

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

June 2, 2017

Compliance News

FinCEN to Update Currency Transaction Report

In August of 2017, the Currency Transaction Report (CTR) available on the BSA E-Filing System will be updated to adhere to the changes defined in Federal Register [notice](#) posted on February 20th, 2016. New or updated data fields will be added to the online discrete CTR as well as the CTR batch files. The new or updated data fields are:

Part I Person Involved in Transaction

- Renamed Item 2d from “Courier Service (private)” to “Common carrier”

Part II Amount and Type of Transaction

- Added a checkbox to Item 24 to reflect “Shared Branching”

Part III Transaction Location

- Added an Unknown option to Item 29, Primary Federal Regulator
- Added an Unknown checkbox to Item 32, EIN
- Added Item 37, Country
- Added Item 41, Cash in amount for transaction location
- Added Item 42, Cash out amount for transaction location

Part IV Filing Institution Contact Information

- Added new Part IV “Filing Institution Contact Information” section to collect data about the institution that filed the CTR

Batch filers will be required to submit the updated CTR data in an XML based file, rather than the current ASCII based fixed-length delimited file. The XML User Guide can be downloaded at:

[FinCEN Currency Transaction Report \(CTR\) Electronic Filing Requirements for XML](#). More information can be found [here](#).

FinCEN will host a technical webinar on June 21st, 2017 to provide an overview of the XML specifications and also address any questions regarding the XML User Guide. Application developers and programmers are urged to register and attend this webinar. Participants can register for the webinar at:

<https://attendee.gotowebinar.com/register/8816599296795401730>

After registering, you will receive a confirmation email containing information about joining the webinar. [View System Requirements](#). Initial questions may be submitted via email at BSAEFilingHelp@fincen.gov prior to the webinar. Please indicate “FinCEN CTR Update Questions” in the subject heading of your email.

Source: FinCEN

Fiduciary Rule Effective June 9, 2017

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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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Association Compliance Forums

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[BSA Compliance Officer Forum](#)

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

The Department of Labor has issued [Guidance FAQs](#) on a phased-in implementation of its [Fiduciary Conflict of Interest Rule](#) and related exemptions beginning at midnight Friday, June 9, 2017, with certain provisions in the exemptions delayed to January 1, 2018. As a result, on June 9, investment advice providers to retirement savers will become fiduciaries, and the "impartial conduct standards" will become requirements of the exemptions. The Department will continue to examine the Fiduciary Rule in compliance with the [President's February 3, 2017, memorandum](#).

Source: Department of Labor

Determining Covered Borrower Status Under the MLA Rule

The MLA rule permits a creditor to use its own method to determine a servicemember's status as a covered borrower, although it provides a safe harbor to a creditor that employs either of the two methods using information obtained directly or indirectly from the DMDC database, or obtaining a consumer report from a nationwide consumer reporting agency. To benefit from the safe harbor provision, a creditor must determine a servicemember's covered borrower status at or before loan consummation for a closed-end loan or the time an open-end loan is established and must make a record of the determination.

The MLA rule prohibits a creditor from accessing the DMDC database after the loan has been established in order to determine whether a servicemember was a covered borrower prior to loan consummation.

However, Question #10 of the DoD's Official Interpretations states that the MLA rule permits a creditor to access the DMDC database periodically after loan consummation to determine whether a previously covered borrower continues to maintain the status as a covered borrower or whether the servicemember is no longer on active duty and therefore no longer a covered borrower. This provision is important, because if the servicemember is no longer a covered borrower, the loan is no longer covered by the MLA rule. Therefore, for example, in the case of an open-end loan, your credit union would not have to continue calculating the MAPR during each billing cycle.

Regulation Z's Advertising Requirements for Closed-End Loans

Section 1026.24 of Regulation Z lays out the requirements credit unions must follow when advertising closed-end loans. Here is an overview of those requirements.

- Requirements for All Advertisements
 - The advertisement must be clear and conspicuous and advertise only "actually available terms" (terms the credit union is prepared to offer)
- Proper Disclosure of Interest Rate and Annual Percentage Rate (APR)
 - The advertisement must disclose the APR associated with the loan product and if the APR is subject to increase after consummation, that fact must be stated in the advertisement
 - For discounted variable-rate transactions, the advertisement may identify the introductory rate so long as it provides the time frame during which the introductory rate will apply and the APR that will apply for the remainder of the loan term
- Trigger Terms Requiring Additional Disclosures
 - If the advertisement contains certain trigger terms, additional disclosures are required

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

Ability to Repay/Qualified Mortgages

Credit unions that make closed-end consumer loans secured by a dwelling must comply with Consumer Financial Protection Bureau's (CFPB) Ability-to-Repay/Qualified Mortgage (ATR/QM) Rule for loan applications. When a credit union complies with the Ability to Repay rule and underwrites certain "qualified mortgages," it has certain protections from legal liability.

