



Emerging Risks:

Looking Ahead: The Regulatory Roadmap

Risk & Compliance Solutions
CUNA Mutual Group



ANDREA
STRITZKE



JOE
LUEDKE



THERESA
REINKE

Today's CUNA Mutual Group presenters:

- **Andrea Stritzke**, Director of Risk and Compliance Solutions. She leads the LOANLINER® Compliance and Document Solutions team as well as the Credit Union Protection Risk Management team. Andrea has been providing regulatory and compliance consultation to credit unions since 2006. She received her law degree from the University of Nebraska College of Law and her bachelor's degree from the University of Nebraska.
- **Joseph Luedke**, Risk and Compliance Consultant working to identify and communicate emerging risks. Joe was previously a Regulatory Compliance Manager focused on consumer lending with a specialization in credit card laws. Before joining CUNA Mutual Group, he was an associate at SmithAmundsen, LLC, a Chicago-based law firm. He received both his law degree and bachelor's degree from Marquette University.
- **Theresa Reinke**, Risk and Compliance Consultant. Theresa is responsible for the thought leadership of our Real Estate Lending area of practice and for managing our LOANLINER mortgage documents portfolio. She has nearly 40 years of experience in financial services and began her career at CUNA Mutual Group in 1988.

Today's presenters:



**ANDREA
STRITZKE**



**JOE
LUEDKE**

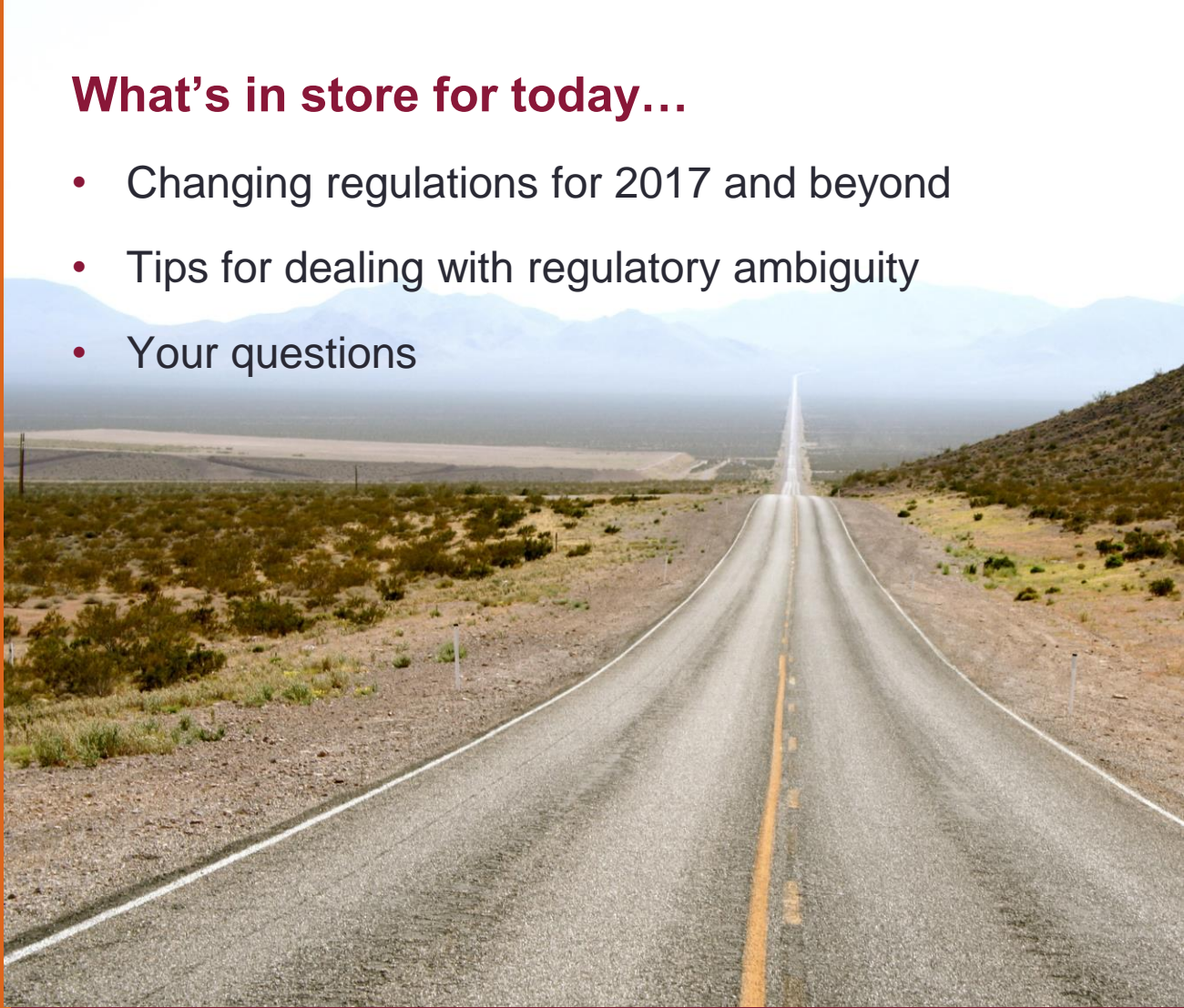


**THERESA
REINKE**

**Risk & Compliance Solutions
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What's in store for today...

- Changing regulations for 2017 and beyond
- Tips for dealing with regulatory ambiguity
- Your questions



The Reality



Dealing with regulations without effective dates or stipulated requirements don't always provide a clear roadmap

Compliance on the radar

MLA

Military Lending Act

TCPA

Telephone Consumer Protection Act

HMDA

Home Mortgage Disclosure Act

UDAAP

Unfair, Deceptive and Abusive Acts
or Practices

ADA

Americans with Disabilities Act



**Critical tasks mirror
risk management steps**

