



## InfoSight Highlight

### 314(a) Point of Contact Changes

Recently a credit union contacted their league's compliance department asking how to change their 314(a) point of contact with FinCEN. They had already contacted FinCEN only to be told that they needed to contact their primary federal supervisory agency. They then contacted their primary federal supervisory agency only to be told that they needed to contact FinCEN. After some research, here is some guidance that FinCEN released on April 22, 2015 that addresses this issue.

According to the guidance, all changes must be made in the online credit union profile in NCUA's CU Online system by updating the Patriot Act contact on the Contacts Tab. Credit unions can access CU Online at [cuonline.ncua.gov](http://cuonline.ncua.gov).

The following items must be provided to update or add your financial institution's POC information: financial institution name and charter number or other identifier; point of contact name and title, mailing (street number, P.O. Box, city, state and zip code) and e-mail addresses; and telephone and facsimile numbers.

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

## Compliance News

### VISA AML/ATF Review

**Question: Our credit union has received an email from VISA stating that the Visa Anti-money Laundering (AML) / Anti-terrorist Financing (ATF) Compliance Program includes the routine review of the financial institutions participating in the Visa network, including their AML/ATF programs. As part of this program, Visa is now reviewing our credit union's AML/ATF program and we must complete an AML/ATF Compliance Questionnaire/Certification form and return it by August 20, 2015. Is this email legitimate or is it SPAM?**

**Answer: The email is legitimate.** GCUA's Card Services Department confirmed that Visa has been sending this out to all clients to make sure that they have AML programs in place and that they comply with Visa rules and standards on this topic.

GEORGIA CREDIT UNION

*Affiliates*

**InfoSight  
Compliance eNEWSLETTER  
August 17, 2015  
Vol. 9, Issue 33**

Created in partnership with the



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

If you have questions regarding this email, please contact VISA at [AML\\_NorthAmerica@visa.com](mailto:AML_NorthAmerica@visa.com). Credit unions that utilize GCUA's Card Services may also call Julie Yanes with questions at (800) 768-4282, ext. 3439.

#### More TCPA FAQs

As you know, the Federal Communications Commission (FCC) has been very active in recent weeks. First the agency's bombshell [declaratory ruling](#) released on July 10 regarding automated telemarketing calls and text messages under the Telephone Consumer Protection Act (TCPA). The FCC has also [announced](#) a \$2.96 million fine against a travel marketing company, which is the largest forfeiture order the FCC has issued for "robocalling" violations.

The company, Travel Club Marketing, was found to have willfully and repeatedly violated the TCPA and the FCC's rules by making or initiating at least 185 unlawful prerecorded advertising calls to 142 consumers who had not consented to the robocalls and the majority of whom had placed their telephone number on the National Do-Not-Call Registry.

At the time of these calls, the rules required prior express consent for all robocalls to cell phones and either prior express consent or an established business relations for advertising robocalls to residential telephone lines. Travel Club Marketing did not have prior express consent or an established business relationship for any of the calls they made. The FCC amended the rules in 2012 (effective October 2013), to rescind the established business relationship exemption and to require that prior express consent be in writing for all advertising robocalls.

**Question: We understand that the FCC recently expanded the scope of what's considered an "automatic telephone dialing system" under the Telephone Consumer Protection Act. Did the FCC provide a list of the types of equipment that fall under that definition?**

**Answer:** According to [CUNA's Compliance Blog](#), the FCC did not provide a covered-equipment list in its recent [declaratory ruling](#). Therefore, credit unions will need to evaluate their telephone systems

[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

to determine whether equipment meets the “automatic telephone dialing system” (“ATDS”) definition.

The TCPA defines an ATDS (or “autodialer”) as “equipment which has the capacity - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” The basic functions of an autodialer are to dial numbers “without human intervention” and “to dial thousands of number in a short period of time.”

According to the FCC, the term “capacity” in the ATDS definition includes both the present and the potential future capability of equipment to be used as an autodialer: “We agree with commenters who argue that the TCPA’s use of ‘capacity’ does not exempt equipment that lacks the ‘present ability’ to dial randomly or sequentially. We agree that Congress intended a broad definition of autodialer, and that the Commission has already twice addressed the issue in 2003 and 2008, stating that autodialers need only have the ‘capacity’ to dial random and sequential numbers, rather than the ‘present ability’ to do so. Hence, any equipment that has the requisite ‘capacity’ is an autodialer and is therefore subject to the TCPA.” (Paragraph 15)

Predictive dialers also satisfy the TCPA’s definition of an “autodialer.” The FCC describes a predictive dialer as “equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a sales agent will be available to take calls.” The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers. Therefore, predictive dialers are considered autodialers under the TCPA.

