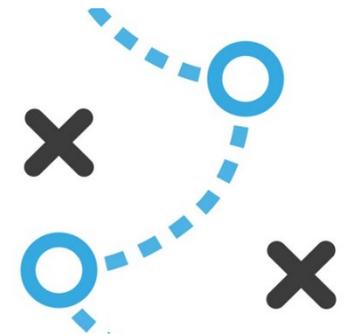


# Regulatory Compliance Hot Topics



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 **DoerenMayhew**  
CPAs AND ADVISORS

- Call for more intensive compliance exams
- Election
- Pendulum beginning to swing back



## John Zasada, Compliance Consulting Director JD, CAMS

- 25 years of financial institution compliance experience
- Created first nationwide credit union compliance consulting practice
- Assist hundreds of financial institutions improve their regulatory compliance performance
- Trained NCUA and state examiners on consumer compliance
- Help lead Doeren Mayhew's national compliance practice
- Perform ongoing compliance reviews of financial institution websites, social media and advertising

# Compliance Practice

- Assist credit unions nationwide with regulatory compliance
- Compliance Advantage
- BSA independent testing
- BSA/AML model validation
- Targeted testing
- MRB and Hemp
- UDAAP
- Website and social media testing

# Agenda

- Compliance Environment
- CFPB
- NCUA
- Confidentiality
- EFTA
- FCRA
- NCUA Focus
- BSA
- Marijuana and Hemp
- UDAAP
- Regulation D
- Incentive Compensation Programs
- Child Privacy Act
- Social Media
- Website Compliance

# Compliance Environment

- In March Senate Banking ranking Democrat Sherrod Brown asked regulators to stop all rulemakings that are not a direct response to COVID-19
- Suspend all rulemakings and comments periods
- Difficult at that time for the public to have customary engagement with government agencies and therefore cannot provide meaningful responses on proposed rules

# Regulatory Change

- Generally it is a slow time for regulatory change
  - Potential for BSA - ANPRM
  - FDCPA
  - Hemp/marijuana
  - Regulation B requirement to collect and report information concerning credit applications made by women or minority owned businesses and by small businesses
- Applying old rules to new technology and delivery

# Compliance Anxiety Up

- Survey of financial institution anxiety regarding regulatory compliance
- Anxiety dropped in 2018
  - Regulatory reform reduced some compliance obligations
- Anxiety level went back up in 2019
  - New HMDA rules
  - Compliance risk management concerns
  - Fines and ongoing challenges from compliance change management

# Compliance Burden

- Cost of compliance increasing
- Hard for one person to manage it
  - More finding a compliance team is necessary
- Hard to find and retain that team
  - 23,000 more compliance positions added by 2026
  - Cost of replacing highly specialized employee estimated at 400 percent of their annual salary
- Mood in the middle important

# More than Just Rules and Regulations

- So much to stay on top of
  - Acts, regulations, exam guides small entity compliance guides, instructional guides for disclosure forms, executive summaries, summaries of regulation changes, factsheets, flow charts, compliance checklists, frequently asked questions, and summary tables
- CFPB just added “Compliance Aids”
  - Notice and comment not necessary...

# CFPB Structure

- Structure under fire
- Unconstitutional?
- Single director structure
- Lack of oversight by Congress and the Executive Branch
- Ideology varies from one administration to the next
  - Cordray, Mulvaney, Kraninger

- Some House members have asserted CFPB career attorneys are being overruled by CFPB political staffers
- Investigation into CFPB settlements with companies
  - CFPB career attorneys recommended consumer reimbursements for abuses by payday lender
  - CFPB political appointee overseeing enforcement recommended no reimbursement
  - Director Kraninger signed agreement with no reimbursement

# CFPB Task Force

- CFPB task force established to study the current regulatory framework and how to improve it
- Critics upset with the four people chosen for the task force
  - None are pro-consumer
  - All have track records opposing consumer protection regulations

# CA Creating Own “CFPB”?

- CA unveils Consumer Financial Protection Law
- Governor says it fills the void of the Trump administration
- Creates state CFPB
  - Four other states do too
- Provides state oversight of debt collectors
- Add dozens of staff
- Greater scrutiny of consumer markets to identify patterns of abuse

