

Compliance News

Helping Credit Unions Stay Compliant in 2019

It seems like every month brings a new compliance challenge for credit unions. Make sure that your staff has access to [Infosight's Compliance Calendar](#) in order for your credit union stay abreast of what is going into effect and when.

Below are just a few items that may require your compliance attention in 2019:

- Providing Faster Funds Availability
- Prepaid Accounts Under the Electronic Funds Transfer Act
- Increasing the Same Day ACH Dollar Limit
- Supplementing Data Security Requirements

NCUA Supervisory Priorities 2019

NCUA has released its primary areas of supervisory focus for 2019. This list is intended to help credit unions prepare for this year's upcoming NCUA examinations.

Consistent with 2018, agency examiners will continue using the streamlined small credit union exam program procedures for most credit unions that have assets under \$50 million. For all other credit unions, examiners will conduct risk-focused examinations, concentrating on the areas of highest risk, new products and services, and compliance with federal regulations.

This year, NCUA examiners will have more flexibility to conduct examination work off site.

The following are the NCUA's primary areas of supervisory focus for 2019. The NCUA expects this increased flexibility will reduce the time impact on credit unions, save on travel costs and increase staff productivity.

Created in partnership with the



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.

Compliance videos can be found on YouTube at the

- BSA (CDD): In-depth reviews of BSA/AML policies and procedures and assessing compliance with the customer due diligence regulation.
- Concentration Risk (Credit): Examiners will look at specific areas where there is a high concentration of certain loan products. If excessive levels of credit concentration risk are identified, examiners will work with management to mitigate risk.
- Consumer Compliance (Reg B, E, MLA, and HMDA): Examiners will look for compliance with the Regulation B notification requirements following an adverse action taken on a consumer credit application. Examiners will also likely review overdraft policies and procedures for compliance with Regulation E. If your credit union lends to military personnel, then examiners will evaluate a credit union's efforts to comply with the Military Lending Act (MLA). HMDA is also an area of focus with data collection and reviews of loan/application registers.
- Current Expected Credit Loss: Otherwise known as CECL, this is new this year. What efforts has your credit union taken to prepare for the new accounting standard? Will the new standard alter or impact ALL funding needs?
- Cybersecurity: An area of focus this year is IT risk management controls and service provider arrangements, and for credit unions with assets over \$250 million, examiners will continue to assess cybersecurity using the ACET tool.
- Liquidity/Interest Rate Risk: With likely economic fluctuations projected in 2019, and the increased use of mobile internet banking apps and non-bank financial type products, the focus will be a credit union's ability to deal with potential challenges in retaining low-cost core deposits.

For the next six weeks the *Compliance eNewsletter* will spotlight each one of these topics in more detail to provide additional guidance and to help prepare your credit union in areas with an examination focus. For additional details and links to NCUA resources and guidance on the areas of supervisory focus please see [NCUA's Letter to Credit Unions 19-CU-01](#).

Considering Skip-A-Pay for Your Members During Government Shutdown

Is your credit union trying to come up with ways it can help members during the government shutdown? Have you considered a skip-a-pay program? Are you wondering, will a skip-a-pay work for open-ended and closed-ended loans? Here are a few things to consider:

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

Compliance Calendar

January 2019

January 21st
Martin Luther King Jr. Day

February 2019

February 18th
Presidents Day

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

Compliance Training

January 8, 2019

[Teller Training Series: Compliance Training for the Frontline](#)

3:00 pm - 4:30 pm ET

January 9, 2019

[Record Retention & Destruction Rules: Paper & Electronic](#)

3:00 pm - 4:30 pm ET

January 10, 2019

[Credit Analysis & Underwriting Series: Regulator Issues & Update for the Credit Analyst](#)

3:00 pm - 4:30 pm ET

January 14, 2019

[IRA & HSA 2019 Update, Including Tax Reform Considerations](#)

3:00 pm - 4:30 pm ET

- Real estate loans should not be included in the skip-a-pay program.
- Your loan policy should include a section that describes your skip-a-pay program and address any different circumstances not associated with a traditional skip-a-pay.