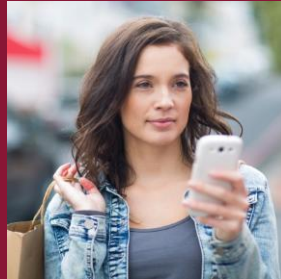
Identify

Assess

Measure

Control

Monitor



Telephone Consumer Protection Act

Telephone Consumer Protection Act


Addresses unsolicited telephone calls and texts to wireless telephone numbers and residential landlines

Consent Requirements

- Telemarketing or non-telemarketing purpose
- Directed to a wireless telephone number or landline
- Utilizes an autodialer
- Utilizes an artificial or prerecorded voice / message



TCPA consent requirements

	Wireless Telephone Number		Residential Landline	
	Telemarketing	Non-Telemarketing	Telemarketing	Non-Telemarketing
Autodialer	Prior Express Written Consent	Prior Express Consent	N/A	N/A
Artificial / Prerecorded Voice	Prior Express Written Consent	Prior Express Consent	Prior Express Written Consent	N/A
Manually Dialed / No Autodialer	N/A	N/A	N/A	N/A

Be sure to understand:

- Prior express written consent **vs.** Prior express consent
- Consent can be captured in a number of ways... via a number of channels or any number of documents
- Members have the right to revoke their prior consent to receiving telemarketing calls or texts at any time by any reasonable means
- How your compliance partner and legal counsel can assist your consent efforts

Check out this new resource - [TCPA Overview](#) in the [Protection Resource Center](#)
(User ID and Password required)



TCPA Violations

Failing to comply with the TCPA can lead to

- significant statutory damages
- class action litigation for credit union

No cap on the number
of penalties a credit union
can face for multiple violations

Per call / text

\$500

per negligent violation

\$1,500

per willful violation





Home Mortgage Disclosure Act

Credit unions with:

- Assets in excess of \$44 million as of 12/31/2016
- Home or branch office in an MSA
- Originated at least one purchase (or refinance) mortgage, in preceding year
- Federally insured or regulated, and
- 2018 - originate at least 25 closed-end loans **or** at least 100 open-end loans (HELOCs) in each of the two preceding years (2016 & 2017)



