

# CONVERSATIONS ON COMPLIANCE CONTRACTS AND CU\*BASE

Patrick Sickels  
Internal Auditor  
CU\*Answers

**AuditLink**

# OVERVIEW

- Important Contract Terms and Risks
- Understanding the Consequences
- Things to Know in CU\*BASE to Reduce Risks

# LEGAL DISCLAIMER

## **LEGAL DISCLAIMER**

The information contained in this presentation does not constitute legal advice. We make no claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained in this presentation. You should retain and rely on your own legal counsel, and nothing herein should be considered a substitute for the advice of competent legal counsel. These materials are intended, but not promised or guaranteed to be current, complete, or up-to-date and should in no way be taken as an indication of future results. All information is provided "as is", with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information, and without warranty of any kind, express or implied, including, but not limited to warranties of performance, merchantability and fitness for a particular purpose. In no event will CU\*Answers, its related partnerships or corporations, or the partners, agents or employees thereof be liable to you or anyone else for any decision made or action taken in reliance on the information provided or for any consequential, special or similar damages, even if advised of the possibility of such damages.

# KEY ELEMENTS

**Overdrafts:** Still remain the biggest litigation threat to credit unions. Class action litigation is increasing.

**TCPA:** Although the Supreme Court has reduced the risk of using auto-dialers, TCPA remains a live danger. Expect law firms to go after organizations that let down their guard.

**Nondiscrimination:** There is increasing litigation against banks for harassing and discriminating against customers on the basis of race.

**Security:** There are still class action lawsuits filed against credit unions for failure to provide adequate security.

**Force Majeure:** COVID-19 is changing how force majeure is interpreted by the courts.

# OVERDRAFTS

Overdraft litigation is **not going away**.

If the contract language or the credit union's disclosures (which are also contractual in nature) do not match the actual overdraft process, the credit union can be sued in a **class action for breach of contract**.

## Overdraft Class Action Litigation: Recent Developments in Maine

Monday, March 29, 2021

Financial institutions have been facing class action lawsuits regarding overdraft and return item (NSF) fees since the early 2000s. Initially, the lawsuits were focused on the largest national banks. Over time, plaintiffs' attorneys also began bringing lawsuits against regional banks and credit unions. Until recently, Maine-based institutions have avoided these claims. In the last several months, however, overdraft class actions have made their way to Maine.

This alert provides an overview of the types of claims that plaintiffs are currently asserting and what Maine-based institutions can do to protect themselves.

# OVERDRAFT RISK

Law firms and third-parties are **actively looking** for members who can claim their contract was breached by the credit union with respect to overdraft fees.

## NSF Fee Charge: Who's Affected?



Do you believe that you were unfairly charged NSF fees by your bank or credit union?

Banks charge account holders an NSF fee when there are non-sufficient funds or insufficient funds, to pay a transaction or check and it rejects the charge. An NSF fee charge can range between \$27 and \$39.

In some cases, customers claim that multiple NSF fees are charged on the same items if the customer attempts to reprocess payment after the initial payment is denied.

# COMMON CONTRACT ISSUES

Language in account agreements was **ambiguous** regarding how the institutions would treat authorizations and settlements.

Lack of language expressly authorizing an overdraft fee when a customer's account had insufficient funds at the time of posting **and settlement**.

Institutions used customers' available balance – including pending debit holds – and therefore charged overdraft fees when the customers had a sufficient ledger balance to cover the transactions. The argument is the credit unions **failed to adequately disclose the practice in their account agreements**.

Allegations that financial institutions breach their account agreements when they assess **more than one NSF Fee on represented transactions**, arguing that those multiple transactions only constitute a single item or transaction.

# OVERDRAFTS AND CU\*BASE

Configure an NSF fee to be per item or per day. Most CUs have not approached the per day concept, but it is available to prevent multiple fees from posting to members when multiple items are NSF on the same day. (Find this in **Tool #558 NSF/OD Transfer Configuration**.)

Configure your ANR fee not to be assessed within \$x of the member's available balance. (Find this in **Tool #558 NSF/OD Transfer Configuration**.)

Configure a maximum ANR fee per day (daily caps). (Find this in **Tool #558 NSF/OD Transfer Configuration**.)

Configure both your NSF fee and your ANR fee to be unique by checking product. For example, if you had a checking product designed for the credit-challenged population, you may wish to reduce the fees assessed to these members for NSF and ANR/Courtesy Pay events. (Find this in **Tool #558 NSF/OD Transfer Configuration**.)

Assign a negative balance (ANR) limit in a tiered fashion based on your credit union's Tiered Services program. For example, a Platinum member with a 90-day average balance of \$x would be assigned a negative balance limit of \$z. (Find this in **Tool #777 Savings/Checking Products Configuration**, via the ANR Scoring button.)

