



**CU Compliance Connection**

**Military Lending and 3rd Quarter 2016 Review**

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 [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.

**Compliance Video: Same Day ACH Preview**

In this 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 Approach"

**InfoSight Highlight**

**Servicemembers (and Dependent) Consumer Lending (Military Lending Act)**

As required by the John Warner National Defense Authorization Act for Fiscal Year 2007 which added 10 USC 987, the Department of Defense (DOD) issued a regulation that implements the Military Lending Act (MLA) regarding the terms of consumer credit extended by creditors to service members and their dependents.

In July 2015, the changes were made that impacted the MLA and became effective on October 1, 2015. Credit unions have until October 3, 2016 to comply. Credit unions should have policies and procedures in place to determine if their new borrowers are considered "covered borrowers" under the MLA. If the covered borrowers are identified and loan is also a "covered loan" the credit union should understand their Military Annual Percentage Rate (MAPR) limitations as well as the required disclosures that need to be provided prior to consummation.

**Loans Covered Under the Rule**

The rule defines "consumer credit" as any credit offered or extended to a covered borrower primarily for personal, family, or household purposes and that is:

- Subject to a finance charge; or
- Payable by a written agreement in more than four installments.

**Identification of Covered Borrowers**

A "covered borrower" is defined as a person with the following status at the time (s)he becomes obligated on a consumer credit transaction:

- A regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or less, or such a member serving on Active Guard and Reserve duty [as defined in [10 U.S.C. 101\(d\)\(6\)](#)]; or
- The covered borrower's dependent(s) as described in subparagraph A, D, E or I of 10 USC 1072(2). Generally, this may include a spouse, child (under 21 or 23 if full time student or no age limit if there is a mental/physical incapacity); could also be a parent or in-law (if supported by the covered borrower); another adult in legal custody of the covered borrower.

The regulation contains safe harbor methods to determine if a borrower is considered "covered" under the rules. In general, the credit union can verify the status by using information related to the borrower, obtained directly or indirectly from the DOD database. Historic lookbacks are prohibited under the rule, so the credit union would not be permitted to obtain information from the DOD database to determine if a borrower would have been covered as of the date the transaction was conducted or account established.

The credit union is also provided with a safe harbor for determining covered borrower status if they use a consumer report from a nationwide consumer reporting agency.

The credit union who makes the covered borrower determination by using one of the safe harbor methods above shall be deemed to be conclusive with respect to that transaction or account, so long as the credit union timely creates and maintains a record of the information obtained.

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

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

## Compliance News

### CFPB Fines Titlemax Parent Company \$9M for Luring Consumers Into More Costly Loans

The Consumer Financial Protection Bureau took action against TitleMax parent company TMX Finance LLC for luring consumers into costly loan renewals by presenting them with misleading information about the deals' terms and costs. The lender also used unfair debt collection tactics that illegally exposed information about debts to borrowers' employers, friends, and family. The Bureau ordered TMX Finance to stop its unlawful practices and pay a \$9 million penalty.

"TMX Finance lured consumers into more expensive loans with information that hid the true costs of the deal," said CFPB Director Richard Cordray. "They then followed up with intrusive visits to homes and workplaces that put consumers' personal information at risk. Today we are making it clear that these actions were unacceptable and illegal."

TMX Finance, which is based in Savannah, Ga., is one of the country's largest auto title lenders, with more than 1,300 storefronts in 18 states. TMX Finance offers title and personal loans through a host of state subsidiaries under the names TitleMax, TitleBucks, and InstaLoan. Single-payment auto title loans are usually due in 30 days, with some carrying an annual percentage rate of up to 300 percent. To qualify for the loan, a consumer must bring in a lien-free vehicle and its title as collateral.

