

## Advertising Deposit Accounts

All deposit advertisements should include either the NCUA official sign or an abbreviated statement, both of which can be found in Section 740 of NCUA Rules & Regulations.

A Credit Union can choose one of the following options to comply with this Regulation:

1. Use the statement, "This Credit Union is federally-insured by the National Credit Union Administration."
2. Use the short statement, "Federally Insured by NCUA"; or
3. Display the official sign in their advertisements.

The official advertising statement must be in a size and print that is clearly legible. However, if the NCUA official sign in the advertisement is so small that the NCUA's sign and the two lines of small type become indistinct, the credit union should use the NCUA official advertising statement or the short statement.

It should be credit union policy to:

- Not use any misleading or inaccurate advertisements;
- Include specific rate information whenever rates are included in advertisements;
- Provide additional information in advertisements that contain or advertise information about rates or bonuses; and
- Not state that a deposit with the credit union is safer than a deposit with an insured savings and loan association or bank.

### What do credit unions have to do to comply with the advertising rules?

If a deposit account advertisement will state a rate of return, the advertisement must reflect the rate as an "annual percentage yield", using that term. A credit union may also use the abbreviation "APY", as long as the full term "annual percentage yield" appears at least once in the advertisement.

The only other rate that a credit union can include in a deposit advertisement is the dividend rate related to the APY. A credit union must use the actual term "dividend rate". It must appear with the APY

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Credit Union National Association

## Compliance Videos

### Q4 2016 Overview and Q1 2017 Changes Coming

In this [recent video](#), Glory LeDu reminds us of the regulatory changes that became effective in the 4<sup>th</sup> quarter of 2016 (which includes the DELAY of the DOL Overtime rules). Glory also provides a review of the changes effective in the 1<sup>st</sup> Quarter of 2017 including the updates to Member Business Lending and the new requirements for HMDA reporting for 2017. This also includes the updated threshold changes effective on 1/1/2017.

### Member Business Lending

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

and cannot be shown more conspicuously. Deposit advertising should not include the term "annual percentage rate" in any context.

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

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

### Compliance News

#### NCUA adjusts civil money penalties

The NCUA has published at [82 FR 7637](#) an interim final rule amending its regulations at 12 CFR Part 747 to adjust the maximum amount of each civil money penalty within its jurisdiction, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The rule is effective upon publication, with a comment period of 30 days, ending on February 22, 2017.

The adjusted maximums reflect the application of a multiplier of 1.01636 to the maximum amounts in effect since mid-2016, when the first adjustments under the Adjustment Act were made. The multiplier is used to increase annually the maximums by the percentage by which the Consumer Price Index for Urban Consumers (CPI-U) for the year immediately preceding the year the adjustment is made exceeds the CPI-U for October of the prior year.

#### NCUA releases key ratios video

The NCUA has [released](#) a new YouTube video module to help credit union board members learn more about key ratios and how they directly affect a credit union's bottom line. The series of five videos, [Understanding Key Ratios](#), examines four key ratios, what they measure and what trends signal improving or declining financial health. The module is a follow-up to NCUA's [Understanding Financial Statements](#) video module, which explores key line items of a financial statement. Understanding Key Ratios explains how those line items, when combined into ratios, provide quick snapshots into a credit union's financial health.

Member Business Lending rules.

### Compliance Calendar

February, 2017

- February 6th, 2017: [NCUA Charting and Field of Membership Manual](#)
- February 20th, 2017: President's Day - Federal Holiday

April, 2017

- April 10th, 2017: [Fiduciary Rule \(Department of Labor\) – Compliance date](#)
- 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

Source: NCUA

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#### FTC to host ID theft awareness week events

The Federal Trade Commission will mark Tax Identity Theft Week, January 30 – February 3, with a [series of events](#) to alert consumers and businesses about ways they can minimize their risk of tax identity theft, and recover if it happens. The week will feature special events for consumers, tax professionals, small businesses and veterans. The Commission will join with the IRS, the Department of Veterans Affairs, the AARP Fraud Watch Network and others to discuss tax identity theft, IRS imposter scams, cybersecurity and identity theft recovery.

Source: Federal Trade Commission

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**Question:** Due to the new Member Due Diligence requirements, do I have to change my BSA procedures to update member information regularly?

**Answer:** No. The rule does not require credit unions to update member information on a continuous or periodic basis. The updating requirement is event-driven and only occurs as a result of detecting unusual activity through normal monitoring.

