

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

May 19, 2017

### Compliance News

#### SCRA 6% Rate Cap - Reminders

##### Background

The Servicemembers Civil Relief Act (SCRA) protects individuals on full-time active duty in the military service of the United States who have been "materially affected" (i.e., financially impacted) by their active duty service.

"Active duty" begins on the date service commences and ends when an individual is separated (i.e., released) from military service. Enlisted reservists may receive protection as soon as they receive orders to report for duty. Active duty personnel include individuals appointed, enlisted or inducted into the regular branches of the U.S. military service, as well as members of the National Guard when called to federal service for longer than 30 days.

This article focuses on the SCRA's 6% interest rate limit. However, keep in mind that there are a number of other SCRA protections that credit unions should be aware of, including provisions that impact default judgments, foreclosures, repossessions, and other matters that may adversely affect the interests of servicemembers during their military service. All of these requirements are covered in detail in [CUNA's e-Guide](#).

##### 6% Interest Rate Cap

The SCRA limits interest rates on debts incurred prior to active duty ("pre-service" debts) at 6% for the duration of the servicemember's period of military service. The term "interest" includes service charges, renewal fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

The 6% interest rate limit does not apply to debt incurred during or after active duty service. Therefore, the rate cap does not apply to new advances under an existing credit card or home equity line of credit program. This is true even if the open-end plans were established prior to active duty.

**Notice to creditors.** In order to receive reduced rates, the servicemember must provide the credit union with a written notice and a copy of the military orders calling the servicemember to active duty, as well as any orders further extending military service. The orders will indicate when active duty service begins and estimates when the member will leave active duty service. The notice to creditors must be provided not later than 180 days after the date of the servicemember's termination or release from military service.

Once the credit union receives this notice, it must reduce the interest rate

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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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on any pre-service debt as of the date on which the servicemember was called to military service. In addition, the SCRA requires a creditor to reduce the amount of any periodic payment due from a servicemember by the amount of the interest forgiven that is allocable to the period for which the payment is made.

**What if the credit union believes the member is not “materially affected” by active duty service?** If a credit union believes that a servicemember is not entitled to the rate reduction, it may not automatically refuse to lower the rate. The SCRA states that the 6% rate cap shall apply to active duty servicemembers, unless "in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6% per year is not materially affected by reason of the servicemember's military service." In other words, the credit union must go to court and prove that the ability of the servicemember to repay the loan(s) has not been materially affected by active duty.

**Restoring the contract rate after active duty.** Generally, once the member is no longer on active duty, the rate may be restored to the contract rate. However, for mortgage loans, the 6% interest rate must be extended for one year beyond the period of military service.

**Can the credit union recapture lost interest?** No -- the credit union must forgive any interest in excess of 6% that would have been incurred by the member if no rate cap was in effect.

This is just the nutshell version of the requirements. [See CUNA's e-Guide](#) for more information on the SCRA, including a detailed summary and frequently asked questions.

*Source: CUNA Compliance Blog*

### **New Executive Order on Cybersecurity: Credit Union, Bank Leadership React**

Three financial services trade organizations had mixed reactions to an executive order, signed by President Trump last week, which calls for a massive review of cybersecurity efforts in government agencies, requires agencies to use one set of cybersecurity risk-management standards and holds agency heads accountable for protecting data.

Within the next 90 days, heads of executive departments and agencies must provide risk-management reports — some of which may be classified — to Homeland Security and the Office of Management and Budget detailing how they manage cyber-risks, what changes they plan to make, and what cybersecurity risks they're willing to accept.

According to the order, agencies must also adopt the National Institute of Standards and Technology's Framework for Improving Critical Infrastructure Cybersecurity, first issued in 2014, to manage cybersecurity risk.

"The executive branch has for too long accepted antiquated and difficult-to-defend IT," the order said. "Known but unmitigated vulnerabilities are among the highest cybersecurity risks faced by executive departments and agencies," it added. "Known vulnerabilities include using operating systems or hardware beyond the vendor's support lifecycle, declining to implement a vendor's security patch, or failing to execute security-specific configuration guidance."

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**

#### **Servicemembers Civil Relief Act**

The Servicemembers Civil Relief Act (SCRA or Act) restates, clarifies, and revises the Soldiers' and Sailors' Civil Relief Act of 1940 in an effort to help ease the economic and legal burdens on military personnel called to active duty status.

The Act provides protection to individuals who are on full-time active military service of the United States. Active duty personnel includes individuals appointed, enlisted, or inducted into regular branches of the U.S. military service, that is the Army, Air Force, Navy, Marines, and Coast Guard, as well as personnel mobilized in National Guard and Reserve Units and certain public health officers. Active duty also includes full-time training such as boot camp.

Coverage under the SCRA begins when the service member receives his or her orders to report for active duty. Generally, it ends with the date of termination from active duty or upon death while in active service. It also includes any time-period during which a person in military service is absent from duty because of sickness, wounds, leave, or other lawful cause. Some of the protections of the Act continue beyond the period of active duty for a

The order also requires several agencies to coordinate on a report of how the tech-modernization efforts would work legally, financially and from a policy perspective. Reports on reducing cyber-threats such as automated and distributed attacks (botnets), building international cooperation on cybersecurity and supporting the growth of the country's cybersecurity workforce are also on the list.

