

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

September 30, 2016

### Compliance News

#### CFPB Sues Arizona Title Lenders for TILA Violations

The Consumer Financial Protection Bureau has [reported](#) it has filed a Notice of Charges against five title lenders operating in Arizona — Auto Cash Leasing, LLC; Interstate Lending, LLC; Oasis Title Loans, LLC; Phoenix Title Loans, LLC; and Presto Auto Loans, Inc. — for failing to disclose the annual percentage rate in online advertisements about title loans.

The CFPB alleges that the companies advertised a periodic interest rate for their loans without listing the corresponding annual percentage rate. For example, one lender advertised a monthly interest rate on its website but failed to include the required APR for the loan. Another lender used an online ad that asked consumers to take its advertised rate and multiply it by 12, but failed to also state that the calculated number is the APR.

Section 1026.24(c) of Regulation Z requires that "If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term." As you can see from the examples above, the regulation is very specific in its requirements and transparency relating to advertising. As a result of these errors, the CFPB filed individual administrative lawsuits against each company seeking money penalties and orders requiring the companies to take corrective action. This serves as a good reminder for credit unions to be cognizant of Truth in Lending Act when placing advertisements and to be sure to follow the requirements carefully.

#### CUNA Urges Court to Reject Request for Wendy's Suit Dismissal

Plaintiffs, including CUNA and certain state credit union leagues and credit unions, urged a Pennsylvania federal judge today to reject the Wendy's Company request to dismiss a class action lawsuit against the fast-food giant over its alleged inadequate security response to a data breach.

Submitting a brief to the U.S. District Court for the Western District of Pennsylvania, the financial institution and association plaintiffs refuted Wendy's assertion that there are no "legitimate claims" in the lawsuit, which was initiated by First Choice FCU.

The brief calls the breach the "the inevitable result of Wendy's inadequate data security measures and lackadaisical approach to the security of the payment card data it collected."

Plaintiffs assert that the financial costs caused by Wendy's deficient data security approach have been borne primarily by credit unions and other financial institutions that issued the payments cards that were compromised in the breach that occurred in 2015 and carried over into 2016.

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### Association Compliance Forums

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Costs associated with recent data breaches are substantial--reaching millions of dollars--and include, but are not limited to, canceling and reissuing compromised cards and reimbursing the cardholders for fraudulent charges associated with the breach, CUNA has noted.

These out-of-pocket costs, CUNA maintains, are sufficient to keep the matter before the court. CUNA joined the lawsuit, aimed at recouping those costs borne by financial institutions, in June.

Industry sources have estimated that fraudulent charges from the Wendy's breach are even greater than those from other huge breaches, such as those occurring at Target and Home Depot.

CUNA surveys found credit unions alone were hit with nearly \$60 million in costs after Home Depot's 2014 data breach and \$30.6 million after Target's 2013 data breach.

*Source: CUNA*

### **CUSO Registry Information No Longer Necessary on Call Reports**

Beginning with the Sept. 30 reporting cycle, the NCUA will require less information from credit unions about credit union service organizations on Call Reports.

"NCUA is working to make reporting easier and Call Reports more informative," NCUA Board Chairman Rick Metsger said, "and this is another part of that important process. It's also part of my Continual Quality Improvement effort to find ways to streamline agency operations by looking at the nuts and bolts of agency operations and finding new ways, both large and small, to improve the NCUA's processes and programs."

Going forward, credit unions will only be required to submit aggregate CUSO loan and investment information on the Call Report. All other required information is now being collected directly from CUSOs through the agency's [CUSO Registry](#).

Direct reporting eliminates redundancy, increases data integrity, and reduces credit unions' reporting burdens. It also improves data quality, as CUSOs are in the best position to provide accurate and timely information.

NCUA has required CUSOs to agree to provide information directly to the agency effective June 30, 2014, and registration for the CUSO Registry was held between Feb. 1 and March 31 this year.

In May, NCUA announced a comprehensive review of Call Report and Credit Union Profile content. An agency working group has been gathering information through a public comment-and-review process. NCUA has extended the reporting deadline for third-quarter Call Reports to Oct. 24.

The announced changes to the Call Report came on the fifth anniversary of NCUA's Regulatory Modernization Initiative. The initiative aims to strengthen the agency's regulations to address safety-and-soundness risks and streamline the agency's rules, where possible, to reduce burdens. Since its inception, the initiative has resulted in [24 actions to cut red tape](#) and provide lasting benefits to credit unions of all sizes.

### **New Technologies Mean New Risks and New Cybersecurity Demands**

### **Operations.**

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### **InfoSight Highlight**

#### **Servicemembers (and Dependent) Consumer Lending (Military Lending Act)**

As required by the John Warner National Defense Authorization Act for Fiscal Year 2007 which added 10 USC 987, the Department of Defense (DOD) issued a regulation that implements the Military Lending Act (MLA) regarding the terms of consumer credit extended by creditors to service members and their dependents.

