



InfoSight Highlight

FinCEN BSA Leadership Expectations

An Effective BSA/AML Program Tested by a Competent, Independent Party

The appropriate involvement of a credit union's leadership in its BSA/AML program should be at least commensurate with the credit union's level of risk exposure. This includes ongoing risk assessment, sound risk-based member due diligence, appropriate detection and reporting of suspicious activity, and independent program testing. BSA/AML compliance officers should be familiar with guidance by federal functional regulators, self-regulating organizations, and FinCEN as well.

FinCEN stresses that compliance program testing must be independent. Credit union leadership needs to ensure that the party testing the program (whether external or internal) is independent, qualified, unbiased, and does not have conflicting business interests that may influence the outcome of the compliance program test. Ensuring the integrity and independence of the compliance program testing enables the credit union to locate and take appropriate correct actions to address deficiencies.

How to handle the independence if you have a party you prefer to do business with every year - have them send a different staff person to review your program. People have strengths and weaknesses and therefore see things from a different perspective so make sure at least every two years a different person (even if within the same firm) reviews your program. For example, although your full program will be reviewed each year, one year a person reviewing the program might be excellent at pinning down the reporting elements to identify structuring and the next year a different staff person might be good at ACH and electronic banking pieces of the puzzle. This will help ensure you have a well thought through program.

Understanding How BSA Reports Are Used

All credit union staff should have an understanding of how information collected through the credit union's BSA/AML program is used, and the purpose that BSA reports serve. Reporting provides law enforcement with important information that safeguards the nation's interest, and helps to confront serious threats, both domestic and abroad. Reporting also helps the credit union protect itself and aid law enforcement in protecting the institution from bad actors, including inside threats, frauds, and cyber-related threats. BSA regulations have the deterrent effect on those who would abuse the financial systems, and force illicit actors to behave in ways that expose them to scrutiny. The advisory lists four main ways that financial institutions can inform staff of how reporting is used:

1. Serving as tips to initiate investigations;
2. Expanding existing investigations;
3. Promoting international information exchange; and
4. Identifying significant relationships, trends and actors

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

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

GEORGIA CREDIT UNION

Affiliates

InfoSight
Compliance eNEWSLETTER
October 24, 2016
Vol. 10, Issue 43

Created in partnership with the



Credit Union National Association

Compliance Video

CU Compliance Connection

Military Lending and 3rd Quarter 2016 Review

This video provides an overview of the key changes made to the Military Lending Act that credit unions need to consider. View the video [here](#).

Be sure to view this [video](#), where Glory LeDu, Manager of League System Relations, provides an overview of the compliance challenges your credit union is facing now in the 3rd quarter of 2016.

Compliance Video: Same Day ACH Preview

In this 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](#).

Compliance News

CFPB's Consent Order Against Credit Union Raises Additional Questions

Last week the Georgia Credit Union Affiliates (GCUA) issued talking points to help guide you with conversation and response to members or the media who may approach your credit union with questions or comments regarding the recent Navy Federal fine.

Based on the consent order the CFPB reasoned that the credit union:

- Falsely threatened legal action and wage garnishment;
- Falsely threatened to contact commanding officers to pressure service members to repay;
- Misrepresented credit consequences of falling behind on a loan; and
- Illegally froze members' access to their accounts

What the consent order fails to address is whether the credit union was limiting services to a member who has caused a loss to the credit union as authorized by the FCU Act. The CFPB claims that the credit union violated UDAAP when the credit union froze electronic account access and disabled electronic services for about 700,000 accounts after consumers became delinquent on a credit union credit product. This meant delinquency on a loan could shut down a consumer's debit card, ATM, and online access to the consumer's checking account. The only account actions consumers could take online would be to make payments on delinquent or overdrawn accounts. In addition to the civil money penalty and required remunerations to affected members, the CFPB has now ordered the credit union to "ensure consumer account access" and has prohibited the credit union from blocking its members' account access if they are delinquent on one or more accounts.

