



# Trending Now! What Compliance Pros Need to Know

ACUIA Region 4 Annual Conference  
November 2, 2023

# Agenda

- CFPB Small Business Lending Final Rule
- CFPB Fees Initiative
- CFPB Circulars
- CFPB Advisory Opinions
- NCUA Updates
- Other Updates
  - NACHA
  - Federal Reserve Board
  - Federal Communications Commission (FCC)
  - Federal Housing Finance Agency (FHFA)
- Hot Issues
- Industry Trends / Exam Priorities
- Tools and Resources



Consumer Financial  
Protection Bureau



# CFPB Small Business Lending Rule

# CFPB – Small Business Lending Rule

## CFPB Small Business Lending Rule

- Amendment to Regulation B – Equal Credit Opportunity Act
- Compliance **effective date** dependent on covered originations (**small businesses**) from **2022 and 2023**.
  - If the credit union **was collecting** relevant information related to gross annual revenue on business credit, they can count the actual number of covered transactions in 2022 and 2023.
  - If the credit union **wasn't collecting** that data, they can determine coverage by:
    - Asking applicants of an approved credit transaction (prior to close) from October 1, 2023 – December 31, 2023 to self-report if it had gross annual revenue for its preceding fiscal year of \$5 million or less and then annualize the number of covered credit transactions originated for both calendar years 2022 and 2023;
    - Assume every covered credit transaction originated for business members in calendar years 2022 and 2023 is a small business; or
    - Use another method provided that such methodology is reasonable and documented in writing.
- **Small Business** if gross annual revenue for its preceding fiscal year is **\$5 million or less**.

# CFPB – Small Business Lending Rule

- **Effective date to start collecting data:**
  - **At least 100 and less than 500 covered originations (2022 and 2023) – January 1, 2026.**
  - **At least 500 and less than 2,500 – April 1, 2025**
  - **At least 2,500 – October 1, 2024**
- **Data points to be collected and reported:**
  - Unique Identifier
  - Application Date
  - Application Method
  - Application Recipient
  - Credit Type
  - Credit Purpose
  - Amount applied for
  - Amount approved or originated
  - Action taken
  - Action taken date
  - Denial reasons
  - Pricing information
  - Census tract
  - Gross annual revenue
  - NAICS code
  - Number of workers
  - Time in Business
  - Minority-owned business status, women-owned business status, and LGBTQI+-owned business status
  - Principal owners' ethnicity, race, and sex
  - Number of principal owners

# CFPB – Small Business Lending Rule

- HMDA reportable transactions are not required to be reported again under this rule.
- Loan officers will not be required to make their own determination of an applicant's race, ethnic, or any other demographic information as was originally proposed. They can rely on the information provided by those small businesses.
- “Covered credit transactions” include loans, lines of credit, credit cards, and credit products used for agricultural purposes.
- Firewall requirements! Final rule prohibits certain employees from accessing certain demographic information obtain from small business applicants if they are involved in making any determination concerning a reportable application.
- Small Business Lending Data Notice posting is required on the availability of data.
- Record Retention Requirements.
- Annual reporting
- [CFPB Small Entity Compliance Guide](#)

# CFPB – Small Business Lending Rule

## Sample data collection form

Federal law requires that we request the following information to help ensure that all small businesses applying for loans and other kinds of credit are treated fairly and that communities' small business credit needs are met.

One or more employees or officers involved in making a determination concerning your application may have access to the information provided on this form. However, **FEDERAL LAW PROHIBITS DISCRIMINATION** on the basis of your answers on this form. Additionally, we cannot discriminate on the basis of whether you provide this information.

While you are not required to provide this information, we encourage you to do so. Importantly, our staff are not permitted to discourage you in any way from responding to these questions. **Filling out this form will help to ensure that ALL small business owners are treated fairly.**

### Business ownership status

Please indicate the business ownership status of your small business. For the purposes of this form, your business is a minority-owned, women-owned, or LGBTQI+-owned business if one or more minorities,\* women, or LGBTQI+ individuals (i) directly or indirectly own or control more than 50 percent of the business AND (ii) receive more than 50 percent of the net profits/losses of the business.

#### What is your business ownership status?

(Check one or more of the options below)

- ☐ Minority-owned business
- ☐ Women-owned business
- ☐ LGBTQI+-owned business
- or –
- ☐ None of these apply

### Number of principal owners

For purposes of this form, a principal owner is any individual who owns 25 percent or more of the equity interest of a business. A business might not have any principal owners if, for example, it is not directly owned by any individuals (i.e., if it is owned by another entity or entities) or if no individual directly owns at least 25 percent of the business.

#### How many principal owners does your business have? (Check one)

- ☐ 0
- ☐ 1
- ☐ 2
- ☐ 3
- ☐ 4

## Demographic information about principal owners

As a reminder, applicants are not required to provide this information but are encouraged to do so. We cannot discriminate on the basis of any person's ethnicity, race, or sex/gender. Additionally, we cannot discriminate on the basis of whether you provide this information.

Please fill out one sheet for each principal owner.

#### 1 Are you Hispanic or Latino? *(i.e., What's your ethnicity? (Check one or more))*

- ☐ Hispanic or Latino
  - ☐ Cuban
  - ☐ Mexican
  - ☐ Puerto Rican
  - ☐ Other Hispanic or Latino *(Please specify your origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on):*

#### ☐ Not Hispanic or Latino – or –

#### ☐ I do not wish to provide my ethnicity

#### 2 What is your sex/gender? *(Please specify):*

– or –

#### ☐ I do not wish to provide my sex/gender

#### 3 What is your race? *(Check one or more)*

- ☐ American Indian or Alaska Native *(Please specify the name of your enrolled or principal tribe):*

#### ☐ Asian

- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian *(Please specify your race, for example, Cambodian, Hmong, Laotian, Pakistani, Thai, and so on):*


#### ☐ Black or African American

- ☐ African American
- ☐ Ethiopian
- ☐ Haitian
- ☐ Jamaican
- ☐ Nigerian
- ☐ Somali
- ☐ Other Black or African American *(Please specify your race, for example, Barbadian, Ghanaian, South African, and so on):*

#### ☐ Native Hawaiian or Other Pacific Islander

- ☐ Guamanian or Chamorro
- ☐ Native Hawaiian
- ☐ Samoan
- ☐ Other Pacific Islander *(Please specify your race, for example, Fijian, Tongan, and so on):*

# CFPB – Small Business Lending Rule

On July 31, 2023, the U.S. District Court for the Southern District of Texas ordered the CFPB not to implement or enforce the small business lending rule against plaintiffs in *Texas Bankers Ass'n, et al. v. CFPB, et al.*, No. 7:23-cv-00144, and their members. That order, a copy of which is available [here](#) , stays all deadlines for compliance with the small business lending rule for plaintiffs in that case and their members.



Consumer Financial  
Protection Bureau

The U.S. District Court for the Southern District of Texas granted the motion to intervene filed by CUNA, the Cornerstone League, and Rally Credit Union Monday. The court's order paves the way for CUNA, Cornerstone, and Rally, now intervenors in the case, to file a motion to ensure the injunction applies to credit unions.

# Resources



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## Compliance Videos

Stay on top of federal regulatory changes with our quick video overviews!

The quarterly videos provide information on:

- Deposit Account Updates
- Lending Updates
- Credit Union Operation Updates
- Resources available in InfoSight and from other sources to help you keep in compliance with these changes and updates!

### 2023 Q2 Compliance Update

#### Disclaimer

- Information provided in this presentation, including all materials, should not be construed as legal services, legal advice, or in any way establishing an attorney-client relationship. Credit unions should contact their own legal counsel for advice. Information may have changed since this presentation was prepared. This information is intended to only be a summary and is not all inclusive.

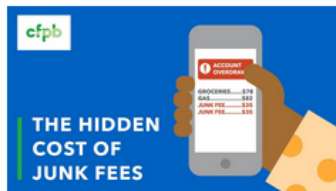


# CFPB Fees Initiative

# CFPB – Fee Initiative

## Junk fees

The CFPB launched an initiative to save households billions of dollars a year by reducing exploitative junk fees charged by banks and financial companies.



### The hidden cost of junk fees

There's a growing concern that banks and other financial companies seem to be making these junk fees, like overdraft fees, part of their core business model.

[Watch the video](#)



### Surprise depositor fees

Surprise depositor fees include the practice of indiscriminately charging fees to every person who deposits a check that bounces.

[Watch the video](#)



### Surprise overdraft fees

Surprise overdraft fees, includes fees charged when consumers reasonably expected they had enough money in their account to cover a charge at the time the bank authorizes it.

[Watch the video](#)

## MORE RESOURCES

[Download the latest non-sufficient fund fee practices chart](#)

## FIND ANSWERS TO YOUR QUESTIONS

Browse answers to hundreds of financial questions.

[Ask CFPB](#)

## SUBMIT A COMPLAINT

Having trouble with a financial product or service? If you've already tried reaching out to the company and still have an issue, you can submit a complaint. Tell us about your issue—we'll forward it to the company and work to get you a response, generally within 15 days.

**Latest news**

**Research and Reports**

# CFPB – Fee Initiative

- **January 2022** – CFPB launched an initiative to scrutinize back-end “junk fees.”
- **Request for information** from consumers on experiences and fees associated with their credit union for things like:
  - Fees for things people believed were covered by the baseline price of a product or service.
  - Unexpected fees for a product or service.
  - Fees that seemed too high for the purported service.
  - Fees where it was unclear why they were charged.

