

InfoSight Highlight

Service Denial and Expulsion

Member Expulsion Requirements for Federal Credit Unions:

According to [section 1764 of the Federal Credit Union Act](#), a member of a federal credit union may be expelled by a two-thirds vote of the members of a federal credit union present at a special meeting called for the purpose, but only after the member is given the opportunity to be heard.

A credit union should be mindful that just because it can expel a member, it does not negate the possibility of retribution through a member lawsuit or other negative action.

Most credit union losses are incurred from unpaid loans. Other losses can be incurred due to returned checks, service fees, etc. In order to expel a member who has caused the credit union a loss, the credit union must have a policy in place.

A suggested policy may read:

"For purposes of this policy, cause is defined as causing the credit union a loss in excess of \$50. Any member of [credit union name] who has caused the credit union a loss in excess of \$50 and who either:

1. has not voluntarily repaid the credit union for this loss, or
2. is not in the process of voluntarily repaying the credit union for this loss, may be expelled from membership at the credit union."

A federal credit union has essentially two grounds available to it under the Federal Credit Union Act to expel a member from his or her membership at the credit union. A member can be expelled:

1. for "cause"; and 2. for "nonparticipation in the affairs of the credit union."

Both of the above grounds for member expulsion involve different procedures and methods to actually accomplish the expulsion. Each ground and its respective procedure is discussed in the link below.

Similar to federally chartered credit unions, state chartered credit unions have options when they find they may need to expel a member. State chartered credit unions may also have a policy, approved by the board, that allows the credit union to expel the member for causing a credit union a loss. In the state act [OCGA § 7-1-653](#) details the ways a state chartered credit union can expel a member.

- (1) At any regular or called meeting of the members, by a two-thirds' vote of those present, the members may expel from the credit union any member. The code further says that the expelled member shall have no further right in the credit union or to any of its benefits, but the expulsion shall not relieve the member from any remaining liability to the credit union.
- (2) A member may be expelled for reasons defined in the bylaws by a two-thirds' vote of the board of directors. An expelled member may obtain reinstatement by an affirmative vote of the majority of the members voting at the next annual meeting of the credit union.

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



InfoSight
Compliance eNEWSLETTER
September 12, 2016
Vol. 10, Issue 37
Created in partnership with the



Credit Union National Association

Compliance Video

CU Compliance Connection

Military Lending and 3rd Quarter 2016 Review (NEW!)

This video provides an overview of the key changes made to the Military Lending Act that credit unions are going to need to consider and implement prior to the compliance effective date of October 3, 2016. View the video [here](#).

Be sure to view this [new video](#), where Glory LeDu, Manager of League System Relations, provides an overview of the compliance challenges your credit union is facing now in the 3rd quarter of 2016.

New Compliance Video: Same Day ACH Preview

In this newly released video, Amy Smith, VP and Executive Director of The Clearing House Payments Authority, provides background information on the current batch-and-forward ACH payment system and introduces the "Phased

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

Compliance News

FAQs from the DoD Regarding the Military Lending Act

The following questions and answers represent official interpretations of the Department on issues related to [32 CFR part 232](#). For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at [10 U.S.C. 987](#)); MAPR refers to the military annual percentage rate, as defined in [32 CFR 232.3\(p\)](#); TILA refers to the Truth in Lending Act (codified at [15 U.S.C. 1601 et seq.](#)); Regulation Z refers to the regulation, and interpretations thereof, issued by the Consumer Financial Protection Bureau (or the Board of Governors of the Federal Reserve System, as applicable) to implement TILA, as defined in 32 CFR 232.3(s); DMDC refers to the Defense Manpower Data Center.

1. What types of overdraft products are within the scope of [32 CFR 232.3\(f\)](#) defining "consumer credit"?

Answer: The MLA regulation generally directs creditors to look to provisions of TILA and its implementing regulation, Regulation Z, in determining whether a product or service is considered "consumer credit" for purposes of the MLA. [\[4\]](#) Also, the supplementary information to the July 2015 Final Rule discusses coverage of overdraft products.

