

92

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.

Is your plan on schedule, if not, has the deviation from schedule been approved by appropriate oversight management?

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

May 1, 2015

Compliance News

Settlement Agents and the TILA-RESPA Closing Disclosure

Beginning August 1, 2015, section 1026.38 of Regulation Z requires a “closing disclosure” form to be completed in connection with a closed-end consumer credit transaction secured by real property (other than a reverse mortgage). One of the information items to be included on the form is the “name of the settlement agent conducting the closing.” The term “settlement agent” is not defined by Regulation Z. The question of whether or not that information must be supplied when the credit union does not employ a third-party to conduct the settlement has come up several times. Neither the preamble to the final rule, nor the commentary provides a direct answer to the question. An attorney for the CFPB has stated his belief is that the credit union should include the credit union name as the settlement agent on page one of the closing disclosure and the name and contact information of the individual employee conducting the closing on page five of the closing disclosure, when a third-party settlement agent is not used by the credit union.

HUD Announces Changes to Distressed Asset Stabilization Program

HUD has announced significant changes to its Distressed Asset Stabilization Program (DASP). In an effort to better serve homeowners looking to avoid foreclosure, loan servicers will now be required to delay foreclosure for a year and to evaluate all borrowers for the Home Affordable Modification Program (HAMP) or a similar loss mitigation program. HUD is making additional improvements to the Neighborhood Stabilization Outcome (NSO) sales portion of DASP which are aimed at increasing non-profit participation. Updates include giving non-profits a first look at vacant properties, allowing purchasers to re-sell notes to non-profits, and offering a non-profit only pool.

Previously, loan servicers could foreclose 6 months after they received the loan and were encouraged, though not required, to assess a borrower’s qualifications for loss mitigation programs. Purchasers of the geographically targeted neighborhood stabilization pools have always been required to ensure that at least 50 percent of the loans in a pool achieve outcomes that help areas hardest hit by foreclosure avoid the neighborhood decline associated with numerous vacant properties.

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Click [here](#) for the complete announcement.

Source: HUD

Treasury's Fiscal Service Bureau to crack down on ACH errors

Financial institutions providing incorrect automated clearing house (ACH) enrollment information will be held liable by the U.S. Department of the Treasury's Fiscal Service Bureau.

The process has been detailed in a section of the Treasury's Greenbook, which serves as a guide for financial institutions receiving and sending federal government ACH payments.

According to the [update](#), if Fiscal Service determines that a recipient's ACH payment was misdirected because an institution submitted incorrect banking information as part of an enrollment, or because the payment was misdirected because of a fraudulent enrollment, a notice of direct debit will be submitted to the Originating Depository Financial Institution (ODFI).

The notice will specify the date and method of the erroneous enrollment or ACH change, and the list of payments and payment amounts for which the ODFI is liable. Upon receipt of the notice, the ODFI has 30 days to return the full amount of the payment via ACH, using the R06 return reason code.

If the full amount the ODFI is liable for is not available for return, the Fiscal Service will debit the institution's Federal Reserve account.

ODFIs are permitted to respond in protest to a notice within 30 days and must include documentation supporting the claim.

Source: CUNA

Deletions from the OFAC List

OFAC has announced the [removal](#) of several entries with the BURMA designation from the SDN List.

Source: US Department of Treasury

Prize-Linked Savings State Issues Brief

Prize-linked savings programs motivate people to save money by offering them prizes that are linked to their savings accounts. The concept of prize-linked savings was pioneered by Harvard Business School professor Peter Tufano and his non-profit, Doorways to Dreams Fund (D2D). Currently, eleven states expressly allow such programs: Michigan, Rhode Island, Maine, Washington, North Carolina, Nebraska, Maryland, Connecticut, Indiana, New York and Virginia.

For information on the legislation in other states, click [here](#).

Source: CUNA

CFPB Takes First Action Under Overdraft Opt-in Rule

Although the Consumer Financial Protection Bureau (CFPB) is not expected to take up consumer protection policy issues associated with overdraft programs until later this year, the bureau has [taken action](#) against a large Alabama-based bank for violating federal rules prohibiting charging overdraft fees to consumers who have not opted in to overdraft protection programs.

Federal rules enacted in 2010 state a consumer must opt in to certain overdraft programs to be covered by their protections for one-time debit and ATM transactions and charged a fee for their services.

CFPB alleges Regions Bank of Birmingham, Ala., did not always limit overdraft fees to bank customers that had specifically opted in to its programs. Regions Bank also is accused of charging overdraft and non-sufficient funds fees on certain products despite claims that it would not.

The CFPB announced that the bank has been fined \$7.5 million for illegal

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Advertising for Savings Promotions Raffle

A savings promotion raffle is a raffle conducted where the sole consideration required for a chance of winning a designated prize is the deposit of a specified amount of money in a savings account or other savings program offered by the credit union. Your state regulations provide information specific to this topic.

What other law(s) apply to savings promotion raffles?

For promotions sent to members through the mail, the Deceptive Mail Prevention and Enforcement Act prohibits the following:

- Claims that a member is a winner unless he/she has actually won a prize.
- Requirements that a member buy something to enter the contest or to receive future sweepstakes mailings.
- The mailing of fake checks that don't clearly state that they are non-negotiable and have no cash value.
- Seals, names or terms that imply an affiliation with or endorsement by the federal government.