You can require that a member have at least \$x in ACH deposits over the last y days to activate, deactivate, or reactivate a negative balance limit. (Find this in **Tool #777 Savings/Checking Products Configuration**, via the ANR Scoring button.)

## CONSENT TO COMMUNICATE (TCPA)

Although this year the Supreme Court limited the reach of what an “auto-dialer” is, the Telephone Consumer Protection Act (TCPA) is **not dead**.

TCPA strictly prohibits call centers from making telemarketing calls to a cell phone number without receiving previous consent first.

You may not contact anyone listed in the National Do Not Call Registry (DNC).

Texts can only be sent between 8 a.m.- 9 p.m. in the called party’s local time.

# CONSENT TO COMMUNICATE (TCPA)

Does your Consent to Communicate or Consent to Contact have provisions for:

- Member opt-out?
- Consent to contact via cell phones, including requirement that the member update the cell phone numbers?

# MAINTAINING PHONE NUMBERS: CU\*BASE

When creating a new membership or maintaining an existing one via **Tool #3 Open/Maintain Memberships/Accounts**, when updating a member's address information via the Name/Address feature in Phone Operator, or when updating non-member data via **Tool #997 Work With Non-Member Database**, the screens will include fields where you can enter up to two contact numbers for that member. If additional numbers are needed, you will use a new More Contact #s button that will let you view and adjust all of that member's contact numbers, labels, and comments.

Contact Information	Member Data	Participation/Products	Status Flags
Address	5165 ANYRD ANYCITY, MI 48722	Opened	Nov 20, 1973
Phone #1	989-555-2016	Family phone	
Phone #2	989-555-0154	MOBILE?	More # <a href="#">Go!</a>

# OPTING OUT OF COMMUNICATIONS

Launch **Tool #15 "Update Membership Information"**

Type in the member's account base

You will be shown a screen with general member information such as name and address

Use Enter until you reach the final screen with the "Other Information" sub-heading

Check the CU contact opt out box

Press Enter to save and finish

You may also update the Flag using Phone Operator. Simply select the Name/Address button (**F14**) and perform the steps above.

Don't forget to use the opt-out exclusion flags when using any of the CU\*BASE communication programs like Member Connect. This omits members who have been opted out so that they do not appear in the final list to be used for the communication.

# NONDISCRIMINATION

Credit unions are required to follow non-discrimination laws.

Be careful when using fraud blockers wholesale. Be sure you have a process for when a customer is blocked.

Black man sues Detroit bank alleging racial discrimination, wrongful accusation of fraud

*He was trying to deposit checks that he received as part of a settlement.*

Business

**A black woman says Wells Fargo didn't want to cash her check. She's suing for discrimination.**

# MANAGING BLOCKERS IN CU\*BASE

Use the Search fields at the top of the Block List Inquiry to filter the listing and view all service denial fraud block lists to which a person or organization has been added. You may do this if you wish to remove someone from all service denial fraud block lists.

To access the Block List Inquiry, use **Tool #892 Update Fraud Alert/Blocked Persons List** and then Search for Member/All Lists (**F10**) or use **Tool #1892 View Fraud Alert/Blocked Persons List**. This inquiry lists all the entries on all of the service denial fraud block lists.

This Inquiry does not list the entries made on the transaction attribute block lists, however. A separate review of the transaction attribute fraud block lists will be needed to ensure that the member's name has not been added to that list. These lists can be viewed by using **Tool #892 Update Fraud Alert/Blocked Persons List** and looking for lists described as transaction attribute list type.

# REASONABLE SECURITY

All financial institutions have the risk of being held accountable if their security promises in the membership agreement do not match actual practices.

A business can be held accountable for “Benefit of the Bargain.” Members joined the credit union expecting a level of security that was promised in the contract. Failure to deliver on that promise entitles consumers to a refund.

APRIL 6, 2021

After ICCU data breach, class action suit could bring payout to impacted customers

# EMPLOYEE SECURITY IN CU\*BASE

Credit unions can use **USMAST-01 Employee Security Maintenance Dashboard** to manage employee security:

- See all your comments and notes at a glance in the Comments column. This information is added in the Employee Profile screen.
- Search for employee IDs by Employee ID. Enter the Employee ID in the "Jump to ID" field and use Enter. The employee will appear at the top of the list.
- Search for an employee by name or part of name. Type a name or part of a name in the "Search for name containing" field and use Enter to filter the list to show only employees containing that text in their name.
- Sort your list the way you by clicking on the header row. (Entering asterisks around end dates in the Comments field makes it easy to sort by this information.)
- View the primary vault. (A plus sign next to the primary vault number indicates that additional vaults are assigned.)
- Easily see highlighted IDs that are either locked or whose passwords are not activated for use (such as a brand new employee or an employee who hasn't logged in following a password reset).
- Use Show Templates to toggle the display so that it shows IDs configured to act as templates for copying security settings. (This is a 3-way toggle: the button will change to read Show ALL IDs and then Show Employees, in rotation.) Template IDs are not available for actual employees and cannot be used to access any CU\*BASE tools from the home page. Template IDs will be highlighted in yellow on this screen, and are set up using a flag on the Employee Profile window.

