

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

February 17, 2017

### Compliance News

#### Bona Fide and Reasonable Credit Card Fees

MLA requirements for credit card accounts don't become effective until October 3, 2017 at the earliest. That date is slightly less than eight months away and even though we don't have sufficient guidance from the DoD to fully understand the issues discussed below, credit unions should begin working with their core processors now in order to be ready by the effective date.

CUNA is preparing to send another letter to the DoD requesting guidance on the issues discussed below as well as a number of other issues left unexplained in the DoD's MLA rule and Official Interpretations issued at the end of August 2016.

Under a Safe Harbor in the MLA Rule, a credit union may exclude a reasonable bona fide credit card fee from the MAPR if the fee is considered "reasonable."

This means that the fee must be less than or equal to the average fee for the same or similar product charged by five separate card issuers, each with at least \$3 billion in outstanding credit card balances at any time during the three-year period preceding the time the average is determined.

What happens if a particular fee charged by a credit union is higher than the average fee charged by the five creditors whose fees are reviewed? According to the MLA Rule, the fee may still be considered reasonable depending on other factors relating to the credit card product such as the existence of a rewards program, a cash-back program or other benefits.

However, the DoD's Official Interpretations don't provide any guidance on how special credit card program benefits such as a Rewards Program should be valued when making a determination that a fee that is higher than the average is still considered reasonable.

The MLA rule also states that a bona fide fee charged by a credit union is not unreasonable solely because other creditors do not charge a fee for the same or substantially similar product or service. In this situation, how can a credit union comply with the requirement in the MLA rule that its fees be compared to the fees for similar products offered by five large card issuers in order to be excludable from the MAPR, when the five large card issuers don't charge the same bona fide fee that a credit union wants to charge?

Again, the DoD's Official Interpretations don't provide any guidance to explain this apparent contradiction.

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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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Furthermore, a credit union that imposes any fee that is not a bona fide fee or that is considered unreasonable, must include the total amount of those fees, including any reasonable bona fide fees (which ordinarily would have been excluded) in the calculation of the MAPR. It is very likely that this situation could cause the MAPR to exceed the 36% limit and would require the credit union to refund any amount that exceeds 36% to the covered borrower over the entire time period that the unreasonable fee or non-bona fide fee was charged.

This requirement seems to be punitive, particularly when the unreasonable or non-bona fide fee has been unknowingly or unintentionally imposed.

Another issue regarding reasonable and bona fide fees concerns the availability of data necessary to make the determination that a particular fee is "reasonable." The DoD states that commercially compiled sources of information necessary to determine whether a credit card fee is a reasonable bona fide fee are widely available. While some relevant data may be available, it doesn't seem to be available in the format that will enable credit unions to easily comply with this requirement.

There is no doubt that credit unions and other lenders will need additional guidance from the DoD, hopefully by mid-year, on these issues to fully understand how they can comply.

*Source: CUNA Compliance Blog*

### FinCEN Proposing SAR Data Fields Revisions

FinCEN has published at [82 FR 9109](#) in the *Federal Register* a notice and request for comments on a proposed update and revisions to the collection of information filings by financial institutions required to file such reports under the Bank Secrecy Act ("BSA"). This notice does not propose any new regulatory requirements or changes to the requirements related to suspicious activity reporting. The data fields reflect the filing requirement for all filers of SARs under the BSA. Most of the proposed changes would alter the "checklist" of violations in Part II of the filings, including the addition of several fields related to cyber events. **Comments are due by April 3, 2017.**

*Source: FinCEN*

### 26 Credit Unions Agree to Late-Filing Penalties for Third Quarter of 2016

Twenty-six federally insured credit unions subject to civil monetary penalties for filing late Call Reports in the third quarter of 2016 have consented to penalties totaling \$17,485, the National Credit Union Administration announced today.

In the third quarter of 2015, 22 credit unions consented to penalties. Individual penalties ranged from \$45 to \$10,000. The median penalty was \$174. The Federal Credit Union Act requires NCUA to send any funds received through civil monetary penalties to the U.S. Treasury.

