



InfoSight Highlight

Board Amends Regulation D - Reserve Requirements

The Board of Governors of the Federal Reserve System has amended Regulation D (Reserve Requirements of Depository Institutions) to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements ("IORR") and the rate of interest paid on excess balances ("IOER") maintained at Federal Reserve Banks by or on behalf of eligible institutions to be 0.50 percent, up from 0.25 percent, effective December 22, 2015, with retroactive applicability to December 17, 2015.

The Final Rule can be viewed [here](#).

For more information on Regulation D, please see the "[Regulation D – Reserve Requirements](#)" topic on InfoSight.

Compliance News

NCUA Publishes Final Rule on IOLTA Pass-Through Insurance

The NCUA Board has published a final rule [80 FR 80635] amending its share insurance regulations at 12 CFR Part 745 to implement statutory amendments to the Federal Credit Union Act resulting from the recent enactment of the Credit Union Share Insurance Fund Parity Act. The statutory amendments require NCUA to provide enhanced, pass-through share insurance for interest on lawyers trust accounts (IOLTA) and other similar escrow accounts. As its name implies, the Insurance Parity Act ensures that NCUA and the Federal Deposit Insurance Corporation (FDIC) insure IOLTAs and other similar escrow accounts in an equivalent manner. The amendments will become effective **January 27, 2016**.

Question: How will the new IOLTA rule impact our member accounts?

Answer: According to [CUNA's Compliance Blog](#), under NCUA's new Interest on Lawyers Trust Accounts (IOLTA) rule share insurance coverage will be expanded for your IOLTA accounts and other accounts that satisfy the definition of "other similar escrow accounts."

Basically, the new rule shifts the membership requirement from the clients of the attorney, who own the funds in the account, to the attorney. In other words, as long as the attorney or escrow agent is a

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Affiliates

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Compliance Calendar

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.](#)

Compliance Training

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](#)

member of the credit union, then the funds in the IOLTA/escrow accounts will be insured on a pass-through basis on behalf of the individuals who actually own the funds, whether they are members or not.

Congress passed the Credit Union Share Insurance Parity Act (Insurance Parity Act) in December 2014.

IOLTA Accounts: Under an IOLTA program, an attorney may establish an account at a financial institution to hold their clients' funds to pay for legal services or for other purposes. The various states operate IOLTA programs pursuant to their own laws, for example an IOLTA program may be mandatory, voluntary or an attorney may opt out of the program.

Prior to the new rule, NCUA's share insurance coverage of IOLTA accounts was limited only to those clients of the attorney who were also members of the insured credit union. According to the agency, this policy was based on the FCU Act's general limitation to insure only member accounts.

"Other similar escrow accounts": NCUA believes that Congress made it clear that only escrow accounts that are "similar" to IOLTAs are to be provided with this enhanced pass-through insurance coverage. The agency recognizes that "similar" is a relative term and without further guidance the agency may have to analyze each potential escrow account on a case-by-case basis.

To provide further clarification, the agency states it considers signature characteristics of IOLTAs to include: (1) a licensed professional or other individual, (2) serving in a fiduciary capacity, and (3) holding funds for the benefit of a client as part of some transaction or business relationship. Examples of these types of accounts include real estate escrow accounts and prepaid funeral accounts. As noted below, NCUA does not believe prepaid card programs meet these requirements.

Prepaid Accounts: NCUA's general position is that prepaid card programs, including payroll cards, should not be considered escrow accounts similar to IOLTAs because they serve very different purposes for the card holder and have drastically different structures. The agency finds that the characteristics that define an attorney's relationship and fiduciary duties to his or her clients in relation to an IOLTA account typically do not exist in the prepaid card scenario.

The agency reminds credit unions that if all of the prepaid card program participants are members of the credit union and all recordkeeping

requirements are met, the funds in the prepaid card program will be insured.

Recordkeeping requirements: There are no additional recordkeeping requirements in the new IOLTA rule. Existing regulations require the account records of the credit union to be conclusive as to the existence of the relationship. For example, an IOLTA or other similar escrow account must be titled as such and the underlying account records of the insured credit union must sufficiently indicate the existence of the relationship on which an insurance claim is submitted.

Bank Secrecy Act requirements: Since under the new rules, IOLTA and “other similar escrow accounts” may contain funds from nonmembers, credit unions must ensure their BSA customer due diligence responsibilities are effectively met. This may require some credit unions to update their BSA policies.

Limit on shares from nonmembers: Funds in IOLTA and other similar escrow accounts do not count toward a federal credit union’s limit on the receipt of payments on shares from nonmembers. The Insurance Parity Act provides that IOLTA and other similar escrow accounts are considered member accounts if the attorney or escrow agent administering the account is a member of the credit union.

For more information please review [the regulation here](#).

Small Creditor and the Definitions of Rural and Underserved Area
On September 21st the Consumer Financial Protection Bureau (CFPB) issued a final rule that amends and broadens the definition of Small Creditor and the definitions of Rural and Underserved Areas found in its 2013 Ability-to-Repay/Qualified Mortgage Rule. This rule was effective on **January 1, 2016**.

