

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

December 16, 2016

New and Revised Rules Compliance Implementation Materials

The Association's InCompliance Materials are provided to help your credit union meet the challenges of implementing new and changing regulations. InCompliance publications provide you with a brief summary of the rule to quickly assess its impact, a detailed analysis for compliance staff charged with implementation, sample policies, implementation checklists and, as appropriate, sample forms. In addition, these materials are updated with Q&As (InResponse), and other materials such as charts and matrices as questions are raised and issues are identified. The InCompliance materials are available on the Association's [website](#) on the Resources page under the Compliance tab. The list of current materials appear in the adjacent column in this edition. We will be publishing revised materials updating the mortgage loan and mortgage servicing rules, and new materials for the CFPB Prepaid Accounts final rule soon.

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Compliance News

The CFPB's Compliance Bulletin on Production Incentives: What You Need to Know

In light of the recent Wells Fargo enforcement action where the bank was fined \$185 million for illegal cross-selling, the CFPB recently published a compliance bulletin on "Detecting and Preventing Consumer Harm from Production Incentives" to compile previous guidance from the Bureau issued in other contexts and to highlight examples where such production incentives posed a threat to consumers.

The bulletin provides a non-exhaustive list of specific examples of problems related to production incentives, which includes the following:

- Sales goals that may encourage employees to open accounts or enroll consumers in services without their knowledge or consent (like in the Wells Fargo case),
- Sales benchmarks that could encourage employees to market a product deceptively,
- Paying compensation based on terms or conditions of transactions (such as interest rate) that could encourage employees to overcharge customers,
- Paying more compensation for some types of transactions than for others that could have been offered to meet consumers' needs, which could lead employees to steer consumers towards certain transactions not in their interests; and
- Unrealistic quotas to enroll consumers in services that may incentivize employees to achieve the result without the consumer's actual consent.

It is clear from the bulletin that the activities described in the above list

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InCompliance Implementation Materials

Log-in required – visit mwcu.com to register

- Loans in Areas with Flood Hazards
- Limitations on Terms of Consumer Credit Extended to Service Members & Dependents
- HELOC Lending Compliance Materials
- HELOC Lending – Comparison Chart
- Comparison of "High-Cost" & "Higher-Priced" Mortgages
- Ability-to-Repay and Qualified Mortgage Standards
- Ability-to-Repay – Sample Policy
- Ability-to-Repay – Q & A
- CFPB's Loan Originator Compensation Requirements
- CFPB's Loan Originator Compensation Requirements – MLO Sample Policy
- CFPB Escrow Requirements Rule
- CFPB Escrow Requirements Rule – Escrow Account Sample Policy
- Appraisals for Higher-Priced Mortgage Loans
- Appraisals for Higher-Priced Mortgage Loans – Sample Policy

are the types of activities the CFPB is keenly looking out for, especially in light of the Wells Fargo matter, so credit unions should ensure that they are not setting benchmarks or tying compensation to sales goals or quotas that could incentivize their employees to engage in UDAAPs or violate other consumer financial laws.

According to the bulletin, the Bureau has found incentives to be especially at issue in the marketing of credit card add-on products, in overdraft opt-in matters and in the opening of unauthorized credit card and deposit accounts in attempt to meet sales goals.

Furthermore, whenever there are employee incentives, the CFPB expects supervised entities to have proper controls in place and monitoring of the program to ensure that the type of deceptive activities described above are not occurring. A robust compliance management system (CMS) is necessary to detect and prevent such violations. The bulletin lays out what CFPB considers to be the elements of an effective CMS based on the Bureau's supervisory experience. An effective CMS often includes the following:

- Board of Directors and management oversight;
- Compliance program, including policies and procedures, training, and monitoring;
- Consumer complaint management program; and
- Independent compliance audit

Lastly, the bulletin lists suggested steps that institutions should take to ensure their CMS is effective. It is worth reviewing the bulletin to see if there are any significant gaps between the CFPB's expectations and the CMS protocols at your particular credit union. As we know, the CFPB's expectations tend to set the tone for the prudential regulators as well, so it is important for all credit unions to ensure that they have an effective CMS as well as proper controls in place for production incentives.

