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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 built into your plan adequate time for testing the updates to the forms from your vendor?

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

March 13, 2015

Compliance News

NCUA Board Chairman Charts Five Areas Where Agency Will Act

Credit unions can look forward to regulatory relief in the coming year, National Credit Union Administration Board Chairman Debbie Matz said today.

“Since 2011, NCUA has streamlined and improved eight regulations to provide lasting relief for credit unions, but we’re not done yet,” Matz said. “I’m committed to making 2015 the year of regulatory relief.”

Matz described five areas in which NCUA will work to provide regulatory relief: supplemental capital, fields of membership, fixed assets, asset securitization and member business lending. This relief will help credit unions compete in a rapidly evolving marketplace. Matz made the comments during a keynote speech to the Credit Union National Association’s annual Governmental Affairs Conference. The full text of her speech is available online [here](#).

Counting Supplemental Capital

Matz said NCUA will respond to comments that, under current law, the agency could count certain forms of debt as supplemental capital for the risk-based capital ratio.

“I understand the need for supplemental capital in certain circumstances,” Matz said. “So I assure you: I am committed to allowing supplemental capital to be counted in full.”

To do so, Matz said NCUA will take three actions:

- Provide consumer protections;
- Change the order of Share Insurance Fund payout priorities to recognize that supplemental capital accounts are not insured; and
- Set prudent standards, such as minimum redemption periods, for credit unions to offer subordinated debt to supplement their risk-based capital.

Matz also said a working group she established is exploring ways to increase access to secondary capital for low-income credit unions this year. The group is discussing potential legislative and regulatory changes for raising supplemental capital.

“NCUA can allow certain forms of supplemental capital for both risk-based capital and low-income credit unions,” Matz said. “For credit unions without a low-income designation, legislation is required to allow supplemental capital to count toward the seven-percent net worth leverage ratio.”

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To address this issue, Matz said NCUA supports H.R. 989, the Capital Access for Small Businesses and Jobs Act.

Expanding Fields of Membership

NCUA will implement rule changes by the end of the year to make it easier for federal credit unions to expand their fields of membership.

“You should not be required to get approval from NCUA each and every time you want to add another group,” Matz said. “Last year, we proposed a rule designating seven categories of associations federal credit unions could automatically add to their fields of membership. This year, we would like to add even more automatic qualifiers.”

Matz said the Field of Membership Working Group she established is identifying obstacles to membership expansion and recommending rule changes to increase flexibility.

Removing the Fixed-Assets Limit

Next week, the NCUA Board will consider a proposed rule to eliminate the five-percent cap on fixed assets and authorize federal credit unions to set their own prudent limits.

“We all know over-concentration in fixed assets like buildings is dangerous,” Matz said. “Credit unions should prudently and deliberately make decisions about the level of assets to hold, but they should be able to do that without needless red tape. Decisions to upgrade your technology or your facilities should be your decisions to make—and yours alone.”

Permitting Asset Securitization

As the credit union system grows in size and complexity, many credit unions have adopted more sophisticated financial innovations. NCUA is responding to these changes with a proposal to allow large, qualified credit unions to securitize their assets.

“Securitization would permit these credit unions to tap new sources of liquidity and reduce interest-rate risk by converting fixed-rate assets to cash,” Matz said.

NCUA is now fine-tuning the proposal. Matz said she hoped the NCUA Board would approve a final rule later this year.

Easing Member Business Lending Burdens

Responding to credit union comments that the waiver process for business loans sometimes prevents them from making timely and prudent loans, NCUA plans to eliminate the need for such waivers.

“We’re going to move away from defining highly prescriptive, one-size-fits-all business loan underwriting requirements,” Matz said. “You know your members’ needs better than we do. Our business lending rules need to reflect that.”

NCUA will continue to provide business loan guidance and supervise effectively for sound commercial lending practices. Additionally, the agency will lift unnecessary limits on construction and development loans.

Matz concluded her remarks by reminding her audience she will always listen to stakeholders’ concerns and ideas about removing regulatory burdens.

“We will listen, and, where sensible, we will act,” Matz said. “Our number one goal is to keep the credit union system safe, sound and sustainable. You will have greater freedom in pursuit of that goal.”

Source: NCUA

Financial Regulators Issue Guidance Encouraging Youth Savings Programs, Address Frequently Asked Questions

Five federal financial regulatory agencies today issued [guidance](#) to encourage federally insured depository institutions to offer youth savings programs to expand the financial capability of young people. The guidance also provides answers to frequently asked questions related to the establishment of these programs.

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OFAC – Office of Foreign Assets Control

The Office of Foreign Assets Control (OFAC) is a division of the U.S. Treasury Department, which administers and enforces economic and trade sanctions against targeted foreign countries and their agents, terrorism sponsoring agencies and organizations, and international narcotics traffickers based on U.S. foreign policy and national security objectives.

How Does OFAC Affect Credit Unions?

