



Compliance News

CUNA: IRS UBIT Memo Clears Way for Past-Tax Refunds for CUs

Credit unions have received a much-sought-after interpretation by the Internal Revenue Service that clears nearly all credit union products from being subject to unrelated business income tax (UBIT).

Finally bowing to the results of two federal court cases brought by credit unions, the IRS recently issued a memorandum that defines nearly all credit union products at stake in the litigation as "substantially related income"--not subject to UBIT.

Credit Union National Association President/CEO Bill Cheney hailed the "highly significant development," particularly as it signals that refund requests for past tax payments by credit unions may now be processed. "And--most importantly," Cheney said, "credit unions now may be able to offer products and services to their members in the future with a significantly diminished threat of having to pay this tax."

Larry Blanchard, chairman of a coalition of credit union groups that has supported the litigation, said of the IRS memo, "This is clearly a breakthrough with the agency. It signals that credit union tax refunds for past UBIT payments should now be processed."

He also emphasized that the IRS action bolsters credit union arguments that future payments to the IRS of UBIT on these same products may not be due.

"Credit unions should talk this over with their tax advisers. In any event, this is a welcome development for credit unions," Blanchard observed.

He added that the IRS memo reflects the agency's appreciation for rulings of the courts: That the credit union mission to serve members extends well beyond loans and savings accounts.

The coalition, called the UBIT Steering Committee, is comprised of representatives of the Credit Union National Association, CUNA Mutual Group, the American Association of Credit Union Leagues and the National Association of State Credit Union Supervisors.

According to a three-page, March 24 "memorandum for all exempt organizations' employees"--geared toward IRS examiners of exempt organizations, such as credit unions--revenue from the following income-producing activities are deemed by IRS "substantially related income" not subject to UBIT:

- Sale of checks/fees from a check-printing company;
- Debit card program's interchange fees;
- Credit card program's interchange fees;
- Interest from credit card loans;
- Sale of collateral protection insurance;
- Credit life and credit disability insurance (not subject to UBIT if sold to members); and
- Guaranteed asset protection (GAP) auto insurance (not subject to UBIT if sold to members).

Royalty income from the marketing of accidental death and dismemberment (AD&D) insurance to credit union members is also exempt.

IRS has also indicated it will incorporate the memo into its Examination Manual to guide future audits of credit unions.

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Collection Practices

Making a collection call may be one of the most uncomfortable tasks—but it's often a necessity. To help you make a calm telephone call, and make an efficient use of your member's time (and yours), a Collection Practices page is in the Bankruptcy and Collections channel of InfoSight.

The Collection Practices page provides seven rules that you can follow when you need to make a collection call. Among the rules listed are these:

- Always verify that you are speaking with the member. Discussing a member's finances with a third party violates privacy laws.
- Keep your voice businesslike. This is particularly significant because at times a member will become upset and angry and use defensive tactics which may surprise you.
- Always let members tell their side of the story. The most effective way for a

"After 15 years of work--and millions of dollars in litigation expenses--it is ironic that a breakthrough in the struggle of this scope comes down to a three-page memo," Blanchard said. "But the effort has been entirely worth the time and money, particularly for those credit unions who have filed their returns and made payments in the past."

In 2009, a jury in federal court ruled in favor of Community First CU, Appleton, Wis., as UBIT related to three insurance products; credit life and credit disability insurance and GAP products. The jury found that these products were substantially related to the tax-exempt purposes of credit unions.

In 2010, a federal court in Colorado ruled in favor of Bellco CU. The Greenwood Village, CO-based credit union challenged UBIT on income from many of the same products through its direct lending program and its indirect lending program for the tax year 2003 and the portion of tax year 2001 for which it had accurate income records.

As to the impact of the IRS guidance on future tax liabilities, neither the UBIT Steering Committee nor any of its members can provide tax advice to credit unions. The committee urges credit unions to consult with their tax advisers on whether the IRS pronouncement, combined with the previous court rulings, provide "substantial authority" to refrain from reporting the affected categories of income in the future. In the past, a law firm retained by the Steering Committee has provided a general opinion on the impact of the court cases on the "substantial authority" issue. (Use the second resource link to access this opinion.)

There are, Blanchard pointed out, some remaining issues to be resolved related to the March 24 IRS memo.

"However," he noted, "this development gives us great hope that real light is at the end of the tunnel, and that credit unions will be able to offer products and services to their members in the future with a significantly diminished threat of having to pay this tax."

Use the first resource link to access the IRS memo.

