

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

June 30, 2017

Compliance News

NCUA Issues Legal Opinion Re: Federal Credit Union's Authority to Issue and Sell Securities

In a recently released [opinion letter](#), NCUA opined that a federal credit union can issue and sell securities as long as it meets the three-pronged test detailed in 721.2 of NCUA's regulations that covers items considered incidental powers even though the activity is not considered preapproved under 721.3. The requirements for an activity to be considered an incidental power not expressly authorized as such, are met if the activity:

- Is convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act;
- Is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and
- Involves risks similar in nature to those already assumed as part of the business of credit unions.

Even with this opinion letter, federal credit unions interested in securitizing assets may still follow the application procedures listed in 721.4 of the rule because issuing and selling securities is still not listed as a preapproved activity. Additional NCUA guidance on securitization is forthcoming and will be issued by November. The legal opinion highlights the importance of a federal credit union working with NCUA to design and implement a successful program. In addition, a federal credit union should consult with legal counsel for compliance with other federal laws and regulations as well as any state and local laws that are applicable to asset securitization activities.

Source: NCUA

Expiring ITINs Can be Renewed Now for 2018

The IRS recently announced that it is accepting renewal applications for the ITINs set to expire at the end of 2017. This renewal process is beginning three months earlier than last year to make the process easier for taxpayers.

Under the Protecting Americans from Tax Hikes (PATH) Act, ITINs that have not been used on a federal tax return at least once in the last three consecutive years will expire Dec. 31, 2017, and ITINs with middle digits 70, 71, 72 or 80 will also expire at the end of the year, even if the taxpayer has used it in the last three years. Affected taxpayers who expect to file a tax return in 2018 must complete a Form W-7 and submit all required documentation.

Federal returns that are submitted in 2018 with an expired ITIN will be processed. However, exemptions and/or certain tax credits will be disallowed.

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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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In this recent notice, the IRS also reminds us that it no longer accepts passports that do not have a date of entry into the U.S. as a stand-alone identification document for dependents from a country other than Canada or Mexico, or dependents of U.S. military personnel overseas. The dependent's passport must have a date of entry stamp, otherwise the following additional documents to prove U.S. residency are required:

- U.S. medical records for dependents under age 6,
- U.S. school records for dependents under age 18, and
- U.S. school records (if a student), rental statements, bank statements or utility bills listing the applicant's name and U.S. address, if over age 18

For more information see [IR-2017-109](#)

Source: IRS

NCUA Board Meeting Information

NCUA's agenda for the June meeting consisted of three final rules, a proposed rule, a request for comment, and a board briefing. Details on each of the items follow:

Final rules:

- Statutory Inflation Adjustment of Civil Money Penalties. The CMP adjustments, as a result of the January 2017 interim rule, are final. Maximum penalty levels for 2017 are 1.6 higher than in 2016.
- Freedom of Information Act. An interim final rule that was issued in December 2016 revised the NCUA's procedures for disclosing records and resolving disputes. The final rule pertaining to Part 792 makes minor wording changes for clarity and consistency.
- Safe Harbor. Part 709 of NCUA's Rules and Regulations is related to the liquidation of credit unions and the final rule issued upon publication in the Federal Register will replace Section 709.10 which covers the treatment by the NCUA Board as conservator or liquidating agent of financial assets transferred in connection with a securitization or participation.

Other items discussed at the recent meeting included a request for comment on the Overhead Transfer Rate and a proposal making amendments to corporate credit unions, specifically to provisions under Part 704 related to retained earnings and Tier 1 capital.

The last item on the agenda was an update to the NCUA Board on the agency's enterprise solution modernization program, which includes replacing AIREs, tools related to the National Supervision Policy Manual (NSPM), and other technical systems related to data reporting, collection and sharing.

Additional details about the items above may be downloaded from the [board meeting agenda](#).

Right to Financial Privacy: FAQ

Q: If I receive a request for financial information belonging to one of my members from a federal government agency, what type of documentation from the agency should I require before turning the information over to them?

A: Generally, according to the Right to Financial Privacy Act (RFPA), a credit union should not release the records of a member unless the

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



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InfoSight Highlight

Customer Due Diligence and Beneficial Ownership

On May 11, 2016, FinCEN published a final rule regarding Customer Due Diligence (CDD) Requirements for Financial Institutions. This rule amends the Bank Secrecy Act regulations and formalizes several existing practices related to the monitoring of customer activity, and adds new requirements that covered financial institutions establish and maintain written procedures that are reasonably designed to identify and verify the beneficial owners of legal entity customers. Financial institutions must comply with this new rule by May 11, 2018.

