

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

March 17, 2017

### Compliance News

#### CFPB Proposes Delay of Prepaid Accounts Rule

The CFPB has announced a proposal to delay for six months the effective date of its final rule governing prepaid accounts. The Bureau indicated it has learned that some industry participants believe they will have difficulty complying with certain provisions of the rule by the current October 1, 2017, effective date. The CFPB is requesting comments about any implementation challenges that may affect consumers, and how additional time will impact industry, consumers, and other stakeholders. Comments will be due 21 days after the request is published in the Federal Register.

Also, the Bureau has made available on its implementation and guidance page for the Prepaid Account Rule a guide to preparing the short form disclosure for prepaid accounts. This disclosure guide is based on Regulation E's Model Form A-10(c) and provides basic "how to" instructions to help financial institutions prepare short form disclosures for prepaid accounts other than government benefit accounts or payroll card accounts.

*Source: CFPB*

#### MBL Guidance: Section 723.5 - Collateral

Credit unions that grant commercial loans must require sufficient collateral to protect against the risk of loss in the event of a borrower default (but collateral should not be the sole basis for granting a loan). So what exactly does that mean? NCUA has been touting this new rule as a shift away from the prescriptive collateral and LTV requirements, thus giving credit unions more flexibility to make their own decisions regarding what constitutes sufficient collateral. The guidance states that the amount of collateral needed will be determined by the creditworthiness of the borrower and the marketability of the collateral. Additionally, to confirm, value, manage, and control collateral, credit unions must have policies and procedures in place:

- Standards should set forth requirements for establishing an enforceable and protected lien position
- Procedures should determine if property offered as collateral has been affected by contamination/hazardous material
- Policies should factor in the size and complexity of the loan transaction and should also address:
  - The level of environmental due diligence required;
  - Acceptable collateral;
  - Collateral valuation method for each type of collateral; and
  - Acceptable LTV for each type of collateral

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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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Additionally, NCUA rules require credit unions to establish internal LTV ratio limits, which should be based on internal risk management analysis and accepted financial industry standards. The former prescriptive requirements for LTV ratios have been eliminated to allow credit unions to make their own risk-based decision. NCUA does not require credit unions to meet the bank regulatory standards for LTV guidelines for real estate but views them as reasonable benchmarks as they reflect common industry practice. The MBL guidance contains a list of the LTV Ratio Guidelines for each type of collateral, so this is a good place to start when setting internal limits. When a credit union decides to exceed these limits, they should be able to justify why (strong borrower, highly marketable collateral, etc.) Further, the guidance also states that when calculating LTV for an acquisition transaction, it is sound practice to establish the collateral value to be the lesser of: (1) acquisition cost (purchase price) plus improvements, or (2) appraised value. These are just a few things to keep in mind when determining whether there is sufficient collateral to protect against the risk associated with commercial lending transactions. For more information, please see the collateral section in the MBL Examiner's Guide, available [here](#).

### “Share Draft” vs. “Checking Account”

Because federal credit unions pay dividends on their deposit accounts, rather than interest, the use of the terms to describe accounts is important.

This seems like a good time to review the Truth-in-Savings [Official Staff Commentary](#) on this topic:

*Generally, it is not the purpose of the TIS regulation to prohibit specific descriptive terms for accounts. For example, credit unions can use adjectives and trade names to describe accounts such as “Best Share Draft Account,” or “Ultra Money Market Share Account.” Synonyms for share, share draft, money market share, and term share accounts may be used to describe various types of credit union share and deposit accounts as long as the synonym is accurate and not misleading and, for account disclosures, is used in conjunction with the correct legal term. For example, the following synonyms may be used:*

- *The term “checking account” may be used to describe share draft accounts.*
- *The term “money market account” may be used to describe money market share accounts.*
- *The term “savings account” may be used to describe regular share and share accounts.*
- *The terms “share certificate,” “certificate account,” or “certificate” may be used to describe share certificates and other dividend-bearing term share accounts.*

**However, under no circumstances** may a credit union describe a share account as a deposit account, or vice versa. For example, the term “certificate of deposit” or “CD” may not be used to describe share certificates and other dividend-bearing term share accounts. Similarly, the terms “time account” and “time deposit” may not be used to describe term share accounts. [\(12 CFR 707.2\(a\)\)](#)

**Q: We are a state chartered credit union and use the term “certificate of deposit”, because our state law allows us to. Are we violating the federal Truth in Savings Act (TISA)?**

**A:** No. While federal credit unions may only offer dividend-bearing and

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



### Put a CCRS at Your Fingertips!

Easily apply [Consumer Compliance Rating System](#) (CCRS) expectations with AffirmX. CCRS is a supervisory policy for evaluating a financial institution's adherence to consumer compliance requirements. By adding AffirmX to your team of experts, a credit union can meet examiner expectations to proactively prevent, self-identify, and correct compliance issues. 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.

