

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

May 12, 2017

Compliance News

Questions & Answers: Safe Harbors for Garnishment of Federal Benefit Payments

Q: Our credit union received a garnishment order for a member's account that receives federal benefit payments. As a result of doing the two-month account review, it was determined that the member does not have enough "unprotected funds" to honor the garnishment order. The member has contacted the credit union and requested that the garnishment order be paid in full using the protected funds. Can the credit union do this?

A: The credit union may honor the member's request, as long as it is in writing and the written document is both dated and provided by the member after the credit union was served with the particular garnishment order. This situation is considered a "safe harbor" in the Garnishment of Accounts Containing Federal Benefits Payments regulation (31 CFR 212), which protects Federal benefits from garnishment.

The following are the safe harbor provisions included in the rule:

Protection during examination and pending review: When complying with the rule in good faith, a credit union will not be liable to a creditor for failing to honor a garnishment order for account activity during:

- The two business days following receipt of a garnishment order during which the credit union is determining whether the federal government or a child support agency has attached or included a Notice of Right to Garnish Federal Benefits;
- The time between the credit union's receipt of the garnishment order and the date the credit union must perform the account review.

Protection when protecting or freezing funds: When complying in good faith, a credit union will not be liable to a creditor for any protected amounts, to an account holder for any frozen amounts, or for other penalties related to garnishment orders where:

- A benefit agency has deposited a benefit payment into an account during the 2-month lookback period, or
- The credit union determines that the order was obtained by the U.S. federal government or issued by a State child support enforcement agency.

Protection for providing additional information to the account holder: A credit union will not be liable for providing optional information in the notice to the account holder, such as contact information for a legal aid service or the credit union's contact information. The credit union may also amend the content of the notice to include information about the State's garnishment protections to help avoid any confusion and to

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

provide complete information about the member's account.

Protection from other potential liabilities: When acting in good faith, a credit union will not be liable for:

- Bona fide errors that occur despite the credit union's reasonable procedures to prevent such errors;
- Customary clearing and settlement adjustments that affect the balance of the account, including a protected amount, such as deposit reversals caused by the return of unpaid items, or debit card transactions settled for amounts higher than the amounts originally authorized; or
- Honoring an account holder's express written instruction, that is both dated and provided by the account holder to the credit union following the date on which it has been served a particular garnishment order, to use an otherwise protected amount to satisfy the order.

For more information, see:

[The Garnishment of Accounts Containing Federal Benefits Payments regulation](#)

[NCUA Regulatory Alert 13-RA-04](#)

MLA Rule Permits "Savings Clause" in Loan Documents for Covered Borrowers

Providing a "Savings Clause" in a Loan Document: The MLA rule prohibits certain terms in a loan agreement with a covered borrower. For example, the loan agreement must not contain language which requires the covered borrower to submit to mandatory arbitration, requires the covered borrower to waive his or her right to legal recourse, or demands unreasonable notice from the covered borrower as a condition for legal action.

Any loan agreement or promissory note that is provided only to covered borrowers that contains one or more of the prohibited terms is void from its inception which means the covered borrower would not be required to repay any loan balance.

However, as explained in Question #15 of the DoD's Official Interpretations, The DoD realized that many creditors would likely use loan agreements that would be designed to be provided to both covered borrowers as well as consumers who are not subject to the MLA requirements. According to Question #15, these loan agreements may include any of the prohibited terms, provided that the loan agreement also contains a contractual "savings clause" limiting the application of the prohibited terms only to consumers who are not subject to the MLA Rule. Therefore, covered borrowers would not be subject to the prohibited terms and the loan agreement would not be void from its inception.

Source: CUNA Compliance Community

FinCEN Awards Recognize Law Enforcement Success Stories Supported by Bank Secrecy Act Reporting

The Financial Crimes Enforcement Network (FinCEN) held its third annual [Law Enforcement Awards](#) ceremony this week at the Treasury Department. FinCEN presented awards to law enforcement agencies that use Bank Secrecy Act reporting provided by financial institutions in their criminal investigations.

