

Regulatory Compliance News



MOUNTAIN WEST
Credit Union Association

March 9, 2018

Compliance News

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...but what if our bylaws are silent?

Last week we discussed the bylaws as a good resource to determine the credit union's procedures for conducting the annual meeting. In fact, the bylaws are the principal authority for the credit union's governance. But, what if the bylaws are silent on a particular matter? If the bylaws do not address a particular topic related to governance, then the credit union should look to the state law on corporations. Both Arizona and Colorado state-chartered credit unions are corporate entities. See A.R.S. § 6-507(B) ("On receipt of the superintendent's certificate of approval the incorporators shall file the certificate of organization, with the certificate of approval attached, with the corporation commission and record a certified copy of the filing under the seal of the commission with the county recorder of the county or counties in which the credit union is to do business. On proof of the recording, the corporation commission shall issue a certificate of incorporation to the credit union.") See also, C.R.S. § 11-30-101(5) (Upon filing of the articles of organization "the credit union shall become a body corporate having the powers enumerated in section 7-103-102, C.R.S., except as otherwise provided or limited [by the credit union act]"). For federally-chartered credit unions, the NCUA typically refers credit unions to the state law where their principal office is located to address governance issues. For example, the NCUA standard bylaws provide that "Notice of all meetings will be given in the manner the board may from time to time by resolution prescribe." If the board has not adopted such a resolution, or holds a meeting without giving the notice established by such a resolution, does the failure of notice invalidate the meeting? The NCUA bylaws give no further guidance on the matter but state laws do address this.

In Arizona, the general non-profit corporation laws state that:

A. A director may waive any notice required by chapters 24 through 40 of this title, the articles of incorporation or bylaws before or after the date and time stated in the notice. Except as provided in subsection B of this section, the waiver shall be in writing and signed by the director entitled to the notice, or by electronic transmission, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any

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InCompliance Implementation Materials

The Association's InCompliance Materials are provided to help your credit union meet the challenges of implementing new and changing regulations. InCompliance publications provide you with a brief summary of the rule to quickly assess its impact, a detailed analysis for compliance staff charged with implementation, sample policies, implementation checklists and, as appropriate, sample forms. In addition, these materials are updated with Q&As (InResponse), and other materials such as charts and matrices as questions are raised and issues are identified.

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required notice to the director of the meeting unless the director at the beginning of the meeting or promptly on the director's arrival at the meeting objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

See A.R.S. § 10-3823.

In Colorado, the general non-profit corporation statutes provide that:

- (1) A director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice. Except as provided by subsection (2) of this section, the waiver shall be in writing and signed by the director entitled to the notice. Such waiver shall be delivered to the nonprofit corporation for filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.
- (2) A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless:
 - (a) At the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting; or
 - (b) If special notice was required of a particular purpose pursuant to section 7-128-203 (2), the director objects to transacting business with respect to the purpose for which such special notice was required and does not thereafter vote for or assent to action taken at the meeting with respect to such purpose.

See C.R.S. § 7-128-204.

Finally, the general non-profit corporation statutes of Wyoming state that:

- (a) A director may at any time waive any notice required by this act, the articles or bylaws. Except as provided in subsection (b) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this act the articles or bylaws objects to lack of notice and does not thereafter vote for or assent to the objected to action.

See Wyo. Stat. Ann. § 17-19-823.

This is just one example of when a credit union can look to state statutes for answers to governance questions not addressed by its bylaws.

PayPal Settles FTC UDAP Charges

The [FTC has announced that it has reached a settlement with PayPal](#), Inc. over allegations that the company told users of its Venmo peer-to-peer payment service that money credited to their Venmo balances could be transferred to external bank accounts without adequately disclosing that the transactions were still subject to review and that funds could be frozen or removed. A [complaint filed by the FTC](#) also charged that Venmo misled consumers about the extent to which they could control the privacy of their transactions. In addition, Venmo misrepresented the extent to which

expectations with AffirmX. CCRS is a supervisory policy for evaluating a financial institution's adherence to consumer compliance requirements. By adding AffirmX to your team of experts, a credit union can meet examiner expectations to proactively prevent, self-identify, and correct compliance issues. AffirmX is the leading cloud-based compliance solution that delivers a near-real time risk-based dashboard of your compliance operations. AffirmX provides document review for all areas of regulatory compliance, including ACH, Advertising, BSA, Deposits, Loans, and Operations, as well as helps you create and manage your Cybersecurity Risk Assessment.

