

## InfoSight Highlight

### Fair Credit Reporting Act: Summary

The purpose of the Fair Credit Reporting Act ("FCRA" or "Act") is to ensure fair and accurate reporting of consumer credit information. It regulates "consumer reporting agencies," including credit bureaus; restricts the use of consumer reports to their legitimate purposes; prohibits the dissemination of outdated credit information; and requires disclosure to consumers and employees when adverse action is taken as the result of credit reports or other consumer information.

The FCRA applies any time a credit report is used as a factor in establishing a member's eligibility for or in making changes to the member's consumer credit, share or deposit accounts and other services. It also applies when credit reports are used in hiring or other employment decisions.

The FCRA does not apply to reports about business, commercial or professional entities, reports about a credit union's own experiences with a consumer, or reports by anyone based solely on their own experience with a consumer.

The Federal Trade Commission enforces compliance with the FCRA by consumer reporting agencies and state-chartered credit unions. The **Bureau of Consumer Financial Protection (CFPB)** is charged with enforcing the provisions of the Act (12 CFR 1022).

In 2003, the Fair and Accurate Credit Transactions Act (FACT Act) was signed into law. This Act amended the Fair Credit Reporting Act in several important ways. It permanently reauthorized seven existing preemption provisions and extended preemption to certain areas related to identity theft prevention and mitigation.

#### How does the FCRA affect credit unions?

Requirements of FCRA are applicable to credit unions that are:

1. "Consumer reporting agencies" by providing credit information (other than their own experience with a member) to third parties (other than affiliates);
2. Users of consumer reports from consumer reporting agencies; and
3. Furnishers of information to consumer reporting agencies.

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## 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

Credit unions are likely to be subject to FCRA as credit grantors, purchasers of dealer paper, issuers of credit cards, and as employers. When credit unions use consumer report information, the provisions of the FCRA that apply relate to transactions where an "adverse action" is taken partially or wholly on the basis of the information from a "consumer report."

Additionally, a number of credit unions and other employers use credit reports to evaluate employees for advancement and applicants for employment. The FCRA mandates particular procedures which must be followed in order to use credit reports for employment purposes.

Compliance with the FCRA is important because the FCRA contains penalties for violations. In a civil action, any consumer-reporting agency or user of information who willfully fails to comply with an FCRA requirement with respect to a consumer is liable to that consumer for any actual damages, any punitive damages that the court allows, and costs and reasonable attorneys' fees. Any consumer-reporting agency or user of information who fails to comply with an FCRA requirement due to negligence is liable to the consumer for any actual damages, plus costs and reasonable attorneys' fees.

Any person found liable for obtaining a consumer report under false pretenses or knowingly without a permissible purpose may be liable for actual damages or \$1,000, whichever is greater.

Criminal penalties can be imposed for certain willful acts. For credit unions using consumer reports, any person who willfully obtains information on a member from a consumer-reporting agency under false pretenses may be fined up to \$5,000, imprisoned for up to one year, or both.

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

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

### Compliance News

#### **CFPB Issues Compliance Guides for Remittance Transfers and the Prepaid Rule**

The CFPB has issued version 4.0 of its [Small Entity Compliance Guide for remittance transfers under Regulation E](#). The update reflects

Member Business Lending rules.

### Compliance Calendar

February, 2017

- 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

- September 4th, 2017: Labor Day - Federal Holiday
- September 15th, 2017: [Same-day](#)

clarifications the CFPB made in the [prepaid rule](#) regarding the application of the remittance rule to prepaid accounts. The CFPB also released a [Small Entity Compliance Guide for the Prepaid Rule](#).

Previously, the remittance rule did not treat prepaid products as “accounts” (other than payroll card accounts and government benefit accounts that were already accounts under Reg E). However, the prepaid rule adopts a definition of “prepaid account,” and as a result, a number of prepaid products are now considered accounts under Reg E.

The CFPB’s clarifications to the remittance rule make clear that that the agency intends to continue to treat transfers from most prepaid products as non-account based transfers. In the prepaid rule, the CFPB amended the remittance rule to clarify the following:

- Whether the remittance rule applies depends on the location of the sender, which can vary based on whether the transfer is from an account, or not. For prepaid accounts other than payroll card accounts and government benefit accounts, the location of these accounts does not determine where funds are being sent to or from for purposes of the remittance rule. See comments 30(c)-2.ii and 30(g)-1
- The temporary exception in Section 1005.32(a) allowing insured institutions to use estimates when providing certain disclosures does not apply to transfer sent from prepaid accounts, unless the prepaid account is a payroll card account or a government benefit account. See Section 1005.32(a)(1)(iii)

*Source: CFPB*

### **Tax Refund Fraud – Don’t Forget to File SARs**

Since the methods for tax refund distribution – direct deposit, paper checks, prepaid access cards – are generally run through financial institutions, credit unions can play a critical role in the battle against tax refund fraud.