The FCC determined that callers cannot avoid the consumer consent requirements by dividing ownership of pieces of dialing equipment that work in concert among multiple parties (e.g., dividing the storage and calling equipment and functions between the two companies). The combination of equipment can be considered an autodialer “if the net result of such voluntary combination enables the equipment to have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers.”

**Question: What about speed-dialing technology?**

**Answer:** According to the FCC, speed dialing technology doesn’t fit the definition of an ATDS “... the Commission found in its original

Compliance Act Effective Date

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

**Compliance Training**

August 20, 2015  
[NCUA MBL Proposal - What You Need to Know before You File Your Comment Letter - Webinar](#)

**2:00 - 3:00 p.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  
[TCPA - RoboCalls, Text Messages and the New FCC Ruling - Webinar](#)  
**12:00 - 1:30 p.m. EST**

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](#)

TCPA proceeding that the ‘prohibitions of [section] 227(b)(1) clearly do not apply to functions like ‘speed dialing.’” Second, the Commission has also long held that the basic functions of an autodialer are to ‘dial numbers without human intervention’ and to ‘dial thousands of numbers in a short period of time.’ How the human intervention element applies to a particular piece of equipment is specific to each individual piece of equipment, based on how the equipment functions and depends on human intervention, and is therefore a case-by-case determination.” (Paragraph 17)

**Bottom line:** Many more telephone systems may now be categorized as an “ATDS,” falling under the TCPA’s auto-dialer rules. Telephone equipment that isn’t currently being used as an ATDS may still fall under the autodialer rules if ATDS features can be activated or equipment can be re-configured to turn these features on in the future. However, “there must be more than a theoretical potential that the equipment could be modified to satisfy the ‘autodialer’ definition.” (Paragraph 18)

**Question: We recently initiated a few automated pre-recorded telemarketing calls to numbers that were reassigned to other people (i.e., members didn’t port their telephone numbers when they changed cell phone carriers). Have we violated the Telephone Consumer Protection Act since we never obtained their prior express consent to receive such calls?**

**Answer:** Technically, the scenario you described above would violate the TCPA. The Act states that it “shall be unlawful” to “make any call” using an autodialer or an artificial or prerecorded voice, without “the prior express consent of the called party.” (See CUNA’s [August 4th blog post](#) for exceptions to this general rule.)

According to the FCC, the “called party” is the subscriber, i.e., the consumer assigned the telephone number dialed and billed for the call, or the non-subscriber customary user of a telephone number included in a family or business calling plan. Both of these individuals can give prior express consent to be called at that number. Therefore, “calls to reassigned wireless numbers violate the TCPA when a previous subscriber, not the current subscriber or customary user, provided the prior express consent on which the call is based.” (Paragraph 73 of the FCC's recent [declaratory ruling](#) on the TCPA.)

The FCC’s ruling clarified that “callers who make calls without knowledge of reassignment and with a reasonable basis to believe that

[eSchool](#)  
**3:00 – 4:30 p.m. EST**

September 9, 2015  
[New Restrictions on Second-Lien Stripping in Bankruptcy](#) - Webinar  
**12 - 1:00 p.m. EST**

September 14, 2015  
[Changes to the Military Lending Act](#) - Webinar  
**11:30 - 12:30 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**

they have valid consent to make the call should be able to initiate one call after reassignment as an additional opportunity to gain actual or constructive knowledge of the reassignment and cease future calls to the new subscriber. If this one additional call does not yield actual knowledge of reassignment, we deem the caller to have constructive knowledge of such.” (Paragraph 72 -- Note that this “one free pass” rule only applies to reassigned numbers, not misdialed numbers (number was incorrectly entered into a dialing system).

