

The scope of compliance is much broader and its impact on credit unions is far greater than ever before.



The Impact of a Constant-Evolving Regulatory Environment.

Compliance risk has become one of the most significant ongoing concerns for financial institutions, including credit unions. In addition, establishing compliant operations can be challenging by increasing the cost of service and sometimes making the delivery of great member experience more difficult. Credit unions face expanded compliance expectations that can lead to higher costs and losses from escalating litigation, penalties, and staffing needs.

1:1 Compliance Q&A with a Risk Consultant

Question: When it comes to compliance risks, what is the first thing you tell credit unions?

Risk Consultant: Clearly, operational and compliance risks have become more complex and entwined. It is critical for credit unions to stay current on these risk trends and integrate risk and compliance management into their day-to-day business plans. Those that do are more likely to minimize their losses.

First off, the C-suite should ensure someone is assigned to take ownership of emerging compliance risks. Then, after establishing an understanding of the risk, one of the best places to start is by engaging in broadening discussions with staff and working through the tough questions to help you navigate through the impact on your operations.

One common challenge is that roles and responsibilities for managing compliance risks are unclear.

Question: Of the compliance issues on your radar, which should credit unions be closely monitoring?

Risk Consultant: It is difficult to narrow it down, but compliance risks that are impacting credit unions right now, include:

- Telephone Consumer Protection Act (TCPA)
- Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)
- Military Lending Act (MLA)
- Reg CC and Remote Deposit Capture Indemnity
- FinCEN's Final Rule on Customer Due Diligence (CDD)

Class action lawsuits also continue to allege defective collection letters, and website accessibility/ADA issues.

The General Data Protection Regulation (GDPR), centered on privacy and individuals in the European Union rights to protect their privacy, has left many credit unions unsure whether they fall within the jurisdiction of GDPR.



Risk & Compliance Solutions

Proactively supporting credit union risk management and compliance efforts, dedicated Risk Consultants are available to assist you credit union in managing risks and helping you make strong strategic decisions.

Contact CUNA Mutual Group's Risk Consultants at **800.637.2676** or riskconsultant@cunamutual.com

1:1 Compliance Q&A with a Risk Consultant

Many employees see compliance training as uninteresting, irrelevant -- or just plain boring. Failing to engage employees can increase the risks of unethical or non-compliant behaviors.

Question: So many think solely of agreements, documents, forms, or disclaimers when compliance is brought up. Aren't there a number of these compliance issues that involve employees following the right behavior?

Risk Consultant: Absolutely, TCPA and UDAAP are two good examples. Unfortunately, many employees see compliance training as uninteresting, irrelevant -- or just plain boring. Failing to engage employees can increase the risks of unethical or non-compliant behaviors.

- **TCPA** requires consent for certain unsolicited calls or texts such as telemarketing or collection calls. Credit unions can obtain an oral or written consent in order to comply but it depends on whether the call or text is for a telemarketing, fraud or collections purposes, is to a landline or cell phone, utilizes an autodialer or utilizes an artificial/prerecorded voice/message. Keep in mind; fines are \$500 per negligent violation and \$1500 per willful violation with no cap. It is important to obtain the appropriate consent, document it, and track it. Also track when it is revoked.
- **UDAAP** prohibits credit unions from engaging in acts or practices that are unfair, deceptive, or abusive. UDAAP compliance is one of those that is often difficult due to the broad scope, vague definitions, and differing interpretations of what is and isn't a violation.

The CFPB looks at the facts of the scenario and applies a subjective analysis to determine injury to consumers. Basically, think about what your documents says and what you do. If you print it, do it. If you do it, say it. UDAAP also touches just about every area and function of your credit union...from products and services...to terms and conditions in your documents...to marketing material or sales scripts used by your staff.

There are huge fines when it comes to violating UDAAP – often surpassing fines for other types of lending violations. Financial institutions have paid billions in fines pursuant to UDAAP violations. In fact, in 2018, one financial institution was fined \$1 billion – the largest fine to date.

Question: One of the challenges with compliance seems to be the constant change that occurs. Do you have an example of a compliance risk that has been changing?

Risk Consultant: MLA is one of those. The **Department of Defense's Military Lending Act** final rule became effective on Oct. 1, 2015. Compliance with the rules provisions for closed-end and most open-end consumer credit was required on Oct. 3, 2016. Compliance is required for credit card accounts opened on or after Oct. 3, 2017

The DOD published an interpretive rule on Dec. 14, 2017 to provide guidance for the October 2015 final rule. Compliant documents used for covered transactions prior to the recent interpretive rule may not have language to support a security interest in all of a covered borrower's shares, while new documents implemented after the interpretive rule may support such a security interest. This may pose issues related to collecting. Be aware of what type of security interest you have in a collection situation.

Creates some complications for indirect lending

Credit unions need to ensure dealerships are complying with the MLA when purchasing retail installment contracts if ancillary products are financed or the borrower is receiving cash out.

A few different credit union approaches have been taken since the interpretive ruling. Some simply stopped buying contracts for covered borrowers. Others have required closing of the indirect loans at their facilities to ensure compliant forms, disclosures, and rates are provided. And, some only buy contracts for covered borrowers that do not include financing of non-vehicle products such as GAP or credit insurance. Other credit unions buy contracts for covered borrowers and use staff to confirm the dealership has provided appropriate forms and interest rate disclosures.

To confirm dealerships are compliant, ensure the dealer:
1) Identifies covered transactions, 2) uses compliant forms, 3) has adequate training and procedures, and 4) calculates the proper MAPR. Credit unions should audit or review these loans for compliance before agreeing to purchase them.

1:1 Compliance Q&A with a Risk Consultant

Question: Are any of these compliance risks putting credit unions up against the calendar to comply?

