

## InfoSight Highlight

### IRS Form 1120-POL

Section 527 of the Internal Revenue Code provides for the exemption from federal income tax of organizations established primarily to accept contributions and make expenditures intended to influence, or attempting to influence, the election process of any federal, state or local office-holder (exempt function). Any political organization with taxable income (e.g. - investment income, income from trade or business) in excess of \$100 is required to file an annual income tax return on Form 1120-POL, (U.S. Income Tax Return for Certain Political Organizations), by the fifteenth day of the third month following the close of the organization's tax year (March 15 for calendar-year taxpayers).

#### What credit unions are impacted by 1120-POL?

Aside from credit union trade organizations that make political contributions, state-chartered credit unions in certain states can make corporate contributions to their state credit union league's state political action committee (PAC) or directly to a candidate for state or local office. If the amount contributed is in excess of \$100, the credit union is required to file a 1120-POL. Federal credit unions are exempted from filing Form 1120-POL.

While most contributions to political organizations can generally incur liability, state-chartered credit unions are not absolutely liable under Section 527 for amounts transferred to an individual, organization, or PAC provided they take reasonable steps to ensure that the individual or organization does not use such amounts for an exempt function. State-chartered credit unions should consult with their own counsel to determine whether they must file the 1120-POL return and the extent of any tax liability.

#### What is the due date for Form 1120-POL?

Credit unions should generally file by the 15th day of the 3rd month after the end of the tax year. For most credit unions, this will be March 15. If the due date falls on a Saturday, Sunday, or legal holiday, the credit union may file on the next business day.

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

## InfoSight Compliance eNEWSLETTER March 3, 2017 Vol. 11, Issue 9

Created in partnership with the



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

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

Member Business Lending rules.

### Compliance News

#### Executive order to create regulatory reform task forces

The White House has announced that President Trump has signed an Executive Order requiring every Executive Branch agency to establish a Regulatory Reform Task Force to eliminate red tape. The task forces are to be charged with making recommendations to the agency head regarding the repeal, replacement, or modification, consistent with applicable law, of regulations that:

- eliminate jobs, or inhibit job creation
- are outdated, unnecessary, or ineffective
- impose costs that exceed benefits
- create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies
- that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility
- derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified

*Source: The White House*

#### MLA Prohibited Terms in Loan Documents for Covered Borrowers

Section 232.9 of the DoD's Military Lending Act rule states that any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with the MLA requirements or which contains one or more provisions prohibited by the MLA, is void from the inception of the contract.

If the covered borrower's loan document contains one or more prohibited terms and is at some point considered void by the creditor's regulator or a court of law, the covered borrower would be relieved from repaying the entire unpaid loan balance and the creditor would have to refund any payments made by the covered borrower.

### 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

Before the DoD's Guidance (Official Interpretation) was issued in late August 2016, in order to reduce the risk that a covered borrower's loan document contained a prohibited term, many creditors either strongly considered or actually developed one set of loan documents for covered borrowers only (that didn't contain prohibited terms) and a second set of loan documents for other borrowers.

However, Question #15 from the DoD's Official Interpretation states that nothing in the MLA rule restricts the ability of a creditor to impose on non-covered borrowers those provisions under Section 232.8 of the MLA rule that are prohibited for covered borrowers, such as a mandatory arbitration clause.

The DoD recognized that many creditors would design loan documents with the intent that they could be provided to both covered borrowers and to other borrowers who are not covered by the MLA rule.

Question #15 from the DoD's guidance provides that a creditor may include a prohibited term in the loan document, provided that the loan document includes a contractual "savings" clause limiting the application of the prohibited term to non-covered borrowers only.

---

### **Under the MLA rule may an Assignee of the Original Creditor Maintain and Utilize the Covered Borrower Identification Safe Harbor?**

The MLA rule permits a credit union to use any method of determining whether a service-member is considered a "covered borrower."

However, the rule only provides two "Safe Harbor" methods to determine active-duty military status of the covered borrower, spouse or dependent:

- A credit union may make the determination by accessing information obtained directly or indirectly from the DoD's database, or
- A credit union may use information from a nationwide consumer reporting agency that describes the military status of the loan applicant.

The safe harbor that previously permitted a credit union to rely on an applicant's declaration in a loan application or elsewhere, has been eliminated, effective October 3, 2016, because the DoD became aware

- 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

that military personnel and their spouses and dependents were making false statements about their military status.

A creditor by definition, includes the creditor's assignee. Therefore, as long as the original creditor creates and thereafter maintains a record of the borrower's covered borrower status and the assignee continues to maintain the record created by the original creditor, the covered borrower identification Safe Harbor will be extended to the assignee.

---

### **Tax Refund Season: Time to Review Direct Deposit FAQs**

As a growing number of taxpayers opt to have their tax refunds provided via direct deposit, it's a great time for credit unions to brush up on several Direct Deposit FAQs, such as:

- Is there a limit on the number of refund payments that can be made to the same account at the credit union? And if so, who has to monitor this?
- If a member who owes a debt to the credit union receives a Federal tax refund by ACH, can the credit union offset the refund against the debt?
- Is the credit union liable for an IRS tax refund to an account that does not belong to the named or intended recipient? In other words, can a credit union rely strictly on the account number in the ACH Entry Detail Record when posting a tax refund payment to a member's account?
- What is the credit union's obligation when it discovers that an IRS tax refund has been sent to the wrong account?
- If the IRS discovers that a refund was misdirected or fraudulent, can the IRS require the credit union to return the funds?
- If suspicious of fraudulent activity is suspected on a refund received by the credit union, who should the credit union contact?