# Why would CA do this?

- CA already a national leader in consumer protection
- Trump pull back of payday lending rules
  - Industry held annual conference at Trump owned hotel
- Kraninger said consumers need to help themselves, protect their own self interests.
  - CFPB more focused on education that cracking down
- CFPB enforcement activity down 80% from 2015
  - Cordrey \$2b and Kraninger \$22m
- Average compensation to aggrieved consumers down 96% per case

# COVID-19 Impact

- Increased consumer complaints
- Compliance issues can arise when working with affected consumers
  - Particularly loan modifications
- Track and read all agency pandemic statements
- Regulators are considering your unique circumstances
  - HMDA example

- Bank employee shared exam report with press
- Unsafe and unsound practice
- Cease and Desist Order

# Top TILA Violations in Enforcement Actions

- Stating an inaccurate APR in credit agreements or disclosures
- Failure to state a description of the finance charge and the APR in closed-end credit disclosures
- Understating the finance charge and APR in credit agreements
- **Failure to provide required disclosures when a trigger term is stated in an advertisement**
- Inadequate open-end credit account opening disclosures

# Top TILA Violations in Examinations

- **Failure to accurately disclose the finance charge, including a brief description such as “the dollar amount the credit will cost you” for closed-end credit**
- Failure to provide the “Closing Disclosure” for mortgage transactions
- Failure to provide specific “Loan Costs” information on the closing disclosure for mortgage transactions

# Top EFTA Violations in Enforcement Actions

- Failure to properly obtain consent for preauthorized electronic fund transfers
- Failure to provide required disclosures for preauthorized transfers
- Failure to comply with the overdraft opt-in requirements
- **Charging fees that were not properly disclosed or agreed to**

- **Failure to timely investigate and resolve errors**
- Failure to follow the requirements when an error investigation reveals either no error or a different error occurred
- Failure to act on both oral and written notices of an error
- Failure to provide remittance transfer disclosures

# More on EFT Error Resolution

- Debit cards being used more
  - 32% to 48% as preferred payment method
- Reg E error resolution procedures more complex than Regulation Z.
- Members more focused on convenience than security.
  - Flipped from previous year

# NCUA's Compliance Focus

- BSA
- Regulation E Error Resolution Procedures
- Regulation Z APR calculations
  - **Closed end, non-mortgage loans**
- Late fees practices
- FCRA
- Privacy
- MLA

# NCUA Compliance Exams

- NCUA Board Member Todd Harper wants the agency to devote more time and resources examining credit unions for compliance
- Proposed hiring three dedicated compliance examiners for large CUs
- Says bank regulators have more intensive compliance testing for large banks
  - Banks have separate compliance exams while CU examiners just look at a few areas a year
- Says NCUA not consistent with FFIEC exam mandate

# ICBA Agrees

- Endorses Harper plan – surprise! 😊
- Cites survey that says only 12% of NCUA examiner time spent on compliance
- Believes, unlike NCUA, banking agencies dedicate significant resources to testing compliance
- NCUA not keeping up with banking agencies increasing focus on compliance given the growth in the industry, new rules, and consumer complaints

# CUs Disagree

- CUs response to Harper's proposal was not positive
- Many CUs feel NCUA current examination does not need to be changed to incorporate more compliance testing
- No compelling need for stricter exams
- **One problem identified by many credit unions is inconsistent examinations for compliance**

- Implement risk-based measures
- Keep examiners informed
- Track deferred actions and temporary waivers

- Update your BSA risk assessment in light of COVID-19
  - Spike in large cash withdrawals
  - Growing use of digital services by those not using it in the past
- FinCEN announcement provides higher risks
  - Fraudsters exploiting fears of the pandemic selling sham cures, impersonating government officials, creating fraudulent charities
- Establish priorities – sanctions, fraud, then AML

# BSA and Domestic Terrorism

- So far, just reactionary
- Responding to Section 314(a) requests
- Difficult to create a typology
  - Not cash-intensive
  - Not necessarily funded through illicit activities
- BSA officers could place members who espouse extremist views on the high-risk list and perform EDD
- There is no formal government guidance on red flags for the financing of domestic terrorism

