

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

June 9, 2017

### Compliance News

#### DOL Fiduciary Rule: What's Next?

*The CUNA Compliance Blog provided the following article related to the Department of Labor Fiduciary Rule, which is effective June 9, 2017:*

The Department of Labor (DOL) delayed the “applicability date” for the fiduciary (“conflict of interest”) rule from April 10, 2017 to June 9, 2017. Certain provisions in the rule’s exemptions are further delayed to January 1, 2018 while the DOL conducts its ongoing examination of the fiduciary rule as directed by President Trump’s [February 2017 memorandum](#).

What’s required during this transition period between June 9 and January 1? The DOL recently released a set of frequently asked questions ([FAQs](#)) to provide additional information on the issues surrounding the transition period. But before we take a look at some of these issues, let’s review a few fiduciary rule basics:

1. The fiduciary rule is generally limited to investment advice concerning IRAs and Employee Retirement Income Security Act (ERISA)-covered retirement plans.
2. Generally speaking, a person is an investment advice fiduciary if s/he provides “investment advice” for a fee or other compensation.
3. Covered “investment advice” is defined as a “recommendation” to a plan, plan fiduciary, plan participant and beneficiary, IRA, or IRA owner for a fee or other compensation, direct or indirect. In other words, do any credit union employees:
  - Make “recommendations” regarding investments (e.g., buying, holding, selling, or exchanging securities or other investment property) or the management of investments (e.g., rollovers, transfers, or distributions from a plan or IRA); and
  - Receive direct or indirect fees or other compensation in connection with the transaction or service. The fee or compensation must be paid "in connection with or as a result of" the transaction or service (e.g., commission or bonus, as opposed to a base salary that would be paid regardless of the transaction).

The “and” is key: the rule will apply if both prongs are satisfied. If you outsource investment services, you’ve probably already heard from your provider about its plans to implement the rule. But, if you have any concerns regarding coverage, we strongly suggest that your credit union consult legal counsel.

4. Note that many types of communications are not considered “recommendations” (i.e., fiduciary investment advice) under the rule and will not trigger compliance, including general communications

### 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.

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(general circulation newsletters, general marketing materials etc.) and investment education (general financial, investment and retirement information, and asset allocation models and interactive investment materials, etc.).

5. If you're covered by the rule: Under ERISA and the Internal Revenue Code, parties providing fiduciary investment advice to plan sponsors, plan participants, and IRA owners are not permitted to receive payments creating conflicts of interest without complying with protective conditions in a "prohibited transaction exemption." Therefore, financial institutions, investment companies and investment advisers must either structure their compensation arrangements to avoid prohibited transactions or comply with an exemption, such as the Best Interest Contract (BIC) Exemption or Principal Transactions Exemption.

### **Now back to the question at hand: what's required during this transition period between June 9, 2017 and Jan. 1, 2018?**

The fiduciary rule's amended definition of fiduciary investment advice will apply on Friday, June 9, 2017. On that same date, the BIC Exemption and Principal Transactions Exemption will become available to fiduciary advisers. However, for a transition period extending until January 1, 2018, fewer conditions will apply to financial institutions and advisers that want to rely upon the exemptions.

During the transition period, financial institutions and advisers must comply with the "impartial conduct standards" which are consumer protection standards that ensure that advisers adhere to fiduciary norms and basic standards of fair dealing. The standards specifically require advisers and financial institutions to:

- Give advice that is in the "best interest" of the retirement investor. This best interest standard has two chief components: prudence and loyalty:
  - o Under the prudence standard, the advice must meet a professional standard of care as specified in the text of the exemption;
  - o Under the loyalty standard, the advice must be based on the interests of the customer, rather than the competing financial interest of the adviser or firm;
- Charge no more than reasonable compensation; and
- Make no misleading statements about investment transactions, compensation, and conflicts of interest.

For institutions that want to rely on the exemptions, full compliance with all of the exemptions' conditions will be required once the transition period ends on January 1, 2018 (absent further action by the DOL). These conditions include, among other things, requirements to execute a contract with IRA investors with certain enforceable promises, make specified disclosures, and implement specified policies and procedures to protect retirement investors from advice that is not in their best interest.

For more detailed information:

Click [here](#) for the DOL's FAQs on the transition period. Additional DOL FAQs: [Part 1: Exemptions](#) and [Part II: Rule Fiduciary Conflict of Interest Rule Web page](#)

*Source: CUNA Compliance Blog*

### **Regulators Issue Advisory on Appraiser Availability**

In response to concerns over the limited availability of state-certified and

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 1099-C**

Occasionally, credit union members may become past due on their obligations to the credit union, and the credit union pursues the collection of these debts in accordance with applicable laws and regulations. However, when an identifiable event occurs (meaning one of the eight possible scenarios listed below) indebtedness is considered discharged, which means the debt never has to be repaid by the debtor.

