



Compliance News

TILA-RESPA Questions and Answers

Question: Is the Credit Union required to allow members to shop for settlement services?

Answer: The Credit Union is **not required** to allow the member to shop for settlement services – that decision is up to the credit union. Keep in mind that fees that cannot be shopped for will be subject to zero tolerance.

Lawmakers Ask CUNA, Partners to Inform of TRID Enforcement Actions

Despite more than 250 members of the U.S. Congress urging the Consumer Financial Protection Bureau (CFPB) to provide a formal hold-harmless period for its new mortgage rule, no such grace period has been put forth, noted Reps. Randy Neugebauer (R-Texas) and Blaine Luetkemeyer (R-Mo.), in a letter Thursday (10/1/15).

The CFPB's Truth in Lending Act-Real Estate Settlement Procedures Act integrated disclosures (TRID) rule became effective Oct. 3.

Neugebauer (R-Texas) and Luetkemeyer (R-Mo.), chairs of House Financial Services subcommittees, wrote to CUNA and other financial trade organizations Thursday asking them to keep Congress informed of TRID impacts.

"It is our hope that financial services trade associations monitor TRID-related penalties assessed to financial institutions and other businesses and consumers party to real estate transactions, and report all enforcement actions, or threat of enforcement actions, to Congress," the legislators wrote. "Your willingness to keep us informed will allow Congress to have a full idea of the immediate liability costs associated with TRID."

House Majority Leader Kevin McCarthy (R-Calif.) [announced](#) that the House would vote on a bill that would place a safe harbor from litigation and enforcement until Feb. 1, 2016. The bill, the Homebuyers Assistance Act (H.R. 3192) has strong CUNA support.

The letter, addressed to CUNA President/CEO Jim Nussle, from Neugebauer and Luetkemeyer came the same day as a response to CUNA from the Federal Financial Institutions Examination Council (FFIEC) regarding TRID compliance. Nussle, along with other organizations, sent FFIEC leaders a letter in September requesting clear enforcement guidance.

The letter to CUNA was signed by National Credit Union Administration Chair Debbie Matz, in her capacity as an FFIEC board member. Other co-signers on

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the original letter received identical letters signed by their prudential regulator, as a member of the FFIEC board.

The letter said the FFIEC recognizes that the mortgage industry has dedicated substantial resources to adapt systems and personnel to the rule.

“Examiners will expect supervised entities to make good faith efforts to comply with the rule’s requirements in a timely manner,” the letter reads. “Specifically, examiners will consider the institution’s implementation plan, including actions taken to update policies, procedures and processes; its training of appropriate staff; and its handling of early technical problems or other implementation challenges.”

CFPB Director Richard Cordray has said on numerous occasions before Congress that early supervision of TRID implementation will be “diagnostic and corrective, not punitive,” but CUNA and other mortgage stakeholders have pushed the bureau to provide more concrete details on how financial institutions will be examined.

“CUNA has frequently asked the agencies to address our concerns surrounding the TRID rule implementation deadline and we are troubled by today’s response,” said Elizabeth Eurgubian, CUNA’s deputy chief compliance officer. “Therefore, we strongly believe that H.R. 3192 is necessary to protect credit unions from legal liability and examination scrutiny during these early stages of compliance. Congress must pass H.R. 3192 which will provide credit unions protection from enforcement actions and legal liability until Feb. 1, 2016.”

Source: CUNA

[NCUA to Hold Fair Lending Webinar](#)

A free NCUA [webinar](#), “2015 Interagency Fair Lending Laws Hot Topics” will be held on October 15, 2015, beginning at 2 p.m. ET. The 90-minute presentation will provide information to credit unions on compliance with fair lending laws. Sponsored by the Federal Reserve System, the session will feature experts from the NCUA, FRB, CFPB, FDIC, OCC, DOJ and HUD.

[The Department Of Defense \(DOD\) Final Rule Amending The Regulation Implementing The Military Lending Act](#)

Under the [Final Rule](#), federal credit unions can continue providing affordable payday alternative loans under NCUA’s PAL regulation to military members and their families.