Before we look at the recent changes, let’s review the current requirements related to small creditors.

Current Rule

Currently a loan is considered a “small creditor” Qualified Mortgage loan if:

- It is originated and held in portfolio for at least three years;
- It is originated by a “small creditor,” which is a creditor with assets less than \$2.060 billion and less than 500 first lien mortgage loans originated in a calendar year;
- It meets the restrictions on QM loans with regard to loan features and points and fees; and
- The small creditor evaluates the borrower’s debt-to-income ratio or residual income.

For small creditors that satisfy these requirements:

- QM first-lien mortgage loans receive safe harbor protections if their APR is less than 3.5 percentage points above the average prime offer rate (APOR) and
- The loans are not subject to the 43 percent DTI ratio required of other Qualified Mortgage loans.

The May 2013 rule defined a “Small Creditor” as a creditor that had total assets of \$2 billion or less at the end of the prior calendar year, and together with all affiliates originated 500 or fewer first lien mortgage loans.

During any of the three preceding calendar years, the creditor extended more than 50 percent of its first lien mortgage loans on properties that are located in counties that are either “rural” or “underserved.”

Under the current rule, a county is “rural” during a calendar year if it is neither in a metropolitan statistical area (MSA) nor in a micropolitan statistical area that is adjacent to a MSA.

Under the current rule, a county is “underserved” during a calendar year, if according to HMDA data for the preceding calendar year, no more than two creditors extended first lien mortgage loans five or more times in the county.

Amended Rule

- The CFPB’s revised rule raises the loan origination limit from 500 to 2000 first lien mortgage loans and, consistent with the current rule, continues to exclude such loans held in portfolio by the creditor and its affiliates from that limit.
- Includes in the calculation of the \$2.060 billion asset limit for small-creditor status the assets of the creditor and the assets of

any affiliates that regularly originate first lien mortgage loans. This is a change from the current rule that only considered the assets of the creditor. The rule also adds a grace period to the asset limit to permit a creditor that exceeded the asset limit in the preceding calendar year to operate as a small creditor with regard to mortgage loan applications received before April 1st of the current year.

- Revises the time period for determining whether a creditor is operating predominately in rural or underserved areas from any of the three previous calendar years to the previous calendar year and adds a grace period similar to the grace period for asset limit that permits a creditor that fails to meet the test in the previous calendar year to continue operating as if it had met the test with regard to mortgage loan applications received before April 1st of the current year.
- Adds to the definition of “rural” by adding census blocks that are not in an urban area as defined by the U.S. Census Bureau to the current county-based definition.
- Adds two new safe harbor provisions related to rural or underserved definitions for creditors that use the CFPB’s website or the Census Bureau’s website to determine whether a particular property is located in rural or underserved areas or located in an urban area respectively.
- Extends the two year transaction period allowing small creditors to make balloon-payment QM loans and balloon-payment high cost mortgage loans regardless of whether they predominately operate in rural or underserved areas. The transaction period for applications received will be extended to April 1, 2016 from January 10, 2016.

Bureau Publishing TRID Rule Corrections

The CFPB has published in the *Federal Register* a series of technical corrections to Regulation Z (Truth in Lending) and the Official Interpretations of Regulation Z. These corrections republish certain provisions of Regulation Z and the Official Interpretations that were inadvertently removed from or not incorporated into the Code of Federal Regulations by the “Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)” final rule. These corrections, which were effective on publication, affect sections 1026.17 (commentary), 1026.18

(commentary), and 1026.22 (regulatory text), plus the commentary to Appendix D.

FTC Issues Policy Statement on Deceptive Ads

A Federal Trade Commission [press release](#) has announced that the Commission has issued a policy statement explaining how established consumer protection principles apply to different advertising formats, including “native” ads that look like surrounding non-advertising content. In the "[Enforcement Policy Statement on Deceptively Formatted Advertisements](#)," the Commission lays out the general principles the Commission considers in determining whether any particular ad format is deceptive and violates the FTC Act. The policy statement affirms the long-standing consumer protection principle that advertisements and promotional messages that promote the benefits and attributes of goods and services should be identifiable as advertising to consumers. The policy statement explains that an ad’s format is deceptive if it materially misleads consumers about the ad’s commercial nature, including through any implied or express representation that it comes from a party other than the sponsoring advertiser.

The FTC also issued "[Native Advertising: A Guide for Business](#)," to help companies understand, and comply with, the policy statement in the context of native advertising. The business guidance gives examples of when disclosures are necessary to prevent deception and FTC staff guidance on how to make clear and prominent disclosures within the format of native ads.