# Pay-to-Pay Fees

- **June 29, 2022** – [Debt Collectors' Collection of Pay-to-Pay Fees](#)
- **CFPB Advisory Opinion on FDCPA**
  - Affirmation that debt collectors are prohibited from collecting pay-to-pay or “convenience” fees when those fees are not expressly authorized by the agreement creating the debt or authorized by law (example includes fees imposed for making a payment online or by phone).
  - It may also be a violation if the debt collector collects pay-to-pay fees through a third-party payment processor.

# Enforcement Action

- **September 2022** – [Regions Bank to Pay \\$191 Million for Illegal Surprise Overdraft Fees](#)
- **CFPB Enforcement Action**
  - Pay \$50 million to CFPB's victims relief fund.
  - Pay \$141 million in refunds back to customers that were harmed.
- Charged a “surprise overdraft fee” known as an authorized-positive fees on certain ATM withdrawals and debit card purchases after they told consumers they had sufficient funds at the time of the transaction.
- Leadership knew about the fee and could have discontinued years earlier.
- *“Even Regions Bank’s own employees could not explain to customers why they incurred the overdraft fees.”*
- *Regions Bank was already fined back in 2015 for charging overdraft fees to consumers who had not opted-in and charged overdraft and non-sufficient fund fees on certain products after they claimed they would not.*

# Unfair Returned Deposit Item Fees

- **October 26, 2022** – [Compliance Bulletin 2022-06](#) – **Unfair Returned Deposited Item Fee Assessment Practices.**
- “*Returned Deposit Item*” is a check that a consumer deposits into their checking account that is returned to the consumer because the check could not be processed against the check originator’s account.
- The check depositor (in most circumstances), has no control over whether, and likely no reason to anticipate that, the deposited check would be returned, and they can’t verify funds in the issuer’s account.
- **Blanket policies of charging Returned Deposited Item fees to consumers for all returned transactions irrespective of the circumstances of the transaction or patterns of behavior on the account are likely unfair and charging these fees cause substantial injury to consumers** (they can’t reasonably avoid being imposed these fees).

# Unfair Returned Deposit Item Fees

- The bulletin focuses on Returned Deposited Item policies that indiscriminately impose fees in circumstances **where the consumer does not know the check would be returned.**
- Deterrence can only be accomplished through the collection of fees in circumstances where **the consumer anticipates that a check will be returned but deposits it anyway** (*knowingly depositing a counterfeit check*).
- **What do we do?**
  - Create procedures that try to identify behavior **indicative of fraud or other circumstances** (missing signature) **where the consumer reasonably should have anticipated that the check would be returned.** *Method in which fees imposed are tailored to only charge consumers who could reasonably avoid the injury.*
  - **Use the Check Deposit Notice Generator within InfoSight to INFORM A MEMBER that you anticipate that the check they are depositing may be returned!**

# Unanticipated Overdraft Fee Assessment

- **October 2022 - CFPB Circular 2022-6** - [Unanticipated Overdraft Fee Assessment Practices](#)
- *Question presented: Can the assessment of overdraft fees constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA), even if the entity complies with Truth in Lending (TILA) and Regulation Z, and the Electronic Fund Transfer Act (EFTA) and Regulation E?*
- **CFPB Response: YES**
  - *Overdraft fees assessed by financial institutions on transactions that a consumer would not reasonably anticipate are likely unfair and likely to impose substantial injury on consumers that they cannot reasonably avoid.*
  - CFPB has observed that in many cases, **financial institutions have created serious obstacles to consumers making informed decisions about their use of overdraft services.** Overdraft services are complex and differ among financial institutions.
    - **Financial institutions use processes that are unintelligible for many consumers and that consumers cannot control.**

# Unanticipated Overdraft Fee Assessment

- **“Authorize positive, settle negative” (APSN)** – transactions that authorize at point of sale with sufficient funds, later settle with negative balances and incur fees.
- Consumers **generally cannot reasonably be expected to understand and thereby conduct their transactions to account for the delay between authorization and settlement** – a delay that is generally not of the consumers’ own making but is the product of payment systems.
- **Consumers can’t control the methods the financial institution will use to settle transactions** in terms of balance calculation and transaction processing.
- Policies include matters such as the **timing gap between authorization and settlement** and the **significance of the gap**, the **amount of time a credit may take to be posted on the account**, the use of **one kind of balance over another for fee calculation purposes**, or the **order of transaction processing** across different types of credit and debits.

# Unanticipated Overdraft Fee Assessment

- **What can we do?**
- [Consumer Compliance Outlook – 2018](#)
- Risks can be identified and managed by taking the following steps related to overdraft practices:
  - Exercise **appropriate vendor management**.
  - Understand the credit union's overdraft processing methodology and **ensure that the credit union does not provide incorrect information to members about that methodology**.
  - **Refrain from assessing unfair overdraft fees on POS transactions when they post to members' accounts with insufficient available funds after having authorized those transactions based on sufficient available funds.**
  - Review applicable **overdraft guidance** and consider implementing best practices, such as setting limits on the overdraft fees charged to members and monitoring for excessive use of overdrafts by consumers.

# Credit Card Penalty Fees

- **February 2023** – CFPB issued a [proposed rule regarding credit card penalty policies](#).
  - Adjust the safe harbor dollar amount for late fees to **\$8 (reduction from \$30)** and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type;
    - *\$8 for the first late payment fee.*
    - *\$30 for fee other than a late payment.*
    - *\$41 for subsequent violation with the following 6 months.*
  - Eliminate the annual inflation adjustments to the amount of safe harbor late fee safes each year; and
  - Provide that late fee amounts not exceed 25% of the required payment.

# "Junk Fees" - Supervisory Highlights

- **March 2023** - [Supervisory Highlights – Junk Fees Special Edition](#)
  - Fees in the areas of deposits, auto servicing, mortgage servicing, payday and small dollar lending, and student loan servicing (**between July 1, 2022 – February 1, 2023**).
  - **Deposits:** Authorize positive - settle negative overdraft fees, multiple NSF's for same transaction.
  - **Auto Servicing:** overcharging late fees (beyond contractual limits), late fees after repossession, higher fees for repossession, charging fees for most common payment methods.
  - **Mortgage Servicing:** late fees exceed caps, fees for property inspections – even at bad addresses, misrepresenting PMI and charging after it should have been removed, failure to waive late charges and fees for penalties accrued outside forbearance periods, charging late fees after listing as \$0 in statements.
  - **Payday and Small-Dollar Lending:** split missed payments into sub payments, charged borrowers to retrieve personal property in repossessed vehicles (title loans), repossessions before payments were due.
  - **Student Loan Servicing** – processing and then reversing payments and charging late fees and interest.

# Enforcement Action

- **July 11, 2023** – Bank of America will pay more than \$100 million to harmed consumers, and \$150 million in penalties to the CFPB and Office of the Comptroller of the Currency.
- **Double-dipping on fees imposed on consumers with insufficient funds.** Charged customers \$35 after the bank declined a transaction (ACH and check transactions) because the customer did not have enough funds in their account. “Double-dipped” by allowing fees to be repeatedly charged for the same transaction. ***\*\*Bank of America is strictly prohibited from charging repeat non-sufficient funds fees in the future.\*\****
- *Withholding rewards bonuses explicitly promised to credit card customers.* Failed to honor promises for consumers who submitted in-person or over-the-phone applications. Denied sign-up bonuses to consumers due to failure of business processes and systems.
- *Misappropriating sensitive personal information to open accounts without customer knowledge or authorization.* To reach sales-based incentive goals, illegally enrolled consumers in credit card accounts with their knowledge or authorization, resulting in unjustified fees, and negative effects to credit profiles.

# Representment Fees

- **September 22, 2023** - [Consumer Compliance Outlook – Compliance Spotlight](#)
  - **Representment** occurs when a credit union declines to pay a debit transaction from a checking account because of insufficient funds and the merchant presents that same transaction again to the credit union for payment.
    - **Financial institutions are charging the fee at first presentment and again each time the transaction was presented and declined (UDAAP issue).**
  - Credit unions can effectively manage and mitigate UDAAP risk by:
    - Refraining to assess an NSF fee on represented transactions.
    - Ensure that information provided to consumers about represented transactions is accurate and consistent with policies and procedures.
    - Work with third party vendors to make sure system settings are utilized to prevent representment fees.

# Enforcement Action

- **August 17, 2023** – [CFPB Penalizes Freedom Mortgage and Realty Connect for Illegal Kickbacks](#)
- **Freedom Mortgage provided illegal incentives to real estate brokers and agents in exchange for mortgage loan referrals.**
  - Paying for referrals through illegal marketing service arrangements.
  - Offering premium subscription services free of charge.
  - Hosting and subsidizing company events and providing gifts.
- Freedom Mortgage will pay \$1.75 million into the CFPB's victim relief fund.

# Resources

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RecoveryPro

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## Welcome, Glory

### Topics of Interest



- [Bankruptcy and Collections](#)
- [Foreclosure \(Michigan\)](#)
- [Garnishment \(Michigan\)](#)
- [Investment](#)
- [Loans and Leasing](#)

### Compliance Calendar

- May 29th, 2023: Memorial Day - Federal Holiday
- June 19th, 2023: Juneteenth National Independence Day - Federal Holiday
- July 1st, 2023: [FRB – Debit Card Interchange Fees and Routing](#)
- July 4th, 2023: Independence Day - Federal Holiday
- July 20th, 2023: [FCC - Limits on Exempted Calls Under the TCPA](#)

[View full Compliance Calendar](#)

### Recently Visited Pages

- [Fair Debt Collection Practices Act](#)
- [Bankruptcy and Collections](#)
- [Fair Credit Reporting Act](#)
- [Loans and Leasing](#)
- [InfoSight Listing by State](#)
- [Business Continuity Planning - Board Responsibilities](#)
- [Business Continuity Planning](#)

### Compliance Training

- [Required Compliance Training](#)
- [CUNA's free Webinars](#)
- [CUNA training, education and professional development](#)
- [NCUA's Learning Management Service](#)

### Credit Union

The 1st Q 2023 C...  
now available! Th...  
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Accounts, Lending...  
Operations.