Source: CFPB via CUNA Compliance Blog

Treasury Sanctions ISIL Support Links

The Treasury Department has [announced](#) action taken to disrupt ISIL's financial facilitation network by designating Iraq-based Selselat al Thahab Money Exchange, ISIL financier Fawaz Muhammad Jubayr al-Rawi, and his company, the Hanifa Currency Exchange in Albu Kamal, Syria. Al-Rawi and the two money services businesses have played an important role in ISIL's financial operations by helping the terrorist group move its money. As a result of the action, all property and interests in property of Selselat al Thahab, al-Rawi, and the Hanifa Exchange's branch in Albu Kamal subject to U.S. jurisdiction are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

Source: U.S. Department of the Treasury

NCUA Insurance Premium Increase Recommended

The December 2016 issue of [The NCUA Report](#) discusses the factors affecting the National Credit Union Share Insurance Fund's equity ratio and why an insurance premium may be necessary. Insured share growth in credit unions, along with the continuing low interest-rate environment, is causing the fund's equity ratio to decline. As a result, staff recommended at the November Board meeting a 2017 share insurance premium of between 3 to 6 basis points.

Source: NCUA

- Appraisals for Higher-Priced Mortgage Loans – Valuation Matrix
- ECOA Valuations Rule
- ECOA Valuations Rule – Valuation Matrix
- ECOA Valuations Rule – Sample Policy
- Reg Z Mortgage Servicing Regulation
- Reg Z Mortgage Servicing – Sample Policy
- CFPB RESPA Mortgage Loan Servicing Rules
- CFPB RESPA Mortgage Loan Servicing – Sample Policy
- CFPB RESPA Mortgage Loan Servicing – Applicability Chart
- CFPB RESPA Mortgage Loan Servicing – Notice Requirements Chart

Association Compliance Forums

Click on one of the below links to subscribe

[Compliance Forum](#)

[BSA Compliance Officer Forum](#)

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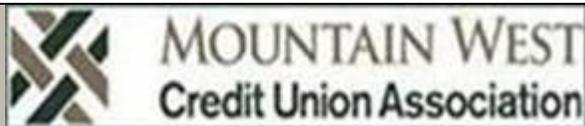
For more information about our compliance services, please contact Melia Heimbeck at: mheimbeck@mwcu.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



InfoSight Highlight

IRS Form 1099-MISC

The Internal Revenue Service collects information annually on miscellaneous income (generally \$600 or



Training & Events Calendar

December 21

Webinar: [Emerging Need & Regulatory Expectations for Enterprise Risk Management Framework](#)

January 4

Webinar: [Top 10 HMDA Issues for 2016 Reporting: Checkup for March 1 Submission](#)

January 5

Webinar: [Cross Selling Products & Services: Compliance with TCPA & FCRA](#)

January 9

Webinar: [ADA Website Compliance Requirements & Common Errors](#)

January 12

Webinar: [Account Documentation Series: Compliance & Due Diligence at Account Opening](#)

Three Compliance Lunch & Learn Sessions Set for February 2017

Three Compliance Lunch & Learn Sessions Set for February 2017

We're starting off 2017 with a set of three Compliance Lunch & Learns for credit union members in Denver, Phoenix and Tucson. The topic for this set of sessions is Business/Entity Accounts.

- On **February 7, Tucson** will host the first Lunch & Learn at Pima Federal Credit Union.
- On **February 9, Phoenix** will hold the second session in the Arizona Central Credit Union building.
- On **February 23, Denver** will host the third round of Lunch & Learn sessions at the Sterner Center at the Mountain West offices.

Discussion and presentation in Tucson and Phoenix will be led by Arizona attorney Jeremy Goodman, Goodman Law PLLC. Colorado attorney Bob Wilson of Berenbaum Weinshienk PC will lead the discussion at Denver's session. Cost for Lunch & Learns at all locations is \$35. To register for any of the Lunch & Learns, email Jodi Weiser at Training@mwcu.com. We hope to see you in February!

