



## InfoSight Highlight

### UDAP/UDAAP

#### UDAAP - Unfair, Deceptive and Abusive Acts or Practices

Section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) essentially maintains the FTC Act's definitions of "unfair" and "deceptive," while also adding a third element, "abusive" (making the acronym UDAAP), and a sixth financial regulatory body, the Consumer Financial Protection Bureau (CFPB), to enforce UDAAP for institutions with over \$10 billion in assets. (Prudential regulators have UDAAP supervision and enforcement authority for depository institutions of \$10 billion or less.) The FTC Act empowers the CFPB to serve as a rule-maker and enforcer of UDAAP. The CFPB has unlimited authority to write rules on unfair, abusive or deceptive practices relating to consumer financial products.

The Bureau may take enforcement action:

- To prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law, or
- In connection with any transaction with a consumer for a consumer financial product or service, or
- The offering of a consumer financial product or service.

#### What Is Abusive?

The Dodd-Frank Act also prohibits conduct that constitutes an abusive act or practice. An act or practice is abusive when it:

- Materially interferes with the ability of a consumer to understand a term or condition of the product or service; or
- Takes unreasonable advantage of:
  - A lack of understanding on the part of the consumer about the risks, costs, or conditions of the product or service,
  - The inability of the consumer to protect the interests of the consumer in selecting or using the product or service; or
  - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

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

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

## Compliance News

### A Reminder to Be Wary of UDAAP When Collecting Debts. . .

In the last newsletter, we mentioned recent enforcement action the CFPB entered against Navy FCU, one of the nation's largest credit unions, citing unfair and deceptive practices in connection with the credit union's debt collection practices. The CFPB alleged that the credit union engaged in deceptive acts when employees threatened legal action they did not intend to

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## 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](#).

take to coerce members into paying their delinquent accounts. They also found that the false threats the credit union's debt collectors made to contact the delinquent members' commanding officers was a deceptive practice, as were the collectors' statements about the negative impact of the delinquency on a member's future credit. The credit union also froze account access at the member level and disabled electronic account services for many delinquent members without providing adequate notice, which the CFPB said was an unfair act or practice under UDAAP that caused substantial injury to members.

While this consent order is sure to send shock waves across the industry, it is a good reminder for credit unions to review the existing guidance we do have on UDAAP and ensure that debt collection practices conform to these standards. In July 2013, the CFPB published a bulletin (2013-07) titled "Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts." The bulletin summarizes the applicable standards and provides examples of unfair, deceptive, and/or abusive acts in the context of debt collection. These include things like falsely representing the character, amount, or legal status of the debt, threatening any action that is not intended or the covered person or service provider does not have the authorization to pursue, and misrepresenting whether information about a payment or nonpayment would be furnished to a credit reporting agency. In light of the CFPB's recent consent order against a credit union, we highly recommend that credit unions review this bulletin and ensure that credit union staff are not engaging in debt collection practices that could potentially violate UDAAP.

### **NCUA Launches New Examiner's Guide**

The National Credit Union Administration recently launched the online Examiner's Guide, a new, interactive tool on [www.ncua.gov](http://www.ncua.gov) for examiners that provides up-to-date, comprehensive supervisory guidance on key regulatory and supervisory issues affecting the credit union system.

"Providing greater clarity on how NCUA evaluates credit union operations will reduce potential conflicts that may arise in the examination process and improve overall safety and soundness," NCUA Board Chairman Rick Metsger said. "Making NCUA's operations more effective and efficient is the goal of my Continual Quality Improvement initiative, and the online *Examiner's Guide* is another example of how the agency can use technology to achieve this goal. I encourage credit union managers, compliance experts and staff to review the new material and format."

The guide's new online format allows readers to easily navigate to topics of interest, search for content using keywords and connect more easily to resources provided by NCUA and other regulatory agencies. The guide also includes a feedback button, allowing stakeholders to provide input and suggestions for additional clarification. Additionally, the new format allows NCUA to update the *Examiner's Guide* continuously, such as in the event of a new law or regulation, changes in agency policy, new products and services or changes in the broader economy.

With the launch of the online Examiner's Guide NCUA is issuing updated guidance on four topics: interest rate risk, risk-focused examinations, total analysis process and fidelity bond coverage.

