New York Credit Union Association
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Compliance and Legal Conference

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Compliance Topics
- Website Compliance and ADA Upcoming Changes
- Reg CC – July 2018
- HMDA – January 2018
- Mortgage Servicing Rules – October 2017/April 2018
- Military Lending Act – Credit Cards – October 2017
- Right to Set off and Credit Cards
- Fair Lending Overview
- Proposed Overdraft Disclosures – CFPB
- Additional items
  - Corporate Credit Union Stabilization Fund
  - Arbitration Agreements
  - New York State Cybersecurity
  - Field of Membership
  - Member Business Loans
Website Compliance

- Ensure websites provide equal access to the online goods and services for those with disabilities
- Places of accommodation have historically included physical spaces, such as retail shops and restaurants, but in recent years lawsuits filed over websites not compliant with ADA have increased, which makes it all the more important to ensure your website is ADA compliant
- Section 508 of Title II requires that all website content be accessible to people with disabilities. This applies to Web applications and Web pages

Website Compliance

- DOJ’s position is that ADA applies to websites where business is done
  - Financial Institution implications: Account opening, loan applications, Online banking, communications with institution about accounts and services
- DOJ Regulations: 28 C.F.R. Part 36 36.303(a)
  - Must ensure that no one with a disability is denied services, segregated or treated differently because of the absence of auxiliary aids and services. Exceptions:
    - Providing aids/services would fundamentally alter the nature of the goods, services, offered; OR – Providing aids/services would result in an undue burden, i.e., significant difficulty or expense.

Website Compliance

Web Content Accessibility Guidelines (WCAG) 2.0 – basic elements:
- Provides text alternatives for any non-text content;
- Provides alternatives for time-based media;
- Includes content that can be presented in different ways without losing information or structure;
- Is easy to see and hear, including separating foreground from background;
Website Compliance

- Permits all functionality from a keyboard (as opposed to a cursor);
- Permits sufficient time to read and use content;
- Is not designed in a way that is known to cause seizures;
- Includes ways to help users navigate, find content, and determine where they are;
- Includes text content that is readable and understandable;
- Operates and appears in predictable ways;
- Helps users avoid and correct mistakes; and
- Is compatible with current and future user agents, including assistive web technologies.

Reg CC

Effective July 2018

The changes will update the check collection framework to reflect a system that is now largely electronic-based. The amendments do not address the sections of Regulation CC regarding funds availability schedules or related customer notices and currently impacts sections C and D.

The final rule modifies:

- the current check return requirements by requiring that all returned checks, both paper and electronic, be returned by 2:00 p.m. on the second business day and eliminating the “forward collection” option

- adds a condition that the depositary bank must have arrangements to accept returned checks electronically in order to make a claim for damages due to a late return.
- applies the return requirements to electronic images of checks, including images that are not derived from a paper check (i.e., electronically-created items).
- creates new indemnities for losses caused by unauthorized or duplicate electronically-created items.
- adds a new indemnity that indemnifies depositary bank that received a deposit of an original paper check if the item is returned unpaid after being deposited using a remote deposit capture service.
HMDA

- Are you a HMDA reportable credit union
- Do you have your LEI
- Have you established what are the reportable covered transactions will be on your HMDA LAR with a final action and final action date
- Policies and procedures
- Testing source fields for additional and modified information being collected for the LAR
- Increased Demographic Information collection
- Reasons for denial
- Credit decision definition

HMDA

- Considerations for the Conditional Free Form Text fields --- training and process for consistency
  - Other denial reasons
  - GMI
  - Ethnicity
  - Race
- Expanded fields on HMDA LAR from the TRID disclosures

Mortgage Servicing Rules

The 2016 Mortgage Servicing Rules have an effective date of October 19, 2017 for all provisions except as noted below:

- Bankruptcy periodic statement exemption and bankruptcy modified periodic statements have an effective date of April 19, 2018. The relevant provisions are §§ 1026.41(e)(5) and (f).
- Successor in interest provisions have an effective date of April 19, 2018. The relevant provisions are in both Regulation X and Regulation Z.
Mortgage Servicing Rules

- The Regulation Z rule addresses:
  - Successors in interest (§§ 1026.2(a)(11) and (27), 1026.20(c) through (e), 1026.36(c), 1026.39(f), and 1026.41(g)) 22 CONSUMER FINANCIAL PROTECTION BUREAU
  - Interest rate adjustment notices for ARMs (§ 1026.20)
  - Prompt crediting of mortgage payments and responses to requests for payoff amounts (§ 1026.36(c)) Periodic statements for mortgage loans (§ 1026.41)
  - Small servicers (§ 1026.41(e)(4))

