

# Regulatory Compliance Update

ACUIA Region 6 Conference

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# Discussion Areas

- **Workshop objectives**
- **The recent focus on regulatory compliance**
- **The many areas of compliance and recent changes affecting credit unions**
- **Open forum**

# Workshop Objectives

- **Gain an understanding of:**
  - BSA/AML and Final CDD Rule
  - Unfair, Deceptive, Abusive Acts and Practices
  - ACH Same-Day Processing Rules
  - New Mortgage Servicing Rule
  - Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure Rule (reminders)
  - HMDA Final Rule
  - Military Lending Act
  - How compliance with these requirements is also an important part of managing risk within the credit union
- **Open participation**

# Recent Focus on Regulatory Compliance

# Focus on Regulatory Compliance

- **Why do the regulators have their eyes on this area?**
- **What is the public perception of the many regulations?**
- **What are the risks of non-compliance?**
- **What does regulatory compliance cost?**

# The Many Areas of Compliance

# BSA/AML Compliance

- **Bank Secrecy Act (BSA) was enacted in 1970 and helps to safeguard financial institutions from the abuses of financial crimes including money laundering, terrorist financing and other illegal transactions.**
- **The Patriot Act of 2001 strengthened Anti-Money Laundering (AML) laws, criminalizing terrorist financing and increasing the civil and criminal penalties for money laundering. The Act also augmented the BSA framework by requiring stronger member identification and due diligence procedures.**

# BSA/AML Compliance

- A written BSA/AML compliance program must be approved by the Board and should be developed using the BSA/AML risk assessment completed by management. The written program must include internal controls, provide for independent testing, designate a BSA officer and address training.
- The credit union's BSA/AML compliance program must also implement a Customer Identification Program (CIP). The CIP should enable the credit union to form a reasonable belief that it knows the true identity of each member.

# BSA/AML Compliance

- FinCEN finalized Customer Due Diligence (CDD) Rule on May 11, 2016 and implementation is required May 11, 2018.
- Credit unions already required to conduct CDD as part of internal controls; however, rule clarifies existing CDD expectations.

# BSA/AML Compliance

- Final CDD Rule is made up of four explicit requirements including:
  1. Identifying and verifying the identity of members.
  2. Identifying and verifying the **identity of beneficial owners and legal entity members.**
  3. Understanding the nature and purpose of member relationships.
  4. Conducting ongoing monitoring to maintain and update member information and to identify and report suspicious transactions.

# BSA/AML Compliance

- **Final CDD Rule (continued):**
  - Beneficial Ownership Form (Appendix A to 1010.230) must be completed by the person opening a new account (not limited to share level accounts) on behalf of a legal entity. Institutions can use their own forms.
  - Credit unions should obtain beneficial ownership information for existing members when, in the course of normal monitoring, the financial institution detects information relevant to assessing or reevaluating the risk associated with that member.

# BSA/AML Compliance

- **BSA/AML Software Validation**
  - Recommended to be performed to verify that software is working effectively/efficiently and transaction data from the core system is being accurately mapped/uploaded to the AML software.
  - Limited guidance on required frequency in FFIEC BSA/AML Manual.
  - NCUA has been including lack of performance/completion in recent Exams.

# Unfair, Deceptive, Abusive Acts and Practices

**UDAAP - In accordance with 12 U.S. Code Section 5536(a), it shall be unlawful for:**

- (1) any covered person or service provider:
  - (A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or
  - (B) to engage in any **unfair, deceptive, or abusive act or practice.**

# Unfair, Deceptive, Abusive Acts and Practices

- **UDAAP implementation:**
  - No CFPB regulations to date specifically under UDAAP.
  - CFPB's enforcement of UDAAP has been through enforcement actions.
  - A specific number of consumers does not need to be affected or sustain any specific amount of damages to require CFPB enforcement.

# Unfair, Deceptive, Abusive Acts and Practices

- **Areas for UDAAP concern:**
  - Payday loans.
  - Student loans.
  - Overdraft protection (i.e. Courtesy Pay).
  - Mortgage loan servicing.
  - Ancillary loan products (debit and ID theft protection, service contracts).
  - Vehicle loans (i.e. dealer rate mark ups)

# ACH Same-Day Rules

- ACH transactions are governed by the National Automated Clearing House Association (NACHA) Operating Rules, which provide the legal foundation for the exchange of ACH payments.
- To be a participant in the ACH network, an annual audit of compliance with the NACHA Operating Rules must be completed annually by Dec. 31st.
- A three-phased implementation effort to provide for a faster ACH processing environment began in Sept. 2016. It is known as same day processing.