The rule requires the credit union assess a member's ability to repay for virtually all closed-end residential mortgage loans secured by the member's dwelling.

Prior to the ATR/QM rule, Regulation Z, which implements the Truth in Lending Act (TILA), prohibited a creditor from making a higher-priced mortgage loan without regard to the member's ability to repay the loan. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA to adopt similar Ability-to-Repay (ATR) requirements for virtually all closed-end mortgage loans. The Dodd-Frank Act also provides a presumption of compliance with ATR requirements and protections from legal liability for a certain category of mortgages, called Qualified Mortgages (QMs).

The ability-to-repay rule:

- Special Advertising Rules for Closed-End Loans Secured by a Dwelling
 - Additional disclosures are required stating that the advertised payment does not include amounts for taxes or insurance premiums and that the member should consult a tax advisor to determine deductibility

There are also special rules that apply to electronic (internet, television and radio) advertisements.

Source: CUNA Compliance Blog

Advocacy Highlight

Request for Information Regarding Ability to Repay/Qualified Mortgage Rule Assessment

The Bureau of Consumer Financial Protection (Bureau) is conducting an assessment of the ATR/QM Rule under Regulation Z, in accordance with section 1022(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Bureau is requesting public comment on its plans for assessing this rule as well as certain recommendations and information that may be useful in conducting the planned assessment.

[Notice of assessment of Ability-to-Repay/Qualified Mortgage rule and request for public comment.](#)

Source: CFPB

ABA Files Motion for Summary Judgement in FOM Lawsuit

The American Bankers Association (ABA) filed a motion for summary judgment on May 26 in its suit against NCUA and its revised membership (FOM) rule. The ABA filed the lawsuit in U.S. District Court for the District of Columbia last December contending that the FOM rule [finalized](#) in October 2016 “expands the field of membership of community-based credit unions far beyond the limits imposed by Congress and previously recognized by NCUA.”

The summary judgement motion points to four areas where it contends that the NCUA oversteps what is allowed by the Federal Credit Union Act by:

- Considering a Combined Statistical Area identified by the Office of Management and Budget as a single local community;
- Not requiring a credit union that is approved to serve a Core-Based Statistical Area (CBSA) to serve the core of the CBSA, which “effectively authorizes redlining;”
- Allowing a credit union to serve areas adjacent to a local community even though those individuals reside outside of the community’s boundaries; and
- Expanding the definition of rural district where it can include an entire state and portions of another state.

CUNA obviously disagrees with the ABA’s claims and is stalwart in its support of the NCUA’s position in the lawsuit. CUNA plans to file an amicus brief to support the FOM rule. The NCUA has until June 21 to file its opposition to ABA’s motion for summary judgement and cross-motion for summary judgment.

CUNA Sends Letter to CFPB Outlining Necessary HMDA Changes

CUNA’s Senior Director of Advocacy and Counsel, Andy Price, [sent a letter](#) to the CFPB in regards to the Proposed Rule on Technical Corrections and Clarifying Amendments to the Regulation C - Home

- Expands coverage of the ability-to-repay (ATR) requirements to any consumer credit transaction secured by a dwelling, except an open-end credit plan, credit secured by an interest in a timeshare plan, reverse mortgages, and temporary loan.
- Prohibits a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the loan according to its terms, and all applicable taxes, insurance, and assessments.
- Provides a presumption of compliance with the ability-to-repay requirements if the mortgage loan is a “qualified mortgage,” which does not contain certain risky features and does not exceed certain thresholds for points and fees on the loan and which meets such other criteria as the CFPB may prescribe.
- Prohibits prepayment penalties unless the mortgage is a fixed-rate qualified mortgage that is not a higher-priced mortgage loan, and the amount and duration of the prepayment penalty are limited.