Updating the content of the *Examiner's Guide* has been an agency-wide effort, involving NCUA field staff and subject matter experts from across the country, as well as input from state regulators.

Over the course of the next year, the agency will issue updated guidance on other topics. Eventually, the online *Examiner's Guide* will include updated

## Compliance Calendar

**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 26, 2016:**  
Christmas Day (observed) - 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

**November 2, 2016**  
Notary Essentials & Legalities for Credit Unions  
Webinar  
**3:00 - 4:30 ET**

**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

guidance on such supervisory areas as member business lending, consumer and real estate lending, internal controls, asset-liability management, investments and fraud, among others. Until that time, [existing guidance found in the previous version of the \*Examiner's Guide\*](#) remains in effect.

NCUA's *Examiner's Guide* provides relevant, accurate guidance that examiners can refer to during an examination. The guide itself does not impose requirements on credit unions, though it does discuss requirements related to a law or regulation.

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### **30 Credit Unions Agree to Late-Filing Penalties for First Quarter of 2016**

Thirty federally insured credit unions subject to civil monetary penalties for filing late Call Reports in the first quarter of 2016 have consented to penalties totaling \$20,036, the National Credit Union Administration announced on October 24th. In the first quarter of 2015, 15 credit unions consented to penalties.

Individual penalties ranged from \$151 to \$6,734. The median penalty was \$274. The Federal Credit Union Act requires NCUA to send any funds received through civil monetary penalties to the U.S. Treasury.

"I'm disappointed the number of late filers has risen," NCUA Board Chairman Rick Metsger said. "While we are still far below the levels of late filers of just a few years ago, the goal remains full compliance. I'd remind credit unions NCUA offers support if they run into problems meeting the Call Report filing deadline, and we hope they will take advantage of that assistance."

The assessment of penalties primarily rests on three factors: the credit union's asset size, its recent Call Report filing history and the length of the filing delay. Of the 30 credit unions agreeing to pay penalties for the first quarter of 2016:

- Twenty had assets of less than \$10 million;
- Nine had assets between \$10 million and \$50 million; and
- One had assets greater than \$250 million.

No credit unions with assets between \$50 million and \$250 million were subject to civil monetary penalties for filing late Call Reports in the first quarter. Five of the late-filing credit unions had been late in a previous quarter.

A total of 40 credit unions filed Call Reports late for the first quarter of 2016. NCUA consulted regional offices and, when appropriate, state supervisory authorities to review each case. That review determined mitigating circumstances in three cases that led to credit unions not being penalized. Another six credit unions received a requested waiver. One credit union paid a civil monetary penalty to its state regulator.

NCUA informed the remaining credit unions of the penalties they faced and advised them they could reduce their penalties by signing a consent agreement. NCUA also said it would initiate administrative hearings against credit unions that did not consent.

NCUA sends reminder messages about Call Report filing deadlines that include information on how to receive technical support to handle filing problems. The agency also has created an automated reminder email system that contacts credit unions that have not filed their Call Reports and confirms successful filing.

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](#)

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](#)

NCUA's Office of Small Credit Union Initiatives has dedicated an Economic Development Specialist to assist small credit unions in filing Call Reports on time. Credit unions that would like assistance should send an email to [OSCUIConsulting@ncua.gov](mailto:OSCUIConsulting@ncua.gov). NCUA also has produced a [video](#) describing how to file Call Reports.

## **Ransomware Is a Serious and Growing Threat**

Businesses and individuals face a dangerous and growing threat to the safety of their personal information and data in the form of ransomware.

Ransomware is a form of malware that targets critical data and systems for the purpose of extortion. Once active on a victim's network or computer, the ransomware encrypts and holds critical and sensitive data hostage until payment is made. A countdown clock usually accompanies the ransom demand and the cybercriminal usually requires payment in bitcoin or another anonymous form of payment. After receiving payment, the cybercriminal may provide an avenue for the victim to regain access to the system or data.

According to the U.S. Federal Bureau of Investigation, ransomware victims in the United States have paid more than \$209 million in ransom payments in the first three months of 2016, compared with \$25 million in all of 2015. The ransom demands vary greatly, but averages about \$500 for individuals and \$10,000 for businesses. Ransomware is primarily delivered through spear-phishing emails. In fact, a recent study by the threat-management company PhishMe found that ransomware attacks make up 93 percent of phishing emails.