2023 Q1 Compl...  
• Deposit Account Updat...  
• Lending Updates  
• Credit Union Operati...  
• Compliance Calendar

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1

Select the potential check loss reason (the potential loss problem) to warn a depositor of a loss on a check.

#### Nonpayment Warning Reasons

- ☐ Insufficient Funds
- ☐ Stop Payment Order
- ☐ Closed Account
- ☐ Payor Contact Unhelpful
- ☐ Stale Dated Check
- ☐ Void Notice
- ☐ Conflicting Amounts
- ☐ Without Recourse
- ☐ Postdated Check
- ☐ GENERAL REASON

#### Fraud Warning Reasons

- ☐ Altered Amount
- ☐ Altered Payee
- ☐ Altered Endorsement
- ☐ Forged Endorsement
- ☐ 3rd Party Check
- ☐ Forged Drawer's Signature
- ☐ Counterfeit Check
- ☐ No Account
- ☐ GENERAL REASON

#### Obvious Warning Reasons

- ☐ Foreign Bank
- ☐ Payee Uncertain
- ☐ Emergency Conditions
- ☐ Loan Invite "Check"
- ☐ Substitute Check
- ☐ Missing Endorsement
- ☐ No Drawer's Signature
- ☐ Missing Information
- ☐ LARGE POTENTIAL LOSS

## 4 Check Deposit Loss Prevention Notice Options

Decline a Check for an Apparent Potential Loss

Immediate Funds with a Warning of a Potential Loss

7 Business Day Hold for a Potential Nonpayment Loss

Offer Collection of a Check with an Obvious Potential Loss

## Need Help with Check Deposit Loss Prevention?

[Go to the Check Deposit Evaluator](#)

# Resources

[Home](#) > [Compliance Topics](#) > [Accounts](#) > [Overdraft Payment Programs](#)

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## Overdraft Payment Programs

**RISK Alert!** Now available from CUNA Mutual Group [\(Credentials required for access\)](#):

- [Dynamic Overdraft Limits May Increase Litigation Risk \(6/21/2022\)](#)
- [Ransomware Risks Drive the Need for Critical Cyber Loss Controls \(12/14/2021\)](#)
- [Overdraft / NSF Fee Class Action Litigation Not Slowing Down for CUs \(11/16/2021\)](#)
- [Overdraft / NSF Fee Lawsuits Continue \(6/15/2021\)](#)

**Last Reviewed: December 2021**

A check overdraft payment program (commonly referred to as "Courtesy Pay") is the credit union's discretionary payment of a member's check, share draft or electronic payment that would otherwise be dishonored and returned by the credit union.

Summary

Checklist

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Model Policies

### Policy 7215: Overdraft Protection

**Revised Date: 4/14/2020**

**Model Policy Revised Date: 04/14/2020**

#### General Policy Statement:

[[CUName]] (Credit Union) may honor a member transaction that results in an overdrawn account through the use of the Credit Union's overdraft protection program (also commonly referred to as "courtesy pay"). Under this program, the Credit Union charges a fee to provide for the payment of a transaction that would otherwise be returned due to non-sufficient funds (NSF). The Credit Union is under no obligation to pay every overdraft.

#### Guidelines:

- 1. TYPES OF TRANSACTIONS SUBJECT TO OVERDRAFT PROTECTION.** The Credit Union offers overdraft protection for the following types of transactions which could result in an overdrawn account: [[7215-1]]
- 2. ATM AND ONE-TIME DEBIT CARD TRANSACTIONS.** Prior to assessing a fee for ATM and one-time debit card transaction overdrafts, the Credit Union will provide members with the right to opt in, or affirmatively consent, to the Credit Union's overdraft service for ATM and one-time debit card transactions **for each account**, pursuant to the Credit Union's ATM/Debit Cards Policy (**See Policy 2615**).
- 3. MEMBER QUALIFICATIONS.** The Credit Union will only offer this program to members "in good standing." To be considered "in good standing," the following qualifications must be met: [[7215-2]]
  - A. Members who are automatically enrolled in the program will be provided with a notice of enrollment, along with an opportunity to "opt out," at the time the eligibility is established.
  - B. Members who no longer meet the eligibility requirements will have access to the program revoked.

# Resources

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## Real Estate Settlement Procedures Act (RESPA)

**Last Reviewed: December 2022**

The Real Estate Settlement Procedures Act (RESPA), which is implemented by [Regulation X](#) is a borrower protection statute that requires lenders, mortgage brokers, or services of home loans to provide borrowers with certain information and timely disclosures regarding the nature and costs of the real estate settlement process. In addition, specific practices such as kickbacks are prohibited under the law and there are certain limitations upon the use of escrow accounts.

Generally, RESPA covers loans secured by a first or subordinate lien on a one-to-four family residential property (a “federally-related mortgage”). These include most purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit.

[Summary](#)[Detailed Analysis](#)[FAQs](#)[Laws & Regulations](#)[Additional Resources](#)[Model Policies](#)

### Policy 9210: HUD Regulation X: Real Estate Settlement Procedures Act

**Revised Date: 10/1/2019**

**Model Policy Revised Date: 10/1/2019**

#### Introduction:

The Real Estate Settlement Procedures Act (RESPA) was established to protect consumers and their rights in the settlement process for residential real estate closings and the associated costs. The purpose of this law is to reduce the possibility of kickbacks or referred fees that unnecessarily increase the cost of closing and settlement services; to reduce the amounts required in escrow; and to modernize the record keeping of title information. Aside from the partial exemptions listed below, the RESPA applies to all federally related mortgage loans.

Closed-end consumer mortgage loans are required to utilize disclosures under the Truth in Lending Act, which replace the Good Faith Estimate and HUD-1 and HUD-1A disclosures. The disclosure requirements under RESPA for the Good Faith Estimate: HUD-1 and HUD-1A; the related one-day advanced inspection delivery requirements of the HUD-1 or HUD-1A; along with the required servicing disclosure statement, pertain only to reverse mortgages.

#### Highlights:

1. **COVERAGE.** RESPA applies to (“federally related mortgage”) loans where:

- A. Loan proceeds are used in whole or part to purchase real estate;
- B. Security interest created in 1-4 family dwellings, including mobile homes and condominium units.
- C. Property located within the state and the lender is insured by a federally qualified plan or the loan is made in connection with a housing or urban development program.
- D. Lender intends to sell the loan to Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation (FHLMC) or to another financial institution who will in turn sell the mortgage to FHLMC.



# CFPB - Circulars

# CFPB Circular 2022-04

- Insufficient data protection or security for sensitive consumer information.
- *Question: Can entities violate the prohibition on unfair acts or practices in the Consumer Financial Protection Act (CFPA) when they have insufficient data protection or information security?*
- **CFPB Response Yes!**
- **Inadequate security for sensitive information collected, processed, maintained, or stored by the company can constitute an unfair practice and in violation of the Act.**
  - Inadequate authentication, password management, or software update policies or practices are likely to cause substantial injury to consumers that is not reasonably avoidable, and credit unions are unlikely to successfully justify weak data security practices.
- **Inadequate data security can be an unfair practice in the absence of a breach or intrusion.**

# CFPB Circular 2022-04

- **Data breaches and cyberattacks have resulted in significant harm to consumers,** including monetary loss, identity theft, significant time and money spent dealing with the impacts of the breach, and other forms of financial distress.
- Members cannot reasonably avoid the harm caused by a credit union's data security failures. **They have no way of knowing whether appropriate security measures are implemented properly, irrespective of disclosures provided.**
- **Equifax breach! Used software that contained a known vulnerability and failed to patch for more than four months.**

# CFPB Circular 2022-07

- Reasonable Investigation of Consumer Reporting Disputes
- *Question: (1) Are consumer reporting agencies (CRAs) and the entities that furnish information to them permitted under the Fair Credit Reporting Act (FCRA) to impose obstacles that deter submission of disputes?*
- **CFPB Response: No**
- CRAs and furnishers are liable under FCRA if they fail to investigate any dispute that meets the statutory and regulatory requirements. Claims may be brought if CRAs or furnishers limit consumers' dispute rights by requiring any specific format or requiring any specific attachment such as a copy of a police report or consumer report beyond what the statute and regulations permit.
- *Question: (2) Do CRAs need to forward furnishers consumer-provided documents attached to a dispute?*
- **CFPB Response: It depends.**
- Enforcers may bring a claim if a CRA fails to promptly provide to the furnisher "all relevant information" regarding the dispute that the CRA receives from the consumer.

# CFPB Circular 2023-02

- Reopening deposit accounts that consumers previously closed
- *Question: After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process a debit (i.e., withdrawal, ACH transaction, check) or deposit, can it constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA)?*
- **CFPB Response: Yes!**
- After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process debits or deposits, it can constitute an unfair practice under the CFPA. This practice may impose substantial injury on consumers that they cannot reasonably avoid and that is not outweighed by the countervailing benefits to consumers or competition.