The Internal Revenue Code defines the receipt of funds that are not required to be repaid (i.e., discharged) as taxable income to the debtor. Credit unions report this type of debt using Internal Revenue Service (IRS) Form 1099-C. By requiring a credit union to report the discharged debt to the IRS using Form 1099-C and provide a copy of Form 1099-C to the affected debtor, a debtor may be more inclined to comply with the tax law and report his/her discharged debt as income.

Reporting is only required for discharges of indebtedness of \$600 or more.

The Mortgage Debt Relief Act (Pub. Law 110-142) provides that discharges of mortgages of up to \$2 million dollars

-licensed appraisers, particularly in rural areas, a [joint press release](#) has been issued by the FRB, FDIC, NCUA, and OCC announcing an [interagency advisory](#) that highlights two options to help insured depository institutions and bank holding companies facilitate the timely consideration of loan applications:

- Temporary practice permits may allow appraisers credentialed in one state to provide their services on a temporary basis in another state experiencing a shortage of appraisers, subject to state law. The advisory also discusses reciprocity, in which one state allows appraisers that are certified or licensed in another state to obtain certification or licensing without having to meet all of the state's certification or licensing standards.
- Temporary waivers would set aside requirements relating to the certification or licensing of individuals to perform appraisals under Title XI of FIRREA in states or geographic political subdivisions where certain conditions are met. Temporary waivers may be granted when it is determined that there is a scarcity of state-certified or state-licensed appraisers leading to significant delays in obtaining an appraisal.

*Source: NCUA*

### NCUA Releases MBL Rule FAQs

Last week, NCUA posted a series of [Frequently Asked Questions](#) in The NCUA Report related to implementation of the new MBL Rule. The answers provide some insight into NCUA's expectations surrounding the new rule. The topics cover steps credit unions can take to prepare for the changes, where credit unions can find guidance and background information, expectations for making loans without a personal guarantee, steps for monitoring the level of risk in individual loans, and the process to follow in the event a credit union disagrees with the findings of an examiner.

There isn't really anything new here, as everything in this document is already contained in the [Examiner's Guide](#). However, this series of FAQs can be a helpful tool for quick reference and is presented in a very readable format, applying the guidance and the rule to different questions credit unions are facing.

### Under the MLA Rule Which Fees or Charges Are Required to be Included in the Calculation of the MAPR?

Fees or charges that are considered "finance charges" under Regulation Z, (such as a cash advance fee, a foreign transaction fee, or an application fee charged to applicants whose loans are approved) must be included in the calculation of the MAPR, unless they are reasonable and bona fide fees charged to a credit card account that are excludable under Section 232.4(d) of the MLA rule.

Fees or charges that are not "finance charges" under Regulation Z (such as a late payment fee, an over-limit fee, or an application fee charged to all loan applicants whether or not credit is actually extended) generally may be excluded from the calculation of the MAPR, provided the fee is not required to be included by Section 232.4(c)(1). This section requires the inclusion of fees, charges or premiums for credit insurance, a debt cancellation contract, a debt suspension agreement or any credit-related ancillary product sold in connection with the credit transaction even though these fees or charges are generally excluded from the finance charge pursuant to Regulation Z.

*Source: CUNA Compliance Blog*

secured on their principal residences will not be subject to taxation. The law applies to discharges entered into between 2007-2009. However credit unions must still file the 1099-C.

### How does IRS Form 1099-C affect credit unions?

Indebtedness is considered discharged (requiring the credit union to file Form 1099-C) only when one of the following seven identifiable events occurs:

- A debt is discharged in bankruptcy, but only if the credit union knows from its books and records that the debt was for business or investment purposes;
- A discharge of indebtedness pursuant to an agreement between the credit union and the member;
- A discharge of indebtedness as a result of a credit union decision to discontinue its collection activity against that debt;
- A debt that is canceled or extinguished due to the expiration of the statute of limitations;
- A debt that is canceled or extinguished in receivership or foreclosure in a state or federal court;
- A debt that is canceled or extinguished pursuant to the credit union's election of foreclosure remedies; or
- A debt that is canceled or extinguished, rendering it unenforceable, pursuant to a probate or similar proceeding.

As of November 10, 2016, the 36-month non-payment testing period was eliminated from the above list. The IRS believed the 36-month non-payment rule created confusion for both the debtor and creditor and did not increase tax compliance or provide the IRS with valuable third-party information. This means that non-payment of a debt for a 36-month period will no longer be an "identifiable event" for Forms 1099-C that are filed after December 31, 2016.

Credit unions should monitor their members' outstanding debts in case one of the seven identifiable events listed above occurs. If one of the listed events does occur and the indebtedness totals \$600 or more, the credit union will have to file Form 1099-C.

