

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

March 3, 2017

### Compliance News

#### Executive Order to Create Regulatory Reform Task Forces

The White House has announced that President Trump has signed an Executive Order requiring every Executive Branch agency to establish a Regulatory Reform Task Force to eliminate red tape. The task forces are to be charged with making recommendations to the agency head regarding the repeal, replacement, or modification, consistent with applicable law, of regulations that:

- eliminate jobs, or inhibit job creation
- are outdated, unnecessary, or ineffective
- impose costs that exceed benefits
- create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies
- rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility
- derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified

*Source: The White House*

#### MLA Prohibited Terms in Loan Documents for Covered Borrowers

Section 232.9 of the DoD's Military Lending Act rule states that any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with the MLA requirements or which contains one or more provisions prohibited by the MLA, is void from the inception of the contract.

If the covered borrower's loan document contains one or more prohibited terms and is at some point considered void by the creditor's regulator or a court of law, the covered borrower would be relieved from repaying the entire unpaid loan balance and the creditor would have to refund any payments made by the covered borrower.

Before the DoD's Guidance (Official Interpretation) was issued in late August 2016, in order to reduce the risk that a covered borrower's loan document contained a prohibited term, many creditors either strongly considered or actually developed one set of loan documents for covered borrowers only (that didn't contain prohibited terms) and a second set of loan documents for other borrowers.

However, Question #15 from the DoD's Official Interpretation states that nothing in the MLA rule restricts the ability of a creditor to impose on non-covered borrowers those provisions under Section 232.8 of the MLA rule that are prohibited for covered borrowers, such as a mandatory

### Your Credit Union's Regulatory Compliance Support Staff

#### Mark Robey

**Sr. VP of Regulatory Affairs**

Phone: 800-477-1697, ext. 3327

Direct: 720-479-3327

#### Melia Heimbuck

**Director of Compliance Operations**

Phone: 800-477-1697, ext. 3325

Direct: 720-479-3325

#### Julie Kappenman

**Director of Association Compliance Services**

Phone: 800-477-1697, ext. 3324

Direct: 720-479-3324

#### Donna Gibbs

**Coordinator Association Services/Compliance**

Phone: 800-477-1697, ext. 3281

Direct: 720-479-3281

### 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.

Visit [mwcua.com](http://mwcua.com) to register

### Association Compliance Forums

Click on one of the below links to subscribe

[Compliance Forum](#)

[BSA Compliance Officer Forum](#)

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

arbitration clause.

The DoD recognized that many creditors would design loan documents with the intent that they could be provided to both covered borrowers and to other borrowers who are not covered by the MLA rule.

Question #15 from the DoD's guidance provides that a creditor may include a prohibited term in the loan document, provided that the loan document includes a contractual "savings" clause limiting the application of the prohibited term to non-covered borrowers only.

### **Under the MLA Rule May an Assignee of the Original Creditor Maintain and Utilize the Covered Borrower Identification Safe Harbor?**

The MLA rule permits a credit union to use any method of determining whether a service-member is considered a "covered borrower."

However, the rule only provides two "Safe Harbor" methods to determine active-duty military status of the covered borrower, spouse or dependent:

- A credit union may make the determination by accessing information obtained directly or indirectly from the DoD's database, or
- A credit union may use information from a nationwide consumer reporting agency that describes the military status of the loan applicant.

The safe harbor that previously permitted a credit union to rely on an applicant's declaration in a loan application or elsewhere, has been eliminated, effective October 3, 2016, because the DoD became aware that military personnel and their spouses and dependents were making false statements about their military status.

A creditor by definition, includes the creditor's assignee. Therefore, as long as the original creditor creates and thereafter maintains a record of the borrower's covered borrower status and the assignee continues to maintain the record created by the original creditor, the covered borrower identification Safe Harbor will be extended to the assignee.

### **Tax Refund Season: Time to Review Direct Deposit FAQs**

As a growing number of taxpayers opt to have their tax refunds provided via direct deposit, it's a great time for credit unions to brush up on several Direct Deposit FAQs, such as:

- Is there a limit on the number of refund payments that can be made to the same account at the credit union? And if so, who has to monitor this?
- If a member who owes a debt to the credit union receives a Federal tax refund by ACH, can the credit union offset the refund against the debt?
- Is the credit union liable for an IRS tax refund to an account that does not belong to the named or intended recipient? In other words, can a credit union rely strictly on the account number in the ACH Entry Detail Record when posting a tax refund payment to a member's account?
- What is the credit union's obligation when it discovers that an IRS tax refund has been sent to the wrong account?
- If the IRS discovers that a refund was misdirected or fraudulent, can the IRS require the credit union to return the funds?
- If suspicious of fraudulent activity is suspected on a refund received by the credit union, who should the credit union contact?

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**

#### **IRS Form 1120-POL**

Section 527 of the Internal Revenue Code provides for the exemption from federal income tax of organizations established primarily to accept contributions and make expenditures intended to influence, or attempting to influence, the election process of any federal, state or local office-holder (exempt function). Any political organization with taxable income (e.g. - investment income, income from trade or business) in excess of \$100 is required to file an annual income tax return on Form 1120-POL, (U.S. Income Tax Return for Certain Political Organizations), by the fifteenth day of the fourth month following the close of the organization's tax year (April 15 for calendar-year taxpayers).

