

Employment – Fair Labor Standards Act

How does the FLSA affect credit unions?

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek. The FLSA imposes record keeping requirements for employers and authorizes the Wage and Hour Division (WHD) of the Department of Labor to administer and enforce the majority of its provisions. The Equal Employment Opportunity Commission (EEOC) administers and enforces the FLSA's pay equity provisions.

The FLSA applies to employer-employee relationships. Those outside of an employment relationship (e.g., independent contractors) are not covered by the FLSA.

In general, the FLSA overtime provisions cover all credit union employees. However, the FLSA does include some narrowly-defined exceptions for individual employees. For example, the FLSA exempts certain categories of employees from its overtime and minimum wage requirements. These so-called white collar exemptions include any employees employed in a bona fide executive, administrative, or professional capacity. The employer carries the burden of proving the employees' exempt status, and these exemptions are narrowly construed against the employer.

What should credit unions do to comply with the FLSA?

Credit unions should put policies and procedures in place to ensure compliance with the FLSA. Management must ensure that credit union employees are properly classified as either FLSA exempt or nonexempt.

Every employer of employees subject to the Fair Labor Standards Act's minimum wage provisions must post, and keep posted, a notice explaining the Act in a conspicuous place in all of their establishments so

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Credit Union National Association

Compliance Videos

First Quarter 2017 Recap and Second Quarter Outlook

This [video](#) provides a recap from Glory LeDu, Director of League System Relations, of the first quarter compliance updates and gives a “sneak peek” of what is to come in the second quarter of 2017. Included are such topics as the NCUA changes to Member Business Lending, the Fixed Assets Rule and the Chartering and Field of Membership Manual as well as a minor revision to the CFPB's HMDA information. There were also annual updates from the CFPB, FRB and the IRS. The FFIEC has also updated the Uniform Interagency Consumer Compliance Rating System, which is mentioned in this video as well as covered in depth in a separate video.

as to permit employees to readily read it. The content of the notice is prescribed by the Wage and Hour Division of the Department of Labor.

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

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

Compliance News

Fiduciary rule applicability date delayed 60 days

The Department of Labor's Employee Benefits Security Administration has submitted for Federal Register publication on Friday, April 7, 2017, a [final rule](#) delaying the Applicability Date of its rule on Fiduciary Conflicts of Interest -- Retirement Investment Advice, and selected other changes, from April 10, 2017, for 60 days, to June 9, 2017. The effective date of this final rule (delaying the Availability Date and certain other provisions) is April 10, 2017.

Source: DOL

Same Day ACH update for Treasury

Federal Reserve Financial Services has [issued a statement](#) that the Treasury Department is operationally committed to participating in Same Day ACH as of September 15, 2017, beginning with the capability to receive tax and non-tax Same Day ACH credits. Treasury also expects to start phasing in its origination of Same Day ACH debits in October, starting with Electronic Federal Tax Payment System (EFTPS) debits. It also intends to publish a final rule amending its regulation on Federal Government Participation in the Automated Clearinghouse at 31 CFR Part 210 to provide for Same Day ACH participation. See the [Same Day ACH Center](#) for additional information.

Source: FRB Services

NCUA Warns of Fake Check Scams

FFIEC Consumer Compliance

In this [video](#), Glory LeDu explains the updates made to the Uniform Interagency Consumer Compliance Rating System by the Federal Financial Institutions Examination Council (FFIEC), as well as the CFPB's requirements for an effective Consumer Compliance Management System. Credit unions should review this video to determine how their current compliance management system stacks up, as examiners will be using this rating system to evaluate credit unions on compliance factors and will be assigning an overall Consumer Compliance Rating.

Member Business Lending

[This video](#) provides the details you will need to know to comply with the NCUA's Member Business Lending rules.

Compliance Calendar

April, 2017

There are many versions of a fake check scam. However, the result is the same. Scammers lure consumers into depositing a cashier's check, money order, or other checking instrument from someone that they don't know and wiring or sending money to the scammers. A check may take considerably longer to clear the financial institution that issued it before the funds can be collected. It could take days or even weeks to discover that the deposited check was fraudulent.

When the check is discovered to be fraudulent, the damage may already have been done. Once a victim wires or sends funds from such a check, he or she may be responsible for reimbursing the financial institution for that amount. Typically, the financial institution will not cover the financial loss and expects the victim to pay the difference.

