

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

July 1, 2016

Changes to the Military Lending Act

This week NCUA hosted a webinar on the changes to the Military Lending Act which take effect October 3, 2016 (except for credit cards). We wanted to remind you that the Association has developed materials that will help you comply with the changes to the Act. We issued our Military Lending Act InCompliance Package in September last year to all Association credit unions. The package contains a summary and detailed analysis of the final Department of Defense rule along with an implementation checklist, sample policy and a model form for complying with the new rule. The InCompliance Package can be downloaded from our website, www.mwcu.com. It is located in the resource section under the Compliance tab. NCUA issued two Regulatory Alerts, 16-RA-04 and 15-RA-04 that are located on their website, www.ncua.gov. These Regulatory Alerts can also be used as resources in complying with the changes to the rule. NCUA will be issuing further guidance on this new rule expected to be published in August of 2016.

Compliance News

FTC Notice to Consumers and Telemarketers on Illegal Payments

The Federal Trade Commission wants businesses to know about important Telemarketing Sales Rule (TSR) amendments that are now in effect. These changes make it unlawful for telemarketers to use three types of payment methods exploited by con artists and scammers.

As of this month, it is illegal for telemarketers to ask consumers to pay for goods or services using cash-to-cash money transfers, such as MoneyGram and Western Union provide, or by providing PIN numbers from cash reload cards such as MoneyPak, Vanilla Reload or Reloadit packs. It also is illegal for telemarketers to use unsigned checks called "remotely created payment orders" to withdraw money directly from consumers' bank accounts.

As detailed in a [press release](#) issued in November 2015, the FTC finalized the payment method bans amendments to the TSR late last year. [Business guidance](#) about the new bans is available. [New guidance](#) warns consumers that any telemarketer requesting payment using these methods is a scammer because the payment method is illegal.

Source: FTC

GAO Study Suggests IRS Update Identity Theft Fraud Program

At the request of the Internal Revenue Service, the Government Accountability Office (GAO) examined the IRS's efforts to combat identity theft (IDT) refund fraud. The IRS utilizes its taxpayer protection program (TPP) to authenticate the identities of suspicious tax return filers and

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Association Compliance Forums

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[BSA Compliance Officer Forum](#)

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prevent IDT. IRS estimates that, in 2014, it prevented or recovered \$22.5 billion in attempted IDT refund fraud, but paid \$3.1 billion in fraudulent IDT refunds. The [GAO recommends](#) that IRS update its TPP risk assessment and take appropriate actions to mitigate risks identified in the assessment. GAO also recommends that IRS improve its IDT cost estimates by removing refund thresholds and using return-level data where available. IRS agreed with GAO's TPP recommendations and will update its risk assessment. IRS took action consistent with GAO's IDT cost estimate recommendations.

Source: US Government Accountability Office

CFPB Finds Mortgage Servicers' Ongoing Technology Failures

The Consumer Financial Protection Bureau (CFPB) released a special edition supervision report focused specifically on mortgage servicers. The report found that some mortgage servicers continue to use failed technology that has already harmed consumers, putting the company in violation of the CFPB's new servicing rules. In its examinations covering numerous mortgage servicers since the new CFPB rules took effect in January 2014, CFPB examiners have found violations because of deficient technology and process breakdowns. Specifically, examiners have observed problems with loss mitigation and servicing transfers. To spur industry in its general compliance with CFPB rules, the Bureau today is also releasing an updated mortgage servicing exam manual. The entire article can be found [here](#).

Source: CFPB

CUNA Learns Supreme Court Will Hear Fair Housing Case

CUNA learned that the U.S. Supreme Court has agreed to review a lower court ruling that raises important questions about the scope of the Fair Housing Act (FHA). CUNA, along with other trade organizations, filed a strong [amicus curae brief](#) in the case in April.

The lawsuit is City of Miami v. Bank of America and City of Miami v. Wells Fargo, and it involves a decision by the 11th Circuit Court. Miami brought suit against the two banks arguing that discriminatory actions against city residents entitles the city to damages for indirect harm. The city argued that foreclosures and other events stemming from unfavorable mortgages resulted in lost revenue from lower property taxes and other incurred expenses.

