

InfoSight Highlight

Whistle Blower Laws

In response to a number of major accounting and financial scandals between 2000-2002, like Enron and Worldcom, Congress enacted corporate governance legislation, the Sarbanes-Oxley Act of 2002 ("the Act"). The vast majority of Sarbanes-Oxley governs companies that are publicly traded, therefore excluding credit unions from its coverage. The Act primarily deals with fraud in financial reporting, accounting, securities reforms, corporate governance, disclosures to stockholders, and whistleblower protection.

Although most of the act does not technically apply to credit unions, credit unions do need to be aware of Section 1107 of the Act, prohibiting criminal whistleblower retaliation. The prohibition applies to any individual or organization (not just publicly traded companies). Specifically, Section 1107 makes it a crime to "knowingly, with the intention to retaliate, take any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense."

Review the information today to help your credit union remain in compliance.

For additional information click [here](#) for the topic in InfoSight.

Compliance News

Police Reports and EFT Error Investigations

CUNA's Compliance Blog highlights the CUNA Mutual Group Risk Alert: "Reg E Violations - Credit Unions Beware" (12/09/11). The alert highlighted **a recent FDIC civil money penalty assessed against an Indiana bank for violating Reg E by requiring account holders to provide a police report on claims of unauthorized use of debit/ATM cards. The penalty amount was \$82,500!**



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Credit Union National Association

Compliance Video

Compliance Connection Video

In this video, League InfoSight CEO Glory LeDu talks about the highlights from the 4th Quarter of 2018 and the 1st Quarter of 2019.

When S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, passed in 2018 there was a lot to understand! Glory LeDu, League InfoSight CEO, provides Part 1 in this short video to break it down for you.

Just a reminder that Compliance videos since 2016 can be found on YouTube at the Compliance Connection channel, where they are generally updated quarterly.

Compliance Calendar

The alert warns credit unions that they are at risk for violating Reg E's error resolution process by requiring members to provide a police report and/or affidavit for unauthorized electronic fund transfers:

"The allocation of liability between the member and credit union for unauthorized EFTs is governed by Section 205.6 and is based on whether the member notified the credit union of the unauthorized transactions in a timely manner. The procedures for resolving errors are addressed in Section 205.11. Reg E does not allow credit unions to condition member rights under Sections 205.6 and 205.11 upon providing a police report and/or affidavit. Therefore, credit unions violate Reg E by requiring members to provide a police report and/or affidavit for unauthorized EFTs (e.g., unauthorized use of debit/ATM cards) as a condition for receiving provisional credit and, more importantly, in the determination of member liability. Credit unions may request a police report and/or an affidavit but cannot require members to provide one."

The alert notes that CUNA Mutual Group does not require credit unions to provide police reports or affidavits when submitting documentation for claims impacted by Reg E that are filed under the Bond or Plastic Card Policies. (The alert also reminds credit unions that they can't deny a claim because of the member's negligence - such as writing a PIN on the back of an ATM/debit card).

CUNA's Compliance Department has also received additional questions, such as:

1. Is this risk alert correct? Yes it is. It has been the Federal Reserve Board's longstanding position that, since the Electronic Fund Transfer Act grants the consumer error-resolution rights, the institution should avoid any "chilling effect" on the good-faith assertion of EFT "errors" (which includes unauthorized EFTs). And, it's quite doubtful that the CFPB would have a different opinion on the matter.
2. Since when? As far as I can tell, as long as there has been a Reg E.
3. Would the same rule apply to investigations of unauthorized ACH transactions too? Yes, since they're electronic fund transfers covered by Reg E.

The credit union can ask the member to assist in its investigation of an unauthorized electronic fund transfer (EFT). However, it cannot place a condition (like requiring a police report, notarized affidavit or statement) before investigating the alleged error or providing provisional credit. The credit union also cannot charge documentation

June 30
PCI - SSL/TLS can no longer be used as a Security Control after this date

Child Support Data Match Reimbursement Deadline

July 4
Independence Day - Federal Holiday

July 25
5300 Call Report Due to NCUA

[Click here for upcoming compliance dates.](#)

Compliance Training

June 14, 2016
[Comparing Regulation E Requirements with Visa & MasterCard Rules](#) - Webinar
3:00 – 4:30 p.m. ET

June 16, 2016
[ACH Rules for Deceased Accountholders & Federal Government Payments](#) - Webinar
3:00 – 4:30 p.m. ET

June 21, 2016
[The Growing Scope of Vendor Management: Business Continuity, Cyber Security, Contract Negotiation & More](#) - Webinar
3:00 – 4:30 p.m. ET

June 22, 2016
Product Terms Part 1:

or investigation fees for EFT errors. (See Q&A #2 in the CUNA March 2007 Compliance Challenge, available [here](#).)

