

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

February 10, 2017

### Compliance News

#### CFPB Issues Compliance Guides for Remittance Transfers and the Prepaid Rule

The CFPB has issued version 4.0 of its [Small Entity Compliance Guide for remittance transfers under Regulation E](#). The update reflects clarifications the CFPB made in the [prepaid rule](#) regarding the application of the remittance rule to prepaid accounts. The CFPB also released a [Small Entity Compliance Guide for the Prepaid Rule](#).

Previously, the remittance rule did not treat prepaid products as “accounts” (other than payroll card accounts and government benefit accounts that were already accounts under Reg E). However, the prepaid rule adopts a definition of “prepaid account,” and as a result, a number of prepaid products are now considered accounts under Reg E.

The CFPB’s clarifications to the remittance rule make clear that that the agency intends to continue to treat transfers from most prepaid products as non-account based transfers. In the prepaid rule, the CFPB amended the remittance rule to clarify the following:

- Whether the remittance rule applies depends on the location of the sender, which can vary based on whether the transfer is from an account, or not. For prepaid accounts other than payroll card accounts and government benefit accounts, the location of these accounts does not determine where funds are being sent to or from for purposes of the remittance rule. See comments 30(c)-2.ii and 30(g)-1
- The temporary exception in Section 1005.32(a) allowing insured institutions to use estimates when providing certain disclosures does not apply to transfer sent from prepaid accounts, unless the prepaid account is a payroll card account or a government benefit account. See Section 1005.32(a)(1)(iii)

*Source: CFPB*

#### Tax Refund Fraud – Don’t Forget to File SARs

Since the methods for tax refund distribution – direct deposit, paper checks, prepaid access cards – are generally run through financial institutions, credit unions can play a critical role in the battle against tax refund fraud.

The following Tax Refund Fraud red flags were provided by FinCEN and the IRS:

- Multiple direct deposit refund payments going into one member’s account;
- Individuals attempting to negotiate double endorsed tax refund checks with questionable identification;

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### InCompliance 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.

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### Association Compliance Forums

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[Compliance Forum](#)

[BSA Compliance Officer Forum](#)

Please provide the subscriber’s name, credit union, title

- One individual accompanying multiple parties to the credit union to negotiate tax refund checks;
- The same signature/endorsement used on multiple checks, with multiple names;
- An account opened on behalf of individuals who are not present, with the opener being named as having signatory authority and the subsequent activity limited to direct deposits of tax refunds. This activity often occurs when exploiting returns for the elderly, minors, prisoners, the disabled, or recently deceased;
- A single individual opening multiple prepaid card accounts in different names, using valid TINs for each of the supplied names and having cards mailed to the same address;
- A personal account where the majority of the transactions are ACH tax refunds - even if this is not tax fraud, your member may be using a personal account as a business account;
- A business account processing third-party tax refunds in a manner inconsistent with their stated business model, i.e., volume of refund checks in contrast to other deposits; refund checks from out of state; multiple refund checks for the same amount or close to the same amount;
- For MSB accounts - a sudden increase in volume involving tax refund checks issued to individuals from across the country.

If, after sufficient investigation, the credit union determines that a suspicious activity report (SAR) should be filed, FinCEN requests that the term "tax refund fraud" be included in the narrative section.

And speaking of SARs, this seems like a good time to remind you that due to the Bipartisan Budget Act of 2015, the civil money penalties for violating BSA requirements have increased significantly as of August 1, 2016. For example, the penalty for a willful violation went from a range of \$25,000 - \$100,000 to the new range of \$53,907 - \$215,628. You can review the entire table of penalty adjustments [here](#).

*Source: CUNA Compliance Blog*

### **Dodd-Frank Act to Be Reevaluated**

In an Executive Order issued on 2/3/17, President Trump has declared seven "Core Principles" for regulation of the U.S. financial system promoting independent consumer choices, preventing bailouts, fostering economic growth, promoting international competitiveness, advancing U.S. interests in international negotiations, tailoring regulations and ensuring regulatory accountability. The Order directs the Secretary of the Treasury to meet with the heads of the other member agencies of the Financial Stability Oversight Council to review how "existing laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other Government policies promote the Core Principles and what actions have been taken, and are currently being taken, to promote and support the Core Principles." An initial report to the president is due within 120 days.

Although the Dodd-Frank Act is not mentioned in the Order, it is generally seen as the most obvious target of the review. There is no clear vision of the outcome of the review, although several provisions of the Act, including the structure and funding of the CFPB, the Durbin Amendment (interchange fee limits on debit card transactions), and the Volcker Rule (restrictions on proprietary trading by banks) are seen as likely focuses of the ordered study.

and email address. The subscriber will receive a welcome e-mail that details how to access the forum.