CUNA warned that the lower court ruling could set a bad precedent that would allow other entities, such as neighboring residents, municipalities and even local businesses, to maintain suits against financial institutions, even if the entity never had any direct dealings with a credit union or bank. CUNA's brief urged the Supreme Court to reverse the 11th Circuit Court's decision, and it cited other recent rulings from the Supreme Court itself, a lack of standing, and the unnecessary expansion of potential liability for lenders without any limiting factor.

CUNA was joined in that brief by the American Bankers Association, American Financial Services Association, Consumer Bankers Association, Consumer Mortgage Coalition, Housing Policy Council of the Financial Services Roundtable, Independent Community Bankers of America, Mortgage Bankers Association and National Association of Federal Credit Unions.

Source: CUNA

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InfoSight Highlight

Charitable Donation Accounts

The NCUA Board issued a final rule to amend its regulations to clarify that federal credit unions are authorized to create and fund a charitable donation account, a hybrid charitable and investment vehicle, as an activity incidental to the business for which the credit union is chartered, provided the account is primarily charitable in nature and meets other regulatory conditions to ensure safety and soundness. The final rule amends parts 703 and 721 of the NCUA Rules and Regulations. This rule became effective on December 19, 2013.

Charitable Donation Accounts

A charitable donation account (CDA) is a hybrid charitable and investment vehicle that federal credit unions may fund as a means to provide charitable contributions and donations to qualified charities. A qualified charity is a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

A federal credit union may fund a CDA free from the investment limitations of the Federal Credit Union Act and part 703, if it funds a CDA that satisfies all of the following conditions:

- Maximum aggregate funding. The book value of your investments in all CDAs, in the aggregate, as carried on your statement of financial condition prepared in accordance with generally accepted accounting principles, must be limited to 5 percent of your net worth at all times for the duration of the accounts, as measured every quarterly Call Report cycle. This means that regardless of how many CDAs you invest in, the combined book value of all such investments must not exceed 5 percent of your net worth. You must bring your aggregate accounts into compliance with the maximum aggregate funding limit within 30 days of any breach of this limit.

Advocacy Highlight

CUNA Releases Summary of Payday Lending Proposal

Earlier this month, the CFPB proposed a new rule for payday, title and other lending. It's a very complicated proposal that will have widespread impact on the credit union system, and CUNA decided early on that they would prefer their analysis to be thorough and analytical, rather than first.

On 6/27/16, CUNA released their summary of the proposal, part of the effort to fully understand how it will impact credit unions. The next part is getting feedback from you, the folks who are offering this type of lending to members. CUNA's comment call information and summary of this lengthy proposal is available [here](#).

Source: CUNA Advocacy

CUNA Seeks Feedback on CFPB Small-Dollar Rule by August 31

As CUNA continues its [advocacy efforts](#) on the Consumer Financial Protection Bureau's (CFPB) short-term, small-dollar lending rule, it seeks feedback from credit unions on how they will be affected by the proposed rule. Feedback is due to CUNA by Aug. 31, and comments are due to the CFPB by Sept. 14.

The [proposal](#) includes new rules for payday, title, and high-cost installment loans including increased underwriting standards. CUNA is concerned that the rule sweeps in a number of consumer-friendly credit union small-dollar and other covered loans, and adds unnecessary compliance burdens and costs to these loans. The proposed rule also adds additional burdens to certain products offered to provide members better options and choices like auto refinance loans.

CUNA has released its [early analysis](#) of the rule, highlighting a number of concerns about the proposed rule and its effects on access to credit.

CUNA sent a [letter](#) to NCUA Chair Rick Metsger Monday, asking him to work closely with the CFPB to ensure that the agency is fully aware of the proposed rule's impact on existing credit union products.

