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The Costs of Not Complying

BY E. ANDREW KEENEY

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It seems as though almost daily a new regulation is published or an existing regulation is modified. What are credit unions to do? What about the concept of ignorance of the law? What about not complying?

Yes, everything comes with a cost. The following are several existing regulations that apply to credit unions and the liability or potential penalty for a breach of the regulations:

Bank Secrecy Act

An incomplete or inaccurate currency transaction report (CTR) could bring fines of \$500 each. Failure to file a CTR within 15 days can bring fines of \$10,000, with further fines of \$10,000 for each day the required report is not filed. A pattern of negligent violations is subject to a fine of up to \$50,000. There are also criminal penalties.

Regulation E (Electronic Fund Transfers Act)

For violations of Reg E, there is civil liability, which could include treble damages for certain error resolution violations. For individual actions, there could also be a penalty of not less than \$100 and not more than \$1,000. Class action damages equate to the lesser of \$500,000 or 1% of the credit union's net worth. Attorneys' fees and court costs may be recovered. Criminal liability is also a possibility.

Regulation Z (Truth in Lending Act)

For violations of Reg Z, there is civil liability, which could include treble damages for certain error resolution violations. For individual actions, there could also be a penalty of not less than \$100 and not more than \$1,000. Class action damages equate to the lesser of \$500,000 or 1% of the credit union's net worth. Attorneys' fees and court costs may be recovered.

NOTE: The NCUA Truth in Savings Act and the Credit Card Act fall under coverage of the Truth in Lending Act.

Regulation B (Equal Credit Opportunity Act)

For violations of Regulation B, there could be civil liability for actual, as well as punitive, damages and individual or even class actions. Liability for punitive damages is limited to \$10,000 in individual actions and the lesser of \$500,000 or 1% of the credit union's net worth in class actions. Attorneys' fees and court costs may also be recovered.

AND THERE IS MORE TO COME. There are numerous compliance challenges for 2011 and beyond. For example, the Fair and Accurate Transaction Act (FACT Act) had a mandatory deadline of January 1, 2011. This regulation deals with risk-based pricing notices, and a separate article appears in this update. The same or similar liability for violation of the FACT Act is that of Regulation B as noted above.

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There are new regulations regarding privacy. There is a safe harbor for old privacy notices, and that was effective January 1, 2011. In the future, credit unions may use a new model privacy form. Although there is additional cost to generate all new forms, there is a presumption of compliance and, in effect, a "safe harbor."

Other regulatory issues on the horizon pertain to Truth in Lending/Regulation Z/mortgage transfer notice; mortgage payment disclosures; loan originator compensation; and of course, there is Dodd-Frank, the new regulator.

The Consumer Financial Protection Bureau will have rule-making authority over all institutions for most of the consumer protection statutes, including credit unions. The new bureau will commence operations on July 21, 2011.

There is already a [Dodd-Frank Rulemaking Tracker website](#). At the time this newsletter went to press, there were already 300 Dodd-Frank regulatory updates reported.

[E. Andrew Keeney](#) is a Norfolk, Va.-based credit union attorney with more than 35 years of experience.

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