Year-end Highlights from the Fed's "Outlook Live" Series

TILA-RESPA Integrated Disclosure Rule (TRID) – All five TRID webinars are archived and are available for playback through the Fed's *Outlook Live* [archives](#) page. To facilitate access to the information covered during the webinars, they have compiled an [index of questions](#) covered during the webinar to help you more quickly locate

and access information. For additional information and resources related to TRID, please refer to the CFPB's [Regulatory Implementation](#) page.

Flood Insurance Rule – On October 22, 2015, there was an *Outlook Live* session titled [Interagency Flood Insurance Regulation Update](#), where the Agencies discussed the recent updates to the flood insurance regulations. The topics included:

1. Escrow of flood insurance premiums and fees
2. Force placed flood insurance
3. Detached structures exemption

Consistent with all of the *Outlook Live* events, this event has been [archived](#) and is available for replay. In addition, the [event transcript](#) is also available for easier access to both the discussion and to the questions and answers covered during the event. Forthcoming is a [Consumer Compliance Outlook](#) article to address the more common questions that were received during the event.

Home Mortgage Disclosure Act (HMDA) Final Rule – On October 15, 2015, the CFPB issued a final rule that updates the reporting requirements of the HMDA regulation. To facilitate understanding of the rule, the CFPB has released numerous resources, including: HMDA Executive Summary, HMDA Key Dates Timeline, HMDA Compliance Guide, Summary of Reportable Data, and Institutional Coverage Charts for 2017 and 2018; all of which are posted to the CFPB's [Regulatory Implementation](#) page.

CFPB's Future Rulemaking – For those interested in the CFPB's rulemaking activity, the CFPB posted its fall 2015 [rulemaking agenda](#) on November 20, 2015. The semiannual rulemaking agenda provides an overview of the CFPB's major rulemaking initiatives in pre-rule, proposed rule, final rule, long-term, and completed stages. Among its shorter-term initiatives, the CFPB expects to issue a final rule related to *prepaid accounts* in spring 2016 and a proposal related to *payday, auto title, and similar products* in first quarter 2016.

Your CU Should Know...

Cyber-Related Sanctions Regulations: The Office of Foreign Assets Control (OFAC) [has published in the Federal Register](#) regulations to

implement Executive Order 1394 issued on April 1, 2015 (“Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities”). The regulations [31 CFR Part 578] are published in abbreviated form for the purpose of providing immediate guidance. OFAC intends to supplement part 578 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, including regarding “cyber-enabled” activities, and additional general licenses and statements of licensing policy. The appendix to the Regulations will be removed when OFAC supplements part 578 with a more comprehensive set of regulations. The regulations became effective upon publication, on **December 31, 2015**.

CFPB Complaint Snapshot Focuses on Money Transfers and Georgia: The Bureau has released its December 2015 monthly consumer complaint snapshot, highlighting problems with money transfers. The report shows that consumers’ complaints about money transfers center around challenges in safely and efficiently sending money, and complaints about being victims of fraud. Some of the findings include consumers victimized by fraud, problems transferring money, lack of adequate customer service, issues resolving errors, and most-complained-about companies.

The snapshot also highlights trends seen in complaints of all kinds coming from consumers in Georgia.

HMDA and CRA 2016 Data Entry Software Available: The FFIEC has announced the HMDA and CRA data entry data software for 2016 is now available.

Belated Address Change for FHFA: The Federal Housing Finance Agency (FHFA) moved its headquarters in January 2012, and the Postal Service changed the FHFA's ZIP Code in November 2015. The FHFA has published a formal notice in the *Federal Register* amending mentions of its address in several FHFA regulations to:

400 7th Street SW
Washington, DC 20219

Georgia Law Firm Barred and Fined \$3.1 MM: A proposed consent order has been filed by the Bureau in federal court that would resolve a lawsuit against Frederick J. Hanna & Associates, a Georgia-based law firm, and its three principal partners, for operating an illegal debt collection lawsuit mill. The CFPB complaint alleged that the defendants with violating the Dodd-Frank Act's prohibition on deceptive practices as well as the Fair Debt Collection Practices Act. The order, if approved by the court, would bar the firm and its principal partners from illegal debt-collection practices, including filing lawsuits without being able to verify the consumers' debt is owed, and intimidating consumers with deceptive court filings. The order would also require the firm and its principals to pay \$3.1 million to the Bureau's Civil Penalty Fund.

Comment Calls

NCUA Field of Membership Proposal

NCUA has published [[80 FR 76747](#)] a proposed rule that would comprehensively amend its chartering and field of membership rules to put them in a more efficient framework and to maximize access to federal credit union services to the extent permitted by law. The amendments would implement changes in policy affecting:

- the definition of a local community, a rural district, and an underserved area;
- the expansion of multiple common bond credit unions and members' proximity to them;
- the expansion of single common bond credit unions based on a trade, industry or profession; and
- the process for applying to charter or expand a federal credit union.

GCUA would like to know your thoughts and comments on NCUA's proposal. Please send them to Selina Gambrell by **January 11, 2016**, at selinag@gcua.org.

We encourage all credit unions to review the proposed rule and comment to NCUA.

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.

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