In direct conflict with this are several NCUA legal opinion letters where the agency has said that nothing in the FCU Act or NCUA's regulations precludes a federal credit union from restricting the availability of certain services (e.g., ATM services, credit cards, loans, share draft privileges, preauthorized transfers, etc.) to members provided there is a rational basis for doing so and as long as the members are aware of the policy. The NCUA opinion letters also state that "any policy limiting services an FCU provides to a member who causes a loss may also be restricted by contract, state, and other federal laws." What has yet to be determined is whether UDAAP is one of these "federal laws" that could restrict a credit union's ability to limit member services. CUNA has reached out to NCUA for clarity on this issue and is continuing to study the matter and will report any new developments.

While there are only a limited number of credit unions under CFPB's supervision, we are hearing rumblings of inquiries about whether and/or how the CFPB's order could impact other institutions' business practices. CUNA and GCUA realize that as a business decision some credit unions may choose to suspend certain services to members that are in default of their loan obligations. Being mindful that suspension of services to members may also be impacted by contract and other state laws, we recommend credit unions consult with local counsel on this matter while the issue continues to evolve.

You should know that

- As of June 30, 2016, Georgia credit unions were carrying almost \$14 billion in outstanding consumer loans.

Compliance Calendar

October 24, 2016:

[5300 Call Report Due to NCUA](#)

November 6, 2016:

Daylight Saving Time Ends

November 11, 2016:

Veterans' Day - Federal Holiday

November 24, 2016:

Thanksgiving Day - Federal Holiday

December 1, 2016:

Overtime Rule - Department of Labor

December 25, 2016:

Christmas Day - Federal Holiday

January 1, 2017:

Member Business Loans;
Commercial Lending (NCUA) –
Effective date

January 1, 2017:

HMDA – Regulation C, excludes
low volume depository institutions
from coverage –
Effective date

January 2, 2017:

New Year's Day (observed) -
Federal Holiday

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

Compliance Training

October 24, 2016

[New CFPB Amended Rules for Mortgage Foreclosure & Bankruptcy Protections: Preparing Now for the 2017 Effective Date](#)
Webinar

3:00 - 4:30 ET

November 2, 2016

[Notary Essentials & Legalities for Credit Unions](#)
Webinar

3:00 - 4:30 ET

- Of those loans, **only .5%** were more than 60 days past due (\$70 million).

What is the message in these stats? *Accounts subject to collections make up a very small portion of the lending pool at Georgia credit unions. The collection procedures affect only a small portion of Georgia credit union members.*

Another Message for Your Credit Union:

- *Credit unions make every attempt to avoid repossession and/or legal intervention or recovery, preferring to work with borrowers to resolve payment issues.*

Supporting Information for that Message:

- Credit unions are in the business of helping people afford life. We are owned by our members and therefore their financial well-being is our first priority.
- It is in the best interest of the credit union and the member that delinquency issues are resolved prior to corrective action becoming necessary.
- ***NOTE:*** *Add your credit union's services and strategies designed to keep borrowers from defaulting on loans (i.e. responsible lending practices, financial education, loan agreements that clearly define next steps should a loan become delinquent, etc.).*

If you are contacted by the media, we encourage you to avoid:

- Demonizing Navy Federal Credit Union
- Diving into the details of the CFPB/Navy Federal CU settlement
- Discussing the collection policies and procedures of other financial institutions
- Deflecting to bank abuses (the recent Wells Fargo fraudulent account issue)

As we gather more information on how this ruling may impact credit unions; we will be sure to inform you through our publications.

NCUA's BSA Policy for Federally Insured Credit Unions

NCUA's Rule 748 requires federally insured credit unions to establish a BSA compliance program.

At a minimum your BSA compliance program must provide for:

1. A designated BSA compliance officer who has been appointed by the credit union's board of directors;
2. A system of internal controls to ensure ongoing compliance;
3. Independent testing to be conducted by qualified, unbiased credit union personnel or outside parties; and
4. Training for appropriate personnel.