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 proposed rule is intended to provide clarifications, technical corrections, or minor changes and while CUNA supports several of the corrections, CUNA believes the CFPB should go much further noting that there are issues that should also be addressed before the proposed rule is finalized:

- **Delaying Compliance of the Rule**

We note that the comment deadline for this rule is approximately 6 months prior to the January 1, 2018 mandatory compliance date to begin collecting data under the rule. Any final rule is likely to occur after the January 1, 2018 effective date which presents a whole host of compliance/implementation/programming issues for a credit union. Although the proposed rule provides the later effective dates of January 1, 2019 or January 1, 2020 to correspond to related effective dates for amendments included in the 2015 HMDA Final Rule, the better approach would be to delay compliance with the entire 2015 HMDA Final Rule until the CFPB completes the appropriate clarifications, or for at least one year, to avoid confusion as to the interpretation of the rule.

- **Compliance Costs**

We note the CFPB's statement that it believes this proposal will not add additional costs to financial institutions. Any change to the data collection means credit unions will spend time updating policies and procedures, audits, and adjusting programming in their systems. Although these proposed changes are favorable and ultimately will make compliance easier, they do not happen in a vacuum. Any change to the regulations will create a cost to the institution.

- **Privacy Concerns**

The CFPB indicated it will allow a process for the public to provide input regarding the application of the "balancing test," yet six months before the January 1, 2018 effective date, no process has been provided.

1. Delay the effective date of the 2015 HMDA Final Rule for at least one year or until the CFPB has articulated which data points will be made public and in what format (with input from the public under notice and comment procedures);
2. Conduct a study regarding the impact on consumer privacy resulting from information made publicly available under HMDA and the potential for identity theft; and
3. Limit the number of required data points to only those expressly mandated under the Dodd-Frank Act. Therefore, required data points would not include the additional, extensive CFPB-created data points that add little in the way of useable data to enforce the purpose of HMDA yet create an enormous compliance burden on credit unions.

- **Reporting for HELOCs**

At a minimum, the CFPB should allow for the separate reporting of HELOC HMDA data versus closed-end reporting so institutions with separate systems are not required to bear the enormous cost of combining data generated from separate systems into one report for purposes of filing. The thresholds for compliance with HMDA should be increased to 500 for closed-end loans and to 1000 for open-end loans if the CFPB continues to require HELOC reporting.

CUNA will continue to urge the CFPB to consider the unnecessary regulatory burdens they are inflicting on credit unions in the



Compliance Calendar

June 9, 2017

- [Fiduciary Rule](#)

July 4, 2017

- July 4th 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 1, 2017

- [Prepaid Accounts Under the Electronic Funds Transfer Act/Reg E and the](#)

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

June 9, 2017~DOL

[Fiduciary Rule](#)

September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

October 19, 2017~CFPB

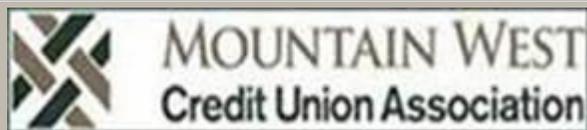
[Amendments to 2013 Mortgage Rules under RESPA/Reg X](#)

mortgage lending space.

Source: *CUNA Removing Barriers Blog*

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

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 Management & Monitoring](#)

July 18

Webinar: [Creating an Effective Suspicious Activity Program: Efficiency, Examinations & Fraud](#)

July 19

Webinar: [Regulation E Fundamentals: Back to Basics](#)

July 25

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 9, 2017 ~ NCUA

[Alternative Capital](#)

May 23, 2017~CFPB

[Review of Remittances Rule](#)

May 25, 2017~CFPB

[Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure \(Reg C\) October 2015 Final Rule](#)

July 17, 2017~NCUA

[2017 Regulatory Review](#)

CO Compliance Lunch & Learn Set for June 29

Colorado compliance professionals, get ready for the next Compliance Lunch & Learn, on Thursday, June 29, 2017 in the Serner Center at the Mountain West offices in Denver, CO. This two-hour program includes a presentation, networking time, lunch and an open-forum discussion on Unfair Deceptive and Abusive Acts and Practices Act (UDAAP). Our presenter, attorney Bob Wilson, will discuss recent enforcement actions and violations, agency enforcement authority, and share best practices to help your credit union avoid liability. 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.

Webinar: [20 UCC Provisions Yu Must Know When Cashing or Depositing Checks](#)

July 26

Webinar: [E-Compliance Rules, Policies & Best Practices for Email, Web, Mobile & Social Media](#)

July 27

Webinar: [Risk Management Series: Conducting a Fair Lending Risk Assessment](#)

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

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