Fair Lending and Consumer Compliance Regulatory Update Webinar

November 19, 2019

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Agenda

- Fair Lending
  - HMDA Review Observations
  - Reg. B Adverse Action Notice Review Observations
- PALs
- Elder Financial Abuse
- Resources
- Q & As
HMDA REVIEW OBSERVATIONS
Overview

- NCUA examiners completed limited scope Home Mortgage Disclosure Act (HMDA) Loan Application Register (LAR) reviews in 2018 and 2019.
- Review scope included 2018 HMDA LAR data collected by federal credit unions.
- HMDA LAR violations often impact fair lending risk evaluation and management.
- Violations are usually attributable to weaknesses in one or more areas of the institution’s compliance management system (CMS).
## HMDA Review Observations

<table>
<thead>
<tr>
<th>Issue</th>
<th>Fair Lending Impact</th>
<th>CMS Deficiency</th>
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</table>
| • Failure to record data timely on HMDA LAR  
  • Section 1003.4(f) requires quarterly recording of data (within 30 calendar days of quarter end) | • Failure to record data on an ongoing basis may impact HMDA LAR accuracy  
  • Regulator may be unable to confirm compliance | • Policies and procedures  
  • Training  
  • Compliance audit |
### Issue
- When more than one party is involved, failure to report originations as required
- The party making the credit decision reports the origination

### Fair Lending Impact
- An institution’s lending patterns cannot be evaluated when its data is aggregated with HMDA data from other institutions

### CMS Deficiency
- Board and management oversight
- Compliance audit
### HMDA Review Observations

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| • Erroneously reporting prequalification requests as preapproval requests  
• Prequalification requests are not applications under HMDA | • LAR contains non-reportable transactions with missing data elements  
• Unreliable data may lead to unreliable conclusions | • Training  
• Monitoring and corrective action |
HMDA Review Observations

- **Issue**
  - Failing to report applications secured by properties located outside of Metropolitan Statistical Areas (MSAs)

- **Fair Lending Impact**
  - Demographics, underwriting, and pricing may be materially different with missing transactions

- **CMS Deficiency**
  - Board and management oversight
  - Training
## HMDA Review Observations

<table>
<thead>
<tr>
<th>Issue</th>
<th>Details</th>
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<tbody>
<tr>
<td>Omitting some or all covered denied</td>
<td>approved applications</td>
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<th>Fair Lending Impact</th>
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<td>Missing approvals or denials can impact</td>
<td>decisioning analysis accuracy</td>
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<td>Board and management oversight</td>
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<tr>
<td>Monitoring and corrective action</td>
<td></td>
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<tr>
<td>Compliance audit</td>
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### HMDA Review Observations

<table>
<thead>
<tr>
<th>Issue</th>
<th>• Reporting applications as &quot;withdrawn&quot; that were not expressly withdrawn by the applicant before the institution made a credit decision</th>
</tr>
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<tbody>
<tr>
<td>Fair Lending Impact</td>
<td>• Affects the accuracy of decisioning analyses, especially when the correct action taken is &quot;denied&quot; or &quot;approved but not accepted&quot;</td>
</tr>
</tbody>
</table>
| CMS Deficiency | • Training  
• Compliance audit |
HMDA Review Observations

- Reporting applications as “approved but not accepted” with no final credit decision – initial information run through automated underwriting system but no further underwriting

- Affects the accuracy of decisioning analyses when applications are incorrectly reported as approved

- Training
  - Compliance audit
### HMDA Review Observations

<table>
<thead>
<tr>
<th>Issue</th>
<th>Impact</th>
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<tr>
<td>- Incorrect race, ethnicity, sex information</td>
<td>- Incorrect prohibited basis data can fundamentally flaw a fair lending analysis</td>
</tr>
<tr>
<td>- HMDA LAR does not match information provided, includes only one entry when more than one provided, or does not include race/ethnicity detail</td>
<td></td>
</tr>
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#### Fair Lending Impact
- Incorrect prohibited basis data can fundamentally flaw a fair lending analysis

#### CMS Deficiency
- Monitoring and corrective action
- Compliance audit
### HMDA Review Observations

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| • Incorrect values or “NA” incorrectly reported in key fields (DTI, LTV, credit score, income, loan amount, property value, etc.) | • Materially incorrect and missing values in fields used to predict lending and pricing decisions affect model accuracy | • Board and management oversight  
• Training  
• Monitoring and corrective action |
## HMDA Review Observations