The new procedures that you are required to have starting May 11, 2018 primarily address the new requirements for “beneficial owners” of “legal entity” members:

- Procedures to identify and verify beneficial owners of legal entity members;
- Procedures for making and maintaining a record of all the identification and verification information collected for beneficial owners of legal entity members;

- 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](#)
- October 9th, 2017: Columbus Day - Federal Holiday

#### Compliance Training

##### Regulatory Compliance Training

[Cybersecurity](#) – Intrusion threats and vulnerabilities (recorded webinar)

##### 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

- Appropriate risk-based procedures for conducting ongoing member due diligence, this will include, at a minimum:
  - Understanding the nature and purpose of member relationships to develop a member risk profile;
  - Conducting ongoing monitoring to identify and report suspicious transactions, and
  - On a risk basis, maintain and update member information - including information regarding the beneficial owners of legal entity members.
- Updated recordkeeping procedures to record, at a minimum:
  - Any identification information obtained, including the beneficial owner Certification Form, if applicable;
  - A description (type, identification number, place of issuance and dates of issuance and expiration, if any) of any document relied upon;
  - Any non-documentary methods used; and
  - Any measures taken in response to any substantive discrepancies, and the results of those actions.

“Beneficial owner”: The definition has two prongs – ownership criteria (25% or more equity interest) and/or control criteria (has significant responsibility to control the legal entity).

“Legal entity”: Accounts owned by legal entities, rather than natural person accounts.

*Source: CU Compliance Community*

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### **[A Closer Look at the MBL Guidance: Section 723.4 - Commercial Loan Policies](#)**

Now that the new MBL rule is in effect, credit unions needs to ensure that they are in compliance and fully understand all of the new requirements. The lengthy guidance that NCUA published in December as part of its

beginner course or want a comprehensive understanding on a specific topic, CUNA webinars, audio conferences and eSchools have what you need.

[Click here](#) for updates on compliance, operations, lending topics and more!

online examiner's guide provides more detail about the rule and sheds some light on examiner expectations. Earlier this month we took a closer look at the Board and Management responsibilities in section 723.3 (available [here](#) in case you missed it). In this week's installment, we will take a deeper dive into the commercial loan policy guidance in 723.4.

Section 723.4 has been of particular concern for credit unions, as it requires all credit union to adopt and implement a board-approved commercial loan policy and establish detailed commercial lending procedures. At minimum, credit union commercial loan policies must address the following:

- Types of commercial loans permitted
- Trade area
- Portfolio concentration limits
- Single borrower limits
- Qualifications/experience requirements for lending staff
- Loan approval process
- Underwriting standards
- Risk management processes

The guidance also goes into great detail regarding the expectations for underwriting standards. The commercial loan policy should address the financial analysis and depth of review to support the credit decision. The policy should address a credit union's borrower analysis, due diligence requirements to evaluate the borrower's ability to service the debt, requirements for financial projections, the quality of the financial information or statements used to make the credit decision (using the level of assurance provided by a preparer and the required professional standards supporting the preparer's opinion), and the type of collateral allowed, LTV limits, personal guarantees and methods used for valuing the types of collateral.

Credit unions must also establish policies and procedures to identify and manage risk. At minimum, such policies should address:

- Use of loan covenants;
- Requirements for periodic loan relationship review;
- A credit risk rating system; and
- The tracking and reporting of any exceptions to the policy

Credit unions are also required to develop a formal credit risk rating system to identify and assign a credit risk rating to each commercial loan in the portfolio. It is important to note that this is not a one size fits all approach; the scope and scale of a credit risk rating system will depend on the variety of product types and the complexity of the commercial loan portfolio. CUs must assign a credit risk rating at loan inception and review ratings as often as necessary. The criteria used to assign each rating should be risk sensitive, suitable for the types of loans underwritten, and should produce a consistent and repeatable assessment of risk, and the system should have an adequate number of ratings to differentiate the varying levels of risk. The guidance also notes that more complex portfolios may benefit from a dual rating system, which is explained in greater detail in the guidance.

Stay tuned for future blog posts on the MBL guidance, and in the meantime be sure to check out NCUA's online examiner's guide, available [here](#).

*Source: CUNA Compliance Blog*

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### **CFPB Says Bank Tricked Consumers into Overdraft Service**

Last week, the [CFPB announced](#) a lawsuit against TCF National Bank for “tricking” consumers into signing up for overdraft services. TCF is headquartered in Wayzata, Minn., and operates approximately 360 retail branches across MN, WI, IL, MI, CO, AZ and SD. The suit seeks redress for consumers, injunctive relief and penalties.

