in Congress and in State Legislatures

Congressional Efforts

The House Energy and Commerce Committee's Subcommittee on commerce, trade and manufacturing held a hearing entitled "What are the Elements of Sound Data Breach Legislation?" Preceding the hearing CUNA and six other financial services trade associations sent a letter for the record outlining principles which should be included in data security legislation.

CUNA supports data security legislation which includes the following principles:

1. Strong national data protection and consumer notification standards with effective enforcement provisions must be part of any comprehensive data security regime, applicable to any party with access to important consumer financial information.
2. Banks and credit unions are already subject to robust data protection and notification standards. These Gramm-Leach-Bliley Act (GLBA) requirements must be recognized.
3. Inconsistent state laws and regulations should be preempted in favor of strong Federal data protection and notification standards.
4. In the event of a breach, the public should be informed where it occurred as soon as reasonably possible to allow consumers to protect themselves from fraud. Banks and credit unions, which often have the most direct relationship with affected consumers, should be able to inform their customers and members about the information regarding the breach, including the entity at which the breach occurred.
5. Too often, banks and credit unions bear a disproportionate burden in covering the costs of breaches occurring beyond their premises. All parties must share in protecting consumers. Therefore, the costs of a data breach should ultimately be borne by the entity that incurs the breach.

The hearing witnesses were in nearly complete agreement that a federal standard should preempt the patchwork of state legislation and regulation for notification requirements. The Committee also asked questions about legislating a particular technology, to which the panel agreed that specific technology, such as chip and pin, should not be included as a requirement in legislation.

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Data security has received a significant amount of attention in the media over the past year, following major merchant breaches; the spotlight continues to shine on the issue this week as the Senate Commerce Committee holds a hearing. CUNA will submit a statement for the record for the Senate hearing and we will continue to work with Members in both chambers so that legislation on this issue addresses the principles we have outlined.

In the States

Last week, new data security legislation was introduced in New Mexico (House 217) and Hawaii (Senate 1186). In addition, New York Attorney General Eric Schneiderman announced a legislative proposal that would strengthen protections for private information by expanding state law to cover e-mails, passwords and health data, require companies to implement data security measures, and notify consumers and employees in the event of a breach. If enacted, the Attorney General said that the "new law will be the strongest, most comprehensive in the nation."

Source: CUNA

NCUA Fair Lending Webinar

The NCUA will host a free webinar, "[Fair Lending and HMDA Compliance](#)," on February 20, 2015, beginning at 2pm ET. Representatives of the NCUA Office of Consumer Protection will provide an overview of the agency's fair lending examination program. They will also outline best practices that can help credit unions of all asset sizes better comply with fair lending requirements. In addition, webinar participants will have the opportunity to learn more about reporting requirements under the Home Mortgage Disclosure Act (HMDA), as well as the most common reporting errors made by credit unions.

Source: NCUA

Agencies Believe Credit Unions Well-Suited to Expanding Small Business Loans

The National Credit Union Administration will team up with the U.S. Small Business Administration on a series of initiatives aimed at helping small businesses connect with local credit unions to get better access to capital.

NCUA and SBA have signed a Memorandum of Understanding (MOU) outlining a series of educational initiatives during the next three years that include webinars, examiner training on SBA programs, data resources and media outreach. The MOU notes that NCUA and SBA agree on the importance of providing access to loan programs for small businesses, especially underserved borrowers. The primary objective of this collaboration between NCUA and SBA is increasing the awareness of credit unions to programs offered by SBA.

"This is a tremendous opportunity for credit unions and small business owners," NCUA Board Chairman Debbie Matz said. "SBA-guaranteed loans made by credit unions provide needed capital for existing small businesses and start-ups that might have difficulty obtaining loans from other institutions. With a significant portion of principal guaranteed by the full faith and credit of the United States government, SBA loans rank among credit unions' safest loans. There is a vast untapped capacity for credit unions to make more SBA loans. This initiative will help us unlock that capacity and put it to work for credit unions, their members and their communities."

