

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

September 16, 2016

### Compliance News

#### Letter to Credit Unions: Preparing for Same-Day Automated Clearing House (ACH) Payments

On September 23, 2016, [Same Day ACH](#), an amendment to the [NACHA Operating Rules](#), will become effective, allowing ACH users to send same-day ACH credit payments. Same Day ACH builds on existing next-day ACH Network capabilities and establishes a new option for same-day clearing and settlement via ACH. Both ACH Operators will begin delivering same-day ACH credit payments to receiving depository financial institutions twice each banking day beginning September 23. View the entire letter to credit unions [here](#).

#### Regulatory Alert Announces Interpretive Guidance for Regulation on Lending to Service Members

On August 26, 2016, the Department of Defense issued Interpretive Guidance on issues related to the 2015 amendments to the regulation implementing the Military Lending Act.

The regulation affects most non-mortgage related consumer credit a lender extends to active duty service members and their dependents. Credit unions must comply with most of the regulatory changes starting October 3, 2016. Compliance with changes related to credit card accounts begins October 3, 2017. View Regulatory Alert 16-RA-06 [here](#).

Source: NCUA

#### FFIEC Revises Information Security Booklet

The FFIEC has [announced](#) the [revision of the "Information Security" booklet](#) of its *IT Handbook*. The revised Information Security booklet provides guidance to examiners and addresses factors necessary to assess the level of security risks to a financial institution's information systems. It also helps examiners evaluate the adequacy of the information security program's integration into overall risk management. The Office of the Comptroller of the Currency (OCC) also issued [Bulletin 2016-27](#) to announce the revision.

Source: FFIEC

#### Incentive Program Costs Wells Fargo \$185 M in CMPs

Wells Fargo Bank, N.A., will pay civil money penalties totaling \$185 million and make about \$2.5 million in restitution payments for failing to monitor and control a cross-selling incentive program. The CFPB, OCC and the Office of the Los Angeles (California) City Attorney announced that they have imposed monetary penalties of \$100 million, \$35 million and \$50 million, respectively, on the bank. The bank encouraged sales of new

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### Association Compliance Forums

Click on one of the below links to subscribe

[Compliance Forum](#)

[BSA Compliance Officer Forum](#)

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.



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accounts and services in a program that established sales goals and bonus incentives, and a widespread employee practice developed that boosted sales figures by opening deposit and credit card accounts without customer authorization. The bank determined that as many as two million accounts were opened that may not have been authorized, and stated that about 5,300 employees involved in the scheme have been fired "over the last few years."

The CFPB found the bank's actions to be unfair and abusive under the Consumer Financial Protection Act of 2010. The OCC found the actions to be unsafe and unsound practices. The City of Los Angeles settled a 2015 suit brought against the bank alleging violations of California's Unfair Competition Law.

*Source: CFPB*

### FinCEN Advisory on Email Compromise Fraud Schemes

The Financial Crimes Enforcement Network (FinCEN) has issued an [advisory](#) to help financial institutions guard against a growing number of email fraud schemes in which criminals misappropriate funds by deceiving financial institutions and their customers into conducting wire transfers. This advisory also provides red flags—developed in consultation with the Federal Bureau of Investigation (FBI) and the U.S. Secret Service (USSS)—that financial institutions may use to identify and prevent such e-mail fraud schemes.

*Source: FinCEN*



#### Training & Events Calendar

#### September 19

Webinar: [HMDA Roadmap Part 1: Impact, Important Changes & Implementation Considerations for Lenders](#)

#### September 20

Webinar: [Director & Officer Liability: Rules, Risks & Trends](#)

#### September 22

Webinar: [Best Practices for Garnishments & Levies](#)

#### September 27

Webinar: [Mobile Remote Deposit Strategies: Technology, Deployment Models & Risks](#)

#### September 28

Webinar: [Clarifying Signature Card Confusion for Personal & Business Accounts](#)

#### October 4

Webinar: [Handling Dormant Accounts, Unclaimed Property & Escheatment](#)

#### October 5

Webinar: [Essential Compliance Regulations for Deposit Operations](#)

#### October 6

Webinar: [Avoiding the Top 10 Legal & Compliance Mistakes in the E-](#)

Operations.

If a full suite of compliance services is not what you are looking for, we now offer self-assessment tools, individual loan reviews, and a basic annual compliance package that includes ACH, BSA, 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

#### ACH - Same Day ACH Payments

Last year, NACHA and the Federal Reserve Board amended their operating rules to support Same Day ACH payments.

The rule will enable ACH originating depository financial institutions (ODFIs) that want to utilize same-day processing the option to send same-day ACH transactions to accounts at any receiving depository financial institution (RDFI). Offering same-day ACH products and services will be optional for ODFIs, but receipt of same-day entries will be required for RDFIs. To allow financial institutions and businesses to acclimate to a faster processing environment, as well as to ease the implementation effort, these new capabilities will become effective over three phases beginning in September 2016. They are:

- **Phase 1**, which is effective September 23, 2016, for credits only with funds availability at the end of the RDFI's processing day (funds do not need to be available for cash withdrawal at that time; they must be available to satisfy other subsequent debit entries against the account);

For additional information, click on the InfoSight link below for the topic.