Mortgage Servicing Rules

- The Regulation X rule addresses:
  - Successors in interest (§ 1024.17 and Subpart C of Regulation X)
  - Error resolution and information requests (§§ 1024.35 and 1024.36)
  - Force-placed insurance (§§ 1024.17 and 1024.37)
  - General servicing policies, procedures, and requirements (§ 1024.38)
  - Early intervention with delinquent borrowers (§ 1024.39)
  - Continuity of contact with delinquent borrowers (§ 1024.40)
  - Loss mitigation (§ 1024.41)

MLA and Credit Cards

- Examples of the types of credit covered by the regulation now include unsecured loans, vehicle refinance loans, unsecured lines of credit, overdraft lines of credit, debt consolidation loans and private student loans and credit cards.
- For closed-end loans, the MAPR must be calculated at the time the extension of credit is made. For open-end credit, the MAPR must be calculated each billing cycle to ensure the 30% cap is not exceeded.
- To have a safe harbor for excluding an eligible fee from the MAPR for a credit card account, the rule requires using the average fee charged by five or more creditors with at least $3 billion in outstanding credit card balances at any time during a three year lookback. (https://www.cunamutual.com/-/media/cunamutual/lending/lender-document-solutions/public/mla-cc-safe-harbor-resource.pdf)
MLA and Credit Card

- The Department of Defense has stipulated a wide range of fees must be calculated in the 36% max MAPR, even those for ancillary credit products like debt protection. Think of the MAPR as an all-inclusive APR – one that doesn't recognize all of Reg Z's exceptions. The DOD has effectively prohibited the deployment of noninterest income opportunities within the credit card portfolio because their fees would likely exceed the MAPR threshold.
- Credit unions may rarely handle the full day-to-day activities of credit card portfolio management. Many may be significantly dependent on third-party vendors to process payments. Therefore, credit unions must perform their third-party due diligence to ensure their partners are indeed implementing the necessary processes to comply with MLA rules.

MLA and Credit Card

- The following terms may not be included in an MLA-covered loan contract: a prepayment penalty, mandatory arbitration, waivers of consumer protection laws, mandatory military allotments to repay the extension of credit, and broad security interests in all of the member's shares. The regulation allows creditors to take an interest only in the member's shares that are deposited after the extension of credit is made, and deposited into an account opened in connection with the consumer credit transaction.
- Creditors face severe consequences for violating MLA:
  - Contract is void from inception
  - Fine and/or imprisonment for knowing violation
  - Civil liability
  - CFPB's Office of Servicemember Affairs
  - Reputational harm

Right to Set Off and Credit Cards

- Reg Z - Section 1026.12(d) prohibits exercise of the right of setoff with respect to a credit cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan. It is important to understand the scope and limitations of this provision.
- Consensual Security Agreement -- agreement that the Credit Union may use the funds from select member accounts to pay any debt or amount owed to the Credit Union, except obligations secured by a dwelling, unless prohibited by applicable law.
- Review for "default on death language" in the loan agreement.
Right to Set Off and Credit Cards

In order to qualify under Regulation Z as a security interest, both the consumer and the creditor must agree to it and the creditor must disclose this security interest in its initial disclosures.

The security interest must not operate, however, as the functional equivalent of the right of setoff. Thus, routinely including contractual language within agreements indicating consumers’ consent to a security interest in any deposit accounts maintained by the credit union does not result in a security interest under Regulation Z.

The consumer (member) must sign or initial a separate agreement indicating the granting of the security interest.

Example:
You grant us a security interest in all individual and joint share and/or deposit accounts you have with us now and in the future to secure your credit card account. When you are in default, you authorize us to apply the balance in these accounts to any amounts due. Shares and deposits in an Individually Retirement Account, and any other account that would lose special tax treatment under state or federal law if given as security, are not subject to the security interest you have given in your shares and deposits.

And...

The consumer (member) must sign or initial a separate agreement indicating the granting of the security interest. Signature card could be the third piece --- as the separate agreement.

Fair Lending

ECOA – Race, color, religion, national origin, sex, age, receipt of public assistance, marital status, applicant in good faith exercising right under Consumer Credit Protection Act

FHA – Race, color, religion, national origin, sex, handicap, familial status

Additional prohibited bases would be military status, genetic orientation,

Potential discrimination areas and risk in the loan process:

- Joint Intent
- Adverse Action notifications
- GMI Government Monitoring Information - Under the ECOA
**Fair Lending**

- Servicing
- Loss Mitigation
- Advertising
- Pricing
- Exceptions
- Complaints and Resolutions

ECOA prohibits both intentional and unintentional discrimination. Violations can occur without a conscious intent to discriminate.

