

## ***So that's your excuse?***

*(BSA rules "void for vagueness, no independence, inadequate training, nepotism...  
You're just picking on us.)*

### **FINAL REGULATIONS/RULES**

<b>Effective Date</b>	<b>Regulation</b>	<b>Citation</b>	<b>Summary</b>
03/26/2018	12 CFR 741	<a href="#">83 FR 10783</a>	The NCUA issued a correction to a final rule regarding requirements for insurance that was published in the Federal Register on February 23, 2018. (Corrected headings)
04/19/2018	Regulation Z	<a href="#">83 FR 10553</a>	The CFPB updated technical aspects for periodic statements to borrowers in bankruptcy.
03/22/2018	Regulation D	<a href="#">83 FR 13104</a>	The Board of Governors of the Federal Reserve System is amending Regulation D (Reserve Requirements of Depository Institutions) to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements (IORR) and the rate of interest paid on excess balances (IOER) maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORR is 1.75 percent and IOER is 1.75 percent, a 0.25 percentage point increase from their prior levels. The amendments are intended to enhance the role of such rates of interest in moving the Federal funds rate into the target range established by the Federal Open Market Committee.

**Revised Form - HUD has finally updated the Servicemembers Civil Relief Act (SCRA) Notice** which had previously expired on December 31, 2017. The new notice ([Form 92070](#)) is available on HUD's website and has an expiration date of March 31, 2021. Institutions should start using the new form as soon as possible. If you use a vendor, you may want to ensure they are aware of the new form as well. Remember to include the institution's name, address, and contact information in the "How Does A Servicemember or Dependent Request Relief Under the SCRA?" section.

**March 16, 2018 – Same Day ACH Phase 3**

**April 1, 2018 – CRA public file update due**

**April 19, 2018 – Mortgage Servicing & Statements to borrowers in bankruptcy ([CFPB Coverage Chart](#))**

**May 11, 2018 – Compliance Date for Customer Due Diligence Requirements for Legal Entity Customers**

**July 1, 2018 - Regulation CC**

### **PROPOSED REGULATIONS**

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

**Regulatory and Legislative Recap March 2018**

Comments Due	Regulation	Citation	Summary
05/14/2018	Regulation - J Check Collection and Funds Transfer	<a href="#">83 FR 11431</a>	The Federal Reserve issued a proposed rule regarding amendments to Regulation J that are intended to clarify and simplify certain provisions of Subpart A of the regulation as well as remove obsolete provisions, in order to align with Regulation CC.

## RESOURCES/GUIDANCE

Guidance	Summary
<a href="#">Webinar on ACET 04/05/18</a>	CUNA and the Financial Services Information Sharing and Analysis Center (FS-ISAC) will host a webinar with NCUA examiners to explain the new Automated Cybersecurity Examination Tool (ACET). The free webinar is scheduled for April 5, from 3 to 5 p.m. (ET), and registration is now open.
Mortgage Servicing & Bankruptcy	The CFPB updated its <a href="#">FAQs</a> to aid in the implementation of the 2016 Mortgage Servicing Rule. The updated FAQs relate to the mortgage-servicing provisions regarding bankruptcy, which are effective 04/19/2018. The CFPB also has a <a href="#">webpage</a> to assist with the Servicing Rule requirements.
Debt Collection	The CFPB and the FTC released their <a href="#">annual report</a> of their actions against legal debt collection practices.
SCRA	The CFPB released a <a href="#">factsheet</a> for servicemembers highlighting the protections provided by the SCRA. It may be a good resource for training staff about the requirements.
Student Loans	On March 12, the U.S. Department of Education published an <a href="#">Interpretation</a> in the Federal Register, which takes the position that state regulation of servicers of loans made under the William D. Ford Federal Direct Loan Program (Direct Loans) and the Federal Family Education Loan Program (FFEL Program Loans) is preempted by Federal law. Specifically, the Department noted that state “regulation of the servicing of Direct Loans” is preempted because it “impedes uniquely Federal interests,” and state regulation of the servicing of FFEL Program Loans “is preempted to the extent that it undermines uniform administration of the program. (See Washington SB 6029 below)
Sound Compensation Practices	The Financial Stability Board announced the release of its <a href="#">Supplementary Guidance to the FSB Principles and Standards on Sound Compensation Practices</a> . The Supplementary Guidance does not contain new or additional principles and standards but provides recommendations presented in three parts: (i) “governance of compensation and misconduct risk”; (ii) “effective alignment of compensation with misconduct risk”; and (iii) “supervision of compensation and misconduct risk.” The Supplementary Guidance notes that “inappropriately structured compensation arrangements can provide individuals with incentives to take imprudent risks,” which may lead to potential harm for financial institutions and their customers or stakeholders. The Supplementary Guidance suggests that financial institutions use compensation tools as part of an overall strategy to limit risks and address misconduct and warns that “compensation should be adjusted for all types of risk.”