What can the credit union do? Section 205.11(b)(2) of Regulation E allows the credit union to require a "written confirmation" of error from a consumer as part of the error resolution process, within 10 business days of an oral notice of error. If the credit union elects to require the member to put the notice of error in writing, then the credit union must inform the member of the written requirement and provide the address where written confirmation of error must be sent when the consumer gives the oral notification.

Bottom line: Take a look at the credit union's current policies and procedures to make sure your process for resolving EFT errors complies with Reg E.

How to Prepare for Customer Due Diligence Rule

With a May 2018 compliance date for the Treasury's new customer due diligence (CDD) rule, credit unions may be tempted to set it aside and focus on current compliance issues. But credit unions should use this time well, according to Colleen Kelly, Senior Federal Compliance Counsel with CUNA, because it's never too early to determine what changes need to be made to policies, procedures and software systems.

The Treasury's Financial Crimes Enforcement Network (FinCEN) finalized this change to the Anti-Money Laundering/Bank Secrecy Act (AML/BSA) rules last month, which would clarify and strengthen CDD obligations of financial institutions, including credit unions.

When it comes to AML/BSA procedures, credit unions should look at updating:

- Internal controls;
- Independent testing procedures; and
- Risk-assessment procedures.

According to Kelly, credit unions should also begin to consider how they will:

- Ensure their third-party processor is aware of the new information and monitoring requirements and will have the credit

[Modifying Existing Product Terms & Fees, Including Timing, Content & Requirements for Change-in-Term Notices](#) - Webinar
3:00 – 4:30 p.m. ET

June 23, 2016
[Legal Aspects of HELOCs: Disclosures, Advertising, Termination, Credit Line Reduction & More](#) - Webinar
3:00 – 4:30 p.m. ET

June 23, 2016
[Telephone Consumer Protection Act: Complying with the Recent Ruling – CUNA Webinar](#)
12:00 – 1:15 ET

June 26 – 29, 2016
[America's Credit Union Conference](#)
Seattle, WA

June 27, 2016
[Developing a Sound Appraisal Management Program](#) - Webinar
3:00 – 4:30 p.m. ET

June 29, 2016
[Understanding FCRA Permissible Purposes in Obtaining Credit Reports](#) - Webinar
3:00 – 4:30 p.m. ET

June 30, 2016
[Compliance Officer Training: Risk Assessments, Monitoring & Testing](#) - Webinar
3:00 – 4:30 p.m. ET