# BSA and Elder Abuse

- EFE activity requires SARs
- SAR filings for EFE per month tripled from 2013 to 2019
- Is more EFE occurring or are FIs looking for it and reporting it more often?
- \$ amount reported on SARs increased 30%
- SARs often filed for EFE due to theft or scams
- Average SAR amount for theft twice as big as for scams

# BSA Personal Liability

- February 2018 US Bank received \$185m CMP for BSA violations
- March 2020 Chief Operational Risk Officer received \$450k CMP for failing to take sufficient action to address significant AML program deficiencies including preventing proper filing of “many, many” SARs
  - Subordinates warned him that the existing automated system was inadequate because number of SAR alerts was capped and that AML staff was stretched dangerously thin
  - OCC warned the bank that numerical caps based on the size of staff and resources could result in CMP. The caps were in place for 5 years

# Seven Bankers Personal Liability

- \$124,000 in CMPs
- Inadequate BSA/AML compliance program
- Inadequate risk assessments
- Inadequate staffing of BSA/AML functions
  - Taking on high-risk accounts

# Takeaways

- Don't ignore other enforcement actions or staff
- Automated system alone is not enough
- Personal liability is possible
- BSA requirements should drive staffing decisions
  - Not the other way around

- House passed legislation giving safe harbor for FIs to provide services to MRBs.
- Waiting on Senate action on the bill.
- Industry hoped for action by the end of 2019 but that did not happen.
  - Impeachment process did not help
  - Then pandemic

# USDA and NCUA

- USDA published interim final rule legal hemp farming.
- NCUA published guidance permitting providing services to hemp related businesses.
- Still far from a clear picture

# Soft Compliance Risks

- UDAAP umbrella
  - Conduct Risk
    - Employee turnover rates
    - Hotline reporting
    - Employee exit surveys
    - Reduce the risk with strong organization culture
  - Sales risk
    - Suitability of product to the consumer
    - Lack of evidence of consumer consent
    - Reduce the risk with team-based incentives

# Complaint Risk

- Less than 2,000 complaints, probability of being fined is 2% and average fine \$17m
- More than 2,000 complaints, probability of being fined is 36% and average fine \$81m
- More than 10,000 complaints, probability of being fined is 71% and average fine \$284m
- Credit reporting complaints up 153%, 43% of all complaints
- 97% of complaints received by CFPB are responded to in 15 days or less

# CFPB Policy Statement on Abusiveness

- Challenge conduct as abusive only when the harm to consumers outweighs the benefits.
- No longer use the same facts to charge a company with abusive and another one of the standards.
- Seek monetary relief for abusiveness only when there has been the lack of a good-faith effort to comply with the law.

# Reaction to Policy Statement

- Trade groups think it will not move the needle much
- Consumer groups were not pleased
  - Found it deeply disturbing
  - CFPB should not have self imposed restraints in protecting consumers

# Regulation D Changes

- Six transaction limitation “temporarily” eliminated
- Making the change is optional
- Alert members if you do make the change
- You can continue to report savings deposits on the FR 2900 report even if you suspend the six-transaction limitation rule
- Suspending rule does not subject savings accounts to Reg CC
- Not a “short-term decision”

# Incentive Compensation Programs

- CFPB Sues Fifth Third Bank for UDAAP, TIL and TIS violations
- Incentive compensation program pushed employees to open accounts without consumer's consent
- Test incentive compensation programs like you do complaints
- To not do so raises your risk of UDAAP violations

# Child Privacy Act

- COPPA in the news with the \$170m fine against Google for violating children's privacy.
  - Knowingly and illegally gathered personal data from children and exploited them with target ads
- Possible changes to COPPA
  - Up the age to 16

# Fair Lending and COVID-19

- COVID-19 poses fair lending risks for credit unions
- Staffing changes can make compliance more difficult
- Handling loan applications can vary based on the circumstances of the day
- Disparate treatment and disparate impact is possible
- **Monitor for fair lending risk**

- Increasingly a concern of credit unions
- Surveys show it is a top issue
- Marketing/advertising/website
- Social media