[IRS decision](#)
[Foley Lardner](#)

Source: CUNA News Now

NCUA Clarifies Hearing Comments on Supplemental Capital

The National Credit Union Administration has "very limited statutory authority" to establish supplemental capital that would benefit federally insured, consumer credit unions by enhancing their net worth for prompt corrective action purposes, agency general counsel noted in a follow-up letter to a Tuesday House Financial Services Committee hearing at which he testified.

During the hearing, Rep. Brad Sherman (D-Calif.) asked NCUA General Counsel Mike McKenna a series of questions regarding the NCUA's risk-based capital proposal, including one about supplemental capital as it relates to the RBC plan. The follow-up letter to committee leadership is intended to provide greater clarity on McKenna's answer, the agency said.

McKenna in response to Sherman said the agency could consider allowing credit unions greater access to supplemental capital as it finalizes proposed RBC regulations.

In his clarification letter, he noted that with the exception of low-income designated credit unions, Congress has limited the definition of "net worth" to retained earnings as defined by generally accepted accounting principles.

"Therefore, unless Congress amends the statutory definition of 'net worth,' other forms of capital, including supplemental capital, cannot legally be counted as 'net worth' for federally insured, consumer credit unions, other than those with low-income designation."

The Credit Union National Association has a different interpretation of the credit union capital statute. CUNA maintains that supplemental capital could be used for risk-based capital purposes under a regulatory proposal without legislative changes.

McKenna, in his letter to lawmakers, also noted NCUA concerns that a credit union's inability to raise capital outside of retained earnings limits its ability to serve its members. He reiterated NCUA's support for the Capital Access for Small Business and Jobs Act (H.R. 719). That legislation would give credit unions an additional tool to promote capital stability by issuing supplemental capital that would count as net worth.

The NCUA general counsel concluded his letter by offering to work with House Financial Services Committee members on H.R. 719 or any similar proposal that would increase access to

collector to proceed is to hear the member out and then get to the task of bringing the account up-to-date. By taking time to listen to the member, a collector may be more likely to gain the member's cooperation

CU Compliance Connection: BSA Marijuana Related Business

FinCEN has issued guidance for credit unions providing service to marijuana-related businesses. The requirements should be carefully reviewed to ensure credit unions are not violating the Bank Secrecy Act. Click [here](#) for the video.



A message from CU PolicyPro

Dear CU PolicyPro Clients,
We have been monitoring from MITRE and other sources the release of CVE-2014-0160, which is an OpenSSL bug that essentially allows a hacker to compromise the secret key of an SSL/TLS CERT, and in turn can allow the attacker to eavesdrop on communications, steal data directly from the services and users, and to impersonate services and users.

We have reviewed the issue with our F5 engineers and the vendor to verify that the bug has no impact on the SSL CERTs managed on the load balancers, and **we have confirmed that our systems are not affected by this issue (we run version 1.0.0)**. The same is true for any client on our Verio hosting platform, as **we have confirmed that the version of OpenSSL running on those systems are not vulnerable (we run 0.9.8)**. If you have any questions, please do not hesitate to contact us at support@cusolutionsgroup.com.

Regards,
Timmy Bohlman, SVP – Tech Solutions
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On April 7, 2014, a serious Internet security vulnerability called "Heartbleed" [was announced by a number of news services and has since been widely reported and discussed throughout the media. This vulnerability exposes a flaw in how some web sites perform online security via OpenSSL.](#)

supplemental capital for "healthy, well-managed" credit unions.

Source: CUNA News Now

Heartbleed Bug Could Threaten Website Security

As was widely reported in the news media Wednesday, any organization with a website should become educated about a new and stealthy invader--the Heartbleed bug--to determine if it is a threat to their operation.

As described by *CNNMoney*, the bug leaks information by creating a hole in the software that "the vast majority" of websites use to turn consumers' personal information into more secure strings of random numbers and letters.

Consumers are often advised to look for a padlock image in the address bar of a website with whom they are sharing information. That's a step that website users have been able to easily take to make sure their information is secure--or at least more secure.

However, *CNNMoney* said now if you see this padlock image it confirms that there's a "good chance" that site is using the encryption software that can be exploited by the Heartbleed bug.

According to several news reports, the bug:

- Exposes usernames and passwords;
- Compromises a user's web session in a way that allows another person to pose as that user--no password required; and
- Enables fraudsters to pose as a legitimate website and bait users into revealing personal information.