NCUA requires credit unions' compliance programs to be:

- in writing,

November 3, 2016

Cyber Series: Member Authentication & Validation: The New Normal in Risk Mitigation Webinar
3:00 - 4:30 ET

November 9, 2016

Form 1099 Reporting: Third-Party Vendors, Foreclosures, Debt Forgiveness & More Webinar
3:00 - 4:30 ET

November 10, 2016

Audit Compliance Series: Developing a Risk-Based Compliance Audit Process for Deposits Webinar
3:00 - 4:30 ET

November 14, 2016

Nonresident Alien Accounts: W-8s, W-8BENs, BSA, Rules & More Webinar
3:00 - 4:30 ET

November 15, 2016

Recognizing & Responding to Elder Fraud: What Every Staff Member Should Know Webinar
3:00 - 4:30 ET

November 16, 2016

Quarterly Supervisory Committee Series: What the Board Needs to Know to Manage IT Webinar
3:00 - 4:30 ET

November 17, 2016

Handling ACH Exceptions & Returns: Unauthorized, Revoked, or Stop Payment? Webinar
3:00 - 4:30 ET

November 22, 2016

Trust Accounts: Opening, Transacting, Deposit Insurance & More Webinar
3:00 - 4:30 ET

November 29, 2016

Top 10 IRA Issues: Compliance, Reporting, Death & Distributions

- approved by the credit union's board of directors, and
- reflected in the minutes of the credit union's meeting.

BSA Compliance Officer: The credit union's board of directors must designate a qualified BSA officer. "Qualified" means the BSA officer is expected to be fully knowledgeable of the Bank Secrecy Act and all related regulations, as well as understand the credit union's products, services, members, geographic locations and the money-laundering and terrorist financing risks associated with each of those activities.

The BSA compliance officer should be in a position to regularly apprise the senior management staff and the board of directors of ongoing compliance with the BSA.

While the BSA officer is responsible for coordinating and monitoring day-to-day BSA compliance, the board of directors is ultimately responsible for the credit union's compliance and is responsible for ensuring that the BSA compliance officer has sufficient authority and resources to effectively administer the compliance program.

Internal Controls: A system of internal controls refers to the policies and procedures the credit union puts in place to limit and control risks associated with BSA. The level of sophistication of your internal controls will be commensurate with the size, structure, risks and complexity of your credit union. A large, complex credit union is more likely to have departmental internal controls that will uniquely address the risks to a particular department or line of business. **The filters put in place for internal controls will not only identify members who engage in suspicious activity but could alert the BSA Officer to staff, volunteer board and committee members who may be up to fraud or structuring activities.**

The following are examples of some of the items that may be included in your internal control procedures:

- Identify your credit union's products, services, members, and branches that you consider more vulnerable to abuse by money-launderers or other criminals, and provide a program to manage the higher risk;
- Inform the board of directors and senior management of your compliance initiatives, identify compliance deficiencies, corrective actions taken, and notify the board and the senior management of SARs that have been filed;
- Provide for program continuity despite changes in management or employees;
- Meet all of the BSA recordkeeping and reporting requirements;
- Implement risk-based Member Due Diligence policies & procedures;
- Identify reportable transactions and accurately file all required reports, such as SARs, and CTRs;
- Provide for the segregation of duties where you can;
- Provide for sufficient controls and monitoring systems for timely detection and reporting of suspicious activity;
- Include adequate supervision of employees who handle currency, complete reports, grant exemptions, etc.;
- Train all employees to be aware of their specific responsibilities under BSA.