All financial institutions, including credit unions, are required to block or "freeze" property and payment of any funds transfers or transactions involving blocked countries or individuals, and to report the "blocks" within 10 days of occurrence. These blocked countries and individuals appear on [OFAC's Specially Designated Nationals and Blocked Persons list](#), commonly referred to as the SDN list. Failure to block and report an illicit transfer may subject the credit union to civil fines, and possibly criminal penalties. Depending on the program, criminal penalties can include fines ranging from \$50,000 to \$10,000,000 and imprisonment ranging from 10 to 30 years for willful violations.

According to [NCUA Letter to Credit Unions 01-CU-25](#), a credit union must have policies and procedures in place for the purpose of complying with OFAC regulations and the various laws that OFAC is responsible for administering. However, the Letter does not indicate that there is any prohibition from combining it with the BSA policy. Therefore it appears that the credit union may incorporate the OFAC policy into your BSA policy, provided that the current BSA policy is in compliance with Part 748 of NCUA Rules and Regulations.

CU Compliance Connection – CFPB Integrated Mortgage Disclosure

The CFPB Integrated Mortgage Disclosure requirements are effective August 1, 2015. To be prepared for the changes, review the disclosures requirements by watching this CU Compliance Connection presentation. Click [here](#) for the video.

Advocacy Highlight

CUNA GAC: NCUA's Metzger Discusses Regulations, Cybersecurity, Risk-Based Capital

Many financial institutions already collaborate with schools to establish programs that allow students in elementary, middle and high school to open and manage savings accounts and to learn good savings habits early. Research indicates that school-based youth savings programs—when combined with financial education—can be effective in helping students to improve their long-term financial and education prospects.

The guidance does not create any new regulatory policy or establish new industry expectations.

This effort is consistent with the [“Starting Early for Financial Success”](#) focus of the Financial Literacy and Education Commission (FLEC). Congress created FLEC in 2003 to improve financial capability and education in the United States. The financial institution regulatory agencies are members of FLEC.

The interagency guidance is being issued by the Federal Reserve Board, Federal Deposit Insurance Corporation, U.S. Department of the Treasury’s Financial Crimes Enforcement Network, National Credit Union Administration, and Office of the Comptroller of the Currency.

Source: NCUA

FRB Releases Information on Its Upcoming Check Debit Transaction Code Changes

On December 1, 2014, the Federal Reserve Board of Governors announced [changes](#) to Part II of the Payment System Risk policy. These changes are designed to enhance the efficiency of the payment system, to align posting times with current operations and processing times, and to strategically position the rules for future advancements in the speed of clearing and settlement. These changes will become effective July 23, 2015.

However, there are several operational changes NACHA will be making effective on March 23, 2015 to the following Check debit transaction codes.

- 15040 and 30040 will no longer be used for any Check-related transactions
- 15090 will be used for all forward substitute check and non-imageable debits, and the description will change to Paper Presentment
- 30090 will be used for return substitute checks and non-imageable debits, and the description will change to Paper Return Deliveries
- 15130 will be used for forward PDF debits, and the description will change to PDF Presentments,
- 30110 will be used for return PDF debits, and the description will change to PDF Presentments

These changes will be reflected in the Account Management Guide in July 2015.

Source: Federal Reserve

OIG Gives NCUA a Pass in Data Breach Caused By Examiner Error

NCUA’s Office of the Inspector General has given the regulator a pass on its handling of the data breach last fall caused by examiner error.

News broke late last year that an NCUA examiner had lost a flash drive containing sensitive member information during an October 2014 examination at \$13 million-asset Palm Springs FCU. The incident drew the ire of many throughout the credit union industry, but many also praised the regulator for its handling of the matter and noted that everyone makes the occasional mistake.

The OIG’s 10-page report, [available here](#), focuses primarily on whether or not the regulator obfuscated the fact that an examiner was responsible for the breach by using the word “auditor” in lieu of “examiner” in a letter to PSFCU members, and NCUA’s response to the breach and its decision to not publically announce the breach on its website.

The report notes that PSFCU elected to use the terms “audit” and “auditor” rather than the more traditional “exam” before NCUA was consulted, choosing the word “audit” and variations of the word in order to avoid alerting “the possessor of the flash drive that ... it contained personally identifiable information (PII).” By using a more generic term, the report states, the CU and its counsel believed “that they

Whether the issue is regulatory modernization, security breaches or legislation, everyone in the credit union community can contribute to positive change, said National Credit Union Administration Board Vice Chairman Rick Metsger.

“All of us have a role,” Metsger said. “The financial services world is continuously evolving. Both you as service providers and we as regulators and insurers need to keep pace with the needs of American consumers. Concentrate on the things you can change. Help us design the best policy for America’s credit unions and your members.”

Metsger spoke to the annual Governmental Affairs Conference hosted by the Credit Union National Association. The text of Vice Chairman Metsger’s prepared remarks is available [here](#).