#### **What credit unions are impacted by 1120-POL?**

Aside from credit union trade organizations that make political contributions, state-chartered credit unions in certain states can make corporate contributions to their state credit union league's state political action committee (PAC) or directly to a candidate for state or local office. If the amount contributed is in excess of \$100, the credit union is required to file a 1120-POL. Federal credit unions are exempted from filing Form 1120-POL.

You can find answers to these and many other related questions by reviewing [Treasury's Direct Deposit of IRS Tax Refunds Resource Page](#).

*Source: CUNA Compliance Blog*

### California Bank Gets BSA/AML Penalty of \$7 Million

The Financial Crimes Enforcement Network (FinCEN) announced the assessment of a \$7 million [civil money penalty](#) (CMP) against Merchants Bank of California of Carson, CA for willful violations of several provisions of the Bank Secrecy Act (BSA). The Office of the Comptroller of the Currency (OCC), the primary federal regulator of Merchants, has identified deficiencies in the Bank's practices that resulted in violations of previous consent orders entered into by Merchants, as well as other violations. The OCC simultaneously assessed a \$1 million CMP against Merchants for these violations.

Merchants failed to (a) establish and implement an adequate anti-money laundering (AML) program, (b) conduct required due diligence on its foreign correspondent accounts, and (c) detect and report suspicious activity. Merchants' failures allowed billions of dollars to flow through the U.S. financial system without effective monitoring to adequately detect and report suspicious activity. Many of these transactions were conducted on behalf of money services businesses (MSBs) that were owned or managed by Bank insiders who encouraged staff to process these transactions without question or face potential dismissal or retaliation. Bank insiders directly interfered with the BSA staff's attempts to investigate suspicious activity related to these insider-owned accounts.

"The banking of money services businesses is important to the global financial system, and we believe that banks can mitigate the risks associated with such businesses, just as they do with other customers," said FinCEN Acting Director Jamal El-Hindi. "But here we had an institution run by insiders essentially to provide banking services to MSBs that the insiders owned, combined with directions from Bank leadership to staff to ignore BSA requirements with respect to those MSB customers and others. It is certainly not an acceptable way to bank MSBs."

Merchants specialized in providing banking services for check-cashers and money transmitters. However, it provided those services without adequately assessing the money laundering risks and without designing an effective AML program. Merchants also provided its high-risk customers with remote deposit capture services without adequate procedures for monitoring their use.

Merchants failed to provide the necessary level of authority, independence, and responsibility to its BSA officer to ensure compliance with the BSA as required, and compliance staff was not empowered with sufficient authority to implement the Bank's AML program. Merchants' leadership impeded BSA analysts and other employees from investigating activity on transactions associated with accounts that were affiliated with Bank executives, and the activity in these accounts went unreported for many years. Merchants' interest in revenue compromised efforts to effectively manage and mitigate its deficiencies and risks.

In addition, Merchants banked customers located in several jurisdictions considered to be high-risk but did not identify these customers as foreign correspondent customers and therefore did not implement the required customer due diligence program. In a three-month period, Merchants processed a combined \$192 million in high-risk wire transfers through

While most contributions to political organizations can generally incur liability, state-chartered credit unions are not absolutely liable under Section 527 for amounts transferred to an individual, organization, or PAC provided they take reasonable steps to ensure that the individual or organization does not use such amounts for an exempt function. State-chartered credit unions should consult with their own counsel to determine whether they must file the 1120-POL return and the extent of any tax liability.

### What is the due date for Form 1120-POL?

Credit unions should generally file by the 15th day of the fourth month after the end of the tax year. For most credit unions, this will be April 15. If the due date falls on a Saturday, Sunday, or legal holiday, the credit union may file on the next business day.

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

This week in Washington, DC is the CUNA Governmental Affairs Conference (GAC). In addition to keynote speakers, CUNA was joined by credit union supporters from Capitol Hill, including Senate Banking Committee Chairman Mike Crapo, House Financial Services Committee Chairman Jeb Hensarling, Senator Roy Blunt, Representatives Maxine Waters, Brad Sherman, Blaine Luetkemeyer, Denny Heck, Linda Sanchez, Bill Huizenga, Kurt Schrader and Walter "Credit Union" Jones.

So that you're aware of what was being discussed, be sure to check out the [briefing documents](#) which were made available to all participants. We want Congress to know that the current regulatory structure is rigged in favor of the large banks and nonbank providers who can afford to comply with all of the rules coming out of Washington.

We need common sense regulations that focus on Wall Street and get out of the way of Main Street.

*Source: CUNA Advocacy*

some of these accounts.

The Bank's payment of the \$1 Million OCC penalty will be credited towards the satisfaction of the FinCEN penalty. FinCEN's settlement with a financial institution does not preclude consideration of separate enforcement actions that may be warranted with respect to any financial institution or any partner, director, officer, or employee of a financial institution.

FinCEN seeks to protect the U.S. financial system from being exploited by illicit actors. Its efforts focus on compromised financial institutions and their employees, significant fraud, third-party money launderers, transnational organized crime and security threats, and cyber threats. FinCEN has a broad array of enforcement authorities to target both domestic and foreign actors affecting the U.S. financial system.

*Source: FinCEN*



### Training & Events Calendar

#### **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

#### **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 &

## 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

### **February 6, 2017**

- [Chartering and FOM Manual](#)

### **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

## 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](#)

**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

**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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