**Who's subject to
HMDA?**

Loans subject to HMDA

Big change from purpose-based test to dwelling-secured test

- Applications for, originations of and purchases of **all loans** secured by a dwelling
- Now includes:
 - HELOCs (optional in the past)
 - Closed-end home equity mortgages
 - Business purpose loans secured by a dwelling
 - Reverse mortgages
- No longer includes an unsecured home improvement loan

HMDA Changes

- 9 existing
- 14 modified
- 25 new with 6 mandated by Dodd-Frank

Data Points



- New web-based data submission tool in 2018
- In 2020, if >60,000 in previous year, report quarterly

Reporting



- Credit union's disclosure statement and LAR will be on the Bureau's website

Requirements



Find out more with this [HMDA implementation resource](#) within the **Protection Resource Center** at www.cunamutual.com

- Reporting on more applications and more loans – even preapprovals approved, but not accepted
- Significant cost increases to upgrade systems and the use of staff time
- Privacy concerns – additional data points
- Increased potential for error
- Additional Fair Lending responsibilities and scrutiny

Additional Burden?





Once you determine if you need to report, you should:

- Identify affected dwelling secured loans
- Determine system requirements
- Identify impacts to service providers or business partners
- Develop a plan with legal, compliance, and IT
- Revise loan applications and understand new notice requirements
- Train staff

Check out the CFPB resources for [HMDA rule implementation](#)



Military Lending Act

Military Lending Act (MLA)

Designed to protect service members from certain lending practices that could impact force readiness

Five key areas:

1) Loan Security

Loans cannot be secured with check, bank account or allotment

2) MAPR

Instituted Military APR with maximum of 36%, required disclosures

3) Oral and Written Disclosures

4) Waivers/Arbitration

Borrower cannot be required to waive legal rights or agree to mandatory arbitration

5) Prepayment

Cannot charge prepayment penalties



Types of credit covered by MLA

Covered

- Payday loans
- Vehicle title loans
- Tax refund anticipation loans
- Overdraft lines of credit
- Credit cards
- Unsecured lines of credit
- Unsecured installment loans
- Private student loans
- Auto refinance loans

Not Covered

- Residential Mortgages
- Most auto loans (except covered loans)
- Federal student loans
- Traditional DDA overdraft protections



- Active duty members of the Army, Navy, Air Force, Marines or Coast Guard
- Reservists and National Guard on active duty
- Spouse of an active duty service member
- Un-remarried widower or un-remarried widow of a service member
- Children under the age of 18
- Children 18 to 23 years old, who are full-time students
- Children permanently incapable of self-support
- Dependent parents

**Must meet definition
of “covered borrower”**



Exclusion from MAPR for application fee, participation fee, transaction-based fee or similar fee, if the fee is **reasonable** and **bona fide**

- Safe harbor for **reasonable** fee amount
- A bona fide fee may be considered **reasonable** even without safe harbor
- If not bona fide and reasonable, fee must be included in MAPR

Creditors are prohibited from imposing charges during no balance billing cycle.

- Doesn't apply to charging a participation fee
- Highest reasonable amount charged is \$100

**New MLA Impact:
Credit Cards**

Assessing your card documents



- **Application**
 - Ensure that any consensual security interest language contains a savings clause for MLA covered borrowers
- **Application & Solicitation Disclosure**
 - Review disclosures for secured cards to ensure the language allows you to open a true secured card without violating the MLA restriction on security interests in shares and deposits
- **Account Opening Disclosure**
 - Confirm the Military Annual Percentage Rate (MAPR) disclosure statement is provided to MLA covered borrowers
 - Verify that you are able to provide a toll-free telephone number MLA covered borrowers can call to receive oral disclosures
- **Agreement**
 - Review agreement to ensure no terms prohibited by MLA are included for covered borrowers (i.e., mandatory arbitration, waivers of rights afforded by state or federal law [including SCRA], mandatory allotments, prepayment penalties)
 - Validate security interest language does not violate the MLA limitation on interests in shares and deposits



Unfair, Deceptive and Abusive Acts or Practices

What is UDAAP?

