

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

December 15, 2017

Compliance News

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Q & A: Can/must a credit union provide a SAR to a grand jury in response to a Federal grand jury subpoena?

First, you should always call FinCEN and ask for the Agency's opinion about disclosure of a SAR. Generally, a credit union is prohibited from disclosing a SAR and any information that would reveal the existence or non-existence of a SAR. There are exceptions to this general rule. In the October 2005 edition of [The SAR Activity Review Trends, Tips and Issues](#), FinCEN discusses these exceptions and states that "financial institutions may share a Suspicious Activity Report, or the information contained therein, with an appropriate federal, state or local law enforcement agency." The publication provides examples of "appropriate federal, state and local law enforcement agencies" and those persons who may properly request and receive SARs (such as an attorney general or a district attorney). Generally speaking, a grand jury is a "tool" used by a state or federal prosecutor (such as a United States Attorney or a state's attorney general) to investigate criminal activity and, if warranted, bring an indictment against a person or persons. A grand jury subpoena may be used in such investigations and, generally speaking, is therefore issued by an "appropriate law enforcement agency." A credit union would not only be permitted, but required, to produce a SAR if requested by such a subpoena. In addition to notifying FinCEN, you may also want to seek the advice of an attorney since improper disclosure of SAR (or the information contained in a SAR) may subject individuals to criminal penalties.

Compliance Due Diligence Checklist

There has been a lot of focus on FinCEN's new beneficial owner of legal entities requirements going into effect in five months. There has been less focus on FinCEN's 5 new requirements for your anti-money laundering program, which include:

- A system of internal controls to assure ongoing compliance;

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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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- 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.

There has been less discussion of these requirements because four of them have been required by NCUA's Part 748 for many years, and the fifth has been considered implicit in the federal regulators' BSA/AML Examination Manual, and necessary to satisfy your suspicious activity reporting (SAR) obligations.

The last requirement listed is new and is now required to be explicitly included in your anti-money laundering programs by May 11, 2018.

Member Risk Profile: To meet this requirement you must develop a member risk profile, which means understanding the nature and purpose of your member relationship in order to provide a baseline against which your member's activity is assessed for suspicious activity reporting. This may include self-evident information such as the type of member or type of account, service, or product. It could also include information indicating a possible change in the member's transaction activity or beneficial ownership, because such information could be relevant to assessing the risk posed by the member.

This information should be integrated into the credit union's automated monitoring system, if applicable. It may also be used as a means of determining whether a transaction that has been flagged as potentially suspicious is actually suspicious.

Ongoing Monitoring: Member due diligence also includes conducting ongoing monitoring to identify and report suspicious transactions.

Updated Member Information: On a risk basis, credit unions must maintain and update member information. When you detect a change in your member's activity, through normal monitoring, you must update your member's information. Such changes in activity may include executing cross-border wire transfers for no apparent reason, or a significant change in the volume of activity without an explanation. This new provision does not require credit unions to update member information on a continuous or periodic basis. The updating requirement is event-driven and only occurs as a result of detecting unusual activity through normal monitoring.

With the new beneficial owner's requirement - although there is no requirement that credit unions update beneficial ownership information on a regular basis, FinCEN does expect that if you detect a change in this information for any account (not just those opened on or after May 11, 2018) you should update, or initiate, that account's beneficial owner certification.

CUNA has developed [this](#) Customer Due Diligence Checklist to assist in your efforts to comply.

Source: CUNA Compliance Blog

Bill Passed for Mortgage-Related Regulatory Relief

The House voted 294-129 in favor of a bill on December 12th that would

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 Heimbuck at: mheimbuck@mwcu.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



InfoSight Highlight

IRS Form 1099-INT

IRS Form 1099-INT must be filed for each person for whom the credit union pays \$10 or more in interest during the calendar year. Although federal (and many state-chartered credit unions pay members "dividends" by definition, for purposes of IRS information returns, credit union dividends are treated as "interest" and must be reported to the government each year on IRS Form 1099-INT.

