

Partner Perspective

A SPOTLIGHT ON MANAGING CREDIT UNION RISK.



Insights from LOANLINER® Compliance Solutions:

Compliant Documents Can Offset Class Action Lawsuits

Class action lawsuits alleging deceptive practices and excessive **overdraft / NSF fees** have plagued credit unions dating back to 2012. Unfortunately, new allegations have been introduced in several states with a handful of law firms seeking potential plaintiffs through websites and social media outlets and then issuing demand letters and pursuing class action lawsuits.

Early lawsuits against financial institutions alleged that the practice of resequencing transactions so that the highest dollar transactions were posted first was unfair and led to excessive overdraft fees. Plaintiffs' attorneys also allege that overdraft fees were being improperly assessed on the available balance rather than the actual balance since this was not clearly defined in account agreements or was confusing to consumers.

In addition to these allegations, more recent lawsuits are also targeting these practices:

- **Multiple NSF fees assessed on the same transaction.**

These lawsuits allege that members are being charged returned item or NSF fees multiple times on the same items when they are returned or represented, and account agreements and/or other disclosures do not clearly describe this practice.

For example, a member authorizes a creditor to debit the member's credit union account for a loan payment. The creditor initiates an ACH debit against the account which the credit union returns unpaid due to insufficient funds and assesses an NSF fee. The creditor reinitiates / resubmits the ACH debit a few days later which the credit union again returns due to insufficient funds and charges another NSF fee.

- **Assessing overdraft fees on debit card transactions.**

In addition, credit unions improperly charging overdraft fees on debit card transactions by placing a preauthorization hold on sufficient available funds reduces the available balance. This has led to complaints which indicate the funds are "set aside" to cover these specific transactions which is reflected in the available balance. However, the transactions may occur after the preauthorization hold that reduces the balance before the final debit card transaction posts to the account.



Review These Documents

Plaintiffs' attorneys are commonly target the language in agreements and other documents alleging that the provisions do not accurately describe and align with the credit union's practices.

A good starting point is for credit unions to review these documents and update them as needed:

- Member account agreements
- Fee schedules
- Online banking agreements

LOANLINER® Compliance Solutions

If your credit union uses the LOANLINER Membership and Account Agreement and/or Business Membership and Account Agreement, you may contact a Compliance Specialist to discuss updates being made to these agreement(s) to mitigate the risk of a class action lawsuit.

To proactively schedule a compliance consultation, simply access this online [LOANLINER Compliance Solutions scheduling tool](#).

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What credit unions should do?

First and foremost, review your documents (as noted earlier) and update them as needed to address potential allegations. Don't wait.

In addition, follow these mitigation tips:

- Review your processes for handling reinitiated / resubmitted incoming electronic debits to member accounts that your credit union previously returned unpaid due to insufficient or uncollected funds resulting in an NSF fee.
- If your credit union charges multiple NSF fees for items that are returned unpaid, review your account agreement to ensure it discloses that NSF fees may be imposed for the initial submission as well as any resubmission of the item.
- If your credit union assesses overdraft fees based on available balance rather than actual / ledger balance, review your account agreement to ensure it explains this practice and contains a description of how certain transactions, such as debit card preauthorization holds and check holds, impact the available balance.
- For debit card preauthorization holds, ensure the account agreement discloses how subsequent debits to the account (e.g., a check clearing the account) impact the available balance and that an overdraft fee could be assessed when the debit card transaction posts to the account taking it negative.
- For credit unions that do not use LOANLINER documents, you may want to consult with your forms provider and/or legal counsel to ensure your document solution includes the proper language to mitigate the risk of a class action lawsuit.



If a lawsuit is filed against your credit union or you receive a demand letter threatening a lawsuit, policyholders should immediately report it to:

CUNA Mutual Group Third-Party Litigation
800.637.2676, Option 2, then Option 1

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Additional Resources

Documents and compliance services from **LOANLINER® Compliance Solutions** integrate seamlessly with your overall risk mitigation strategy to help you reduce the time and resources you spend on regulatory changes and the costs associated with staying compliant.

And, with constantly changing laws, regulations, and even potential lawsuit allegations, it can be nearly impossible to keep up.

Current LOANLINER Compliance Solutions customers can visit the [Lending Resource Center](#) (User ID / Password required) to get more information on:

- [Document Resources](#)
- [Training Materials](#)
- [Compliance Library](#)
- [LOANLINER Alerts](#)

Protection Resource Center

You can also access CUNA Mutual Group's [Protection Resource Center](#) (User ID / Password required) at cunamutual.com for exclusive resources to assist with your loss control efforts including:

- RISK Alerts
- Webinars
- Risk Assessments
- Risk Overviews / Checklists

Loss Prevention Questions

Contact CUNA Mutual Group's Risk & Compliance Consultants at **800.637.2676** or by email at riskconsultant@cunamutual.com.