Do all you can to prepare for 2017 NCUA exam priorities issued in [NCUA letter 17-CU-01](#) by adding AffirmX to your team of experts. AffirmX is the leading cloud-based compliance solution that delivers a near-real time risk-based dashboard of your compliance operations. AffirmX provides document review for all areas of regulatory compliance, including ACH, Advertising, BSA, Deposits, Loans, and Operations, as well as helps you create and manage your Cybersecurity Risk Assessment.

If a full suite of compliance services is not what you are looking for, we now offer self-assessment tools, individual loan reviews, and a basic annual compliance package that includes ACH, BSA, SAFE Act, and Website compliance.

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



### **InfoSight Highlight**

#### **Fair Credit Reporting Act: Summary**

The purpose of the Fair Credit Reporting Act ("FCRA" or "Act") is to ensure fair and accurate reporting of consumer credit information. It regulates "consumer reporting agencies," including credit bureaus; restricts the use of consumer reports to their legitimate purposes; prohibits the dissemination of outdated credit information; and requires disclosure to consumers and employees when adverse action is taken as the result of credit reports or other consumer information.

The FCRA applies any time a credit report is used as a factor in establishing a member's eligibility for or in making changes to the member's consumer credit, share or deposit accounts and other services. It also applies when credit reports are used in hiring or other employment decisions.

The FCRA does not apply to reports about business, commercial or professional entities, reports about a credit union's own experiences with a consumer, or reports by anyone based solely on their own experience with a consumer.

The Federal Trade Commission enforces compliance with

## 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.



### Training & Events Calendar

#### **February 13**

Webinar: [Part 2 – New FFIEC Consumer Compliance Rating System, Effective 3-31-17: Violations of Law & Consumer Harm](#)

#### **February 14**

Webinar: [Military Lending Act: Exam Procedure Changes, Post Implementation Considerations & FAQs](#)

#### **February 16**

Webinar: [BSA Compliance Series: FinCEN's CCD Rules & BSA Compliance](#)

#### **February 22**

Webinar: [Flood Compliance in Lending Part 1: Loan Origination](#)

#### **February 27**

Webinar: [Everything You Need to Know About Reg CC: Holds, Funds Availability, Compliance & More](#)

#### **March 2**

Webinar: [Compliance Questions & Issues in Deploying Mobile Remote Deposit Capture](#)

#### **March 7**

Webinar: [UDAAP Challenges: Practices, Risk Mitigation, Regulator Expectations & Case Studies](#)

#### **March 8**

Webinar: [Hot Issue in Cyber Compliance, Including Recent Changes to the IT Handbook](#)

#### **March 9**

Webinar: [How to Audit Deposit Operations for Reg CC & D Compliance](#)

#### **March 14**

Webinar: [Fair Lending Risks in Third-Party Relationships](#)

#### **March 15**

Webinar: [Flood Compliance in Lending Part 2: Post Loan Closing](#)

#### **March 16**

Webinar: [Reg E Requirements for Debit Card Error Resolution](#)

#### **March 28**

[BSA Officer Training - Phoenix](#)

#### **March 30**

Webinar: [ACH Rules Update 2017](#)

the FCRA by consumer reporting agencies and state-chartered credit unions. The Bureau of Consumer Financial Protection (CFPB) is charged with enforcing the provisions of the Act (12 CFR 1022).

In 2003, the Fair and Accurate Credit Transactions Act (FACT Act) was signed into law. This Act amended the Fair Credit Reporting Act in several important ways. It permanently reauthorized seven existing preemption provisions and extended preemption to certain areas related to identity theft prevention and mitigation.

How does the FCRA affect credit unions?

Requirements of FCRA are applicable to credit unions that are:

- "Consumer reporting agencies" by providing credit information (other than their own experience with a member) to third parties (other than affiliates);
- Users of consumer reports from consumer reporting agencies; and
- Furnishers of information to consumer reporting agencies.
- Credit unions are likely to be subject to FCRA as credit grantors, purchasers of dealer paper, issuers of credit cards, and as employers. When credit unions use consumer report information, the provisions of the FCRA that apply relate to transactions where an "adverse action" is taken partially or wholly on the basis of the information from a "consumer report."

Additionally, a number of credit unions and other employers use credit reports to evaluate employees for advancement and applicants for employment. The FCRA mandates particular procedures which must be followed in order to use credit reports for employment purposes.

