InfoSight Highlight

## Loan Workouts and Non-accrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans

**Lending Policies**

Credit unions are required to adopt policies that govern loan workout arrangements and non-accrual practices. A credit union's written non-accrual standards must include the discontinuance of interest accrual on loans that are past due by 90 days or more and requirements for returning such loans, including MBLs workouts, to accrual status.

To set NCUA's supervisory expectations and assist credit unions in compliance, appendix to Part 741 thoroughly addresses the loan workout account management and reporting standards credit unions must implement in order to comply with the rule. It also explains how credit unions report their data collections related to TDRs on Call Reports.

*Written Loan Workout Policy and Monitoring Requirements*

The credit union's board and management must adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to ensure the policy is consistently applied. The loan workout policy and practices should be commensurate with the credit union's size and complexity, and must be in line with the credit union's broader risk mitigation strategies.

The policy must do the following:

- Define eligibility requirements (i.e. under what conditions the credit union will consider a loan workout), including establishing limits on the number of times an individual loan may be modified. [Note: Broad-based credit union programs commonly used as a member benefit and implemented in a safe and sound manner limited to only accounts in good standing, such as Skip-a-Pay programs, are not intended to count toward these limits.]
- Ensure the credit union makes loan workout decisions based on the borrower's renewed willingness and ability to repay the loan.
- Establish sound controls to ensure loan workout actions are appropriately structured, including a prohibition against any authorizations of additional advances to finance unpaid interest and credit union fees. The policy may allow a credit union to make advances to cover third-party fees, such as force-placed

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Compliance Videos

### First Quarter 2017 Recap and Second Quarter Outlook

This video provides a recap from Glory LeDu, Director of League System Relations, of the first quarter compliance updates and gives a "sneak peek" of what is to come in the second quarter of 2017. Included are such topics as the NCUA changes to Member Business Lending, the Fixed Assets Rule and the Chartering and Field of Membership Manual as well as a minor revision to the CFPB's HMDA information. There were also annual updates from the CFPB, FRB and the IRS. The FFIEC has also updated the Uniform Interagency Consumer Compliance Rating System, which is mentioned in this video as well as covered in depth in a separate video.

- insurance or property taxes. However, the credit union cannot finance any related commissions it may receive from the third party
- Ensure adequate controls and monitoring by the board of directors and management. Decisions to re-age, extend, defer, renew, or rewrite a loan, like any other revision to contractual terms, must be supported by the credit union's management information systems.
- Ensure appropriate documentation showing the credit union's personnel communicated with the borrower, the borrower agreed to pay the loan in full, and the borrower has the ability to repay the loan under the new terms.

If credit unions engage in restructuring activity on a loan that results in restructuring a loan more often than once a year or twice in five years, examiners will have higher expectations for the documentation of the borrower's renewed willingness and ability to repay the loan. Examiners will ask credit unions to provide evidence that their policy of permitting multiple restructurings improve collectability.

NCUA does not intend for these minimum requirements to be an all-inclusive list.

For additional information, click here for the topic.

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

## Compliance News

### CFPB finalizes extension of Prepaid Accounts rule

The Consumer Financial Protection Bureau has announced a final rule delaying by six months the general effective date of the CFPB rule governing prepaid accounts. The rule will now take effect on April 1, 2018. The Bureau also reported it would revisit at least two substantive issues in the prepaid accounts rule through a separate notice and comment rulemaking process:

- The linking of credit cards to digital wallets that are capable of storing funds
- Error resolution and limitations on liability for prepaid accounts that cannot be registered, have not yet been registered, or for

### FFIEC Consumer Compliance

In this video, Glory LeDu explains the updates made to the Uniform Interagency Consumer Compliance Rating System by the Federal Financial Institutions Examination Council (FFIEC), as well as the CFPB's requirements for an effective Consumer Compliance Management System. Credit unions should review this video to determine how their current compliance management system stacks up, as examiners will be using this rating system to evaluate credit unions on compliance factors and will be assigning an overall Consumer Compliance Rating.

### Member Business Lending

This video provides the details you will need to know to comply with the NCUA's Member Business Lending rules.