# Managing Online Compliance

- Wait and see
- Clean past exam
- One-time test
- Periodic tests
- Train marketing department, lenders, etc.
- Process and procedures

# Mortgage Lenders

- CFPB is going after mortgage lenders in summer of 2020
  - Eight so far
- Consent orders include CMPs of as much as \$600,000
- Violations include closed end trigger terms without triggered disclosure
- Missing payment examples
- Unavailable credit terms

# Online Banking Compliance Risks

- Online banking is becoming the norm
- Reduce UDAAP risk by:
  - Comparing disclosures
  - Member feedback on product experiences
  - Monitor complaints

# Targeted Online Marketing

- Big fair lending implications.
- Facebook
- Unequal access to information.
- Manage the risk by:
  - Review for and eliminate geographical filters
  - Review information about the audience that viewed each ad
  - Comprehensive fair lending policy and procedures
  - Outreach to predominantly minority neighborhoods

- Most bank regulatory compliance exams included social media compliance testing
- Policies and procedures almost always reviewed
- Credit unions?

# TISA Triggered Disclosures

- APY triggers:
  - Variable rate (if applicable)
  - Time period APY offered or accurate as of a date
  - Minimum balance to earn the APY
  - Minimum opening deposit (if greater than minimum balance to earn the APY)
  - Statement that fees could reduce earnings (if maintenance of activity fees apply)
  - For Share Certificate only:
    - Term of the account
    - Statement that a penalty will or may be imposed for early withdrawal

# TISA Trigger Term Problem?

*Check out our amazing 2.50% APY Share Certificate\**

\*APY effective January 2, 2020.

# TISA Trigger Term Solution

*Check out our amazing 2.50% APY Share Certificate\**

\* APY=Annual Percentage Yield. APY accurate as of 11/9/2019. Rates are subject to change after the account is opened. Fees may reduce earnings. Minimum balance is \$2,500. Term of the share certificate is 60 months. A penalty will be imposed for early withdrawal.

- HELOC applications must be accompanied by the HELOC brochure and application disclosures.
- Check to see that the disclosures appear on every page that includes a HELOC application.
- Verify the 15-year historical example is current.

# HELOC Trigger Term Disclosures

“No Fees” or APR, triggers:

- Finance charges
- APR and if variable
- Membership/participation fee
- Loan fee
- Maximum APR

**Apply for a HELOC loan  
today!**

**We have great rates,  
flexible payment plans,  
and no fees!**

**Apply for a HELOC loan today!**

**We have great rates, flexible payment plans, and no fees\*!**

\* 5.50% APR. Variable Rate range from 5.50% APR to a maximum rate of 10.50% APR. Consult a tax advisor regarding the deductibility of interest.

# Credit Card Promotional Rates

- Credit card promo rates listings must state:
  - When the rate will end
  - APR after the end of the promo period
- If the APR is an introductory rate, introductory or intro must be stated in immediate proximity to the rate

**0% APR for 12 months on credit  
card purchases!**

**0% Intro APR for 12 months on  
credit card purchases! 12.50%  
APR after 12 months.**

# Closed End Loan Trigger Term Disclosures

- Payment term is a trigger term, triggering the following:
  - Downpayment (if applicable)
  - Terms of repayment/payment example
  - APR
  - Variable rate (if applicable)
  - For RE loans, taxes and insurance statement

**30-year Mortgages Available!**

**Fixed rate – an excellent  
choice for long term stability.**

**Our rates will beat any bank!**

**30 year Mortgages Available\*!**

**Fixed rate – an excellent choice for long term stability.**

**You will love our rates!**

\*4.25% APR. For example, if you borrow \$100,000 for 30 years at 4.25%, your monthly payment per \$1,000 borrowed would be \$4.92. The payment example does not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

# Fair Lending and Photos

- Be cognizant of the photos you use online
- Only have pictures of white males? All of your lenders white males?
  - CFPB took note
- By only including pictures representing a particular demographic, it could be construed as discouraging membership by those outside of that demographic

# Fair Lending Problem?

***Join in the fun and become a member of Town Credit Union today!***



# Thank You!

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