SilverSky, a provider of cloud-based managed security solutions and a CUNA Strategic Services alliance provider, has contacted customers with a message regarding Heartbleed, calling it a "vulnerability in the OpenSSL encryption standard."

SilverSky recommends that everyone using OpenSSL patch and update to the latest version.

Also, CUNA Mutual Group is developing a risk alert for credit unions on the Heartbleed bug.

Source: CUNA News Now

Financial Regulators Release Statements on Cyber-Attacks on Automated Teller Machine and Card Authorization Systems and Distributed Denial of Service Attacks

The Federal Financial Institutions Examination Council (FFIEC) members are issuing statements to notify financial institutions of the risks associated with cyber-attacks on Automated Teller Machine (ATM) and card authorization systems and the continued distributed denial of service (DDoS) attacks on public-facing websites. The statements describe steps the members expect institutions to take to address these attacks and highlight resources institutions can use to help mitigate the risks posed by such attacks.

Cyber-attacks on financial institutions to gain access to, and alter the settings on, Web-based ATM control panels used by small- to medium-sized institutions are on the rise. The members expect financial institutions to take steps to address this threat by reviewing the adequacy of their controls over information technology networks, card issuer authorization systems, ATM usage parameters, and fraud detection processes. In addition, the members expect financial institutions to have effective response programs to manage this type of incident.

The members also expect financial institutions to address DDoS readiness as part of their ongoing information security and incident plans. More specifically, each institution is expected to monitor incoming traffic to its public website, activate incident response plans if it suspects that a DDoS attack is occurring, and ensure sufficient staffing for the duration of the attack, including the use of pre-contracted third-party servicers, if appropriate.

Attachments:

[Cyber-attacks on Financial Institutions' ATM and Card Authorization Systems](#) (PDF)

[Distributed Denial-of-Service \(DDoS\) Cyber-Attacks, Risk Mitigation, and Additional Resources](#) (PDF)

Source: FFIEC/NCUA

NCUA Hosting Twitter Chat on Financial Literacy – April 23

NCUA is hosting their second Twitter chat focused on financial literacy on April 23 from 11 a.m. until noon, Eastern, to be hosted by Kenneth Worthey, Financial Literacy and Outreach Analyst with

[AffirmX has performed a full assessment of our systems and we have determined that our Risk Intel Center platform servers were never vulnerable to the Heartbleed exploit.](#)

[If you have questions, please do not hesitate to contact us at support@affirmx.com](#)

2014 Compliance Calendar

April 25

- [5300 Call Report Due to NCUA](#)

April 30

- [Credit Card Quarterly Agreement Submission Due to CFPB](#)

May 26

- [Memorial Day – Federal Holiday](#)

July 4

- [Independence Day – Federal Holiday](#)

July 31

- [Credit Card Quarterly Agreement Submission Due to CFPB](#)

September 1

- [Labor Day – Federal Holiday](#)

September 19

- [NACHA Operating Rules Changes](#)

October 13

- [Columbus Day – Federal Holiday](#)

October 31

- [Credit Card Qtrly Agreement Submission Due to CFPB](#)

November 2

- [Daylight Savings Time Ends](#)

November 11

- [Veterans' Day – Federal Holiday](#)

CUNA 2014 Effective Dates New and Revised Rules

March 31, 2014~NCUA

[NCUA Emergency Liquidity Rule](#)

June 30, 2014~NCUA

[Credit Union Service Organization](#)

December 31, 2015~IRS

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

2014 CUNA Comment Calls

Due Dates on Proposed Rules

NCUA's Office of Consumer Protection. Credit unions and consumers are encouraged to follow the conversation and contribute using the #NCUACHat hashtag on Twitter. Participants can submit questions ahead of time to socialmedia@ncua.gov

Source: NCUA

Tighter Rules May Be on the Way for Alternative Currencies

Money-laundering and know-your-customer controls will need to be applied to virtual currency transactions such as those made through bitcoin, U.S. Attorney General Eric Holder told U.S. House Committee on the Judiciary members this week.

These controls would help fight illegal activity on these marketplaces, Holder said (*Finextra.com* April 9). The Department of Justice is working with financial regulators to assess the issue, Holder said, noting that the popularity of alternative currencies among criminals has created a new issue for law enforcement and regulators alike.

The new government attention has made some fear that tightening regulations could tighten the online currency business, *Finextra.com* wrote.

The question is not if the government will regulate online currencies, but when and which agency will oversee the transactions, *MarketWatch.com* reported (April 9).

There must be regulation, Boston University professor Mark Williams told participants at a recent *MarketWatch* panel discussion held in New York. Consumer protection must be a focus, he added.