**Question: How can credit unions avoid/limit exposure to TCPA liability for additional automated/pre-recorded calls to reassigned numbers?**

**Answer:** The FCC suggests the following options (found in Paragraph 86 of the declaratory ruling):

1. Include an interactive opt-out mechanism in all artificial- or prerecorded-voice calls so that recipients may easily report a reassigned or wrong number;
2. Implement procedures for recording wrong number reports received by member service representatives placing outbound calls;
3. Implement processes for allowing member service reps to record new phone numbers when receiving calls from members;
4. Periodically send an email or mail request to the consumer to update his or her contact information;
5. Utilize an autodialer’s and/or a live caller’s ability to recognize “triple-tones” that identify and record disconnected numbers;
6. Establish policies for determining whether a number has been reassigned if there has been no response to a “two-way” call after a period of attempting to contact a consumer; and
7. Enable members to update contact information by responding to any text message they receive, which may increase a member’s likelihood of reporting phone number changes and reduce the likelihood of a caller dialing a reassigned number.

For more information:

- [FCC Declaratory Ruling and Order \(FCC 15-72\)](#)
- [CUNA’s letter](#) to NCUA concerning the impact of the FCC ruling on credit union operations

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**

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

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

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

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### DBF Final Rule Could Affect Committee Structure for SCCUs

Recently in the Department of Banking and Finance's Housekeeping bill that became law on July 1, a few changes were made including some clarifications about the duties of boards. Section 7-1-656 was amended and the underlined language (below) could potentially require either some clarification or changes to committee structures of state chartered credit unions.

To help understand the impact of the changes, GCUA staff and six state chartered credit unions recently held a call with Steve Pleger, Senior Deputy Commissioner, and Bo Fears, General Counsel from the Department of Banking and Finance. The call was to help educate and clarify the position of the regulator in respect to committees, and to allow credit unions to discuss what their credit union committee model looks like today. The Department mentioned that the underlying reasons for the clarifications was to protect the boards of directors, and to make sure that the Board understood the potential liability issues for allowing other volunteers to make decisions that could bind the credit union.

Here is a copy of the amended section:  
7-1-656

(b) Unless otherwise provided in the articles or bylaws of a credit union:

(1) A majority of all directors shall constitute a quorum for the transaction of business and actions of a majority of those present at a meeting at which a quorum is present shall be deemed as actions of the board of directors;

**(2) The board of directors may designate three or more of its number to constitute a credit committee, supervisory committee, or other committees which, to the extent provided in a resolution, shall have and exercise the authority of the board of directors with regard to the business of a credit union; and**

**(3) Any action authorized to be taken at a meeting of the board of directors or a credit, supervisory, or other committee may be taken without a meeting if the action is set forth in writing and approved and signed by all directors or all members of the credit, supervisory, or other committee entitled to vote with respect to the underlying subject matter.**

After some discussion, the Department learned that most credit unions do not hand over decision making for their credit unions to the committees, and that board of directors are active in monitoring committees. It was agreed that credit unions have three possible committee structure options that they could employ and still comply with the law. Those three options are as follows:

1. Committee consists of all board members and can act in lieu of the board (minimum of 3 members).
2. Committee consists of 3 board members plus other non board members (CUs can decide whether they want to say all members can vote but only the vote from a board member is binding; or another approach is that only board members are authorized to vote and the other members of the board are non-voting).
3. Committee consists of 1 board member and others who are not on the board: chair must be a board member and others are not board members. (This says the group can make recommendations to the board but all decisions are made by the board - and the board shouldn't just rubber stamp what the committee recommends without some review and, if needed, discussion.)

Important aspects of this process:

- Board appoints committee by resolution (needs to be in minutes) and gives instructions about the committee duties and responsibilities. (Committee appointments should be in the minutes. The committee's duties and responsibilities could be defined in a Committee Charter, Resolution or be defined in the Bylaws)
- Verify if the credit union has insurance coverage for volunteers as well as board members. (We have heard from both CUNA Mutual and Evans and Simpson that their Director and Officer Bond coverage does mention it covers volunteers as well as directors and officers – but everyone should still check.)
- Review bylaws, as model bylaws may not be consistent with the way a credit union operates.

The most important take away from the clarifications in the housekeeping legislation is that **the board cannot hand over the responsibility of their decisions to any committee.**

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Your CU Should Know...

