

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

December 18, 2015

### Compliance News

#### Student Loan Interest Reporting, Form 1098-E: What's New for 2016?

The IRS notes the following new developments and reminders:

##### Filing Deadline:

- File Form 1098-E on paper by February 29, 2016, or March 31, 2016, if filing electronically.
- Send recipient statements by January 31, 2016. You are required to include the direct telephone number of a person who can answer questions about the statement.

**Form W-9S:** You may use Form W-9S, Request for Student's or Borrower's Taxpayer Identification Number and Certification, to obtain the student's or borrower's name, address, taxpayer identification number, and student loan certification to be used when filing Form 1098-E. Use of Form W-9S is optional; you may collect the information using your own forms. You may collect the student's or borrower's information on paper or electronically.

**Electronic Submission of Form W-9S:** A credit union may establish a system for students and borrowers to submit Form W-9S electronically, including by fax. Generally, the electronic system must:

- Ensure the information received is the information sent and document all occasions of user access that result in the submission,
- Make reasonably certain the person accessing the system and submitting the form is the person identified on Form W-9S,
- Provide you with the same information as the paper Form W-9S,
- Be able to supply a hard copy of the electronic Form W-9S if the IRS requests it, and
- If an electronic Form W-9S is used to obtain the borrower's certification that all the loan proceeds are used solely to pay qualified higher education expenses, your electronic system must require, as the final entry in the submission, an electronic signature by the borrower whose name is on Form W-9S.

**Revolving Accounts:** Report interest paid on revolving accounts, such as credit card accounts, only if the borrower certifies that all the loan proceeds are solely used to pay qualified higher education expenses. You do not have to verify the borrower's actual use of the funds. Do not report interest on mixed use loans.

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*From Your Regulatory Compliance Team*

*Please note there will be no newsletter until Jan. 8, 2016*

### Association Compliance Forums

Click on one of the below links to subscribe

[Compliance Forum](#)

[BSA Compliance Officer Forum](#)

**Multiple Loans for One Borrower:** The \$600 threshold applies to each borrower regardless of the number of student loans obtained by that borrower. However, you may file a separate Form 1098-E for each student loan of the borrower, or you may file one Form 1098-E for the interest from all student loans of the borrower.

**The First Person to Receive Interest Files:** If more than one person has a connection with the loan, only the first person to receive the interest payment must file Form 1098-E. For example, a loan service or collection agent receiving payments on behalf of the lender must file.

**Electronic Filing:** If you are required to file 250 or more information returns, you must file electronically. The 250-or-more requirement applies separately to each type of form. For example, if you must file 500 Forms 1098 and 100 Forms 1099-A, you must file Forms 1098 electronically, but you are not required to file Forms 1099-A electronically. The electronic filing requirement does not apply if you apply for and receive a hardship waiver.

**Paper Forms:** If you are filing paper forms, you must send a Form 1096 with each type of form as the transmittal document. You must group the forms by form number and submit each group with a separate Form 1096. NOTE: The IRS encourages you to file electronically even though you are filing fewer than 250 returns.

**Record Retention:** Generally, keep copies of information returns you filed with the IRS or have the ability to reconstruct the data for at least 3 years from the due date of the returns. Keep copies of information returns for 4 years if backup withholding was imposed.

The IRS updates its guidance on an irregular basis. Check often for updated [instructions for Form 1098-E](#).

*Source: CUNA and IRS*

### **Mortgage Interest Reporting on Form 1098: What's New for 2016?**

The IRS notes the following new developments and reminders:

#### **Filing Deadlines:**

- File Form 1098 - Mortgage Interest, with the IRS on paper by February 29, 2016, or March 31, 2016, if filing electronically.
- Send recipient statements by January 31, 2016. You are required to include the direct telephone number of a person who can answer questions about the statement.