Also, make sure that your initial skip-a-pay disclosure states all the eligibility requirements such as:

- Eligible loans
- Restrictions (example: no late payments in the last 6 months, etc.)
- Fees
- Impact to finance charges
- Reduction to GAP or warranty coverage (when applicable)
- Changes in terms (when applicable)
- How automatic payments will be treated

In addition to Regulation Z, a couple of things to consider when making loan modifications are:

- **Will the credit union require all of the borrower(s)' signature(s) and consent prior to modifying the loan?** From a contract enforceability perspective, when there is a co-borrower and the credit union is willing to modify the terms of the note, state law may require that both signatures be on the modification or the credit union may not be able to enforce the contract against the borrower who did not sign. Check your loan agreements to determine if you require signatures of all borrowers.
- **How is the member making up the skipped payment?** For example, if the credit union adds another payment at the end of the maturity, this may extend the loan period and hence require a contract modification.

Regulation Z has various disclosure requirements for skip-a-pay programs depending on whether the loan is open- or closed-end credit.

For open-end lending:

- If the features of the skip-payment program are disclosed in the account-opening disclosure, the credit union does not have to provide a change-in-terms notice. The skip-payment features that would be explained in the account-opening agreement include the times when skip payments will be allowed (such as, "You may skip the December payment"), the amount of any fee, how the

January 15, 2019

[FFEIC Exam Procedures for Business Continuity](#)

3:00 pm - 4:30 pm ET

January 16, 2019

[2018 HMDA Submission Due March 1, 2019, Part 1: Identifying Reportable Loans, Data Integrity & FIG Analysis](#)

3:00 pm - 4:30 pm ET

January 22, 2019

[Successful Skip Tracing Techniques for Locating Borrowers & Recovering Collateral](#)

3:00 pm - 4:30 pm ET

January 23, 2019

[Determining Cash Flow from Personal Tax Returns After 2018 Tax Reform Part 1: Schedules A, B & C](#)

3:00 pm - 4:30 pm ET

January 24, 2019

[2018 HMDA Submission Due March 1, 2019, Part 2: Requirements, Clearing Edits, Exempt Fields & More](#)

3:00 pm - 4:30 pm ET

January 29, 2019

[Real Estate Loan Collection Rules for Lenders & Mortgage Servicers](#)

3:00 pm - 4:30 pm ET

January 30, 2019

[Credit Analysis & Underwriting Series: Analyzing Financial Statements for the Credit](#)

credit union will collect that fee (such as a withdrawal from the member's share account), the fact that finance charges will continue to accrue on the account, and the payment amount upon resumption of regular payments.

- If the skip-payment features of an open-end loan are not provided in the initial account-opening document, then certain change-in-terms notices are required before a member may skip a payment.
- If no skip-payment fee is charged, the credit union must only provide a change-in-terms notice prior to resuming the original payment schedule to advise members of the resumption of regular payments, even though no notice is required prior to the skip payment. This change-in-terms notice must be provided at least 45 days prior to resuming the regular payment schedule. In fact, the change-in-terms notice required for resumption is often combined with the initial letter or notice offering the skip payment. This is done to notify the member of the resumption of the original payment either by explicitly stating when the regular payment resumes or by indicating the duration of the skip. For instance, the credit union can print on the August statement, "You may skip your October payment," and this can serve as the change-in-terms notice required prior to resumption of the regular payment schedule.
- Charging a skip-payment fee would require a change-in-terms notice pursuant to Section 226.9 of Regulation Z. This section requires that the change-in-terms notice be provided at least 45 days before the "effective date of the change." In other words, the notice must be provided at least 45 days before the date the fee is charged. This notice could also be combined with the "resumption of payment notice" in a letter or notice offering the skip payment, or it could be printed on a monthly statement as long as the notice is provided at least 45 days prior to the date the fee is charged.

For closed-end lending:

- Regulation Z does not require subsequent disclosures for skip payments on closed-end loans. Generally, the only time that new Truth in Lending Act (TILA) disclosures are required for closed-end loans is if a refinancing occurs. A refinancing takes place when an existing obligation is satisfied and replaced by a new obligation for the same borrower. New disclosures are not necessary if the existing agreement is only being modified, for example, by lowering the payment or permitting a payment to be skipped. This is true regardless of whether the change is considered adverse to the borrower. Subsequent disclosures are

Analyst

3:00 pm - 4:30 pm ET

January 31, 2019

[Teller Training Series: Frontline Fraud Prevention: Stopping Fraud at the Teller Line](#)

February 5, 2019

[Right of Setoff on Deposit Accounts & Loans: Legal Issues](#)