# ACH Same-Day Rules

- **ACH Same-Day Rules**
  - Transactions above \$25,000 and international ACH transactions are not eligible.
  - Phase 1 (effective Sept. 23, 2016): Same day credit entries must be made available by the end of the credit union's processing day.

# ACH Same-Day Rules

- **ACH Same-Day Rules (continued)**
  - Phase 2 (effective Sept. 23, 2017): Same day debit entries must also be made available by the same deadline effective for same day credit entries.
  - Phase 3 (effective Mar. 16, 2018): For the second processing window, same day credit and debit entries must be made available by 5 p.m.
  - Same Day Fees: Fee of approximately 5.2 cents for each same day entry accepted, which is paid to the RDFI from the ODFI.

# Lending Compliance

- **2016 Mortgage Servicing Rule**
- **Truth in Lending Act (TILA)/Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure Rule**
- **Home Mortgage Disclosure Act (HMDA)**
- **Military Lending Act**

# Lending Compliance

- In August 2016, CFPB published a final rule that amended certain mortgage servicing rules. It is known as the 2016 Mortgage Servicing Rule. Most provisions are effective October 19, 2017. Provisions related to successors in interest and bankruptcy periodic statements are effective April 19, 2018.
- In accordance with the 2016 Mortgage Servicing Rule, credit unions must consider compliance with the following changes:
  - Excludes certain seller-financed transactions and mortgage loans serviced for a non-affiliate from being counted toward the 5,000 loan limit for small servicer exemption.

# Lending Compliance

- In accordance with the 2016 Mortgage Servicing Rule, credit unions must consider compliance with the following changes (continued):
  - Adds definitions of “successor in interest” to RESPA and TILA and includes provisions to confirm a successor’s interest and identity.
  - Clarifies certain periodic statement disclosure requirements for mortgage loans, requires certain borrowers in bankruptcy to be provided with modified periodic statement, and exempts servicers from periodic statement requirement for charged-off mortgage loans in certain circumstances.

# Lending Compliance

- In accordance with the 2016 Mortgage Servicing Rule, credit unions must consider compliance with the following changes (continued):
  - Amends the force-placed insurance disclosures and model forms to account for when the borrower has insufficient coverage on the property.
  - Clarifies the obligations for servicers to establish or make good faith efforts to establish live contact with delinquent borrowers and revises the exemption from early intervention for borrowers in bankruptcy or invoked a case under the FDCPA.

# Lending Compliance

- In accordance with the 2016 Mortgage Servicing Rule, credit unions must consider compliance with the following changes (continued):
  - Adopts a general definition of delinquency that applies to all servicing provisions under RESPA and periodic statements for mortgage loans under TILA.
  - Amends and modifies several sections of the Loss Mitigation Rule.

# Lending Compliance

- **TRID Rule - Reminders**

- TRID **prohibits the collection of fees** (other than fee to obtain credit report) prior to providing the Loan Estimate to the consumer.
- TRID includes rules for providing **Revised Loan Estimates and Corrected Closing Disclosures**.
- TRID also **requires two post-consummation notices** including the Escrow Closing Notice and partial payment policy addition to the existing mortgage transfer servicing notice.

# Lending Compliance

- HMDA (Regulation C) provides the public and government with information to help determine whether the credit union is serving the credit needs of its community and helps discourage redlining, which is the practice of denying or limiting credit based on neighborhood characteristics (race, national origin, income). HMDA requires the credit union to report data for home purchase loans, home improvement loans and refinances.

# Lending Compliance

- **HMDA (continued)**
  - The Consumer Financial Protection Bureau recently issued a Final Rule amending HMDA. The Final Rule, effective in phases starting in 2017, changes the following:
    - Types of institutions subject to the regulation.
    - Types of transactions subject to the regulation (now includes home equity lines of credit).
    - Specific information to be collected, recorded and reported.
    - Processes for reporting and disclosing data.