Compliance with the FCRA is important because the FCRA contains penalties for violations. In a civil action, any consumer-reporting agency or user of information who willfully fails to comply with an FCRA requirement with respect to a consumer is liable to that consumer for any actual damages, any punitive damages that the court allows, and costs and reasonable attorneys' fees. Any consumer-reporting agency or user of information who fails to comply with an FCRA requirement due to negligence is liable to the consumer for any actual damages, plus costs and reasonable attorneys' fees.

Any person found liable for obtaining a consumer report under false pretenses or knowingly without a permissible purpose may be liable for actual damages or \$1,000, whichever is greater.

Criminal penalties can be imposed for certain willful acts. For credit unions using consumer reports, any person who willfully obtains information on a member from a consumer-reporting agency under false pretenses may be

## MLO Training

Mountain West Credit Union Association has partnered with the Credit Union National Association (CUNA) to bring you an [8 Hour SAFE Comprehensive Mortgage Loan Originator Course](#). This course will cover the necessary Federal laws and regulations and meets the continuing education requirements of the SAFE Act inclusive of (3) hours federal laws & regulations, (3) hours ethics, consumer protection & fair lending, and (2) hours lending standards for the non-traditional mortgage product marketplace. Event pricing and registration is made available directly through the CUNA website – click on the location below for details. *Registration will require a CUNA username and password.*

- [March 9 - Mortgage Loan Originator Training - Phoenix](#)
- [May 9 - Mortgage Loan Originator Training - Denver](#)

## Effective Dates New and Revised Rules

**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](#)

## CUNA Comment Calls – Due Dates on Proposed Rules

**February 1, 2017~CFPB**  
[Consumer Access to Financial Records](#)



## Compliance Calendar

**January 20, 2017**  
• [Federal Credit Union Occupancy, Planning and Disposal of Acquired and Abandoned Premises: Incidental Powers](#)

**January 29, 2017**  
• 5300 Call Report Due to NCUA

**February 6, 2017**  
• [Chartering and FOM Manual](#)

**February 20, 2017**  
• Washington's Birthday/President's Day – Federal Holiday

**April 10, 2017**

fined up to \$5,000, imprisoned for up to one year, or both.

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

## Compliance Videos

### Q4 2016 Overview and Q1 2017 Changes Coming

In this [NEW video](#), Glory LeDu reminds us of the regulatory changes that became effective in the 4<sup>th</sup> quarter of 2016 (which includes the DELAY of the DOL Overtime rules). Glory also provides a review of the changes effective in the 1<sup>st</sup> Quarter of 2017 including the updates to Member Business Lending and the new requirements for HMDA reporting for 2017. This also includes the updated threshold changes effective on 1/1/2017.

### Member Business Lending

[This new video](#) provides the details you will need to know to comply with the NCUA's Member Business Lending rules.

## Advocacy Highlight

### Executive Order Delays Fiduciary Rule and Suggest Additional Analysis of Impact

In an Order signed last Friday, the Administration directed the Department of Labor to further examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice.

CUNA [sought](#) and obtained improvements to final rule, but remained concerned that regulatory burdens and complexity associated with this rule could make it more difficult for consumers of all means to receive support planning for their financial future from credit union service organizations and some credit unions.

A memorandum to the Secretary of Labor directs the DOL to examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice.

As part of the directive, the DOL must prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Duty Rule, which shall consider (but shall not be limited to) the following:

- i. Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;
- ii. Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees;

- [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

**January 1, 2018**

[HMDA/Reg C](#)

**March 16, 2018**

- [Same-day ACH - Phase 3 \(Final phase\)](#)

**April 19, 2018**

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

**May 11, 2018**

- [Customer Due Diligence/CDD](#)

- ii. Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

The directive states that if the DOL makes an affirmative determination as to any of these considerations, or if it concludes for any other reason after appropriate review that the Fiduciary Duty Rule is inconsistent with the priority identified earlier in this memorandum -- then it shall publish for notice and comment a proposed rule rescinding or revising the Rule, as appropriate and as consistent with law.

CUNA will be following the DOL's action on this rule as well as [legislation](#) in Congress impacting it.

**OFAC Sanctions Supporters of Iran Missile Program and Revolutionary Guard**

OFAC has [announced](#) the imposition of sanctions against multiple entities and individuals involved in procuring technology and/or materials to support Iran's ballistic missile program, as well as for acting for or on behalf of, or providing support to, Iran's Islamic Revolutionary Guard Corps-Qods Force.

*Source: OFAC*

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

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