<p>union's system updated no later than May 11, 2018;</p> <ul style="list-style-type: none"> • Determine how the credit union will identify the beneficial owners of any legal entity accounts and talk to their processors to see whether the certification form provided in the regulation can be incorporated into an electronic records system; • Update account opening procedures to include the identification of the beneficial owners of business accounts and any other "legal entity" accounts; • Update Member Identification Program (MIP) procedures to include the methods that will be used to verify beneficial owners of legal entity accounts; and • Ensure that all appropriate personnel are trained on the new policies and procedures developed to meet the compliance requirements of this new rule. 	<p>July 7, 2016 Your Borrower Has Died: Actions to Take, Mistakes to Avoid - Webinar 3:00 – 4:30 p.m. ET</p> <p>July 10-13, 2016 Southeast Regional Directors' Conference Pinehurst, NC</p> <p>July 11, 2016 New Overtime Rule Critical Budgeting Issues - Webinar 3:00 – 4:30 ET</p> <p>July 12, 2016 Board Oversight & Responsibility for ACH Risk - Webinar 3:00 – 4:30 p.m. ET</p>
<p>CFPB Proposes Rule to End Payday Debt Traps The Consumer Financial Protection Bureau recently announced its anticipated proposed rule [PDF, 1334 pages] that would require lenders who offer covered loan products to determine whether borrowers can afford the full amount of each payment when it is due without having to reborrow within the next month and limit lenders' ability to roll such debt over. Covered loans would include payday loans, single-payment auto title loans and certain high-cost installment loans (those with an "all-in" APR over 36 percent to be repaid by creditor access to the consumer's deposit account or paycheck or secured by a vehicle title).</p>	<p>July 13, 2016 Manufactured & Mobile Home Lending Standards & Eligibility - Webinar 3:00 - 4:30 p.m. ET</p> <p>July 14, 2016 Call Report Preparation for New Preparers & Reviewers - Webinar 3:00 – 4:30 p.m. ET</p>
<p>Under the proposal, loans of \$500 or less could be offered with a "principal reduction feature" designed to keep consumers from being trapped in debt. Lenders could also offer two longer-term loan options with more flexible underwriting by adhering to certain limits, such as loans generally meeting the parameters of the NCUA's "payday alternative loans" program or loans payable in equal installments with terms not over two years with an all-in cost of 36 percent or less, plus a reasonable origination fee.</p>	<p>July 18, 2016 New FFIEC Guidance on Mobile Financial Services - Webinar 3:00 – 4:30 p.m. ET</p>
<p>Another provision of the proposal would require a notice in advance of a lender's attempt to collect a payment on a covered loan from the consumer's deposit account, and cut off a lender's authorization for such</p>	<p>July 19, 2016 Collection Concepts, Compliance & Risks - Advanced - Webinar 3:00 – 4:30 p.m. ET</p>

account access after two unsuccessful attempts, unless the lender obtains a new authorization.

- [Fact sheet](#) on proposed rule

The Bureau also announced an inquiry into other potentially high-risk loan products and practices that are not specifically covered by the proposed rule. A [Request for Information](#) was issued with a **comment deadline of September 14, 2016**. Also released was the text of [CFPB Director Cordray's prepared remarks](#) introducing the proposal and inquiry at the Field Hearing on Small-Dollar Lending, held on June 2, 2016 by the Bureau in Kansas City, Missouri.

Your CU Should Know...

NCUA Free Webinar - Military Lending Act: The National Credit Union Administration will host a webinar, "Preparing to Comply with Regulatory Changes to the Military Lending Act," on Wednesday, June 29, starting at 2 p.m. Eastern.

During this webinar, staff from NCUA's Office of Consumer Protection will provide a high-level overview of the significant changes to the regulation implementing the Military Lending Act, most of which go into effect by Oct. 3. The law now covers most non-mortgage-related consumer credit extended to active duty service members and certain dependents. The webinar will review topics like:

- Transactions the rule covers, including credit card accounts;
- Who is covered under the rule's protections;
- How to determine who is a covered borrower; and
- How the new rule applies to NCUA's rule on payday alternative loans.

Online registration for this 90-minute webinar is now open [here](#). Participants will use this same link to log into the webinar. Registrants should allow pop-ups from this website. There is no charge for participating in this webinar.

Prior to the webinar, participants are encouraged to review two NCUA Regulatory Alerts issued in March 2016 and October 2015. These alerts explain the scope of the new rules, the safe harbors available to credit unions and other details to help bring credit unions into compliance before the rule's effective date. They also provide information about the

July 20, 2016
[Analyzing & Managing Escrow Accounts](#) - Webinar
3:00 – 4:30 p.m. ET

July 21, 2016
[Same Day ACH Deadline](#) - Webinar
3:00 – 4:30 p.m. ET

July 26, 2016
[Risks & Precautions for Endorsements & Other Negotiable Instruments](#) - Webinar
3:00 – 4:30 ET

July 27, 2016
[Understanding Letters of Credit: Rules, Responsibilities & Liabilities](#) - Webinar
3:00 – 4:30 ET

July 28, 2016
[Overdraft Outlook: Litigation Lessons, Avoiding Violations & Best Practices](#) - Webinar
3:00 – 4:30 ET

August 3, 2016
[Product Terms Part 2: Establishing New Product & Service Controls](#) - Webinar
3:00 – 4:30 ET

August 4, 2016
[15 Errors to Avoid When Conducting Internal Investigations](#) - Webinar
3:00 – 4:30 ET

August 9, 2016
[E-Mail Risks, Rules, Records & Regulations](#) - Webinar
3:00 – 4:30 ET

compliance resources available on NCUA's and the Consumer Financial Protection Bureau's websites.