Advocacy Highlight

Issues to be Tackled by the NCUA in 2017

[The NCUA Report's](#) December issue mentions several issues that are anticipated to be addressed in the coming year. Among them:

- A final rule on field of membership for federal credit unions that is consistent with the Federal Credit Union Act and removes artificial impediments to growth and should make it easier for potential members to join.
- A proposed field-of-membership rule to consider whether the 2.5 million population cap on federal community charters and expansions should be raised to 10 million and whether community charter applications could be based generally on a narrative approach.

more) paid to persons in the ordinary course of business. Miscellaneous income includes such things as prizes, awards, attorney fees, some services, royalties, and rents. A credit union must file IRS Form 1099-MISC each year for each person to whom the credit union paid at least \$600 in miscellaneous income.

How does IRS Form 1099-MISC affect credit unions?

IRS Form 1099-MISC must be filed once each calendar year, and must reflect the miscellaneous income the credit union paid during the previous calendar year to a person in the ordinary course of business. Therefore, the credit union will need to keep track of any payments it makes during the year that qualify as miscellaneous income. (Note: If the credit union did not pay any reportable miscellaneous income during the calendar year, it need not file Form 1099-MISC.)

Again, miscellaneous income includes such things as prizes, awards, attorney fees, some services, royalties, and rents. For example, if the credit union gives more than \$600 in prizes to a member, it must report that on IRS Form 1099-MISC. However, it is important to note that when giving a prize or award, the credit union must determine whether it is considered taxable wages and reported on Form W-2, or miscellaneous income and reported on Form 1099-MISC. There is a distinction between awards or prizes given to employees and awards or prizes given to non-employees. Any award or prize given to a non-employee is miscellaneous income and must be reported on Form 1099-MISC. If the prize or award is given as a result of an employer-employee relationship, such as employee suggestions to improve efficiency, it is considered taxable wages and must be reported on Form W-2.

In addition, any payment made by a credit union in exchange for performance of services by non-employees is considered non-employee compensation and reported on Form 1099-MISC. This means that if a credit union pays \$600 or more in fees in a year to a lawyer, for example, it must report the total amount on Form 1099-MISC.

InfoSight -- [AZ](#), [CO](#), [WY](#)

CUNA Advocacy Report

The [CUNA Advocacy Update](#) is published at the beginning of every week and keeps you on top of the most important changes in Washington for credit unions--and what CUNA is doing to monitor, analyze, and influence government agencies and federal law. Additional Advocacy efforts may also be found under CUNA's [Removing Barriers](#) blog.

The [comment period](#) for this closed on Dec. 9.

- Examine ways to increase examination uniformity throughout the regions, and improve the examination-appeals process;
- Consider establishing an NCUA Credit Union Advisory Council to hear directly from credit unions;
- Review NCUA's cybersecurity protocols;
- Be more active with other agencies and the Financial Accounting Standards Board to ensure credit union differences are recognized;
- Work with state regulators to enhance the dual-chartering system;
- Ensure the agency's priorities align with its budget expenditures through greater transparency; and
- Work with Congress to update the Federal Credit Union Act to facilitate credit union operations and growth.

Source: NCUA

CUNA's Focus for 2017

From a credit union advocacy perspective, 2016 was remarkable. Major victories at NCUA on more than a handful of issues help ensure that credit unions will continue to be able to meet the needs of their members and that consumers across the country will continue to have strong, safe and sound cooperative credit options. Thanks to help from Congress, CUNA made progress toward getting CFPB to acknowledge and use its statutory exemption authority to mitigate the harmful impact of rules, designed for big banks and abusers of consumers, on credit unions and their members. Leagues in several states successfully enacted credit union act updates and other legislation designed to ensure credit unions can continue to efficiently and effectively serve their members. Working with league partners, CUNA continued to hold merchants accountable for data breaches, pursuing legislation in Congress and state legislatures, and litigation in courts. And, CUNA protected the credit union tax status from scrutiny in Congress and attacks in the states.

2017 promises its own set of challenges and opportunities:

- The CFPB is not working for credit unions and credit union members. A new administration and a new Congress present the opportunity to continue the work on regulatory relief and CFPB reform. CUNA has a plan—a campaign—to address this and will need everyone's help to get it done.
- NCUA is defending its member business lending and field of membership rules in court against baseless attack from the banking trade groups; CUNA is standing with them because they have acted within the scope of the Federal Credit Union Act, and these rules will benefit credit union members across the country.
- As long as merchants fail to protect their data systems from hackers, breaches will continue and consumers and credit unions will be harmed. The resolve is to improve the law so that those who accept cards for payment are held to security standards like those who issue cards is strong; and, the commitment to pursue claims against merchants that allow breaches to happen is unshakable.
- The political environment is ripe for comprehensive tax reform, and it's high on everyone's agenda. Credit unions need to be prepared to engage in this process (and we are), emphasizing that credit unions are tax exempt because of their structure as not-for-profit financial cooperatives and their mission to promote thrift and provide access to credit for provident purposes.