DOD’s Final Rule permits federal credit unions making PALs in accordance with NCUA’s regulation to exclude one application fee in a rolling 12-month period from the military annual percentage rate (MAPR). DOD’s proposed rule would have limited the MAPR on PALs to 36 percent including the application fee in addition to the interest rate.

DOD’s original regulation applied only to payday loans, vehicle title loans and tax refund anticipation loans. The Final Rule expands the 36 percent MAPR limit to cover most non-mortgage-related consumer credit transactions under the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z. For example, the Final Rule covers credit card accounts and installment loans, as well as PALs.

The Final Rule also changes how the MAPR is calculated. For most loans (other than the first PAL in a rolling 12-month period), an application fee counts in calculating the MAPR. This is the case even though the application fee would not count in calculating the APR under Regulation Z.

Other Changes:

In addition to accommodating most PALs and revising how the MAPR is calculated, the Final Rule:

looking for, we now provide individual loan reviews and a basic annual compliance package that includes BSA, ACH, SAFE Act, and Website compliance.

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InfoSight Highlight

Backup Withholding

The Interest and Dividend Tax Compliance Act of 1983 (26 USC 3402), as amended, requires credit unions and other payers of reportable interest and dividends to withhold, under specified circumstances. Currently, the amount to be withheld is 28 percent of those interest and dividend payments as federal income tax. The credit union is required to make timely deposits of those taxes to the IRS. This is referred to as backup withholding. The backup withholding rate is 28%.

How does backup withholding affect credit unions?

The Act mandates payer penalties for failure to withhold, failure to make timely deposits, and failure to file information returns in the required format. A payee’s failure to report interest or dividend income will create a presumption of negligence on the part of the payer. Backup withholding is not an additional tax. It is an early collection of taxes. The credit union will be required to supply the IRS with information on the amount of taxes withheld, and the account-holder will claim a credit against taxes owed when filing his/her tax return. The credit union must institute backup withholding under the following circumstances:

- There is a missing or obviously incorrect taxpayer identification number (TIN). For example, an obviously incorrect TIN is one that does not have nine numeric digits.
- The account-holder has not certified, under penalties of perjury, that the TIN provided to the credit union is correct.
- The account-holder has not certified, under penalties of perjury, that the account-holder is not subject to backup withholding (unless the member qualifies for an exemption).
- The IRS notifies the credit union to withhold due to the account-holder’s under-reporting of income, or because the account-holder has a tax problem (C-Notice).
- The IRS notifies the credit union that the TIN on a Form 1099 filed with the Service is missing or incorrect (IRS CP2100 or CP2100A).
- The member fails to provide a W-8 BEN or does not renew the form after three years.

Note: If an account-holder is subject to backup withholding for more than one reason, then the

- Adjusts the safe harbor for determining and documenting who is a covered borrower;
- Amends disclosure requirements and provides model disclosure language;
- Amends provisions prohibiting certain contract terms, including exemptions from certain provisions for credit unions;
- Defines the penalties and civil remedies for violations; and
- Preempts state law in certain circumstances.

Effective Dates

Although the Final Rule's effective date is October 1, 2015, credit unions generally have a year from the effective date of the Final Rule to comply with the new provisions for the types of "consumer credit" covered only by the expanded definition under the Final Rule. The compliance date for most new provisions will be October 3, 2016. Compliance with the credit card account rules will begin October 3, 2017.

Until October 3, 2016, credit unions making payday loans, vehicle title loans, or tax refund anticipation loans must continue to comply with the original regulation.

Source: NCUA

Advocacy Highlight

TRID Effective Oct. 3 – Contact CUNA Regarding Regulatory Burden

As published in an [article](#) by CUNA on 10/2/15, the Truth-in-Lending Act-Real Estate Settlement Procedures Act integrated disclosure (TRID) rule went into effect on 10/3/15, bringing with it a number of compliance questions for mortgage participants.

CUNA President/CEO Jim Nussle is requesting credit unions contact CUNA with stories regarding their efforts to comply with TRID, including information on how it adds to the regulatory burden already facing credit unions. CUNA has been advocating for more information regarding how financial institutions will be examined for TRID compliance, particularly in the days and weeks following the effective date.

