

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

December 4, 2015

### Compliance News

#### Coverage of the NCUA's Revised Flood Rule

After our release of the InCompliance materials for NCUA's revised flood hazard rule in November, a credit union questioned whether a loan secured by a mobile home that is not "on a permanent foundation" would be subject to the requirements of the rule. In a telephone conversation with Sarah Chung, attorney with NCUA's Office of General Counsel, she told us that the NCUA interprets the phrase "on a permanent foundation" to mean a mobile home that is "affixed to a permanent site." Therefore, the requirement to purchase flood insurance does not apply to a loan secured by a mobile home that is not on a permanent foundation; for example, a mobile home on a "temporary" pad or that remains on a chassis. Interestingly, Ms. Chung did state that a flood hazard determination must still be made although she cited no authority. Since the definition of "mobile home" is consistent through all sections of the rule, and since flood insurance would not need to be purchased for a loan secured by a mobile home not on a permanent foundation, it may not be necessary to perform a flood hazard determination for such a loan.

#### NCUA Risk-Based Capital Rule Report Includes Legislative Recommendations

With the National Credit Union Administration's risk-based capital rule now finalized, credit unions would benefit from changes Congress could make in the Federal Credit Union Act, the agency said.

NCUA delivered a [report](#) to the House Financial Services Committee on the agency's risk-based capital final rule. As outlined in H.R. 2769, the Risk-Based Capital Study Act of 2015, the report included legislative recommendations to improve the capital system for credit unions. NCUA recommended that Congress allow well-managed credit unions to issue supplemental capital that will count as net worth. NCUA also proposed technical changes to the current prompt corrective action statutory framework.

The 228-page report contains an analysis of the agency's legal authority to require a two-tiered risk-based capital system, a comparison of credit union and bank risk weights, a discussion of the rationale for each of the risk weights and an overview of how the proposed rule would apply to credit union capital buffers.

NCUA Board Chairman Debbie Matz in October committed to completing the report outlined in H.R. 2769. The House Financial Services Committee passed the bill Sept. 30.

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Approved by the NCUA Board at its October 2015 open meeting by a 2-1 vote, the [risk-based capital final rule](#) goes into effect Jan. 1, 2019. The final rule was approved after a comprehensive review of thousands of comments by lawmakers and credit union system stakeholders during two separate comment periods. The scope of the new rule covers 24 percent of credit unions—complex credit unions with assets above \$100 million—that hold 90 percent of the system’s assets.

NCUA hosts an online [Risk-Based Capital Rule Resources Center](#) with extensive information about the rule, including a risk-based capital estimator tool for credit unions to assess the rule’s impact on their operations and a [video](#) about the final rule.

Source: NCUA

### IRS Upgrades, Enhances FATCA Registration System

The Internal Revenue Service has upgraded the Foreign Account Tax Compliance Act (FATCA) Online Registration System, enabling sponsoring entities to register their sponsored entities to obtain a global intermediary identification number. The upgraded system also will allow users to update their information, download registration tables and change their financial institution type. The upgrade also includes an updated jurisdiction list.

The Foreign Account Tax Compliance Act (FATCA) Online Registration System is a secure, web-based system that financial institutions and other entities can use to register for FATCA purposes. Launched in 2013, the system allows the IRS to identify foreign financial institutions and certain other entities with FATCA obligations. These entities generally report on foreign financial accounts held by U.S. taxpayers under the terms of FATCA or pursuant to the provisions of specific intergovernmental agreements (IGAs).

“The registration system is the backbone of FATCA,” said IRS Commissioner John Koskinen. “These upgrades improve the FATCA process, enabling the registration of sponsored entities and making it easier for registrants to use. Working with financial institutions and through intergovernmental agreements, our progress against undisclosed foreign accounts continues.”

More than 170,000 financial institutions worldwide have registered with the IRS. These financial institutions are located in more than 200 jurisdictions. In most cases, those foreign financial institutions that do not comply with FATCA or participate through an IGA are subject to 30 percent withholding on certain U.S. source payments.

FATCA requires certain sponsored entities (including those covered by an IGA) to have their own Global Intermediary Identification Number (GIIN) for FATCA reporting and withholding purposes by Dec. 31, 2016. To facilitate this requirement, the FATCA Online Registration System will now enable sponsoring entities to add their sponsored entities and, if applicable, sponsored subsidiary branches. These entities can be added either individually or by submitting a file containing information for multiple entities.

The IRS also provides a Microsoft Excel-based Sponsored Entity Data Preparation Tool for users choosing the multiple record file upload option. As a result of the new sponsored entities and sponsored subsidiary branches, the values available for the GIIN have been expanded. See the Instructions for Sponsored Entity Data Preparation Tool for XML File for the

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@mwcua.com](mailto:mheimbeck@mwcua.com) or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



### InfoSight Highlight

#### IRS Form W-9

A credit union that is required to file information returns with the Internal Revenue Service (IRS) must get the correct taxpayer identification numbers (TINs) of members in order to report to the IRS certain income paid to members (A TIN is either a social security number (SSN), an employee identification number (EIN), or an individual tax identification number (ITIN).) IRS Form W-9, Request for Taxpayer Identification Number and Certification, is used by credit unions to request correct TINs for members as well as to request that members certify certain claims. Form W-9 is used if members can certify that they are U.S. persons or resident aliens, that the TINs they provide are correct, and that they are not subject to backup withholding.

Individuals who have an ITIN must provide it on Form W-9. However, some individuals, who for tax purposes are considered U.S. resident aliens, are not eligible to obtain an SSN. A resident alien is an individual who either has an immigration visa (green card) and/or has resided in the U.S. for at least 31 days in the calendar year, and 183 days in the two preceding years. This includes certain resident aliens who must receive information returns but who cannot obtain an SSN.

