

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

February 24, 2017

Compliance News

MLA Website Problem Revealed

The Department of Defense has posted a [notice](#) on its official Military Lending Act (MLA) website that between February 9 and February 15, 2017, there was a problem with MLA Multiple Record Requests that prevented 149 request files from processing. It was suggested that those who submitted a multiple record request file in between those dates, submit the file again for processing.

Source: Department of Defense

CFPB Adds HMDA Resources

The HMDA effective date is now officially less than a year away. Is your credit union ready for HMDA? The new HMDA rule will have a huge impact on credit unions, much like TRID did in 2015. So NOW is the time to start getting your credit union up to speed. The CFPB has a HMDA implementation page with helpful resources, and they added two new resources recently. The first is a new HMDA webinar, which provides an overview of identifiers, including entity, applications or loans, property and loan originator, as well as data points related to applicants and borrowers (available [here](#)). The CFPB has also published a chart that illustrates a covered institutions' options for collecting and reporting ethnicity and race information (available [here](#)). Please use these resources to help get your credit union ready for HMDA in 2018! Also check out CUNA's [HMDA Final Rule Analysis](#) summarizing the changes in the new rule.

Source: CFPB and CUNA Blog

Reintroduction of TAILOR Act

Senator Mike Rounds (R-SD) reintroduced the TAILOR (Taking Account of Institutions with Low Operation Risk) Act. S. 366 would require regulatory agencies, including NCUA, to take risk profiles and business models into account when crafting regulations.

The bill also requires agencies to examine all regulations issued since the passage of Dodd-Frank in 2010 to make sure they conform with the TAILOR Act.

Last Congress, Congressman Scott Tipton (R-CO) introduced the TAILOR Act in the House. It is expected that the House bill will be reintroduced soon.

Source: CUNA

What is the Consumer Compliance Rating System

The Consumer Compliance Rating System (CCRS) is an interagency framework developed by FFIEC member agencies for evaluating an institution's ability to manage consumer compliance risk and to prevent

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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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harm to consumers. NCUA integrates the current rating system into its existing CAMEL structure.

In November 2016, the FFIEC agencies finalized changes to the current 36 year-old rating system to bring it more in line with existing consumer compliance approaches and the examination focus toward risk. The revisions to FFIEC's existing guidance have an effective date of March 31, 2017.

Essentially, the CCRS is a supervisory policy for evaluating a financial institution's adherence to consumer compliance requirements. It emphasizes the importance of an institution's compliance management system (CMS). Particularly the institution's compliance risk management practices that are in place to manage consumer compliance risk, support compliance, and prevent consumer harm.

Why should credit unions care? Under the new system NCUA examiners will assess a credit union's ability to effectively manage its compliance risk. A credit union is expected to proactively prevent, self-identify, and should self-correct compliance issues. A credit union's ability to do so will be reflected in the "Management" component rating and the overall CAMEL rating used by NCUA.

What about credit unions with assets over \$10 billion? The CFPB will also use the CCRS, as appropriate, to assign a consumer compliance rating. The interagency final guidance was clear that a credit union with over \$10 billion in assets may receive a consumer compliance rating by both NCUA and the CFPB. The rating will be based on the CFPB's review of the credit union's CMS and compliance with the federal consumer financial protection laws falling under each regulator's jurisdiction. NCUA will take into consideration any material supervisory information provided by the CFPB. Similarly, the CFPB will take into consideration any material supervisory information provided by NCUA in appropriate situations.

What about state-chartered credit unions? As state regulators maintain supervisory authority over state-chartered credit unions, state regulators may also assign consumer compliance ratings to evaluate compliance with both state and federal laws and regulations. If the credit union has over \$10 billion in assets then it may receive a consumer compliance rating from its state regulator and the CFPB.

What are the main components of the CCRS framework? Well, first there are four principles of the CCRS that serve as its foundation:

- **Risk-based.** The CCRS is risk-based. The focus is more on the sufficiency of the CMS. An effective CMS varies and is based on the size, complexity, and risk profile of the credit union.
- **Transparent.** The CCRS is transparent and provides clear distinctions between rating categories to support consistent application by regulators across supervised financial institutions. The rating should reflect the scope of the review that formed the basis of the overall rating.
- **Actionable.** The CCRS identifies areas of strength and directs appropriate attention to specific areas of weakness. It conveys the examiner's assessment of the effectiveness of the credit union's CMS, including its ability to prevent consumer harm and ensure compliance with consumer protection laws and regulations.
- **Incent Compliance.** The CCRS is a tool to encourage the credit union to establish an effective CMS across the institution, to self-identify risk,

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 or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



InfoSight Highlight

Electronic Returns Under Reg. CC

Regulation CC addresses the collection and return of checks through the banking system and is the rule that implements the Expedited Funds Availability Act (EFAA). The Uniform Commercial Code Article 4A governs the rights, duties, responsibilities and liabilities of the parties involved in the electronic funds transfers and Regulation J governs those electronic funds transfers through Fedwire.