For more information on those efforts, see "[Lawmakers ask CUNA, partners to inform of TRID enforcement actions](#)" in today's *News Now*.

2016 CUNA GAC – The Biggest CU Advocacy Event of the Year

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CUNA Governmental Affairs Conference is the largest gathering of credit union advocates rallying on behalf of America's more than 103 million credit union members.

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[Training & Events Calendar](#)

Regulatory Compliance & BSA School - Phoenix

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withholding must continue until all the reasons have been removed. For example, an account-holder can be subject to backup withholding because of an incorrect TIN and because of a tax problem. Even if the account-holder subsequently provides the credit union with the correct TIN certified on a Form W-9, the credit union must continue to impose withholding until it has received notification from the IRS that the tax problem has been corrected.

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



The [CUNA Regulatory Advocacy Report](#) 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. You can view the current report and past reports from the archive.



[Compliance Calendar](#)

October 1

⬇ Flood Insurance Rule Effective Date – Part 1

October 1

⬇ Credit/Debit Card Liability Shift

October 3

⬇ CFPB: Know Before You Owe Disclosure - Effective Date

October 3

⬇ CFPB: Integrated Mortgage Disclosures - Effective Date

October 12

⬇ Columbus Day – Federal Holiday

October 23

⬇ 5300 Call Report Due to NCUA

November 1

⬇ Daylight Savings Time Ends

November 11

⬇ Veterans Day - Federal Holiday

November 26

⬇ Thanksgiving Day – Federal Holiday

December 25

⬇ Christmas Day – Federal Holiday

December 31

⬇ Foreign Account Tax Compliance Act Effective Date

Effective Dates New and Revised Rules

October 1, 2015~DOD (Compliance Mandatory 10/3/2016)

[October 20-21: Phoenix, AZ](#)

October 15

Webinar: [BSA Compliance: Identifying, Monitoring and Reporting Suspicious Activity](#)

October 26

Webinar: [Clarifying the Confusion: TRID & FAQs](#)

October 27

Webinar: [Adverse Action Consumer & Mortgage Loan Best Practices](#)

October 28

Webinar: [Supervisory Committee Duties & Responsibilities](#)

October 29

Webinar: [CFPB Final Amendments for Small Creditors & Rural or Underserved Areas, Effective January 1, 2016](#)

November 4

Webinar: [Director Series: Interest Rate Risk Policies, Considerations & Consequences: What Directors Should Know](#)

November 9

Webinar: [Preparing for the Impact of Same Day ACH](#)

November 12

Webinar: [Regulatory Requirements for the Board & Senior Management](#)

November 24

Webinar: [Top 10 Mistakes in Deposit Compliance Exams](#)

December 9

Webinar: [BSA Special Risks: Policy, Law Enforcement & Regulator Issues](#)

New Date: Compliance Networking Council – rescheduled for

October 15

The scheduled October 8th Compliance Networking Council **has been changed** to Thursday, October 15, 2015. The Compliance Council brings together compliance professionals to discuss the challenges inherent in keeping credit unions compliant with the regulations that govern them. The council provides opportunities to meet with your counterparts from other credit unions, discuss upcoming regulatory changes, as well as strategies to minimize their impact. This council will take place in Denver, CO, Phoenix, AZ and Rock Springs, WY. For more information or to register, please e-mail: training@mwcu.com.

Military Lending Act Rule

October 3, 2015~CFPB

[TILA-RESPA Integrated Disclosure Rule](#)

October 19, 2015~CFPB

[Request to Develop Survey on POS/ATM Overdraft Disclosure](#)

December 31, 2015~IRS

["Foreign Account Tax Compliance Act" \(FATCA\) Rule](#)

CUNA Comment Calls – Due Dates on Proposed Rules

September 30, 2015~NACHA

[NACHA Third-Party Sender Registration Request for Comment](#)

October 19, 2015~CFPB

[Request to Develop Survey on POS/ATM Overdraft Disclosure](#)

CUNA Schools and Webinars

November 19

Webinar: [Identify Interest Rate and Market Risk](#)

December 17

Webinar: [Managing Credit Risk](#)

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

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