## Compliance Calendar

April, 2017

which consumers have attempted but have not successfully completed the registration process

[Federal Register submission]

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### Ocwen sued by CFPB

The CFPB has [announced] the filing of a lawsuit against Ocwen Financial Corporation and its subsidiaries for failing borrowers at every stage of the mortgage servicing process. The [Bureau's complaint] alleges that Ocwen, one of the country's largest non-bank mortgage loan servicers, allegedly mishandled basic functions like sending accurate monthly statements, properly crediting payments, and handling taxes and insurance. In addition, Ocwen also allegedly illegally foreclosed on struggling borrowers, ignored customer complaints, and sold off the servicing rights to loans without fully disclosing the mistakes it made in borrowers' records. The Bureau's announcement reported that the Florida Attorney General took a similar action against Ocwen in a separate lawsuit, and that many state financial regulators are also independently issuing cease-and-desist and license revocation orders against Ocwen for escrow management and licensing issues.

*Source: CFPB*

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### OFAC Publishes FAQs on List Removal Process

The Office of Foreign Assets Control (OFAC) has posted frequently asked questions (FAQs) and answers on how individuals and entities can request a removal from any OFAC sanctions list, including the Specially Designated National and Blocked Persons List (SDN List).

A person can petition OFAC for removal from any sanction list by sending a written request via e-mail (OFAC.Reconsideration@treasury.gov) or postal mail: Office of Foreign Assets Control, Office of the Director, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. OFAC doesn't accept removal requests by telephone.

Questions answered in the FAQs include:

- How do I file a request for removal from an OFAC sanctions list?

- April 30th, 2017: [5300 Call Report Due to NCUA]

May, 2017

- May 29th, 2017: Memorial Day - Federal Holiday

June, 2017

- June 9th, 2017: [Fiduciary Rule (Department of Labor) – Compliance Date]

July, 2017

- July 4th, 2017: Independence Day - Federal Holiday
- July 30th, 2017: [5300 Call Report Due to NCUA]

September, 2017

- September 4th, 2017: Labor Day - Federal Holiday
- September 15th, 2017: [Same-day ACH (NACHA) – Phase 2 of the implementation period for the rule.]

October, 2017

- Do I need to hire an attorney in order to file a petition for removal?
- How will I know if OFAC received my email petition?
- How long does the entire petition process take?
- Why do lawyers representing an SDN require OFAC authorization to get paid?
- What can you tell me about OFAC's listing process?
- If my petition for removal is denied, can I reapply?
- How can I obtain an update on the status of my petition?

Click here for the FAQs.

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### 271 Individuals Added to Syrian Sanctions List

In one of the largest sanctions actions in its history, OFAC designated 271 employees of Syria's Scientific Studies and Research Center (SSRC), the Syrian government agency responsible for developing and producing non-conventional weapons and the means to deliver them. The action was taken in response to the April 4, 2017 sarin attack on innocent civilians in Khan Sheikhoun, Syria, by the regime of Syrian dictator Bashar al-Assad. This action was taken pursuant to E.O. 13582, which targets the Government of Syria and its supporters. As a result of this action, any property or interest in property of the designated persons in the possession or control of U.S. persons or within the United States must be blocked, and U.S. persons are generally prohibited from dealing with them.

*Source: OFAC*

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### Marijuana: Is there a future for the “Cole Memos”?

With the new administration, and particularly new Attorney General Jeff Sessions, there has been a lot of speculation about the future of the marijuana-related “Cole Memos” (named after their author, former Deputy Attorney General James Cole).

These memos were issued by the Department of Justice (DOJ) in August 2013 and February 2014 recommending that prosecuting marijuana businesses may not be the best use of the DOJ’s resources in states where

- October 3rd, 2017: Military Lending Act for Credit Cards
- October 9th, 2017: Columbus Day - Federal Holiday
- October 19th, 2017: Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act - Regulation X and the Truth in Lending Act -Regulation Z
- October 29th, 2017: 5300 Call Report Due to NCUA

November, 2017

- November 10th, 2017: Veterans' Day (Observed) - FRB will be open

## Compliance Training

### Regulatory Compliance Training

**NCUA Field-of-Membership Rule**
Get more information about the NCUA’ new field-of-membership rule by watching the agency’s webinar online and review questions and answers from the event.

such businesses are legal and where there are robust regulatory and law enforcement systems.

It has been largely due to these memos that many financial institutions have determined that serving these businesses, although federally illegal, are worth the risk.

Last week, the Department of Justice issued another memo providing an update on the Task Force on Crime Reduction and Public Safety. This Task Force was established in February to identify ways in which the federal government can more effectively combat various crimes, including drug trafficking.

Subcommittees of this Task Force will, among other things:

- Review existing policies in the area of "marijuana to ensure consistency with the Department's overall strategy on reducing violent crime and with Administration goals and priorities";
- "Explore our use of asset forfeiture and make recommendations on any improvements needed to legal authorities, policies, and training to most effectively attack the financial infrastructure of criminal organizations".