#### **Electronic Filing:**

If you are required to file 250 or more information returns, you must file electronically. The 250-or-more requirement applies separately to each type of form. For example, if you must file 500 Forms 1098 and 100 Forms 1099-A, you must file Forms 1098 electronically, but you are not required to file Forms 1099-A electronically. The electronic filing requirement does not apply if you apply for and receive a hardship waiver. If you are required to file electronically but fail to do so, and you do not have an approved waiver, you may be subject to a penalty of up to \$100 per return for failure to file electronically unless you establish

Please provide the subscriber's name, credit union, title and email address. The subscriber will receive a welcome e-mail that details how to access the forum.



Spend more time with members and less time worrying about compliance! Add compliance experts to your team and know your compliance risks with one easy-to-read dashboard from AffirmX. This cloud-based, near real-time solution combines call-report data, onsite visits, and document review to help you efficiently manage compliance in the areas of Operations, Lending, BSA, Deposit and Advertising.

If a full suite of compliance reviews isn't what you are looking for, we now provide individual loan reviews and a basic annual compliance package that includes BSA, ACH, SAFE Act, and Website compliance.

For more information about our compliance services, please contact Melia Heimbeck at: [mheimbeck@mwcu.com](mailto: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.

Form W-8BEN is to be filled out by a foreign person who is a nonresident alien and beneficial owner of an **interest bearing** account subject to withholding. This should be completed regardless of whether there is a claim for a reduced rate of, or an exemption from, withholding. By law, credit union dividends are considered to be interest. Therefore, **Form W-8BEN is not required to be completed by a nonresident alien who opens a non-interest bearing account (no dividends paid).**

#### **How does IRS Form W-8BEN affect credit unions?**

A credit union should request Form W-8BEN from any foreign person which the credit union is making an interest payment if it is the beneficial owner of the income, whether or not it is claiming a reduced rate of, or exemption from, withholding.

reasonable cause.

**Paper Forms:** If you are filing paper forms, you must send a Form 1096 with each type of form as the transmittal document. You must group the forms by form number and submit each group with a separate Form 1096. NOTE: The IRS encourages you to file electronically even though you are filing fewer than 250 returns.

**Mortgage Insurance Premiums:** Report mortgage insurance premiums paid of \$600 or more in box 5 of Form 1098.

**New Reporting Requirements:** The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 contains new reporting requirements for recipients of mortgage interest. For forms 1098 issued to payers after December 31, 2016, you must report the address or description of property securing the mortgage, the outstanding mortgage principal as of January 1, 2016, and the mortgage origination date.

**Lines of Credit and Credit Card Obligations:** Interest (other than points) received on any mortgage that is in the form of a line of credit or credit card obligation is reportable regardless of how you classified the obligation. A borrower incurs a line of credit or credit card obligation when the borrower first has the right to borrow against the line of credit or credit card, whether or not the borrower actually borrows an amount at that time.

**Nonresident Alien Interest Payer:** You must file Form 1098 to report interest paid by a nonresident alien only if all or part of the security for the mortgage is real property located in the United States.

**Multiple Borrowers:** Even though there may be more than one borrower on the mortgage, you are required to prepare Form 1098 only for the payer of record, and only if such payer of record is an individual, showing the total interest received on the mortgage. Even if an individual is a coborrower, no Form 1098 is required unless the payer of record is also an individual.

**Points:** You must report points if the points, plus other interest on the mortgage, are \$600 or more. For example, if a borrower pays points of \$300 and other mortgage interest of \$300, the lender has received \$600 of mortgage interest and must file Form 1098. Report the total points on Form 1098 for the year of closing regardless of the accounting method you use to report the points as income for federal income tax purposes.

Amounts received directly or indirectly by a mortgage broker are treated as points to the same extent they would be treated as points if paid to and retained by the lender of record. The lender of record must report those points paid to a mortgage broker.

**Reimbursements:** You are required to report reimbursements of overpaid interest aggregating \$600 or more to a payer of record on Form 1098. You are not required to report reimbursements of overpaid interest aggregating less than \$600 unless you are otherwise required to file Form 1098.

The reimbursement must be reported on Form 1098 for the year in which

Generally, a credit union must withhold 30% from the gross amount paid to a foreign person unless it can reliably associate the payment with a Form W-8. The credit union can reliably associate a payment with a Form W-8 if it holds a valid form, it can reliably determine how much of the payment relates to the form, and it has no actual knowledge or reason to know that any of the information or certifications on the form are unreliable or incorrect.

