



InfoSight Highlight

Bankruptcy Forms Changed December 1st

As of December 1, 2015, the United States Bankruptcy Courts mandated usage and filing of new bankruptcy forms. Although many of the official bankruptcy forms will change, those effecting lenders and creditors directly include: proof of claims, mortgage attachment (also known as 410A form), notice of payment change, notice of post petition expenses and the reaffirmation agreement cover page. (**Note:** The new proof of claim and the mortgage attachment (Form 410A) have significant changes and require substantially more information to complete as compared to the old forms.)

After December 1, 2015, the old forms will not be accepted and the Courts will require usage of the new forms.

Credit unions that have that have questions or concerns with completing the new forms, should seek the advice of their counsel to discuss.

The new forms and their requirements can be found on the [US Courts](#) website.

For more information on Bankruptcy, please see the [Bankruptcy](#) topic on InfoSight.

Compliance News

Exemption Threshold for Regs M and Z Unchanged for 2016
The Federal Reserve Board (FRB) and the Consumer Financial Protection Bureau (CFPB) have jointly [announced](#) that the dollar thresholds in Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing), both currently \$54,600, will remain unchanged for 2016. Transactions above the thresholds are exempt from the regulations, except that the exemption under Regulation Z does not apply to extensions of credit that are private education loans or loans secured by real property or by personal property that is the consumer's primary residence. The amendments to the Official Interpretations of the regulations have been published in the *Federal Register*.

- [Final Rule amending Regulation M Supplement I](#)
- [Final Rule amending Regulation Z Supplement I](#)

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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](#)

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

Compliance Calendar

December 25
Christmas Day - Federal Holiday

December 31
Foreign Account Tax Compliance Act Effective Date

January 1, 2016
New Years Day - Federal Holiday

Flood Insurance Rule Effective Date - Part 2
January 12
Microsoft Discontinues Support of Older Versions of Internet Explorer

January 18
Martin Luther King, Jr Birthday - Federal Holiday

January 22
5300 Call Report Due to NCUA

February 15
Washington's Birthday/President's Day - Federal Holiday

March 13
Daylight Savings Time Begins

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

HPML Appraisal Exemption Threshold Also Unchanged for 2016
The CFPB, FRB, and Office of the Comptroller of the Currency have jointly announced that the threshold amount for exempting loans from special appraisal requirements for higher-priced mortgage loans (HPMLs) will remain unchanged for 2016, at \$25,500. The [amendments](#) to the agency's respective regulations were published in the *Federal Register*.

Don't Forget Your Annual ACH Audit
Financial institutions that originate and receive transactions over the Automated Clearing House (ACH) Network are required to perform an annual compliance audit under the National Automated Clearing House Association's (NACHA) Operating Rules. The rule also applies to third-party service providers. **The rule requires the audit be performed by December 31, 2015.**

Important reminders about the rule:

1. All credit unions that originate or received transactions via ACH are required to perform the audit annually;
2. The audit cannot be performed by anyone involved in the posting or receiving of the ACH transactions. It must be someone not involved with the transactions; and
3. The audit must be completed by the end of December.

Security Interests in Share Accounts under the Military Lending Act Regulations
In late July, the U.S. Department of Defense (DoD) issued a final rule

Compliance Training

December 16, 2015
[Mortgage Lending - NCUA Webinar](#)
2:00 - 3:30 p.m. EST

January 26, 2016
[Grassroots Academy](#)
Atlanta, GA

February 21 – 25, 2016
[CUNA Governmental Affairs Conference](#)
Washington D.C.

May 11 – 14, 2016
[GCUA Annual Convention](#)
Savannah, GA

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

that amended its regulation that implements the Military Lending Act (MLA). These amendments expand the definition of “consumer credit” to provide the protections of the MLA to a broader range of closed-end and open-end loans within the scope of the Truth in Lending Act and Regulation Z, rather than the limited types of credit that are defined in the current rule.