InfoSight ([AZ](#), [CO](#), [WY](#))



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

- NCUA Hints at Possible Changes to Supplemental Capital in Latest Newsletter
- NCUA Testifies Before Congress on Regulatory Burdens



Compliance Calendar

April 24

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

May 16

- [IRS Form 990 Due](#)

May 25

- [Memorial Day – Federal Holiday](#)

July 3

- [Independence Day – Federal Holiday](#)

actions. The bureau noted that Regions already had refunded "hundreds of thousands of consumers" roughly \$49 million in fees, and that a consent order in the case requires the bank to fully refund all remaining consumers.

Regions Bank offers both overdraft protection services and products that consist of a loan to a consumer known as a deposit advance loan. The latter product allows the bank to claim repayment as soon as the next qualifying electronic deposit is received.

The CFPB found Regions Bank:

- Failed to obtain required opt-ins for certain consumers with linked savings and checking accounts. Regions never provided those consumers an opportunity to opt in for overdraft protections. Rather than declining ATM or one-time debit card transactions exceeding available account balances in the linked accounts, the bank charged customers a fee of up to \$36;
- Delayed fixing the violation until almost a year after discovering it in an internal review. The federal rules took effect in July and August 2010, but 13 months later a review found the violations. Not until April 2012 was the violation brought to the attention of senior executives, who reported the error to the CFPB. Additional unauthorized fees were also found to have been charged in early 2015; and
- Charged non-sufficient funds fees and overdraft charges to more than 36,000 consumers, totaling approximately \$1.9 million between November 2011 and August 2013, despite claiming it would not charge any such fees.

A CFPB [consent order](#) requires the bank to provide refunds to all remaining affected consumers, correct errors on credit reports and pay the associated fine.

The bureau also released a [consumer advisory](#) on overdraft issues.

Regions Bank, according to the CFPB, operates roughly 1,700 retail branches and 2,000 ATMs across 16 states. With \$119 billion in assets, it is one of the country's largest banks.

Source: CUNA

Advocacy Highlight

Small Entity Definition Proposal

The NCUA Board proposes to amend its [Regulatory Flexibility Act](#) (RFA) definition of small entity increasing the threshold from \$50 million in assets to \$100 million in assets.

The RFA requires federal agencies to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If a substantial number of small entities would be impacted, the RFA requires agencies to engage in a small entity impact analysis, known as an initial regulatory flexibility analysis (IRFA) for proposed rules and a final regulatory flexibility analysis (FRFA) for final rules.

This rulemaking effort is narrower in scope than NCUA's 2013 final rule that changed the asset threshold for the definition of small entity to the current \$50 million from \$10 million. That final rule changed the definition of "complex" credit union for prompt corrective action in Part 702 and revised the threshold for credit unions subject to NCUA's interest rate risk rule to \$50 million. NCUA's current risk-based capital proposal would change the definition of complex to \$100 million.

The other impact of this rule is on the asset threshold for obtaining services from NCUA's Office of Small Credit Union Initiatives (OSCUI) for credit unions with \$100 million or less in assets.

This proposal would amend Interpretive Ruling and Policy Statement (IRPS) 87-

July 18

- [Higher-Priced Mortgage Loans: Modified exemptions for loans secured by manufactured homes](#)

July 23

- [Changes to Posting Rules for ACH Transactions \(Federal Reserve\) Effective date](#)

July 24

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

August 1

- [CFPB: Know Before You Owe Disclosure - Effective Date](#)

August 1

- [CFPB: Integrated Mortgage Disclosures - Effective Date](#)

CUNA Comment Calls – Due Dates on Proposed Rules

April 24, 2015~NCUA

[Fixed Assets](#)

May 1, 2015~NCUA

[Small Entity Definition](#)

May 1, 2015~Federal Reserve

[EGRPRA Review \(Excludes NCUA\)](#)

May 6, 2015~CFPB

[Credit Card Market Review](#)

May 7, 2015~CFPB

[Consumer Complaint Database](#)

July 13, 2015~NCUA

[2015 Annual NCUA Regulatory Review List](#)

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

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](#)

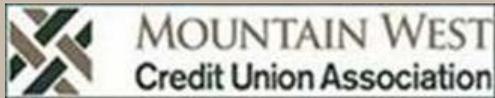
June 25

Webinar: [Use of Loan Guaranties Instead of Co-Signers](#)

2, as amended by IRPS 03-2 and 13-1 and make a technical change to subpart B of Part 791 of NCUA's regulations.

Comments are due to [CUNA](#) by May 1, 2015 and to NCUA by May, 4, 2015.

Source: CUNA



[Training & Events Calendar](#)

Lending Compliance School:

[May 14-15, 2015: Phoenix, AZ](#)

[May 20-21, 2015: Denver, CO](#)

May 6

Webinar: [Revised Escrow Rules Effective August 1, 2015](#)

May 11

Webinar: [The FFIEC's New Appendix J on Outsourced Technology Services](#)

May 14

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

May 20

Webinar: [Advanced ACH Specialist Series: ACH Death Notification Entries \(DNEs\) & Reclamations: Your Credit Union's Liability](#)

May 21

Webinar: [Wire Transfer Compliance: Who is Liable?](#)

May 26

Webinar: [Testing Loan Audit Procedures for Integrated Disclosure Compliance Before the 8-1-15 Deadline](#)

May 28

Webinar: [The ALLL in Troubled Debt Restructuring: Identifying & Accounting for Impaired Loans](#)

June 10

Webinar: [Countdown to the Integrated Disclosure Deadline: August 1, 2015](#)

June 11

[Compliance Networking Council](#) – Casper, Denver, Phoenix

July 21

Webinar: [What is New in Mortgage Lending Compliance](#)

August 11 - 13

Webinar: [Performing Your ACH Audit and ACH Risk Assessment Series](#)

August 25 – December 31

[CUNA Regulatory Compliance Update eSchool](#)

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

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