**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.

## Advocacy Highlight

### Field of Membership Rule Published in the Federal Register

NCUA's proposed field of membership (FOM) rule was published in the Federal Register, and is now open for comment. Comments will be due to the NCUA by February 8, 2016.

NCUA's proposed FOM rule would provide extra flexibility for federal credit unions of all federal charters. These changes should give federal credit unions additional flexibility in determining areas and people to serve that are not available in the current regulation.

The amendments would implement changes in policy affecting:

- The definition of a local community, a rural district, and an underserved area;
- The expansion of multiple common bond credit unions and members' proximity to them;
- The expansion of single common bond credit unions based on a trade, industry or profession; and
- The process for applying to charter or expand a federal credit union.

CUNA has [prepared a detailed summary](#) to help credit unions parse through the proposed rule to determine how it would impact them, and encourages all credit unions to review the proposed rule and comment to NCUA. CUNA has also developed an [FOM resource page](#) to help credit unions wade through the proposed

the reimbursement is made. No change should be made to the prior year Form 1098 because of this reimbursement.

If you reimburse interest in the same year it is overpaid, do not report the overpayment on Form 1098 as interest received during the year or as a reimbursement of overpaid interest. If you pay interest of \$10 or more on the reimbursement, do not report it on Form 1098 – report it on Form 1099-INT.

**Truncation of ID Numbers:** You may truncate a payee’s identification number (social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN)) on payee statements. Truncation is not allowed on any documents filed with the IRS.

**Record Retention:** Generally, keep copies of information returns you filed with the IRS or have the ability to reconstruct the data for at least 3 years from the due date of the returns. Keep copies of information returns for 4 years if backup withholding was imposed.

The IRS updates its guidance on an irregular basis. Check often for updated [instructions for Form 1098](#).

*Source: CUNA and IRS*

### Most Recent Settlement Resolves Cases in New York and Kansas Federal Courts

The National Credit Union Administration announced a settlement with Morgan Stanley for \$225 million to resolve claims arising from losses related to corporate credit unions’ purchases of faulty residential mortgage-backed securities.

“NCUA continues to pursue recoveries on behalf of the corporate credit unions against the financial firms we maintain contributed to the corporates’ losses,” NCUA Board Chairman Debbie Matz said. “These actions fulfill our statutory obligation to act in order to minimize costs to the credit union system resulting from the crisis. They also promote accountability and ensure consumers remain protected.”

The settlement covers claims asserted in 2013 by the NCUA Board on behalf of U.S. Central Federal Credit Union, Western Corporate Federal Credit Union, Members United Corporate Federal Credit Union and Southwest Corporate Federal Credit Union. NCUA will dismiss pending suits against Morgan Stanley in federal district courts in New York and Kansas. Morgan Stanley does not admit fault in the settlement.

Net proceeds from this settlement and others are used to pay claims against the failed corporate credit unions, including those of the Temporary Corporate Credit Union Stabilization Fund. Stabilization Fund recoveries reduce borrowings from the U.S. Treasury and eliminate the need for assessments to federally insured credit unions.

NCUA was the first federal regulatory agency for depository institutions to recover losses from investments in these securities on behalf of failed financial institutions.

NCUA continues to pursue litigation in federal courts in New York, Kansas and California against financial firms, including RBS, Goldman Sachs, UBS and Credit Suisse, based on the sale of faulty securities that caused the collapse of five corporate credit unions. The agency, on behalf of the failed

rule and to comment to the NCUA. We have been working with credit unions, leagues and other stakeholders to provide important feedback to NCUA on FOM and will continue these efforts through the comment period.

*Source: CUNA*

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

February 21-25, 2016 • Washington, D.C.

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.

Join thousands of credit union leaders to leverage the power of our united system and share credit unions’ positive impact with lawmakers from all 50 states.

Click [here](#) to register and get more information.



