

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

November 17, 2017

Compliance News

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Please note there will not be a newsletter next week.

Happy Thanksgiving from your Regulatory Compliance Team!

What Are the Record Retention Requirements for Unclaimed Property?

A. Arizona, Colorado and Wyoming have all adopted the Uniform Unclaimed Property Act. Under the Act, records are generally required to be maintained for five years after the date the property becomes reportable. However, records of sales of traveler's checks, money orders and similar instruments must be retained as follows:

Arizona: "A business association or financial organization that sells, issues or provides to others for sale or issue in this state traveler's checks, money orders or other similar instruments on which the business association or financial organization is directly liable, other than third party bank checks, shall maintain a record of the instruments while the instruments remain outstanding and the record shall indicate the state and date of issue of the instruments. The association or organization shall maintain the record prescribed by this subsection for three years after the holder files the report." See A.R.S. § 44-323.

Colorado: "Any banking or financial organization that sells in this state its money orders or other similar written instruments, other than third-party bank checks on which the banking or financial organization is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable." See C.R.S. § 38-13-124.

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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Wyoming: "Any business association that sells in this state its traveler's checks, money orders or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three (3) years after the date the property is reportable." See Wyo. Stat. § 34-24-132.

"'Business association' means a nonpublic corporation, joint stock company, investment company, business trust, partnership or association for business purposes of two (2) or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company or utility." Wyo. Stat. § 34-24-102(a)(v).

Innocent Game...or Illegal Gambling?

During our recent series of Compliance Lunch-and-Learn programs, the topic of sweepstakes and contests was brought up. It is becoming more common for credit unions to use contests or sweepstakes as a tool to aid in increasing member participation in the credit union or use of products. While such contests and sweepstakes are often very effective at accomplishing the desired results, credit unions must be very careful not to violate various gaming laws and federal laws regulating solicitation.

Below are two links to an article titled "An Introduction to Sweepstakes and Contests Law" written by Steven C. Bennett and published in the August 2007 edition of The Practical Lawyer. This article provides a good, high-level overview of the legal considerations around sweepstakes and contests. The third link is to an informational webinar that also provides a good overview of the relevant considerations. Each of these resources provides general information, and you should consult your attorney with any questions about a specific contest or sweepstakes you are considering.

- http://files.ali-cle.org/thumbs/datastorage/lacidoirep/articles/TPL0708-Bennett_thumb.pdf
- <http://www.jonesday.com/files/publication/69ea168c-4173-4321-9fa5-d4b8bb86ae1c/presentation/publicationattachment/b9a311c5-f53d-4a89-97fc-d85993081c2e/bennet.pdf>
- <https://www.thompsoncoburn.com/insights/tcle/presentation/detail/2016-07-28/sweepstakes---the-essentials-what-you-need-to-know>

CFPB to Survey Consumers on Debt Collection Disclosures

The Consumer Financial Protection Bureau published in a recent *Federal Register* a notice and request for comment proposing a new information collection, "[Debt Collection Quantitative Disclosure Testing.](#)" Comments are due by December 14, 2017. The survey will explore consumer comprehension and decision making in response to debt collection disclosure forms. The survey will oversample respondents who have had experience with debt collection in the past.

Source: CFPB

Appraisal Exemption Threshold Updated for 2018

Section 1026.35 of Regulation Z identifies additional compliance requirements associated with loan transactions that are considered higher-priced. A higher-priced mortgage loan ("HPML") is a closed-end consumer credit transaction secured by the borrower's principal dwelling with an

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

Americans with Disabilities Act: ADA Audits and Website Accessibility

Credit unions remain in a holding pattern waiting on the Department of Justice (DOJ) to issue website regulations under Title III of the Americans with Disabilities Act (ADA). Demand letters are on the rise; therefore, waiting for official regulation is no longer an option. Since Title III lacks regulation, there is no specific standard for credit unions causing them to be unsure which technical standard to follow. The United States Access Board adopted WCAG 2.0 as its accessibility standard for federal agency websites in January 2017. It is suspected that the DOJ will adopt this standard for non-agency websites once it issues Title III regulations for public accommodation websites. WCAG 2.1 is currently under development and is scheduled to be published as a standard in 2018. Until that time, credit unions should evaluate and create a plan of action for websites to protect itself from ADA web-related lawsuits.

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

Compliance Videos

Quarterly Update for Q4 and Review of Q3

This newly released Compliance Connection [video](#) reviews

annual percentage rate that exceeds the average prime offer rate by:

- 1.5% or more for non-jumbo (<\$424,100) 1st lien loans;
- 2.5% or more for jumbo (>\$424,100) 1st lien loans; or
- 3.5% or more for subordinate lien loans.

The following additional compliance requirements apply to a loan transaction that is higher-priced:

- The credit union must escrow for property taxes and insurance premiums in connection with a 1st lien HPML for a minimum of 5 years (or until the loan is paid off if payoff occurs earlier);
- The credit union must obtain two appraisals in connection with an HPML secured by a "flipped" property; and
- The credit union must obtain a written appraisal of the property securing the HPML.

There are several exceptions to the mandatory appraisal requirement for an HPML. The credit union may instead rely upon an alternative method of valuation for:

- HPMLs that are also classified as a qualified mortgage under the Ability-to-Repay Rule;
- Loans secured by a mobile home, boat or trailer;
- Construction loans;
- Bridge loans with a term of 12 months or less;
- Reverse mortgages; and
- Loans for an amount equal to or less than a threshold established annually by the Consumer Financial Protection Bureau (CFPB).

This appraisal exemption threshold was \$25,500 for 2017. On Thursday, November 9th, the CFPB published in the Federal Register a final rule which increases this amount to \$26,000 for calendar year 2018.