Dodd-Frank transferred rulemaking authority from Federal Trade Commission to the CFPB

CFPB

- Prohibits engagement in any **unfair, deceptive** or **abusive** acts or practices

Federal Trade Commission Act provides

- CFPB broad rule-making and enforcement authority to prevent such acts; as well as,
- supervisory authority for detecting and assessing risks to consumers and markets

Over \$10B

CFPB

Under \$10B

FTC
Attorney General
Federal / State Regulators

Unfair Acts or Practices

The standard for unfairness in the Dodd-Frank Act is that an act or practice is unfair when:

- (1) It causes or is likely to cause substantial injury to consumers;
- (2) The injury is not reasonably avoidable by consumers; and
- (3) The injury is not outweighed by countervailing benefits to consumers or to competition.

Deceptive Acts or Practices

A representation, omission, act or practice is deceptive if:

- (1) It misleads or is likely to mislead the consumer;
- (2) The consumer's interpretation is reasonable under the circumstances; and
- (3) It is material.

Abusive Acts or Practices

Materially interferes with the ability of a consumer to understand a term or condition of a product or service or takes unreasonable advantage of:

- A lack of understanding of the material risks, costs, or conditions;
- The inability of the consumer to protect its interests in selecting or using; or
- The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.



MasterCard and UniRush

- Customers unable to access their own money
- Botched processing of deposits and payments
- Provided inaccurate account information
- Failed to provide customer service to customers impacted by the breakdown

Prospect Mortgage LLC

- Paid illegal kickbacks for mortgage business referrals

Examples of UDAAP Violations



CitiMortgage, Inc. & CitiFinancial Servicing

- Kept borrowers in the dark about options to avoid foreclosure relief

TCF National Bank

- Charged overdraft fees on one-time debit purchases and ATM withdrawals without consumer's consent
- Designed the application process to obscure the fees and make the practice of overdraft seem mandatory to open an account

Examples of UDAAP Violations

Do what you say, say what you do.

Members should have access to their funds, unless you tell them otherwise.

It is not about what you call something; it is about what you do and the actions you take.

Lessons learned



General UDAAP Guidance

- Understand UDAAP
- Develop a UDAAP policy
- Review your marketing, advertising, and fine print
- Monitor your vendors' practices
- Manage and track complaints
- Train your staff



Americans with Disabilities Act

Websites contain digital barriers that limit the ability of visually impaired to access the site

Assistive technology, such as screen reader software, converts web page text to synthesized speech they can hear or outputs the text to a digital braille display that can be read

For screen readers to work with a website or application, the website must be programmed for compatibility

Use the [Web Content Accessibility Guidelines \(WCAG\) 2.0](#) developed by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C)

ADA & Website Accessibility



- Compliance risk is real
- Staying on top of compliance trends is not a one-time job
- Consider expanding the role of compliance into your overall risk and control governance framework
- Follow best practices and use all available resources


Stay on top of emerging risks

- RISK Alerts – **Warning** ♦ **Watch** ♦ **Awareness**
- Loss Prevention Library (whitepapers, checklists)
- Webinars & Education
- Risk Assessments
- Peer Data

Protection Resource Center @ www.cunamutual.com

RISK Alert

ACTIONABLE INSIGHTS FOR BOND POLICYHOLDERS.




Alert Type: Awareness **Watch** Warning

Mitigate Emerging Risks Related To Cash Advances

While stolen card data has continued to wreak havoc on gross fraud losses, the primary method used by fraudsters has been isolated to point-of-sale and ATM terminals. Recently, however, reported credit union losses suggest a shift to in-branch cash advance machines.

[Read Full Alert](#)
User ID and Password required

[Download PDF >](#)
File is available for 30 days.

 **Protection Resource Center**
Access risk management resources to identify and manage credit union risks including access to the full RISK Alert Library.
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© CUNA Mutual Group
PO Box 391 | 5310 Mineral Point Road
Madison, WI 53701-0391
608.238.5851 | 800.396.2644 | www.cunamutual.com

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