The MLA regulation defines "consumer credit" as credit offered or extended to a covered borrower primarily for personal, family or household purposes that is either subject to a finance charge or payable by a written agreement in more than four installments, with some exceptions. The exceptions include: Residential mortgage transactions; purchase money credit for a vehicle or personal property that is secured by the purchased vehicle or personal property; certain transactions exempt from Regulation Z (not including transactions exempt under [12 CFR 1026.29](#)); and credit extended to non-covered borrowers consistent with [32 CFR 232.5\(b\)](#). Although coverage by the MLA and the MLA regulation is not completely identical to that of TILA and Regulation Z, the July 2015 Final Rule amends the definition of consumer credit under the MLA to be more consistent with how credit is defined under TILA. The supplementary information to the July 2015 Final Rule states:

As proposed, the Department is amending its regulation so that, in general, consumer credit covered under the MLA would be defined consistently with credit that for decades has been subject to TILA, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments. [\[5\]](#)

The MLA regulation also defines "closed-end credit" and "open-end credit" with express references to the definitions of the same terms in Regulation Z.

The supplementary information to the July 2015 Final Rule illustrates how to apply these standards specifically with respect to overdraft products and services. [\[6\]](#) It states that consistent with Regulation Z, an overdraft line of credit with a finance charge is a covered consumer credit product when: It is offered to a covered borrower; the credit extended by the creditor is primarily for personal, family, or household purposes; it is used to pay an item that overdraws an asset account and results in a fee or charge to the covered borrower; and, the extension of credit for the item and the imposition of a fee were previously agreed upon in writing. The supplementary information further states that other types of overdraft products not pursuant to a written agreement typically are not covered consumer credit "because Regulation Z excludes from 'finance charge' any charge imposed by a creditor for credit extended to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, unless the payment of such an item and the imposition of the fee or charge were previously agreed upon in writing." [\[7\]](#)

Thus, whether or not a particular overdraft product or service is "consumer credit" under the MLA regulation depends on whether the product or service meets each element of the definition of "consumer credit" and whether an exception applies.

Approach" of the Same Day ACH program, which will begin in September of 2016. You will want to pay special attention to Amy's suggestion to review current ACH files you may be transmitting. View the video [here](#).

Compliance Calendar

October 3, 2016:
[DOD Military Lending Act Regulation - Effective Date](#)

October 3, 2016:
[NACHA's Network Quality Rule](#)

October 10, 2016:
Columbus Day - Federal Holiday

October 24, 2016:
[5300 Call Report Due to NCUA](#)

November 6, 2016:
Daylight Saving Time Ends

November 11, 2016:
Veterans' Day - Federal Holiday

November 24, 2016:
Thanksgiving Day - Federal Holiday

December 1, 2016:
Overtime Rule - Department of Labor

December 25, 2016:
Christmas Day - Federal Holiday

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

Compliance Training

September 12, 2016
[New Customer Due Diligence Rules for Beneficial Ownership: Implementation Game Plan](#)
Webinar

2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2) (iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?

Answer: No. Section 232.3(f)(1) defines "consumer credit" as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to paragraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional "cash-out" financing is not eligible for the exception under 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

CUNA Letter Urges DoD to Delay MLA Effective Date

In a recent [letter](#) to the Department of Defense, CUNA is urging a minimum six-month delay to the October 3 effective date of the Military Lending Act (MLA) regulation.

While CUNA appreciates the DoD's compliance guidance published on August 26, in light of the fact that it is only one month from the October 3 effective date, CUNA is concerned the guidance may be too little, too late. Based on their review of the guidance, it appears to provide some helpful information regarding certain provisions of the regulation. However, there are a number of areas and issues on which credit unions need clarification that were not addressed in the guidance, such as the definition of the term "ancillary product," which is critical to accurately determining the Military APR. Therefore, CUNA urges the DoD to delay the MLA rule's effective date for a minimum of six months to ensure credit unions and other lenders are fully capable of compliance.

Absent a delayed effective date, CUNA asks the DoD to establish a safe harbor of at least six months for lenders that are working to comply with the rule but are unable to do so by October 3. The safe harbor should permit such lenders to continue operating - entirely or partially - under the regulation's requirements prior to the July 2015 amendments. Since the DoD does not examine financial institutions, it is critical that the DoD pledge to work with the federal financial regulators to ensure the safe harbor will be observed by lenders' prudential regulators.