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

Prepaid Accounts	The CFPB released version 3.0 of the Prepaid Rule's <a href="#">Small Entity Compliance Guide</a> , and the <a href="#">Guide to Preparing the Short Form Disclosure</a> . These now reflect the postponed compliance date of April 1, 2019.
Regulation Z	The CFPB released its annual list of <a href="#">rural counties</a> and <a href="#">rural or underserved counties</a> for lenders to use when determining qualified exemptions under certain TILA regulatory requirements. In addition to these lists, the Bureau also directed lenders to use its web-based <a href="#">Rural or Underserved Areas Tool</a> to assess whether a rural or underserved property qualifies for safe harbor for purposes of Regulation Z.
<a href="#">Beige Book</a>	The Federal Reserve released the latest version of the Beige Book, which reports on the current economic conditions in each District.
Best Practices to Improve Mobile Device Security	The FTC released a <a href="#">report</a> that offers several recommendations on ways to improve the security of mobile devices.



COMPLIANCE SERVICES GROUP

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

**Regulatory and Legislative Recap March 2018**

[California Pacific Bank versus FDIC](#) – another example of how not to run your BSA program.

- The bank argued that the BSA and the impending FDIC regulations were “void for vagueness” because the BSA itself was not precise enough to alert the Bank to its required conduct and the FDIC was not legally permitted to rely on the FFIEC Manual to clarify the regulations and analyze compliance.
- The bank hired the son of its CEO as the BSA compliance officer, without interviewing any other candidates, without interviewing him and without seeking approval of the Board of Directors. His relevant background and experience consisted of attending a training course, a webinar, and on-the-job training. He also served as the Senior Vice President, Senior Credit Officer, CFO, Internal Auditor, and Operations Compliance Officer.

[Loser](#) of the month, if not the year – I don’t usually post these, but this one deserved extra attention. Taking advantage of a handicapped customer by stealing cash from their safe deposit box. Could this happen at your institution?

Oregon		
<a href="#">HB 4007 B</a>	Permits individual to create first-time house buyer savings account with financial institution to pay or reimburse account holder’s eligible costs for first-time purchase of single family residence.	Passed both House and Senate, Awaiting Governor’s signature
<a href="#">SB 1551 B</a>	Requires person that owns, licenses or otherwise possesses personal information that was subject to breach of security or that received notice of breach of security from another person that maintains or otherwise possesses personal information on person's behalf, to notify consumer to whom personal information pertains and, if number of consumers to whom person must send notice exceeds 250, to Attorney General. Included: <ul style="list-style-type: none"> <li>• Credit Monitoring Services. If a person or entity offers free credit monitoring services to affected consumers, the entity may not require a credit or debit card number as a condition for the service. If additional identity theft services are offered for a fee, the person or entity must “separately, distinctly, clearly and conspicuously” disclose the charging of the fee.</li> <li>• Security Freezes. Prohibits a consumer reporting agency from charging a fee for placing, temporarily lifting, or removing a security freeze. It also prevents credit reporting agencies from charging fees for replacing a lost personal identification number or</li> </ul>	Enacted

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

	password.	
Washington		
<a href="#">SB 6029</a>	<p>Establishes the “Washington student education loan bill of rights” and outlines licensing requirements and responsibilities for student loan servicers. The act, among other things, requires that the council designate a “student loan advocate” whose responsibilities include providing timely assistance to borrowers, reviewing borrower complaints, referring servicing-related complaints to the state’s Department of Financial Institutions (DFI) or the Attorney General’s office, compiling and disseminating data regarding borrower complaints, and establishing a student education loan borrower education course by October 1, 2020. The act also requires that student loan servicers be licensed through the state (certain entities that are exempt from the licensing requirement must still comply with the act’s other requirements). Under the act, student loan servicers—in addition to complying with applicable federal program requirements—must also (i) provide information to borrowers concerning repayment options, account history, and assessed fees; (ii) notify borrowers when acquiring or transferring servicing rights; and (iii) provide disclosures concerning the possible effects of refinancing student loans. The act further provides that third-parties offering student education loan modification services may not charge or receive money “prior to full and complete performance of the [agreed upon] services,” may not charge fees that are in excess of what is customary or reasonable, and must immediately inform a borrower in writing if the owner or servicer of a loan requires additional documentation or if “modification, refinancing, consolidation, or change in repayment plans . . . is not possible.”</p> <p><b>Furthermore, the act exempts from the outlined requirements “any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust</b></p>	<p>Enacted Effective 06/07/2018</p>

