

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

August 12, 2016

### Compliance News

The CFPB has issued a final rule to require residential mortgage loan servicers to provide certain borrowers with foreclosure protections more than once over the life of the loan, clarify borrower protections when the servicing of a loan is transferred, and provide important loan information to borrowers in bankruptcy. The changes also help ensure that surviving family members and others who inherit or receive property generally have the same protections under the CFPB's mortgage servicing rules as the original borrower. The Bureau issued a proposed rule in November 2014, but has made several changes in the final rule based on comments received from the public. The rule will—

- Require servicers to provide certain borrowers with foreclosure protections more than once over the life of their loan;
- Expand consumer protections to surviving family members and other homeowners (successors in interest) when a borrower dies;
- Require servicers to notify borrowers when loss mitigation applications are complete;
- Protect struggling borrowers during servicing transfers;
- Clarify servicers' obligations to avoid dual-tracking and prevent wrongful foreclosures; and
- Clarify when a borrower becomes delinquent.

The rule also provides servicers some flexibility to comply with certain force-placed insurance and periodic statement disclosure requirements, and clarify several requirements regarding early intervention, loss mitigation, information requests, and prompt crediting of payments, as well as the small servicer exemption.

Additionally, the Bureau issued an interpretive rule under the Fair Debt Collection Practices Act relating to servicers' compliance with certain mortgage servicing provisions as amended by the final rule.

Most of the provisions of the final rule will take effect 12 months after publication in the Federal Register. The provisions relating to successors in interest and the provisions relating to periodic statements for borrowers in bankruptcy will take effect 18 months after publication.

### Bureau Issues 'Principles' for Future Foreclosure Prevention

The Consumer Financial Protection Bureau (CFPB) has outlined consumer protection principles to guide mortgage servicers, investors, government housing agencies, and policymakers as they develop new foreclosure relief solutions. The Bureau's action comes as the Department of Treasury's Home Affordable Modification Program, a foreclosure relief program put in place in response to the financial crisis, is nearing its expiration date. The CFPB's proposed principles are meant to inform the discussion of potential

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options to help prevent avoidable foreclosures. The principles promote:

- **Accessibility:** Consumers should easily be able to obtain and use information about loss mitigation options, and how to apply for those options.
- **Affordability:** Repayment plans and mortgage loan modifications should generally be designed to produce a payment and loan structure that is affordable for consumers.
- **Sustainability:** Loss mitigation options used for home retention should be designed to provide affordability throughout the remaining or extended loan term.
- **Transparency:** Consumers should get clear, concise information about the decisions servicers make.

The Bureau's principles don't establish legal requirements, but are instead intended to complement ongoing discussions amount industry, consumer groups and policymakers.

*Source: CFPB*

### **How the New CDD Rule Applies to Trust Accounts and DBAs From the CUNA Compliance Blog:**

*Q: I'm looking at the list of exemptions in the new CDD rule and can't find Trusts or "doing business as" (DBA) accounts. Are they covered by the new beneficial owner requirements effective in 2018?*

**A:** For trust accounts, it will depend on the trust. Business trusts are created by a filing with a state office (statutory trusts), which are included in the definition of "legal entity" in the rule, which means they are covered by the requirements.

Non-statutory trusts (which are more common at credit unions) are contractual arrangements between the person who provides the funds or other assets and specifies the terms (grantor) and the person with control over the assets (beneficiaries). Formation of this type of trust does not generally require any action by the state, so these trusts do not meet the definition of "legal entity" for purposes of this rule. FinCEN recognizes that identifying a "beneficial owner", as defined in the rule, from among these parties would be impossible.

FinCEN further notes that where 25 percent or more of the equity interests of a legal entity are owned by a trust (other than a statutory trust), credit unions would collect and verify the identity of the trustee. In this case, the individual opening the account would still be the one required to provide the credit union with the beneficial owner information.

FinCEN also reminds credit unions that although they are not required to look through a trust for its beneficiaries, they "may need to take additional steps to verify the identity of a member that is not an individual, such as obtaining information about persons with control over the account."

In regard to DBAs, if it is a sole proprietorship the rule does not apply. If it is a corporation, LLC, general partnership or other similar entity that is created by filing a public document with a state or federal office, it is considered a "legal entity" under this rule.

*Source: CUNA*

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### **InfoSight Highlight**

#### **BSA: FinCEN BSA Leadership Expectations Engaging Leadership**

A successful BSA/AML program requires the participation and encouragement of leaders at all levels of the credit union, including the Board of Directors, Senior and Executive Management, and at lower levels of management. The program should have the demonstrable support of the leadership, and leadership should receive position appropriate periodic training. An understanding of BSA/AML obligations and compliance will help the credit union make appropriate decisions when allocating resources to the BSA/AML functions. Leaders should also remain informed of the state of BSA/AML Compliance on an ongoing basis.

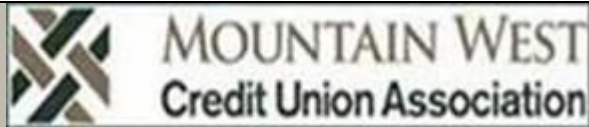
#### **Compliance Should Not Be Compromised by Revenue Interests**

Compliance staff should be empowered with sufficient authority and autonomy to implement the credit union's AML program. The pursuit of revenue should not compromise efforts to effectively manage and mitigate BSA/AML deficiencies and risk, including the timely submission of appropriate and accurate reports to FinCEN. The structure of the credit union should allow for the BSA/AML function to work independently and to take the appropriate actions necessary to address and mitigate any risks.