The goals of the program are to recognize law enforcement agencies that made effective use of financial institution reporting to obtain a successful

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



InfoSight Highlight

Investments – Permissible Investments

Variable rate investment: A federal credit union may invest in a variable rate investment, as long as the index is tied to domestic interest rates. Except in the case of Treasury Inflation Protected Securities, the variable rate investment cannot, for example, be tied to foreign currencies, foreign interest rates, or domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this part, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

Corporate credit union shares or deposits: A Federal credit union may purchase shares or deposits in a corporate credit union, except where the NCUA Board has notified it that the corporate credit union is not operating in compliance with part 704 of this chapter. A Federal credit union's aggregate amount of perpetual and non-perpetual capital, as defined in part 704 of this chapter, in one corporate credit union is limited to two percent of the federal credit union's assets measured at the time of investment or adjustment. A Federal credit union's aggregate amount of contributed capital in all corporate credit unions is limited to four percent of assets measured at the time of investment or adjustment.

prosecution, and to demonstrate to the financial industry the value of its reporting to law enforcement. The program emphasizes that prompt and accurate reporting by the financial industry is vital to the successful partnership with law enforcement to fight financial crime.

Source: FinCEN

Advocacy Highlight

Michigan Credit Unions Encourage NCUA to Merge Funds

Last week, the Michigan Credit Union League (MCUL) and 100 of their credit union CEOs sent a letter to the NCUA's Acting Chairman Mark McWatters and Board Member Rick Metsger. The Michigan credit unions encouraged the NCUA Board to merge the National Credit Union Share Insurance Fund (NCUSIF) and the Temporary Corporate Credit Union Stabilization Fund (TCCUSF). They also urged the Board to issue a dividend to any credit union with amounts over the mandated 1.3% in the NCUSIF. "Merging the two funds this year would eliminate the need for an insurance premium assessment as well as allow for dividends sooner rather than later to occur. While it is understood that merging the two funds also comes with some amount of risk and uncertainty, the passage of time and a very low probability of a significant economic downturn in the coming years, the risk seems relatively low."

Ohio Budget Bill with Credit Union Provisions Advances

Recently, the Ohio House passed the budget (Sub. H. 49) by a 58-37 vote. The bill contains several provisions that would impact credit unions, including public deposits, a Good Funds correction and remote notarization. The Ohio League is working diligently to strengthen those provisions as the measure heads to the Senate. The budget bill grants credit unions access to Ohio's public deposit programs. Business Link and Ag-Link, however, still requires credit unions pay the Treasurer Assessment Rate. Banks are not subject to the Treasurer Assessment rate and the League is seeking to amend the language to grant credit unions parity in the Senate. The League is already working closely with Senate leaders to ensure credit union interests are well-represented and protected in their version of the budget bill.

Georgia Governor Signs Legislation with Pro-Credit Union Provisions

Earlier this month, Georgia's Governor Nathan Deal signed H. 154 into law. This legislation, backed by Georgia's Credit Unions, included a number of pro-credit union provisions that will improve operations and alleviate compliance burdens. Among those provisions:

- Create flexibility and enhancements in the audit provisions for smaller credit unions by permitting different forms of audits to be held on a case-by-case basis;
- Outline that businesses headquartered within the field of membership may be eligible for membership in the same manner as a person;
- Add "working" to the eligible criteria for field of membership when an individual is working in the approved geographic area;
- Add whole loans to the permissible items for investment;
- Outline the ability of financial institutions to charge a convenience fee;
- Permit financial institutions to operate on Sundays;
- Increase the age at which a minor can open an account

Source: CUNA Advocacy Removing Barriers

CUNA Advocacy Report

Registered investment company: A Federal credit union may invest in a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for Federal credit unions.

Collateralized mortgage obligation/real estate mortgage

investment conduit: A Federal credit union may invest in a fixed or variable rate collateralized mortgage obligation/real estate mortgage investment conduit.