Three types of discrimination:

- Overt Discrimination
- Disparate Treatment
- Disparate Impact

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**Fair Lending**

- Fail to provide information or services relating to, or provide different information or services relating to, any aspect of the lending process, including credit availability, application procedures, and lending standards
- Discourage or selectively encourage applicants with respect to inquiries about or applications for credit
- Refuse to extend credit, or use different standards in determining whether to extend credit
- Vary the terms of credit offered, including the amount, interest rate, duration, and type of loan
- Use different standards to evaluate collateral
- Treat a borrower differently in servicing a loan or invoking default remedies

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**Fair Lending**

**Fair Housing Act**

- Enforced by the U.S. Department of Housing and Urban Development (HUD).
- Protects people from discrimination when they are renting, buying, or securing financing for any housing. It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence.
- Financial institutions are expressly prohibited from engaging in preferential or limiting treatment in the advertisement of purchase and rental properties.
CFPB proposed prototypes for "Know Before You Owe" Overdraft disclosures

A-9 Model Form for current overdrafts and opt in/out language

The CFPB has issued another report on checking account overdraft services, "Data Point: Frequent Overdrafts." The new report represents the CFPB's third report dealing with overdraft services. It previously issued a white paper in June 2013 and another "Data Point" report in July 2014.

Frequent overdrafters have accounts with more than 10 overdrafts and NSFs combined in a 12-month period. Very frequent overdrafters are defined as accounts with more than 20 overdrafts and NSFs combined in a 12-month period. Frequent overdrafters account for nine percent of all accounts but paid 79 percent of all overdraft and NSF fees. Very frequent overdrafters account for about five percent of all accounts but paid over 63 percent of all overdraft and NSF fees.

The CFPB offers no conclusions based on its findings to date and no date for any proposed rulemaking.

"Don't opt-in. You can avoid paying overdraft fees when using your debit card for purchases and at ATMs by not opting-in, or by opting-out if you are currently opted in. This means that your debit or ATM card may be declined if you don’t have enough money in your account to cover a purchase or ATM withdrawal at the time you attempt a transaction. However, it also means you won’t be charged an overdraft fee for these transactions."

https://www.consumerfinance.gov/about-us/blog/understanding-overdraft-opt-choice/
Proposed Overdraft

Without consent, financial institutions cannot charge a fee for paying ATM or one-time debit card transactions

- The consumer is provided with a notice in writing, (or if the consumer agrees, electronically) segregated from all other information, explaining the institution's overdraft service;
- The consumer is given a reasonable opportunity to affirmatively consent (opt in);
- The consumer affirmatively consents (opts in) to the service; and
- The institution provides the consumer with confirmation of the consumer's consent in writing (or if the consumer agrees, electronically), which includes a statement informing the consumer of the right to revoke such consent.

Corporate CU Stabilization Fund

The NCUA will be:

- Closing the Temporary Corporate Credit Union Stabilization Fund; and
- Setting the Share Insurance Fund Normal Operating Level
  - The current normal operating level is 1.30 percent
  - To ensure the Share Insurance Fund has sufficient equity to absorb risks, the Board proposes to raise the normal operating level to 1.39 percent.

Arbitration Agreements

- The CFPB issued a rule to ban companies from using arbitration clauses.
  - Financial companies can no longer block consumers from joining together to sue over wrongdoing.
- This regulation is effective September 18, 2017


https://www.federalregister.gov/documents/2017/07/19/2017-14225/arbitration-agreements
New York State Cybersecurity

**DFS Frequently Asked Questions**

[http://www.dfs.ny.gov/about/cybersecurity_faqs.htm](http://www.dfs.ny.gov/about/cybersecurity_faqs.htm)

Covered Entity means any Person operating under or required to operate under a license, registration, charter, certificate, permit, accreditation or similar authorization under the Banking Law, the Insurance Law or the Financial Services Law.

FOM and MBL

- Field of Membership
- Member Business Loans
Questions

https://www.consumerfinancemonitor.com/tag/overdraft/
https://thatcreditunionblog.wordpress.com/2015/08/17/rights-to-set-off-from-a-credit-unions-account/
https://www.law.cornell.edu/cfr/text/12/701.39