According to the CFPB's complaint, TCF violated Regulation E's overdraft opt-in provisions for ATM and one-time debit card transactions. As you'll recall, Regulation E prohibits a financial

institution from charging overdraft fees for ATM and one-time debit card transactions unless the institution:

- Provides the consumer with a notice in writing (or electronically, if the consumer agrees) segregated from all other information, describing the institution's overdraft services.
- Provides a reasonable opportunity for the consumer to affirmatively consent (or opt-in) to the service for ATM and one-time debit card transactions.
- Obtains the consumer's affirmative consent (separately from other consents or acknowledgements).
- Provides the consumer with confirmation of his or her consent in writing (or electronically, if the consumer agrees), which includes a statement informing the consumer of the right to revoke such consent.

The CFPB also alleged that the bank's practices violated the Dodd-Frank Act's (DFA) prohibition on unfair, deceptive, or abusive acts or practices (UDAAP). Under the DFA, an act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.

An act or practice is deceptive when: (1) it misleads or is likely to mislead the consumer; (2) the consumer's interpretation is reasonable under the circumstances; and (3) the misleading act or practice is material.

And, an act or practice is abusive when it: materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or takes unreasonable advantage of: (1) a consumer's lack of understanding of the material risks, costs, or conditions of the product or service; (2) a consumer's inability to protect his or her interests in selecting or using a consumer financial product or service; or (3) a consumer's reasonable reliance on a covered person to act in his or her interests.

[According to the complaint:](#)

- TCF required staff to meet opt-in specific performance goals and offered substantial bonuses to employees who got consumers to sign up for the service. In order to maximize opt-ins, staff were

instructed to “say as little as possible” in trying to get customers to opt-in.

- For existing customers, TCF telemarketing calls pitched the overdraft service by asking consumers whether they wanted their account to “continue working as it does today.” TCF considered a consumer’s “yes” an opt-in to the overdraft service. They didn’t explain that the “yes” was an authorization for the bank to charge fees in connection with ATM/one-time debit overdrafts.
- For new customers, TCF staff described the Reg E opt-in notice as “a federally-prescribed notice describing our overdraft service.” Further, the customer was not given the opportunity to make the opt-in election at the time s/he received the notice. Instead, TCF placed the “overdraft fee acknowledgement” immediately after a series of mandatory items the consumer had to initial in order to open the account, giving the impression that the Reg E opt-in was mandatory rather than voluntary.
- For consumers who questioned the opt-in, staff were instructed to “sell” the product by suggesting a hypothetical situation, such as an emergency where a consumer would need access to otherwise unavailable funds.

According to the CFPB, these practices constitute Reg E and UDAAP violations. To read the complaint in its entirety, click [here](#).

*Source: CU Compliance Community*

### Advocacy Highlight

#### **Bankers’ Lawsuit Against NCUA Dismissed**

The U.S. District Court for the Eastern District of Virginia granted NCUA’s motion to dismiss the Independent Community Bankers of America’s (ICBA) lawsuit against NCUA for its recent member business lending (MBL) rule. The court in a written opinion found that ICBA lacked standing and timeliness for the claim. Furthermore, the judge stated that even if the ICBA had established standing and timeliness, it still would have found that the rule satisfied the requirements established by the Administrative Procedures Act and existing case law.

CUNA and NAFCU filed an amicus brief supporting NCUA’s rulemaking authority. Dan Berger, president/CEO of NAFCU, and Jim



Nussle, president/CEO of CUNA stated “The court made the right decision in granting NCUA’s motion to dismiss ICBA’s groundless lawsuit. We had maintained all along that this was nothing more than a frivolous and ill-conceived effort by the bankers. Today’s decision is a clear message that NCUA acted well within its statutory authority when it issued its member business lending rule. The CUNA/League system and NAFCU applaud today’s ruling because it is a huge win for Main Street businesses which look to credit unions to secure much-needed access to capital. Perhaps the bankers should put more effort into serving their own customers instead of filing meritless lawsuits that only result in wasted time and money.”

The ICBA can appeal the court’s decision to dismiss the case, but we would expect the appellate court to also find the lawsuit meritless

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### **States Seek to Strengthen Data Breach Notification Laws**

In response to well-publicized data breaches, state lawmakers are considering legislation that would strengthen existing data breach notification laws. Recently, legislators in Connecticut, Georgia and Oklahoma have introduced legislation that imposes new notification requirements in the event of breaches.