Municipal security: A Federal credit union may purchase and hold a municipal security, as defined in Section 107(7)(K) of the Act, only if it conducts and documents an analysis that reasonably concludes the security is at least investment grade. The Federal credit union must also limit its aggregate municipal securities holdings to no more than 75 percent of the Federal credit union's net worth and limit its holdings of municipal securities issued by any single issuer to no more than 25 percent of the Federal credit union's net worth.

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

Compliance Videos

First Quarter 2017 Recap and Second Quarter Outlook

This [new video](#) provides a recap from Glory LeDu, Director of League System Relations, of the first quarter compliance updates and gives a "sneak peek" of what is to come in the second quarter of 2017. Included are such topics as the NCUA changes to Member Business Lending, the Fixed Assets Rule and the Chartering and Field of Membership Manual as well as a minor revision to the CFPB's HMDA information. There were also annual updates from the CFPB, FRB and the IRS. The FFIEC has also updated the Uniform Interagency Consumer Compliance Rating System, which is mentioned in this video as well as covered in depth in a separate video (see below).

FFIEC Consumer Compliance

In this [new video](#), Glory LeDu explains the updates made to the Uniform Interagency Consumer Compliance Rating System by the Federal Financial Institutions Examination Council (FFIEC), as well as the CFPB's requirements for an effective Consumer Compliance Management System. Credit unions should review this video to determine how their current compliance management system stacks up, as examiners will be using this rating system to evaluate credit unions on compliance factors and will be assigning an overall Consumer Compliance Rating.

Member Business Lending

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

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

May 16

Webinar: [Legal & Compliance Issues in Obtaining Priority in Collateral, Including Purchase Money Security Interests](#)

May 17

Webinar: [Conducting an RDC Risk Assessment: Compliance Findings & Regulatory Guidance](#)

May 18

Webinar: [HMDA Data Collection Rules: Preparing for the Extensive Jan 1, 2018 Changes](#)

May 23

Webinar: [How to Handle Unauthorized Electronic Fund Transfers Under Reg E](#)

May 24

Webinar: [Account Documentation Series: Non-resident Alien Accounts](#)

May 31

Webinar: [Mastering Escrow Compliance: Analysis, Rules, Forms & Accounting](#)

June 7

Webinar: [Report Writing for Auditors – Tips, Tools & Best Practices](#)

June 8

Webinar: [Revisiting TRID Line-by-Line Part 2: Closing Disclosure](#)

Compliance Lunch & Learn - Wyoming

Compliance professionals, get ready for the next Compliance Lunch & Learn, on Tuesday, May 23 in the private room at Applebee's in Cheyenne, WY. The session will feature a presentation, networking time, lunch and an open-forum discussion on Power of Attorney, Trusts & UDAAP, led by Mark Robey, SVP, Regulatory Affairs and General Counsel at Mountain West, and Julie Kappenman, Director of Association Compliance Services, at Mountain West. Cost is \$35 per person (includes lunch). The program takes place from 11:30 am - 1:30 pm. To register, contact Jodi Weiser at jweiser@mwcu.com

Advocacy Highlight



Compliance Calendar

July 30, 2017

- 5300 Call Report Due to NCUA

May 29, 2017

- Memorial Day Holiday

July 4, 2017

- July 4th Holiday

September 4, 2017

- Labor Day Holiday

September 15, 2017

- [Same-day ACH – Phase 2](#)

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 1, 2018

- [Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z](#)

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

September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

October 19, 2017~CFPB

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

April 1, 2018 ~ CFPB

Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z

CUNA Comment Calls – Due Dates on Proposed Rules

May 1, 2017~CFPB

Alternative Data

May 4, 2017~CFPB

CFPB's Amendments to Equal Credit Opportunity Act (Reg B) Ethnicity and Race Information Collection

May 9, 2017 ~ NCUA

Alternative Capital

May 23, 2017~CFPB

Review of Remittances Rule

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

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