

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

March 25, 2016

### Compliance News

#### NEW: CIP Guidance For Prepaid Card Programs

Five federal regulators, including NCUA, have issued [joint guidance](#) to clarify how FinCEN's customer identification program (CIP) requirements apply to issuers and users of several types of prepaid card programs.

This guidance may not be as impactful for credit unions as it may be for other financial institutions, because credit unions primarily serve their members for which the CIP requirements clearly apply. However, this guidance may help you determine who the customer/member is in certain prepaid account situations, such as payroll cards, government benefit cards and health benefit cards.

By way of background, the CIP rule requires credit unions to gather information sufficient to form a reasonable belief that you know the true identity of your member when opening an account. You must also have risk-based procedures in place to verify this identifying information. The CIP is part of the larger set of Bank Secrecy Act/ Anti-money laundering regulations.

#### CIP Triggers

According to the guidance, the following functions on a prepaid card trigger the CIP rule:

- Reloadable by the cardholder or another party on behalf of the cardholder;
- Withdrawals permitted in excess of the card balance;
- Access to an overdraft line or an established line of credit;
- Prepaid Cardholders and Third Parties

In a footnote to the guidance, NCUA notes that any credit union contemplating entering into an account relationship involving holders of prepaid cards sold and distributed by third parties must ensure that the consumer with whom the credit union intends to establish the relationship is within the credit union's field of membership.

Additionally, the guidance emphasizes that issuing financial institutions should enter into well-constructed, enforceable contracts with third-party program managers that clearly define the expectations, duties, rights, and obligations of each party. At a minimum, the agreement should:

- Outline CIP obligations of the parties;
- Ensure the right of the issuing financial institution to transfer, store, or otherwise obtain immediate access to all CIP information collected by the third-party program manager on cardholders;
- Provide for the issuing financial institution's right to audit the third-party program manager and to monitor its performance; and

### 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

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- Credit unions must comply with [Letter to Credit Unions 07-CU-13](#) and the accompanying [Supervisory Letter 07-01](#).

### Payroll Cards

If the employer (or the employer’s agent) is the only person that may deposit funds into the payroll card account, the employer should be considered the financial institution’s customer/member for purposes of the CIP rule. In that case, the financial institution is not required to apply its CIP to each employee. The employer should be considered to be the customer/member even if there are subaccounts that are attributable to each employee. By contrast, if the employee is permitted to access credit through the card, or reload the payroll card account from sources other than the employer, the employee should be considered the customer/member and the financial institution should apply its CIP to the employee. (Keep in mind this discussion is for CIP purposes only – it does not address the insurability of funds in a pooled account if any of the employees are not members of the credit union.)

### Government Benefit Cards

If a government benefits card program permits only government funds to be loaded onto the card and does not provide access to credit, no customer/member relationship is established between the financial institution and the beneficiary-cardholder for purposes of the CIP rule. A financial institution that issues such a government benefit card is not required to apply its CIP to the government agency establishing the benefit card account. If, however, the card allows non-government funds to be loaded onto the card or provides access to credit, then a customer/member relationship is established between the financial institution and the beneficiary-cardholder and the financial institution should collect CIP information from the beneficiary-cardholder.

### Health Benefit Cards

While Health Savings Accounts (HSA), Flexible Spending Arrangements (FSA), and Health Reimbursement Arrangements (HRA) are all used to set aside tax-exempt funds for certain medical expenses, these arrangements may differ with respect to who may establish the account, deposit funds into the account, or access funds in the account. Therefore, the person or entity that should be considered to be the issuing financial institution’s customer/member for CIP purposes will differ.

HSAs: Because the employee establishes the account, the employee is the issuing financial institution’s customer/member for purposes of the CIP rule.

FSAs & HRAs: Because no person other than the employer (or employer’s agent) establishes an FSA or HRA, makes deposits into the FSA or HRA, and distributes funds from the FSA or HRA, the employer should be the issuing financial institution’s customer/member for purposes of the CIP rule.

### Closed-loop Cards

In the case of closed-loop prepaid cards, those that do not have the functionalities that trigger the CIP rule, such as a specific retailer’s card, the third-party program manager whose name the pooled account has been established should be considered to be the only customer/member of the issuing financial institution and subject to the CIP requirements. In these cases, the issuing financial institution is not required to “look through” the pooled account to verify the identity of each cardholder.

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### InfoSight Highlight

#### Advertising

##### **Equal Credit Opportunity Act**

An advertisement must not use any words, phrases, symbols, or forms that would convey either overt or tacit discriminatory preferences or limitations (i.e., based on race, color, religion, sex, handicap, familial status, or national origin). This rule is not intended to prohibit or restrict advertising efforts as a part of an affirmative action marketing program.