Actual Balance vs Available Balance

Actual Balance vs Available Balance: Make Sure Your Members Understand the Difference

Some authorized transactions, such as PIN-based debit card and ATM transactions, settle the same business day they are authorized. Other authorized transactions, such as signature-based debit card transactions, may not be presented for settlement for a day or two after authorization.

Generally, available funds are reduced by the amount of the authorized transaction. However, for certain types of transactions, the amount authorized is often different than the amount that will settle.

For example, when you pay at the pump with your debit card, the gas station does not know the transaction amount until after the purchase is complete. So, it may place a \$100-hold on the account for \$20's worth of gas to make sure the purchase is covered.

In such cases, the account-holding institution often reduces the available funds by the full authorization amount (which exceeds the actual purchase amount).

3:00 - 4:30 ET

September 12-14, 2016
[Georgia Compliance Road Trip](#)
North and South ATL, Macon and Savannah
Check link for times

September 13, 2016
[Navigating Compliance Issues for Promotions, Bonuses, Contests & Sweepstakes](#)
Webinar
3:00 - 4:30 ET

September 19, 2016
[HMDA Roadmap Part 1: Impact, Important Changes & Implementation Considerations for Lenders](#)
Webinar
3:00 - 4:30 ET

September 20, 2016
[Director Series: Director & Officer Liability: Rules, Risks & Trends](#)
Webinar
3:00 - 4:30 ET

September 21, 2016
[ACH for the Frontline](#)
Webinar
3:00 - 4:30 ET

September 22, 2016
[Debt Collection Series: Best Practices for Garnishments & Levies: Getting It Right!](#)
Webinar
3:00 - 4:30 ET

September 27, 2016
[Cyber Series: Mobile Remote Deposit Strategies: Technology, Deployment Models & Risks](#)
Webinar
3:00 - 4:30 ET

September 28, 2016
[Clarifying Signature Card Confusion for Personal & Business Accounts: Compliance, Account Titling & Ownership](#)
Webinar
3:00 - 4:30 ET

September 29, 2016

So, a member relying on the "actual balance" in his account may experience an overdraft (and resulting fee) when the debit authorization reduces his "available balance" (i.e., the amount of money in the account that's available for use without incurring an overdraft or NSF fee).

So the question is: does your member understand the difference between "actual balance" and "available balance"? If/when account terms are unclear; your members may not understand how much they have available in their accounts to use without incurring a fee. And this can be problematic for both the member and the credit union.

Some questions to consider:

- Does your account agreement fully explain how and when overdraft fees or NSF fees will be assessed?
- Does the account agreement use and define the term "insufficient funds"?
- Does the agreement use and define the terms "actual balance" and "available balance"?
- If the account agreement says that the CU will only charge a fee when there is a "negative balance" in the account, does it explain whether this means "actual balance" or "available balance"?

As many of you know, financial institutions have been targeted for lawsuits when their actual practice of assessing fees on available balances didn't line up with what was disclosed to consumers in the account agreement. The CFPB has also expressed a concern with disclosures that were "misleading or likely to mislead," finding them to be unfair and deceptive to consumers. (See [CFPB's Supervisory Highlights](#) -Winter 2015). So, be sure to review your overdraft policies, procedures, processes and disclosures to make sure they're clear, consistent, and accurately reflect your current practices.

"Successors in Interest" Policies and Procedures Required by New Mortgage Servicing Rule

The new mortgage-servicing rule requires credit unions to include policies and procedures that, upon notice of the death of a borrower or any transfer of mortgaged property, are reasonably designed to:

- Retain the notice information and promptly facilitate communication with any potential or confirmed successors in interest regarding the property;
- Promptly determine which documents the credit union reasonably requires to confirm a potential successor in interest's identity and ownership interest in the property;
- Promptly provide to the potential successor in interest a description of those documents and how the person may submit a written request;
- Promptly notify the person that the credit union either:
 1. has confirmed the person's status,
 2. has determined that additional documents are required (and what those documents are), or
 3. has determined that the person is not a successor in interest.
- Promptly identify and obtain documents or information not in the borrower's control that the credit union requires to determine which loss mitigation options, if any, to offer the borrower.