In July 2015, the changes were made that impacted the MLA and became effective on October 1, 2015. Credit unions have until October 3, 2016 to comply. Credit unions should have policies and procedures in place to determine if their new borrowers are considered "covered borrowers" under the MLA. If the covered borrowers are identified and loan is also a "covered loan" the credit union should understand their Military Annual Percentage Rate (MAPR) limitations as well as the required disclosures that need to be provided prior to consummation.

#### **Loans Covered Under the Rule**

The rule defines "consumer credit" as any credit offered or extended to a covered borrower primarily for personal, family, or household purposes and that is:

1. Subject to a finance charge; or
2. Payable by a written agreement in more than four installments.

#### **Identification of Covered Borrowers**

A "covered borrower" is defined as a person with the following status at the time (s)he becomes obligated on a consumer credit transaction:

- A regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or less, or such a member serving on Active Guard and Reserve duty [as defined in [10 U.S.C. 101\(d\)\(6\)](#)]; or

The financial services sector is experiencing an "Uber moment," experts with NCUA's Office of Examination and Insurance stated, and technological innovation, the expansion of social networking and growing interconnectivity are fueling fundamental change in cybersecurity procedures and processes.

That change carries with it more sophisticated risks and more numerous vulnerabilities for community-based financial institutions like credit unions. Potential effects on credit unions include higher mitigation costs and lower consumer confidence, as well as greater financial and legal risks.

"Cyber criminals and cyber terrorists are increasingly using innovative online services, new ways to transmit financial information and off-the-shelf toolkits to invade computer networks, snatch personal information and steal money," NCUA Board Chairman Rick Metsger said. "Credit unions, therefore, must evolve to stay a step ahead of the hackers and thieves knocking on their doors. To help credit unions, NCUA has made cybersecurity a supervisory priority since 2013, and we have conducted extensive training for our examiners along with considerable outreach to credit unions in this area. We will continue to provide these services in the future."

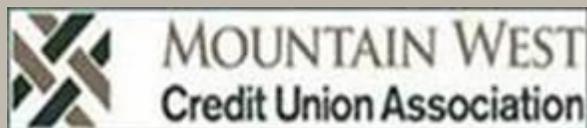
Investors poured more than \$19 billion into financial technology companies in 2015, spurring payment, lending, banking and wealth management innovations that may replace current service models. That kind of disruption will, in turn, force rapid adjustments by financial institutions and regulators to their security strategies, including their ability to detect, prevent or recover from cyberattacks.

With cybersecurity now an integral part of the credit union business model, NCUA will continue to refine its approach to supervision in this area to strengthen the system's resilience to attacks. The agency maintains a [cybersecurity resources webpage](#) that offers extensive, detailed information on cybersecurity matters. Credit unions are encouraged to use this resource.

NCUA and its partners in the Federal Financial Institutions Examination Council, an interagency body that promotes uniformity in the supervision of financial institutions, have worked to help financial institutions develop better cybersecurity processes and policies. The council offers services at no charge that include outreach and industry education.

Last year, the council introduced its [cybersecurity assessment tool](#) to help credit unions and other institutions determine how prepared they are to address cybersecurity risks. NCUA is developing a new cybersecurity component to its examination process that embodies the comprehensive risk-management approach of the cybersecurity assessment tool.

*Source: NCUA*



[Training & Events Calendar](#)

- The covered borrower's dependent(s) as described in subparagraph A, D, E or I of 10 USC 1072(2). Generally, this may include a spouse, child (under 21 or 23 if full time student or no age limit if there is a mental/physical incapacity); could also be a parent or in-law (if supported by the covered borrower); another adult in legal custody of the covered borrower.

The regulation contains safe harbor methods to determine if a borrower is considered "covered" under the rules. In general, the credit union can verify the status by using information related to the borrower, obtained directly or indirectly from the DOD database. Historic lookbacks are prohibited under the rule, so the credit union would not be permitted to obtain information from the DOD database to determine if a borrower would have been covered as of the date the transaction was conducted or account established.

The credit union is also provided with a safe harbor for determining covered borrower status if they use a consumer report from a nationwide consumer reporting agency.

The credit union who makes the covered borrower determination by using one of the safe harbor methods above shall be deemed to be conclusive with respect to that transaction or account, so long as the credit union timely creates and maintains a record of the information obtained.

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

## Compliance Videos

### Same Day ACH Preview

In this newly released video Amy Smith, VP and Executive Director of The Clearing House Payments Authority, provides background information on the current batch-and-forward ACH payment system and introduces the "Phased Approach" of the Same Day ACH program, which will begin in September of 2016. You will want to pay special attention to Amy's suggestion to review current ACH files you may be transmitting. View the video [here](#).

### Military Lending Act

This video provides an overview of the key changes made to the Military Lending Act that credit unions are going to need to consider and implement prior to the compliance effective date of October 3, 2016. View the video [here](#).