##### **Fair Housing Act**

The following practices generally derived from the Fair Housing Act may be considered discriminatory and should be avoided by the credit union: (This list of prohibitions under the Act is not exhaustive.)

- Limiting advertising to a particular geographic region.
- Using language selectively (e.g., using only English in an advertisement in an area that is predominantly non-English-speaking).
- Using certain media to the exclusion of other media (e.g., placing an advertisement exclusively in an English-language newspaper circulated in a predominantly non-English-speaking area and where non-English media are available).
- Advertising on billboards that are strategically placed and brochures that are distributed within a limited geographic area.
- Using human models selectively in advertisements. If reviewing a website, review the entire site in order to determine whether imagery would tend to discourage potential credit applicants on a prohibited basis.

The credit union should include the Fair Housing Act equal housing logo and slogan in all home mortgage advertisements. If other logos are used in an advertisement, then the equal housing logo should be at least as large as the other logos. If no other logos are

For complete information, review the [Interagency Guidance to Issuing Banks on Applying Customer Identification Program Requirements to Holders of Prepaid Cards](#).

*Source: NCUA/CUNA Comp Blog*

### CFPB Schedules Another TRID Q&A Webinar

The CFPB will present a 60-minute webinar using the Federal Reserve's Outlook Live portal on Tuesday, April 12, at 2 p.m. EDT. The presentation will answer some frequently asked questions on the TRID rule. The webinar will address specific questions that various stakeholders have raised to the Consumer Financial Protection Bureau related to the interpretation and implementation of the rule's requirements. In particular, this session will cover questions that have been raised since the rule took effect on October 3, 2015. [Online registration](#) for the event is now available.

### Matz and Cordray Town Hall Meeting Record

The NCUA has [announced](#) the availability of the audio recording and written transcript of the February 9, 2016, town hall webinar hosted by NCUA Chairman Matz and CFPB Director Cordray, which are available online. The topics discussed included:

- The status of the overdraft protection rule,
- Consumer access to checking accounts and prepaid cards,
- The NCUA's member-business lending rule, and
- The impact of the Military Lending Act rule.

*Source: NCUA/CFPB*

### Credit Union Responsibilities When Returning Federal Payments - Five Things You Must Know:

**One: A credit union is liable for all benefit payments received after the death of a member, unless you meet the qualifications for limiting this liability.**

You can limit your liability if:

- You certify that you did not have knowledge of the member's death at the time of the deposit;
- You return all post-death benefit payments you receive after learning of your member's death; and
- You respond to the government's Notice of Reclamation within 60 days.

If you meet these criteria, the credit union's Federal Reserve account will only be debited for the amount of the post-death benefit payments received within 45 calendar days following your member's death.

**Two: A credit union must immediately return any post-death benefit payments as soon as you become aware of your member's death.**

You must notify the federal agency as soon as you learn of your member's death. An ACH return using return code R15 (beneficiary deceased) constitutes proper notification.

A credit union is considered to be aware of a member's death when:

- You receive information that the member has died and you have had a reasonable opportunity to verify the information, or
- If you would have learned of the death if you had followed commercially reasonable business practices.

Once a credit union is aware of the death of a member, you do not have to

used, then the equal housing logo should be clearly visible in a bold display face.

**SIZE:** NCUA and FDIC both simply state that the logo and statement must be "prominent". It may be wise to try to keep the Home Mortgage Disclosure Act (HMDA) guidelines in mind as any dispute over the issue of "prominence" will likely consider those standards.

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

### CU Compliance Connection – Compliance Outlook for Q1 2016 & Q4 2015 Review

In this newly released video, Glory LeDu, Manager of League System Relations, discusses the Compliance outlook for the 1<sup>st</sup> quarter of 2016 and gives us a review of the 4<sup>th</sup> quarter of 2015. View the CUBE TV video [here](#).

### Advocacy Highlight

#### Upcoming Congressional Hearings

**Two crucial hearings will be held when Congress returns from its break**

#### Tuesday, April 5

The Senate Banking Committee will hold a hearing entitled, "Assessing the Effects of Consumer Finance Regulations." The witnesses for this hearing will be Leonard Chanin, the author of [CUNA's legal opinion memo on CFPB's statutory exemption authority](#), and Todd Zywicki, a professor of law at George Mason University who recently participated in a breakout session on CFPB regulations at CUNA's GAC.

#### Thursday, April 7

The Senate Banking Committee will hold a hearing entitled, "the Consumer Financial Protection Bureau's Semi-Annual Report." CFPB Director Cordray will testify.

#### FASB Credit Impairment Proposal

FASB is in the final stages of reviewing a proposed standard that would drastically change the accounting method for assessing credit impairment. The proposal, which is expected to be finalized by June, would require a forward-looking "current expected credit loss"—or CECL—model instead of the current "incurred loss" approach.