CUNA, with the Independent Community Bankers of America, also sent a [preliminary letter](#) to CFPB Director Richard Cordray Monday, urging him to focus on the impact the rule will have on depository institution small-dollar lending programs.

In conjunction with its proposed rule, the CFPB issued a [request for information](#) about predatory lending practices, specifically about other potentially high-risk loan products and practices not covered by the proposal.

Comments on this request for information can be sent to CUNA by Sept. 30, and must be sent to the CFPB by Oct. 14.

Source: CUNA Advocacy

Recent Advocacy Accomplishments Provide an Opportunity to Celebrate Progress

Over the last few months, a number of really positive things have happened as a result of years of advocacy work on the part of CUNA, the Leagues and credit unions.

For the first time, NCUA published and opened for comment the

- Segregated account. The assets of a CDA must be held in a segregated custodial account or special purpose entity and must be specifically identified as a CDA.
- Regulatory oversight. If you choose to establish a CDA using a trust vehicle, the trustee must be regulated by the Office of the Comptroller of the Currency (OCC), the U.S. Securities and Exchange Commission (SEC), another federal regulatory agency, or a state financial regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA (manager), other than the credit union itself, must be either a Registered Investment Adviser or regulated by the OCC.

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

CU Compliance Connection

This **new video** provides an overview of the key changes made to the Military Lending Act that credit unions are going to need to consider and implement prior to the compliance effective date of October 3, 2016. View the video [here](#).

Q2 2016 & Q1 2016 Review

In this **recently released** video (now on YouTube!), Glory LeDu, Manager of League System Relations, discusses the Compliance outlook for the 2nd Quarter of 2016 and reviews the 1st Quarter of 2016. View the CUBE TV video [here](#).

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 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

June 30

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

methodology for the overhead transfer rate. This is something that we've been pushing the agency to do for years, and now we have a better understanding about how the agency determines what funds will be transferred from the insurance fund to the operating funds, and we have a voice to influence that decision in a way we never had before.

Examination fairness and frequency has been a top priority for credit union advocates for years. We've worked to raise awareness of our concerns in Congress by encouraging support for legislation that would bring fairness to the supervisory process. In response to our work, NCUA has made major steps in the right direction to take a comprehensive approach to modernizing the supervisory process. They've reached out to the credit union system to ensure they have the information they need to modernize the call report, improve examination efficiency, and reduce examination frequency. This is all good news for credit unions and a direct result of everyone's years of work on this issue.

Likewise, CUNA's efforts to bring about transparency in the NCUA budget process continues to yield results. Last year, CUNA secured the first oversight hearing on the NCUA in the House Financial Services Committee in years. In recent weeks, NCUA Chairman Metsger announced there will be a board briefing on the NCUA budget at the October board meeting, and that CUNA and other stakeholders will be invited to participate.

Regulatory burden remains a top concern for credit unions and a top advocacy priority for CUNA and the Leagues. Earlier this year, CUNA, the Leagues and credit unions united 329 Members of the House of Representatives on a letter to the Consumer Financial Protection Bureau (CFPB) encouraging it to use its statutory exemption authority to minimize the adverse impact of its rulemakings on credit unions. To give you a sense of how significant this was, consider that perhaps the only other issues that invoke more partisan divisiveness than the CFPB are Obamacare and guns. So, bringing together majorities of both the Democratic Caucus and the Republican Conference on a CFPB matter is quite an accomplishment. And, it has already produced a positive result: when the CFPB released its payday lending proposal earlier this month, the CFPB used its authority for credit unions for the first time.

The legislative and regulatory process are top of mind when one thinks about advocacy, but CUNA and the Leagues also advocate on behalf of credit unions in the courts. In the past few months, we prevailed in an interchange surcharging lawsuit in Texas and we secured a ruling affirming our standing in the class action lawsuit against Home Depot. These successes make us more inclined to look at ways in which legal advocacy might help advance our public policy goals, opening a new front in our battle to improve the operating environment for credit unions to serve their members.