The [Federal Trade Commission](#) also recently issued a fake check scam alert. These checks can be hard to recognize. They may be printed with the names, addresses, and logos of legitimate financial institutions. Consumers are reminded to be on the alert and to not be pressured into wiring funds or sending money after depositing a check.

If you think you or someone you know was the victim of a fake check scam, consider taking the following steps:

- Contact your local law enforcement agency to report the scam.
- Contact your state's attorney general. Contact information for each state's attorney general can be found on the National Association of Attorneys General [website](#).
- File a complaint with the [Federal Trade Commission](#). Your complaint will be filed into a secure online database, which is used by many local, state, federal, and international law enforcement agencies. Complaints from consumers help detect patterns of fraud and abuse.
- If you or the victim is an older adult or a person with a disability, contact your local adult protective services agency. You can find local support resources using the online [Eldercare Locator](#) or by calling 1-800-677-1116.

NCUA operates an online [Fraud Prevention Center](#) that offers information about avoiding frauds and scams on its [MyCreditUnion.gov](#) website. NCUA also released a [two-part video series](#) for consumers on fraud prevention techniques.

Under the Federal Credit Union Act, promoting financial literacy is a core credit union mission. While credit unions serve the needs of their members and promote financial literacy within the communities they

- April 30th, 2017: [5300 Call Report Due to NCUA](#)

May, 2017

- May 29th, 2017: Memorial Day - Federal Holiday

July, 2017

- July 4th, 2017: Independence Day - Federal Holiday
- July 30th, 2017: [5300 Call Report Due to NCUA](#)

September, 2017

- September 4th, 2017: Labor Day - Federal Holiday
- September 15th, 2017: [Same-day ACH \(NACHA\) – Phase 2 of the implementation period for the rule.](#)

October, 2017

- October 1st, 2017: [Prepaid Accounts under the Electronic Fund Transfer Act/Regulation E and the Truth In Lending Act/Regulation Z](#)
- October 3rd, 2017: [Military Lending Act for Credit Cards](#)

serve, NCUA works to reinforce credit union efforts, raise consumer awareness and increase access to credit union services. NCUA also participates in national financial literacy initiatives, including the Financial Literacy and Education Commission, an interagency group created by Congress to improve the nation's financial literacy and education. Access NCUA's Financial Literacy Resource center at NCUA.gov for more information.

Source: NCUA

CFPB Provides HMDA Coverage Chart

To assist with determining if your credit union will need to report HMDA activity under Regulation C, effective January 1, 2018, the CFPB has provided the following [chart](#). Please note that it is not intended to be a substitute for the regulation or its commentary, but is a quick reference guide.

Source: CFPB

- October 9th, 2017: Columbus Day - Federal Holiday
- October 19th, 2017: [Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act - Regulation X and the Truth in Lending Act - Regulation Z](#)
- October 29th, 2017: [5300 Call Report Due to NCUA](#)

November, 2017

- November 10th, 2017: Veterans' Day (Observed) - FRB will be open

Advocacy Highlight

DOL Delays Fiduciary Rule for 60 Days

As expected, the Department of Labor (DOL) published a 60-day delay for the Fiduciary Rule. While the delay very significantly alleviates a number of compliance burdens associated with the rule, it is not a complete delay. The final rule outlines the following:

- The applicability date is extended for 60 days, from April 10 to June 9, 2017
- The applicability date of all of the new and amended exemptions is extended for 60 days, from April 10 to June 9, 2017
- From June 9, 2017 to January 1, 2018, anyone wishing to use the BICE, the Class Exemption for Principal Transactions or Prohibited Transaction Exemption 84-24, only must comply with the Impartial Conduct Standards.
- Compliance with all other conditions of these exemptions, including written disclosures and representations, are waived until January 1, 2018

Compliance Training

Regulatory Compliance Training

NCUA Field-of-Membership Rule

Get more information about the NCUA's new field-of-membership rule by watching the [agency's webinar online](#) and review [questions and answers](#) from the event.

The NCUA Board unanimously approved the new field-of-membership

- The DOL will complete the study mandated by the [Executive Order](#) by January 1, 2018.