Independent Testing: It is recommended that an audit of the BSA compliance program be conducted by the internal audit department, outside auditors, consultants, or other qualified independent parties. "Qualified" means someone who understands the requirements of BSA. Credit unions that do not have any of these options available to them may comply with this requirement by using

Webinar

3:00 - 4:30 ET

November 30, 2016:

Annual Robbery Training for All Staff

Webinar

3:00 - 4:30 ET

December 1, 2016:

Meaningful & Strategic Stress Testing: A Valuable Board & Management Tool

Webinar

3:00 - 4:30 ET

December 6, 2016

Cyber Series: Requirements for Tech-Based Marketing: Websites, Social Media, Robo Calls & More

Webinar

3:00 - 4:30 ET

December 13, 2016

Loan Review: Consumer, Commercial & Real Estate

Webinar

3:00 - 4:30 ET

December 14, 2016

Director Series: Essential Compliance Training for the Board & Senior Management

Webinar

3:00 - 4:30 ET

December 15, 2016

Frontline Series: Powers-of-Attorney In-Depth: Good Faith, Fraud & Fiduciary Capacity

Webinar

3:00 - 4:30 ET

December 20, 2016

Disaster Preparedness, Recovery & Business Continuity

Webinar

3:00 - 4:30 ET

December 21, 2016

Emerging Need & Regulatory Expectations for Enterprise Risk Management Framework

Webinar

3:00 - 4:30 ET

BSA Training Opportunities through GCUA

[Click here for details](#)

qualified credit union staff who are not involved in the function being tested, or audited. The persons conducting the test should report directly to the board of directors or to a designated board committee comprised primarily or completely of outside directors.

Training: At a minimum, the credit union's BSA training program must provide training for all personnel whose duties require knowledge of the BSA. The training should be tailored to the person's specific responsibilities. An overview of the BSA requirements should be given to new staff during employee orientation. And, the BSA compliance officer should receive periodic in-depth training that is relevant and appropriate to the activities and overall BSA risk of the credit union.

While the board of directors may not need the same degree of training as credit union personnel, they need to understand the importance of BSA regulatory requirements, the ramifications of noncompliance, and the risks posed to the credit union. Without a general understanding of the BSA, the board of directors cannot adequately provide BSA oversight, approve policies, or provide necessary resources. **An engaging way to train the board - tell them real life stories along with the bullet points!** There is a great deal of information on FinCEN's website about prominent players in the financial field who have been under the microscope for less-than-ideal BSA/OFAC programs. This will drive home the point of having adequate BSA resources and training.

Student Loan Servicing – Handling Partial Payments

In August of this year, the CFPB issued a consent order against Wells Fargo Bank for unlawful student loan servicing practices related to payment aggregation in violation of UDAAP, the Fair Credit Reporting Act, and Regulation V. The Bureau found that the bank processed payments in a way that maximized fees for many consumers who made partial payments. A "partial payment" is a payment towards a student loan account that is less than the scheduled amount due for that billing cycle. In this case, the bank grouped together consumers' student loans that had the same monthly due date and if the borrower made a partial payment that was not sufficient to cover the total amount due across all loans, the bank applied the payment proportionally across all the loans rather than satisfying the amount due on as many of the loan amounts as possible, which led to increased costs and late fees. The bank also failed to disclose its method for allocating payments to consumers and did not inform consumers that they had the right to instruct the bank on how to allocate their partial payments.

As a result, the CFPB found that this was an unfair practice that caused or was likely to cause substantial injury to consumers that was not reasonably avoidable or outweighed by countervailing benefits to consumers or competition in violation of the Consumer Financial Protection Act's prohibition on unfair, deceptive, or abusive acts or practices. The bank also violated the FCRA and Regulation V when it furnished information about the delinquencies that resulted from the improper allocation of partial payments to credit reporting agencies.

This enforcement serves as a reminder to credit unions to properly allocate partial payments in a way that does not maximize fees to the member. Credit unions should allocate payments in a manner most favorable to the member that will reduce the number of delinquencies and late fees.

Your CU Should Know...

FAQ on Cybersecurity Assessment Tool

The Federal Financial Institutions Examination Council (FFIEC) has issued [frequently asked questions](#) related to the [Cybersecurity Assessment Tool](#)(Assessment). According to [NCUA's press release](#), the FAQ guide answers questions and clarifies points in the assessment and supporting materials based on questions received by the FFIEC members over the course of the last year.

