



## InfoSight Highlight

Native Advertising – NEW TOPIC!

The Federal Trade Commission 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. If the source of advertising content is clear, consumers can make informed decisions about whether to interact with the advertising and the weight to give the information conveyed in the ad.

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.

For additional information, click [here](#) for the topic. (Also – see new item in Advertising Deposit Accounts FAQ)

Review the information today to help your credit union remain in compliance.



**InfoSight  
Compliance eNEWSLETTER**

**May 31, 2016**

**Vol. 10, Issue 22**

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**Credit Union National Association**

**Compliance Video**

### CU Compliance Connection

In this recently released video, Glory LeDu, Manager of League System Relations, discusses the Compliance outlook for the 1<sup>st</sup> quarter of 2016 and gives us a review of the 4<sup>th</sup> quarter of 2015. View the CUBE TV video [here](#).

**Compliance Calendar**

June 30

PCI - SSL/TLS can no longer be used as a Security Control after this date

Child Support Data Match Reimbursement Deadline

**Compliance News**

## Director Seat Vacancies

**Question: We have three director terms expiring at the next annual meeting and we recently filled an interim unexpected board seat because a director resigned a year into their term for health reasons, so there will be four director terms up for election at our next annual meeting and we only have a five-member Board, is that allowed?**

**Answer:** NCUA realizes that sometimes it is not possible to have a board with an equal number of regular terms expiring at the same time, so yes, based on the scenario above, having four terms expire at the same time is OK. As for the unexpected vacancy, NCUA Bylaws specify that any vacated seats must be filled as quickly as possible and will only hold that position until the next annual meeting when the vacancy will be filled by a vote of the members.

For state chartered credit unions, Georgia law, O.C.G.A. §7-1-655 (b), provides that the term of office for all board members expire at each annual meeting. However, Georgia law also permits credit unions to enact bylaws that expressly permit staggered elections with approximately one-third of the members' terms expiring at each annual meeting. In addition, §7-1-655 (e) also allows, in the case of a vacancy, for a new director to be either appointed or elected to fill out the unexpired term of that position. Therefore, a credit union will need to review its bylaws to determine what their actions should be.

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## Business Account Escrow Insurance

**Q: We have a business account member that does collections for various businesses in the area. This business member will deposit the collected payments into an escrow account and pay the businesses based on each contract agreement. In regard to share insurance for escrow accounts, does it matter whether the owners of the funds in the account are business members vs. individuals?**

**A:** According to NCUA, as long as the business member is actually a member of the credit union, it will be treated the same as an individual member in regard to the share insurance. However, NCUA cautions that state law must permit the business to be a principal in an escrow account.

The Georgia Department of Banking and Finance has no role in share insurance determinations and, as a result, the NCUA would make the determination of whether or not a business can qualify for share insurance coverage. Although its view is irrelevant for purpose of

July 4

Independence Day - Federal Holiday

July 25

5300 Call Report Due to NCUA

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

## Compliance Training

June 2, 2016

[Best Practices for Member Business Lending](#) - Webinar  
**3:00 – 4:30 p.m. EST**

June 7, 2016

[Hiring in the Digital Age: What Every HR Manager Needs to Know About Social Media](#) – Webinar  
**3:00 - 4:30 p.m. EST**

June 8, 2016

[Federal Government ACH Payments, Reclamations & Garnishments](#) - Webinar  
**3:00 – 4:30 p.m. EST**

June 9, 2016

[FFIEC Cyber Security Risk Assessments: Recent Findings & Recommended Actions](#) - Webinar  
**3:00 – 4:30 p.m. EST**

June 10 – 17, 2016

[Southeast CUNA Management School](#)  
**Athens, GA**

June 14, 2016

[Comparing Regulation E Requirements with Visa &](#)

determining share insurance coverage, it is the understanding of the Department that a business can in fact be a principal in an escrow account under Georgia law.

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#### Charging a Fee for Summons

**Q: We received a summons today to appear in court tomorrow for a divorce hearing. Can we charge for our time and document production? What amount can we charge to appear to testify?**

**A:** It might be worthy for credit unions to add to their list of scheduled fees to members that includes a provision for file research and document recovery at an hourly rate and a photocopy charge to establish a standard charge for these searches. Charges for personnel, transportation cost or outside counsel can be determined on a case by case basis. But not having this doesn't prevent you from charging a reasonable fee. According to GA Code O.C.G.A. §7-1-237, any financial institution shall be reimbursed by the requesting party for costs which are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data of a customer required or requested to be produced pursuant to a lawful subpoena, summons, warrant, garnishment, attachment, request for the production of documents, or court order where the financial institution is not a party to the action. Except as may otherwise be ordered by a judge of the court issuing the same, a financial institution shall have five business days from service of a subpoena within which to produce any books, papers, or records ordered produced pursuant to such subpoena. In the case of a garnishment or attachment of funds held by the financial institution, such reimbursement may be deducted prior to remission of such funds in response to the garnishment or attachment. Rates and conditions under which reimbursement may be made under this Code section shall be prescribed by regulations of the department (80-10-01-.04).