CUNA [urged](#) the DOL to delay the Fiduciary rule to give credit unions more time for compliance complexities associated with the rule. We believe these changes will be beneficial to credit unions who were facing compliance burdens and the members relying on them for investment services.

[Letter Sent in Support of SeniorSafe Act](#)

On April 5, 2017, the Senate Banking Subcommittee on Economic Policy met to discuss the current state of retirement security in the United States. Prior to the hearing, [CUNA sent a letter](#) reiterating support for the SeniorSafe Act of 2017 (S. 223).

The SeniorSafe Act would help encourage more widespread reporting of suspected elder financial abuse by those most likely to notice, including certain credit union employees. While credit unions and other financial institutions already report suspected financial abuse of seniors, in many cases privacy laws or concerns about potential litigation make it difficult to notify authorities when exploitation is suspected. This legislation would be instrumental in providing even more opportunity for credit unions and other financial institutions to protect seniors.

CUNA will continue to promote and monitor the progress of the SeniorSafe Act. This common-sense legislation would allow for enhanced safety measures for some of the nation's most vulnerable citizens.

[Credit Union Bills on the Move in New Hampshire, New Mexico, Delaware and Washington](#)

Last week, a Cooperative League-backed **New Hampshire** bill, S. 246, was signed by Governor Sununu. The legislation loosens credit union branching restrictions by giving the regulator the authority to approve out of state credit unions to branch into New Hampshire and removes a provision that requires that New Hampshire credit unions be permitted to

rule at its [October 2016 open meeting](#).

[CUNA AND CUNA Webinars](#)

CUNA offers hundreds of online training events that make it easy for you to learn right at your desk. Whether you are looking for a beginner course or want a comprehensive understanding on a specific topic, CUNA webinars, audio conferences and eSchools have what you need.

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branch into other states for that state's credit unions to be permitted to branch into New Hampshire.

After unanimously passing the **New Mexico** state legislature, a data breach notification bill, H. 15, was signed by Governor Martinez on Thursday. The legislation was championed by the New Mexico Credit Union League and protects credit union members by requiring retailers and any other entity that gathers and stores personal information to notify affected parties within 30 days when the entity believes there is a serious risk of identity theft or fraud. Businesses that do not comply could be fined up to \$150,000. Alabama and South Dakota are now left as the only states without a data breach notification law.

Delaware is on the verge of becoming the 23rd state to authorize prize-linked savings (PLS) programs. Recently, H. 31 was sent to Governor Carney and if signed, Delaware credit unions and banks can conduct savings promotions in which a minimum deposit in an amount predetermined by the financial institution qualifies for a chance to win prizes. PLS programs assist members build up their savings and promote loyalty to credit unions.

After an extensive lobbying effort by the **Northwest League**, legislation that provides technical corrections to Washington's Credit Union Act, S. 5144, was sent to Governor Inslee for signature. Among the provisions, the bill would update credit union governance, Board of Director powers and responsibilities, clarify low-income designations for credit unions to match definitions already set at the federal level, and update the parity provision allowing state chartered credit unions the same powers that federally-chartered credit unions have.

Source: CUNA Removing Barriers Blog

CUNA Advocacy Update

The [CUNA Advocacy Update](#) is published at the beginning of every week and 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. Additional Advocacy efforts may also be found under CUNA's [Removing Barriers](#) blog.

New ComplySight Enhancements - Factor Grading Screen and Factor Grade Report!

This [short video](#) will walk you through the recent enhancements to the Factor Grading Screen to provide a more intuitive and clear distinction between the current grade and a previous grade. We also walk through the Factor Grade Report which now allows users to filter by Area and/or Item, as well as showing Factors that are not yet graded. If you have any questions, please feel free to contact info@complysight.com.

ComplySight Training is Available!

Not sure how to get started, or want a refresher on how to use ComplySight? Or are you interested in seeing more of how ComplySight works? We are excited to make available recorded webinars to help you get the most out of ComplySight! We currently have seven training modules available! The ComplySight training webinars are available at any time, and registration is not required. [Click here to start training today!](#)

ComplySight: 30 Day Free Trial!

If you're interested in a "trial run" of ComplySight, League InfoSight is offering a free, 30-day trial so you can see the benefits first-hand. It's easy to get started. [Just visit us online and click on Free Trial Offer.](#)