The CFPB found that store employees, as part of their sales pitch for the 30-day loans, offered consumers a "monthly option" for making loan payments. They then offered consumers a "Voluntary Payback Guide" that showed how to repay the loan with smaller payments over a longer time period. But the guide and sales pitch did not explain the true cost of the loan if the consumer renewed it multiple times. TMX Finance employees also unlawfully exposed

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

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

sensitive personal information during “field visits” to consumers’ homes, references, and places of employment in attempts to collect debt. Today’s order addresses a period from July 21, 2011 to the present. Specifically, the Bureau found that TMX Finance:

- **Presented consumers with misleading information about loan terms:** TMX Finance employees asked consumers how much they wanted to pay each month or how long they wanted to take to pay off the 30-day loan. The guide and sales pitch distracted consumers from the fact that repeatedly renewing the loan, as encouraged by TMX Finance employees, would dramatically increase the loan’s cost. The guide does not calculate fees or the total cost to consumers of repeatedly renewing the loan instead of repaying it in 30 days. This makes it difficult, if not impossible, for a consumer to compare costs for renewing the loan over a given period,
- **Exposed information about consumers’ debts to co-workers, neighbors, and family members:** Some TMX Finance employees revealed information about consumers’ past-due debt while visiting consumers’ homes, references, or places of employment. TMX Finance also made in-person debt collection attempts despite knowing that visitors were not permitted at the consumer’s workplace. Such visits can damage consumers’ reputations, interfere with their ability to do their jobs, and trigger disciplinary action or firing.

#### Enforcement Action

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB has the authority to take action against institutions violating consumer financial laws, including engaging in unfair, deceptive, or abusive acts or practices. Under the order, TMX Finance is required to:

- **Stop abusive loan-repayment policies:** TMX Finance cannot use any payback guide or similar document and cannot misrepresent the terms, length, or cost of the loan. It also cannot encourage consumers to take longer to pay than the term of the original loan.
- **Stop intrusive visits to consumers’ homes or workplaces:** TMX Finance cannot make in-person visits to the homes of consumers or their workplaces to collect payments. To make sure the company follows through, TMX Finance must submit a compliance plan for the Bureau’s approval within 60 days of the order.
- **Pay a \$9 million penalty:** TMX Finance will pay a penalty of \$9 million to the CFPB’s Civil Penalty Fund.

#### Plaintiffs Urge Court to Reject Request for Wendy’s Suit Dismissal

Plaintiffs, including CUNA, GCUA and certain state credit union leagues and credit unions, urged a Pennsylvania federal judge to reject Wendy’s Co. request to dismiss a class action lawsuit against the fast-food giant over its alleged inadequate security response to a data breach.

Submitting a brief to the U.S. District Court for the Western District of Pennsylvania, the financial institution and association plaintiffs refuted Wendy’s

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 9-12, 2016**  
CUNA HR Compliance School  
<http://www.cuna.org/Events/CUNA-HR-Compliance-School/Home/>

**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 Compliance by the December 1, 2016 Deadline

assertion that there are no “legitimate claims” in the lawsuit, which was initiated by First Choice FCU.

The brief calls the breach the “the inevitable result of Wendy’s inadequate data security measures and lackadaisical approach to the security of the payment card data it collected.”

Plaintiffs purport that the financial costs caused by Wendy’s deficient data security approach have been borne primarily by credit unions and other financial institutions that issued the payments cards that were compromised in the breach that occurred in 2015 and carried over into 2016.

Costs associated with recent data breaches are substantial--reaching millions of dollars--and include, but are not limited to, canceling and reissuing compromised cards and reimbursing the cardholders for fraudulent charges associated with the breach, CUNA has noted.

These out-of-pocket costs, CUNA maintains, are sufficient to keep the matter before the court. CUNA joined the lawsuit, aimed at recouping those costs borne by financial institutions, in June.

Industry sources have estimated that fraudulent charges from the Wendy’s breach are even greater than those from other huge breaches, such as those occurring at Target and Home Depot.