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

	<p><b>companies, savings and loan or building and loan associations, or credit unions.”</b></p> <p>The DFI has begun rulemaking and has invited commentary:  <a href="https://dfi.wa.gov/rulemaking/student-education-loan-servicers">https://dfi.wa.gov/rulemaking/student-education-loan-servicers</a></p>	
<a href="#">SSB 5928</a>	Making financial services available to marijuana producers, processors, retailers, qualifying patients, health care professionals, and designated providers.	<a href="#">Enacted</a> Effective 6/7/2018
<a href="#">SB 6018</a>	Amends sections of the state’s Fair Credit Reporting Act addressing the removal of security freezes. Among other things, the amended act prohibits credit reporting agencies (CRAs) from charging a fee for placing, temporarily lifting, or removing a security freeze, or when assigning consumers unique personal identification numbers.	Enacted Effective 06/07/2018
<a href="#">SB 6375</a>	Developing a publicly owned depository business plan.	Failed Cutoff
<a href="#">HB 1053</a>	Addressing the Washington state credit union act. <ul style="list-style-type: none"> <li>• <del>Modifies credit union governance provisions related to supervisory committees and special membership meetings.</del></li> <li>• <del>Modifies low income credit union designations and secondary accounts.</del></li> </ul>	Failed Cutoff
<a href="#">HB 2384</a>	Concerning consumer reporting agency security freeze fees. <ul style="list-style-type: none"> <li>• <del>Prohibits consumer reporting agencies from charging a fee for one placement, lift, and, removal of a security freeze per consumer per calendar year.</del></li> <li>• <del>Prohibits consumer reporting agencies from charging a fee for up to three placements, lifts, and removals of a security freeze per calendar year for victims of identity theft and consumer that believe their personal or financial data has been breached.</del></li> <li>• <del>Adds the reissuance of a personal identification number to a consumer to the list of activities a credit reporting agency may charge a fee for.</del></li> </ul>	Failed Cutoff
<a href="#">HB 2343</a>	Defining “willful” in regard to abuse of vulnerable adults. <ul style="list-style-type: none"> <li>• <del>Defining "willful" as it relates to the abuse of vulnerable adults</del></li> </ul>	Failed Cutoff

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

	as a deliberate action, regardless of whether injury or harm is intended	
<a href="#">2ESHB 2057</a>	<p>Relating to the services and processes available when residential real property is abandoned or in foreclosure.</p> <ul style="list-style-type: none"> <li>• Raises the amount of the required beneficiary remittance, to the Department of Commerce for deposit into the Foreclosure Fairness Account, from \$250 to \$325 for every recorded notice of trustee's sale (NOTS) on a noncommercial loan on residential real property.</li> <li>• Requires that a NOTS cover sheet clearly indicate the name of the beneficiary and whether the loan is commercial or noncommercial, and requires the auditor to index each NOTS by beneficiary in addition to any other indexing requirements.</li> </ul>	Passed both Senate and House Delivered to Governor
<a href="#">HB 2036</a>	<p><del>Relating to residential real property and the services and processes available when such property is abandoned or in foreclosure.</del></p> <ul style="list-style-type: none"> <li><del>• Finds that there are issues that should be addressed with respect to residential property, and the services and processes available when the property is abandoned or in foreclosure.</del></li> </ul>	Failed Cutoff
<a href="#">HB 1209</a>	<p>Addressing municipal access to local financial services.</p> <ul style="list-style-type: none"> <li>• Allows credit unions to accept public deposits over the maximum insured amount, subject to collateralization.</li> <li>• Allows the Department of Financial Institutions (DFI) to rely on information reported by the National Credit Union Association for investigation and examination of public depositories.</li> </ul>	Enacted Effective 06/07/2018
<a href="#">HB 1318</a>	<p><del>Addressing credit unions' capital.</del></p> <ul style="list-style-type: none"> <li><del>• Permits state chartered credit unions to take on secondary capital accounts.</del></li> <li><del>• Includes secondary capital accounts in the calculation of capital.</del></li> </ul>	Failed Cutoff

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

## **March Madness had a lot of activity on the basketball court, but in other courts:**

### Fiduciary Rule

On March 15, the U.S. Court of Appeals for the Fifth Circuit, vacated the Department of Labor's fiduciary rule, overturning a Texas district court decision that upheld the rule last year.