According to the CFPB, the new policies and procedures requirements for successors in interest are triggered as soon as a mortgage servicer receives notice of the existence of a potential successor in interest, even if the servicer doesn't know at the time of the initial contact whether a potential successor in interest meets the definition of "successor in interest". In other words, you may not wait until you have reason to believe that the person is in fact a successor in interest to engage in the required communication with them.

However, you are not required to conduct a search for potential successors in interest if you have not received actual notice of their existence.

[Maximizing LinkedIn to Build a "Social Selling" Culture](#)

Webinar
3:00 - 4:30 ET

[October 3, 2016 New CFPB Amended Mortgage Servicing Rules: What You Must Know Now & Why Advance Planning is Critical](#)

Webinar
3:00 - 4:30 ET

[October 4, 2016 Handling Dormant Accounts, Unclaimed Property & Escheatment](#)

Webinar
3:00 - 4:30 ET

[October 5, 2016 Essential Compliance Regulations for Deposit Operations](#)

Webinar
3:00 - 4:30 ET

[October 6, 2016 Avoiding the Top 10 Legal & Compliance Mistakes in the E-Statement Process](#)

Webinar
3:00 - 4:30 ET

[October 11, 2016 HMDA Roadmap Part 2: Operations Systems, Audit & Reporting Implications](#)

Webinar
3:00 - 4:30 ET

[October 12, 2016 Frontline Series: Skills & Tools for Improving Teller Performance](#)

Webinar
3:00 - 4:30 ET

[October 13, 2016 Proper Repossession, Notice & Sale of Non-Real Estate Collateral](#)

Webinar
3:00 - 4:30 ET

[October 17, 2016 Countdown to the New Overtime Rules: How to Bring Your Credit Union into](#)

And, by the way, "promptly" is not defined in the new rule. The CFPB notes that it will depend on the facts and circumstances of each situation

For more information, review [CFPB's Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act \(Regulation X\) and the Truth in Lending Act \(Regulation Z\)](#).

Your CU Should Know...

FTC Updates Fees for Do Not Call Access

The Federal Trade Commission has published a final rule at [81 FR 59845](#) in the *Federal Register*, amending section 310.8 of its Telemarketing Sales Rule (16 CFR Part 310) to update the fees charged to entities accessing the National Do Not Call Registry. The amendment will be effective October 1, 2016.

OFAC Adds SDN Listings Related to Conflict in Ukraine

OFAC has designated 37 individuals and entities under three Executive Orders (E.O.s) related to Russia and Ukraine. The action is part of OFAC's ongoing efforts to counter attempts to circumvent sanctions on Russia, to assist the private sector with sanctions compliance, and to foster a diplomatic resolution to the conflict in Ukraine. These sanctions follow the recent extension of European Union sectoral sanctions, and together these steps demonstrate continued international unity in opposing Russia's actions in Ukraine. Included in the entities added at a number of subsidiaries that are owned 50 percent or more by previously sanctioned Russian companies to provide additional information to assist the private sector with sanctions compliance.

The list includes a number of subsidiaries of Bank of Moscow, Gazprom and Gasprombank, each of which has been sanctioned since July 2014. Each of those subsidiaries is subject to the same sanctions as those imposed on its parent organization.

Q & A: Share Insurance & Inherited IRAs

Q: Will an IRA account continue to receive NCUA share insurance coverage after the owner's death if a designated beneficiary who inherits the IRA is a non-member?

A: Yes. According to NCUA's rules, share insurance coverage will continue for a designated beneficiary regardless of membership status.

In a [2007 comment letter](#), NCUA noted that share insurance for traditional and Roth IRAs "is based on the present vested ascertainable interest of a participant or designated beneficiary." The agency clarified that while the participant or original owner of the IRA would have to have been a member to open the account in the first place, the regulations provide coverage to a designated beneficiary without specifically requiring the designated beneficiary to be a member. (12 CFR 745.9-2(c)(2)).