CUNA surveys found credit unions alone were hit with nearly \$60 million in costs after Home Depot’s 2014 data breach and \$30.6 million after Target’s 2013 data breach.

The Indiana Credit Union League, Michigan Credit Union League, and Ohio Credit Union League also are parties to the lawsuit.

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## **CUSO Registry Information No Longer Necessary on Call Reports**

Beginning with the Sept. 30 reporting cycle, the National Credit Union Administration will require less information from credit unions about credit union service organizations on Call Reports.

“NCUA is working to make reporting easier and Call Reports more informative,” NCUA Board Chairman Rick Metsger said, “and this is another part of that important process. It’s also part of my Continual Quality Improvement effort to find ways to streamline agency operations by looking at the nuts and bolts of agency operations and finding new ways, both large and small, to improve the NCUA’s processes and programs.”

Going forward, credit unions will only be required to submit aggregate CUSO loan and investment information on the Call Report. All other required information is now being collected directly from CUSOs through the agency’s [CUSO Registry](#).

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](#)



Direct reporting eliminates redundancy, increases data integrity, and reduces credit unions' reporting burdens. It also improves data quality, as CUSOs are in the best position to provide accurate and timely information.

NCUA has required CUSOs to agree to provide information directly to the agency effective June 30, 2014, and registration for the CUSO Registry was held between Feb. 1 and March 31 this year.

In May, NCUA announced a comprehensive review of Call Report and Credit Union Profile content. An agency working group has been gathering information through a public comment-and-review process. NCUA has extended the reporting deadline for third-quarter Call Reports to Oct. 24.

The announced changes to the Call Report came on the fifth anniversary of NCUA's Regulatory Modernization Initiative. The initiative aims to strengthen the agency's regulations to address safety-and-soundness risks and streamline the agencies rules, where possible, to reduce burdens. Since its inception, the initiative has resulted in [24 actions to cut red tape](#) and provide lasting benefits to credit unions of all sizes.

### **Q&A: Defining "Other Similar Escrow Accounts" for Share Insurance**

**Q:** Our credit union is interested in opening landlord/tenant escrow accounts. We believe these accounts are similar to IOLTA accounts for NCUA share insurance purposes. Do we need to confirm this with NCUA?

**A:** Yes. NCUA stated in its recent IOLTA rule, which went into effect January 27, 2016, that the agency will be analyzing, on a case-by-case basis, whether escrow accounts are similar enough to IOLTA accounts to meet the rule's criteria for pass-through insurance.

NCUA's new rule expands share insurance coverage for Interest on Lawyers Trust Accounts (IOLTA) and "other similar escrow accounts". 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.

The new rule shifts the membership requirement from the clients of the attorney or escrow agent, who own the funds in the account, to the attorney or escrow agent. In other words, as long as the attorney or escrow agent is a 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 or not they are members.

NCUA staff has noted that credit unions' requests to the agency for whether certain escrow accounts meet the rule's definition should be extremely specific, detailed and demonstrate "how the account complies with the new rule and the discussion in the federal register preamble to the rule."

Webinar  
**3:00 - 4:30 ET**

**November 13 - 16, 2016:**  
[CUNA/NASCUS Bank Secrecy Act Conference](#)

**November 14, 2016**  
[Nonresident Alien Accounts: W-8s, W-8BENs, BSA, Rules & More](#)  
Webinar  
**3:00 - 4:30 ET**

**November 15, 2016**  
[Recognizing & Responding to Elder Fraud: What Every Staff Member Should Know](#)  
Webinar  
**3:00 - 4:30 ET**

**November 16, 2016**  
[Quarterly Supervisory Committee Series: What the Board Needs to Know to Manage IT](#)  
Webinar  
**3:00 - 4:30 ET**

**November 17, 2016**  
[Handling ACH Exceptions & Returns: Unauthorized, Revoked, or Stop Payment?](#)  
Webinar  
**3:00 - 4:30 ET**

