

## InfoSight Highlight

### Electronic Returns Under Reg. CC

Regulation CC addresses the collection and return of checks through the banking system and is the rule that implements the Expedited Funds Availability Act (EFAA). The Uniform Commercial Code Article 4A governs the rights, duties, responsibilities and liabilities of the parties involved in the electronic funds transfers and Regulation J governs those electronic funds transfers through Fedwire.

When a paying bank (financial institution on which a check is drawn, including a payable through financial institution) decides to return a check, Regulation CC requires it to send the check or a notice within certain deadlines. Section 229.30(f) and 229.31(f) of the regulation requires the paying bank to return the original check unless the check is unavailable. If the check is unavailable, the paying bank may send a notice in lieu of return that includes specific information required by Regulation CC. The Commentary to these sections explains that a notice is permitted instead of the actual check only when an institution does not have or cannot obtain the physical check, or must keep the physical check for protest. The Commentary states that a check is not considered unavailable for return simply because it is difficult to retrieve from a filing system or storage by a keeper of checks in a truncation system.

An "electronic return" is an arrangement whereby the paying bank sends, and the depository bank accepts, an electronic image or other notice in lieu of the return of the actual physical item itself. Provisions in Regulation CC, specifically additions to the Commentary for Section 229.37, allow financial institutions that have entered into agreements with other financial institutions, to return checks electronically, even if such checks are considered available for return. Entering into these arrangements is strictly voluntary. Before your credit union enters into such agreements, keep in mind that not having the original item could affect your rights with the depositing member and others.

#### How do electronic returns affect the credit union?

Electronic returns may assist the credit union in being more efficient in both returning items drawn on the credit union and receiving the return of items deposited at the credit union, which the paying bank has chosen not to pay. However, the credit union may lose rights since it cannot bind remote parties to a check. For example, rights against third party endorsers could be lost. Thus, if a financial institution issues a notice

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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

when the physical check is considered available under Regulation CC, then if the return of the check causes the party to suffer a loss, the credit union or the returning financial institution could be liable for damages. The financial institution that sent the notice could be liable even if it had agreed with the receiving depository institution to use notices in lieu of return. There could also be problems with initiating bad check charges against someone if the original check isn't available as evidence.

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

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

### Compliance News

#### MLA Website Problem Revealed

The Department of Defense has posted a [notice](#) on its official Military Lending Act (MLA) website that between February 9 and February 15, 2017, there was a problem with MLA Multiple Record Requests that prevented 149 request files from processing. It was suggested that those who submitted a multiple record request file in between those dates, submit the file again for processing.

*Source: Department of Defense*

#### CFPB adds HMDA Resources

The HMDA effective date is now officially less than a year away!!! Is your credit union ready for HMDA? This regulation is not one for procrastinators...the new HMDA rule will have a huge impact on credit unions, much like TRID did in 2015. So NOW is the time to start getting your credit union up to speed. The CFPB has a HMDA implementation page with lots of helpful resources, and they added two new resources last week. The first is a new HMDA webinar, which provides an overview of identifiers, including entity, applications or loans, property and loan originator, as well as data points related to applicants and borrowers (available [here](#)). The CFPB has also published a chart that illustrates a covered institutions' options for collecting and reporting ethnicity and race information (available [here](#)). Please use these resources to help get your credit union ready for HMDA in 2018! Also check out

Member Business Lending rules.

### Compliance Calendar

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 ACH \(NACHA\) – Phase 2 of the implementation period for the rule.](#)

October, 2017

CUNA's [HMDA Final Rule Analysis](#) summarizing the changes in the new rule.

*Source: CFPB and CUNA Blog*

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### Reintroduction of TAILOR Act

Senator Mike Rounds (R-SD) reintroduced the TAILOR (Taking Account of Institutions with Low Operation Risk) Act. S. 366 would require regulatory agencies, including NCUA, to take risk profiles and business models into account when crafting regulations.

The bill also requires agencies to examine all regulations issued since the passage of Dodd-Frank in 2010 to make sure they conform with the TAILOR Act.

Last Congress Congressman Scott Tipton (R-CO) introduced the TAILOR Act in the House. It is expected that the House bill will be reintroduced soon.

*Source: CUNA*

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### What is the Consumer Compliance Rating System?

The Consumer Compliance Rating System (CCRS) is an interagency framework developed by FFIEC member agencies for evaluating an institution's ability to manage consumer compliance risk and to prevent harm to consumers. NCUA integrates the current rating system into its existing CAMEL structure.

In November 2016, the FFIEC agencies finalized changes to the current 36 year-old rating system to bring it more in line with existing consumer compliance approaches and the examination focus toward risk. The revisions to FFIEC's existing guidance have an effective date of March 31, 2017.

Essentially, the CCRS is a supervisory policy for evaluating a financial institution's adherence to consumer compliance requirements. It emphasizes the importance of an institution's compliance management system (CMS). Particularly the institution's compliance risk management

- 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](#)
- October 29th, 2017: [5300 Call Report Due to NCUA](#)

### 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

practices that are in place to manage consumer compliance risk, support compliance, and prevent consumer harm.

**Why should credit unions care?** Under the new system NCUA examiners will assess a credit union's ability to effectively manage its compliance risk. A credit union is expected to proactively prevent, self-identify, and should self-correct compliance issues. A credit union's ability to do so will be reflected in the "Management" component rating and the overall CAMEL rating used by NCUA.

