The Real Cost of Non-Compliance

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What We'll Discuss

- NCUA Categories of Risk
- Compliance Risk - Defined
- The Cost of Non-compliance
  - Regulations and Penalties
- The Role of Risk Assessments
  - Required by law
- Tools for Compliance
- Things to Consider

NCUA Categories of Risk

- Strategic
- Reputation
- Credit
- Interest Rate
- Liquidity
- Transaction
- Compliance
Compliance Risk

- Current and prospective risk to earnings or capital arising from violations of, or nonconformance with, laws, rules, regulations, prescribed practices, internal policies and procedures, or ethical standards.
- Compliance risk can lead to:
  - Diminished reputation
  - Limited opportunities
  - Reduced field of membership expansion potential
  - Lack of contract enforceability

From the NCUA...

“Compliance risk goes beyond a failure to comply with consumer protection laws. It encompasses all laws as well as prudent ethical standards, contractual obligations, and exposure to litigation. Compliance risk can blend into operational risk, transaction processing, and even legal risk, increasing the difficulty of identifying this risk.”

Civil Money Penalty

A punitive fine imposed by a civil court on an entity that has profited from illegal or unethical activity.
Penalties to the Credit Unions
- Cease and Desist Order
- Loss of charter
- Criminal money penalties up to the greater of $1 million or twice the value of the transaction.
- Civil money penalties.

Small Asset CU Fined $300K
- $4 million in assets
- Only five employees
- Willfully violated BSA
  - Contracted with third party vendor and Money Service Businesses located in high risk areas outside of FOM
  - $1.01 billion in outgoing wires
  - $984 million in remotely captured deposits
- Did not assess risks in addition to other deficiencies.

Penalties to the Individual
- Removal and bar from banking (criminal and civil).
- Criminal fine of up to $250,000, five (5) years in prison, or both for willful violations of the BSA and for structuring transactions to evade BSA reporting requirements.
- Criminal fine of up to $500,000, ten years (10) in prison, or both for violating BSA and any other U.S. law or engaging in a pattern of criminal activity.
- Civil money penalties.
**Flood Disaster Protection Act**

- Civil money penalties of $385 per violation and up to $110,000 annually.

- If a CU has not met all the requirements of the Act and the borrower sustains a loss due to flooding, the CU may run the risk of being held liable in a negligence suit.

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**What if this is your collateral?**

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**SAFE Act**

- NCUA has authority to take enforcement actions against Federally-insured credit unions and employees who violate the SAFE Act and regulation under 12 U.S.C. 1786.

- May include civil money penalties.
COPPA

- Both NCUA and FTC have the authority to assess:
  - Civil penalties of up to $11,000 per violation
  - Plus enforcement actions

Privacy – Consumer Info

- There are no civil liability provisions in the regulation; however, state law may provide a basis for an individual to sue the credit union for compliance problems.

OFAC

- Vary depending on specific law violated
- Corporate or personal penalties up to $1 million and 12 years in jail
- Civil penalties up to $250,000/incident
- Forfeiture of funds involved in violation
- Plus criminal penalties

- Year end 2014
  - 23 Penalties or Settlements
  - Total of $1,209,298,807
Reg Z
Credit unions are required to refund amounts to consumers if clear and consistent patterns of improper disclosure of annual percentage rates or finance charges are made.
- Improper disclosures must have misled consumers adversely as to the cost and rate of credit offered.
- Willful and knowing violations may result in fines up to $5,000, up to one year’s imprisonment, or both.

Reg B
- NCUA refers matters to U.S. Attorney General.
- Credit union could be liable for actual damages.
- As well as punitive damages up to $10,000 in individual suits.
- Up to the lesser of $500,000, or 1% of the credit union’s net worth in class action suits.

Credit Practice Rule
- NCUA has the enforcement authority to declare unfair or deceptive trade practices of FCU’s, to investigate such practices, and to issue rules regulating such practices.
- NCUA may take administrative action if such prohibited practices are identified.
- FCU’s engaging in prohibited practices are also exposed to suit by the victims of such practices.
HMDA

- Administrative sanctions, including civil money penalties, may result from intentional violations of this regulation.
- Typically, the agency requires the institution to collect/correct and (re)submit the information which imposes a work burden that acts as a penalty.