The majority held that the Department of Labor exceeded its statutory authority under the Employee Retirement Income Security Act in promulgating the regulation. The appellate judges criticized the rule's best-interest-contract exemption stating that it "supplants former exemptions with a web of duties and legal vulnerabilities," and that "[e]xpanding the scope of DOL regulation in vast and novel ways is valid only if it is authorized by ERISA Titles I and II."

It is speculated that the Department could ask the 5<sup>th</sup> Circuit to rehear the case or appeal the ruling to the U.S. Supreme Court (note that the 10th Circuit Court of Appeals upheld the rule in a decision issued on March 13). Add to all of this the fact that the rule has been partially implemented and remains under DOL review per President Trump's February 2017 memorandum.

### TCPA

On March 16, the D.C. Circuit Court issued its ruling that significantly narrows a FCC order from 2015.

The court addressed three parts of the TCPA rule in its decisions. In short:

#### **Autodialer**

The court determined that the FCC's approach to defining what qualifies as an autodialer, is "utterly unreasonable" and fails the Administrative Procedure Act's arbitrary and capricious standard of review. The court did not act on the meaning of "make any call using" an autodialer, and whether the prohibition applies to only calls made using the autodialer function, or to all calls made with a device that has the ability to use an autodialer function.

#### **Safe Harbor for Reassigned numbers**

The court also struck down the section of the rule that allows a caller who had consent could make one liability free call to a phone number after reassignment to a new party. The court identified this as "arbitrary and capricious" and also struck down the FCC's interpretation that a "called party" refers to the new subscriber.

#### **Revocation of Consent**

The court upheld the FCC's determination that a called party can revoke consent by any reasonable means.

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

### **Regulatory and Legislative Recap March 2018**

Unfortunately, the court did not provide any guidance on the application of the TCPA rule going forward, and the FCC still has the ability to appeal the decisions.

The FCC's 2015 order required that prior express written consent be obtained before making telephone calls from phones that have an autodialer capability, or by using a prerecorded message to deliver a telemarketing message. Essentially all phone systems have the ability to function as an autodialer, and thus shut down the ability to make marketing calls unless the institution obtained written permission first. Violation of the rule can carry a minimum \$500 penalty in damages for each individual recipient of each prohibited call or message.

Now that the D.C. Court killed the autodialer definition, does that mean that institutions are safe to start making marketing calls? Good question. The Court struck down the existing interpretation of an autodialer but did not provide a new one. It is expected that the FCC will reconsider the definition of an autodialer, and it may also decide to appeal the ruling.

This is a ruling the DC Circuit. We are in the 9th Circuit. Although it appears that certain amount of sanity is returning to TCPA compliance, we recommend that you DO NOT change your procedures for now. Continue to monitor for FTC pronouncements that address the decision made in the DC Circuit and analyze your policies and procedures based on FTC changes to policy. While the institution may be safe in doing so, there is always the risk that a recipient of a marketing call may take a claim to court, and without further guidance, the institution may face extensive legal fees in defending the practice.

#### Credit Union Field of Membership

A U.S. District Court judge invalidated a portion of the NCUA's field of membership rule that further expanded the already loose fields of membership from which federal credit unions can draw their customers. The rule, adopted in late 2016, allowed community credit unions -- which Congress by statute limited to serving a single "well-defined local community, neighborhood, or rural district" -- to serve large regions encompassing multiple metropolitan areas with populations in the millions.

Judge Dabney Friedrich declared invalid and vacated two aspects of the rule: the inclusion of Combined Statistical Areas with fewer than 2.5 million people, and the dramatic expansion of a "rural area" to include areas with up to 1 million people -- which in some cases could encompass entire states.

The compliance professionals with CSG are not attorneys and, therefore, the services we provide should not be considered a legal opinion or other legal analysis pertaining to the information covered. We urge you to consult with your legal advisor before revising products or services or taking other action based on this information.

**Regulatory and Legislative Recap March 2018**