**What about credit unions with assets over \$10 billion?** The CFPB will also use the CCRS, as appropriate, to assign a consumer compliance rating. The interagency final guidance was clear that a credit union with over \$10 billion in assets may receive a consumer compliance rating by both NCUA and the CFPB. The rating will be based on the CFPB's review of the credit union's CMS and compliance with the federal consumer financial protection laws falling under each regulator's jurisdiction. NCUA will take into consideration any material supervisory information provided by the CFPB. Similarly, the CFPB will take into consideration any material supervisory information provided by NCUA in appropriate situations.

**What about state-chartered credit unions?** As state regulators maintain supervisory authority over state-chartered credit unions, state regulators may also assign consumer compliance ratings to evaluate compliance with both state and federal laws and regulations. If the credit union has over \$10 billion in assets then it may receive a consumer compliance rating from its state regulator and the CFPB.

**What are the main components of the CCRS framework?** Well, first there are four principles of the CCRS that serve as its foundation:

- **Risk-based.** The CCRS is risk-based. The focus is more on the sufficiency of the CMS. An effective CMS varies and is based on the size, complexity, and risk profile of the credit union.
- **Transparent.** The CCRS is transparent and provides clear distinctions between rating categories to support consistent application by regulators across supervised financial institutions. The rating should reflect the scope of the review that formed the basis of the overall rating.
- **Actionable.** The CCRS identifies areas of strength and directs appropriate attention to specific areas of weakness. It conveys the examiner's assessment of the effectiveness of the credit union's CMS, including its ability to prevent consumer harm and ensure compliance with consumer protection laws and regulations.

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!

- **Incent Compliance.** The CCRS is a tool to encourage the credit union to establish an effective CMS across the institution, to self-identify risk, and to take the necessary actions to reduce the risk of non-compliance and consumer harm.

The CCRS focuses on three board categories within a credit union:

- Board and Management Oversight
- Compliance Program
- Violations of Law and Consumer Harm

Each category has assessment factors and performance expectations. The first two areas (Board/Management Oversight and Compliance Program) are used to assess the effectiveness of the credit union's compliance management system to prevent consumer violations and harm. The first two categories also apply to third party relationships. Both the NCUA ([LCU 07-CU-13](#)) and CFPB ([Bulletin 2012-03](#)) have issued guidance detailing expectations of third-party relationships. The third area of review (Violations of Law/Consumer Harm) assesses and evaluates the root cause of the problem; the severity of the problem, the duration, and frequency/commonness of the problem and evaluates violations and harm that have occurred.

The final interagency guidance indicated that the revisions to the CCRS were not developed to set new or higher supervisory expectations. We anticipate that NCUA will release additional guidance about the revisions to the CCRS and its integration into the "M" component in CAMEL prior to the March 31, 2017 effective date.

The final guidance provided details and described standards and expectations for each of the three rating categories (link provided below). It should shed some light on performance expectations until the additional guidance is released. While there are numerical factors on a scale of 1 to 5, in increasing order of supervisory concern, supplementary information to the final guidance indicated that a specific numeric rating won't be assigned for each assessment factor. Therefore, the relative importance of each category or assessment factor is not a one size fits all approach; accomplishing an effective CMS may differ based on the size, complexity, and risk profile of the individual institution.

The chart in the *Federal Register* can be viewed [here](#) (see page 79480).

Source: CUNA Compliance Blog

### **30-Day Extension Requested for Comments on TCPA Related Petition**

CUNA and several other trade associations requested a 30-day extension of the period for the submission of comments for the petition that seeks to reverse the Federal Communications Commission's (Commission) 25-year old interpretation that persons who knowingly release their phone numbers have given their consent to be called under the Telephone Consumer Protection Act (TCPA).

The letter notes that such a dramatic change would prevent consumers from receiving important communications from credit unions on their mobile phones, communications that provide critical information that consumers want and need to receive. It would also likely require credit unions to make fundamental changes to their practices for obtaining consent in conformity with the TCPA's requirements. Furthermore, it notes that millions of consumers would be impacted in a very negative way by the change proposed in the Petition.

The letter explains that the group believes that consideration of a proposed change of this magnitude should be done through a process that affords a greater opportunity for public participation. It notes that a 60-day comment period would be consistent with the intent of the Memorandum issued by President Trump's chief of staff, Reince Priebus, directing the heads of executive departments and agencies to delay, by 60 days, the effective date of regulations that have not taken effect, with certain exceptions, in order to allow for additional consideration of the regulation.

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### **State Issues – Changes in State Acts**

This week, bills backed by the regulators of Iowa and Kentucky credit unions were introduced. The League-supported measures modestly modify the state credit union charters.

In Iowa, SSB 1098 is a clean-up measure that creates a process by which the regulator can share confidential exam information with a third party, such as a potential merger partner. It also permits the regulator to convene a credit union board meeting that's unrelated to the examination process. An Iowa League-backed bill, SF 177/HSB14, which permits

Iowa credit unions to offer deferral payment programs to members, is progressing in the state legislature as well.

The regulator of Kentucky credit unions is pushing a bill, H 325, that changes the examination fee assessment to an annual basis. Previously, the examination cycle was changed to 18 months and thus the regulator would now like to set the fee assessment to an annual basis for budgeting and consistency.

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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!**

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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.