"It's about to become easier for credit unions to help their members finance small business ventures," SBA Administrator Maria Contreras-Sweet said. "It's a natural fit; credit unions are some of this nation's most trusted mission-based lenders. This partnership will have another benefit in that it will serve the needs of encore entrepreneurs, people who've worked all their lives in one career who decide to strike out on their own. SBA will backstop the loans, and credit unions' long-term relationships with their members put them in an ideal position to assess their character and creditworthiness."

SBA-guaranteed loans are designed to provide credit to business owners who

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@mwcu.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



Power of Attorney

A power of attorney is a writing that appoints and authorizes a person to act on behalf of another person in order to assist that person in handling his or her business and/or personal affairs. The person who creates a power of attorney is called a principal, and the person who is granted the power of attorney is referred to as being the principal's attorney in fact.

There are two primary reasons that a principal creates and appoints an attorney in fact to act under a power of attorney on behalf of the principal: 1) to assist the principal with his or her business and/or personal affairs because the principal is physically and/or mentally incapable of transacting those business and affairs for himself or herself, or 2) to allow the attorney in fact to attend to specific transactions on behalf of the principal, which the principal wants to delegate to the attorney in fact.

Types of Powers of Attorney: Complete & Limited

There are essentially two different types of powers of attorney: general or complete powers of attorney, and limited powers of attorney. Under a general or complete power of attorney the attorney in fact is granted the authority to act on behalf of the principal generally in any manner that the principal could (i.e., there are no limitations on the agent's power to act on behalf of his or her principal). Under a limited power of attorney the attorney in fact's authority is specifically designated (and thus limited) to authority expressly stated in the power of attorney.

Furthermore, complete and limited powers of attorney can be durable or nondurable. A durable power of attorney means that the attorney in fact's authority is not terminated by the principal's disability or incompetence, or is triggered by the principal's disability or incompetence. A nondurable power of attorney means that the attorney in fact's authority is terminated by the principal's disability or incompetence.

Creation of a Power of Attorney

Powers of attorney become effective at the pleasure of the principal. Typically they become

might not qualify for standard business loans. The guaranteed portions of SBA-backed loans do not count against credit unions' statutory cap on member business lending. SBA guarantees range from 50 percent up to 90 percent of the principal of each loan, depending on the loan type.

NCUA and SBA have scheduled a joint webinar for credit union officials and NCUA staff to learn more about SBA lending. The webinar is scheduled for March 4 at 3 pm ET. Details will be released in the coming weeks.

Source: NCUA

'Significant' Concerns with Same-Day ACH Plan, CUNA Says

While same-day automated clearinghouse (ACH) payments would create a faster payments option, CUNA has significant concerns about the same-day ACH proposal issued by NACHA--The Electronic Payments Association. The proposal would enable the option for same-day processing of virtually any ACH payment.

Currently, most ACH payments are settled on the next business day. Under the proposal, all Receiving Depository Financial Institutions (RDFIs) would be required to receive same-day ACH payments in order to provide certainty to originators desiring same-day processing and settlement.

CUNA continues to have "significant concerns regarding the cost and impact associated with the proposed requirement that all RDFIs accept same-day ACH payments," reads CUNA's [comment letter](#). "RDFIs, including smaller credit unions, will incur increased costs in numerous areas under the proposal and will generally receive only a limited number of same-day ACH transactions and limited benefits."

CUNA also made several recommendations to improve the proposal, including:

- Minimizing costs on RDFIs, originating depository institutions, corporate credit unions and other processors that would be affected. NACHA should also continue to evaluate alternatives that could lower costs, such as an exemption or opt-in process for small financial institutions;
- Providing delayed compliance deadlines, particularly for small credit unions and other small financial institutions, to implement the rule;
- Providing new settlement schedules to accommodate smaller institutions. The proposal would have a morning window deadline of 10 am ET, with settlement occurring at noon, and an afternoon window deadline of 3 pm ET, with settlement occurring at 5 pm ET. CUNA asks for a transition period of at least 18 months for smaller credit unions with limited staff to adjust to the afternoon window;
- Excluding certain high-risk transactions from same-day ACH, such as international transactions and individual transactions greater than \$25,000; and
- Continuing to coordinate on same-day ACH and other faster payments issues with the Federal Reserve Banks, U.S. Department of the Treasury, financial institutions and their trade associations, the National Credit Union Administration and other key stakeholders.