# Lending Compliance



## HMDA Rule Key Dates Timeline

	2016	2017	2018	2019	2020
Effective Dates	No new regulatory requirements go into effect	1/1 Effective date for excluding low volume depository institutions from coverage	1/1 Effective date for most provisions related to institutional and transactional coverage, and data collection, recording, reporting, and disclosure	1/1 Effective date for changes to enforcement provisions and additional amendments to reporting provisions	1/1 Effective date for quarterly reporting provisions
Data Collection	<b>Q1 – Q4</b> Collect 2016 data as required under the <b>current rule</b> <sup>1</sup> (for reporting in 2017)	<b>Q1 – Q4</b> Collect 2017 data as required under the <b>current rule</b> <sup>1</sup> (for reporting in 2018)	<b>Q1 – Q4</b> Collect 2018 data as required under the <b>new rule</b> <sup>2</sup> (for reporting in 2019)	<b>Q1 – Q4</b> Collect 2019 data as required under the <b>new rule</b> <sup>2</sup> (for reporting in 2020)	<b>Q1 – Q4</b> Collect 2020 data as required under the <b>new rule</b> <sup>2</sup> (for reporting in 2021 and, if FI is quarterly reporter, 2020)
Data Submission	1/1 – 3/1 Submit 2015 data as required under the <b>current rule</b> , <sup>1</sup> and submit to the Federal Reserve Board	1/1 – 3/1 Submit 2016 data as required under the <b>current rule</b> , <sup>1</sup> and submit to the Federal Reserve Board	1/1 – 3/1 Submit 2017 data as required under the <b>current rule</b> , <sup>1</sup> and submit to the CFPB	1/1 – 3/1 Submit 2018 data as required under the <b>new rule</b> , <sup>2</sup> and submit to the CFPB	1/1 – 3/1 Submit 2019 data as required under the <b>new rule</b> , <sup>2</sup> and submit to the CFPB  4/1 – 5/30 Quarterly FI reporters report Q1, 2020 data as required under the <b>new rule</b> , <sup>2</sup> and submit to the CFPB

# Lending Compliance

- **HMDA (continued)**
  - Expanded data fields apply to covered transactions that have “final action” taken on or after January 1, 2018. This is going to effect the credit unions’ pipeline of loans as any applications taken in November/December 2017 with a final action date in January 2018 will be subject to collection of the expanded data fields.

# Lending Compliance

- Military Lending Act (MLA) was recently expanded by the DoD to apply to more than only payday loans, vehicle title loans, and tax refund anticipation loans. The final rule went into effect October 3, 2016 (2017 for credit cards) and applies to more consumer credit products granted to “covered borrowers” subjecting the products to the 36 percent interest rate ceiling using the all in “Military Annual Percentage Rate” (MAPR), as well as disclosure requirements, prohibitions on prepayment penalties, and limitations on mandatory arbitration.

# Lending Compliance

- **MLA (continued)**
  - Consumer credit is credit which is offered or extended to a covered borrower primarily for personal, family, or household purposes and subject to a finance charge or payable in more than four installments. Exceptions include residential mortgages, transactions to finance the purchase of a motor vehicle, and loans that are exempt for the purposes of Regulation Z (1026.3, 1026.29).
  - Applies to members (or their dependents) of the armed forces serving on active duty or active guard and reserve duty at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit
  - The MAPR includes finance charges under Regulation Z (1026.4) and specific fees otherwise excluded by Regulation Z such as credit insurance premiums, fees for debt cancellation contract, and fees for credit related ancillary products sold in connection with the loan.

# What Makes for an Effective Compliance Program

# An Effective Compliance Program

- **Identification** – Analyze the products and services offered by the credit union to determine the applicable regulatory requirements.
- **Risk Assessment** – Assign risk ratings for each applicable regulation based on the likelihood of a violation and the severity of the penalties.
- **Policies and Procedures** – Act as tools to ensure that compliance-related issues are handled consistently.

# An Effective Compliance Program

- Key Members of the Compliance Team – Compliance officer, Board, executive management, legal counsel, internal audit personnel, loan officers/processors, tellers, member services and marketing personnel.
- Education – Ongoing training is a necessity.
- Independent Testing – Audits must be performed at an appropriate frequency and the depth of the review is dependent on the credit union's size and complexity.

# Open Forum

# Thank You!



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