The following Tax Refund Fraud red flags were provided by FinCEN and the IRS:

- Multiple direct deposit refund payments going into one member’s account;

[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
- 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](#)

### **Compliance Training**

#### **Regulatory Compliance Training**

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

#### **CUNA AND CUNA Webinars**

CUNA offers hundreds of online training events that

- Individuals attempting to negotiate double endorsed tax refund checks with questionable identification;
- One individual accompanying multiple parties to the credit union to negotiate tax refund checks;
- The same signature/endorsement used on multiple checks, with multiple names;
- An account opened on behalf of individuals who are not present, with the opener being named as having signatory authority and the subsequent activity limited to direct deposits of tax refunds. This activity often occurs when exploiting returns for the elderly, minors, prisoners, the disabled, or recently deceased;
- A single individual opening multiple prepaid card accounts in different names, using valid TINs for each of the supplied names and having cards mailed to the same address;
- A personal account where the majority of the transactions are ACH tax refunds - even if this is not tax fraud, your member may be using a personal account as a business account;
- A business account processing third-party tax refunds in a manner inconsistent with their stated business model, i.e., volume of refund checks in contrast to other deposits; refund checks from out of state; multiple refund checks for the same amount or close to the same amount;
- For MSB accounts - a sudden increase in volume involving tax refund checks issued to individuals from across the country.

If, after sufficient investigation, the credit union determines that a suspicious activity report (SAR) should be filed, FinCEN requests that the term “tax refund fraud” be included in the narrative section.

And speaking of SARs, this seems like a good time to remind you that due to the Bipartisan Budget Act of 2015, the civil money penalties for violating BSA requirements have increased significantly as of August 1, 2016. For example, the penalty for a willful violation went from a range of \$25,000 - \$100,000 to the new range of \$53,907 - \$215,628. You can review the entire table of penalty adjustments [here](#).

Source: CUNA Compliance Blog

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### **[Dodd-Frank Act to be reevaluated](#)**

In an Executive Order issued on 2/3/17, President Trump has declared seven "Core Principles" for regulation of the U.S. financial system: promoting independent consumer choices, preventing bailouts, fostering

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economic growth, promoting international competitiveness, advancing U.S. interests in international negotiations, tailoring regulations and ensuring regulatory accountability. The Order directs the Secretary of the Treasury to meet with the heads of the other members agencies of the Financial Stability Oversight Council to review how "existing laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other Government policies promote the Core Principles and what actions have been taken, and are currently being taken, to promote and support the Core Principles." An initial report to the president is due within 120 days.

Although the Dodd-Frank Act is not mentioned in the Order, it is generally seen as the most obvious target of the review. There is no clear vision of the outcome of the review, although several provisions of the Act, including the structure and funding of the CFPB, the Durbin Amendment (interchange fee limits on debit card transactions), and the Volcker Rule (restrictions on proprietary trading by banks) are seen as likely focuses of the ordered study.

*Source: whitehouse.gov*

#### Advocacy Highlight

#### **Executive Order Delays Fiduciary Rule and Suggest Additional Analysis of Impact**

In an Order signed last Friday, the Administration directed the Department of Labor to further examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice.

CUNA [sought](#) and obtained improvements to final rule, but remained concerned that regulatory burdens and complexity associated with this rule could make it more difficult for consumers of all means to receive support planning for their financial future from credit union service organizations and some credit unions.

A memorandum to the Secretary of Labor directs the DOL to examine the Fiduciary Duty Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice.

As part of the directive, the DOL must prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Duty Rule, which shall consider (but shall not be limited to) the following:

1. Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;
2. Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees;
3. Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

The directive states that if the DOL makes an affirmative determination as to any of these considerations, or if it concludes for any other reason after appropriate review that the Fiduciary Duty Rule is inconsistent with the priority identified earlier in this memorandum -- then it shall publish for notice and comment a proposed rule rescinding or revising the Rule, as appropriate and as consistent with law.

CUNA will be following the DOL's action on this rule as well as [legislation](#) in Congress impacting it.

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### **Changes to Credit Union Acts Sought in Alabama, Illinois, Maine and Tennessee**

Lawmakers in Alabama, Illinois, Maine and Tennessee are considering measures that would alter some credit union restrictions and operational requirements. Currently in Alabama, state chartered credit unions must be examined annually. If S 27 is enacted, the examination period will be extended to 18 months. Reducing the frequency of examinations would remove some unnecessary pressure on credit union resources and permit credit unions to allocate those resources to better serve members.

The Illinois bill, H 1792, would improve credit union operations and services by permitting credit union members to vote electronically, increasing the limit on loans to members, expanding the ability of credit unions to market their products and services and allowing credit unions to invest in corporate bonds and loan pools.

On the heels of the legalization of recreational marijuana in Maine, legislation was introduced that would permit state-chartered credit unions to obtain private insurance in lieu of NCUA share insurance. With S 130, the bill's author is seeking to facilitate credit union service to the marijuana industry by removing the federal regulator and the threat of losing share insurance.

In Tennessee, if H 150 becomes law, the amount that a credit union can pay out from a deceased member's account or safe deposit box will increase to \$15,000 from \$10,000. The change would give credit unions greater flexibility to assist the families of deceased members.

*Source: CUNA Advocacy Removing Barriers*

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### **OFAC sanctions supporters of Iran missile program and Revolutionary Guard**

OFAC has [announced](#) the imposition of sanctions against multiple entities and individuals involved in procuring technology and/or materials to support Iran's ballistic missile program, as well as for acting for or on behalf of, or providing support to, Iran's Islamic Revolutionary Guard Corps-Qods Force.

Source: OFAC

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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.