In addition, the Secretary of Energy and the Secretary of Homeland Security must issue a report on the potential effects of cyber-related power outages and gaps in readiness for those events. The Defense Department, Homeland Security and the FBI are required to issue a report about cybersecurity risks facing military operations and defense supply chains.

Further, the Department of Homeland Security and the Secretary of Commerce must report on how well existing government policies and practices promote market transparency of cyber risk management in "critical infrastructure entities," especially those that are publicly traded.

The NCUA said it is currently reviewing the executive order and had no comment on its implications for the agency. CUNA, however, appeared somewhat skeptical of the order's requirements.

"CUNA generally supports the use of the framework as a tool for credit unions but is concerned that mandatory use by federal agencies could eventually lead to making it a mandatory standard for financial institutions," it said in a statement. "It should not create additional requirements, nor should it apply a one-size-fits-all approach for credit unions to demonstrate readiness. CUNA also believes that, should regulators determine new or additional cybersecurity requirements are necessary, those should be incorporated into existing frameworks and guidance."

American Bankers Association President and CEO Rob Nichols praised the executive order in a statement, saying it "will enhance the security of government systems and help protect our critical financial infrastructure — and ultimately bank customers — through enhanced information sharing and greater cross-industry collaboration."

"The financial services industry is committed to help protect our country's critical sectors and economic security. America's banks will continue to work closely with the White House, Congress and others to establish clear lines of public-private communication, while avoiding inconsistent or duplicative regulation that might undermine our efforts to protect banks and the customers they serve," he added.

Kenneth E. Bentsen, Jr., who is president and CEO of the Securities Industry and Financial Markets Association (SIFMA) also applauded the executive order.

"We commend the Administration for its focus on the critically important issue of cybersecurity. Improving both the government's and the private sector's ability to defend against cyberattacks is a top priority for the financial services industry," he said in a statement issued yesterday.

"The Administration's Executive Order is a positive step forward for enhancing the cyber defense capability of the government, but we urge those agencies and departments not directly covered by this action to

short time.

Under the SCRA (as was the case under the SSCRA), while a service member is on active duty, a credit union may charge no more than six percent (6%) simple interest on loan balances incurred prior to active duty status. The SCRA clarifies this requirement by extending that limitation to the service member and his or her spouse jointly. As many credit unions learned during the Desert Shield/Desert Storm call-up of reservists in 1990/91, this protection causes an immediate compliance responsibility of uncertain duration. The SCRA also clarifies that any interest in excess of 6% that otherwise would have been incurred (while on active duty) is forgiven. The SCRA also extends protections to co-debtors who may also be obligated on loans with the active duty servicemember.

The SCRA severely restricts the ability of credit unions to obtain default judgments against service members whose ability to defend themselves in court has been prejudiced by active duty status.

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.

adopt these policies to better protect Americans,” he added.

### **Independent Community Bankers of America Pushes Review of CU Tax Exemption**

The Independent Community Bankers of America (ICBA) are asking the Trump Administration to push for a review of the credit union tax exemption, contending that they have an unfair advantage over banks. In a white paper sent last week to Treasury Secretary Mnuchin, the ICBA contends that the credit union model is outdated.

“The National Credit Union Administration (NCUA) has enabled many credit unions to grow their membership and their markets well beyond their statutory mission,” the ICBA stated.

President Trump earlier this year asked Mnuchin, in consultation with members of the Financial Stability Oversight Council, to develop recommendations on how to overhaul the regulatory regime governing financial institutions.

Separately, tax-writing committees on Capitol Hill are exploring ways to enact comprehensive tax reform.

In their white paper, the bankers cite many of the regulatory problems that credit unions face. They ask Treasury to push for changes in mortgage regulations, commercial lending and the work of the CFPB.

“As illustrated in this paper, community banks operate in a suffocating regulatory environment that prevents them from reaching their full potential as catalysts for local economic growth and job creation,” the ICBA contends.

In arguing that credit unions have an unfair advantage because of their tax exemption, the ICBA cites growth in the industry.

The bankers said that while the number of credit unions has decreased, in the past four years assets of federally insured credit unions have grown by nearly \$70 billion and membership has grown by more than 10 million.

In just the past four years, the total assets of federally insured credit unions have grown by nearly \$70 billion and membership has grown by more than 10 million, while the total number of credit unions has declined by more than 1,000, the ICBA said in the white paper.

The bankers said that credit unions also are increasing their business lending activities, adding that “This increase in lending comes at the direct expense of taxpaying community banks.”

The bankers asked the Treasury Department to push for a review of the credit union tax exemption—especially for the largest, multi-billion-dollar credit unions—in an effort to “rein in the rogue credit union sector.”

In addition, credit unions should not be granted any additional expansion powers as long as they have the tax exemption and are exempt from the Community Reinvestment Act, they said.

The bankers also said that credit unions also must not be allowed to raise supplemental capital, and should be required to comply with the CRA.