These individuals must apply for an ITIN on Form W-7, Application for IRS Individual Taxpayer Identification Number, unless they have an application pending for an SSN. Individuals filing a Form W-7 must provide proof that the ITIN will be used for tax administration purposes (meaning a completed tax return). In general, an individual is required to attach the individual’s original completed tax return for which the ITIN is needed, such as a Form 1040 (U.S. individual Income Tax Return), to the Form W-7.

If a member cannot claim that he/she is a U.S. person, or is completing one of the other processes, then Form W-8BEN must be completed.

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

definitions of sponsored entities and sponsored subsidiary branches.

The update to the system occurred on November 16. The improvements to the system and additional features to manage user accounts include the following:

- New questions have been added, such as asking foreign financial institutions to indicate their tax identification number in their country or jurisdiction, if they have one. Other questions relate to identifying the common parent entity of the expanded affiliated group.
- Certain financial institutions can now change their “Financial Institution Type.”
- Member financial institutions can now transfer to another expanded affiliated group without having to cancel their current agreement and re-register.

Following the change or transfer, a new FATCA account will be created with existing registration information, including branches. The FATCA Online Registration System User Guide and FAQs have been updated for these enhancements. Additional information on this system is available at [www.irs.gov/fatca](http://www.irs.gov/fatca).

*Source: IRS*

### **CFPB Announces Fall 2015 Rulemaking Agenda**

The Bureau has announced its 2015 fall rulemaking agenda. Current and long-term initiatives were listed. Current items include:

- Mandatory arbitration clauses
- Payday, auto title, and similar lending products
- Prepaid accounts
- Overdraft services
- Debt collection
- Larger participants and non-depository lender registration
- Women-owned, minority-owned, and small businesses data collection
- Mortgage servicing
- Facilitating implementation of the Home Mortgage Disclosure Act, Know Before You Owe disclosures, and other mortgage rules

### **Agencies Announce Dollar Thresholds in Regulations Z and M for Exempt Consumer Credit and Lease Transactions**

The Federal Reserve Board and the Consumer Financial Protection Bureau (CFPB) announced the dollar thresholds in Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing) that will apply for determining exempt consumer credit and lease transactions in 2016. These thresholds are set pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amendments to the Truth in Lending Act and the Consumer Leasing Act that require adjusting these thresholds annually based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the Federal Reserve Board and the CFPB will not adjust this exemption threshold from the prior year. Transactions at or below the thresholds are subject to the protections of the regulations.

Based on the annual percentage decrease in the CPI-W as of June 1, 2015, the protections of the Truth in Lending Act and the Consumer Leasing Act generally will apply to consumer credit transactions and consumer leases of \$54,600 or less in 2016—the same thresholds that applied in 2015.

## **Advocacy Highlight**

### **CUNA Regulatory Issues and Resources**

On its website under [Advocacy](#), CUNA has compiled a listing of Additional Regulatory Resources, one of which is called “Top Credit Union Regulatory Issues.” It provides descriptions of the following issues, some of which were completed in 2015 and many that are still under review. So that your voice can be heard, you may wish to take a look at the more detailed information:

- Credit Impairment (FASB)
- Cybersecurity Issues (FFIEC & NCUA)
- Debt Collection (CFPB)
- Examination Issues (NCUA)
- Field of Membership (NCUA)
- Home Mortgage Disclosure Act (CFPB)
- IOLTA (NCUA)
- Member Business Lending (NCUA)
- Overdraft Protection (CFPB)
- Overtime Pay (Department of Labor)
- Payday Lending (CFPB)
- Regulatory Relief (CFPB & NCUA)
- Risk-Based Capital (NCUA)
- Same Day ACH (NACHA & Fed)
- Small Credit Union (NCUA)
- Telephone Consumer Protection Act (FCC)
- Truth in Lending Act & Real Estate Settlement Procedures Act (CFPB)

### **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.



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.

However, private education loans and loans secured by real property (such as mortgages) are subject to the Truth in Lending Act regardless of the amount of the loan.

Although the Dodd-Frank Act generally transferred rulemaking authority under the Truth in Lending Act and the Consumer Leasing Act to the CFPB, the Federal Reserve Board retains authority to issue rules for certain motor vehicle dealers. Therefore, the agencies are issuing these notices jointly.

The Regulation M notice submitted to the Federal Register is available here:

<https://federalregister.gov/a/2015-30071>

The Regulation Z notice submitted to the Federal Register is available here: <https://federalregister.gov/a/2015-30091>

Source: CFPB



#### Training & Events Calendar

#### **December 7**

Webinar: [Examining the Proposed Federal Changes to Overtime Pay Exemptions & the Potential Impact to Credit Unions](#)

#### **December 9**

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

#### **December 10**

Webinar: [Managing Accounts & Records for Nonresident Aliens: Opening, Identifying, Monitoring & Tax Reporting](#)

#### **December 14**

Webinar: [Revised TRID Mortgage Exam Procedures: Reviewing September 15, 2015 Changes](#)

#### **December 15**

Webinar: [Robbery Prevention, Apprehension & Recovery](#)

#### **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](#)

### **CUNA Schools and Webinars**

#### **December 17**

Webinar: [Managing Credit Risk](#)



### **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**

- 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**

#### **November 19, 2015~NCUA**

[Investment & Deposit Activities – Bank Notes](#)

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

[Request for OMB To Review Information Collected Under HMDA \(Reg C\)](#)

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