# CFPB Circular 2023-03

- Adverse Action Notification Requirements and proper use of Regulation B Forms
- *Question: When using artificial intelligence or complex credit union models, may creditors rely on the checklist of reasons provided in CFPB sample forms for adverse action notices even when those sample reasons do not accurately identify the reasons for the adverse action?*
- **CFPB Response: NO!**
- Creditors may not rely on the checklist of reasons provided in the sample forms (currently codified in Regulation B) to satisfy their obligations under ECOA if those reasons do not specifically and accurately indicate the principal reason(s) for the adverse action. Nor, as a general matter, may creditors rely on overly broad or vague reasons to the extent that they obscure the specific and accurate reasons relied upon.



Consumer Financial  
Protection Bureau



## CFPB – Advisory Opinions

# CFPB Advisory Opinion

- **July 7, 2022 – FCRA Advisory Opinion on Permissible Purpose**
  - In accordance with the written instructions of the consumer (e.g., consent)
  - In connection with a new extension of credit
  - In connection with the review and/or collection of an existing credit account
  - For employment purposes (e.g., credit screening of new hires)
  - In connection with the underwriting of insurance
- **July 11, 2022 – FCRA Interpretive Rule on State Law Exemption**
  - **Only a state law in direct conflict with any of the provisions of FCRA would be preempted:**
    - Permissible purpose of consumer reports
    - Procedure in case of disputed accuracy
    - Requirements on users of consumer reports
    - Requirements relating to information contained in consumer reports
    - Administrative enforcement
    - Disclosures to consumers

# RESOURCES

[Home](#) > [Compliance Topics](#) > [Loans and Leasing](#) > [Fair Credit Reporting Act](#)

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## Fair Credit Reporting Act

**Last Reviewed: December 2022**

The purpose of the Fair Credit Reporting Act ("FCRA" or "Act") is to ensure fair and accurate reporting of consumer credit information by "consumer credit reporting agencies," including credit bureaus; restricts the use of consumer reports to their legitimate purposes; prohibits discrimination on the basis of race, sex, or other prohibited factors; and requires disclosure to consumers and employees when adverse action is taken as the result of credit reporting.

The FCRA applies any time a credit report is used as a factor in establishing a member's eligibility for or in making changes to a member's share or deposit accounts and other services. It also applies when credit reports are used in hiring or other employment decisions.

The FCRA does **not** apply to reports about business, commercial or professional entities, reports about a credit union's members, or reports by anyone based solely on their own experience with a consumer.

- [Policy 11001: Fair Credit Reporting Act](#)
- [Policy 11003: Accuracy and Integrity of Information Reported](#)
- [Policy 11004: Pre-Screened Offers of Credit or Insurance](#)
- [Policy 11005: Fair Credit Reporting Act: Adverse Action Requirements](#)
- [Policy 11006: Receipt of Notice of Dispute of Accuracy of Information](#)
- [Policy 11009: Identity Theft Red Flag Guidelines](#)
- [Policy 11010: Risk-Based Pricing](#)
- [Policy 11012: Disclosure of Information to Victims of Identity Theft](#)
- [Policy 11015: Obtaining and Using Medical Information](#)
- [Policy 11016: Affiliate Marketing Rules](#)

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# CFPB Advisory Opinion

- **May 18, 2022 – CFPB Advisory Opinion on ECOA**
  - ECOA and Regulation B protect not only those actively seeking credit but also those who have sought and have received credit (ongoing – existing account holders).
- **July 5, 2022 – CFPB Advisory Opinion on FDCPA**
  - Affirmation that debt collectors are prohibited from collecting pay-to-pay or “convenience” fees when those fees are not expressly authorized by the agreement creating the debt or authorized by law (example includes fees imposed for making a payment online or by phone).
  - It may also be a violation if the debt collector collects pay-to-pay fees through a third-party payment processor.

# RESOURCES

[Home](#) > [Compliance Topics](#) > [Loans and Leasing](#) > [Equal Credit Opportunity Act](#)

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## Equal Credit Opportunity Act

**Last Reviewed: January 2022**

The Consumer Financial Protection Bureau (CFPB) Regulation B (Reg B) implements the provisions of the Equal Credit Opportunity Act (ECOA) which was enacted by Congress in 1974 to prevent discrimination on the basis of sex or marital status in any aspect of a credit transaction. Subsequent amendments extended the Act's prohibition of discrimination in credit transactions on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of part or all of one's income from a public assistance program, and good faith exercise of rights under the Consumer Protection Act of 1968.

In October 2017, the CFPB amended Regulation B in order to facilitate compliance with the Home Mortgage Disclosure Act (HMDA). Credit unions that offer mortgage loans now have additional clarity that applicant information collection requirements under HMDA will satisfy the similar requirements under Regulation B. The rule also amends forms found in Regulation B's appendix to provide two alternative forms to collect applicant race, ethnicity, and sex information.

### Summary

### Detailed Analysis

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## Equal Credit Opportunity Act: Laws & Regulations

- [12 CFR 1002, Equal Credit Opportunity Act \(Regulation B\)](#)
- [15 USC 1681 et seq., Fair Credit Reporting Act](#)
- [ECOA Advisory Opinion](#)

## Policy 7120: Fair Lending

**Revised Date: 6/30/2022**

**Model Policy Revised Date: 06/30/2022**

### General Policy Statement:

[[CUnion]] (Credit Union) is firmly committed to the principles of fair lending. We view this commitment seriously and will not tolerate discrimination in policy or practice in any of our lending activities. The purpose of this policy is to promote the availability of credit on equal terms to ALL credit worthy applicants and continue that treatment through the lending process including after credit has been extended.

1. **REGULATIONS.** The key regulations governing discrimination in lending at our Credit Union are:

- A. Equal Credit Opportunity Act (ECOA) - Regulation B applies to any extension of credit, including extensions of credit to small businesses, corporations, partnerships and trusts.
- B. Home Mortgage Disclosure Act (HMDA) - Regulation C requires the Credit Union (federally-insured) to compile and disclose data about home purchase loans, home improvement loans, and refinancings that it originates or purchases, or for which it receives applications. The purpose is to provide the public with data that can be used to:
  - i. Help determine whether the credit unions are serving the housing needs of their communities.
  - ii. Assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed.
  - iii. Assist in identifying possible discriminatory lending patterns and enforcing compliance with anti-discrimination statutes.

# RESOURCES



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## Fair Debt Collection Practices Act

**RISK Alert!** Now available from CUNA Mutual Group (Credentials required for access): [FDCPA-Reg F: What you need to know before November 30, 2021](#) (11/9/2021)

A comprehensive federal debt collection regulation interpreting the Fair Debt Collection Practices Act (FDCPA) takes effect November 30, 2021. The updated regulation applies to debt collectors as defined by the FDCPA, which generally includes debt collection agencies, collection attorneys, debt buyers, and mortgage servicers that obtained the account in default, and generally excludes original creditors. While the revised rule does not specifically address first party creditors, credit unions should be aware of the rule and ensure that any third-party collectors engaged by the credit union are in compliance with Regulation F.

**Last Reviewed: October 2022**

The Fair Debt Collection Practices Act (FDCPA) is a federal law that was enacted in 1977 to curb abusive debt collection activity by some debt collectors. The law became effective on March 20, 1978.

Summary



State Considerations (Maryland)



State Considerations (DC)



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## Policy 9120: Fair Debt Collection Practices Act

Revised Date: 10/14/2022

Model Policy Revised Date: 10/14/2020

### Introduction:

The purpose of the Fair Debt Collection Practices Act (FDCPA) is to eliminate abusive debt collection practices by debt collectors; to ensure that debt collectors who refrain from abusive collection practices are not competitively disadvantaged; and to promote consistent state action to protect consumers against debt collection abuses.

### Highlights:

1. **EXCLUSION FROM COVERAGE.** The Credit Union is not a debt collector subject to the FDCPA when it collects:

A. Debts due to another creditor only in isolated instances;

B. Debts, in the Credit Union's own name, owed to the Credit Union;

C. A debt that it originated and sells, even though it services the debt (i.e., mortgages and student loans);

D. A debt not in default when obtained;

E. A debt obtained as security for a commercial credit transaction involving the Credit Union;

F. A debt incidental to a bona fide fiduciary relationship or escrow arrangement (i.e., a debt held in the Credit Union's trust department); or

G. A debt for another person to whom it is related by common ownership or corporate control, so long as it does so only for those related persons. However, if the Credit Union regularly collects defaulted debts owed to a nonaffiliated person, the Credit Union will become a debt collector for those defaulted debts as well as for defaulted debts of affiliated entities, but not for its own debts.

2. **COVERAGE.** A Credit Union that regularly collects debts for other unrelated institutions, including collections under reciprocal service agreements, will be subject to the FDCPA. A Credit Union is also covered under the FDCPA when it uses a name other than its own for collection efforts. This policy assumes the Credit Union is acting as a debt collector under the FDCPA.



# NCUA Updates

# NCUA – FCU Virtual Meetings

**Expired on December 31, 2022**

- [NCUA Letter 22-FCU-03 – Expiration of Emergency Exemption from Certain In-Person Meeting Requirements](#)
- Certain flexibilities permitted during COVID for FCU virtual annual meetings expired on December 31, 2022.
- FCUs that already adopted the bylaw amendment can retain it in their bylaws, but it is no longer applicable unless the NCUA issues a new notification.
- “Virtual-only” member meetings are no longer an option, however FCUs can choose to hold hybrid meetings (virtually and in-person). Bylaws must authorize hybrid meetings.