Over the past few months, Attorney General Sessions has made a number of comments about the marijuana issue, such as:

- that he may have some different ideas than set out in the Cole memorandum;
- that experts are saying there is "more violence around marijuana than one would think"; and
- that the federal law will be enforced in states where they may have repealed their own anti-marijuana laws.

The DOJ also notes that their efforts to combat crime will require access to "complete, accurate, and timely crime data." They will be examining reporting and information sharing issues and make recommendations for improvements.

Initial recommendations from the Task Force to Attorney General Jeff Sessions are due no later than July 27, 2017.

*Source: CUNA Compliance Blog*

The NCUA Board unanimously approved the new field-of-membership rule at its October 2016 open meeting.

### NCUA videos on effective board meetings

The NCUA has released a new video series, "Effective Board Meetings," designed to help credit union directors make the best use of their meetings. The four-part series features different examples of well-run and poorly run board meetings. It also provides helpful tips on how to run constructive meetings and create an environment that engages a credit union's board members.

### CUNA AND CUNA Webinars

CUNA offers hundreds of online training events that make it easy for you to learn right at your desk. Whether you are looking for a beginner course or want a comprehensive understanding on a specific topic, CUNA webinars, audio conferences and eSchools have what you need.

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### Government Shutdown Won't Impact CFPB, NCUA for Now

The NCUA and the CFPB will not close even if there is a lapse in federal funding at the end of the week and many agencies are forced to shut down most operations.

The two agencies are not subject to the appropriations process, so their funding is not contingent on a Continuing Resolution or an appropriations bill.

The current Continuing Resolution expires on Friday and if another one is not passed, large segments of the federal government would be forced to shut down. But not the CFPB and NCUA.

House Republicans would like to change that. In his Financial CHOICE Act, House Financial Services Chairman Jeb Hensarling (R-Texas) has proposed subjecting all financial regulators—including the NCUA and the CFPB—to the annual funding process. That would mean the agencies would close if appropriations lapsed.

Credit union officials have said they are concerned that the Community Development Financial Institutions program could face cuts in the Continuing Resolution that Congress will consider.

President Trump has proposed eliminating all funding for the program, which provides financial institutions, including credit unions with grants.

House Republicans also might try to add to the Continuing Resolution some restrictions on CFPB activities. In the past, they have proposed such measures, but the Senate has never accepted them.

*Source: Credit Union Times*

## Advocacy Highlight

### Update on the Federal Budget Process

This week the Congress will, among other items, be considering legislation to fund government operations through September 30th 2017, the end of this fiscal year. Current government funding ends Friday and at midnight and action is necessary to avert a government shutdown.

Democrats and Republicans have been working for weeks to try and whittle down points of contention among the parties so that a bill with bipartisan support can be enacted into law before this week's deadline. If this doesn't happen, a government shutdown is possible or Congress may enact a short-term "continuing resolution" to fund government operations at essentially the same levels as present.

One issue of concern to CUNA is this process is funding for the Community Development Financial Institutions (CDFI) Fund. In FY2016, the CDFIF was funded at $233.5 million. CUNA, its state partners, individual credit unions, and concerned credit union members, have engaged in a large lobbying and grassroots effort to convince Congress to fully fund the Community Development Financial Institutions (CDFI) Fund as part of a bill to fund the federal government for the remainder of fiscal year 2017. This funding is critical given the fact that the Administration requested that the Fund be eliminated.

CUNA sent a letter to all House Appropriations Committee members, as well as a letter to their Senate counterparts on March 30, 2016, urging them to fully fund the CDFI Fund. There are 288 CDFI credit unions in the U.S. and this is great news for not only them, but the credit union movement as a whole.

Another issue that CUNA is advocating is the retention of report language that was included in last year's House-passed Financial Services and General Government Appropriations Act for Fiscal Year 2017 (H.R. 5485). This language would direct the CFPB to report to the Senate and House Appropriations Committees, Senate Banking Committee and House Financial Services Committee on how it has used its section 1022 exemption authority under the Dodd-Frank Act to tailor its rulemakings to community financial institutions within 120 days of the bill's enactment. This language is nearly identical to language included in two CUNA letters to the CFPB last year. The House letter received 329 signatures and its Senate companion received 70 signatures.