As far as having to testify, O.C.G.A. §24-13-25 describes what fees a witness can expect, for example it allows a per diem fee of \$25.00. It also specifically states that if a witness resides outside the county where the testimony is to be given, in order for the subpoena to be valid, the per diem fee for one day plus a mileage fee of 45 cents per mile for going from and returning to a place of residence by nearest practical route, must accompany the subpoena. There is one exception - when the subpoena is issued on behalf of this state, or an officer, agency, or political subdivision thereof, or an accused in a criminal proceeding, witness fees and mileage need not be tendered.

#### MasterCard Rules - Webinar **3:00 – 4:30 p.m. EST**

June 16, 2016  
ACH Rules for Deceased Accountholders & Federal Government Payments - Webinar

**3:00 – 4:30 p.m. EST**

June 21, 2016  
The Growing Scope of Vendor Management: Business Continuity, Cyber Security, Contract Negotiation & More - Webinar

**3:00 – 4:30 p.m. EST**

June 22, 2016  
Product Terms Part 1: Modifying Existing Product Terms & Fees, Including Timing, Content & Requirements for Change-in-Term Notices - Webinar

**3:00 – 4:30 p.m. EST**

June 23, 2016  
Legal Aspects of HELOCs: Disclosures, Advertising, Termination, Credit Line Reduction & More - Webinar

**3:00 – 4:30 p.m. EST**

June 26 – 29, 2016  
America's Credit Union Conference  
**Seattle, WA**

June 27, 2016  
Developing a Sound Appraisal Management Program - Webinar

**3:00 – 4:30 p.m. EST**

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CFPB updates its rulemaking plans

The Consumer Financial Protection Bureau has [posted an article](#) on its Spring 2016 rulemaking agenda, a semi-annual status report on the agency's plans for adding or amending consumer protection rules assigned to the agency for implementation.

- **Arbitration.** The Bureau [published a proposed rule](#) last week that would restrict the use of mandatory arbitration agreements in contracts for consumer financial products or services. Comments are due August 22, 2016.
- **Payday, auto title, and similar lending products.** The CFPB plans to release a Notice of Proposed Rulemaking addressing consumer protections for these small consumer loans "in the next several weeks." Industry observers have suggested that the proposed rule is likely to be announced June 2, at a [small dollar lending field hearing](#) in Kansas City, Missouri.
- **Prepaid accounts.** The Bureau expects to issue a final rule this summer to create a comprehensive set of consumer protections for prepaid financial products. A [proposed rule](#) was issued in November 2014.
- **Mortgage servicing.** The Bureau reports that a final rule can be expected this summer to amend a [proposal published in December 2014](#). The proposal addressed enhanced loss mitigation requirements and compliance with certain servicing rules when a successor in interest or bankruptcy may be involved.
- **TRID Rule.** Also expected this summer is a proposed rule to "make small clarifications and provide further regulatory guidance" on the TRID Rule.
- **Pre-rule stage.** The Bureau reports it is still in the "pre-rule stage" in any potential rulemaking related to overdraft services on consumer checking accounts; debt collection practices; and data gathering and reporting for women-owned, minority-owned and small business lending.

Aside from the status of the proposed Arbitration Rule, none of the dates in the Bureau's regulatory agenda are commitments. This update reflects later target dates for most of the agenda items than seen on the Bureau's Fall 2015 agenda. Nonetheless, this summer promises to be one of active regulatory change.

