Compliance Issues Board
Members Need to Know

Facilitated by:

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Thursday, July 12, 2012, 1:30-3:00 p.m.
Compliance Issues Board Members Need to Know

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Jody Dabrowski
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The Beginning:

- **Credit Union is Open For Business**
  - Federally Chartered (Federal Credit Union Act)
    OR
  - State Chartered (State Credit Union Act)

- **Primary Regulator**
  - NCUA for Federally Chartered (National Credit Union Administration)
    OR
  - OFIR for State Chartered

- **Insurer**
  - NCUSIF (National Credit Union Share Insurance Fund)
  - Other (American Share Insurance)
Laws and Regulations that Affect **Deposit Accounts**

- Reg D
- Reg E
- Reg CC
- Truth in Savings, NCUA Part 707
- Reg J
- NCUA Insurance Regulations
- IRS withholding and Reporting Requirements
- Esign
- Check 21
- Customer Identification Program
- Various State Laws (UCC, Escheats)
- Federal Credit Union Act / State Credit Union Act

Laws and Regulations that Affect **Lending**

- Reg B
- Reg C
- RESPA
- Fair Housing Act
- Homeowners Protection Act
- National Flood Insurance Act
- Reg M
- Reg Z
- Fair Credit Reporting Act
- NCUA Lending Rules and Regulations
- IRS Reporting Requirements
- Various State Laws
- Federal Credit Union Act / State Credit Union Act
Laws and Regulations that Affect Operations

- Bank Secrecy Act
- Bank Bribery Act
- Right to Financial Privacy Act
- Information Security, NCUA Part 748
- Privacy, NCUA Part 716
- IRS Withholding and Reporting Requirements
- Various State Laws
- Federal Credit Union Act / State Credit Union Act

How the Regulatory Process works:

- First Step – Advanced Notice of Proposed Rulemaking
  - Optional Step – concept release is published

- Second Step – Proposed Rule: Open for Comment
  - Detailed proposed final rule published in Federal Register
  - Typically 30 – 60 days
  - Gather comments from the public

- Third Step – Proposed Rule: Comment Period Closed
  - Closed for comment awaiting final rule

- Fourth and Final Step – Final Rule
  - Effective at least 30 days after publication in the Federal Register.
  - Can be longer or shorter.
Why your involvement is key:

- Open for Comment
  - Considered a vital part
  - The agency reviews all comments
    - CUNA, Leagues, Credit Unions and Individuals can/should submit comments
  - Changes are made to proposed rule

- Final Rule
  - Once final, no going back

Where to find Tools for Compliance:

- Books and Manuals
  - CUNA Reg Trac
  - Federal Reserve Board – Consumer Compliance Handbook
  - NCUA Rules and Regulations
  - Federal Credit Union Act
  - State Credit Union Act
  - Bylaws
Where to find Tools for Compliance:

- Publications
  - InfoSight Newsletter
    - Highlights upcoming issues
    - Compliance Calendar
    - Emailed every week and available on our League website

Where to find Tools for Compliance:

- Websites
  - CUNA
    - http://www.cuna.org/regulations-compliance/
  - CUBE TV
    - Compliance Videos
Avoiding Common Pitfalls

Common Compliance Pitfalls

Deposit Accounts

- Reg D – Reserve Requirements
  - Not Understanding the Regulation
  - Refunding fees for excessive transactions
Common Compliance Pitfalls

Deposit Accounts

- Reg E – Electronic Funds Transfer
  - ATM Notice
  - Opt In for Overdrafts – POS / ATM
    - Written confirmation
    - Gas station transactions

Common Compliance Pitfalls

Deposit Accounts

- Reg CC – Funds Availability
  - Exception Hold Notices
    - Account Holder (new)
    - Account Number
    - Date of Deposit
    - Amount of Deposit (new)
    - Hold Amount
    - Date funds will be available
    - Reason for Hold
  - Employee Training
    - Required
Common Compliance Pitfalls
Deposit Accounts

- Truth in Savings - NCUA Part 707
  - APY vs. APYE
- NCUA Insurance Regulations

Common Compliance Pitfalls
Deposit Accounts

- IRS withholding and Reporting Requirements
  - Promotions & 1099-MISC/1099-INT
- Customer Identification Program
  - Four pieces of required information
    - Name, Birth date, address, and ID #
  - Failing to verify
    - Documentary or non-documentary methods.
Common Compliance Pitfalls

Lending

- Reg B – Equal Credit Opportunity Act
  - Age and Income Discrimination
  - Advertisements

- IRS Reporting Requirements
  - 1099 C
  - REQUIRED

Common Compliance Pitfalls

Lending

- Reg Z – Truth in Lending
  - Credit Card Applications and Open End Lines of Credit
    - New Application/Disclosures
  - Education Loans
    - Right of Recession
  - Higher Price Mortgages
    - Escrows
    - Average Prime Rate Offer
Common Compliance Pitfalls

*Operations*

- Right to Financial Privacy Act
- Information Security, NCUA Part 748
- Privacy, NCUA Part 716
Americans with Disabilities Act

- [http://www.access-board.gov/adaag/](http://www.access-board.gov/adaag/)
- Building Requirements:
  - Area of Rescue Assistance 4.3.11
  - Accessible Parking Spaces 4.6.4
  - Elevators 4.10.3 to 4.10.5
  - Alarm systems 4.28
  - Signage 4.30
  - Telephone 4.31

Bank Secrecy Act/PATRIOT Act

- Customer Identification Program Notice required before account opening
  - IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT
  
  To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver’s license or other identifying documents.
Current Financial Statement

- Month End - remain posted until next month
- Federal Bylaws require posted within 20 days
- State charters – check your bylaws, MI is 10 days
- NCUA share insurance logo
- Includes branch offices.