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| • Reporting “NA” for property address when address is known  
• Reporting “NA” for rate spread when spread should be reported | • Missing rate spreads may make pricing analyses inaccurate  
• Missing property addresses affect redlining analyses | • Training  
• Monitoring and corrective action |
### HMDA Review Observations

<table>
<thead>
<tr>
<th>Issue</th>
<th>• Reporting the institution’s Nationwide Mortgage Licensing System and Registry (NMLSR) ID instead of the loan originator’s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair Lending Impact</td>
<td>• Cannot evaluate trends associated with an institution’s loan originators</td>
</tr>
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</table>
| CMS Deficiency | • Training  
• Compliance audit |
REGULATION B
ADVERSE ACTION NOTICE
REVIEW OBSERVATIONS
Overview

- NCUA examiners completed targeted reviews in 2019 to evaluate compliance with Regulation B Adverse Action Notice requirements

- Reviews conducted in federal credit unions

- Violations are usually attributable to weaknesses in one or more areas of the institution’s compliance management system (CMS)
AAN Review Observations

Issue

- Reasons for adverse action are not specific, based on credit union’s internal standards or policies, or based on a particular credit score

CMS Deficiency

- Training
- Compliance audit
AAN Review Observations

**Issue**
- Incorrect federal regulator contact information
- Federal credit unions with assets <= $10 billion – AANs should list NCUA’s Office of Consumer [Financial] Protection
- State-chartered credit unions with assets <= $10 billion – AAN’s should list Federal Trade Commission

**CMS Deficiency**
- Training
- Compliance audit
AAN Review Observations

**Issue**
- Adverse Action Notices contain the name and address of more than one federal regulator
- Notices should clearly identify the **one** federal agency responsible for compliance oversight of the creditor

**CMS Deficiency**
- Training
- Compliance audit
AAN Review Observations

**Issue**
- Adverse Action Notice not provided within 30 days of a complete application
- Adverse Action Notice not provided within 30 days of an incomplete application, and no notice of incompleteness provided

**CMS Deficiency**
- Training
- Compliance audit
PALs
PALs - Background

- Original PALs (PALs I) created in 2010
- Incentive to federal credit unions:
  - Alternative to costly payday loans
  - Assistance for existing members
- NCUA Regulation section 701.21(c)(7)(iii)
PALs - Background

Specific restrictions and requirements

- Maximum 28 percent interest
- $200 minimum, $1,000 maximum
- Maximum term of six months
- Structured as closed-end, fully amortizing
- Limit of three loans in rolling six month period
- 30-day membership required
- Maximum $20 application fee
- Written underwriting guidelines
PALs - Background

- **Recommended practices:**
  - Consider benefits to member
  - Basic underwriting
  - Reporting to credit reporting agencies
  - Financial education
  - Savings component
  - Encourage payroll deduction
PALs - Background

- Market penetration low
- Too restrictive
  - Membership requirement
  - Loan amounts
  - Loan term
PALs II Rule

- Final rule issued September 19, 2019
- Effective date December 2, 2019
- Does not replace PALs I
- NCUA Regulation section 701.21(c)(7)(iv)
  - Preserves exemption for PALs I from CFPB Payday Lending Rule
## PALs I vs. PALs II

<table>
<thead>
<tr>
<th>Provision</th>
<th>Current PALs Rule (Sept 2010)</th>
<th>Final PALs II Rule (Sept 2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Loan Amount</strong></td>
<td>$200–$1,000</td>
<td>Up to $2,000</td>
</tr>
<tr>
<td><strong>Interest Rate</strong></td>
<td>Up to 1000 bps above max interest rate allowed by the NCUA Board (currently 28%)</td>
<td>Same.</td>
</tr>
<tr>
<td><strong>Membership Requirement</strong></td>
<td>Must be a member for at least 30 days</td>
<td>Must be a member, but no length of membership requirement</td>
</tr>
<tr>
<td><strong>Loan Term</strong></td>
<td>1–6 Months</td>
<td>1–12 Months</td>
</tr>
<tr>
<td><strong>Application Fee</strong></td>
<td>Actual costs, not to exceed $20</td>
<td>Same.</td>
</tr>
<tr>
<td><strong>Limits on Usage</strong></td>
<td>3 PALs in 6-month period / Only one loan at a time</td>
<td>Same.</td>
</tr>
<tr>
<td><strong>Structure</strong></td>
<td>Closed-End</td>
<td>Same.</td>
</tr>
<tr>
<td><strong>Volume Limits</strong></td>
<td>Aggregate of loans must not exceed 20% of net worth</td>
<td>Same.</td>
</tr>
<tr>
<td><strong>Other Restrictions</strong></td>
<td>No rollovers</td>
<td>Same.</td>
</tr>
<tr>
<td><strong>Overdraft Fees</strong></td>
<td>Does not prohibit overdraft fees</td>
<td>Prohibits overdraft fees</td>
</tr>
</tbody>
</table>
Recommended practices – same as PALs I:

- Consider benefits to member
- Basic underwriting
- Reporting to credit reporting agencies
- Financial education
- Savings component
- Encourage payroll deduction
PALs and CFPB Rule

- CFPB Rule currently stayed
- PALS I loans fully exempt from CFPB Rule
- PALs II conditionally exempt
  - Based on loan terms
  - Based on covered loans made per year
  - Based on receipts from covered loans
PALs II – NCUA Reporting

- **Call Report**
  - Report total PALs I and II combined
  - Instructions only will change

- **Profile**
  - State if making PALs I, II or both
ELDER FINANCIAL ABUSE
Elder Financial Abuse - Agenda

- Definition
- Overview
- EGRRCPA – Section 303
- Immunity
- Limitations
- Training Content
- Resources
Definition

- Financial exploitation of senior citizens is defined as:
  - "The fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or a fiduciary, that uses the resources of a senior citizen for monetary or personal benefit, profit, or gain;"
  - OR
  - [Activity that] results in depriving a senior citizen of rightful access to or use of benefits, resources, belongings, or assets.”
Overview – Who?

PERCENT OF EFE SARs BY SUSPECT CATEGORY

- Stranger: 51%
- Known person: 36%
- Family: 25%
- Fiduciary: 7%
- Non-family Caregiver: 4%

Family, Fiduciary, and Non-family Caregiver are sub-categories of Known Person.

Source: Bureau’s analysis of a random sample of EFE SARs (1,051 SARs)
Overview – How much?

NUMBER OF EFE SARS BY MONTH (APRIL 2013-DECEMBER 2017)

Source: Bureau’s analysis of EFE SARs filed between April 2013 and December 2017 (176,690 SARs)
Overview – How much?

TOTAL AMOUNT OF MONETARY LOSSES AND ATTEMPTS REPORTED IN EFE SARs BY YEAR (IN BILLIONS)

Source: Bureau’s analysis of all EFE SARs filed between April 2013 and December 2017 (183,360 SARs).
According to the CFPB

“SARs indicate that Elder Financial Exploitation is widespread and damaging.”

“Financial Institutions are filing more SARs on Elder Financial Exploitation, but in most cases SARs don’t indicate that they are also reporting to law enforcement or adult protective services.”
Section 303 of EGRRCPA – Immunity

Codified as 12 U.S.C. § 3423 - Immunity from suit for disclosure of financial exploitation of senior citizens
Immunity – CU Employees

- Provides immunity from liability to credit union employees:
  - Serving in a supervisory, legal, or compliance capacity,
  - Who, in good faith and with reasonable care, disclose the suspected financial exploitation of a senior citizen (age 65 or older) to a regulatory or law-enforcement agency.
To receive immunity, credit union must provide the employee with training to identify suspected exploitation

- Third party may provide the training
Immunity – Credit Unions

- Extends immunity to credit unions for employees’ disclosures
- The credit union must provide training to identify/report suspected financial exploitation:
  - To all employees who may have contact with a senior citizen
  - The credit union must maintain adequate training records
Limitations

The Act does not:

- Require employees or credit unions to report suspected exploitation;
- Obligate credit unions to provide the training to their employees;
- Limit the liability of an individual or a credit union for any act, omission, or fraud not a disclosure described in Section 303; or
- Preempt or limit any provision of State law, except to the extent that it provides greater protection against liability to an individual or credit union than State law provides.
To provide immunity under Section 303, the training must:

- Be maintained by the credit union and be made available to regulatory authorities;
- Instruct on identification and on reporting the suspected exploitation internally and, as appropriate, to
  - Government officials or
  - Law enforcement authorities,
- Include common signs that indicate the financial exploitation of a senior citizen;
- Discuss the need to protect the privacy and respect the integrity of each customer; and
- Be appropriate to the job responsibilities of those attending the training.
Resources

- NCUA Consumer Report: Scams Targeting Seniors
- NCUA Consumer Protection Update: Reporting Elder Financial Abuse or Exploitation
- Money Smart for Older Adults (FDIC, CFPB)
- MyCreditUnion.gov
  - Fraud Prevention Center
  - Scams Targeting Older Adults
Resources

• **Consumer Compliance Regulatory Resources**
  – On ncua.gov
  – All consumer compliance subject areas

• **Federal Consumer Financial Protection Guide**
  – Replaces Self-Assessment Guide
  – Contains full versions of consumer compliance examination procedures
Resources

Fair Lending and Consumer Compliance Regulatory Update Webinar
Resources

Consumer Compliance Regulatory Resources

This webpage presents information about compliance with consumer lending and deposit laws and regulations, including those arising out of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The webpage provides access to NCUA Regulatory Alerts, Supervisory Letters, webinars and quick reference guides, as well as to Consumer Financial Protection Bureau’s rules, compliance guides, and other federal resources. Direct any questions to the Division of Consumer Compliance Policy and Oversight in NCUA’s Office of Consumer Financial Protection at compliance monk@ncua.gov.

Consumer Financial Protection Updates

Consumer Financial Protection Updates announce new activity on consumer compliance laws, regulations and guidance. They briefly describe the action taken and provide links to relevant materials. Through these updates, the NCUA’s Office of Consumer Financial Protection helps keep credit unions up to date on the most recent amendments and regulatory changes.

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<tr>
<th>Number</th>
<th>Title</th>
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<tbody>
<tr>
<td>16-15</td>
<td>CFPB Issues Amendments to HUD/Rule</td>
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<tr>
<td>16-14</td>
<td>Federal Reserve Issues Correction to Final Rule on Availability of Funds and Collection of Checks</td>
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<tr>
<td>16-13</td>
<td>CFPB Announces Adjusted 2020 TILA Fees and Thresholds</td>
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<tr>
<td>16-12</td>
<td>CFPB and FRB Issue Amendments to Regulation CC</td>
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<tr>
<td>16-11</td>
<td>CFPB Delayed Compliance Date for Underwriting Requirements of the Payday, Vehicle Title, and Certain High-Cost Installation Loans Rule</td>
</tr>
<tr>
<td>16-10</td>
<td>FRBC Issues 2019 Home Mortgage Disclosure Act (HMDA) Getting it Right Guide</td>
</tr>
<tr>
<td>16-09</td>
<td>CFPB Issues Technical Specifications and Resources for Prepaid Product Agreements</td>
</tr>
<tr>
<td>16-08</td>
<td>CFPB Releases Small Entity Compliance Guide Summarizing the Payday, Vehicle Title, and Certain High-Cost Installation Loans Rule</td>
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Recently Added Resources

- Appraisal for Higher-Priced Mortgage Loan Exemption Threshold Adjustment Effective Jan. 1, 2020
- Annual Adjustment to Dollar Threshold for Exempt Consumer Loans under the Consumer Leasing Act and Regulation M Effective Jan. 1, 2020
- Annual Adjustment to Dollar Thresholds for Exempt Consumer Credit Transactions under the Truth in Lending Act and Regulation Z Effective Jan. 1, 2018
- HMDA Lending Instruction Guide for HMDA Data Collected in 2020
- HMDA Supplemental Guide for Quarterly Files (Released Sept. 2018)
- CFPB Guide and Fair Enforcement for Mortgage Licensing Act FAQs Available Sep 24, 2019
- CFPB Truth in Lending (Regulation Z) Annual Threshold Adjustments (FHA and USDA) Effective Jan. 1, 2020
- FRID and FSA Final Rule on Availability of Funds and Collection of Checks (Regulation CC) Published July 23, 2018
- CFPB TILA-RESPA Integrated Disclosures FAQs (in the TILA Rule as it applies to construction loans) (First Set, May 31, 2019)
- NCUA Regulatory Alert TIL-R-01, ‘Truth in Lending’ Revisions (August 2019)
Regulation and Supervision