The assessment of penalties primarily rests on three factors: the credit union's asset size, its recent Call Report filing history and the length of the filing delay. Of the 26 credit unions agreeing to pay penalties for the third quarter of 2016:

- Fourteen had assets of less than \$10 million;
- Nine had assets between \$10 million and \$50 million; and

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.

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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

#### Signs of Elder Financial Abuse

According to the National Center on Elder Abuse (NCEA), signs and symptoms of financial or material exploitation include but are not limited to:

- Sudden changes in bank account or banking practice, including an unexplained withdrawal of large sums of money by a person accompanying the elder;
- The inclusion of additional names on an elder's bank signature card;
- Unauthorized withdrawal of the elder's funds using the elder's ATM card;
- Abrupt changes in a will or other financial documents;
- Unexplained disappearance of funds or valuable possessions;
- Substandard care being provided or bills unpaid despite the availability of adequate financial resources;
- Discovery of an elder's signature being forged for financial transactions or for the titles of his/her possessions;
- Sudden appearance of previously uninvolved relatives claiming their rights to an elder's affairs and possessions;
- Unexplained sudden transfer of assets to a family

- Three had assets between \$50 million and \$250 million.

No credit unions with assets of more than \$250 million were subject to civil monetary penalties for filing late Call Reports in the third quarter. Three of the late-filing credit unions had been late in a previous quarter.

A total of 40 credit unions filed Call Reports late for the third quarter of 2016. NCUA consulted regional offices and, when appropriate, state supervisory authorities to review each case. That review determined mitigating circumstances in six cases that led to credit unions not being penalized. Another six credit unions received a requested waiver. Two state-chartered credit unions paid penalties to their state regulators.

NCUA informed the remaining credit unions of the penalties they faced and advised them they could reduce their penalties by signing a consent agreement. NCUA also said it would initiate administrative hearings against credit unions that did not consent.

NCUA sends reminder messages about Call Report filing deadlines that include information on how to receive technical support to handle filing problems. The agency also has created an automated reminder email system that contacts credit unions that have not filed their Call Reports and confirms successful filing.

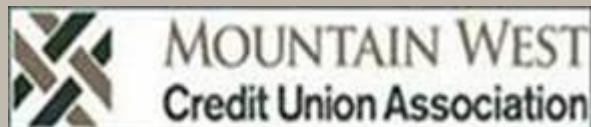
NCUA's Office of Small Credit Union Initiatives has dedicated an Economic Development Specialist to assist small credit unions in filing Call Reports on time. Credit unions that would like assistance should send an email to [OSCUIConsulting@ncua.gov](mailto:OSCUIConsulting@ncua.gov). NCUA also has produced a [video](#) describing how to file Call Reports.

*Source: NCUA*

### OFAC Publishes Cyber-Related FAQs

OFAC has provided [four frequently asked questions \(FAQS\)](#) related to the recently imposed sanctions on the Russian Federation's Federal Security Service and the issuance of [General License 1](#) authorizing certain transactions otherwise prohibited under Executive Order (E.O.) 13694 of April 1, 2015 ("Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities"), as amended by E.O. 13757 of December 28, 2016 ("Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities").

*Source: OFAC*



### [Training & Events Calendar](#)

#### 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](#)

member or someone outside the family;

- The provision of services that are not necessary; **and**
- An elder's report of financial exploitation.

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

### NCUA ANPR on Alternative Capital

The Board of Directors of the National Credit Union Administration has published [\[82 FR 9691\]](#) in a recent *Federal Register* an "advanced [*sic*] notice of proposed rulemaking" (ANPR) to solicit comments on alternative forms of capital federally insured credit unions could use in meeting capital standards required by statute and regulation. **Comments on the ANPR close on May 9, 2017.**

*Source: Federal Register*

## 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.

## CUNA Comment Calls – Due Dates on Proposed Rules

### February 1, 2017~CFPB

[Consumer Access to Financial Records](#)

### May 9, 2017 ~ NCUA

[Alternative Capital](#)

**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](#)

## 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](#)



## Compliance Calendar

**February 6, 2017**

- [Chartering and FOM Manual](#)

**February 20, 2017**

- Washington's Birthday/President's Day – Federal Holiday

**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

**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](#)

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

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