Equal Housing Lender Poster

- Posted in lobby and other areas where real estate related loans are made

- Federal Charters: NCUA’s Rules and Regulations, Section 701.31(d)(2)

- State Charters: 24 CFR Part 110.25(b)
Funds Availability Policy

- Model Clauses in Regulation CC
- Posted at each location where employees receive deposits.
- Not required at drive-through or night depositories

Home Mortgage Disclosure Act

- Posted in the main office AND at any branch located in a MSA

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, and income of applicants and borrowers; and information about loan approvals and denials. Inquire at this office regarding the locations where HMDA data may be inspected.
NCUA Share Insurance Signage

- Notice provided by NCUA
- All Federally Insured
- Post at each teller station where deposits are taken.
- Post on website if accept deposits and/or open accounts online.

Truth in Savings Act

- Lobby Sign visible mainly to members:
  - IF yield is mentioned must be stated using APY
  - Can include corresponding dividend rate
  - See employee for more information on fees and terms.
HR/Employee Bulletin Board

- Fair Labor Standards – Minimum Wage Poster
- FMLA Poster
- Employee Polygraph Protection Act Poster
- Equal Employment Opportunity Poster
- Occupational Safety and Health Act
- State Laws
  - Unemployment
  - Workers Compensation

Required Compliance Training
Bank Secrecy Act

- 31 USC 5318(h) requires an anti-money laundering program that includes ongoing employee training
- NCUA 748.2 (b) & (c) requires BSA program in writing, approved by the board that provides for training for appropriate personnel

Regulation CC – Funds Availability

- 229.19 (f)
- Employee training and compliance.
- Each bank (credit union) shall establish procedures to ensure that the bank complies with the requirements of this subpart, and shall provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee.
Regulation B: Equal Credit Opportunity

- Commentary to 202.15 (c)3

- Depending on the method and scope of the self-test and the results of the test, appropriate corrective action may include one or more of the following:
  - iii. Identifying and training and/or disciplining employees involved;

- Policy Statement on Discrimination in Lending, April 15, 1994

- Interagency Policy Statement of Fair Mortgage Lending Practices, October 9, 1992

NCUA Part 748-Security Program

- 5 Components of Security Program
  - Protect CU office from robbery
  - Ensure security and confidentiality of member records
  - Respond to incidents
  - Assist in identification of person who commit crimes
  - Prevent destruction of vital records

- Appendix A, III, C 2
  - Train staff to implement the credit union’s information security program
Board Members Role in Compliance

Fiduciary Duty

- **Duty of Care:**
  - This duty is a common law standard that holds directors to that degree of care which ordinarily prudent and diligent individuals would exercise in handling the affairs of others under similar circumstances.
  - This means that directors must participate actively and to the best of their ability through the work of the board in order to assure themselves that all
    - financial arrangements are safe,
    - that all employees operate in a legal and ethical manner, and
    - that all activities are within the law and regulations imposed on the credit union.
Fiduciary Duty

- **Duty of Loyalty:**
  - This is a general responsibility that prohibits directors from putting their personal interests above those of the credit union.
  - It can include anything from respecting the confidentiality of information received to transacting their personal business with the credit union at arm’s length.
  - This does not mean that directors may not conduct business with the credit union. However, directors must disclose any personal interest in matters before the board, and if necessary abstain from the related discussion and vote.

- **Duty of Candor or Disclosure:**
  - requires directors to provide full and open disclosure of all facts and circumstances which may impact the board’s deliberations on matters under consideration.
  - It can include disclosure of direct and indirect business and personal relationships with individuals seeking to do business with the institution as prospective members, borrowers, or vendors.
Fiduciary Duty

- Statutory and Regulatory Liability:
  - A director who fails to comply with applicable regulations, has engaged or participated in any unsafe or unsound practice in connection with the credit union, has committed or engaged in any act, omission, or practice that constitutes a breach of fiduciary duty of that person, and causes the credit union financial loss or other damage or that jeopardizes the interest of its members and depositors, could be subject to administrative remedies including removal from office and/or monetary fines.

Fiduciary Duty - Protection

- Business Judgment Rule
  - The business judgment rule requires directors act as prudent and diligent business persons when selecting, monitoring and evaluating management; when establishing business policies and procedures; when monitoring and assessing business operations; and when establishing and monitoring adherence to policies required by law, regulation, and principles of safety and soundness.
  - The rule guards against claims of negligence in the performance of duties, even if their decisions were wrong, as long as the behavior was guided by the good faith, objective and disinterested business judgment of the directors.
  - Appropriate levels of due diligence are required when investigating new products, services or investments, or before entering into contractual relationships with third parties. This requires appropriate documentation to support conclusions by directors in performance of their duties.
Fiduciary Duty - Protection

- Appropriate Indemnification Insurance
  - A certain amount of protection against individual director liability can be obtained through the purchase of indemnification and director and officer liability insurance. Directors should be familiar with any insurance provided by the credit union.

7 Compliance Rules for Board Members
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6) Ask for help.
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7) Read.

Contact Information

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