Guidance for Managing Ransomware Threats - Reminder from the Georgia Department of Banking and Finance

The Treasury Department together with U.S. intelligence and regulatory agencies have jointly released an interagency technical guidance document on how institutions can better manage ransomware threats. The document provides an aggregate of already existing federal government and private industry best practices and mitigation strategies focused on the prevention and response to ransomware incidents. The guidance is available at http://csbs.informz.net/csbs/data/images/How%20to%20Protect%20Your%20Networks%20from%20Ransomware_%20Technical%20Guidance%20Documen.pdf.

U.S. Financial Institution Obligations

The Financial Crimes Enforcement Network (FinCEN) today issued an advisory to financial institutions regarding the Financial Action Task Force's (FATF) updated list of jurisdictions with strategic anti-money laundering/counter-terrorist financing (AML/CTF) deficiencies. These

[Compliance by the December 1, 2016 Deadline](#)

Webinar
3:00 - 4:30 ET

[October 18, 2016 Liquidity Funding Concerns in a Rising Interest Rate Market](#)

Webinar
3:00 - 4:30 ET

[October 19, 2016 Understanding Title Insurance Policies, Commitments & ALTA Endorsements](#)

Webinar
3:00 - 4:30 ET

[October 20, 2016 Conducting the 2016 ACH Audit](#)

Webinar
3:00 - 4:30 ET

[October 24, 2016 New CFPB Amended Rules for Mortgage Foreclosure & Bankruptcy Protections: Preparing Now for the 2017 Effective Date](#)

Webinar
3:00 - 4:30 ET

[November 2, 2016 Notary Essentials & Legalities for Credit Unions](#)

Webinar
3:00 - 4:30 ET

[November 3, 2016 Cyber Series: Member Authentication & Validation: The New Normal in Risk Mitigation](#)

Webinar
3:00 - 4:30 ET

[November 9, 2016 Form 1099 Reporting: Third-Party Vendors, Foreclosures, Debt Forgiveness & More](#)

Webinar
3:00 - 4:30 ET

[November 10, 2016 Audit Compliance Series: Developing a Risk-Based Compliance Audit Process for Deposits](#)

Webinar

changes may affect U.S. financial institutions' obligations and risk-based approaches regarding relevant jurisdictions. FinCEN's advisory can be viewed at <https://www.fincen.gov/>.

Comment Calls

Small-Dollar Payday, Vehicle Title and Certain High-Cost Installment Loans

On June 2, in conjunction with a field hearing in Kansas City, Missouri, the CFPB released a more than 1300-page rule for Payday, Vehicle Title, and Certain High-Cost Installment Loans. The CFPB released the Small Business Regulatory Enforcement Fairness Act (SBREFA) proposals, prior to a Small Businesses Review Panel, for this rule more than a year ago. We have concerns that the rule will sweep in consumer friendly credit union small dollar loan products.

While the CFPB's proposed rule addresses some of the concerns raised by CUNA and credit unions prior to its release, and purports to exempt the National Credit Unions Administration's (NCUA) Payday Alternative Loan (PAL) program as requested, in actuality it adds many new regulatory and compliance burdens for federal and state-chartered credit unions working to underwrite consumer friendly small dollar options. The added requirements and changes to the PAL program eliminate flexibility in offering these loans, and will likely make many credit unions reevaluate their participation in the program. The rule also does not account for the diverse and unique structure of consumer friendly small dollar loans offered at state-chartered credit unions. To read CUNA's summary of the proposal [click here](#). GCUA would like to know your thoughts and/or concerns with this proposal. Please email Selina Gambrell at selinag@gcu.org by **September 16th**.

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.

Bookmark InfoSight

No need to go through the Georgia Credit Union Affiliates home page to access InfoSight. Simply add the following link to your bookmarks: <http://ga.leagueinfosight.com/>.

Need a BSA, ACH or Website review? Email compliance@gcu.org.

3:00 - 4:30 ET

November 14, 2016

[Nonresident Alien Accounts:
W-8s, W-8BENs, BSA, Rules
& More](#)

Webinar

3:00 - 4:30 ET

**BSA Training
Opportunities through
GCUA**

[Click here for details](#)