3:00 pm - 4:30 pm ET

February 6, 2019

[C-Suite Series: CAMELS Rating for Executives](#)

3:00 pm - 4:30 pm ET

February 7, 2019

[ACH Specialist Series: ACH Tax Refund Exceptions, Posting & Liabilities](#)

3:00 pm - 4:30 pm ET

February 12, 2019

[Teller Training Series: Risks & Precautions for Endorsements & Other Negotiable Instruments](#)

3:00 pm - 4:30 pm ET

February 13, 2019

[Board Reporting Series: Board Secretary Procedural & Compliance Responsibilities](#)

3:00 pm - 4:30 pm ET

February 14, 2019

[Prepaid Cards: Your Credit Union's Responsibilities Under the New Rules, Effective April 1, 2019](#)

3:00 pm - 4:30 pm ET

not necessary when the existing loan agreement remains in place but is only being modified.

- Although the fee for allowing a skip payment is considered a finance charge, new TILA disclosures will not be required as long as the skip payment is accomplished by amending the existing closed-end loan agreement rather than by a complete refinancing (as described above). Because new disclosures are not required, the inaccuracy created by imposing the fee is not a Truth-in-Lending violation according to Section 226.17 (e) of Regulation Z.
- Prior to allowing skip-a-pay on closed end loans, the credit union should make members aware of a number of issues, including the right to skip a payment, which month(s) a skip payment will be allowed, the amount of any fee, how the credit union will collect that fee (such as a withdrawal from the member's share account), and the effect the skip payment will have on increasing the total finance charges and extending the loan term.
- This notice can be sent as a letter with a tear-off along the bottom for the member to sign and return to the credit union which acknowledges the member's desire to skip a particular loan payment and indicates that the member understands and agrees to the skip payment terms and conditions.

More information about "skip-a-payment" programs and the impact of Regulation Z is available [here](#).

Credit unions may also consider offering assistance to affected members by offering payroll assistance, offering no- or low-interest loans and allowing penalty-free early withdrawals of share certificates. Consider allowing members to opt in for these services by showing proof that they were furloughed and have a direct deposit account with the credit union.

InfoSight Highlight

Content Updates!

There have been recent updates to the following InfoSight channels:

- *Accounts/Reserve Requirements*: annual threshold changes
- *Accounts/Expedited Funds Availability*: Regulation CC: "Presumption of Alteration" paragraph added
- *Loans/Ability to Repay*: annual threshold changes
- *Loan/Home Ownership and Equity Protection Act (HOEPA)*: annual threshold changes

February 19, 2019

[Determining Cash Flow from Personal Tax Returns After 2018 Tax Reform Part 2: Schedules D, E & F](#)

3:00 pm - 4:30 pm ET

February 20, 2019

[Credit Analysis & Underwriting Series: Debt Service Coverage Calculations in Underwriting](#)

3:00 pm - 4:30 pm ET

February 21, 2019

[The New NIST Digital Identity Guidelines: Impact on Passwords, Security Questions & Account Lockouts](#)

3:00 pm - 4:30 pm ET

February 25, 2019

[Debit Card Chargebacks: Understanding Visa Claims Resolution](#)

3:00 pm - 4:30 pm ET

February 27, 2019

[ACH Specialist Series: ACH Dispute Resolution](#)

3:00 pm - 4:30 pm ET

February 28, 2019

[Flood Insurance Compliance Update & FAQs](#)

3:00 pm - 4:30 pm ET

BSA Training Opportunities through GCUA

[Click here for details](#)

Please be sure any affected policies/procedures have been updated to reflect these changes.

Your CU Should Know

NCUA's Redesigned Websites Offer Users Easier Access and More Information

Effective Jan. 8, 2019 NCUA announced the public and other stakeholders will now be able to find the information more easily with the launch of redesigned versions of NCUA.gov and MyCreditUnion.gov.

"The launch of the redesigned website is part of the NCUA's on-going efforts to streamline operations and communication efforts," according to NCUA Board Chairman J. Mark McWatters. Stakeholders are diverse and they all need to be able to access information quickly and easily. Both websites are now more intuitive and accessible and will improve their ability to communicate with the broader credit union community and the public.