The original House bill passed last year includes significant relief for banks and credit unions, including:

- Changing the leadership structure of the CFPB to a five-person board and placing the bureau under the appropriations process;
- Requiring the CFPB to study the use of arbitration prior to issuing any new regulations. This would affect the bureau's recent proposal on arbitration;
- Allowing for residential mortgages held in portfolio by lenders to be recognized as qualified mortgages for the purposes of the

CFPB's mortgage lending rules. These efforts would especially help community bankers and credit unions who have decreased their mortgage lending business in recent years due to onerous regulatory requirements;

- Supporting efforts to clarify the definition of ‘‘points and fees’’ for qualified mortgages in order to improve access to credit for low and moderate income borrowers; and
- Stopping the CFPB from proceeding with its short-term, small-dollar loan proposal.

The committee report also contained a number of other items of interest to credit unions, including:

- CUNA-supported language that would call for the Federal Communications Commission to revisit its Telephone Consumer Protection Act (TCPA) order, and address technical questions that may be impossible for financial institutions to resolve. This includes clearing up whether an exemption for financial institutions to contact consumers with additional information can actually be used, and urging the FCC to provide more flexibility to the requirements.
- Directing the CFPB to report to the Senate and House Appropriations Committees, Senate Banking Committee and House Financial Services Committee on how it has used its section 1022 exemption authority to tailor its rulemakings to community financial institutions within 120 days of the bill’s enactment;
- Directing the Government Accountability Office (GAO) to determine the impacts of the Foreign Account Tax Compliance Act on U.S. citizens living abroad. The GAO must also make recommendations on FATCA implementations, and both must be done within 180 days of enactment of the bill;
- Directing the Office of Critical Infrastructure Protection and Compliance Policy to report to several Congressional committees on ways to improve cybersecurity and an update on collaboration across the financial services sector within 60 days of the bill’s enactment.
- Directing the CFPB to consider its recent actions related to auto lending that are reducing competition, regulating auto dealers, and raising costs to consumers.

The bill also contained funding of key programs that assist low-income credit unions that serve underserved areas and members of modest means, including:

- Maintaining the annual $2 million for the NCUA’s Community Development Revolving Loan Fund, which provides grants and loans to low-income designated credit unions; and
- Increasing the funding to $250 million for the U.S. Treasury’s Community Development Financial Institutions (CDFI) Fund, which awards funds to certified CDFIs.

The bill also maintained funding for the two Small Business Administration (SBA) programs that are crucial to credit unions:

- $28.5 billion for the SBA’s 7(a) program, which allows the government to guarantee up to 85% of loans, with the guaranteed portion not counting against credit unions’ cap on member business lending; and
- $7.5 billion for the SBA’s 504 loan program, which is used for long-term, fixed-rate financing on major fixed assets, such as equipment and real estate.

Last year, the full Senate Appropriations Committee approved its version of the FY 2017 Financial Services and General Government (FSGG) appropriations bill. The Committee report included language urging Treasury to work with financial regulators to address student debt. Additionally, the bill itself contained:

- Funding for the Community Development Financial Institutions (CDFI) fund at $234 million, $500,000 more than FY16, and $16 million less than the bill passed last week by the House Appropriations committee;
- Maintaining $2 million for NCUA's Community Development Revolving Loan Fund (CDRLF); and
- Funding a new account called the Cybersecurity Enhancement Account. The Committee recommends $47,743,000 for the initiative. It is "designed to bolster the (Treasury) Department's cybersecurity posture and mitigate threats to the U.S. financial infrastructure." It will also "improve identification of cyber threat and better protect information systems from attack; provide a platform to enhance efficient communication, collaboration, and transparency around the common goal of improving not only the Cybersecurity of the Treasury Department, but also the Nation’s financial sector."; and
- Prohibiting funds from being used to penalize financial institutions that provide financial services to certain persons in States and jurisdictions where marijuana is legal.

CUNA continues to monitor this process and lobby Congressional appropriators to achieve full funding for the CDFI Fund as well as achieving the maximum amount of regulatory relief possible through the appropriations process.

*Source: CUNA Advocacy Removing Barriers*

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**CUNA Advocacy Update**

The CUNA Advocacy Update is published at the beginning of every week and 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. Additional Advocacy efforts may also be found under CUNA's Removing Barriers blog.

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**New ComplySight Enhancements - Factor Grading Screen and Factor Grade Report!**

This short video will walk you through the recent enhancements to the Factor Grading Screen to provide a more intuitive and clear distinction between the current grade and a previous grade. We also walk through the Factor Grade Report which now allows users to filter by Area and/or Item, as well as showing Factors that are not yet graded. If you have any questions, please feel free to contact info@complysight.com.

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