Beneficial Ownership

The newest requirement under the rule is the identification of beneficial ownership. At the time of opening an account for a legal entity, a financial institution must identify beneficial owners of that legal entity. Beneficial ownership falls into one of two categories:

- Ownership – A person who owns 25% or more equity interest in the legal entity
- Control – A person that has significant responsibility to control the legal entity, such as a senior management official, or another person that performs similar actions

requesting agency provides: (a) a signed authorization from the member; (b) a search warrant; (c) a judicial subpoena; (d) a summons or administrative subpoena; or (e) a formal written request.

The government agency must give a certification to the credit union that it has complied with the RFPA. In addition to keeping a copy of the agency's certification, the credit union must maintain a record of all disclosures provided to the agency and the credit union members must be able to inspect it.

Whether an administrative or judicial subpoena or a summons is used, the government agency is required to provide a copy to both the credit union and the member.

There may be a delay in the government authority notifying the member if there is a belief that notification may endanger the life or safety of any person. Other reasons may include a possible flight from prosecution, destruction or tampering of evidence, intimidation of a potential witness, possible jeopardizing of an investigation or official proceeding, or because it could cause an undue delay in a trial.

RFPA Exceptions:

- No credit union is prohibited from notifying a Government authority of a possible illegal activity. The notification may only include the name or other identifying information of the individual, corporation or account.
- No credit union is prohibited from providing copies of any financial record to any court or Government authority incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the credit union itself or in its role as a fiduciary.

Good faith defense: Any credit union making a disclosure of financial records in good-faith reliance upon a certificate by any Government authority or in relation to a crime against the credit union by insiders will not be liable to the member under the RFPA or any state law.

RFPA vs. Privacy: It's worth noting that the Right to Financial Privacy law requirements (12 U.S. C. 3401) are in addition to the Gramm-Leach-Bliley (GLB) privacy regulation (12 CFR 1016). The GLB privacy rule requires that you provide member notification and an opt-out option before sharing your members' financial information with non-affiliated third parties. There are several exceptions in the GLB privacy regulation, including, for example, "law enforcement agencies ... self-regulatory organizations, or for an investigation on a matter related to public safety;" (12 CFR 1016.15(4)). This exception calls for the disclosure to be permitted in "accordance with the Right to Financial Privacy Act."

It's important to have the necessary documentation before releasing member financial records.

For more information see CUNA's eGuide: [Right to Financial Privacy](#)

Source: CUNA Compliance Blog

Advocacy Highlight

CUNA Advocates for Changes that Should be Made to CFPB

(typically, a CEO, CFO, COO, a manager, or a person serving in a similar capacity)

Information collected about the beneficial owner must include that person's:

- Name
- Date of Birth
- Address
- Social Security Number or other government identification number

This information must be collected for any individual with 25% or more of the equity interest of the legal entity and at least one individual with significant responsibility to control/manage the legal entity at the time the account is opened. If the legal entity does not have an owner, or does not have an owner with at least 25% of the equity interest, the credit union must still obtain information for one individual under the control prong.

Once the credit union collects this information, it must verify it within a reasonable period of time. These verification procedures must contain at least the same elements for verifying the identity of individuals under the credit union's existing CIP rule. Since acquiring proper verification documentation may be difficult, credit unions may rely on photocopies or other reproductions of identification documents when requiring documentary verification. Information need not be obtained directly from beneficial owners.

Beneficial owners are also subject to OFAC regulations, and must be checked against government lists.

These new beneficial ownership documentation rules are in addition to existing requirements, and the credit union must still collect and verify CIP information for the legal entity as required under existing rules.

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).

Rules

CUNA staff attended an SBA Office of Advocacy Roundtable to discuss the Dodd-Frank required assessment of CFPB mortgage rules and the Small Business Lending Request for Information. In addition to SBA Office of Advocacy staff, staff from the CFPB, the Federal Reserve, and the House Small Business Committee also attended. During the roundtable, the group discussed ideas for reducing regulatory burdens on small entities, such as credit unions.

Specifically, the group discussed:

- Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) Assessment
- Ability-to-Repay/Qualified Mortgage Rule Assessment
- Dodd-Frank Section 1071 & the CFPB's Request for Information on Small Business Lending

CUNA provided several credit union specific suggestions for changes to the mortgage rules and the pending Small Dollar Lending rule.