[View the entire press release](#)

NMLS in Reinstatement Period

The NMLS has posted a notice that the Reinstatement Period began on January 2, 2019, for mortgage loan originators whose registrations lapsed on December 31 because they had not completed the annual renewal process and will run through midnight ET on February 28. MLOs with lapsed registrations should check the NMLS's [Federal Registry annual renewal page](#) for guidance on reactivation.

HMDA Filing Period Open

The CFPB recently announced to its subscribed email list that the filing period for HMDA data collected in 2018 opened on January 1, 2019. Financial institutions can access the HMDA Platform at <https://ffiec.cfpb.gov/filing/2018/>. With the opening of the live filing period, the beta testing period for 2018 filing is closed, and all test data uploaded during the beta period have been purged.

User accounts created during the 2018 beta test period and during the filing period for 2017 data will be maintained for the 2018 period, and users can use their current credentials to access the HMDA Platform. Financial institutions should continue providing feedback on their experience using the HMDA Platform and to direct any questions regarding the HMDA Platform to HMDAHelp@cfpb.gov.

USAA to Pay \$15.3M for Reg E Violations

The CFPB has [announced](#) a settlement with USAA Federal Savings Bank, a federally chartered savings association headquartered in San Antonio, Texas. Under the terms of a consent order, USAA must, among other provisions, provide approximately \$12 million in restitution to certain consumers who were denied a reasonable error resolution investigation, and pay a \$3.5 million civil money penalty. The Bureau found that USAA violated the Electronic Fund Transfer Act and Regulation E by failing to properly honor consumers' stop-payment requests on preauthorized electronic fund transfers, and by failing to initiate and complete reasonable error resolution investigations. USAA also violated the Consumer Financial Protection Act of 2010 by reopening deposit accounts consumers had previously closed without seeking prior authorization or providing adequate notice. See "[USAA FSB to pay \\$3.5M fine and make restitution](#)" in the Penalties pages for additional information.

IRS Says Refunds Will Be Processed and Paid

The IRS has announced that tax season will begin on January 28, and the Service will begin accepting paper and electronic returns that day, reports [Forbes](#). Despite the partial government shutdown, IRS Commissioner Chuck Rettig said, "We are committed to ensuring that taxpayers receive their refunds." The Office of Management and Budget has determined that the relevant law allows the IRS to pay refunds during a lapse in annual appropriations.

Other sources report that the IRS has also said it will resume its Income Verification Express Service program, used by many lenders to obtain tax transcripts to support income claims in loan applications.

Notwithstanding the IRS announcements, [Forbes also reports](#) the National Treasury Employees Union filed a lawsuit alleging the administration is violating the Fair Labor Standards Act (FLSA) by requiring federal employees to work without pay during the partial government shutdown. The union is asking the court to order the government to pay compensation for these employees plus 100 percent liquidated damages.

OFAC Targets Venezuela Currency Exchange Network

On Tuesday, January 8, [OFAC sanctioned Venezuelan individuals and companies](#) involved in a significant corruption scheme designed to take advantage of the Government of Venezuela's currency exchange practices, generating more than \$2.4 billion in corrupt proceeds. This designation, pursuant to Executive Order (E.O.) 13850, targets seven individuals, including former Venezuelan National Treasurer Claudia

Patricia Diaz Guillen (Diaz) and Raul Antonio Gorrin Belisario (Gorrin), who bribed the Venezuelan Office of the National Treasury (ONT, or Oficina Nacional del Tesoro) in order to conduct illicit foreign exchange operations in Venezuela.

In addition to Diaz and Gorrin, OFAC designated or blocked five other individuals and 23 entities, pursuant to E.O. 13850, for their roles in the bribery scheme, and identified one private aircraft as blocked property.

For information on a General License issued in connection to these designations and on the identities of the designated individuals, entities and aircraft, see the [OFAC Update](#).

Compliance Q&As

Q: What documentation do you recommend we collect from a member who has a small home business in order to accept checks for deposit to that DBA name, if any? For example, if I start a new business called "Kaleb's Photography" and I don't have any legal documents for the business, what should my credit union have on file in order to accept checks made payable to "Kaleb" or "Kaleb's Photography"?