Form 1099-INT must be filed for 1) each person paid at least \$10 in interest or dividends and 2) each person from whom Federal income tax was withheld under the backup withholding rules, regardless of the amount withheld. As in the case with most other IRS information returns, a 1099 must be delivered to each affected member by January 31 following the tax year reported. Copies must be delivered to the IRS by February 28 for paper, and magnetic filing by April 2 if filing electronically.

Credit unions can file for an automatic extension of time to file their 1099-INT forms with the IRS by filing IRS Form 8809. The extension will only apply to filing with the IRS, so credit unions must still deliver a 1099-INT to each

provide mortgage-related regulatory relief. The Community Institution Mortgage Relief Act of 2017 (H.R. 3971) was introduced in October by Rep. Claudia Tenney (R-N.Y.).

“H.R. 3971 is a common-sense piece of regulatory reform legislation that makes changes to the Truth in Lending Act and the Real Estate Settlement Procedures Act,” said CUNA Chief Advocacy Officer Ryan Donovan.

Specifically, it would exempt:

- Mortgage loans made by financial institutions under \$10 billion in assets from the Truth in Lending Act’s escrow requirements; and
- Mortgage servicers that service fewer than 20,000 mortgages annually from the requirements of Section 6 of the Real Estate Settlement Procedures Act.

The bill is consistent with the goals of CUNA's bipartisan, pro-consumer [Campaign for Common-Sense Regulation](#), which CUNA launched earlier this year.

Can CU Staff Accept Gifts from Members?

Your credit union's offices may soon be full of cards, chocolates, cookies, fruitcakes, and maybe tickets to the “concert of the year.” Can you accept these? Do you know when you might need to say “no thank you”?

Now is a good time to review your credit union’s Bank Bribery Act policy. The act applies to all credit unions with accounts insured by the National Credit Union Share Insurance Fund.

The National Credit Union Administration ([NCUA](#)) issued Interpretive Ruling and Policy Statement (IRPS) No. 87 in 1987 to provide federally insured credit unions with Bank Bribery Act guidelines. IRPS 87-1 gives credit unions some background on the act and recommends procedures to ensure compliance.

In accordance with 18 U.S.C. 215(a), a violation is punishable if the value of the item or benefit offered or received exceeds \$100, the offense is a felony punishable by up to 30 years imprisonment and a fine of up to \$1 million or three times the value of the bribe or gratuity, whichever is greater. If value does not exceed \$100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of \$1,000.

There are situations when it might be appropriate for a credit union employee to receive a business-related gift. Your credit union’s policies should address specific examples.

Make sure you have a clear understanding of the guidelines.

You won’t violate the act if you:

- Accept a gift based on a family relationship;
- Receive a benefit available to the general public; or
- Receive a benefit paid by the credit union as a reasonable business expense.

For a listing of appropriate gifts, see the [complete article](#) on the CUNA website.

affected member by the January 31 deadline.

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

Compliance Videos

NEW! Compliance Outlook for Q4 2017

In this [video](#), Glory LeDu provides a brief summary of the key changes of the new HMDA rules becoming effective in January.

Quarterly Update for Q4 and Review of Q3

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

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. To receive this update, click on “Get CUNA Updates” on the [CUNA Advocacy Page](#). Additional Advocacy efforts may also be found under CUNA’s [Removing Barriers blog](#).

Advocacy Highlight

With the recent updates to CUNA’s website, Advocacy information has also changed. To view recent advocacy issues and see ways your credit union can become involved, visit the [Priorities](#) or [Actions](#) pages.

Home Depot Payments Start in January, Equifax Suits Combined

Credit unions who made claims under the Home Depot data breach settlement will begin receiving settlements payments from the company starting in January. A [settlement](#) was approved in September that included the creation of a \$25 million fund by Home Depot and an agreement to strengthen its future data security measures.

“We’re pleased to see credit unions affected by this breach will start to see some compensation from the major costs they were hit with as a result of this data breach,” said CUNA President/CEO Jim Nussle. “We remain active in seeking recompense from other data breaches, and in the meantime CUNA will continue its advocacy work to hold merchants to the strict same data security standards credit unions follow.”