This rule was effective October 1, 2015, but compliance isn’t mandatory until October 3, 2016.

Section 232.8(e)(3) of the DoD’s Military Lending Act regulations permits a creditor to take a security interest in funds deposited after the extension of credit and in an account established in connection with the loan.

This same provision has been in the regulations from the beginning, meaning 2007. However, because of the limited types of loans that were subject to the MLA (Payday Loans, Auto Title Loans and Tax Refund Anticipation Loans), the provision didn’t seem to cause much of a problem at that time. However, now that the MLA has expanded coverage to include most open-end as well as closed-end loans subject to Regulation Z (other than the limited exceptions), this provision may pose a serious problem to those credit unions that serve large numbers of military personnel and their dependents.

Why is this language in the MLA Regulations a Problem?

The provision limiting security interests does not apply to any loan that is not covered by the MLA regulations. However, for loans that are covered by the MLA regulations, the specific provisions regarding security interests could severely limit the amount of funds on deposit that are subject to setoff. This could result in higher loan losses on loans covered by the MLA regulations. In addition, Section 232.9(c) of the MLA regulations provides that any credit agreement, promissory note or other contract with a covered borrower that fails to comply with the regulations is void from the inception.

Standard cross-collateralization clauses, contained in many loan documents, typically permit a security interest to be obtained in shares deposited both prior to and after consummation of the loan and in connection with any share account of the borrower.

Statutory Lien provisions in Part 701.39 of NCUA’s Rules and Regulations permit Federal credit unions to apply the balance of shares

and dividends in all individual and joint accounts to the loan balance once a member is in default.

Standard cross-collateralization clauses as well as NCUA's statutory Lien provisions, do not comply with the MLA regulations limiting the security interest to shares deposited after the loan is established and to funds that are deposited into an account set up in connection with the loan.

As such, any loan agreement between a credit union and covered borrower that contains **only** the standard cross-collateralization language and language regarding statutory liens could be considered void and the borrower would not be required to repay any outstanding loan balance.

How can We Prevent our Loan Agreements from Being Considered Void?

To start with, you should make sure that the "Security" clause in your loan documents contains language regarding the specific requirements in the MLA regulations related to a security interest in deposited funds. This means ensuring that the security interest only covers deposits made after loan consummation and relates only to deposits made in an account that is established in connection with the loan.

What type of Share Account Would Satisfy the Requirements of the MLA regulations?

Unfortunately, the MLA regulations don't provide any guidance with regard to this requirement in either the current final rule or in its initial final rule issued in August 2007. However, a share account that is opened at or near the time a covered loan is opened might satisfy the requirement of being established in connection with the loan.

In addition, a "Credit Builder" or similar account that is opened in connection with the loan would seem to satisfy this requirement.

However, it is unlikely that a share account opened three months before a member applies for a loan covered by the MLA regulations would satisfy the MLA requirement that the "account be established in connection with the loan."

CUNA recently contacted the NCUA to ask whether they could check with the DoD and request further guidance regarding the security

interest limitations. CUNA will keep GCUA informed of any response they receive.

What Other Action will our Credit Union Have to Take?

With only ten months until the mandatory compliance date, CUNA and GCUA recommend that your credit union consider the following:

- Contact your data processor immediately concerning software changes that will be necessary to ensure that any security interest in the borrower's funds only applies to funds that are deposited into an account that is established in connection with the loan and only applies to funds deposited after the extension of credit.
- Check with your forms supplier to ensure that cross-collateralization clauses in your loan documents contains language that limits the security interest to funds deposited after the extension of credit and to funds deposited into an account established in connection with the MLA covered loan.
- Finally, your loan policies and procedures should be revised to cover these MLA requirements.

Disclosing Percentages on the Loan Estimate

Question: How are percentage amounts supposed to be disclosed on the Loan Estimate? For example, how many decimals should we include, or should we round percentage disclosures?