A: [According to Georgia.gov](#), in order for a business to be truly be considered a sole proprietorship in Georgia, your member is required to obtain a business license and register a trade name with the clerk of Superior Court. The member is also required to run the name of the company in the local newspaper for two weeks. All the sole proprietor's personal and business assets are at risk, meaning the all the risk is solely on your member. Accordingly, CIP regulations would only require that you obtain the "big four" items on the individual which are name, date of birth, street address and Social Security number (for U.S. persons). Verify the individual's identity using whatever methods your institution allows in your MIP program.

Q: When doing loans, I have heard that regulators are scrutinizing spousal guaranties more closely. Is this true? What is the expectation?

A: This has been a hot topic for a long time in the ECOA/Reg B arena, particularly in the context of commercial lending. Recent regulatory activity by FRB, OCC and FDIC indicate this issue is being carefully looked at, which means that its likely not far off NCUA's radar. Thus, now it may be a good idea to review this issue internally and train staff and assess procedures as necessary.

To prevent marital status discrimination, Regulation B limits creditors

from requiring spousal signatures on loan documents and mandates documentation of applicants' intent to apply jointly on joint loans. Spousal signature violations are serious and can result in a referral to the Department of Justice. Below is a summary of some of the regulation's requirements:

- Lenders may believe the credit union is better protected by requiring a spouse to co-sign a loan or serve as a guarantor on a commercial or agricultural transaction. Regulation B makes clear that a creditor may not require a spouse to sign a loan if the applicant qualifies individually for credit and the spouse is not a joint applicant. And even if the applicant does not qualify individually for the credit, the credit union should not require the spouse to guaranty the loan; the applicant should designate the guarantor in such situations (i.e. - if a co-signer/guarantor is required - DO NOT state who that person must be other than creditworthy). Also, remember that a spouse should not be required to guarantee a business loan unless the spouse is a partner, director or officer of the business or a shareholder of a closely held corporation.
- To ensure compliance with Regulation B's spousal signature rules, the credit union should ensure that lenders document applicants' intent to apply jointly on joint commercial and agricultural loans. Failing to document joint intent on commercial and agricultural loans is a common violation. A jointly signed financial statement is not generally sufficient to establish joint intent. As such, most lenders must document joint intent on these loans using a different form or other method. Most consumer-purpose loan applications adequately show joint intent, so fewer problems tend to arise with these loan types.
- Lenders should also be trained to limit inquiries about a spouse when a married applicant applies individually, particularly when the spouse will not use the account or support its repayment in any way. Credit union lending policies should also clearly articulate when obtaining a spousal signature is acceptable and when it is not.

You are encouraged to review the [Consumer Compliance Outlook](#) and the [National Law Review](#) articles on this topic. They provide a more in-depth discussion of Regulation B's marital status discrimination rules.

Q: Are financial institutions required to report pre-approvals and pre-qualifications with their HMDA data?

A: According to [Regulation C](#), a financial institution shall collect data

regarding applications for covered loans that it receives, covered loans that it originates, and covered loans that it purchases for each calendar year. A financial institution shall collect data regarding requests under a preapproval program, as defined in §1003.2(b)(2), (see below) only if the preapproval request is denied, is approved by the financial institution but not accepted by the applicant, or results in the origination of a home purchase loan.

A preapproval program for purposes of Regulation C is a program in which the financial institution:

1. Conducts a comprehensive analysis of the applicant's creditworthiness (including income verification), resources, and other matters typically reviewed as part of the financial institution's normal credit evaluation program; and then
2. Issues a written commitment that: (a) is for a home purchase loan; (b) is valid for a designated period of time and up to a specified amount; and (c) is subject only to specifically permitted conditions. 12 CFR 1003.2(b)(2); Comment 2(b)-3.

Comment Calls

Pending Regulatory Comment Calls

For more information regarding these proposals, please follow the links below:

Issues	Comment Period Deadline	Agency	CUNA Staff Contact
Federal Credit Union Bylaws	Jan. 14, 2019	NCUA	Luke Martone
Fidelity Bonds	Jan. 22, 2019	NCUA	Mitria Wilson
FHLB Housing Goals Amendment	Jan. 31, 2019	FHFA	Mitria Wilson
Availability of Funds and Collection of Checks (Reg CC)	Feb. 8, 2019	BCFP	Alexander Monterrubio
Policy on No-Action Letters and the	Feb. 11, 2019	BCFP	Alexander Monterrubio

BCFP Product Sandbox			
Validation and Approval of Credit Score Models	Mar. 21, 2019	BCFP	Mitria Wilson

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.