Bitcoin Investment Trust creator Barry Silbert argued that bitcoin is regulated, noting that the Financial Crimes Enforcement Network has released guidance on virtual currencies. Silbert said the Federal Reserve, Securities and Exchange Commission, Commodity Futures Trading Commission and the Federal Trade Commission are not likely to regulate the nascent currency.

State regulators and the Consumer Financial Protection Bureau may be the bodies in charge of rulemaking for bitcoin, he said. The CFTC may develop regulations if bitcoin derivatives are created, he added.

Source: CUNA News Now

Advocacy Highlight NCUA Warns Credit Unions of "Heartbleed" Vulnerability

NCUA warned credit unions of "Heartbleed" vulnerability last week. Heartbleed is a computer virus that exposes flaws in OpenSSL web encryption that is widely used on most of the internet's websites. In a message from the Federal Financial Institutions Examination Council (FFIEC), NCUA and other federal financial regulators stated that they "expect financial institutions to incorporate patches on systems and services, applications, and appliances using OpenSSL and upgrade systems as soon as possible to address the vulnerability." OpenSSL is a cryptographic software library used to authenticate services and encrypt sensitive information. A significant vulnerability has been found in OpenSSL that could allow an attacker to decrypt, spoof, or perform attacks on network communications that would otherwise be protected by encryption.

Credit unions should review this guidance and check with their IT departments and vendors to assess vulnerability. CUNA will be pressing policymakers for more guidance and more consideration of what the federal government should be doing to protect financial institutions and concerns from the impact of such vulnerabilities.

Source: CUNA

Regulatory Advocacy Report

The [CUNA Regulatory Advocacy Report](#) contains information from Bill Cheney about regulatory issues that affect credit unions. View the current report and past reports from the archive



MOUNTAIN WEST
Credit Union Association

[Training & Events Calendar](#)

Archive Only

[Webinar: Interagency Guidance for Reporting Elder Financial Exploitation](#)

[Please contact Jaquetta Ward at \[jward@mwcu.com\]\(mailto:jward@mwcu.com\) to register](#)

April 21, 2014~NCUA

[Voluntary Liquidations of Federal Credit Unions](#)

June 9, 2014~NCUA

[Annual Regulatory Review List](#)

ASAP~NCUA

[Risk Based Capital \(RBC\)](#)

CUNA Spring Webinars

April 22

[Consumer Lending Regulations](#)

April 23

[Sales and Marketing – The Powerful One-Two Punch](#)

April 30

[Mortgage Loans in Chapter 13 – The Do-It-Yourself Guide to Bankruptcy Proofs of Claim](#)

May 1

[Minimizing the Risk of Consumer Loan Fraud](#)

[The Four Pillars of Loan Pricing - Credit Risk, Transfer Pricing, Comparative Analysis and Balance Sheet Composition](#)

May 6

[Mortgage Lending Regulations](#)

May 7

[Basic Fixed-Income Terms and Introduction to Bullet Securities](#)

May 8

[Common Mistakes and What is New in Consumer Lending Compliance](#)

May 12

[Traps and Tripwires in Reg X and the UCC](#)

May 14

[Agency Callables, Agency Step-Ups](#)

[Negotiation Skills and Tactics](#)

May 15

[OFAC – More Than a Scan](#)

[Payday Lending – The Credit Union Way](#)

May 19

[Money Mission Demo - Online Financial Literacy Game](#)

May 21

[Mortgage-Backed Securities](#)

May 22

[The Low-Down on Private Student Loans](#)

May 28

[Collateralized Mortgage Obligations](#)

May 29

[The Keys to Loan Growth](#)

CUNA Schools and Conferences

September 14 - 19

April 23

[Webinar: REAL ESTATE LENDING SERIES: Ability to Repay-Are You in Compliance with the New CFPB Rules?](#)

April 24

[Webinar: BSA Officer Duties & Update](#)

May 22

[Colorado: Consumer Lending Basics for Non-Lenders](#)

May 29

[Bank Secrecy Act School: Denver, CO](#)

July 1

[Webinar: COMPLIANCE OFFICER TRAINING: Will Your AML/BSA/OFAC Program Satisfy Examiner Scrutiny?](#)

[CUNA Regulatory Compliance School Introduction & Update](#), Chicago, IL

October 26 - 29

[CUNA Bank Secrecy Act Conference](#), Las Vegas, NV

Please respond to mrobey@mwcu.com with any questions or concerns regarding content of this newsletter.

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