The progress made on these issues and others, like the new member business lending regulation and the pending field of membership regulation is a reminder not only that we can positively impact public policy, but also that it is critically important that we stay engaged in what can often be a long and frustrating policy development process. Advocacy is a marathon, not a sprint. Thanks to your help over the years, CUNA, the Leagues and credit unions are leading way! (Ryan Donovan, CUDE, Chief Advocacy Officer Credit Union National Association)

Source: CUNA Advocacy

July 4

- Independence Day – Federal Holiday

July 25

- 5300 Call Report Due to NCUA

July 31

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

September 5

- Labor Day – Federal Holiday

September 23

- [Same-day ACH \(NACHA\) – Phase 1 of the Implementation Period for the Rule](#)

October 3

- [DOD Military Lending Act Regulation - Effective Date](#)

October 3

- [NACHA's Network Quality Rule](#)

October 10

- Columbus Day – Federal Holiday

October 24

- 5300 Call Report Due to NCUA

October 31

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

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](#)

December 1, 2016~DOL

[New Overtime Rules](#)

January 1, 2017~CFPB

[HMDA – Regulation C](#)

January 1, 2017~NCUA

[Member Business Loan Rule](#)

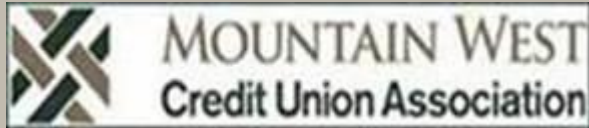
April 10, 2017~DOL

[Fiduciary](#)

September 15, 2017~NACHA

[Same-day ACH \(NACHA\) – Phase 2](#)

CUNA Comment Calls – Due Dates on Proposed Rules



Training & Events Calendar

Archived Webinar: Expanded Financial Protections Under the New Military Lending Act, Including SCRA Update

July 7

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

July 11

Webinar: Understanding the New Overtime Rules Effective Dec. 1, 2016: Critical Budgeting Issues & How to Determine the Appropriate Hourly Rate

July 12

Webinar: Board Oversight & Responsibility for ACH Risk

July 18

Webinar: New FFIEC Guidance on Mobile Financial Services: Evolving Delivery Channels vs. Risk Management Expectations

July 19

Webinar: Advanced Collection Concepts, Compliance & Risks

July 20

Webinar: Analyzing & Managing Escrow Accounts for Overages, Deficiencies & Delinquencies

July 21

Webinar: Countdown to Same-Day ACH September 23, 2016 Deadline

July 26

Webinar: Risks & Precautions for Endorsements & Other Negotiable Instruments

July 28

Webinar: Overdraft Outlook: Litigation Lessons, Avoiding Violations & Best Practices

August 3

Webinar: Product Terms Part 2: Establishing New Product & Service Controls

August 9

Webinar: Email Risks, Rules, Records & Regulations

August 10

Webinar: Legally Handling ATM & Debit Card Claims Under Reg E

August 23

Webinar: Complying with Final Military Lending Act Rule Changes Effective October 3, 2016

August 24

Webinar: Auditing for BSA Compliance

August 25

Webinar: Annual MLO Compliance Requirements & Auditing for SAFE Act

June 8, 2016~Joint Agency

Joint Agency Rule on Incentive-Based Compensation

June 20, 2016~NCUA

NCUA Occupancy Rule

July 15, 2016~NCUA

2016 Regulatory Review

July 25, 2016~NCUA

Community Development Revolving Loan Fund

August 12, 2016~CFPB

Arbitration Proposal

August 31, 2016~CFPB

CFPB Small Dollar Proposal

September 30, 2016~CFPB

RFI for Small Dollar Proposed Rule

NCUA Webinars

Archived NCUA Webinar – Regulatory Compliance Training

Hot Topics in Compliance (click to register)

- An overview of the Bank Secrecy Act, with discussion of requirements and common violations;
- Monitoring of money laundering;
- Suspicious Activity Reports;
- Equal Credit Opportunity Act adverse action notice requirements; and
- Office of Consumer Protection contact information.

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

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