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

### Compliance Videos

#### Same Day ACH Preview

In this newly released video Amy Smith, VP and Executive Director of The Clearing House Payments Authority, provides background information on the current batch-and-forward ACH payment system and introduces the "Phased Approach" of the Same Day ACH program, which will begin in September of 2016. You will want to pay special attention to Amy's suggestion to review current ACH files you may be

## Statement Process

### **October 20**

Webinar: [Conducting the 2016 ACH Audit](#)

### **November 3**

Webinar: [Cyber Series – Member Authentication & Validation](#)

### **November 15**

Webinar: [Recognizing & Responding to Elder Fraud: What Every Staff Member Should Know](#)

### **November 15-16 – Phoenix**

IRA School: [Essentials & Advanced](#)

### **December 14**

Webinar: [Essential Compliance Training for the Board & Senior Management](#)

### **December 15**

Webinar: [Powers of Attorney In-depth: Good Faith, Fraud & Fiduciary Capacity](#)

### **December 21**

Webinar: [Emerging Need & Regulatory Expectations for Enterprise Risk Management Framework](#)

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### **2016 Compliance Schools Registration**

Compliance expert, Gaye DeCesare, NCCO, CUCE, BSACS, will be giving attendees a solid understanding of the regulations and laws affecting their regulatory compliance responsibilities.

- Phoenix, AZ: [October 12-13](#) (*seats still available*)

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## **CUNA Webinars**

### **July 7, 2016 - July 7, 2017**

[CFPB's Payday, Small Dollar and Vehicle Title Proposed Rule – Recorded](#)

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

### **September 14, 2016**

[Consumer Survey Re Complaint Closing Process](#)

### **September 19, 2016~CFPB**

[CFPB Small Dollar Proposal](#)

### **October 11, 2016**

[Amendments to TRID Rule](#)

### **October 31, 2016~CFPB**

[RFI for Small Dollar Proposed Rule](#)

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transmitting. View the video [here](#).

### **Military Lending Act**

This 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](#).

### **2016 Q3 Review**

Glory LeDu, Manager of League System Relations provides an [overview](#) of the compliance challenges your credit union is facing now in the 3<sup>rd</sup> quarter of 2016.

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## **Advocacy Highlight**

### **Credit Union Hike-the-Hills Provide Opportunities to Voice Concerns on CFPB Small Dollar Rule**

This month, representatives from dozens of credit unions are traveling to Washington, DC to represent the industry on Capitol Hill and federal agencies. With only a [few weeks](#) remaining in the comment period for the CFPB's payday and [small dollar loan rule](#), credit union representatives are using this time to voice concerns about how the CFPB's overly broad rule could detrimentally impact credit union members, who rely on consumer friendly credit union small dollar loans. Credit unions continue to urge the CFPB to focus the rule on predatory practices in the payday lending market, and to avoid adding new requirements to credit union small dollar loans, which consumers need as safe and affordable alternatives. They will also continue to urge the CFPB to more narrowly tailor the rule so that totally different types of loans, such as auto refinances, are not impacted.

Last week in a meeting between the CFPB and several New Mexico credit unions, the credit union representatives expressed many concerns with the complexity of the 1300-page small dollar loan rule. They specifically noted that the underwriting requirements in the CFPB's proposed Ability-to-Repay test is not appropriate or conducive to credit union lending, and could harm members by:

- Limiting the number of times CUs can serve as an alternative to other lenders;
- Requiring credit reports to be pulled, which could potentially harm consumers' credit scores; and
- Causing some credit unions to reevaluate their participation in this market due to rigid rules.

These representatives also took issue with several aspects of the exemptions to the Ability-to-Repay test, which add unnecessary complexity to credit union small dollar loans that are already being monitored in

## Compliance Calendar

### 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](#)

### November 6

- Daylight Savings Time Ends

### November 11

- Veterans' Day – Federal Holiday

### November 24

- Thanksgiving Day – Federal Holiday

### December 26

- Christmas Day – Federal Holiday

## Effective Dates New and Revised Rules

### 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](#)

examinations, and are subject to safety and soundness requirements. Specifically, the reps noted that the 5 percent default rate was too low, that returning application fees would be extremely problematic from an operations perspective, and that not all loans need to be reported to all credit reporting agencies.

They also outlined some of the many of the complexities/operational problems associated with the Military Lending Act's new MAPR calculation and noted that the CFPB's "all-in" 36 percent APR calculation could cause similar confusion.

Lastly, the representatives asked the CFPB to produce evidence, through research, data, or complaint information, that might show problems with credit union small dollar loans. The CFPB staff stated that their research is not based on individual providers, but on products such as storefront and online payday loans, and bank deposit advance products. The participants noted that credit union small dollar loans are very different from storefront or online payday loans, particularly since they are lending to their own members, answer to a prudential regulator, and have safety and soundness requirements. The participants noted this additional problem with the rule, nothing that is a "mismatch" because data from non-bank lenders is not applicable to credit union consumer friendly loans.

*Source: CUNA Advocacy*

## CUNA Advocacy Report

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](#).

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

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