When a paying bank (financial institution on which a check is drawn, including a payable through financial institution) decides to return a check, Regulation CC requires it to send the check or a notice within certain deadlines. Section 229.30(f) and 229.31(f) of the regulation requires the paying bank to return the original check unless the check is unavailable. If the check is unavailable, the paying bank may send a notice in lieu of return that includes specific information required by Regulation CC. The Commentary to these sections explains that a notice is permitted instead of the actual check only when an institution does not have or cannot obtain the physical check, or must keep the physical check for protest. The Commentary states that a check is not considered unavailable for return simply because it is difficult to

and to take the necessary actions to reduce the risk of non-compliance and consumer harm.

The CCRS focuses on three board categories within a credit union:

- Board and Management Oversight
- Compliance Program
- Violations of Law and Consumer Harm

Each category has assessment factors and performance expectations. The first two areas (Board/Management Oversight and Compliance Program) are used to assess the effectiveness of the credit union's compliance management system to prevent consumer violations and harm. The first two categories also apply to third party relationships. Both the NCUA ([LCU 07-CU-13](#)) and CFPB ([Bulletin 2012-03](#)) have issued guidance detailing expectations of third-party relationships. The third area of review (Violations of Law/Consumer Harm) assesses and evaluates the root cause of the problem; the severity of the problem, the duration, and frequency/commonness of the problem and evaluates violations and harm that have occurred.

The final interagency guidance indicated that the revisions to the CCRS were not developed to set new or higher supervisory expectations. We anticipate that NCUA will release additional guidance about the revisions to the CCRS and its integration into the "M" component in CAMEL prior to the March 31, 2017 effective date.

The final guidance provided details and describes standards and expectations for each of the three rating categories (link provided below). It should shed some light on performance expectations until the additional guidance is released. While there are numerical factors on a scale of 1 to 5, in increasing order of supervisory concern, supplementary information to the final guidance indicated that a specific numeric rating won't be assigned for each assessment factor. Therefore, the relative importance of each category or assessment factor is not a one size fits all approach; accomplishing an effective CMS may differ based on the size, complexity, and risk profile of the individual institution.

The chart in the *Federal Register* can be viewed [here](#) (see page 79480).

Source: CUNA Compliance Blog

Advocacy Highlight

30-Day Extension Requested for Comments on TCPA Related Petition

CUNA and several other trade associations requested a 30-day extension of the period for the submission of comments for the petition that seeks to reverse the Federal Communications Commission's (Commission) 25-year old interpretation that persons who knowingly release their phone numbers have given their consent to be called under the Telephone Consumer Protection Act (TCPA).

The letter notes that such a dramatic change would prevent consumers from receiving important communications from credit unions on their mobile phones, communications that provide critical information that consumers want and need to receive. It would also likely require credit unions to make fundamental changes to their practices for obtaining consent in conformity with the TCPA's requirements. Furthermore, it notes that millions of consumers would be impacted in a very negative way by the change proposed in the Petition.

retrieve from a filing system or storage by a keeper of checks in a truncation system.

An "electronic return" is an arrangement whereby the paying bank sends, and the depository bank accepts, an electronic image or other notice in lieu of the return of the actual physical item itself. Provisions in Regulation CC, specifically additions to the Commentary for Section 229.37, allow financial institutions that have entered into agreements with other financial institutions, to return checks electronically, even if such checks are considered available for return. Entering into these arrangements is strictly voluntary. Before your credit union enters into such agreements, keep in mind that not having the original item could affect your rights with the depositing member and others.

How do electronic returns affect the credit union?

Electronic returns may assist the credit union in being more efficient in both returning items drawn on the credit union and receiving the return of items deposited at the credit union, which the paying bank has chosen not to pay. However, the credit union may lose rights since it cannot bind remote parties to a check. For example, rights against third party endorsers could be lost. Thus, if a financial institution issues a notice when the physical check is considered available under Regulation CC, then if the return of the check causes the party to suffer a loss, the credit union or the returning financial institution could be liable for damages. The financial institution that sent the notice could be liable even if it had agreed with the receiving depository institution to use notices in lieu of return. There could also be problems with initiating bad check charges against someone if the original check isn't available as evidence.

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 4th quarter of 2016 (which includes the DELAY of the DOL Overtime rules). Glory also provides a review of the changes effective in the 1st 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.

The letter explains that the group believes that consideration of a proposed change of this magnitude should be done through a process that affords a greater opportunity for public participation. It notes that a 60- day comment period would be consistent with the intent of the Memorandum issued by President Trump's chief of staff, Reince Priebus, directing the heads of executive departments and agencies to delay, by 60 days, the effective date of regulations that have not taken effect, with certain exceptions, in order to allow for additional consideration of the regulation.

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 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](#)

April 5

Webinar: [Real Estate Series: CFPB Real Estate Loan Collection Rules for Mortgage Servicers & Your Credit Union](#)



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](#)

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](#)

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.*

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

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](#)

May 9, 2017 ~ NCUA

[Alternative Capital](#)

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

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