FHA – HUD

Penalties imposed by HUD are tiered based on number of prior discriminatory practices:
- None - Amount not exceeding $10,000.
- Two or More - An amount not exceeding $25,000 or $50,000 depending on timing of violations.

FHA – US Attorney General

- Such preventative relief, including:
  - A permanent or temporary injunction
  - Restraining order
  - Other order against the person responsible for the discriminatory practice that is necessary to ensure that the rights under this Act are enjoyed;
- Such other relief as is deemed appropriate by the court, including monetary damages; and
- Civil money penalties
  - Not exceeding $50,000 for the first violation and
  - Not exceeding $100,000 for any subsequent violation.
### HOPA

Credit unions violating HOPA are liable to borrowers as follows:

- **Individual Action:** Actual damages, statutory damages not to exceed $2000, reasonable attorney’s fees and court costs.
- **Class Action:** Statutory damages up to the lesser of $500,000 or 1% of the credit union’s net worth, cost of the action and reasonable attorney’s fees.

### RESPA

**Servicing Disclosures:**

- Actual damages; plus up to $1000 per individual.
- Where a class action is involved, the penalties are actual damages, plus up to $1000 per individual in the class, but not to exceed the lesser of $500,000 or 1% of the credit union’s net worth.

**Escrow Procedures:**

- $50 per incident, but not more than $100,000 in any 12 month period.
- If the incidents appear to be intentional, the penalties are $100 per incident, with no upper limit.

### Reg CC – Funds Availability

Credit unions can be held liable for:

- Actual damages.
- Not less than $100 nor more than $1,000 for individual actions the lesser of $500,000 or 1% of net worth for class actions, and reasonable attorney’s fees.
Reg E - EFT

In a successful suit brought by a member, the credit union could be liable for:

- Actual damages
- Punitive damages up to $1,000 in an individual suit
- Up to $500,000, or 1% of the net worth of the credit union in a class action suit.

Reg D - Reserves

- Federal Reserve Bank can assess penalties at a rate of 2 percent per year above the lowest rate for borrowing from the Federal Reserve Bank.
- Violations could also result in assessment of civil money penalties or cease-and-desist proceedings.

TISA

- Penalties in regulation were rescinded.
- Regulators still have authority to enforce restitution orders when necessary.
Required Risk Assessments

- BSA/OFAC
- ACH
- Vendor Management
- Identity Theft/Red Flags
- Internet Banking Risk Assessment
- Information Security
- E-Commerce/RDC
- Remote Banking
- IT Functions – Patch Management/Remote Access
- Fair Lending – Best practice

Tools for Compliance

- Review your risk assessments taking into account the potential risk beyond compliance.
- Consider the impact of deficiencies and potential fines assessed on the various categories of risk.

Things to Consider

- Strategic
- Reputation
- Credit
- Interest Rate
- Liquidity
- Transaction
- Compliance

- How would the potential cost of non-compliance affect our overall goals for growth?
- How would a violation resulting in a penalty affect our capital position?
- How would lack of compliance limit our ability to offer new products or services?
Things to Consider

- Strategic
- Reputation
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- Compliance

- How would a violation of this regulation or rule be viewed by our members?
- How could this negatively affect our credit union’s reputation in the community? Industry?

- How would deficiencies in our lending compliance affect loans quality?
- What would be the overall impact to our credit risk?

- What if we must liquidate investments to pay for penalties assessed?
### Things to Consider

- **Strategic**
- **Reputation**
- **Credit**
- **Interest Rate**
- **Liquidity**
- **Transaction**
- **Compliance**

1. **What would the credit union do if a fine was assessed and there were not enough liquid assets to pay it?**
2. **How much would we need to have in reserve to cover potential cost of non-compliance?**

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### Things to Consider

- **Strategic**
- **Reputation**
- **Credit**
- **Interest Rate**
- **Liquidity**
- **Transaction**
- **Compliance**

1. **How would a weakness in compliance expose our members to higher risk of fraud?**
2. **How would weak internal controls limit our ability to offer/deliver the products and services our members need?**

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### Things to Consider

- **Strategic**
- **Reputation**
- **Credit**
- **Interest Rate**
- **Liquidity**
- **Transaction**
- **Compliance**

1. **How does non-compliance increase our risk for penalties, enforcement actions and law suits?**
2. **What affect does deficiencies have to our credit union operations as a whole?**
Let’s Review

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Thank you for your time!

Optional – Demo Time