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

#### Advertising Overdraft Programs

The NCUA addresses overdraft program disclosure requirements, regardless of whether a credit union promotes the payment of overdrafts, in Part 707.

All credit unions that charge fees for paying overdrafts are required to disclose them on the periodic statement, both for the statement period and for the year-to-date. The disclosure does not have to be provided if no fees have been charged (e.g., the credit union would not have to disclose "\$0" for the statement period or year-to-date).

The disclosure must be made in a tabular format and be near the other itemized fees. The final rule includes a sample form for making this disclosure. Credit unions may either use the term "returned item fee" or "NSF fee" on the form to describe the fee for returning items unpaid. The regulations require that the periodic statement disclosure be provided in tabular format, as illustrated in NCUA's model form B-12.

#### Periodic Statements

The credit union must separately disclose on each periodic statement:

- The total dollar amount for all fees or charges imposed

non-dividend-bearing share accounts, TISA notes that “state-chartered credit unions may offer both share and deposit accounts, if permitted by their state law.”

State law, including regulations and official interpretations, will determine if returns earned on accounts in state-chartered credit unions are dividends. As a result, state chartered credit unions may be permitted to offer interest bearing deposit term accounts (certificates of deposit), even though they are prohibited for federal credit unions.

*Source: CUNA Compliance Blog*

### FinCEN Issues SAR Stats Technical Bulletin

The Financial Crimes Enforcement Network (FinCEN) has issued full Suspicious Activity Report (SAR) statistics through Dec. 31, 2016, reflecting data nationwide and by individual states and territories. This edition contains a new feature—where County and Micro & Metropolitan Statistical Area data is concerned, percentage change(s) in filing rates between the last two full calendar years (2015 & 2016) have been added.

Note: the Interactive SAR Stats (accessible via FinCEN’s homepage) displays filing rates of specific SAR data from March 1, 2012 through the latest month of the current year.

Click [here](#) for the SAR Stats Technical Bulletin.

Click [here](#) for the Interactive SAR Stats.

*Source: FinCEN*

## Advocacy Highlight

### Credit Unions, Trades Meet with Federal Regulators on MLA

Numerous credit unions met with representatives from the Department of Defense (DOD), CFPB, and NCUA to discuss credit union specific issues related to implementation of the Military Lending Act (MLA). In particular, the challenges around such items as calculating the MAPR for open-end loans, equity out or negative balance financing, oral disclosures, the relationship between MLA and Regulation Z as well as the numerous issues surrounding the upcoming compliance deadline for credit cards.

While the DOD would not commit to any timeline or guidance at the meeting, they did indicate they welcome industry input and are working on possible approaches to providing additional guidance and/or delays in compliance. They further indicated their understanding of the urgency for further clarification on the MLA rules. The credit unions present were actively engaged with the regulators in articulating their compliance challenges and burdens. Also present at the meeting were NAFCU and the Defense Credit Union Council.

CUNA most recently outlined specific concerns in its [letter](#) to DOD last month. CUNA will continue to press the DOD to issue clarification on the numerous lingering issues and will continue to press for credit card guidance to be issued as soon as possible so that credit unions can meet the upcoming compliance.

### CUNA Files a Joint Amicus Brief in Case on CFPB Structure

CUNA recently joined several other groups in filing an amicus brief in a court case that originally found that the Consumer Financial Protection Bureau’s structure was [unconstitutional](#), however, this decision has since been vacated. The U.S. Court of Appeals for the D.C. Circuit granted the CFPB’s petition for an “en banc” re-hearing of the case, meaning it will be

on the account for paying checks or other items when there are insufficient funds and the account becomes overdrawn, using the term “Total Overdraft Fees;” and

- The total dollar amount for all fees imposed on the account for returning items unpaid.
- The overdraft services covered do not include a service providing for the transfer of funds from another share account of the member to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

These disclosures must be provided for the statement period and for the calendar year to date.

The aggregate fee disclosures required must be disclosed in close proximity to the other itemized fees, using a format substantially similar to Sample Form B-12 in Appendix B of NCUA's Rules & Regulation.