FinCEN makes it clear that any inappropriate activity must be investigated thoroughly, and appropriate action taken regardless of the impact on revenue. The sales or marketing unit of the credit union should not have any express or implied authority to veto a compliance decision, especially based on sales grounds.

#### **Leadership Should Provide Adequate Human and Technological Resources**

The credit union should have a dedicated BSA/AML compliance officer that is responsible for coordinating



## Training & Events Calendar

### **August 17**

Webinar: Internal Controls & Due Diligence: The Supervisory Committee's Role

### **August 18**

Webinar: Consumer Loan Documentation

### **August 23**

Webinar: Complying with Final Military Lending Act Rule Changes Effective October 3, 2016

### **August 24**

Webinar: Auditing for BSA Compliance

### **August 25**

Webinar: Annual MLO Compliance Requirements & Auditing for SAFE Act

### **August 30**

Webinar: Essential Compliance Regulations for the Frontline

### **September 12**

Webinar: New Customer Due Diligence Rules for Beneficial Ownership: Implementation Game Plan

### **September 13**

Webinar: Navigating Compliance Issues for Promotions, Bonuses, Contests & Sweepstakes

### **September 19**

Webinar: HMDA Roadmap Part 1: Impact, Important Changes & Implementation Considerations for Lenders

### **October 4, 2016**

Webinar: Handling Dormant Accounts, Unclaimed Property & Escheatment

### **October 20, 2016**

Webinar: Conducting the 2016 ACH Audit

### **November 15**

Webinar: Recognizing & Responding to Elder Fraud: What Every Staff Member Should Know

### **November 15-16 – Phoenix**

IRA School: Essentials & Advanced

### **December 14**

Webinar: Essential Compliance Training for the Board & Senior Management

### **Registration Now Open for 2016 Compliance Schools**

Compliance expert, Gaye DeCesare, NCCO, CUCE, BSACS, will be the instructor for both locations, giving attendees a solid understanding of the regulations and laws affecting their regulatory compliance responsibilities.

- Denver, CO: [September 13-14](#) (*Deadline to register Sept. 2<sup>nd</sup>*)
- Phoenix, AZ: [October 12-13](#)

and monitoring day-to-day compliance with BSA. This person should have the sufficient authority, knowledge, and training to administer the BSA/AML program. If additional resources are needed, the credit union should devote sufficient support staff to carry out the task, especially when the credit union's risk profile indicates a higher risk for suspicious activity.

FinCEN stresses that the failure to devote appropriate resources and staff to a BSA/AML compliance function could result in other failures. Since financial institutions have staff that review alerts generated by transaction monitoring systems, devoting insufficient staff and resources may result in alerts not being properly scrutinized, due to backlog or improper identification. Credit unions should be prepared to provide sufficient resources to make sure these functions are properly handled.

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

## **Compliance Videos**

### **Same Day ACH Preview**

In this newly released video Amy Smith, VP and Executive Director of The Clearing House Payments Authority, provides background information on the current batch-and-forward ACH payment system and introduces the "Phased Approach" of the Same Day ACH program, which will begin in September of 2016. You will want to pay special attention to Amy's suggestion to review current ACH files you may be transmitting. View the video [here](#).

### **Military Lending Act**

This video provides an overview of the key changes made to the Military Lending Act that credit unions are going to need to consider and implement prior to the compliance effective date of October 3, 2016. View the video [here](#).

## **CUNA Advocacy Update**

The Regulatory Advocacy Report is now combined with CUNA's Legislative Update into a comprehensive CUNA Advocacy Update. The new [Advocacy Update](#) is published at the beginning of every week, and 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.

Prior CUNA Regulatory Advocacy Reports have been archived and are available [here](#).

## **Effective Dates**

## CUNA Webinars

**July 7, 2016 - July 7, 2017**

CFPB's Payday, Small Dollar and Vehicle Title Proposed Rule – Recorded



### Compliance Calendar

#### July 25

- 5300 Call Report Due to NCUA

#### July 31

- Credit Card Quarterly Submission Due to CFPB

#### September 5

- Labor Day – Federal Holiday

#### September 23

- Same-day ACH (NACHA) – Phase 1 of the Implementation Period for the Rule

#### October 3

- DOD Military Lending Act Regulation - Effective Date

#### October 3

- NACHA's Network Quality Rule

#### October 10

- Columbus Day – Federal Holiday

#### October 24

- 5300 Call Report Due to NCUA

#### October 31

- Credit Card Quarterly Submission Due to CFPB

## New and Revised Rules

**September 23, 2016~NACHA**

Same-day ACH (NACHA) – Phase 1

**October 3, 2016~DoD**

Limitations on Terms of Consumer Credit Extended to Service Members & Dependents

**December 1, 2016~DOL**

New Overtime Rules

**January 1, 2017~CFPB**

HMDA – Regulation C

**January 1, 2017~NCUA**

Member Business Loan Rule

**April 10, 2017~DOL**

Fiduciary

**September 15, 2017~NACHA**

Same-day ACH (NACHA) – Phase 2

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### CUNA Comment Calls – Due Dates on Proposed Rules

**July 25, 2016~NCUA**

Community Development Revolving Loan Fund

**August 3, 2016~CFPB**

Amendment to the Annual Privacy Notice Requirement Under Gramm-Leach-Bliley

**August 12, 2016~CFPB**

Arbitration Proposal

**September 19, 2016~CFPB**

CFPB Small Dollar Proposal

**October 31, 2016~CFPB**

RFI for Small Dollar Proposed Rule

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

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