

InfoSight Highlight

Family and Medical Leave Act Final Rule

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. The FMLA also includes certain military family leave provisions.

The Department of Labor issued a Final Rule on February 25, 2015 (effective March 27, 2015) revising the regulatory definition of spouse under the Family and Medical Leave Act of 1993 (FMLA). The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.

The Final Rule amends the regulatory definition of spouse under the FMLA so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live. This will ensure that the FMLA will give spouses in same-sex marriages the same ability as all spouses to fully exercise their FMLA rights.

Major features of the Final Rule

- The Department has moved from a “state of residence” rule to a “place of celebration” rule for the definition of spouse under the FMLA regulations. The Final Rule changes the regulatory definition of spouse in 29 CFR §§ 825.102 and 825.122(b) to look to the law of the place in which the marriage was entered into, as opposed to the law of the state in which the employee resides. A place of celebration rule allows all legally married couples, whether opposite-sex or same-sex, or married under common law, to have consistent federal family leave rights regardless of where they live.
- The Final Rule’s definition of spouse expressly includes individuals in lawfully recognized same-sex and common law marriages and marriages that were validly entered into outside of the United States if they could have been entered into in at least one state.

The enforcement agency for FMLA is the Department of Labor, Wage and Hour Board.



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Credit Union National Association

Compliance Video

Compliance Connection Video

In this video, League InfoSight CEO Glory LeDu talks about the highlights from the 4th Quarter of 2018 and the 1st Quarter of 2019.

When S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, passed in 2018 there was a lot to understand! Glory LeDu, League InfoSight CEO, provides Part 1 in this short video to break it down for you.

Just a reminder that Compliance videos since 2016 can be found on YouTube at [the Compliance Connection](#)

For additional information, click [here](#) for the topic.

Compliance News

CFPB PMI Cancellation Guidance

CFPB [Bulletin 2015-03](#), "Private Mortgage Insurance Cancellation and Termination," is now available. The bulletin provides guidance to mortgage servicers regarding the cancellation and termination of private mortgage insurance. It explains certain requirements of the Homeowners Protection Act (HPA) and is intended to help servicers comply with the law. The Bureau has identified substantial industry confusion over implementation of the PMI cancellation and termination requirements in the HPA, and examinations by the Bureau have identified violations of several different provisions of the Act.

CFPB's announcement is [here](#).

TCPA FAQs

Question: Can you provide a simple breakdown of the prior consent rules for telemarketing calls under the TCPA?

Answer: According to [CUNA's Compliance Blog](#), there's nothing simple about the Telephone Consumer Protection Act (TCPA)...

Note that these particular requirements have been in effect since October 2013 (click [here](#) for the 2012 rules). For an update on the most recent FCC declaratory ruling and order, see CUNA's [July 17 blog post](#).

Calls to Landlines

Prior express written consent is required for all telephone calls using an automatic telephone dialing system ("ATDS" or "autodialer") or a prerecorded voice to deliver a telemarketing message to residential landlines [updated 8/5/15]. (The "established business relationship" exemption for these calls was eliminated in the 2012 rulemaking.) Telemarketers will have to comply with the Do-Not-Call rules if the calls are live solicitations (for both landline and wireless calls). For a recap of the FCC's do-not-call rule's application to tax-exempt nonprofit organizations, see [NCUA Regulatory Alert 04-RA-08](#).

Wireless Calls/Text Messages

Prior express written consent is required for all telemarketing

[channel](#), where they are generally updated quarterly.

Compliance Calendar

September 7

Labor Day - Federal Holiday

September 18

NACHA's Return Rate Levels & Reinstated Transactions Rule

October 3

CFPB: Know Before You Owe Disclosure - Effective Date

CFPB: Integrated Mortgage Disclosures - Effective Date

October 12

Columbus Day - Federal Holiday

October 23

5300 Call Report Due to NCUA

November 1

Daylight Savings Time Ends

November 11

Veterans' Day - Federal Holiday

November 26

Thanksgiving Day - Federal Holiday

December 25

Christmas Day - Federal Holiday

December 31

Foreign Account Tax

calls/text messages made to cell phones using an autodialer or prerecorded message.

If an autodialed or prerecorded call/text to a wireless number is not for telemarketing or advertising purposes (i.e., an informational call), the consent may be oral or written.

However, the prior express written consent rules will apply to informational calls that also contain any advertising message (i.e., intended to offer property, goods, or services for sale).

The FCC's most recent declaratory ruling and order exempted from the TCPA's consumer consent requirements free calls and text messages concerning: (1) transactions and events that suggest a risk of fraud or identity theft; (2) possible security breaches of consumers' personal information; (3) steps consumers can take to prevent or remedy harm caused by data security breaches; and (4) actions needed to arrange for receipt of pending money transfers. There are a number of conditions attached to these exemptions that are covered below.

