

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

September 15, 2017

Compliance News

Treasury Announces South Sudan Designations and FinCEN Advisory

The Department of the Treasury [announced](#) multiple actions on Wednesday in response to the continued deterioration of the humanitarian situation in South Sudan and the role of officials of the South Sudanese Government in undermining the peace, security, and stability of the country. The Office of Foreign Assets Control (OFAC) designated two South Sudanese government officials and one former official for their roles in destabilizing South Sudan and three companies that are owned or controlled by one of the officials. Additionally, the Financial Crimes Enforcement Network (FinCEN) issued an advisory [[FIN-2017-A004](#)] to financial institutions concerning the potential movement of assets belonging to South Sudanese politically exposed persons.

Source: Department of the Treasury

Early Savings Bond Redemptions in Irma's Wake

Federal Reserve Bank Services has announced that early savings bonds redemptions are authorized in areas of the [U.S. Virgin Islands](#), [Puerto Rico](#), and [Florida counties](#) affected by severe weather.

Each of the announcements includes a list of areas included (which may be updated as more information is received), and instructions for individuals who need replacements for missing or destroyed bonds and for those requesting a waiver of the holding period for bonds held in TreasuryDirect accounts.

Source: FRB Services

Protect Your Systems Against the EternalBlue Vulnerability

Credit unions need to ensure they aren't vulnerable to ransomware like Petya or WannaCry that can exploit the security vulnerability EternalBlue found on Microsoft's Windows-based systems.

Published by the hacking group Shadow Brokers in April, this security vulnerability targets Windows' SMB file-sharing system 1.0. This is a network file sharing protocol that allows computer applications to read and write to files, and to request services from systems that are on the same network. Left unpatched, hackers and other cyber actors can exploit this vulnerability and spread WannaCry and other infections to other unpatched computers and networks.

Versions of Windows Vista, Windows Server 2008, Windows 7, Windows Server 2008 R2, Windows 8.1, Windows Server 2012 and Windows Server 2012 R2, Windows RT 8.1, Windows 10, and Windows Server 2016 are all vulnerable to the EternalBlue exploit.

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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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Here's how you can strengthen your IT systems to ensure you're better protected:

- Install Microsoft's patch for the EternalBlue vulnerability that was released on March 14 on to your systems;
- Ensure your anti-virus software is up-to-date;
- Review and manage the use of privileged accounts. A best practice is to implement the principle of least privilege. No users should be assigned administrative access unless absolutely needed. Those with a need for administrator accounts should only use them when necessary;
- Educate your staff so they can scrutinize links and attachments found in unsolicited emails;
- Limit access to critical functions or files to only those who absolutely need it. For example, if a user only needs to read specific files, they should not have write access to those files or directories;
- Enable automatic installation of patches for your operating system and web browser;
- Disable macro scripts on Microsoft Office files transmitted by email;
- Develop and implement education programs to help employees identify scams, malicious links and forms of social engineering. Test your employees regularly as well; and
- Test your backups to ensure they work correctly.

Remember: Cyber adversaries can exploit vulnerabilities in older operating systems and un-patched software now more than ever before. The breadth and complexity of the exploits and malware we have seen often exceed the protections that reactive defenses like anti-virus software can provide. Proactive defenses like those provided by Microsoft and other third parties can help, as can cyber-threat intelligence and regular vulnerability assessments.

For additional information, visit [NCUA's Cybersecurity Resources Center](#).

Credit Union Boards Are the First Line of Defense Against Fraud

Sometimes, credit unions fail. When they do, NCUA's Asset Management and Assistance Center is there to manage the liquidation by winding down the affairs of the failed credit union and minimizing losses to the Share Insurance Fund. Our office also ensures that all verified shares are returned to members, typically within five days of a credit union's closure.

Over the last ten years, NCUA has liquidated 135 natural person credit unions, ranging in size from just under \$15,000 in assets to more than \$320 million in assets. A little less than half of these liquidations were caused by fraudulent activity. In recent years, fraud has played a role in several failures. In 2016, fraud was a contributing factor at 10 of the 14 credit unions that failed during the year, costing the Share Insurance Fund \$6.5 million. In 2015, fraud was a contributing factor at 11 of the 16 failed credit unions for that year, costing \$12.3 million. Of the two credit unions that failed in 2017 so far, fraud was a contributing factor in one of them. Smaller credit unions in particular face significant fraud risk because they have limited staff to ensure adequate controls are in place and they lack sufficient reserves to absorb any losses from fraud. However, an engaged board of directors can be a critical first line of defense against the potential for fraud and employee dishonesty.