Source: CUNA News Now

Advocacy Highlights

Reminder: RBC2 Comment Deadline

[Comments](#) for the revised risk-based capital plan proposed Jan. 15 by the National Credit Union Administration are **due to CUNA March 8th**.

The Credit Union National Association has noted "significant improvements" in the agency's revised plan and is seeking credit union comment on how the new proposal will affect their operations, and what further improvements are necessary.

See related story for more details: [RBC2 changes, improvements, outlook detailed in CUNA webinar](#).

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

effective when signed by the principal and upon the agent's consent to accept the responsibilities enumerated in the power of attorney. Powers of attorney can take effect immediately, at some future date, or upon the occurrence of a specific event. The effective date of the POA should be apparent from the document itself.

Duration of a Power of Attorney

If not addressed in the document, a power of attorney is effective until the incapacitation or death of the principal. However, quite often the authority of the agent to act under a power of attorney is terminated by a written provision in the document itself. Determining when a power of attorney is terminated is more difficult than determining when the power of attorney is effective (which usually is apparent from the document itself), since it may require careful study of the power of attorney in addition to knowledge of specific facts or circumstances that affect the/pertain to the effectiveness of the power of attorney.

Termination of a Power of Attorney

As stated above, powers of attorney remain in force until they are terminated by the principal, by the occurrence of an event or condition stated in the power of attorney, by the incapacity or disability of the principal if the power of attorney is nondurable, and finally by the death of the principal. If a conservator is appointed for the principal by a probate court, the conservator usually has the right to revoke the durable power of attorney. Credit unions are advised to consult with their attorney if there is a conflict on this issue.



[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](#)

April 24

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



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

- Reminder: CFPB is Still Accepting Nominations for Open Council Positions
- CUNA Seeks Comments on CFPB's Small Creditor and Rural Areas Proposed Rule
- CUNA Supports NACHA's Objective but Cites Significant Concerns with Same Day ACH Proposal
- NCUA to Live-Stream Next Board Meeting
- FFIEC Revises Business Continuity Planning Booklet

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



[Training & Events Calendar](#)

February 18

Webinar: [New BSA Officer Training](#)

February 19

Webinar: [Compliance Rules Lenders Must Know](#)

February 24

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

February 25

Webinar: [Top 10 Compliance Mistakes in Advertising](#)

March 12

Webinar: [Enterprise Risk Management – The Roles of the Board and Supervisory Committee](#)

March 25

Webinar: [TILA/RESPA Integrated Disclosure Line-by-Line – Part 1: Loan Estimate](#)

March 26 – 28

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

April 2

Webinar: [Opening Trust Accounts: Compliance, Documentation, Signing Authority & Deposit Insurance Issues](#)

April 15

Webinar: [CFPB Real Estate Loan Collection Rules for Mortgage Servicers](#)

April 22

Webinar: [TILA/RESPA Integrated Disclosure Line-by-Line – Part 2: Closing Disclosure](#)

April 28

Webinar: [Red Flags, Privacy & Ethical Considerations: Know Your Compliance Responsibilities](#)

April 30

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

CUNA Comment Calls – Due Dates on Proposed Rules

January 23, 2015~NACHA

[Same Day ACH Proposal](#)

February 23, 2015~CFPB

[Safe Student Account Scorecard](#)

March 1, 2015~NCUA

[Economic Growth and Regulatory Paperwork Reduction ACT \(EGRPRA\) Regulatory Review](#)

March 8, 2015~NCUA

[Risk Based Capital Proposal \(RBC2\)](#)

March 9, 2015~CFPB

[Prepaid Accounts](#)

March 16, 2015~CFPB

[Proposal Regarding Rural and Underserved Areas](#)

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

February 18

Webinar: [Expiring ITINs and Form W-8BEN](#)

February 19

Webinar: [Payments Systems Fraud for Compliance Staff](#)

March 11

Webinar: [Recognizing Financial Elder Abuse for the Frontline](#)

April 12 - 17

[Regulatory Compliance School – Las Vegas](#)

May 13

Webinar: [Cyber Crime - Detecting and Preventing a Corporate Account Takeover](#)

June 1 - 18

[CUNA Consumer Lending eSchool](#)

June 4

Webinar: [Home Equity Lending](#)