REGULATION D – The Present and Look to the Future

Project Outline

Prepared by Jim Vilker, VP of Professional Services. AuditLink

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Introduction

During my tenure at CU*Answers, the question on managing non-transactional accounts using features in CU*BASE has come up dozens of times. Credit unions, especially newly converted ones, continue to ask why the software does not just stop electronic transactions once the maximum number has been met. This may sound simple, but is much more complicated because of the number of posting, settlement, and exception handling programs impacted is in the hundreds. Not to mention the re-write of many of the posting and transfer programs in online banking.

The requirements and interpretations of Regulation D are some of the most ambiguous found in the Federal Register and compliance sites. Listed below are the two strategies financial institutions can use to manage non-transactional accounts.

[4]In order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the definition of "savings deposit," a depository institution must either:

(a) Prevent withdrawals or transfers of funds from this account that are in excess of the limits established by paragraph (d)(2) of this section, or

(b) Adopt procedures to monitor those transfers on an ex post basis and contact customers who exceed the established limits on more than occasional basis. For customers who continue to violate those limits after they have been contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the transfer and draft capacities of the account. An account that authorizes withdrawals or transfers in excess of the permitted number is a transaction account regardless of whether the authorized number of transactions is actually made. For accounts described in paragraph (d)(2) of this section, the institution at its option may use, on a consistent basis, either the date on the check, draft, or similar item, or the date the item is paid in applying the limits imposed by that section.

This document is designed to accomplish three objectives:

- Assist new clients with understanding the best practices of using CU*Answers Regulation D monitoring tools
- Assist existing clients on best practices, including both credit unions who have been monitoring and those who have not been monitoring but want to start
- Introduce potential new concepts and system features to further assist in monitoring Regulation D violation activity

Historical Perspective

CU*BASE was built upon the second of the two requirements listed above for many reasons but mostly due to the fact that our credit union owners and clients are member-focused unlike our uncaring competition. The feature functionality allows the credit union to monitor violations and take action when necessary by offering alternatives such as assessing fees, opening up a transactional account for the member, and even restricting certain activities.

Recently, there have been comments questioning whether our current approach takes more time than option (a) as listed in the regulation. It may (based upon the reasons it was constructed), but I have my doubts. If you interpret the requirement strictly under option (a) you would need to block debit card, ODP, PC transfers, audio transfers, phone operator, and ACH transactions. The regulation does not allow the financial institution to block some transactions and not others…. it is all or nothing. Imagine the impact on the credit union call center, direct contacts, exception handling, not to mention the transition if a credit union were to adopt option (a) after using option (b).

In a nutshell, the cost to the CUSO to change the hundreds of posting programs and the cost to the credit union if they decide to abide by the first option far outweighs the cost of using the existing tool (especially when the regulation has been under intense scrutiny from both the CFPB, courtesy pay alternatives, and NCUA on its regulatory review cycle).

Best practice for use of the existing monitoring tool

For newly converting credit unions and those that previously did not monitor violations but would like to start, the list below contains a number of items to consider:

- Train staff on how the tool works and the importance of communicating the electronic restrictions to members at account opening
- Review configuration settings and verify that all transaction types have been correctly chosen
- Review the violation register and communicate with members who appear on the report
- Update an audit tracker after the member communication in order to track violation history
- Set up a Regulation D violation fee to gain the attention of the member (vs. making money on it)
- Create a transactional savings account that is listed on the FR2900 along with other transactional accounts not subject to the violations
- Train phone center representatives on appropriate member communication when the warning message occurs while performing member transactions
- Do all of the items above consistently

For credit unions who have not monitored for violations in the past and are now required to do so, it is no easy task to put the horses back in the barn. The daily violation register could potentially contain hundreds of names as month end approaches. In this case, it is recommended that prior reports be evaluated to determine the source of the violations. Reviewing the violation history can help the credit union understand how best to approach a solution. A common violation is overdraft protection from a money market savings account. Many credit unions actually cease offering that service based upon the potential for Regulation D violations.

My response to many CEOs who have not previously monitored for Regulation D violations is that the transition may take up to 12 months. The education and repeated member communication (i.e. via newsletters, etc.) is a time consuming process.

Based upon some of the comments from "Of Course" e-mail string it may be a wiser alternative to tweak the existing toolset vs. rewriting many posting programs

Considerations to include:

- Soft message in online banking – one individual said this is where the majority are coming from
  Status: *Specification submitted, awaiting programming*

- Create an event around the violation that generates a notice and tracker record, tracker records could then be used for both monitoring the number of occurrences and also for outbound calling queues
  Status: *In envisioning stage*
- Add an additional end-of-day report which shows total violations by member to day of month
  Status: *In envisioning stage*

The plan

- Promote credit union participation in upcoming best practice web conferences scheduled for April 2015
- Finalize programming specifications for changes listed above and solicit credit union comments on software enhancements via the AuditLink site and peer group directly after the web conference with a due date of mid-May (understanding that the soft message in online banking has already been submitted)
- Ask credit unions to provide examples of collateral (disclosures, policies, procedures) that has convinced the regulator that they are minding their Ps & Qs (to be announced on the AuditLink site and uploaded to Policy Swap by the middle of May)
- Develop collaborative documentation to be used by our clients for implementing and maintaining a monitoring process (this documentation will also appease new clients that are transitioning from an environment that blocked Reg D transactions) by the end of May

What you need to do

- Watch for upcoming announcements
- Send Reg D policies or procedures used by your credit union to AuditLink

All the above looks like a lot of work resulting from a four sentence e-mail forwarded via “Of Course”, but I think the public commentary brought up some great conversations relative to this antiquated regulation and a renewed interest in the process and toolset.