# EMPLOYEE SECURITY IN CU\*BASE

Credit unions can use **USMAST-02 Employee Security - Employee Profile**:

## Setting Up Employee Templates

Templates are special types of employee IDs which can be used as the basis for assigning tools to new employees, as well as for auditing existing employee access by comparing against a benchmark of standard access settings. Creating a template ID works exactly the same as creating and setting up an employee ID, except that for a template ID the This is a template flag must be checked on this screen. An ID that is flagged as a template:

Will be locked and will appear highlighted in yellow on the main security screen, along with other employee IDs that are locked.

Cannot be used like a regular ID to access tools from the CU\*BASE home page.

Can be copied to other employee IDs (or other template IDs) using the Copy feature on the main security screen.

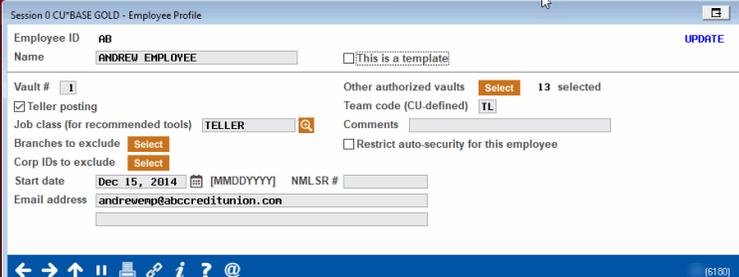
Can be hidden from the list of regular IDs by using the Show... buttons on the main security screen.

Will be marked with a notation of **\*\*\*TEMPLATE\*\*\*** on various employee security reports.

Will not be counted in the “# of Employees” counts on the Assign Tools to Employees screen.

Will not be counted in total employee ID statistics on the Employee Profiles Analysis dashboard

Will not be included in counts on the Tool Usage Analysis (NOTE: If an existing ID was changed to a template, stats from prior to that time will still include that ID, from when it was not a template.)



The screenshot shows the 'Employee Profile' form for Employee ID 'AB'. The form includes the following fields and options:

- Employee ID:** AB
- Name:** ANDREW EMPLOYEE
- This is a template
- Vault #:** 1
- Teller posting
- Job class (for recommended tools):** TELLER
- Branches to exclude:** Select
- Corp IDs to exclude:** Select
- Start date:** Dec 15, 2014
- Email address:** andrevenp@abccreditunion.com
- Other authorized vaults:** Select 13 selected
- Team code (CU-defined):** TL
- Comments:** [Empty text box]
- Restrict auto-security for this employee

The form has a blue header bar with navigation icons and a status bar at the bottom showing '(6180)'.

# FORCE MAJEURE

Force Majeure is a contract term that allows a party to claim circumstances prevented them from completing their responsibilities on a contract.

COVID-19 is reshaping force majeure clauses. For example, a student sued his university, claiming that it breached a contract to provide in-person learning after COVID-19 caused the school to turn to remote learning.

# CU\*BASE AND FORCE MAJEURE

CU\*Answers does  
extensive rollover  
testing.

These reports should be  
part of the credit union's  
own record. Credit  
union force majeure  
terms should not exceed  
what is provided by  
CU\*Answers.

## CU\*Answers High Availability and Disaster Recovery Test Reports

The following recovery test analysis reports are available for your review. We encourage you to include them in your next board meeting minutes. Please CONTACT if you have any questions regarding the reports or the CU\*Answers recovery testing program.

### CU\*BASE/GOLD HA Rollover Reports

- [September, 2020 Report](#) 
- [March, 2020 Report](#) 
- [November, 2019 Report](#) 
- [February, 2019 Report](#) 
- [September, 2018 Report](#) 
- [May, 2018 Report](#) 
- [September, 2017 Report](#) 
- [March, 2017 Report](#) 
- [December, 2016 Report](#) 
- [October, 2016 Report](#) 
- [April, 2016 Report](#) 
- [September, 2015 Report](#) 
- [April, 2015 Report](#) 
- [September, 2014 Report](#) 
- [May, 2014 Report](#) 
- [November, 2013 Report](#) 
- [September, 2013 Report](#) 
- [June, 2013 Report](#) 
- [November, 2012 Report](#) 
- [May, 2012 Report](#) 
- [February, 2012 Report](#) 

→ [View our High Availability Rollover Schedule](#)

### It's Me 247 HA Rollover Reports

- [September, 2020 Report](#) 
- [August, 2019 Report](#) 

QUESTIONS??