### Compliance Calendar

#### December 25

- ♦ Christmas Day – Federal Holiday

#### December 31

- ♦ Foreign Account Tax Compliance Act Effective Date

#### December 25

- Christmas Day – Federal Holiday

#### December 31

- Foreign Account Tax Compliance Act Effective Date

#### January 1

- Flood Insurance Rule Effective Date – Part 2

#### January 1

- New Year’s Day – Federal Holiday

#### January 12

- Microsoft Discontinues Support of Older Versions of Internet Explorer

#### January 18

- Martin Luther King, Jr. Birthday – Federal Holiday

#### January 22

- 5300 Call Report Due to NCUA

#### February 15

- President’s Day – Federal Holiday

#### March 13



corporates, has other litigation pending against securities firms alleging violations of state and federal anti-trust law by manipulation of interest rates through the London Interbank Offer Rate system. NCUA also has pending suits against financial firms alleging their failure to perform their duties as trustees of residential mortgage-backed securities trusts.

*Source: NCUA*

### **FinCEN and China's CAMLMAC Sign Memorandum of Understanding**

Financial Crimes Enforcement Network (FinCEN) Director Jennifer Shasky Calvery and the China Anti-Money Laundering Monitoring and Analysis Center (CAMLMAC) Director-General Luo Yang of the People's Republic of China signed a Memorandum of Understanding (MOU) this week to create a framework to facilitate expanded U.S.- China collaboration, communication, and cooperation between both nations' financial intelligence units (FIUs). This arrangement provides a mechanism for sharing information on money laundering and the financing of terrorism in order to prevent illicit actors from abusing either country's financial systems. This information sharing arrangement implements important objectives of the September, 2015 meetings between the two nations' leaders and furthers the objectives of the U.S. - China Strategic and Economic Dialogue.

"This MOU provides an important foundation for a reciprocal exchange of extremely valuable financial information to help thwart terrorism and money laundering in these perilous times," said Director Calvery. "Building this mutually beneficial bridge of cooperation will serve each country's vital interests and help protect the citizens of both of our countries from the damage that criminals and terrorist financiers can inflict." FinCEN, as the FIU for the United States, is responsible for collecting, analyzing, and disseminating financial intelligence to law enforcement and other relevant authorities to help fight money laundering and the financing of terrorism. FinCEN is also the lead anti-money laundering/countering the financing of terrorism regulator for the federal government. In both roles, its mission is to safeguard the financial system, combat money laundering, and promote national security. FinCEN has dozens of similar MOU arrangements with other FIUs, organized under the global network of the Egmont Group, to share information to protect the world's financial system.

FinCEN's Chinese counterpart, CAMLMAC, has similar responsibilities for the Chinese government. Though not yet a member of the Egmont Group, CAMLMAC possesses financial intelligence that will provide FinCEN and U.S. law enforcement investigators with extremely valuable information to provide leads, expose criminal networks, and help thwart illicit activity in the vast and interconnected global economy.

The MOU establishes that the information being exchanged is to be used only in an authorized manner and treated in a confidential manner.

*Source: FinCEN*

### • Daylight Savings Time Begins

## **Effective Dates New and Revised Rules**

### **December 31, 2015~IRS**

"Foreign Account Tax Compliance Act" (FATCA) Rule

### **CUNA Comment Calls – Due Dates on Proposed Rules**

### **December 11, 2015~CFPB**

Request for OMB To Review Information Collected Under HMDA (Reg C)

### **February 8, 2016~NCUA**

NCUA Field of Membership Proposal



### Training & Events Calendar

### **January 6**

Webinar: New Unauthorized ACH Rules: Impact on Return Rates & Fee Thresholds

### **January 7**

Webinar: Essential Compliance Requirements for Lenders

### **January 12**

Webinar: Maximizing Cyber Security Soundness & Minimizing Incidents

### **January 19**

Webinar: Denied Loan Requirements: Consumer, Commercial & Real Estate

### **January 27**

Webinar: Demystifying Rules for TRID Tolerances

### **January 28**

Webinar: Completing the CTR Line-by-Line

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

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