Risk Consultant: Both the Reg CC-Remote Deposit Capture Indemnity (July 1, 2018 compliant date) and Customer Due Diligence (mandatory compliance date was May 11, 2018) are important to address sooner than later.

Regulation CC - Remote Deposit Capture Indemnity

The Federal Reserve Board issued the final amendments to check collection and returns provisions in Subpart C of Reg CC in May 2017. Among the changes is a new remote deposit capture indemnity that will increase the risk to credit unions offering this service.

The indemnity is designed to protect a depository institution receiving an original paper check for deposit which is returned unpaid to that institution due to being previously deposited at a credit union via RDC, for example.

Therefore, the institution who receives the paper check for deposit can make an indemnification claim against the credit union who originally accepted it as a RDC item.

Keep in mind, the indemnity would not apply if the original paper check contains a restrictive endorsement; such as "for mobile deposit only" includes the credit union name.

Therefore, the key is to require members to restrictively endorse the original paper check prior to transmitting the image via RDC. Doing this will mitigate the risk of an RDC indemnity claim being made against your credit union.

Credit unions should enforce the restrictive endorsement requirement by performing a manual review of check images transmitted for deposit and reject any that don't have the restrictive endorsement. If it isn't feasible to review every check; you should consider a monetary threshold and any amount above that should be reviewed. Also, any new accounts or new RDC users should have all of their check images reviewed for a period of time. In addition, ensure your RDC agreement and disclosure requires members to restrictively endorse the original paper check prior to transmitting the items via RDC.

Customer Due Diligence (CDD)

The Financial Crimes Enforcement Network (FinCEN) issued its customer due diligence rule under the Bank Secrecy Act in May 2016; the mandatory compliance date was May 11, 2018. The CDD rule requires credit unions to identify and verify the identity of beneficial owners of "legal entity customers." The new rule also provides for explicit due diligence requirements by adding a fifth core element to a credit union's BSA/AML compliance program.

Many credit unions want to know who is considered a beneficial owner. The CDD rule defines a beneficial owner as **each** of the following:

- Under the Ownership Prong: Each individual who directly or indirectly owns 25% or more of the equity of a legal entity customer
- Under the Control Prong: A single individual with significant responsibility to control or manage the legal entity customer. Examples include the business entity's executive officer or senior manager or other individual who performs similar functions.

Furthermore, the CDD Rule defines "legal entity customer" to include business entities such as corporations, limited liability companies, other legal entities created by the filing of a public document with a Secretary of State or similar office, and partnerships. Sole proprietorships, unincorporated associations and natural persons are specifically excluded.

Credit unions can identify the beneficial owners of legal entity customers in one of three ways: 1) By obtaining a Certification Regarding Beneficial Owners of Legal Entity Customers provided in the final rule in Appendix A, 2) By using the credit union's own forms, or 3) By obtaining the required information by any other means

FinCEN issued an administrative ruling on May 16, 2018, which provides for a 90 day limited exceptive relief from the obligations of the beneficial ownership requirements for legal entity customers with respect to certain products and services that automatically rollover or renew; such as, CDs or loan accounts that were established before May 11, 2018. This exception will begin retroactively on May 11, 2018 and expire August 9, 2018.

In the interim, FinCEN will determine whether additional exceptive relief is appropriate for such financial products and services. FinCEN has established a Regulatory Helpline (800.949.2732) for financial institutions.

Risk & Compliance Solutions

• 800.637.2676 •

riskconsultant@cunamutual.com

1:1 Compliance Q&A with a Risk Consultant

Question: You mentioned a fifth core element under BSA. What does that mean?

Risk Consultant: In addition to the beneficial ownership requirements as part of Customer Due Diligence, credit unions must expand their BSA/AML compliance program to add a fifth core element. The new fifth core element is comprised of maintaining appropriate risk-based procedures for conducting ongoing customer due diligence including, but not limited to:

- Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
- Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, including information regarding beneficial owners of legal entity customers.

Question: No wonder compliance risk has become one of the most significant ongoing concerns for credit unions. Where do you suggest getting even more information on these and other emerging compliance risks?

Risk Consultant: One of the first places to start is in CUNA Mutual Group's [Protection Resource Center](#). Our team of Risk & Compliance Consultants work to draft insights and resources that can assist credit unions in making better strategic decisions. Some of the specific resources include:

- [UDAAP Risk Overview](#)
- [GDPR Risk Overview](#)
- [Emerging Litigation Trends: Collection Letters](#)
- [Website Accessibility Risk Overview](#)
- [Telephone Consumer Protection Act Risk Overview](#)
- [Remote Deposit Capture Risk Overview](#)

And, remember that you can always reach out to our team of Risk Consultants for additional insights when you need it the most. Just call or email the Risk & Protection Response Center.



Risk & Compliance Solutions • 800.637.2676 • riskconsultant@cunamutual.com

This resource is for informational purposes only. It does not constitute legal advice. Please consult your legal advisors regarding this or any other legal issues relating to your credit union. CUNA Mutual Group is the marketing name for CUNA Mutual Holding Company, a mutual insurance holding company, its subsidiaries and affiliates. Insurance products offered to financial institutions and their affiliates are underwritten by CUMIS Insurance Society, Inc. or CUMIS Specialty Insurance Company, members of the CUNA Mutual Group. CUNA Mutual Group Proprietary and Confidential. Further Reproduction, Adaptation or Distribution Prohibited.

800.637.2676 | cunamutual.com

P.O. Box 391 | 5910 Mineral Point Road

Madison, WI 53701-0391

10007721-0618 © 2018 CUNA Mutual Group, All Rights Reserved.