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

## Compliance Videos

### Q4 2016 Overview and Q1 2017 Changes Coming

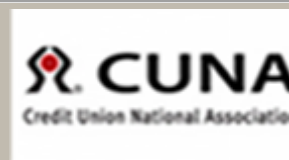
In this [NEW video](#), Glory LeDu reminds us of the regulatory changes that became effective in the 4<sup>th</sup> quarter of 2016 (which includes the DELAY of the DOL Overtime rules). Glory also provides a review of the changes effective in the 1<sup>st</sup> Quarter of 2017 including the updates to 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.

## 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.



## Compliance Calendar

April 10, 2017

heard before all judges of the court. Oral arguments are scheduled for May 24, 2017.

The PHH decision last year was a landmark ruling, which if it stood, would have changed the accountability structure of the CFPB. The court found that, "As an independent agency with just a single Director, the CFPB represents a sharp break from historical practice, lacks the critical internal check on arbitrary decision-making, and poses a far greater threat to individual liberty than does a multi-member independent agency." It further added that, "All of that raises grave constitutional doubts about the CFPB's single-Director structure."

It also struck language from the Dodd-Frank Act saying the CFPB director can only be removed with cause. The most important takeaway from the rule being vacated is that it means the President cannot remove the CFPB Director "at-will" unless the Court rules on this issue again.

While the review is not limited to these points, the court directed the parties to address the following issues in briefs:

1. Is the CFPB's structure as a single-Director independent agency consistent with Article II of the Constitution and, if not, is the proper remedy to sever the for-cause provision of the statute?
2. May the court appropriately avoid deciding that constitutional question given the panel's ruling on the statutory issues in this case?
3. If the en banc court, which has today separately ordered en banc consideration of *Lucia v. SEC*, 832 F.3d 277 (D.C. Cir. 2016), concludes in that case that the administrative law judge who handled that case was an inferior officer rather than an employee, what is the appropriate disposition of this case?

CUNA has decided to participate on a joint trade association amicus brief that focuses on the non-Constitutional issues in the case (as other amici will be providing arguments on the constitutional issues in the case). There will be several financial trade associations signing on to this amicus brief. The brief applauds the Court for the previous decision it rendered on the RESPA, statute of limitations, and retroactivity issues and discusses the need for regulatory certainty and due process, noting that RESPA is one of the most important statutes that govern the mortgage industry.

In addition to closely following *PHH v. CFPB*, CUNA has been advocating for a change to CFPB's leadership structure to a 5-person commission, so that more voices are included in the debate. The change is one of the primary goals of CUNA's bipartisan, pro-consumer Campaign for Common-Sense Relief.

*Source: CUNA Removing Barriers Blog*



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

#### **March 21**

Webinar: [Opening Deposit Accounts Online: Rules, Risks & Best Practices](#)

#### **March 22**

#### • [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](#)

#### **October 19, 2017~CFPB**

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

## **BSA Officer Training Scheduled for March & April**

Mountain West is offering BSA Officer Training on March 28 in Phoenix, AZ, led by compliance expert Mary-Lou Heighes. We're also offering BSA Training on April 25 in Denver, CO, led by Chris Collver. See details below.

This full day seminar provides new and experienced BSA officers not only the newest information as it relates to

Webinar: [Form UCC-1: Initial Filing & Perfection of Security Interests](#)

**March 28**

[BSA Officer Training - Phoenix](#)

**March 29**

Webinar: [20 Common Collection Pitfalls](#)

**March 30**

Webinar: [ACH Rules Update 2017](#)

**April 5**

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

**April 20**

Webinar: [How to Build an Effective & NCUA Compliant MBL Credit Administration Program](#)

**April 25**

[BSA Officer Training - Denver](#)

**April 26**

Webinar: [BSA Compliance Hotspots: Regulators, Litigation, Policies & Procedures](#)

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## CUNA Comment Calls – Due Dates on Proposed Rules

**March 9, 2017**

[Telephone Consumer Protection Act \(TCPA\)](#)

**March 13, 2017**

[DOL Fiduciary Rule](#)

**March 15, 2017**

[FinCEN Update of SAR Fields](#)

**May 1, 2017~CFPB**

[Alternative Data](#)

**May 9, 2017 ~ NCUA**

[Alternative Capital](#)

the Bank Secrecy Act and OFAC requirements, but also the fundamentals of the duties of being a BSA Officer. The registration fee is \$229/ person and includes instruction, lunch and materials.

- March 28: [BSA Officer Training – Phoenix](#)
- April 25: [BSA Officer Training – Denver, CO](#)

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## 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](#)**

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

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