Participants may submit questions in advance at WebinarQuestions@ncua.gov. The subject line of the email should read, "MLA Regulatory Amendments." Participants with technical questions about accessing the webinar may email audience.support@on24.com. NCUA will closed caption and then archive the webinar online approximately three weeks following the live event.

Overtime Pay Rule Is In and the Clock Is Ticking: On May 18, 2016, the Department of Labor published the final ruling for overtime pay, which states that exempt employees, who meet the duties requirement and make less than \$47,476 (\$913 per week), will need to be paid overtime rates if overtime hours are worked. Credit unions must comply with the rule by December 1, 2016 to minimize risks, fines, and potential retaliation claims.

FTC Charges Precious Metals Scheme With Fraud: The Federal Trade Commission has charged a nationally advertised gold and silver marketing operation with bilking millions from consumers. The FTC seeks to recover money from the defendants to return to their customers, many of whom allegedly lost thousands of dollars to the scheme. According to the [FTC's complaint](#), the defendants marketed gold and silver as investments, but often failed to deliver the goods. Operating as Discount Gold Brokers, the defendants offered gold and silver "at discounted prices," with "zero commissions, fees, or expenses," and at "zero percent above dealer cost." In response, many consumers used their retirement savings to buy the precious metals, with individual orders ranging from \$1,000 to \$300,000. The complaint alleges that the defendants required up-front payment via check or wire and some consumers used their family trust or retirement accounts to pay.

The defendants – DiscountMetalBrokers Inc. (formerly known as Discount Gold Brokers Inc. and Discount Metal Brokers Inc., and doing business as Discount Gold Brokers and North American Discount Gold.com); Donald Lee Dayer; Katherina Dayer; and Michael Scott Berman – are charged with violating the FTC Act and the FTC's Mail, Internet or Telephone Order Merchandise Rule, which requires sellers soliciting orders via mail, internet, or phone to have a reasonable basis to expect that they can ship merchandise within any advertised time frame, or within 30 days if no specific time frame is promised.

Former Wells Employee Pays \$85,000 CMP: The Consumer Financial Protection Bureau has [announced](#) the filing of an administration consent

August 10, 2016
[Legally Handling ATM & Debit Card Claims Under Regulation E - Webinar](#)

3:00 – 4:30 ET

BSA Training Opportunities through GCUA

[Click here for details](#)

order against a former Wells Fargo employee for an illegal mortgage fee-shifting scheme. The CFPB found that David Eghbali referred a substantial number of loan closings to a single escrow company, which shifted its fees from some customers to others at Eghbali's request. Eghbali could then manipulate loan costs and ultimately increase the number of loans he closed, increasing his commissions. The consent order requires Eghbali to pay an \$85,000 civil money penalty and bans him from working in the mortgage industry for one year.

Bureau Updates eRegulations to Include Regs C, X, and DD: The CFPB has announced the update of its eRegulations platform by adding Regulations C (HMDA), X (RESPA), and DD (TISA). In addition, the Regulation Z eRegulation has been updated to include all amendments through May 2016.

Comment Calls

CFPB Arbitration Rule

The Consumer Financial Protection Bureau (CFPB) is proposing sweeping changes to the use of pre-dispute arbitration clauses. Congress directed the CFPB to study pre-dispute arbitration agreements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In 2015, the CFPB published and delivered to Congress a study of arbitration. In the Dodd-Frank Act, Congress also authorized the Bureau, after completing the study to issue regulations restricting or prohibiting the use of arbitration agreements. Despite conflicting findings in the study, some of which show that consumers receive little or no relief from class action litigation, and that there are benefits to arbitration, the CFPB is moving forward with a rulemaking, which eliminates the use of class action waivers in mandatory arbitration agreements. In October 2015, the CFPB published Small Business Regulatory Enforcement Fairness Act (SBREFA) proposals in conjunction with a Small Business Review panel.

GCUA would like to know your thoughts and/or concerns with this proposal. Please email Selina Gambrell at selinag@gcua.org by **August 2nd**.

The CUNA Advocacy Update 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. You can view the current report and past reports from the archive.

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Need a BSA, ACH or Website review?

Email compliance@gcu.org.