Question: What about debt collection calls/texts?

Answer: With respect to debt collection calls to telephone numbers assigned to wireless numbers, the FCC previously determined that the provision of a cell phone number to a creditor, (e.g., as a part of a credit application), reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt.

Question: What must a caller do to obtain prior express written consent?

Answer: The TCPA rule defines "prior express written consent" as a signed written agreement that clearly and conspicuously discloses to the consumer that:

- By signing the agreement, he or she authorizes the seller to deliver, to a designated phone number, telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and

Compliance Act Effective Date

[Click here for upcoming compliance dates.](#)

Compliance Training

August 11 & 13, 2015
Performing Your ACH Audit and ACH Risk Assessment - Webinar
2:00 – 3:30 p.m. EST

August 13, 2015
GCUA Call on DOL Proposed Overtime Rules
10:00 a.m. - 11:00 a.m. EST

August 24-25, 2015
NASCUS/CUNA Cybersecurity Symposium
Denver, CO

Aug. 25 – Dec. 31, 2015
CUNA Regulatory Compliance Update eSchool

September 1, 2015
Improving Credit and Correcting Errors on Credit Reports – Webinar
2:00 – 3:30 p.m. EST

September 8, 2015
Helping Your Members Understand Their Rights on Repossessions, Foreclosures and Bankruptcies - Webinar
2:00 – 3:30 p.m. EST

September 8 – October 7, 2015
CUNA Lending Compliance

- The consumer is not required to sign the agreement or agree to enter into it as a condition of purchasing any property, goods, or services.

The required signature may be "obtained in compliance with the E-SIGN Act," including via an e-mail, website form, text message, telephone key press, or voice recording.

See the [July 17 blog post](#) for a discussion of the FCC's recent ruling concerning revocation of consent.

Question: How do recipients opt-out of prerecorded telemarketing calls?

Answer: The TCPA rule requires that every prerecorded telemarketing message, whether delivered to a mobile phone or a residential landline, provide an automated, interactive voice- and/or key press-activated mechanism for the consumer to request no further telemarketing calls from the caller.

The mechanism must be presented at the beginning of the call, together with instructions on how to use it. When a consumer uses the opt-out mechanism, his number must be automatically added to the telemarketer's do-not-call list, and the call must immediately terminate.

When the message is left on an answering machine, it must also provide a toll-free number that the consumer can use to connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism.

Question: Are there any exceptions to the prior express written consent requirements for auto-dialed/pre-recorded calls or text messages to mobile phones?

Answer: The FCC's [recent declaratory ruling and order](#) (FCC 15-72) exempted from the TCPA's consumer consent requirements free calls and text messages concerning:

1. Transactions and events that suggest a risk of fraud or identity theft;

[eSchool](#)
3:00 – 4:30 p.m. EST

September 16 – 17, 2015
[Leadership Development Institute](#)
Duluth, GA

September 20 – 25, 2015
[CUNA Regulatory Compliance School](#)
Boston, MA

Sept. 24 – Oct. 15, 2015
[CUNA Bank Secrecy Act eSchool](#)
3:30 – 5:30 p.m. EST

September 28, 2015
[BSA Internal Audit Strategies – Webinar](#)
3:30 – 5:30 p.m. EST

October 1, 2015
[Don't Let Orange Become the New Black: Enforcement Actions – Webinar](#)
3:30 – 4:30 p.m.

October 8, 2015
[What's In Your Member's Wallets – Webinar](#)
3:30 – 4:30 p.m. EST

October 13 & 22, 2015
[ACH Origination – Webinar](#)
2:00 – 3:00 p.m. EST

October 15, 2015
[Beneficial Owners and Business Accounts – Webinar](#)
3:30 – 4:30 p.m. EST

2. Possible security breaches of consumers' personal information;
3. Steps consumers can take to prevent or remedy harm caused by data security breaches; and
4. Actions needed to arrange for receipt of pending money transfers.

The "no charge" requirement includes ensuring that notifications don't count against a recipient's plan minutes/texts. In addition, the following conditions apply to the exempted calls and texts made by a financial institution:

1. Voice calls and text messages must be sent, if at all, only to the wireless telephone number provided by the member/customer of the financial institution;
2. Voice calls and text messages must state the name and contact information of the financial institution (for voice calls, these disclosures must be made at the beginning of the call);
3. Voice calls and text messages are strictly limited to purposes listed above and must not include any telemarketing, cross-marketing, solicitation, debt collection, or advertising content;
4. Voice calls and text messages must be concise, generally one minute or less in length for voice calls (unless more time is needed to obtain customer responses or answer customer questions) and 160 characters or less in length for text messages;
5. A financial institution may initiate no more than three messages (whether by voice call or text message) per event over a three-day period for an affected account;
6. A financial institution must offer recipients within each message an easy means to opt out of future messages, voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call, voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls, text messages must inform recipients of the ability to opt out by replying "STOP," which will be the exclusive means by which consumers may opt out of such messages; and,
7. A financial institution must honor opt-out requests immediately.