The judge who approved the Home Depot settlement, Judge Thomas W. Thrash Jr., will also hear the



MOUNTAIN WEST
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Training & Events Calendar

December 19

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

December 20

Webinar: [Preparation Plan for CDD Changes to Beneficial Ownership Rules: Effective May 11, 2018](#)

2018 Webinars

IMPORTANT NOTE: For the past ten years we have partnered with the Credit Union Webinar Network to provide timely, relevant webinars. We are excited to announce an expansion of our partnership! Beginning in 2018, they will also assist us in marketing and managing these webinars. Click on the link above for a full list of webinar offerings and for more detailed information, please click [here](#).

January 4

Webinar: [Top Issues for 2017 HMDA Reporting: Due March 1, 2018](#)

January 18

Webinar: [Navigating Compliance Issues for Promotions, Bonuses, Contests & Sweepstakes](#)

January 24

Webinar: [Preparing for a Military Lending Act Audit](#)

January 30

Webinar: [Compliance Series: Job-Specific Compliance Training for the Frontline](#)

February 6

Webinar: [Fair Lending Challenges for HMDA Data Rule Changes: Expanded Data Fields & Lending Practices](#)

February 8

Webinar: [Simplifying the Compliance Function: Tools & Checklists to Keep You on Track](#)

February 14

Webinar: [Preparing for the New Mortgage Servicing Rules: Final Implementation Date, April 19, 2018](#)

March 8

Webinar: [Revisiting CDD Policies & Procedures to Include Beneficial Ownership Rule Changes Effective May 11, 2018](#)

March 15

Webinar: [Flood Insurance Compliance Review & Update 2018](#)

March 21

Webinar: [Compliance & Legal Risks in Mobile Banking: Rules & Security Requirements](#)

consolidated class action lawsuits against Equifax. The consolidated suit will be heard in the U.S. District Court for the Northern District of Georgia.

CUNA [filed its lawsuit](#) against Equifax as a result of the data breach announced in September that exposed information of as many as 145 million consumers. A number of credit unions and leagues joined CUNA by filing additional suits which have now been consolidated for judicial efficiency.



Compliance Calendar

December 25, 2017

- Christmas Day – Federal Holiday

Effective Dates

New and Revised Rules

December 1, 2017

- [New Bankruptcy Rules](#)

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](#)

January 16, 2018

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

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](#)

March 22

Webinar: [Completing the CTR Line-by-Line Effective May 28, 2018: Technical Changes, New Data Fields & Alternate Model Reporting](#)

March 28

Webinar: [Collections & The Servicemember: From the MLA to SCRA](#)

**For 2018 webinar questions, please contact MWCUA@cuwebtraining.com.*

2018 Compliance Lunch & Learn Sessions Begin in February

The first Compliance Lunch & Learn sessions for 2018 begin in February in Phoenix, AZ on February 7 and in Tucson, AZ on February 8. Join your credit union compliance peers for instruction and a discussion regarding Advertising & Sweepstakes Rules. Arizona attorney Jeremy Goodman will review important advertising regulations, and discuss how to avoid pitfalls with promotional giveaways, sweepstakes and contests. Cost is \$35/person. Instruction, networking and lunch included. [Click here](#) for more information and to register for this program.

CUNA Comment Calls – Due Dates on Proposed Rules

November 20, 2017~NCUA

[Regulatory Reform Agenda](#)

November 20, 2017~NCUA

[Regulatory Review Summary](#)

December 4, 2017~NCUA

[NCUA Draft 2018-2022 Strategic Planning](#)

December 4, 2017~NCUA

[Accuracy of Advertising and Notice of Insured Status](#)

December 28, 2017~CFPB

[Consumer Response Intake Form](#)

December 28, 2017~CFPB

[Generic Information Collection Plan for Consumer Complaint and Information Collection System](#)

December 29, 2017~NCUA

[Capital Planning and Supervisory Stress Testing](#)

January 2, 2018~NCUA

[Electronic Loan, Deposit, and Investment Data Collection](#)

January 8, 2018~CFPB

[Financial Coaching Program for Veterans and Low-income Consumers](#)

January 16, 2018~CFPB

[Web-based Quantitative Testing of Point of Sale/ATM Overdraft Disclosure Forms](#)

May 11, 2018

- [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](#)

August 19, 2019

- [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](#)

**For detailed information on rules and effective dates, click [here](#)*

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

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