Our analysis of failed credit unions shows that credit union boards can mitigate the potential for fraud through increased oversight and engagement in the credit union's operations and financial management.

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



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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

IRS Form W-8BEN

IRS Form W-8BEN is a form that every nonresident alien who wishes to open a new account with a credit union must complete. Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding) replaced Form W-8 (Certificate of Foreign Status) as of January 1, 2001.

Effective January 1, 2017, a Form W-8BEN is required to contain the foreign person's foreign TIN and, in the case of an individual account holder, the foreign person's date of birth in order for the credit union to treat the Form as valid. For Form W-8BENs associated with payments made beginning on January 1, 2018, if a foreign person does not have a foreign TIN, the foreign person is required to provide a "reasonable explanation" as to why this information was not collected (e.g., the country of residence does not provide TINs) in order for the Form to not be considered invalid. A Form W-8BEN that does not contain the foreign person's date of birth will not be considered invalid if the credit union has the foreign person's date of birth information in its files.

A reasonable explanation is described as a statement that the foreign person is not legally required to obtain a TIN in

For example, credit union boards should:

- Ensure fidelity insurance applications are signed by an audit committee or a board member and not by a credit union employee to maintain independence;
- Require third parties not involved in daily operations to perform bank reconciliations;
- Verify all dormant or inactive accounts are closed and funds are submitted to the state's unclaimed property department, as appropriate under state law;
- Ensure loans are approved and disbursed by different employees or board members;
- Document all loans in writing and require them to be signed by the member or members;
- Confirm that investment account balances are accurate, independent of staff's own verification;
- Document and monitor accounts that have invalid addresses;
- Require additional reviews or audits when the credit union has very low delinquencies, but high asset yields;
- Use an independent third party to investigate member complaints;
- Question unusual balances and activity in cash or suspense accounts that appear on your financial reports;
- Ensure members receive regular statements through the mail or electronically. Statements should not be hand delivered by staff;
- Follow up on any unusual activities or changes in the lifestyles of staff, such as large personal expenditures or frequent trips to casinos; and
- Inform your auditor, insurer and regulator if you notice anything suspicious or if your credit union has processes and procedures that aren't commensurate with how a credit union should conduct business.

Engaged credit union boards are an effective way to reduce the potential for fraud. To help you get started, we have developed a number of resources on the role board members play in overseeing credit union operations and reducing the potential for fraud and other forms of employee dishonesty. All of these resources are available on [NCUA's Learning Management Service](#).

Source: NCUA

The Cost of Elder Financial Abuse Reported To Be 12 Times More Than Previously Believed

Over the past few years, a frequently cited estimate of the amount of money lost to elder financial abuse was \$2.9 billion. This estimate included the caveat that the crime is largely underreported.

A 2015 study by True Link reveals that elderly Americans lose \$36.48 billion each year to financial abuse. This new study attempts to gather more of the unreported information and broaden the definition of elder abuse to include deceptive practices (even if technically legal).

A couple of other interesting finds in this survey study include:

- Seniors who are young, urban and college-educated lose more money than those who are not;
- Seniors described as extremely friendly lose four times as much to elder financial abuse.

The survey found that financially sophisticated people are likely to avoid certain types of financial loss, but the losses are bigger when they do

the foreign person's jurisdiction of tax residence. The explanation may be written on line 6 of the Form W-8BEN, in the margins of the Form, or on a separate attached statement associated with the Form. If the foreign person is writing the explanation on line 6 of the Form, the foreign person may shorten it to state "not legally required." The foreign person is unable to write "not applicable." In addition, if the foreign person is not using the Form W-8BEN to document a financial account, the foreign person may provide the foreign TIN issued by the foreign person's jurisdiction of tax residence on line 6 of the Form W-8BEN for purposes of claiming treaty benefits (rather than providing a U.S. TIN on line 5 of Form W-8BEN, if required).

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

Compliance Videos

Quarterly Update for Q2 and Q3 2017

This [video](#) reviews a few important laws and regulations that will impact our credit unions in the 2nd and 3rd quarters of 2017. League InfoSight CEO Glory LeDu covers the **DOL – Fiduciary Rule** effective 6/9/17, Phase II of the **NACHA Same Day ACH**, the changes to the **DOD - Military Lending Act** related to credit cards, and an overview to the 1st set of changes made to **Mortgage Servicing**.