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June 29, 2016  
[Understanding FCRA Permissible Purposes in Obtaining Credit Reports](#) - Webinar

**3:00 – 4:30 p.m. EST**

June 30, 2016  
[Compliance Officer Training: Risk Assessments, Monitoring & Testing](#) - Webinar

**3:00 – 4:30 p.m. EST**

July 7, 2016  
[Your Borrower Has Died: Actions to Take, Mistakes to Avoid](#)

**3:00 – 4:30 p.m. EST**

July 10-13, 2016  
[Southeast Regional Directors' Conference](#)  
**Pinehurst, NC**

July 12, 2016  
[Board Oversight & Responsibility for ACH Risk](#) - Webinar

**3:00 – 4:30 p.m. EST**

July 13, 2016  
[Manufactured & Mobile Home Lending Standards & Eligibility](#) - Webinar

**3:00 - 4:30 p.m. EST**

July 14, 2016  
[Call Report Preparation for New Preparers & Reviewers](#) - Webinar

**3:00 – 4:30 p.m. EST**

July 18, 2016  
[New FFIEC Guidance on Mobile Financial Services](#) -

## CFPB spotlights credit reporting complaints

The May issue of the CFPB's Monthly Complaint [Report](#) focuses on credit reporting complaints. The Bureau reports that consumers continue to complain about incorrect information on their credit reports as well as difficulty having errors resolved. The Monthly Complaint Report uses a three-month rolling average, comparing the current average to the same period in the prior year where appropriate, to account for monthly season fluctuations.

As a reminder, credit unions are responsible for the Accuracy and Integrity of Consumer Information provided to consumer reporting agencies as required by Section 312(a) of the FACT Act. In addition, a process must be in place to address member complaints where their credit information is in dispute regarding loans funded by the credit union. Visit the FACT Act channel of InfoSight for a detailed analysis as these guidelines are very specific regarding the credit unions actions following a borrower's inquiry.

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## Your CU Should Know...

**NCUA Extends Call Report Deadlines for 2Q, 3Q of 2016:** Credit unions will have an additional three days to file second- and third-quarter call reports this year, the NCUA announced Monday. Second quarter call reports will be due by 11:59 p.m. (ET) on July 25, instead of July 22, while third-quarter call reports will be due at 11:59 p.m. (ET) Oct. 24, instead of Oct. 21.

These changes could eventually lead to an extended examination cycle, which CUNA strongly advocates, with [efforts](#) led by its Examination and Supervision Subcommittee whose members include credit unions and state credit union leagues.

**NMLS year-end reports:** NMLS has [released](#) its [2015 Mortgage Industry Report](#), its [2015 Q4 Mortgage Update](#) and Q4 Fact Sheets for its licensing of [Money Service Businesses](#), [Debt Collectors](#) and [Payday Lenders](#).

**Raymond James pays \$17M for AML violations:** The Financial Industry Regulatory Authority (FINRA) has announced it has fined Raymond James & Associates, Inc. (RJA) and Raymond James Financial Services, Inc. (RJFS) a total of \$17 million for widespread failures related to the firms' anti-money laundering (AML) programs. RJA was fined \$8 million and RJFS was fined \$9 million for failing to establish and implement adequate AML procedures, which resulted in the firms' failure to properly prevent or detect, investigate, and report

## Webinar

3:00 – 4:30 p.m. EST

July 19, 2016

[Collection Concepts, Compliance & Risks - Advanced](#) - Webinar  
3:00 – 4:30 p.m. EST

July 20, 2016

[Analyzing & Managing Escrow Accounts](#) - Webinar  
3:00 – 4:30 p.m. EST

July 21, 2016

[Same Day ACH Deadline](#) - Webinar  
3:00 – 4:30 p.m. EST

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



suspicious activity for several years. RJA's former AML Compliance Officer, Linda L. Busby, was also fined \$25,000 and suspended for three months. See "[Brokers to pay \\$17 million for AML failures.](#)"

### **OCC announces enforcement actions**

The Office of the Comptroller of the Currency has [released a list of recent enforcement actions](#) taken against national banks and federal savings associations. The list includes one cease and desist (C&D) order, two orders to pay civil money penalties (CMPs), one formal agreement, and five orders terminating previous enforcement actions. [Stearns Bank, N.A.](#), St. Cloud, Minnesota, received a C&D and an order to pay a \$1 million CMP for violations of SAR filing requirements. A \$56,500 CMP was assessed against [TCF National Bank](#), Sioux Falls, South Dakota, for violations of the National Flood Protection Act.

### **Comment Calls**

#### **NCUA Occupancy Rule**

The NCUA Board has issued a [proposed rule](#) that would amend the agency's regulations governing a federal credit union's (FCU) requirements for occupancy, planning, and disposal of acquired and abandoned premises. The proposal eliminates a requirement in the current occupancy rule that an FCU must plan for, and eventually achieve, full occupancy of acquired premises. Instead, it allows for a credit union to achieve partial occupancy with an at least fifty percent use of premises by an FCU and partial occupancy can be maintained with not plan for full occupancy.

GCUA would like to know your thoughts and/or concerns with this proposal. Please email Selina Gambrell at [selinag@gcua.org](mailto:selinag@gcua.org) by **June 17<sup>th</sup>**.

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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