Bankruptcy Rule and Forms Changes

The Federal Rules of Bankruptcy procedures dealing with requirements and timing of a Proof of Claim is changing on December 1, 2017.

Currently Bankruptcy Rule 3002 generally requires a proof of claim in a Chapter 7,12, or Chapter 13 case to be filed no later than 90 days after the first date set for the meeting of creditors.

The [new bankruptcy rule change](#) will require a proof of claim to be filed no later than 70 days after the date the bankruptcy case is filed. This is certainly a decrease in the amount of time permitted for filing a proof of claim.

Attachments that are generally required, such as a note, mortgage or security agreement can be filed as a supplement to a credit union's claim no later than 120 days after the date the bankruptcy is filed.

The new rules also clarify that secured creditors must file a Proof of Claim for the claim to be allowed, but the creditor's security interest is still valid even if the creditor fails to file the proof of claim.

A credit union should receive a notice from the Bankruptcy Court advising the credit union that the debtor has filed either a Chapter 7 or a Chapter 13 bankruptcy. The notice in a Chapter 13 bankruptcy will indicate the deadline for a creditor to file a proof of claim.

those laws and regulations effective in the 3rd Quarter of 2017 and tells credit unions what to prepare for in the 4th Quarter of 2017 as well as what's coming up in the first half of 2018.

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.

Effective Dates New and Revised Rules

October 3, 2017

- [Military Lending Act – Limitations on Terms of Consumer Credit Extended to Service Members and Dependents \(DoD\)](#)

October 19, 2017

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

January 1, 2018

- [HMDA/Reg C](#)

January 1, 2018

- [Supervisory Review Committee; Procedures for Appealing Material Supervisory Determinations](#)

January 1, 2018

- [Appeals Procedures](#)

January 1, 2018

- [Amendments to Equal Credit Opportunity Act \(Reg B\) Ethnicity and Race Information Collection](#)

January 1, 2018

- [Truth in Lending Annual Threshold Adjustments](#)

March 16, 2018

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

March 19, 2018

- [Arbitration Rule](#)

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

In a Chapter 7 bankruptcy, the notice will either provide a deadline for filing a proof of claim where there are assets available to pay creditors or where there are currently no assets available to pay creditors, will indicate that a creditor should not file a proof of claim unless they receive a notice from the court to do so. If it later appears that assets are available to pay creditors, the bankruptcy clerk will send another notice indicating that a creditor may file a proof of claim and the deadline for filing the claim.

Six Months Left to Comply with FinCEN's New Customer Due Diligence Rule

It has been 18 months since FinCEN issued its Customer (Member) Due Diligence rule with compliance date of May 11, 2018.

The new rule includes provisions addressing (1) identifying the beneficial owners of your legal entity accounts, and (2) your anti-money laundering (AML) programs.

The new beneficial owner requirements include:

- Identification & verification of beneficial owners of legal entity members;
- A new certification form requirement;
- Written procedures;
- Recordkeeping; and
- Record Retention.

The new AML program requirements include:

- A system of internal controls to assure ongoing compliance;
- Independent testing for compliance to be conducted by credit union personnel or outside parties;
- Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance;
- Training for appropriate personnel; and
- Appropriate risk-based procedures for conducting ongoing member due diligence.

If most of these AML requirements sound familiar to you, it's because NCUA's Bank Secrecy Act (BSA)/AML regulations require the first four bullets – almost verbatim. FinCEN also believes that the fifth bullet shouldn't be considered a new requirement, as it reflects existing practices necessary to satisfy your suspicious activity reporting (SAR) obligations.

To help you comply, review CUNA's Member Due Diligence compliance tools:

- [Customer Due Diligence Checklist](#)
- [Final Rule Summary : Customer Due Diligence \(May 2016\)](#)
- [CUNA's CDD Compliance Chart \(May 2016 Amendments\)](#)

Source: CUNA Compliance Blog



MOUNTAIN WEST
Credit Union Association

[Training & Events Calendar](#)

- [Customer Due Diligence/CDD](#)

May 25, 2018

- [EU's General Data Protection Regulation](#)

July 1, 2018

- [Availability of Funds and Collection of Checks/Reg CC](#)

October 1, 2018

- [Amendments to the Integrated Disclosure Rule](#)

January 1, 2019

- [HMDA Thresholds/Reg C](#)

January 1, 2019

- [Risk-Based Capital](#)

July or August 2019 (21 months after published in Federal Register)

- [Payday Lending, Vehicle Title, and Certain High-Cost Installment Loans](#)

January 1, 2020

- [HMDA Threshold/Reg C](#)

December 15, 2020

- [Current Expected Credit Losses](#)

January 1, 2022

- [Amendments to Equal Credit Opportunity Act \(Reg B\) Ethnicity and Race Information Collection](#)



Compliance Calendar

October 29, 2017

- 5300 Call Report Due to NCUA

November 23, 2017

- Thanksgiving Day – Federal Holiday

December 25, 2017

- Christmas Day – Federal Holiday

CUNA Comment Calls – Due Dates on Proposed Rules

November 20, 2017~NCUA

[Regulatory Reform Agenda](#)

November 29

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

November 30

Webinar: [Robbery Preparedness for All Staff](#)

December 6

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

December 12

Webinar: [All About 1099 Reporting Part 2: Forms 1099-INT & 1099-MISC: Vendor Payments, Prizes & Interest on Deposit Accounts](#)

December 13

Webinar: [ACH Risk Management & Assessment: Risks, Controls & Ratings](#)

December 14

Webinar: [Real Estate Series: Mortgage Loan Disclosure Timing Issues](#)

December 19

Webinar: [The ALLL with TDRs & Foreclosed Assets](#)

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

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