Answer: According to [CUNA's Compliance Blog](#), the CFPB notes that percentage amounts may not be rounded on the Loan Estimate and should be shown to two or three decimals, as needed, except where noted in the [regulation](#) (§1026.37(o)(4)). If a percentage amount is a whole number, show the whole number only - with no decimals.

Since we're talking about rounding, remember that dollar amounts must be rounded to the nearest whole dollar where noted in the regulation. If an amount is required to be rounded but is composed of other amounts that are NOT required or permitted to be rounded, use the unrounded amounts in calculating the total and then round the final sum.

Communicating with NCUA about Consumer Complaints

Credit unions can use NCUA's Consumer Assistance Center (CAC) portal to receive correspondence from the CAC regarding any credit union complaints received by NCUA. The complaint portal was opened to consumers on August 24, 2015. If a credit union is interested in using the portal it must request access by emailing the Consumer Assistance Center at consumeraffairs@ncua.gov. For more information, NCUA's release is [here](#) and the FAQ sheet on the portal is [here](#).

Credit unions can also check out the [November issue](#) of *The NCUA Report*. The November report features articles on, among other things, the Risk Based Capital Rule, revisions to delegations of authority and also NCUA's new process for handling consumer complaints.

In the article, "[Understanding the New Process for Handling Consumer Complaints](#)", NCUA indicates that the new consumer complaint handling process and improved online CAC portal is intended to streamline how it attempts to resolve consumer complaints involving consumer financial protection laws and regulations. The new consumer complaint handling process involves two distinct phases. In the first phase, the credit union has 60 calendar days from receipt of the complaint to review and, if possible, resolve the matter in-house. If the credit union is unable to resolve the issue, then the second phase is triggered. In the second phase, CAC formally investigates the matter.

Additionally, the article highlights NCUA's online CAC portal. NCUA indicates that in addition to consumers, credit unions will also be able to use the new CAC portal to submit complaint response information securely and check the status and number of complaints concerning their institutions. The CAC also provides new features that allow consumers to find financial protection information and personal finance resources.

Your CU Should Know...

Bureau Adds HMDA Compliance Guide: The CFPB has added a [Home Mortgage Disclosure \(Regulation C\) Small Entity Compliance Guide](#) to its [HMDA Rule implementation](#) page to provide plain-

language assistance for small entities in their efforts to comply with the upcoming changes to HMDA data collection and filing under amendments to Regulation C.

CFPB 2016 Rural Counties List Updated: The CFPB has posted [updated lists of rural or undeserved counties](#) for 2016. Some businesses with volume in rural or underserved counties that outweighs volume in other counties are exempt from certain regulatory requirements in Ability to Repay and Qualified Mortgage Standards and Escrow Requirements under the Truth in Lending Act such as creating escrow accounts and not including balloon payment provisions to get “qualified mortgage” status.

NCUA Mortgage Lending Webinar Announced: The NCUA will host a free “[Mortgage Lending](#)” webinar on **December 16 beginning at 2:00 pm. EST.** The ninety-minute presentation will provide valuable information about mortgage outsourcing, mortgage best practices and compliance requirements for lenders.

DOL Overtime Rule Now Slated for July 2016: The Labor Department is now targeting a **July 2016** release of the highly anticipated and contentious final rule to raise the overtime pay exemption threshold, according to the [fall 2015 semiannual regulatory agenda](#) published by the Office of Management and Budget.

[Previous reports](#) indicated that the rule would be released "late 2016", so this latest information provides a more specific time frame. The DOL is in the midst of reviewing nearly 300,000 comments received on the proposed rule, issued in June, which would update the Fair Labor Standards Act by more than doubling the minimum salary for the overtime exemption to \$50,440 per year from \$23,660.

The proposal is seen as a major part of President Obama's agenda to raise wages and is at the top of the DOL's list of regulatory priorities in the administration's final full year.

OFAC Updates Cuba FAQs: OFAC has updated its document covering [FAQ's related to Cuba](#) by adding question #52 regarding the

processing of authorized Cuba travel-related transactions by financial institutions subject to U.S. jurisdiction.