# NCUA – Federal Credit Union Bylaws

**Effective on August 25, 2023**

- FCU member may be expelled for cause by two-thirds vote of a quorum of the Board.
- Changes to Article II of the FCU Bylaws regarding members in good standing.
- Bylaws can be amended through a two-thirds vote of the Board of Directors. No need to submit the amendment to the NCU for approval provided the amendment is identical to the language included in the final rule.
- Bylaw amendments can be adopted immediately after the effective date of the final rule.
- The FCU Board of Directors may expel a member, only if the FCU has provided a copy of the expulsion policy to each member of the credit union.
  - The Credit Union may add the expulsion policy to membership and account terms and conditions.
  - The final rule does not define or otherwise limit an FCU's discretion to determine what behavior or violation of the membership agreement is substantial.

# NCUA – Cyber Incident Notification Requirements

**Effective on September 1, 2023**

- [Cyber Incident Notification Requirements](#)
- NCUA Regulation - Part 748 was updated. Credit unions **are required to notify the NCUA** of a **reportable cyber incident** as soon as possible, **but no later than 72 hours** after the possible reportable incident is believed to have occurred.
- **Reportable cyber incident** - any substantial cyber incident that leads to one or more of the following:
  1. **A substantial loss of confidentiality, integrity, or availability of a network or member information system** that results from the **unauthorized access** to or exposure of sensitive data, disrupts vital member services, or has a serious impact on the safety and resiliency of operational systems and processes.
  2. **Disruption of business operations, vital member services**, or a member information system resulting from a cyberattack or exploitation of vulnerabilities.
  3. **Disruption of business operations or unauthorized access to sensitive data facilitated through**, or caused by, a compromise of a credit union service organization, cloud service provider, or other third-party data hosting provider or by a supply chain compromise.

# NCUA – Financial Innovation

**Effective on October 30, 2023**

- [Financial Innovation: Loan Participations, Eligible Obligations, and Notes of Liquidating Credit Unions](#)
- Provides flexibility for federally insured credit unions (FICUs) to make use advanced technologies and opportunities offered by the financial technology (fintech) sector.
  - Credit union can meet the definition of “originating lender” under 701.22, provided the credit union is making the **final underwriting decision** and the **loan is assigned to the purchaser very soon after the inception of the obligation to extend credit**. As opposed to being the purchase of an eligible obligation.
  - Only “notes” purchased by a federal credit union (FCU) from a liquidating credit union are included in the calculation of the **5% limit under 701.23 (b)(4)**.
  - **Removes the CAMELS ratings and well-capitalized requirements** for a FCU’s purchase of certain non-member loans from FICUs.
  - Safety and soundness requirements for FCUs purchasing eligible obligations and notes from a liquidating credit union.

# NCUA – Cyber Incident Notification Requirements

[Home](#) > [Compliance Topics](#) > [Security](#) > [Security Program for Credit Unions](#)

 [View/Print All](#)

## Security Program For Credit Unions

**Last Reviewed: March 2023**

Part 748 of the NCUA Rules and Regulations requires each federally-insured credit union develop a comprehensive written security program (including administrative, technical, and physical safeguards appropriate to their size, complexity, and the nature and scope of their operations) within 90 days of the date it is insured by the National Credit Union Share Insurance Fund (NCUSIF). The security program and associated procedures will be evaluated during examinations by the NCUA or state credit union regulator.

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NACHA

# NACHA – Third Party Sender

**Effective on March 31, 2023 (6-month grace period – September 30, 2022)**

- **NACHA Third Party Sender (TPS) Roles/Responsibilities**
- Third-Party Senders (TPS) (whether nested or not) must conduct a **Risk Assessment** of ACH activities.
  - Nested Third-Party Sender is defined as a Third-Party Sender that has an agreement with another Third-Party Sender to act on behalf of an Originator, and does not have a direct agreement with the ODFI. Typically addressed in ACH Origination Agreements.
- Can not rely on a just a compliance audit or a Risk Assessment completed by another TPS in a chain (nested relationship).
- ODFIs need to identify all Nested Third-Party Relationships in NACHA's Risk Management Portal.

# NACHA – Micro-Entries

**Effective on March 17, 2023 (Phase 2)**

- **Micro-Entry Rule – Phase 2**
- Originators are required to use **commercially reasonable fraud detection, including monitoring Micro-Entry forward and return volumes.**
  - Micro-entries are ACH credits of less than \$1 and any offsetting ACH debits, used for the purpose of verifying a Receiver's account.
- Phase 1 of the rule required **standardized formatting for Micro-Entries** (company entry description – “ACCTVERIFY”). Simultaneous delivery of credit Micro-Entries and corresponding debit offsets in the same file.
  - Intended to minimize the incidence of fraud schemes that make use of Micro-Entries.
  - Monitoring forward and return volumes, establishes a baseline of normal activity.
  - Entry-by-entry review is not required.



Federal Reserve Board

# FRB – Debit Card Routing

## Final Rule – Debit Card Interchange Fees and Routing

**Effective July 1, 2023**

- Regulation II amendments to specify that each **debit card** transaction must be able to be processed on at least two unaffiliated payment card networks for **card-not-present transactions**.
- Encourage competition between networks and incentives them to improve fraud-prevention capabilities.
- Credit union issuers must configure each of its debit cards so that each electronic debit transaction performed with the card (or device, e-wallet, etc.) can be processed on at least two unaffiliated payment card networks, even if the networks that are actually available to the merchant for a particular transaction are limited.

# FRB – Bank Term Funding Program

## Bank Term Funding Program – Federal Reserve

**Effective March 12, 2023**

- **Additional funding made available** to eligible depository institutions (including credit unions).
  - Source of liquidity against high-quality securities, eliminating the need to quickly sell those securities in times of stress.
- **Immediate borrowing capacity** if eligible financial institutions have discount window borrowing documentation in place.
- **Structure:** Loans up to 1 year maturity, pledge of collateral (collateral must be eligible for purchase by the Federal Reserve Banks in open markets, such as US Treasuries, US Agency Securities and US Agency Mortgage-Back Securities), fixed rate, no fees, no prepayment penalties.
- Questions about the program should be directed to the Credit Union's local Reserve Bank.

# FRB – Bank Term Funding Program

[Compliance Topics](#)[Checklists](#)[Model Policies](#)[RecoveryPro](#)[Resources](#)[Home](#) > [Compliance Topics](#) > [Investment](#) > Bank Term Funding Program - Federal Reserve[View/Print All](#)

## Bank Term Funding Program - Federal Reserve

**Last Reviewed: March 2023**

In the wake of the recent bank failures, the Federal Reserve Board has authorized all twelve Reserve Banks to establish the Bank Term Funding Program to make available additional funding in order to help assure financial institutions have the ability to meet the needs of all their depositors. The idea is for financial institutions to have an additional source of liquidity against high-quality securities, eliminating the need to quickly sell those securities in times of stress.

[Summary](#)[Additional Resources](#)



# FCC – Telephone Consumer Protection Act

# FCC – TCPA

## Limits on Exempted Calls Under the TCPA of 1991

### Effective July 20, 2023

- Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) was implemented requiring changes to the TCPA.
- **In general** – an entity may not initiate any telephone call (other than for emergency purposes or made with **prior express written consent** of the called party) using an automated telephone dialing system or an artificial prerecorded voice.
- **2023 requirements** involve calls to **residential lines** using an artificial or prerecorded voice to deliver a message without prior written consent (with certain exceptions).
  - Calls made without prior written consent have certain call limits and requirements, including what the message must include.
  - **If the credit union is considering this approach, they need to develop a formal program including a written policy, training, recording and disclosure of do-not-call requests, identification of callers and telemarketers and maintenance of do-no-call lists.**

# FCC – TCPA

## Limits on Exempted Calls Under the TCPA of 1991

- Certain provisions of the TRACED Act amendments became effective in **March 2021** and were specific to **calls to a wireless number**.
- Exemptions for certain calls on wireless numbers (provided they are not charged or counted against certain plan limits) and subject to a few other provisions (such as calls on a number provided by the member, stating the name and contact information of the credit union at the beginning of the call, limiting for purposes of events that suggest a risk of fraud or identity theft, breaches of security, steps to remedy harm, actions needed for pending money transfers, etc.) exist.
- Credit unions are encouraged to **work with legal counsel** to develop a compliant program and obtaining their member's express written consent.

# FCC – TCPA

[Home](#) [Compliance Topics](#) [Advertising](#) [Telephone Consumer Protection Act](#)

## Telephone Consumer Protection Act

**RISK Alert!** Now available from CUNA Mutual Group [\(Credentials required for access\)](#):

- [TCPA Relief for Credit Unions?](#) (5/4/2021)

**Last Reviewed: February 2023**

### What is the Telephone Consumer Protection Act?

The Telephone Consumer Protection Act of 1991 (TCPA) places certain restrictions on telemarketing calls, text messages, and faxes. This regulation was designed to protect consumers from unwanted autodialed or pre-recorded telemarketing calls, also known as "telemarketing robocalls" and requires prior express written consent of the called party for autodialed or prerecorded telemarketing calls to wireless numbers and prerecorded calls to residential landlines. An established business relationship with a member does not serve to exempt prerecorded telemarketing calls to residential landlines. Accordingly, such calls require prior express written consent.

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Model Policies



### Policy 9600: TCPA, JFPA and CAN-SPAM

Revised Date: 4/14/2023

Model Policy Revised Date: 04/14/2023

#### General Policy Statement:

[[CUName]] (Credit Union) will ensure that all covered phone calls/texts, email communications and covered faxes comply with the requirements of the Telephone Consumer Protection Act (TCPA) (including revisions as a result of the Pallone-Thune Telephone Robocall Abuse Criminal and Deterrence Act (TRACED Act), the Junk Fax Prevention Act (JFPA), and the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM)). The Board delegates to management the responsibility for developing procedures in accordance with this policy.