While CUNA has conveyed concerns with the proposal to FASB through several letters and in-person meetings, FASB is a non-governmental body and can be more difficult to persuade than governmental agencies. Therefore, CUNA is calling on credit unions to share their concerns directly with FASB. To facilitate your input, CUNA has activated their [Voter Voice](#)

wait to receive a Notice of Reclamation – you may immediately return all subsequent post-death payments.

### **Three: How to Respond to a Notice of Reclamation.**

If the full amount listed on the Notice of Reclamation is returned, the credit union does not need to complete and return the form.

If funds are available, but not sufficient to satisfy the reclamation, a partial payment should be submitted along with the completed Notice of Reclamation.

If additional benefit payments are deposited after the Notice of Reclamation is received by the credit union, the additional amounts should be returned as well.

### **Four: What to do if a post-death payment has already been withdrawn.**

If the credit union (which has qualified for limited liability) responds to the Notice of Reclamation, but all or part of the post-death payments were already withdrawn from the account before the credit union learned of the death, the reclamation process will be suspended while the agency attempts to collect the outstanding balance from the withdrawers.

If the agency is unsuccessful in collecting the outstanding total, the credit union's Federal Reserve account will be debited for the post-death payments received within 45 days of the member's death. *Note that the government does not authorize the credit union to try and recover the funds from the withdrawer.*

If the withdrawers tell the credit union that they have already repaid the government, obtain a copy of the front and back of the check and return it with the Notice of Reclamation.

The credit union may be asked by a survivor of the deceased member not to return post-death benefit payments because the survivor may still be entitled to the payment.

In this case, the government advises the credit union to return the payment and direct the survivor to contact the appropriate benefit agency.

### **Five: What if the member is not dead**

If the credit union obtains satisfactory proof that the member is alive, you are still required to complete and return the Notice of Reclamation in order to avoid your Federal Reserve account from being debited the amount listed on the Notice.

Once you have satisfactory proof that your member is alive, you must correct the error on the Notice of Reclamation, sign Certification #1 on the back of the Notice, return the Notice with a copy of the proof of the error and advise your member to contact the federal agency to restart the payments. Returning the corrected Notice of Reclamation is not enough to restart the monthly benefit payments.

*Source: CUNA*

### **Supervisory Highlights – Winter 2016**

The CFPB has just released its Winter 2016 Supervisory Highlights Report. Not surprisingly, the report focuses on recent supervisory observations in

[Grassroots Action Center](#). To make it easy to send comments to FASB Chairman Russell Golden, the Action Center includes a draft letter that can be modified or sent as is.

This is an important issue for all credit unions. Not only will the proposed standard present compliance challenges for all credit unions, it will also likely require an immediate increase to credit unions' loan loss reserves. CUNA appreciates your participation in trying to improve this proposal.

### **Majority of House Supports CFPB Using Exemption Authority For Credit Unions**

On March 14, 2016, in an effort spearheaded by CUNA, the state leagues and member credit unions, 329 members of the House of Representatives sent a [letter](#) to Director Cordray of the CFPB urging the Bureau to use its exemption authority to protect credit unions and other small financial institutions from provisions of the Dodd-Frank Act that have led to increasing regulatory burdens.

The letter by Reps. Adam Schiff (D-Calif.) and Steve Stivers (R-Ohio) was signed by an overwhelming 75% of the House, indicating that the majority believes that the CFPB does have the power to exempt credit unions from certain rulemakings, despite Cordray's statement that Congress has not given the Bureau such authority. Furthermore, this letter garnered support from both political parties and from every corner of the country, showing that the issue here rises above politics. Seventeen House Committee chairs signed the letter as well as nearly 50% of Congressional leadership. This effort is an example of the crucial nexus between compliance and advocacy and how the two fit together, hand in glove.

The unintended consequence of many of the Bureau's rulemakings is credit unions being forced to limit their services and product offerings, or in some cases exit the marketplace all together. This letter urges the Bureau to consider the benefits credit unions provide to their members, keeping in mind that credit unions were not the bad actors that caused the financial crisis that Dodd-Frank was enacted to rectify. CUNA hopes this letter will push the CFPB to reexamine its position on using its statutory exemption authority to shield credit unions from the burden of regulatory compliance under Dodd-Frank.

*Source: CUNA*

### **CUNA Advocacy Update**

The Regulatory Advocacy Report is now combined with CUNA's Legislative Update into a comprehensive CUNA Advocacy Update. The new [Advocacy Update](#) is

the areas of consumer reporting, debt collection, mortgage origination, remittances, student loan servicing, and fair lending.

