



**COMPLIANCE CHALLENGES**

Kris Kully

# What is the Right Size for Compliance?

*With Changes in D.C., Now May Be the Time for Credit Unions to Focus on Compliance Infrastructure*

By Kris Kully

**W**ith all the changes in Washington, D.C. over the past two years, it is reasonable for credit unions to consider whether they can rebalance their priorities.

It feels like compliance with onerous and confusing consumer protection laws has played an outsized role for all mortgage lenders. The onslaught of dozens of new regulations and the fierce and unpredictable enforcement actions caused constant stress and sucked up valuable time and resources.

While everyone agrees compliance is important, credit unions have many competing priorities, like serving members' needs, maintaining safety and soundness, and fostering growth.

Can credit unions finally “right-size” our compliance efforts?

## **MORE CHANGE AT THE CFPB**

There certainly are signs of change at the “new” Consumer Financial Protection Bureau (CFPB). As of December 2018, the CFPB is under new leadership (again), but conventional

wisdom predicts that new Director Kathy Kraninger will largely mimic her predecessor (Acting Director Mick Mulvaney) in declining to use aggressive enforcement actions to push legal boundaries. She has em-

phasized that under her leadership, the agency will prioritize cost/benefit analyses, signaling a careful, balanced approach.

Still, Kraninger promises the CFPB will “vigorously enforce the law,” and it has recently finalized some large enforcement actions inherited from the prior administration. Also, recent anecdotal evidence shows the CFPB is still citing mortgage lenders for alleged violations, particularly regarding the inimical regulations for loan originator compensation (LO Comp), and the complex requirements for TILA/RESPA Integrated Disclosures (TRID).



Since those agency findings do not always result in public enforcement actions, silence does not mean complacency!

### BALANCE SOUGHT AT NCUA

The National Credit Union Administration (NCUA) similarly seems to be in a right-sizing mode, looking for ways to provide credit unions with much-needed regulatory and examination relief while still upholding risk management and safety/soundness principles.

The agency reports, though, that it will lean hard on compliance, including in the near future on the new Home Mortgage Disclosure Act (HMDA) reporting requirements. (The NCUA also will reportedly focus on some nonmortgage topics, including cybersecurity, the Bank Secrecy Act, Regulation E (regarding electronic/preauthorized account transfers) and the Military Lending Act.)

Aside from those stated priorities, reports continue to circulate that the NCUA is actively pursuing alleged violations of TRID, LO Comp, and fair lending requirements, among others.

The new year also may be ripe for scrutiny under the Real Estate Settlement Procedures Act (RESPA). By most reports, 2019 will continue to be a challenging environment for mortgage lending. Those economic challenges often lead to creativity--innovative marketing ideas and outreach to new partners as possible sources of business (real estate agents, builders, or other affinity relationships).

While the CFPB suffered a loss in the courts last year regarding its expansive RESPA interpretation, the statute (and its state counterparts) still prohibit payments to referral sources except for goods or services provided, among other prohibitions, and its applicability can be counterintuitive.

A careful compliance review of any new proposed marketing agreements or other arrangements is critical.

### STATES MAY STEP UP COMPLIANCE

Compliance blows do not just come from regulatory agencies. Perhaps sensing that the CFPB (and the U.S. Department of Housing and Urban Development) may be stepping back from vigorous fair lending enforcement, a group of Democratic state attorneys general (AG) promised they will not hesitate to protect their citizens from lending discrimination. While Democrats picked up additional AG seats in the last election, even certain Republican AGs have stated that they never waited on the CFPB when consumer protection was needed.



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State AGs can enforce many state and federal consumer financial protection requirements, including fair lending and LO Comp violations, as well as prohibitions against unfair, deceptive, or abusive acts or practices (UDAAP).

Private plaintiffs, including consumer advocacy groups, also can file court actions alleging violations of fair lending requirements (among other requirements, like the LO Comp Rule).

While credit unions can only lend to their field of membership, they may not be immune from the costs (and reputation risk) of fighting a fair lending challenge.

### REQUIREMENTS AND RISK REMAIN

Accordingly, while things in Washington may have changed, none of the myriad requirements for mortgage

lenders have gone away, and compliance risk still exists. Plus, agencies often reach back several years when searching for violations, so letting your guard down now could come back to haunt your credit union later if and when Washington's regulatory climate changes.



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Instead of downsizing compliance efforts altogether, now may be a great time for credit unions to focus on compliance infrastructure. Regulators are increasingly looking not just at whether a credit union has complied, but whether it has a compliance management system that ensures it can and will comply.

Developing written consumer-related compliance policies and procedures that are approved by the board and accessible to applicable personnel is a big

task, but one that will pay off when the next exam approaches.

Including compliance in the credit union's risk assessments and quality control and audit plans also is critical.

The credit union also should incorporate compliance principles into its vendor management policy and in analyzing any complaints from members or others. Compliance also should be an important part of employee training, both for new hires and periodically, including for managers and executives. ▲

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