Conforming Loan Limits Unchanged for 2016: The Federal Housing Finance Agency has announced that the maximum conforming loan limits for mortgages acquired by Fannie Mae and Freddie Mac in 2016 will remain at existing levels, except in 39 high-cost counties where they will increase. In most of the country, the loan limit will remain at \$417,000 for one-unit properties.

CFPB Spotlights Bank Account and Services Complaints: The CFPB November 2016 monthly complaint spotlight highlights bank account and service complaints. The report shows many consumers are experiencing problems opening and managing accounts, while other consumers found their accounts closed without explanation. This month's snapshot also highlights trends seen in complaints coming from Connecticut.

- Monthly Complaint Report, Vol. 5

Bureau Releases Credit Card Report: The CFPB has released a report describing how the Credit Card Accountability Responsibility and Disclosure Act (CARD Act) has helped reduce the costs of what the agency termed "gotcha" credit card fees by over \$16 billion. Many of those savings have involved "back-end" pricing practices such as over-limit fees. The Bureau reported, however, that it still has concerns over other practices, such as deferred-interest promotions. The CFPB report indicates that since the implementation of the CARD Act, consumers have saved over \$9 billion in over-limit fees and more than \$7 billion in late fees. Concerns remain, said the CFPB, over:

- Deferred-interest promotions
- Pricing by subprime issuers
- Rewards programs with obscure and incomplete terms and conditions
- Credit card debt collection practices
- Long and complex card agreements

Videos on Share Insurance Coverage: NCUA has released three videos to assist credit union members in understanding how their accounts at federally-insured credit unions are protected. The videos, available on [NCUA's You Tube Channel](#), include a Share Insurance Coverage Overview, How to Use NCUA's Share Insurance Estimator, and Account Ownership Types.

Bureau Issues Auto-Debit Bulletin: The CFPB has posted an [article](#) and [announced](#) its issuance of Bulletin 2015-06 on automatic debits. The article explains to consumers the way an auto debit to a financial institution account works and the protections for the account owner, and provides links to action letter templates consumers can use to invoke those protections. The bulletin alerts companies that they must obtain authorization before automatically debiting a consumer's account. The bulletin also reminds companies they are required by law to provide notifications to consumers that clearly describe the terms of preauthorized auto debits. In addition, the Bureau is publishing action letters today for consumers seeking to revoke a company's authorization to auto debit an account.

- [Bulletin 2015-06](#)

Money Laundering by Transporting Cash: The Financial Action Task Force (FATF) has released a [report](#) on how money laundering can occur by the physical transportation of cash. The joint FATF / Middle East & North Africa Financial Action Task Force (MENAFATF) report highlights that cash remains an important means of payment across the globe, with an estimated \$4 trillion in various currencies in circulation.

New FDIC Cybersecurity Awareness Resources: The FDIC has issued [FIL-55-2015](#) to announce the addition of new cybersecurity awareness resources for financial institutions. These include a [Cybersecurity Awareness video](#) and three new [vignettes for the Cyber Challenge](#), which consists of exercises that are intended to encourage discussions of operational risk issues and the potential impact of information technology disruptions on common banking functions. The new tools have been added to the [Directors' Resource Center](#). While not a credit union regulator, these resources may still be helpful to credit unions looking for help with cybersecurity.

Comment Calls

Request to Review Information Collected Under HMDA

In accordance with the Paperwork Reduction Act of 1995 (PRA), the CFPB is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection, and to revise an existing information collection, titled, "Home Mortgage Disclosure (Regulation C) 12 CFR 1003."

Comments are requested on "(a) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The information collected is sought under the recent final rule for Regulation C, published October 27, 2015 that substantially overhauled the existing HMDA requirements.

GCUA would like to know your comments. Please email Selina Gambrell by **December 11, 2015**, at selinag@gcu.org.

The CUNA Advocacy Update 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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