The FAQs answer questions such as:

- Why did the FFIEC release the Assessment?
- Does my institution have to use the Assessment?
- What is the value of the Assessment to management?
- How do I determine my institution's Inherent Risk Profile?
- How do I determine my institution's Cybersecurity Maturity?
- Can the Assessment be used as part of my institution's oversight of third parties?
- How are FFIEC member agencies using the Assessment?

The [7-page document](#) contains a total of 18 FAQs.

And, just a reminder that [CUNA Strategic Services](#) provider [TraceSecurity](#) has developed a free [automated tool](#) to assist credit unions with implementation of the complex FFIEC cyber-assessment. The TraceSecurity tool incorporates all aspects of the assessment into a user-friendly, easily accessible application. Upon assessment completion, results are compiled into an export of the data as well as a report that evaluates the credit union's results, and includes TraceSecurity's recommendations to improve cybersecurity maturity. [Click hereto](#) access the tool.

Bureau Publishes Mortgage Servicing Amendments

On August 6, the CFPB released a final rule making several amendments to the 2013 Mortgage Servicing Rules under RESPA (Regulation X) and TILA (Regulation Z). That rule was published in the *Federal Register* at [81 FR 72160](#). The rule clarifies, revises, or amends provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z's servicing provisions. The final rule also addresses proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act, and makes several technical corrections to both regulations. The rule will be effective one year from publication, or October 19, 2017, except for portions for which the effective date will be six months later, or April 19, 2018.

The CFPB also published [81 FR 71977](#), "Safe Harbors from Liability under the Fair Debt Collection Practices Act for Certain Actions Taken in Compliance with Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)," official Bureau interpretations to clarify the interaction of the FDCPA and specified mortgage servicing rules in Regulations X and Z. The interpretations will also be effective October 19, 2017, except for provisions relating to confirmed successors in interest in Part II.A of the document, which will take effect April 19, 2018.

Outlook Live Webinar on Overdraft Services - Nov. 9th

The Federal Reserve has scheduled an [Outlook Live webinar](#) on overdraft services to be held on Wednesday, November 9th at 2:00 p.m. Eastern Time. The webinar is described as a "discussion of overdraft practices and issues identified through consumer complaints, examinations, and enforcement actions." For more information, and to register for the program, click [here](#).

OFAC and Commerce Ease Cuba Restrictions

The U.S. Department of the Treasury has [announced](#) the amendment of the OFAC Cuban Assets Control Regulations (CACR) to implement the new U.S. policy direction towards Cuba. Among other things, these amendments authorize certain transactions related to Cuban-origin pharmaceuticals and joint medical research; add, expand, and clarify authorizations relating to trade and commerce; authorize certain civil aviation safety-related services; further facilitate authorized travel to Cuba; and expand the authorizations for grants and humanitarian-related services designed to directly benefit the Cuban people. The amendment was published at [81 FR 71372](#) in the *Federal Register*, and was effective on publication. OFAC also published new and updated [FAQs](#), a [Fact Sheet](#), and [updated Travel Guidance](#). In a coordinated action, the Department of Commerce published a final rule at [81 FR 71365](#) amending a license exception to allow cargo aboard aircraft to transit Cuba when that cargo is bound for destinations other than Cuba. This rule also authorizes export and re-export of certain items sold directly to individuals in Cuba under a license exception. Finally, this rule revises the lists of ineligible Cuban officials for purposes of certain license exceptions. Commerce's rule is also effective now.

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.

Click [here](#) to request to be added to the mailing list for this and/or other GCUA email publications.

Bookmark InfoSight

No need to go through the Georgia Credit Union Affiliates home page to access InfoSight. Simply add the following link to your bookmarks: <http://ga.leagueinfosight.com/>.

Need a BSA, ACH or Website review? Email compliance@gcu.org.