**November 22, 2016**  
[Trust Accounts: Opening, Transacting, Deposit Insurance & More](#)  
Webinar  
**3:00 - 4:30 ET**

**November 29, 2016**  
[Top 10 IRA Issues: Compliance, Reporting, Death & Distributions](#)  
Webinar  
**3:00 - 4:30 ET**

**November 30, 2016:**  
[Annual Robbery Training for All Staff](#)  
Webinar  
**3:00 - 4:30 ET**

Some of the points discussed in the preamble to the rule that the agency suggests you consider when submitting escrow account descriptions include:

**IOLTA:** "An IOLTA is defined as "a system in which lawyers place certain client funds in interest bearing or dividend-bearing accounts, with the interest or dividends then used to fund programs such as legal service organizations who provide services to clients in need."

**Characteristics of escrow accounts:** "Specifically, "other similar escrow account" means an account where a licensed professional or other individual serving in a fiduciary capacity holds funds for the benefit of a client as part of a transaction or business relationship, such as real estate escrow accounts and prepaid funeral accounts."

**Fiduciary duty:** "Congress made it clear that only escrow accounts that are similar to IOLTAs are to be provided with enhanced pass-through coverage. The lawyer-client relationship is largely characterized by the fiduciary duty lawyers owe their clients. Accordingly, requiring the fiduciary component to be present with respect to providing enhanced pass-through insurance coverage for "other similar escrow accounts" comports with congressional intent."

**Recordkeeping:** For IOLTA and other similar escrow accounts to receive the share insurance coverage to which they are entitled, the recordkeeping provisions of NCUA's share insurance regulations must be satisfied. NCUA's rules provide that the account records of an insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded.

**Disclosures:** If the "account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, then the details of the relationship and the interest of other parties in the account must be ascertainable either from the record of the credit union or the records of the member maintained in good faith and in the regular course of business. NCUA will not recognize a claim for insurance based on such a relationship in the absence of such disclosure."

**Business accounts:** Coverage should not be limited to accounts held and administered only by individual professionals. "Accounts opened by a law firm instead of an individual attorney, for example, will still need to satisfy the fiduciary relationship requirement. Accordingly, law firms and other entities administering the accounts must comply with all relevant law to maintain that relationship, which may or may not require an individual lawyer or escrow agent to also be named on the account."

"A law firm that wishes to open an escrow account at a credit union must meet the credit union's field of membership criteria. If the firm itself does not qualify for membership in a particular credit union, but one of its lawyers does, then the firm may maintain an IOLTA in that credit union if the eligible lawyer joins the credit union. It is the responsibility of the law firm or other entity wishing to establish an escrow account, however, to first determine if state and other

**December 1, 2016:**  
[Meaningful & Strategic Stress Testing: A Valuable Board & Management Tool](#)

Webinar  
**3:00 - 4:30 ET**

**BSA Training Opportunities through GCUA**  
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applicable law and rules of professional conduct allow for such an arrangement."

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## Your CU Should Know...

### **Overtime Rule - Department of Labor**

In March of 2014, President Obama ordered the Department of Labor to revise the Fair Labor Standard's Act overtime exemption for executive, administrative and professional employees. Commonly called the "white-collar exemption", the rule doubles the salary-level threshold for employees to be exempt from overtime, regardless of their job's duties. The DOL's overtime rule moves the cut-off to \$47,476, up from the current \$23,660. The state of Georgia has joined a lawsuit challenging the U.S. Department of Labor's new overtime rule in federal court. This law will become effective December 1, 2016.

In other news on this front: CUNA continues to push for a delay in the Department of Labor's (DOL) overtime rule so the agency has time to fully assess the severe impact the plan would have on credit unions, especially smaller ones and those in non-metropolitan areas. In a letter to House leadership on September 28, 2016, CUNA urged lawmakers to pass H.R. 6094 if it comes up for a vote before Congress adjourns. That bill would impose a six-month delay in the rule's effective date, currently set for Dec. 1. There is likely not enough time left in the congressional calendar this election year to get this bill through both the House and Senate, but continued congressional focus on this issue could send a strong signal before the December deadline.