Is any of this do-able, especially in light of the fact that the messages can't reduce the subscriber's plan minutes/texts? According to the

October 21, 2015
[Lending Workshop](#)
Duluth, GA

November 12, 2015
[BSA/OFAC Workshop](#)
Atlanta, GA

BSA Training Opportunities
 through GCUA
[Click here for details](#)

declaratory ruling, financial institutions will have to work with wireless carriers to make this possible. Until then, there really aren't any exemptions credit unions can rely upon.

Please let us know what you think about this issue, as well as other aspects of the declaratory ruling. Your valuable input will assist in [CUNA](#) and [GCUA](#)'s advocacy efforts on your behalf.

For more information:

[July 17, 2015 CompBlog Post](#)

[FCC Press Release](#) (June 18, 2015)

[FCC Declaratory Ruling and Order](#) (FCC 15-72)

[See CUNA's e-Guide for additional latest developments and resources.](#)

Your CU Should Know...

Internal Controls Webinar for CUs: The NCUA will host a [free 90 minute webinar](#), "Internal Controls and Accounting Tips for Small Credit Unions," beginning at **2:00 p.m. EST on August 19**. A panel will discuss topics including:

- The purpose of internal controls,
- Segregation of duties,
- Supervisory Committee audits,
- Appropriate use of the prepaid account, and
- Proper accounting for Other Real Estate Owned transactions.

Bureau Updates TRID Implementation Materials: The Consumer Financial Protection Bureau has updated its [TRID Rule implementation materials](#) to reflect the new effective date of **October 3, 2015**. Updates have been made to:

- the [TILA-RESPA Integrated Disclosures rule small entity compliance guide](#),

- the [TILA-RESPA Integrated Disclosures Guide to the Loan Estimate and Closing Disclosure forms](#), and
- the [TILA-RESPA Integrated Disclosures timeline example](#).

Iranian Sanctions - Revised Guidance and FAQs: Treasury has issued [revised Guidance](#) and [FAQs](#) on the Continuation of Certain Temporary Sanctions Relief Implementing the Joint Comprehensive Plan of Action (JCPOA) to ensure that Iran's nuclear program will be exclusively peaceful.

Bureau Study on eClosings: The CFPB has [announced](#) a report on its "Know Before You Owe" eClosing project, "[Leveraging technology to empower mortgage consumers at closing](#)," which found that borrowers can benefit from electronic closings when navigating the mortgage closing process. Specifically, the results of the pilot indicate that those who closed their mortgage using an electronic platform are generally better off on measures of understanding, efficiency, and feeling empowered than borrowers who used just paper forms. The CFPB project took place over a four-month period and involved seven lenders, more than 3,000 consumers, four technology companies, and many settlement agents and real estate professionals. The report is not part of a rulemaking process, but rather was initiated to promote best practices in the marketplace.

FTC Debt Collection Dialogues in Dallas and Atlanta: The Federal Trade Commission has [announced](#) the panels for a Debt Collection Dialogue in Dallas on September 29, 2015. Representatives from the Commission, other federal and state law enforcement agencies, and the debt collection industry will discuss enforcement actions, consumer complaints, compliance issues, industry best practices, and how regulatory enforcement actions are investigated and pursued. [Additional information](#), including a tentative schedule and information on pre-registration and submission of early questions, is available on the Commission's website. The Dallas event is the second in a series of three sessions. **The final session will be held [in Atlanta on November 18](#).**

Comment Calls

NCUA MBL Proposal

The NCUA Board has approved a proposed member business loan (MBL) rule.

The proposed rule would completely overhaul NCUA's MBL regulation. Almost all requirements not in the Federal Credit Union Act would be removed. The proposal would create a category of "commercial" loans for safety and soundness purposes and utilizes the category of MBLs for compliance with the Act's limitations on member business lending. For example, the Act does not categorize any nonmember participations as MBLs and neither does the proposed rule. However, business loan participations are considered commercial loans for the purposes of safety and soundness.

The rule would remove all of the specific requirements that currently require waivers, including the personal guarantee requirement. It would also exempt some credit unions with less than \$250 million in assets from the board of director and management responsibility requirements and commercial loan policy requirements. The proposal does have an 18-month implementation period.

GCUA would like to know your thoughts and comments on this proposal. Please send them to Selina Gambrell at selinag@gcu.org by **August 17th**.

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.

Click [here](#) to request to be added to the mailing list for this and/or other GCUA email publications.

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