#### Definitions:

- AUTOMATIC TELEPHONE DIALING SYSTEM (AUTODIALER).** The TCPA's definition is any technology which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator to dial such numbers. Even if the Credit Union's system does not currently have the capacity or capability at this time to make these calls, the system would still be considered an "autodialer" if it had the capacity to be upgraded in the future to make these calls.
- COMMERCIAL MESSAGE.** Defined by CAN-SPAM as those having the primary purpose of advertisement or promotion of a product or service (including email that promotes content on commercial websites). "Transactional" or "relationship" messages are not considered commercial emails.
- TELEMARKETING.** The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, investment in, property, goods, or services, which is transmitted to any person.
- TRANSACTIONAL OR RELATIONSHIP MESSAGE.** CAN-SPAM defines this to mean an email message with the primary purpose to:
  - Facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the Credit Union (sender);
  - Provide warranty information, product recall information or safety or security information with respect to a commercial product or service used or purchased by the recipient;
  - Provide notification concerning a change in terms or features, recipient's standing or status, or at regular periodic intervals: account balance information or other type of account statement for a subscription, membership account, loan or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the Credit Union (sender);
  - Provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating or enrolled; or
  - Deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the Credit Union (sender).

### Procedure 9600.10: TCPA Procedures

Revised Date: 4/14/2023

Model Revised Date: 04/14/2023

The Telephone Consumer Protection Act (TCPA) places restrictions on telemarketing calls, text messages and faxes. Generally speaking, the law requires prior express written consent of the called party for autodialed or prerecorded telemarketing calls to wireless numbers and residential land lines.

#### DEFINITIONS

**Coverage and Automatic Dialing System** - the TCPA defines an Automatic Telephone Dialing System and Autodialer as equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator to dial such numbers.

In determining coverage of the TCPA, the credit union must determine if their phone system has the capacity or capability either currently, or at some point in the future (i.e., after an upgrade) to dial random and sequential numbers. EVEN IF THEY DON'T USE IT.

**Prior Express Written Consent** – an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. The written agreement shall include a clear and conspicuous disclosure informing the person signing that:

- By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and
- The person is not required to sign the agreement (directly or indirectly) or agrees to enter into such an agreement as a condition of purchasing any property, goods, or services.

#### PROCEDURES

- Prior Express Written Consent.** While there are details and exemptions based on certain call types, certain calls to residential vs. wireless, to most effectively protect the Credit Union an effort will be made to get Express Written Consent from a member to make calls to them on a phone number they provide.

A. The **written agreement** bearing the signature of the person called (your member) that clearly authorizes the Credit Union to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

B. The agreement shall also include a clear and conspicuous disclosure informing the member signing that:



# FHFA – Consumer Information Form 1103

# FHFA – Supplemental Consumer Information

## FHFA – Supplemental Consumer Information Form Update

**Effective March 1, 2023**

- Fannie Mae and Freddie Mac (the GSE's) announced that the Supplemental Consumer Information Form (SCIF Form 1103) **will be a required document in the loan file** for new conventional loans sold to the GSEs with application dates on or after March 1, 2023.
- Credit union lenders can begin submitting the updated data in the loan submission files at any time.



FinCEN

# Anti-Money Laundering Act of 2020

**Effective date: January 1, 2024**

## “Reporting Rule”

- “Reporting companies” must file BOI report with FinCEN that identifies:
  - Beneficial owners – any individual who directly or indirectly, either exercises substantial control over the reporting company or controls at least 25% of the ownership interests.
  - Company applicants – the individual who directly files the document creating the reporting company.
- FinCEN will assign a unique identifying number (“FinCEN Identifier”)
  - Reporting companies created before January 1, 2024 will have until January 1, 2025 to file their initial BOI reports; Reporting companies created/registered after January 1, 2024 will have 30-days from creation/registration to file their initial reports (***could change to 90 days with proposed rule***).
  - Reporting companies must file updates within 30-days of any relevant changes to their BOI.

# Anti-Money Laundering Act of 2020

## “Access Rule”

- Beneficial Ownership (Legal entities) Information Access & Safeguards, use of Identifiers “Access Rule.”
- December 16, 2022 – Notice of Proposed Rulemaking – comments due on February 14, 2023.
- Only authorized recipients will have access to beneficial ownership information and for permissible purposes only. Security and confidentiality procedures!

### SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into eight divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.
- (4) Division D—Funding Tables.
- (5) Division E—National Artificial Intelligence Initiative Act of 2020.
- (6) Division F—Anti-Money Laundering
- (7) Division G—Elijah E. Cummings Coast Guard Authorization Act of 2020
- (8) Division H—Other Matters

## One Hundred Sixteenth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Friday,  
the third day of January, two thousand and twenty*

### An Act

*To authorize appropriations for fiscal year 2021 for military activities of the Department of Defense, for military construction, for national security, and for other purposes, and for other matters.*

*Representatives of the*

*(Mr.) Thornberry*

*2021”.*

*TABLE OF CONTENTS.*

*Eight divisions as*

*authorizations.*

*Authorizations.*

*National Security*

*Intelligence Initiative*

*Intelligence Initiative*

*Coast Guard*

*Coast Guard*

*(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:*

- Sec. 1. Short title.
- Sec. 2. Organization of Act into divisions; table of contents.
- Sec. 3. Congressional defense committees.
- Sec. 4. Budgetary effects of this Act.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS



Hot issues

# Bank Failures

- Our members are concerned!
- Are my funds safe?
- How is your credit union answering questions about insurance coverage?
- NCUA information is not easy to use and says nothing about YOUR credit union's safety and security!

## Account Insurance ESTIMATOR

### Estimate the Maximum Federal Coverage of Funds with Us

As a member of our credit union, you can estimate the maximum Federal insurance coverage of funds held in account(s) with us and then estimating the ten, or one of the ten, most popular types of account coverage offered by the NCUA. By answering questions, the Account Insurance Estimator estimates the maximum federal coverage of funds in the account(s) with us in seconds!

Your Name:

Estimate the Maximum Insurance for TEN Types of Account Coverage

Estimate the Maximum Insurance for ONE Type of Account Coverage

The screenshot displays the NCUA website's navigation bar with a red box highlighting the 'Resources' link. Below the navigation bar, a breadcrumb trail shows 'Home > Resources > Credit Union Tools'. The main content area features the 'Account Insurance Estimator' tool, which is also highlighted with a red box. The tool's description states it is now available to all credit unions as a member benefit. It allows users to estimate the maximum federal insurance (NCUSIF) coverage of funds in any member's account(s) for the ten most popular types of coverage, and generate a customized estimate and estimate form to provide to the member to reinforce the value of your credit union. Not only is the AIE a "service excellence" and "employee training" solution, the AIE will also allow your credit union to promote itself and all its important products and services to members and potential members instantly!

Below the description, there is a section for 'Account Insurance Estimator Webinar Recording' with a 'View Recording' link and a passcode: -6Oga3G. A text prompt asks how employees are being prepared to answer questions and build confidence in your credit union, with a link to 'Let us help!'.

To the right of the main content, there is a sidebar with a red box highlighting the 'Account Insurance Estimator' link. Below this, there is a 'Check Deposit Notice Generator' tool, which is also highlighted with a red box. The tool's description states it consistently and objectively prevents all check losses for your members & credit union. Below this, there is a 'Click here to access these tools!' button.

At the bottom of the page, there is a section for 'Check Deposit Notice Generator'.

**Account Insurance Estimator Webinar Recording**

The recent bank failures have raised member concerns for many credit unions. Help equip your employees to answer questions and assure members about NCUSIF coverage through the Account Insurance Estimator. We recently held an educational webinar to help credit unions learn more and take advantage of this dues-supported tool. A recording of the April 4, 2023 webinar is below.

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- **AIE Video Tour** Passcode: 4j#@T7#g
- **AIE Video Tour Additional Information**

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**Account Insurance Estimator**

Consistently & objectively prevent all check losses for your members & credit union

Make & Save Money for you with Two Exclusive Products

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**Account Insurance ESTIMATOR**

Estimate all key NCUSIF coverages and sell more profitable products & services!

Click here to access these tools!

# Trusted Contact

- NCUA and CFPB are recommending that consumers establish “trusted contacts” with their financial institution.
- No formal regulatory guidance has been issued by either agency.
- Elder financial exploitation continues to increase and become an issue.

Compliance Topics Discussion Board Checklists CU PolicyPro RecoveryPro Resources

Home > Compliance Topics > Security > Elder and/or Vulnerable Adult Protections

[View/Print All](#)

## Elder and/or Vulnerable Adult Protections

Last Reviewed: December 2022


Older Americans hold a high concentration of wealth as compared to the general population. In the instances where elderly individuals experience declining cognitive or physical abilities, they may find themselves more reliant on specific individuals for their physical well-being, financial management, and social interaction. While anyone can be a victim of a financial crime such as identity theft, embezzlement, and fraudulent schemes, certain elderly individuals may be particularly vulnerable.

- Summary
- State Considerations (Michigan)
- Trusted Contact Person Toolkit**
- FAQs
- Laws & Regulations
- Additional Resources
- Model Policies

### Elder and/or Vulnerable Adult Protections: Trusted Contact Toolkit

Help You Protect Your Elder Members Through a Trusted Contact

Credit unions are on the frontline in the fight against elder financial exploitation and we are excited to offer a brand-new resource to help in the fight ... **Trusted Contact!**

 This new resource comes in the form of a toolkit designed to assist credit unions help their senior members remain safe from financial frauds, scams, and theft.

**How does having a Trusted Contact\* help?**

An emerging practice where “banks and credit unions allow members to choose one or more trusted contacts, such as an adult child or close friend, who the credit union can reach out to for extra help in emergency situations.”