The SBA Office of Advocacy has in the past [expressed concerns](#) when CFPB rules have the potential to be overly burdensome to credit unions. Last year, they sent several suggestions during the comment period for the CFPB's proposed small dollar loan rule and urged it to exempt credit unions from it. In addition to this week's roundtable, the SBA Office of Advocacy plans to hold roundtables throughout the country to:

- Identify regional small business regulatory issues in order to assist agencies with regulatory reform and reduction in compliance with Executive Orders 13771 & 13777;
- Compile crucial information for Advocacy's new report on existing small business regulatory burdens across the nation, identifying specific recommendations for regulatory changes based upon first-hand accounts from small businesses across the country; and
- Inform and educate the small business public as to how Advocacy and SBA can assist them with their small business goals.

CUNA will continue to work with the SBA Office of Advocacy to highlight areas where the CFPB should further tailor its rules to alleviate regulatory burdens on credit unions.

Source: CUNA/CFPB

NCUA Proposes Changes to 'OTR' Methodology

Last week the National Credit Union Administration (NCUA) board issued [proposed changes](#) to the way the agency calculates the overhead transfer rate (OTR).

In January 2016 the board issued a request for comments on the OTR methodology. Based on a review of the 40 comments received and an internal assessment, the agency is now issuing proposed changes.

The NCUA said the proposed changes are meant to "reduce both the complexity of the methodology and the resources necessary to administer the overhead transfer rate."

"We are pleased the agency is moving forward with improving the methodology and seeking comments from stakeholders," said Sharon Lindeman, vice president of regulatory advocacy for the California and Nevada Credit Union Leagues. "We'll be reviewing the proposal and request for comments closely. Simplifying the method is welcome, and

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.

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

June 9, 2017

- [Fiduciary Rule](#)

July 4, 2017

- July 4th Federal Holiday

July 30, 2017

- 5300 Call Report Due to NCUA

September 4, 2017

- Labor Day Federal Holiday

September 15, 2017

- [Same-day ACH – Phase 2](#)

September 30, 2017~NCUA

- [New Call Report Form](#)

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](#)

most importantly we want to ensure the methodology will ensure a fair allocation of costs to both state and federally chartered credit unions.”

The request for comments will be available in [PowerComment](#) soon. Comments must be submitted within 60 days of publication in the Federal Register.

Source: NCUA



Training & Events Calendar

July 10

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

July 11

Webinar: [Account Documentation Series: Closing or Changing Deposit Accounts for Consumer & Businesses](#)

July 13

Webinar: [Call Reports: Financial Statements & Schedules B-E](#)

July 18

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

July 19

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

July 20

Webinar: [Working with Troubled Members: Loan Extensions, Deferments, Re-Aging, Refinancing & Incentives](#)

July 24

Webinar: [Special Rules for Credit Card Compliance: Changes in Terms, APR Increases, Protected Balances, Offsets, Fee Limits & More](#)

July 25

Webinar: [20 UCC Provisions You 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](#)

August 2

Webinar: [Advertising Compliance: Website, Print, TV & Radio](#)

August 15

Webinar: [TILA Rules for Non-Mortgage & Non-Credit Card Lending](#)

August 16

Webinar: [Job-Specific BSA for Deposit Operations: SAR Monitoring,](#)

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 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

July 10, 2017~CFPB

[CFPB’s Notice of Assessment of 2013 RESPA Servicing Rule and Request for Public Comment](#)

July 13, 2017~Federal Reserve

[Ability of Funds and Collection of Checks \(Reg CC\)](#)

July 14, 2017~CFPB

[CFPB’s Request for Information Regarding the Small Business Lending Market](#)

July 17, 2017~NCUA

[2017 Regulatory Review](#)

August 7, 2017~NCUA

[NCUA’s Notice of Proposed Rulemaking Regarding Appeals Process](#)

[NCUA’s Notice of Proposed Rulemaking Regarding Supervisory Review Committee; Procedures for Appealing Material Supervisory Determination](#)

314(1) Requests & CIP

August 21

Webinar: Revisiting Your HMDA Policies to Include Comprehensive Changes Effective Jan 1, 2018

August 22

Webinar: New Compliance Officer Boot Camp

Recorded Webinars:

Available June 30

Webinar: CTR Technical Changes: New Data Fields, Amendments & Alternate Model Reporting

Available August 18

Webinar: New MLA Requirements for Credit Cards, Effective Oct 3, 2017

NCUA's Notice of Proposed Rulemaking Regarding Bylaws; Bank Conversions and Mergers; and Voluntary Mergers of Federally Insured Credit Unions

Please note: There will not be a newsletter next week

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