### **NCUA Releases Supervisory Guidance for CDFI-Certified CUs**

The NCUA released a [supervisory letter \(16-01\)](#) on September 27th establishing a framework for examination and supervision of certified Community Development Financial Institutions. The letter contains guidance that applies to all CDFI-certified credit unions, including what examiners will look for.

### **Bureau Sues Credit Repair Company**

The CFPB [filed a suit](#) in federal court on Thursday against the credit repair company Prime Marketing Holdings, LLC ("Prime"), which allegedly charged consumers a series of illegal advance fees as well as misrepresented the cost and effectiveness of its services. The CFPB is seeking to halt the company's harmful conduct and to obtain relief for consumers, including refunds of fees paid to the defendant. The Bureau also released a [consumer advisory](#) with tips for consumers who are working to improve their credit history or who are dealing with credit repair services.

The Bureau's complaint alleges that Prime violated the Dodd-Frank Act's prohibition on deceptive acts and practices in the marketing and promotion of its services. The company also allegedly violated the FTC's Telemarketing Sales Rule by charging illegal advance fees and making deceptive statements. The CFPB also alleges that Prime misled consumers about the cost of their services, failed to discuss limits on its "money back guarantee," and misled consumers about the benefits of their services. The Bureau's complaint seeks monetary relief, injunctive relief and penalties.

### **CFPB Sues Arizona title lenders for TILA violations**

The Consumer Financial Protection Bureau has [reported](#) it has filed a Notice of Charges against five title lenders operating in Arizona - Auto Cash Leasing, LLC; Interstate Lending, LLC; Oasis Title Loans, LLC; Phoenix Title Loans, LLC; and Presto Auto Loans, Inc. - for failing to disclose the annual percentage rate in online advertisements about title loans. The Bureau alleges that the companies advertised a periodic interest rate for their loans without listing the corresponding annual percentage rate. A Notice of Charges initiates proceedings in an administrative forum, and is similar to a complaint filed in federal court. The case will be tried by an Administrative Law Judge from the Bureau's Office of Administrative Adjudication, an independent office within the Bureau.

### **HUD Issues final rule on gender access equity**

HUD has [announced](#) the publication of a final rule, "[Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs](#)," to ensure that all individuals have equal access to many of the Department's core shelter programs in accordance with their gender identity. The new rule will require a recipient, subrecipient, or provider to establish, amend, or maintain program admissions, occupancy, and operating policies and procedures (including policies and procedures to protect individuals' privacy and security), so that equal access is provided to individuals based on their gender identity. This requirement includes tenant selection and admission preferences.

## **Comment Calls**

### **Amendments to Federal Mortgage Disclosure Requirements Under Truth in Lending Act - TRID**

CFPB has issued a [proposed rule](#) regarding Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z). This Rule is commonly referred to as the "TRID" rule (TILA-RESPA Integrated Disclosures), "KBYO" (Know Before You Owe) Rule, or "TILA-RESPA" Rule, finalized in January 2015 and became effective October 3, 2015. This proposed rule attempts to remediate numerous operational and technical issues with the original TILA-RESPA rule but is not intended to open up the rule for significant policy changes.

The proposed amendments memorialize the Bureau's informal guidance on various issues and include clarifications and technical amendments. The Bureau is also proposing tolerance provisions for the total of payments, an adjustment to a partial exemption mainly affecting housing finance agencies and nonprofits, extension of coverage of the integrated disclosure requirements to all cooperative units, and guidance on sharing the disclosures with various parties involved in the mortgage origination process. 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 [selinaq@gcu.org](mailto:selinaq@gcu.org) by **October 5th**.

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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