*\*A **Trusted Contact** does NOT have control over a member's finances, ownership interests in your accounts, or authorizations to access, transact on, or withdraw money from the member's accounts.*

- [Elder and/or Vulnerable Adult Protections Model Policy](#)
- [Trusted Contact Person Model Procedures](#)
- [Trusted Contact Person Model Script](#)
- [Trusted Contact Information and Authorization Form](#)
- [Trusted Contact Person FAQs](#)
- Additional Resources:
  - [CFPB Trusted Contact - Credit Union Deliverable](#)
  - [CFPB Trusted Contact - Member Deliverable](#)
  - [NCUA Consumer Assistance Center - Trusted Contact](#)
  - [NCUA Trusted Contact Video](#)

# Check Fraud

SUSPICIOUS ACTIVITY CATEGORY	SUSPICIOUS ACTIVITY TYPE	2014	2015	2016	2017	2018	2019	2020	2021	2022
Cyber Event <sup>00</sup>	Against financial institution(s)*	-	-	-	-	260	2,829	4,871	5,399	7,188
	Against financial institution customer(s)*	-	-	-	-	659	9,108	12,148	17,884	18,735
	Other*	-	-	-	-	302	2,112	3,067	3,743	4,341
	<b>Subtotal</b>	-	-	-	-	<b>1,221</b>	<b>14,049</b>	<b>20,086</b>	<b>27,026</b>	<b>30,264</b>
Fraud	ACH	24,904	37,338	48,679	50,680	65,179	88,858	143,269	176,911	183,730
	Advance fee*	-	-	-	-	130	1,694	2,351	2,398	2,281
	Business loan	1,487	1,263	1,442	1,528	1,021	2,078	12,761	36,238	17,603
	Check	96,786	112,133	152,593	145,272	166,511	228,469	216,963	249,802	501,477
	Consumer loan	87,668	71,548	57,536	52,190	54,659	71,234	57,352	52,333	81,777
	Credit/Debit card	75,496	87,364	104,716	120,413	163,896	171,515	132,925	140,327	269,693
	Healthcare/Public or private health insurance	1,094	682	679	769	772	929	745	912	977
	Mail	5,930	8,358	6,337	5,651	5,954	7,597	7,363	7,162	11,830
	Mass-marketing	928	3,509	6,270	9,664	9,612	12,808	19,974	20,785	30,629
	Other	45,915	42,199	66,453	64,595	78,675	84,570	146,287	224,786	219,549
	Ponzi scheme*	-	-	-	-	66	394	337	309	390
	Pyramid scheme	396	307	260	314	209	174	188	131	123
	Securities fraud*	-	-	-	-	79	514	638	817	236
	Wire	22,092	29,298	35,037	38,973	44,281	47,746	52,400	58,872	77,761
	<b>Subtotal</b>	<b>362,696</b>	<b>393,999</b>	<b>480,002</b>	<b>490,114</b>	<b>591,944</b>	<b>718,581</b>	<b>793,553</b>	<b>971,783</b>	<b>1,398,056</b>
Gaming Activities <sup>0</sup>	Chip walking*									

- SAR reportable instances of check fraud doubled from 2021 to 2022!
- [FinCEN Alert on Nationwide Surge in Mail Theft-Related Check Fraud Schemes](#)
- How is the credit union protecting themselves?

# Check Fraud

[Compliance Topics](#)[Discussion Board](#)[Checklists](#)[CU PolicyPro](#)[RecoveryPro](#)[Resources](#)[Home](#) [Resources](#) [Credit Union Tools](#)

## Account Insurance Estimator

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- [AIE Video Tour Additional Information](#)

## Check Deposit Notice Generator

[A-Z Listing](#)[Account Insurance Estimator](#)[Check Deposit Notice Generator](#)[Collaborative Tools](#)[Compliance Calendar](#)[CUNA e-Guide](#)[FAQs](#)[Federal Regulations List](#)[InfoSight Listing by State](#)[Newsletter](#)[Required Compliance Training](#)[RISK Alerts](#)

### Check Deposit NOTICE GENERATOR

Consistently & objectively prevent all check losses for your members & credit union

Make & Save Money for you with Two Exclusive Products

InfoSight

### Account Insurance ESTIMATOR

Estimate all key NCUSIF coverages and sell more profitable products & services!



Click here to access these tools!

1 Select the potential check loss reason (the potential loss problem) to warn a depositor of a loss on a check.

#### Nonpayment Warning Reasons

- ☐ Insufficient Funds ?
- ☐ Stop Payment Order ?
- ☐ Closed Account ?
- ☐ Payor Contact Unhelpful ?
- ☐ Stale Dated Check ?
- ☐ Void Notice ?
- ☐ Conflicting Amounts ?
- ☐ Without Recourse ?
- ☐ Postdated Check ?
- ☐ GENERAL REASON ?

#### Fraud Warning Reasons

- ☐ Altered Amount ?
- ☐ Altered Payee ?
- ☐ Altered Endorsement ?
- ☐ Forged Endorsement ?
- ☐ 3rd Party Check ?
- ☐ Forged Drawer's Signature ?
- ☐ Counterfeit Check ?
- ☐ No Account ?
- ☐ GENERAL REASON ?

#### Obvious Warning Reasons

- ☐ Foreign Bank ?
- ☐ Payee Uncertain ?
- ☐ Emergency Conditions ?
- ☐ Loan Invite "Check" ?
- ☐ Substitute Check ?
- ☐ Missing Endorsement ?
- ☐ No Drawer's Signature ?
- ☐ Missing Information ?
- ☐ LARGE POTENTIAL LOSS ?

#### 4 Check Deposit Loss Prevention Notice Options

[Decline a Check for an Apparent Potential Loss](#)[Immediate Funds with a Warning of a Potential Loss](#)[7 Business Day Hold for a Potential Nonpayment Loss](#)[Offer Collection of a Check with an Obvious Potential Loss](#)

#### Need Help with Check Deposit Loss Prevention?

[Go to the Check Deposit Evaluator](#)



# Industry Trends / Examination Priorities

# Industry Trends....

- [Federal Reserve Board's Consumer Compliance Outlook – Third Issue 2022](#)
  - Compliance Management Systems and the failures they are identifying in institutions without them! Even with institutions with experienced Compliance Officers! We need to get everyone involved!
- **Climate Related Financial Risks**
  - CFPB issued a [proposed rule for amendments to the Truth in Lending Act](#) to support PACE financing.
  - The NCUA also [published a request for information and comment](#) on climate-related financial risk.

# OCC 2024 Priorities

## OCC 2024 Priorities

### **Bank Supervision priority objectives:**

- Asset and liability management
- Credit
- Allowance for credit losses
- Cybersecurity
- Operations (use of complex structures, AI, real-time payments, etc.)
- Distributed ledger technology related activities
- Change management
- Payments
- BSA/AML/OFAC
- Consumer Compliance
- Community Reinvestment Act (CRA)
- Fair Lending
- Climate-related financial risk

# Examination Priorities

## [NCUA Letter 23-CU-01](#)

### **NCUA 2023 Supervisory Priorities**

- Interest Rate Risk
- Liquidity Risk
- Credit Risk
- Fraud Prevention and Detection
- Information Security (Cybersecurity)
  - *Corporate Account Takeover Policy/Procedure*
- Consumer Financial Protection
  - (Overdraft, Fair Lending – review of real estate appraisals for any bias, Truth in Lending Act, Fair Credit Reporting Act)
  - *Mortgage Pipeline Management Policy*
- Other: CECL, Succession Planning, Support for Small CUs and Minority Depository Institutions.

# Examination Priorities

## **Overdraft Program Focus**

- Website advertising;
- Balance calculation methods;
- Settlement processes;
- Member statements and disclosures (related to the Payday Alternative Loans (PALS II) program; and
- Management's actions to address unanticipated overdraft fees.

# Examination Priorities

## **Fair Lending**

- Reviewing policies and procedures related to loan pricing discrimination risk, steering discrimination risk and appraisal bias.

## **Truth in Lending**

- Focus for federal credit unions that have auto loan portfolios that have increased more than 30% from September 30, 2021 to September 30, 2022.

## **Fair Credit Reporting Act**

- Adverse action notices, risk-based pricing disclosures and consumer rights disclosures.