**Fed Clarifies Debit Interchange Fees:** The Federal Reserve Board [clarified Regulation II](#) (Debit Card Interchange Fees and Routing) regarding the inclusion of transaction-monitoring costs in the interchange fee standard.

Regulation II implements, among other things, standards for assessing whether interchange transaction fees for electronic debit transactions are reasonable and proportional to the cost incurred by the issuer, as required by section 920 of the Electronic Fund Transfer Act (EFTA). On March 21, 2014, the Court of Appeals for the D.C. Circuit reversed an earlier decision of the District Court and largely upheld Regulation II against a challenge to the rule by merchant groups. The court found that one aspect of the rule--the Board's inclusion of transaction-monitoring costs in the interchange fee standard--required further explanation. Click [here](#) for the press release.

**Bureau and Outlook Live TRID Webinar Index:** The CFPB has posted an [index](#) to its Outlook Live series of webinars on the TRID rule. The index includes links to the five webinars, and each webinar recording now includes a clickable table of contents that allows the viewer to jump directly to the appropriate portion of the recording.

**VA Updates ARM Rule:** The Department of Veterans Affairs has published a final rule [[80 FR 48254](#)] to amend its regulations (at 38 CFR 36) that govern adjustable rate mortgages made in conjunction with the Home Loan Guaranty program. These revisions align VA's disclosure and interest rate adjustment requirements with the implementing regulations of the Truth in Lending Act (TILA), as revised by the Consumer Financial Protection Bureau (CFPB) (at 12 CFR 1026.20(c) and (d)). The VA's amendments will become effective on September 11, 2015.

**Citizens Financial Penalized for Unadjusted Deposit Errors:** The Consumer Financial Protection Bureau, Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have announced enforcement orders against Citizens Financial Group, Inc. (formerly known as RBS Citizens Financial Group), Providence, RI,



and its two bank subsidiaries, Citizens Bank, N.A. (f/k/a RBS Citizens, N.A.), Providence, RI and Citizens Bank of Pennsylvania (Philadelphia), for failing to credit customers the full amounts of their deposited funds. The agencies found that the bank kept money from deposit discrepancies when deposit slips did not match actual deposit totals from January 1, 2008, to November 30, 2013, and mislead customers by implying that the bank would ensure that customers were credited with the correct deposit amount, when its practice was not to correct deposit inaccuracies under a \$50 (through September 2012) or \$25 (September 2012 to November 2013) threshold. The agencies ordered the holding company and banks to make restitution of approximately \$11 million to affected customers, and to pay civil money penalties or fines totaling \$20.5 million.

CFPB [press release](#) and [consent order](#) against the holding company and both banks, with \$7.5 million civil money penalty to the Bureau's Civil Penalty Fund.

## Comment Calls

### DOL Updating Rules for OT Pay

The Fair Labor Standards Act (FLSA or Act) guarantees a minimum wage and overtime pay at a rate of not less than one and one-half times the employee's regular rate for hours worked over 40 in a workweek. While these protections extend to most workers, the FLSA does provide a number of exemptions. The Department of Labor (DOL) has [proposed](#) updating and revising the regulations issued under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. This exemption is referred to as the FLSA's "EAP" or "white collar" exemption. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption is currently \$455 a week (\$23,660 for a full-year worker) and was last updated in 2004.

GCUA would like to know your thoughts and/or concerns on this proposal. Please send your comments to Selina Gambrell at [selinag@gcu.org](mailto:selinag@gcu.org) by **August 21st**.

**NCUA's Member Business Lending Proposal:** CUNA is hosting a free webinar on August 20 focusing on NCUA's MBL proposal. Bill Hampel, CUNA's Chief Economist, Lance Noggle, Senior Director of Advocacy and Counsel, and Ryan Donovan will discuss the proposal, its potential impact on credit unions, and key points to raise in your comment letters. The

webinar will also be an opportunity for credit unions to provide feedback on the proposal and ask questions. To learn more, click [here](#). To register, click [here](#).

**The bankers are making their views known on the MBL proposal.** We strongly encourage you to ask your members, employees and volunteers to send a message to NCUA on this proposal. On GCUA's '[Calls to Action](#)' page, we have about 10 draft messages you can use to create a comment letter. Please click "switch message" to scroll through all of the sample text. You can use this sample language to draft a letter, or feel free to draft your own message.

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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