In Connecticut, H 6708 would require those who store personal information to notify the police when breaches occur. Current law only requires notification to those who have been compromised. Georgia legislation, H 82, would require notification when personal information is released to unauthorized persons whether it was released intentionally, inadvertently, or accidentally. Oklahoma’s bill, S 614, would require retailers to notify each financial institution that issued a credit or debit card that was compromised in a breach. Also, violations of the provisions of the Oklahoma’s Data Breach Notification Act could lead to damages for the costs of reissuing cards, stopping payments, closing accounts and notifying customers.

Data breach notification requirements are in 47 states statutes, leaving Alabama, New Mexico, and South Dakota as the only three states that currently do not have data breach notification laws. A notification bill is currently pending in New Mexico, however. State notification laws typically cover: who is required to comply with the law; what constitutes “personal information”; what is considered a breach; what are the requirements for notice; and any exemptions from the law.

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### **Georgia League Seeks Compliance Burden Relief**

After months of dialogue between credit unions, the League and state regulators, provisions that will reduce compliance burdens and improve the operational environment for Georgia credit unions were included in the Department of Banking and Finance's housekeeping bill, H 143. The changes sought will improve credit union operations by:

- Creating flexibility and enhancements in the audit provisions for smaller credit unions
- Clarifying nonmember deposits
- Outlining that businesses headquartered within the field of membership may be eligible for membership in the same manner as a "person,"
- Adding whole loans to the permissible items for investment
- Improving the law that governs real estate property held by the credit union

Bills to modernize state credit union acts have been introduced in seven other states this session.

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### **CUNA and Ohio talk regulatory reform on Capitol Hill**

CUNA and the Ohio Credit Union League recently with several members of Ohio's congressional delegation, including delegation members in the House and the Senate.

As part of the Campaign for Common-Sense Regulation, CUNA and the Ohio League raised issues around the need for regulatory reform and amending the Dodd-Frank Act to help credit unions better serve their members. Issues such as data security and potential repeal of the Durbin Amendment on interchange fees were the main issues discussed. With Finance and Ways and Means members, the credit union tax status was the key focus.

As the 115th Congress begins legislating, CUNA will continue to work with leagues to ensure credit union interests are protected. CUNA and the leagues are ready to work with Congress to achieve meaningful regulatory reform for credit unions.

Source: CUNA Advocacy

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### **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.

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### **ComplySight: 30 Day Free Trial!**

League InfoSight is offering a free, 30-day trial of ComplySight so you can see the benefits first hand. It's easy to get started. [Just visit us online.](#)

### **FREE Webinars on ComplySight, the League's latest compliance resource**

Registration is now open for your front row seat to learn about ComplySight, League InfoSight's newest addition to your compliance toolbox. If you're looking for a solution to the compliance tidal wave, this system is for you!

### ***RECORDED WEBINARS – Available ANY Time!***

For “recorded” webinars, click on the title of the webinar to listen. Users may be asked to download WebEx, which is a safe download for viewing the webinars. These are also available on the Dashboard in ComplySight and are available 24/7!

### **[Introduction to ComplySight](#)**

Designed to introduce and show the many features and benefits of ComplySight.

### **[ComplySight Training & Tips – Where to Start?](#)**

This webinar will: suggest a starting point as a new ComplySight user, discuss how Factor Grading works, review the Action Item Build/Edit process, and discuss the need for a compliance management tool that regulators - and you - will appreciate.

### **[ComplySight Training & Tips – Regulatory Alerts, Assigning Employees, Preview of L2.5, Tools in the Help Area](#)**

What should be done when you get an email about a Regulatory Alert? Where are “old” Regulatory Alerts? How do I assign an employee to an Area, and what will be different with the upcoming Level 2.5? And – what tools are available in the Help area? This webinar will explore all of this – and more!

[ComplySight Training & Tips – How to Export Data](#)

When you need to archive or copy data out of ComplySight for a fresh start or to provide information for a Board meeting, this webinar will explain the process.

[ComplySight Training & Tips – Reports in ComplySight](#)

What information is contained on the reports in ComplySight and how are they used?

[Factor Selection Navigation Screens](#)

To simplify the ability to access Factor Grading screens and Item information, the Factor Selection screens have been redesigned. Check out this short webinar for details!

[Access Level 2.5 and How to Use It](#)

Introducing the newest access level, allowing the L1 Administrator to set L2.5 access and then assign specific Areas that only that user may review.