### 2016 Q3 Review

Glory LeDu, Manager of League System Relations

**October 4**

Webinar: [Handling Dormant Accounts, Unclaimed Property & Escheatment](#)

**October 5**

Webinar: [Essential Compliance Regulations for Deposit Operations](#)

**October 6**

Webinar: [Avoiding the Top 10 Legal & Compliance Mistakes in the E-Statement Process](#)

**October 20**

Webinar: [Conducting the 2016 ACH Audit](#)

**November 3**

Webinar: [Cyber Series – Member Authentication & Validation](#)

**November 15**

Webinar: [Recognizing & Responding to Elder Fraud: What Every Staff Member Should Know](#)

**November 15-16 – Phoenix**

IRA School: [Essentials & Advanced](#)

**December 14**

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

**December 15**

Webinar: [Powers of Attorney In-depth: Good Faith, Fraud & Fiduciary Capacity](#)

**December 21**

Webinar: [Emerging Need & Regulatory Expectations for Enterprise Risk Management Framework](#)

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### 2016 Compliance Schools Registration

Compliance expert, Gaye DeCesare, NCCO, CUCE, BSACS, will be giving attendees a solid understanding of the regulations and laws affecting their regulatory compliance responsibilities.

- Phoenix, AZ: [October 12-13](#) *Registration Deadline October 5th*

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## CUNA Webinars

**July 7, 2016 - July 7, 2017**

[CFPB's Payday, Small Dollar and Vehicle Title Proposed Rule – Recorded](#)

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## CUNA Comment Calls – Due Dates on Proposed Rules

**September 14, 2016**

[Consumer Survey Re Complaint Closing Process](#)

**September 19, 2016~CFPB**

[CFPB Small Dollar Proposal](#)

**October 11, 2016**

[Amendments to TRID Rule](#)

**October 31, 2016~CFPB**

provides an [overview](#) of the compliance challenges your credit union is facing now in the 3<sup>rd</sup> quarter of 2016.

## Advocacy Highlight

### House Committee Holds Second Hearing on Modernizing TCPA

At the 9/22/16 House Energy and Commerce Subcommittee on Communications and Technology [hearing](#), legislators and witnesses expressed many of CUNA's same concerns regarding the FCC's recent Order under the Telephone Consumer Protection Act (TCPA.) The clear consensus of the committee and witnesses was that the 90's-era TCPA is in desperate need of modernization in the cell-phone age.

Rep. Greg Walden (R-Ore.), chair of the subcommittee, called the TCPA "a prime example of an outdated law that lags behind modern communications technology and consumer preferences," and Rep. Gus Bilirakis (R-Fla.), opened his comments by stating that modernizing the TCPA was one of his top priorities as a congressman.

CUNA [wrote](#) to the committee before the hearing in a letter and in [written testimony](#), [outlining a number of concerns](#) and calling for Congress to act on what they believe is an overreach by the FCC.

In his comments, Rep. Robert Latta (R-Ohio) echoed two of CUNA's main concerns with the FCC order: that businesses still need to have clear avenues to communicate with their customers, and that the FCC's definition of "autodialer" is problematic and leads to compliance confusion.

CUNA also pointed to recent CFPB statements, where bureau staff have urged institutions to take advantage of technological advancements in communications to ensure consumers have the information they need.

### Action Alert: CFPB's Small Dollar Loan Proposal

The CFPB released an extremely complex 1300+ page small dollar rule in early June. The proposed rule includes some reforms to predatory lending practices, which credit unions would support if narrowly tailored. Unfortunately, the CFPB's proposed rule badly misses the mark of targeting predatory behavior, and instead threatens to limit consumer-friendly alternatives to short-term, small dollar loans. We encourage you to [share your story](#) with the CFPB, and tell them the negative impact this rule will have on your ability to provide services to your members. The comment period closes on October 7.

*Source: CUNA Advocacy*



## Compliance Calendar

### October 3

- [NACHA's Network Quality Rule](#)

### October 10

- Columbus Day – Federal Holiday

### October 24

- 5300 Call Report Due to NCUA

### October 31

- [Credit Card Quarterly Submission Due to CFPB](#)

### November 6

- Daylight Savings Time Ends

### November 11

- Veterans' Day – Federal Holiday

### November 24

- Thanksgiving Day – Federal Holiday

### December 26

- Christmas Day – Federal Holiday

### January 2, 2017

- New Year's Day (observed) – Federal Holiday

## CUNA Advocacy Report

The Regulatory Advocacy Report is now combined with CUNA's Legislative Update into a comprehensive CUNA Advocacy Update. The new [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.

Prior CUNA Regulatory Advocacy Reports have been archived and are available [here](#).

## Effective Dates New and Revised Rules

### September 23, 2016~NACHA

[Same-day ACH \(NACHA\) – Phase 1](#)

### October 3, 2016~DoD

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

### December 1, 2016~DOL

[New Overtime Rules](#)

### January 1, 2017~CFPB

[HMDA – Regulation C](#)

### January 1, 2017~NCUA

[Member Business Loan Rule](#)

### April 10, 2017~DOL

[Fiduciary](#)

### September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

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

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