Finally, Congress should ease the way for credit unions to convert to

### **Advocacy Highlight**

#### **CUNA Submits Follow-Up Letter to DoD Regarding the Adverse Impact of the MLA on Servicemembers**

In a February 2017 letter, CUNA notified the DoD that we were in the process of collecting data that would demonstrate the adverse impact the MLA regulation is having on some credit unions' ability to lend to servicemembers and their families. CUNA combed through National Credit Union Administration (NCUA) regulatory call report data to determine the extent to which credit unions have been forced to discontinue certain products directly covered by the MLA regulation. In addition to examining call report data, CUNA surveyed credit unions on whether and how the MLA regulation has affected the safe and affordable products and services they are able to offer their members, including servicemembers. We completed our data collection shortly after the end of the first quarter of this year.

The letter shared the relevant findings from our data collection and offered suggestions the DoD can implement to reduce or eliminate the adverse impact the MLA rule is having on servicemembers and their dependents.

The letter points out the types of loans credit unions have eliminated as a result of the MLA rule and the numbers of servicemembers and dependents and reserve personnel and dependents potentially harmed by the elimination of particular loan products.

Click [here](#) for a copy of CUNA's May 11, 2017 follow-up letter to the DoD.

*Source: CUNA*

#### **Comment on the CFPB's Remittance Rule Review**

The notice and resources are available in [PowerComment](#), and **comments are due May 23**.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”—DFA) requires the bureau to review each significant rule issued within five years of the rule’s effective date. The remittance rule, effective Oct. 8, 2013, was the first significant rule issued by the bureau, and as such, it is beginning the review process. Section 1022(d)(3) of the DFA further requires that before the bureau publishes a report of its assessment, it must invite public comment on *recommendations for modifying, expanding, or eliminating the significant rule or order*.

At a meeting with the CFPB last week in Los Angeles, five of the six credit unions present informed Acting Deputy Director David Silberman that they exited the remittance business in 2013 due to implementation challenges, costs, and the risks associated with the new rule. The remaining credit union continued the service because of its unique members’ needs—but it is doing so at a higher cost and



commercial banks, the ICBA said.

Source: *Credit Union Times*

## 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

#### **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](#)

#### **June 13**

Webinar: [Traditional & Roth IRA Plan Establishment & Required Amendments](#)

#### **June 14**

Webinar: [Reporting Member Credit & Effectively Managing Credit Disputes](#)

#### **June 20**

Webinar: [Supervisory Committees: Understanding Expectations & Avoiding Landmines](#)

#### **June 21**

Webinar: [Adverse Action in Mortgage Lending: Are You in Compliance?](#)

#### **June 22**

Webinar: [New BSA Officer Training](#)

#### **June 28**

Webinar: [Top 10 Things You to Know About the CFPB's Amendments to Mortgage Servicing Requirements before Oct. 19](#)

#### **June 29**

Webinar: [Same-Day ACH: Preparing for Processing Debits, Effective Sept. 15, 2017](#)

#### **July 10**

Webinar: [Wire Transfer Security Controls: Regulatory Guidance, Risk](#)

risk.

In addition, those who attended a meeting with CFPB Director Richard Cordray in February during the Governmental Affairs Conference (GAC) in Washington, D.C. will remember a lively conversation about remittances. Credit union leaders shared comments about the impact the rule has had on consumers and their communities. These comments ranged from the inability to offer remittances due to the high burdens, risks and costs; offering remittances but at a loss; and offering remittances but with an increased fee to members to help mitigate the costs and liabilities.

While the majority of the requirements under the remittance rule come directly from the DFA, the bureau has some discretion in defining who is a "remittance transfer provider." The statutory definition of a provider is any person or financial institution that provides remittance transfers for a consumer "in the normal course of its business."

In [August 2012 the bureau determined](#) the phrase "normal course of its business" means any financial institution that provides more than 100 remittance transfers in both the prior and current calendar year.

### **Vermont's Legislature Becomes the First to Legalize Recreational Marijuana**

While eight states and the District of Columbia have legalized recreational marijuana by voter referendum, earlier this week Vermont's Legislature became the first in the nation to approve a recreational marijuana legalization bill, S. 22. The measure will now be considered by Governor Phil Scott. If signed, it would become effective July 1, 2018.

The bill provides that small amounts of marijuana would be legal to possess and grow for anyone over the age of 21. Larger amounts would remain illegal. The legislation also creates a nine-member commission that will develop a proposal to tax and regulate marijuana.

Marijuana businesses operating under state laws that have legalized the substance have, for the most part, been denied access to the mainstream financial system because institutions that provide financial services to such businesses can be [prosecuted under federal law](#).

CUNA continues to monitor and track marijuana legislation in Congress and the states.

Source: *CUNA*



## 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@mwcua.com](mailto:jweiser@mwcua.com)

## 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

## Compliance Calendar

### May 29, 2017

- Memorial Day Holiday

### July 4, 2017

- July 4<sup>th</sup> Holiday

### July 30, 2017

- 5300 Call Report Due to NCUA

### 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

Please respond to [Mark Robey](mailto:Mark.Robey@mwcua.com) with any questions or concerns regarding content of this newsletter.

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