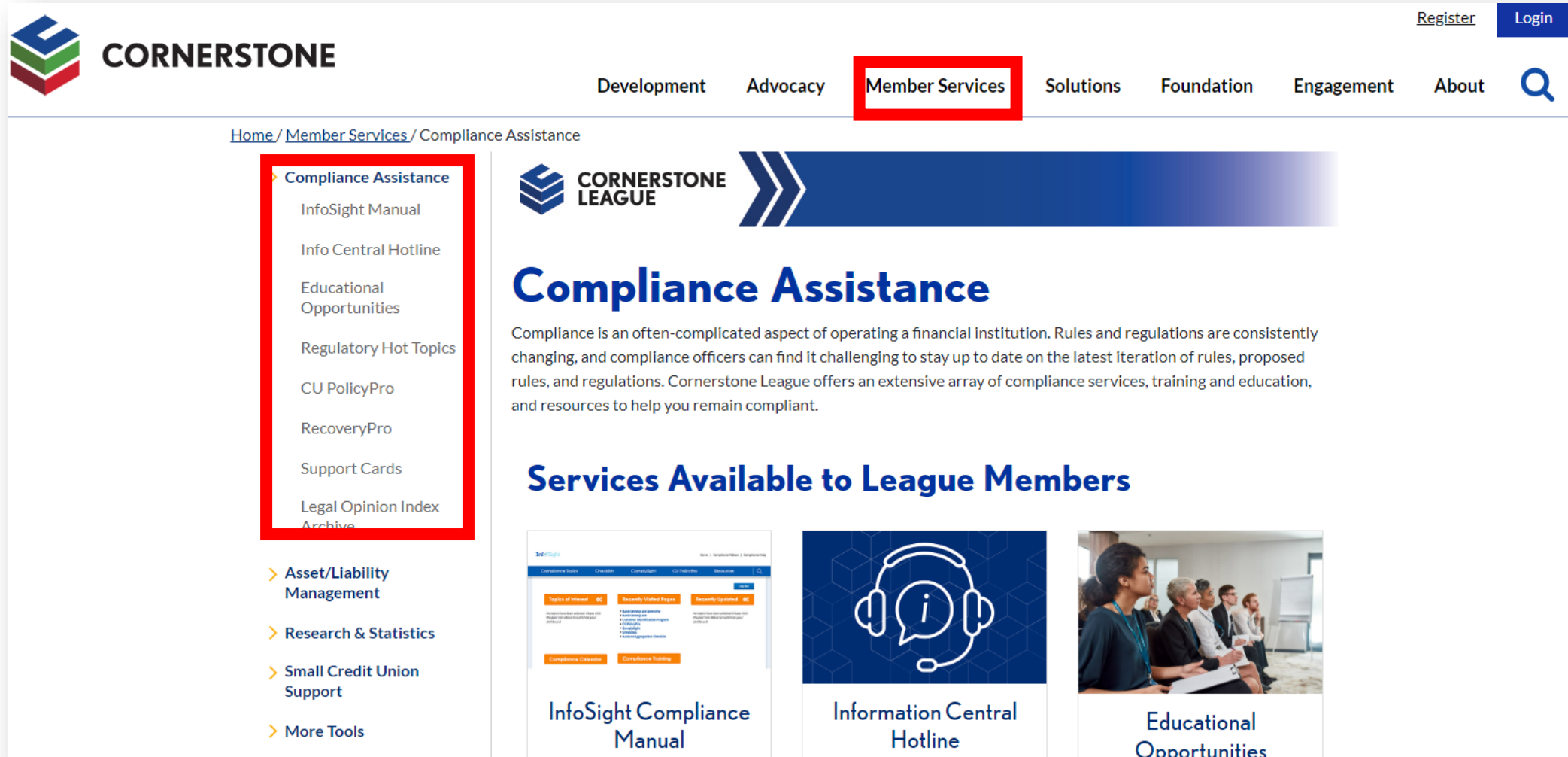


# Tools and Resources

# RESOURCES

## Member Benefits

<https://www.cornerstoneleague.coop/services/compliance>



**CORNERSTONE**

Development Advocacy **Member Services** Solutions Foundation Engagement About

Register Login

Home / Member Services / Compliance Assistance

**Compliance Assistance**

- InfoSight Manual
- Info Central Hotline
- Educational Opportunities
- Regulatory Hot Topics
- CU PolicyPro
- RecoveryPro
- Support Cards
- Legal Opinion Index Archive

**Asset/Liability Management**

**Research & Statistics**

**Small Credit Union Support**

**More Tools**

**CORNERSTONE LEAGUE**

## Compliance Assistance



Compliance is an often-complicated aspect of operating a financial institution. Rules and regulations are consistently changing, and compliance officers can find it challenging to stay up to date on the latest iteration of rules, proposed rules, and regulations. Cornerstone League offers an extensive array of compliance services, training and education, and resources to help you remain compliant.

### Services Available to League Members


- InfoSight Compliance Manual**
- Information Central Hotline**
- Educational Opportunities**


# RESOURCES


## Member Benefit

 In Partnership with  **CORNERSTONE LEAGUE**

Home | Compliance Videos | Compliance Help

Compliance Topics | Checklists | CU PolicyPro | RecoveryPro | **Resources** | 

**Welcome, Amy** 

**Topics of Interest** 

- Bankruptcy and Collections
- Foreclosure (Michigan)
- Garnishment (Michigan)
- Investment
- Loans and Leasing

**Recently Visited Pages**

- InfoSight Listing by State
- InfoSight Listing by State
- Expedited Funds Availability - Regulation CC
- Accounts
- Compliance Videos
- Uniform Electronic Transactions Act (Michigan)
- FAQ Home

**Compliance Calendar**  
**October, 2023**


- October 30th, 2023: **5300 Call Report Due to NCUA**
- October 30th, 2023: **NCUA - Financial Innovation (Loan Participations, Eligible Obligations, and Notes of Liquidating**


**Compliance Training**


- Required Compliance Training
- CUNA's free Webinars
- CUNA training, education and professional development


**Credit Union Tools**

Hot off the press! The 3rd Quarter Compliance Video is now available!



- Trusted Contact Person Toolkit
- League InfoSight is now on  Follow us today!

**Recently Updated** 

**Resources** | 

**A - Z Listing**

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**Credit U**

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counts, Lending  
operations.

2023 Q1 Compli

- Deposit Account Updat
- Lending Updates
- Credit Union Operatio
- Compliance Calendar

# RESOURCES

## Member Benefit

CUPolicyPro

League InfoSight Credit Union Manual

Logged in as: Glory LeDu Access Level: Admin Change Password

☆ Model Policies

The **Model Policies** include template language to be used as the starting point for crafting your credit union's own policies (and procedures and other relevant content). The Model Policies are comprehensive and provide an excellent foundation for regulatory compliance; however, every Credit Union is unique and all content should be reviewed and customized as needed to fit your credit union's operations. All content is written from a federal perspective, so state and local laws should be researched and incorporated if applicable.

View

📖 Published Manuals

The **CU Policies** manual includes the credit union's individual customized policies and other relevant content that is edited and maintained within the CU PolicyPro system. Selected content from the CU Policies manual can be combined into a single document, or **Published Manual**, for viewing by authorized staff. If you have any questions about the published policy content or availability, please contact your system admin.

View Edit

📰 Latest News

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**Connect with Us!**

[League InfoSight is now on LinkedIn!](#) Connect w up with the latest updates and information from InfoSight!

View Model Policies

Search Model Policies

Q

Expand All | Collapse All

Chapter 1000: Administrative ▶

Chapter 2000: Operations ▶

Chapter 3000: Accounting ▶

Chapter 4000: Security ▶

Chapter 5000: Asset/Liability Management ▶

Chapter 6000: Investments ▶

Chapter 7000: Lending ▶

Chapter 8000: Other Real Estate Owned (OREO) ▶

Chapter 9000: Federal Regulations ▶

Chapter 10000: Records Retention ▶

Chapter 11000: Fair Credit Reporting Act ▶

Each credit union has their own  
CU PolicyPro site!

<https://www.leagueinfosight.com/cu-policypro-client-listing>

# RESOURCES

<https://www.leagueinfosight.com/recoverypro>



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[Checklists](#)

[CU PolicyPro](#)

[RecoveryPro](#)

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Welcome, Amy

[Log Out](#)

## Topics of Interest



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## Recently Updated



# CMS RESOURCES

## Policy 1230: Regulatory Compliance

Model Policy Revised Date: 03/14/2022

Revised Date: 3/14/2022

### General Policy Statement:

[[CName]] (Credit Union) is committed to understanding and complying with the laws and regulations that govern its operation. The purpose of this policy is to formalize that commitment, assign responsibility, and authorize general compliance activities. In order to assist with this formalized commitment, the Credit Union has a compliance management system in place, inclusive of a compliance program addressing the guidelines within policy, along with processes and procedures to manage consumer compliance risk, support compliance and ultimately prevent any harm to the Credit Union's members, and consumers generally.

### Guidelines:

#### 1. RESPONSIBILITY.

A. While the Board of Directors is responsible for the overall performance of the Credit Union, authority to design and administer the compliance program is granted to the CEO/President.

B. The CEO/President is assigned the role of Compliance Officer, unless this role is formally assigned by the CEO/President to another member of the management team.

C. Effective compliance requires the contribution of each employee at each stage of the product lifecycle, from product creation, implementation and service/administration. All employees are responsible to learn, understand and comply with the laws and regulations that affect their area of responsibility.

2. **COMPLIANCE EXPERTISE.** The CEO/President is responsible to ensure they or the assigned Compliance Officer has knowledge of consumer compliance laws and regulations, including emerging risks that may impact the Credit Union's products and services. The Compliance Officer will continue to build the compliance expertise of the entire Credit Union with authorized activities including internal staff training, attendance at compliance schools and webinars, subscription to compliance update services, etc. Funding for such compliance activities that exceeds management's spending authority must be approved as part of the annual budget or through separate action by the Board.

## COMPLYSIGHT

CU Risk Intelligence's compliance management solution, **ComplySight**, provides visibility, tracking, measuring and reporting of compliance activities through a single, simplified application.

The system provides a conduit to strengthen a credit union's overall communication, supporting a state of continual readiness for audits, and providing regulatory updates essential to maintaining compliance.

## AFFIRMX

CU Risk Intelligence's industry-leading risk management automation provider, **AffirmX**, delivers mitigation resources for credit unions that reduce the costs, workloads and angst associated with regulatory compliance.

Serving more than 230 credit union clients and scores of association partnerships nationwide, the system prioritizes risk management tasks and remediation by utilizing relevant and timely data that improves performance throughout the enterprise.

<https://www.curiskintelligence.com/>



# Questions?

Amy Wargo

Director of Risk Management

[Amy.Wargo@CURiskIntelligence.com](mailto:Amy.Wargo@CURiskIntelligence.com)



LeagueInfoSight

**CU RISK**  
INTELLIGENCE 