However, ransomware is also evolving and becoming increasingly more sophisticated. According to the FBI's Cyber Division, in newly identified instances of ransomware, cybercriminals are bypassing the need for victims to click on a link in an email. Instead, they are seeding legitimate websites with malicious code to take advantage of unpatched software that may be present on a victim's computers.

## **Small Financial Institutions Are Especially Vulnerable**

The rising threat of ransomware is a particular concern for smaller financial institutions like credit unions. A recent report by Beazley Breach Response notes the rising threat to small banks and credit unions with less than \$35 million in annual revenue. They found that 81 percent of hacking and malware breaches at financial institutions in 2016 occurred in these small financial institutions, compared to 54 percent of the incidents reported in 2015. Beazley said its team handled 86 ransomware attacks during the first six months of 2016, versus 43 for all of 2015.

## **Ways to Prevent Ransomware**

Fortunately, there are ways to mitigate the risk ransomware poses to your credit union. The FBI, U.S. Computer Emergency Readiness Team and the Federal Financial Institutions Examination Council have put out guidance and best practices on how to help protect your systems from this growing threat.

Some of the basic defenses against ransomware include:

- Educating all staff on the risks and how to use email and the web safely;
- Making sure to regularly back-up critical systems and data;
- Maintaining up-to-date firewalls and anti-malware systems and protections;
- Limiting the ability of users or IT systems to write onto servers or other systems;
- Having a robust patch-management program;

### **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](#)

- Using web- and email-protection systems and software; and
- Removing any device suspected of being infected from your systems.

### **Additional Resources**

For additional information on ransomware and its growing threat to financial institutions, visit:

- [\*Beazley Breach Insights, "Hackers Target Smaller Financial Institutions"\*](#)
- Federal Bureau of Investigation, ["Incidents of Ransomware on the Rise: Protect Yourself and Your Organization"](#)
- The United States Computer Emergency Readiness Team, ["Ransomware" and "Ransomware and Recent Variants"](#)
- Federal Financial Institutions Examination Council, ["Cyber Attacks Involving Extortion"](#)

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## **Your CU Should Know...**

### **HUD Expands Housing Protection for Violence Survivors**

A [final rule](#) has been issued by HUD to protect the housing of survivors of domestic and dating violence, sexual assault and stalking, to implement the requirements of the 2013 reauthorization of the Violence Against Women Act (VAWA), which applies for all victims of domestic violence, dating violence, sexual assault and stalking, regardless of sex, gender identity or sexual orientation, and which must be applied consistent with all nondiscrimination and fair housing requirements. The final rule will be effective 30 days following publication in the *Federal Register*, with compliance required by 180 days after publication.

### **CFPB Spotlights Prepaid Product Complaints**

The [October CFPB complaint spotlight](#) focuses on consumer complaints about prepaid products. The report shows that consumers continue to experience issues trying to manage their accounts and access funds. This month's report also highlights trends seen in complaints coming from North Carolina.

### **OFAC Sanctions Nine Mexicans Tied to Drug Traffickers**

Treasury has announced that its Office of Foreign Assets Control (OFAC) has sanctioned nine Mexican individuals linked to the Cartel de Jalisco Nueva Generacion (CJNG) and its close ally, the Los Cuinis Drug Trafficking Organization (DTO), which were initially sanctioned on April 8, 2015. The nine individuals are designated as Specially Designated Narcotics Traffickers (SDNTs) pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) for providing material assistance to the drug trafficking activities of Nemesio Oseguera Cervantes (a.k.a. "Mencho") and his brother-in-law, Abigael Gonzalez Valencia, the respective leaders of CJNG and the Los Cuinis DTO. As a result of today's action, any assets these individuals may have under U.S. jurisdiction are frozen, and U.S. persons are generally prohibited from engaging in transactions with them. See our [OFAC Update](#) for further details.

### **New Antitrust Guidance for HR Professionals**

The [Federal Trade Commission and the Justice Department's Antitrust Division](#) issued [guidance](#) for human resource (HR) professionals and others who are involved in hiring and compensation decisions. HR professionals are often in the best position to ensure their companies' hiring practices comply with the law and this guidance will help educate and how the antitrust laws apply to the employment arena.

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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.

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