ABA Sues NCUA Over Field of Membership



Compliance Calendar

December 26

- Christmas Day (observed)– Federal Holiday

January 1, 2017

- Member Business Loans; Commercial Lending (NCUA) – Effective Date

January 1, 2017

- HMDA – Reg C, excludes low volume depository institutions from coverage – Effective Date

January 2, 2017

- New Year's Day (observed) – Federal Holiday

January 29, 2017

- 5300 Call Report Due to NCUA

April 10, 2017

- Fiduciary

April 30, 2017

- 5300 Call Report Due to NCUA

July 30, 2017

- 5300 Call Report Due to NCUA

September 15, 2017

- Same-day ACH – Phase 2

October 1, 2017

- Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z

October 19, 2017

- Amendments to 2013 Mortgage Rules under RESPA/Reg X and TILA/Reg Z

October 29, 2017

- 5300 Call Report Due to NCUA

CUNA Comment Calls – Due Dates on Proposed Rules

December 9, 2016~NCUA

[Field of Membership](#)

December 12, 2016~CFPB

[Consumer Response Company Response Survey – Follow-up](#)

December 16, 2016~NCUA

[Private Flood Insurance](#)

Effective Dates New and Revised Rules

The American Bankers Association (ABA) filed a lawsuit against the NCUA over the agency's final field of membership (FOM) rule, which was also published in the [Federal Register](#) on December 7, 2016. The lawsuit is very similar to the recent Independent Community Bankers Association's lawsuit against NCUA over the recent final Member Business Lending (MBL) Rule. Both lawsuits allege that the NCUA has improperly interpreted the Federal Credit Union Act in its recent FOM and MBL rulemakings.

Reacting to the lawsuit, CUNA President/CEO Jim Nussle said that "the NCUA acted well within its authority when it issued its field of membership rule. This meritless attack from bankers on the NCUA's rule completely ignores both the law and the NCUA's authority to regulate credit unions. The suit completely lacks worth, and CUNA and its partners will vigorously defend the rule on behalf of credit unions and the consumers that will benefit from the changes."

The final FOM rule provides much needed regulatory relief for credit unions. It modernizes FOM regulations, giving credit unions more flexibility in defining the communities that they serve and thus gives consumers more choice for financial services.

The NCUA has also [proposed](#) an additional FOM rule containing CUNA-suggested changes. [Comments](#) on that proposal were due Dec. 9. The NCUA's rule, [finalized](#) in October, is [effective](#) starting Feb. 6.

CUNA Continues to Press DoD for Clarification on MLA Rule

CUNA's latest effort to achieve clarification on the Department of Defense's Military Lending Act regulation comes in the form of a letter sent this week to the DoD with a copy sent to NCUA Chairman Metsger. The letter urges the DoD to answer several outstanding questions on which CUNA continues to receive inquiries. Many of these questions were raised in a [September letter](#) to NCUA.

Although the bulk of the MLA rule went into effect this October, CUNA is still pressing for clarification on: purchase money loans, ancillary products, statutory liens, share-secured loans, the term "vehicle," credit card fees, and oral disclosures. In addition, they are asking the DoD to consider exempting credit unions with a very low volume of covered transactions from compliance with the rule.

Source: CUNA Advocacy

January 1, 2017~CFPB

[HMDA – Regulation C](#)

January 1, 2017~NCUA

[Member Business Loan Rule](#)

April 10, 2017~DOL

[Fiduciary](#)

September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

October 1, 2017 ~ CFPB

[Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z](#)

October 19, 2017~CFPB

[Amendments to 2013 Mortgage Rules under RESPA/Reg X and TILA/Reg Z](#)

Please respond to [Mark Robey](#) with any questions or concerns regarding content of this newsletter.

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