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

## Final Reg CC Rule and New Proposal Issued

One part of the question concerning the future of Regulation CC has finally been solved. [The Federal Reserve Board has issued a final rule](#) to amend the check collection and return provisions in subparts C and D of the regulation, but left unchanged, for now, subpart B, which covers the funds availability and funds availability disclosure requirements. Rulemaking on subpart B must be done in partnership with the CFPB.

In the final rule, the Board has modified the current check collection and return requirements to reflect the virtually all-electronic check collection and return environment and to encourage all depository banks to receive, and paying banks to send, returned checks electronically. The Board has retained, without change, the current same-day settlement rule for paper checks. The Board is also applying Regulation CC's existing check warranties under subpart C to checks that are collected electronically, and in addition, has adopted new warranties and indemnities related to checks collected and returned electronically (including those deposited via remote deposit capture and mobile remote deposit capture) and to electronically-created items. The final rule will be effective July 1, 2018.

The Board has also released for comment a [proposed amendment](#) to the regulation's existing liability provisions to address situations when it's unknown whether a substitute or electronic check was altered or forged in certain cases. Comments on the proposal will be accepted for 60 days following *Federal Register* publication. The proposal was published at [82 FR 25539](#), with a comment period ending August 1, 2017.

## Deutsche Bank AG Pays \$41 Million for AML Deficiencies

The Board of Governors of the Federal Reserve System has [announced](#) a \$41 million penalty and consent cease and desist order against the U.S. operations of Deutsche Bank AG for anti-money laundering deficiencies.

The actions were taken by the Board to address unsafe and unsound practices at the firm's domestic banking operations. The Board identified failures by Deutsche Bank's U.S. banking operations to maintain an effective program to comply with the Bank Secrecy Act and anti-money laundering laws.

The consent order requires Deutsche Bank to improve its senior management oversight and controls related to compliance by the U.S. banking operations with anti-money laundering laws.

*Source: FRB*

## Advocacy Highlight

### CUNA Seeks Feedback on the TCPA and Your Credit Union

The Telephone Consumer Protection Act (TCPA) has added a number of compliance burdens to credit unions and has adversely affected the way credit unions can communicate with the members they serve.

In March, [CUNA met with the FCC's Chairman's](#) office to discuss the [many problems](#) credit unions face when attempting to understand complex FCC interpretations of the TCPA and come into compliance. They also remain concerned with frivolous class action litigation as a result of the unclear guidance.

CUNA appreciated [FCC Commissioner O'Reilly](#) highlighting the need for

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.

## 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 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 1, 2017

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



reform to the TCPA at an industry meeting in the beginning of May. He also included a strong critique of the FCC's past interpretation of the law.

In order to best measure and present the compliance burdens and costs associated with the TCPA, CUNA sent out a survey to member credit unions this week.

Please take a few minutes to review and complete [this confidential survey](#) (or send it to a designated member of your staff). At the end of the survey is an opportunity to include contact information if you or your credit union is interested in discussing your TCPA concerns directly with one of CUNA's regulatory attorneys.

### **CUNA Provides CFPB with Detailed Summary of Changes to Better Protect Credit Union Members**

CUNA sent CFPB Director Cordray a detailed list of [suggestions](#), accompanied by a [letter](#), highlighting the ways the CFPB's rulemaking have adversely affected the way credit unions operate and serve their members. In addition to outlining the issues, CUNA also included recommendations on how the CFPB should improve its regulations and rulemakings to provide much needed relief to credit unions and their members. The letter outlines:

- The negative effects CFPB regulations have had on credit union operations, their products and services, and their members even for rules the CFPB claims to have accommodated credit unions in;
- The costs borne by credit unions as a result of CFPB regulations—not including the additional costs that will be incurred as a result of the Home Mortgage Disclosure Act (HMDA) and Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure (TRID) requirements; and
- The failure of the CFPB both to use its legal authority to exempt credit unions from certain regulations and to adequately account for the size, complexity, structure, or mission of all credit unions.

The letter also includes detailed recommendations for how the CFPB can improve its work on:

- HMDA;
- Mortgage origination rules;
- Mortgage servicing regulations;
- Remittances
- The Fair Debt Collection Practice Act;
- Indirect lending;
- Prepaid cards;
- Payday and small-dollar loans;
- Unfair, deceptive, or abusive acts or practices;
- Voluntary products;
- Arbitration;
- Small business lending; and
- Access to financial records.

The current one-size-fits-all regulatory scheme employed by the CFPB does not work for credit unions and other community financial institutions, but rather favors the largest banks who have access to unlimited compliance resources. CUNA will continue to push for common-sense regulations and urge the Bureau to use their exemption authority for credit unions.

### **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](#)

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## **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](#)

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## **CUNA Comment Calls – Due Dates on Proposed Rules**

### **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](#)

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## **CO Compliance Lunch & Learn Set for June 29**

Colorado compliance professionals, get ready for the next



Training & Events Calendar

**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**

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

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@mwcu.com](mailto:jweiser@mwcu.com).

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