The NCUA’s mission is to ensure the nation’s system of cooperative credit remains safe and sound. To achieve this, the agency’s examination program focuses on risk to the broader system and the National Credit Union Share Insurance Fund. Through the NCUA’s rule-making process, it is creating a modern regulatory framework that allows for innovation and flexibility, while still maintaining a safe and sound credit union system.
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- **Supervisory Review Committee**: This committee ensures the agency’s policies are being implemented effectively.
- **Corporate Credit Unions**: These credit unions are regulated by the NCUA and are subject to the same rules as other credit unions.
- **Regulatory Reporting**: This involves the collection and analysis of data from credit unions to monitor their compliance with regulations.
- **Examination Modernization Initiatives**: The NCUA has several initiatives in place to improve and modernize how it conducts examinations and supervision.

**Legal Opinions**
In an effort to help credit unions, lawyers, and others that have an interest in the laws and regulations that apply to federally insured credit unions, the NCUA publishes certain of staff’s legal opinions and interpretations letter issued since 1981. Users can search these by year, subject, title and keywords.

**Regulatory and Compliance Resources**
The NCUA has put together comprehensive resources covering topics such as risk-based capital, consumer and fair lending compliance, cybersecurity, BSA/AML compliance, and capital planning and stress testing.

**Enforcement Actions**
In working to protect the credit union system and the Share Insurance Fund from losses, the NCUA employs several supervisory tools and enforcement actions depending on the severity of the situation.

**Supervisory Review Committee**
The NCUA’s policy is to maintain good communication with all the credit unions it inspects. Should disagreements or issues remain unresolved, the Supervisory Review Committee and other appeal processes are available for certain disputes.

**Corporate Credit Unions**
Corporate credit unions are defined as “credit unions offering credit union services” by providing a number of financial services for consumer credit unions. These institutions can access regulatory information on examiners, credit union service organizations, examinations and other relevant regulatory information.

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Examiners Guide

This manual details NCUA’s examination and supervision program for federally insured credit unions. The agency’s risk-focused approach evaluates how a credit union’s management identifies, measures, monitors and manages existing and potential risks.

Fair Lending Guide

A credit union’s board of directors and management, compliance officers, or other employees responsible for fair lending compliance can use this guide as a reference to comply with fair lending rules. While the guide covers federal fair lending laws and regulations, it does not address all federal consumer protection laws or any state laws, and should be used in conjunction with other supervisory guidance.

Federal Consumer Financial Protection Guide

This guide serves a resource to help credit unions comply with certain consumer financial protection laws and regulations. It includes NCUA and interagency examination procedures, and is intended for use by a credit union’s board of directors and management, compliance officers, and others having responsibility for consumer compliance as part of their duties.

Hurricane and Disaster Information

Credit unions can access information and resources on emergency and disaster preparedness and the types of assistance available following a hurricane or other disaster.

National Supervision Policy Manual

This manual provides the credit union system with a better understanding of the NCUA’s rules and policies, helping to reduce possible misunderstandings that may occur during the examination process.
Federal Consumer Financial Protection Guide

National Credit Union Administration

The National Credit Union Administration is the independent federal agency created by the U.S. Congress to regulate, charter and supervise federal credit unions. The agency’s mission is to provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit. It protects credit unions and the consumers who own them through effective supervision, regulation and insurance. With the backing of the full faith and credit of the United States, NCUA administers the National Credit Union Share Insurance Fund, which provides up to $250,000 of federal share insurance to millions of account holders in all federal credit unions and the overwhelming majority of state-chartered credit unions.

Purpose of Guide

This guidance is provided as a resource to help you comply with statutory and regulatory compliance. It includes NCUA and interagency examination procedures. The guidance is intended for use by a credit union’s board of directors and management, compliance officers, and others having responsibility for compliance as part of their duties. While it covers most federal consumer protection laws and regulations that affect credit unions, it does not address all federal laws or any state laws.

Each regulation guidance is divided into 5 sections:

- Overview
- Definitions
- Associated Risks
- Examination Objectives
- Examination Procedures

* The checklists can be used to test compliance with the various laws and regulations, or as a starting point in developing a policy for compliance with the various regulations. The questions are written so that a “yes” answer indicates compliance with the regulation, and a “no” answer indicates a potential problem area.
Please contact our office with questions or comments.

Office of Consumer Financial Protection
Division of Consumer Compliance Policy and Outreach

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Phone:  703-518-1140