Mortgage Servicing Rule

This [video](#) provides more detailed information from Glory LeDu, CEO of League InfoSight, regarding the upcoming **Mortgage Servicing Rules, effective 10/19/2017**. Be sure to review this video to ensure you are in compliance with these upcoming changes.

Member Business Lending

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

Advocacy Highlight

CUNA Submits Comments to NCUA on Share Insurance Equity Distribution

[CUNA filed a comment letter with NCUA](#) providing input on how the agency should amend its share insurance rule to provide for equity distributions. The proposed share insurance fund equity distribution rule would modify the rule for normal equity distributions and has a separate provision for special distributing funds from the Temporary Corporate Credit Union Stabilization Fund (TCCUSF or Stabilization Fund) after it is merged into the National Credit Union Share Insurance Fund (NCUSIF).

CUNA proposed that NCUA prorate all refunds during the special distribution period on the basis of total stabilization assessments paid by each credit union from 2009 to 2013. Specifically, NCUA should first aggregate the total assessments paid by each credit union, and

become victims of this crime. This could be because they are more confident in their decision-making or more comfortable moving large amounts of money. An earlier study found that overconfidence in one's own ability to manage money may be as dangerous as memory loss in enabling financial fraud.

Reportedly, someone described as "extremely friendly" over the course of his or her life is likely to experience four times the financial losses as someone with a more typical level of friendliness. One explanation is that friendliness increases exposure to more people with abusive intentions. This report concludes that increased risks of elder financial abuse occur with the interaction of two factors: vulnerability plus exposure. Older adults with independent, active lifestyles may be more vulnerable to financial fraud because they inadvertently provide perpetrators with more ways to target them. This survey study lists the following as factors that may increase risk:

- Cognitive conditions, including dementia and Alzheimer's disease
- College or graduate-level education
- Financial sophistication
- Friendliness
- Urban dwelling
- Poor memory
- Calls from telemarketers

You may want to add these new risk factors to your staff training and consideration when determining which of your older members may be targets of elder financial exploitation.

For additional resources, see [CUNA's eGuide to Federal Laws and Regulations: Elder Financial Abuse](#).

Source: CUNA Compliance Blog



Training & Events Calendar

September 11

Webinar: [Preparing for Reg CC Rule Changes Part 1: Impact, Detailed Changes & Action Plan](#)

September 12

Webinar: [Regulator Issues for the Credit Analyst](#)

September 13

Webinar: [Minor Accounts: Ownership, Documentation & Access](#)

September 19

Webinar: [Managing & Mitigating Data Breaches: Fraud, Forensics & Incident Response](#)

September 20

Webinar: [Supporting Documentation for the ALLL: Current Rules & Future Expectations Under CECL](#)

calculate each credit union's share of the total equity to be transferred from the Stabilization Fund to the Share Insurance Fund based on its share of total assessments collected. Next, NCUA should debit this amount for each credit union by the amount necessary to increase the NCUSIF equity ratio to its historical NOL of 1.3% based on each credit union's current insured shares. Furthermore, should NCUA decide to raise the NOL above 1.34% for reasons having to do with the Share Insurance Fund's future projected operations (an increase CUNA does not support), the amount necessary to make that increase should be debited to total assessment refunds based on current insured shares. It should be noted that CUNA supports a NOL of 1.3%, but we will not oppose NCUA's proposed 4 basis points while the NCUSIF holds volatile assets from the TCCUSF.

This method would be transparent and equitable which is important in the repayment of credit unions' money. CUNA also reminded the NCUA of the following:

- CUNA agrees with NCUA's legal analysis that TCCUSF repayment cannot be made from the TCCUSF and can only be made from the Fund NCUSIF after the funds merge; any other opinion is not based on sound legal analysis.
- CUNA supports commencing distributions as early in 2018 as possible. Further, in the event that distributions do not begin in 2018 because the two Funds are not merged this year, CUNA urges that no premium be charged this year in consideration of the fact that substantial equity will be available to Share Insurance Fund from the Stabilization Fund in the next few years.

CUNA supports a temporary 4 basis point increase in the normal operating level (NOL) while the Fund holds corporate legacy assets in addition to traditional Treasury securities. However, we insist the increase be temporary – and phased down from 1.34% in 2018 to 1.3% in 2021 as the relative exposure to the legacy assets diminishes.

CUNA Supports FHFA's Proposed Housing Goals

This week, CUNA filed a [letter](#) with the Federal Housing Finance Agency in support of its proposed 2018 - 2020 Enterprise Housing Goals.