You can find answers to these and many other related questions by reviewing [Treasury's Direct Deposit of IRS Tax Refunds Resource Page](#).

*Source: CUNA Compliance Blog*

---

### **California Bank Gets BSA/AML Penalty of \$7 Million**

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!

The Financial Crimes Enforcement Network (FinCEN) announced the assessment of a \$7 million [civil money penalty](#) (CMP) against Merchants Bank of California of Carson, CA for willful violations of several provisions of the Bank Secrecy Act (BSA). The Office of the Comptroller of the Currency (OCC), the primary federal regulator of Merchants, has identified deficiencies in the Bank's practices that resulted in violations of previous consent orders entered into by Merchants, as well as other violations. The OCC simultaneously assessed a \$1 million CMP against Merchants for these violations.

Merchants failed to (a) establish and implement an adequate anti-money laundering (AML) program, (b) conduct required due diligence on its foreign correspondent accounts, and (c) detect and report suspicious activity. Merchants' failures allowed billions of dollars to flow through the U.S. financial system without effective monitoring to adequately detect and report suspicious activity. Many of these transactions were conducted on behalf of money services businesses (MSBs) that were owned or managed by Bank insiders who encouraged staff to process these transactions without question or face potential dismissal or retaliation. Bank insiders directly interfered with the BSA staff's attempts to investigate suspicious activity related to these insider-owned accounts.

"The banking of money services businesses is important to the global financial system, and we believe that banks can mitigate the risks associated with such businesses, just as they do with other customers," said FinCEN Acting Director Jamal El-Hindi. "But here we had an institution run by insiders essentially to provide banking services to MSBs that the insiders owned, combined with directions from Bank leadership to staff to ignore BSA requirements with respect to those MSB customers and others. It is certainly not an acceptable way to bank MSBs."

Merchants specialized in providing banking services for check-cashers and money transmitters. However, it provided those services without adequately assessing the money laundering risks and without designing an effective AML program. Merchants also provided its high-risk customers with remote deposit capture services without adequate procedures for monitoring their use.

Merchants failed to provide the necessary level of authority, independence, and responsibility to its BSA officer to ensure compliance with the BSA as required, and compliance staff was not empowered with sufficient authority to implement the Bank's AML program. Merchants' leadership impeded BSA analysts and other employees from investigating activity on transactions associated with accounts that were

affiliated with Bank executives, and the activity in these accounts went unreported for many years. Merchants' interest in revenue compromised efforts to effectively manage and mitigate its deficiencies and risks.

In addition, Merchants banked customers located in several jurisdictions considered to be high-risk but did not identify these customers as foreign correspondent customers and therefore did not implement the required customer due diligence program. In a three-month period, Merchants processed a combined \$192 million in high-risk wire transfers through some of these accounts.

The Bank's payment of the \$1 Million OCC penalty will be credited towards the satisfaction of the FinCEN penalty. FinCEN's settlement with a financial institution does not preclude consideration of separate enforcement actions that may be warranted with respect to any financial institution or any partner, director, officer, or employee of a financial institution.

FinCEN seeks to protect the U.S. financial system from being exploited by illicit actors. Its efforts focus on compromised financial institutions and their employees, significant fraud, third-party money launderers, transnational organized crime and security threats, and cyber threats. FinCEN has a broad array of enforcement authorities to target both domestic and foreign actors affecting the U.S. financial system.

*Source: FinCEN*

### Advocacy Highlight

#### **CUNA Governmental Affairs Conference (GAC)**

This week in Washington, DC is the CUNA Governmental Affairs Conference (GAC). year's conference promises to be one of the biggest and best ever! In addition to keynote speakers, CUNA is going to be joined by credit union supporters from Capitol Hill, including Senate Banking Committee Chairman Mike Crapo, House Financial Services Committee Chairman Jeb Hensarling, Senator Roy Blunt, Representatives Maxine Waters, Brad Sherman, Blaine Luetkemeyer, Denny Heck, Linda Sanchez, Bill Huizenga, Kurt Schrader and Walter "Credit Union" Jones.

So that you're aware of what is being discussed, sure to check out the briefing documents which were made available to all participants. We want Congress to know that the current regulatory structure is rigged in

favor of the large banks and nonbank providers who can afford to comply with all of the rules coming out of Washington. We need common sense regulations that focus on Wall Street and get out of the way of Main Street.

We look forward to favorable reports following the CUNA GAC.

*Source: CUNA Advocacy*

### **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.

---

### **ComplySight: A Complete Compliance Management and Tracking System**

What can ComplySight do for your credit union? It is central site that allows your credit union to:

- review regulations and laws to assess the level of compliance within your own organization;
- manage regulatory requirements and the associated internal organizational communications;
- assign and track the activities needed to achieve or maintain compliance; and
- keep current on regulatory alerts and updates.

[Click here to see six more ways ComplySight can help your credit union!](#)

### **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.](#)