Metsger touched on several issues during his remarks, including plans to modernize regulations covering field of membership, fixed assets and member business lending; the importance of cybersecurity; and the agency’s proposed risk-based capital rule.

Discussing changes in field-of-membership rules, the Vice Chairman noted some states have been more progressive than the federal government in adapting to a changing marketplace, and he encouraged credit unions to become engaged in driving change.

“The biggest single issue where you can make a difference is to add your voice to my effort to modernize field-of-membership rules for federal charters,” Metsger said. “Modernizing field-of-membership regulations and statutes may be the most valuable issue for your credit union’s future—more so than any other effort in which you can focus your advocacy efforts. We can, and must, make progress in this area. I welcome input from the credit union community on how we should move forward.”

On the issue of NCUA’s fixed-assets rule, Metsger said he hopes the agency will complete work in the coming months to remove the current 5-percent limit on fixed assets and give credit unions decision-making power on facilities and technology purchases.

“We need to turn operational decisions that do not have an impact on safety and soundness over to you as directors and executive management,” Metsger said. “That’s where those business decisions belong.”

Addressing member business lending, Metsger said he supports both regulatory and legislative change to make it possible for credit unions to better meet the needs of small businesses in their communities.

could reduce the likelihood that the notification letter might alert an unwitting possessor of the flash drive of the valuable information it contained."

The report found that NCUA's decisions in regard to announcing the breach were influenced by the fact that the data was lost due to human error rather than something more sinister such as a hacking.

"While the credit union's failure to encrypt the data provided to NCUA staff was imprudent," the report quotes, "the facts as currently known indicate that NCUA staff failed to exercise proper care over the data in their custody."

OIG's Recommendations

The OIG report offered the following best practices for examiners as a result of the breach:

- Specialized information security training;
- Stressing the importance of situational awareness and consequences of non-compliance with NCUA policies; and
- NCUA should accelerate the implementation of its privacy program in order to increase end-user awareness of privacy-related issues.

NCUA has already undertaken those suggestions at varying levels, and the OIG is also conducting an audit to ensure that the regulator "has adequate controls in place to protect electronic [personally identifiable information] and sensitive credit union data."

The data breach occurred at approximately the same time CUNA sent a letter to NCUA urging it to increase the amount of technology used during exams as a way to streamline that process—something that some said could have helped prevent the data breach.

Source: CU Journal



[Training & Events Calendar](#)

March 18

Webinar: [Flood Insurance Compliance Review & Update](#)

March 25

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

April 2

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

April 7 – Denver

April 9 – Phoenix

[Mortgage Loan Originator Training](#)

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

Webinar: [BSA Compliance Series: Updating Your Credit Unions's BSA/AML/OFAC Risk Assessment](#)

May 14

Webinar: [Home Equity, HELOC & Second Lien Risk Management, Including Maturing](#)

Metsger described cybersecurity breaches as a problem that "has reached epidemic proportions." He said NCUA and credit unions must remain vigilant to threats. He also said retailers, not credit unions, should bear the responsibility and the cost when breaches occur at their locations.

Speaking to the agency's proposed rule on risk-based capital, Metsger called on credit unions to participate in the review-and-comment process.

"Our current risk-based capital system is broken and has to be fixed," Metsger said. "It fails to identify capital-constrained credit unions until it is too late to save them, so we need to adopt a new system. As we finalize that system, I encourage you to help us design the best policy for America's credit unions and your members."

Source: NCUA



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

- CUNA to Eleventh Circuit: Surcharging Poses Harm to Consumers, Payment System
- NCUA/SBA Hold Webinar on Small Business Lending
- NCUA to Hold Field-of-Membership Webinar
- CUNA Comments on CFPB Proposal to Temporarily Suspend Submissions of Credit Card Agreements

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



[Compliance Calendar](#)

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](#)

April 30

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

May 25

- [Memorial Day – Federal Holiday](#)

CUNA Comment Calls – Due Dates on Proposed Rules

March 1, 2015~NCUA

CUNA Schools and Webinars

April 1

Webinar: [New Accounts for the Frontline – Compliance Issues to Watch For](#)

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 1

[Webinar: Basics of Consumer Lending – Part 1](#)

June 4

Webinar: [Home Equity Lending](#)

June 8

Webinar: [Basics of Consumer Lending – Part 2](#)

June 11

Webinar: [Consumer Lending Compliance 101](#)

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

March 8, 2015~NCUA

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

March 9, 2015~CFPB

[Safe Student Account Scorecard](#)

March 9, 2015~CFPB

[Amendments to 2013 Mortgage Rules Under RESPA/TILA](#)

March 9, 2015~CFPB

[Prepaid Accounts](#)

March 16, 2015~CFPB

[Proposal Regarding Rural and Underserved Areas](#)

March 20, 2015~NCUA

[Capital Planning and Stress Testing – Schedule Shift](#)

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](#)

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