We recognize that the FHFA's objective is to set the benchmarks to their market projections, not to actually influence the market. Accordingly, we support the proposed benchmarks for single family purchases, which will remain essentially the same as prior years.

The safety and soundness of Fannie Mae and Freddie Mac is very important to credit unions, and should remain a top mission of the FHFA in overseeing the operation of the Enterprises.

September 21

Webinar: [ACH Specialist Series: RDFI Returns: 2 Day v 609 Calendar Days – Understanding the Difference](#)

September 27

Webinar: [Step by Step SAR Completion: Dos & Don'ts](#)

September 28

Webinar: [Record Retention & Destruction Rules: Compliance & Best Practices](#)

October 16

Webinar: [Planning & Compliance Considerations for the New Fannie Mae & Freddie Mac Uniform Residential Loan Application](#)

October 26

Webinar: [Job-Specific BSA Training for Frontline: CTRs, SARs, CIP & More](#)

October 30

Webinar: [Preparing for the Impact of New Prepaid Card Rules Under Regulation E – Deadline April 1, 2018](#)

November 8

Webinar: [When a Depositor Dies: Next Steps & Best Practices](#)

November 9

Webinar: [Auditing for Reg E Compliance](#)

November 16

Webinar: [Required Compliance for the Board & Senior Management](#)

November 29

Webinar: [OFAC Sanctions Compliance: Update, Expectations & Best Practices](#)

December 6

Webinar: [Job-Specific BSA Compliance for Lenders](#)

Recorded Webinars:

Webinar: [CTR Technical Changes: New Data Fields, Amendments & Alternate Model Reporting](#)

Webinar: [New MLA Requirements for Credit Cards, Effective Oct 3, 2017](#)

Compliance Lunch & Learn September 21 - Grand Junction, CO

Compliance professionals on the Western Slope can join their compliance peers in Grand Junction, CO on **September 21, 2017** for the next Compliance Lunch & Learn. This two-hour program includes a presentation, networking time, lunch and an open-forum discussion on Power of Attorney, Trusts & UDAAP. Mark Robey will provide an overview of opening, maintaining and closing accounts for trusts, and will discuss various power of attorney issues. Julie Kappenman will review recent regulatory

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****September 15, 2017**

- [Same-day ACH – Phase 2](#)

September 30, 2017~NCUA

- [New Call Report Form](#)

October 3, 2017

- [MLA – Limitations on Terms of Consumer Credit Extended to Service Members & Dependents](#)

October 19, 2017

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

October 29, 2017

- 5300 Call Report Due to NCUA

January 1, 2018

- [HMDA/Reg C](#)

March 16, 2018

- [Same-day ACH - Phase 3 \(Final phase\)](#)

April 1, 2018

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

April 19, 2018

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

May 11, 2018

- [Customer Due Diligence/CDD](#)

Effective Dates New and Revised Rules

September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

April 1, 2018 ~ CFPB

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

CUNA Comment Calls – Due Dates on

activity. Mark and Julie will also lead a discussion about the Unfair Deceptive and Abusive Acts and Practices Act (UDAAP). Cost is \$35; **registration deadline is September 15**. To register, email Jodi Weiser at jweiser@mwcua.com.

Regulatory Compliance School October 25 & 26 – Phoenix Now Open for Registration

Credit union compliance professionals face a complex regulatory environment and challenging compliance issues. For those needing a refresher course or a solid understanding of the regulations and laws affecting their regulatory compliance responsibilities, plan to attend the Mountain West Regulatory Compliance School taught by compliance experts, Bruce Jolly and David Reed. This 2-day program will provide you with the latest information regarding operational compliance issues, and update you on current areas of concern expressed by regulators and examiners. Plan to attend this important program so you can stay up-to-date with the latest compliance regulations and ensure your credit union is operating within the current laws. **Registration deadline is October 11, 2017**. To register for the **Oct. 25-26 Regulatory Compliance School** in **Phoenix, AZ**, [click here](#).

Proposed Rules

August 28, 2017~NCUA

[National Credit Union Share Insurance Fund Equity Distributions](#)

August 31, 2017~CFPB

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

September 18, 2017~DOL

[DOL Overtime Rule RFI](#)

NCUA Field-of-Membership Rule

Get more information about the NCUA' new field-of-membership rule by watching the [agency's webinar online](#) and review [questions and answers](#) from the event. The NCUA Board unanimously approved the new field-of-membership rule at its [October 2016 open meeting](#).

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

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