Highlights from the report are discussed below:

- Compliance with furnisher obligations at depository institutions under Regulation V was one area of review for CFPB Examiners. Examiners found that some furnishers failed to have policies and procedures in place addressing the furnishing of information related to deposit accounts and lacked processes to verify data furnished through automated internal systems. Additionally, the examiners found that one or more furnishers failed to correct and update account information they furnished to NSCRAs. This is significant because not updating an account to paid-in-full or settled-in-full status could adversely affect consumers' attempts to establish new deposit accounts, and the CFPB has been very clear about making improved access to deposit accounts for more Americans a top priority.
- Debt collection practices and violations of the FDCPA were examined as well. Examiners found instances of debt collectors failing to honor consumers written requests to cease communications, and other instances where debt collectors used false, deceptive, or misleading representations and threats of wage garnishment against borrowers that were ineligible for garnishment. In addition to violating Section 807 of the FDCPA, the CFPB can also use its UDAAP enforcement authority in such instances and we have seen a lot of enforcement activity lately in this area.
- The mortgage origination exam findings in this report focused on the Title XIV rules as the time period covered in this report precedes the effective date of the Know Before You Owe Disclosure Rule. We anticipate the findings in this area will be much longer in the next report! The findings within the period of this report demonstrate general compliance with the Title XIV rules, with the exception of the absence of written policies and procedures at depository institutions required under the loan originator rule and findings that indicated deficiencies in compliance management systems at certain institutions that allowed violations of Regulations X and Z to occur. Credit unions need to ensure they have effective compliance management systems in place to avoid such errors.
- Compliance with the Remittance Rule was also examined. Examiners found violations such providing incomplete and inaccurate disclosures, failing to refund cancelled transactions within the allowable timeframe under the regulation, failing to communicate the results of error investigations and failing to promptly credit consumers accounts when errors occurred.
- Illegal student loan servicing practices are another priority for the Bureau and examiners found unfair practices in several areas of student loan servicing including private student loan servicers engaged in unfair auto-defaults, failure to disclose the impact of forbearance on co-signor release eligibility, servicing conversion errors costing borrowers money and insufficient policies and procedures to satisfy the furnisher obligations imposed by Regulation V.
- Fair lending is also highlighted via the enforcement actions against Ally Bank, Synchrony Bank, Fifth Third, and M&T where in each case millions in damages was paid to harmed minority borrowers subjected to discriminatory lending practices.

For more information, see the full text of the report [here](#).

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.

Prior CUNA Regulatory Advocacy Reports have been archived and are available [here](#).



## Compliance Calendar

### April 22

- 5300 Call Report Due to NCUA

### May 30

- Memorial Day – Federal Holiday

### June 30

- PCI-SSL/TLS Can No Longer Be Used as a Security Control

## Effective Dates New and Revised Rules

### July 1, 2016~DoEd

[Program Integrity and Improvement](#)

### September 23, 2016~NACHA

[Same-day ACH \(NACHA\) – Phase 1](#)

### October 3, 2016~DoD

[Limitations on Terms of Consumer Credit Extended to Service Members & Dependents](#)

### January 1, 2017~CFPB

[HMDA – Regulation C](#)

### September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

## CUNA Comment Calls – Due Dates on Proposed Rules

### March 18, 2016~FinCEN

[Changes to BSA Currency Transaction Report](#)

### March 24, 2016~NCUA

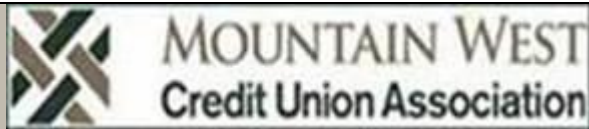
[NCUA Strategic Plan 2017- 2021](#)

### March 26, 2016~NCUA

[Overhead Transfer Rate Methodology](#)

### March 26, 2016~NCUA

[Operating Fee Schedule](#)



### Training & Events Calendar

#### **March 31**

Webinar: Developing Your Same-Day ACH Game Plan

#### **April 5**

Webinar: New Federal Regulations Targeting Student Accounts, Including Debit & Prepaid Cards, Effective 7.1.2016

#### **April 12**

Webinar: Completing the SAR Line-by-Line

#### **April 13**

Webinar: Your Depositor Has Died: Actions to Take, Mistakes to Avoid

#### **April 25**

Webinar: Examining Complex TRID Issues, Part 1: Application Through Loan Estimate & Revised Loan Estimate

#### **April 26**

Webinar: Regulator Expectations for Risk Assessment: Policies, Procedures & Steps in Obtaining Board Approval

#### **April 28**

Webinar: ACH Rules Update

#### **May 3**

BSA Seminar - Denver

#### **June 8**

Financial Strategies Seminar - Denver

## CUNA Schools and Webinars

#### **March 30**

Webinar: Lenders, Third Party Vendors and BSA Compliance

#### **April 12**

Same Day ACH – What Does It Mean to Your Financial Institution Webinar

#### **April 14**

ACH for Frontline Staff Webinar

#### **April 20**

MIP and Account Opening Webinar

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

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