For more information about our compliance services, please contact Melia Heimbuck at: mheimbuck@mwcu.com or (720) 479-3325 or 1 (800) 477-1697 ext. 3325



Advertising

When your credit union is considering a new - or thinking of making changes to an existing - product or service, you will definitely want to review the Advertising channel to be sure you are in compliance with the necessary requirements. These include not only the general rules for advertising specific products and services such as accounts, loans, safe deposit facilities and raffles, but also includes topics such as CAN-SPAM, NCUA signage requirements, prescreen opt-out notices, social media risk management and more.

InfoSight -- [AZ](#), [CO](#), [WY](#)

Compliance Videos

Compliance Outlook for Q1 and Q2 2018

In this NEW video, Glory LeDu provides the [overview of what's ahead in the compliance world for 2018](#). This covers annual threshold updates, HMDA changes, Payday Alternative Loans, Military Lending Act, ACH Same-day ACH processing and more!

Just a reminder that Compliance videos since 2016 can be found on YouTube at [the Compliance Connection channel](#), where they are generally updated quarterly.

Advocacy Highlight

S. 2155 – Economic Growth, Regulatory Relief & Consumer Protection Act

The Economic Growth, Regulatory Relief, and Consumer Protection Act – S. 2155 contains several provisions that would significantly reduce regulatory burden for community financial institutions like credit unions. These

consumers' financial accounts were protected by "bank grade security systems," and violated the Gramm-Leach-Bliley Act's Safeguards and Privacy Rules. As part of the [proposed settlement](#), Venmo is prohibited from misrepresenting any material restrictions on the use of its service, the extent of control provided by any privacy settings, and the extent to which Venmo implements or adheres to a particular level of security. Venmo is also required to make certain disclosures to consumers about its transaction and privacy practices, and is prohibited from violating the Privacy Rule and the Safeguards Rule. Consistent with several past cases involving violations of Gramm-Leach-Bliley Act Rules, Venmo is required to obtain biennial third-party assessments of its compliance with these rules for 10 years.

Source: FTC

Service Animals in the Credit Union – Q&A from CUNA

Q: We are seeing a much broader range of service animals entering the credit union with members who are not obviously using them to perform specific tasks. Sometimes the animals are not very well behaved. What are our obligations under the ADA to ensure that our members with disabilities are protected from discrimination, while at the same time maintaining a safe environment for all of our members?

A: Credit unions are not the only businesses that are struggling with the growing number and variety of "service animals". Many of us have seen the recent news reports about airlines tightening their policies due to mishaps by "emotional support" turkeys, snakes, and other unconventional animals. Additionally, many states have passed laws to crack down on people who try to pass off their pets as "service animals."

While both the Air Carriers Access Act (ACAA) and the Fair Housing Act (FHA) call for modification of [no pets] policies for "emotional support animals", the American with Disabilities Act (ADA) only addresses "service animals", and states that the "provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks" of a service animal as defined by the ADA.

[Click here for the rest of the CUNA Blog.](#)

Source: CUNA Compliance Blog



MOUNTAIN WEST
Credit Union Association

Training & Events Calendar

2018 Webinars

March 14

Webinar: [ACH Rules Update 2018](#)

March 15

Webinar: [Flood Insurance Compliance Review & Update 2018](#)

March 20

changes would allow credit unions across the country to more fully serve their members' needs, from mortgages to small business loans.

Section 101 - provides relief from some of the requirements of the Qualified Mortgage rule for certain lenders who hold mortgage loans in portfolio. Treating loans held on balance sheets in this manner is especially appropriate for credit unions not only because they retain all of the risk involved with these mortgages and are subject to significant safety and soundness supervision from their prudential regulator, but also because they frequently have unique knowledge of their members' financial circumstances.

Section 104 - includes changes to Home Mortgage Disclosure Act reporting requirements, including raising the threshold for reporting to 500 closed-end and open-end loans in a calendar year.

Section 105 - presents a simple fix, based on consistency and fairness that could significantly reduce constraints and free up billions in capital for economic development. Under current law, when a bank makes a loan for the purchase of a 1-4 unit, non-owner-occupied residential property the loan is classified as a residential real estate loan. On the other hand, credit unions that make such loans are forced to classify such loans as business loans.

Section 108 - addresses long-held concerns about Property Assessed Clean Energy (PACE) loans; namely, that the same consumer protections in place with respect to mortgage lending are nonexistent for PACE loans.

Section 110 - removes the three-day wait period required for the combined TILA/RESPA mortgage disclosure if a creditor extends to a consumer a second offer of credit with a lower annual percentage rate.

Section 303 - is an important step toward improving protection for seniors by providing legal immunity for properly trained financial services employees who disclose concerns about financial exploitation of senior citizens.

Section 501 - requires Treasury to conduct a study on the risks that cyber threats may pose to financial institutions. This is particularly important due to recent data breaches, which cause tremendous disruption and impose significant costs to credit unions.

If this bill becomes law, credit unions and their members will benefit directly in a variety of ways. Credit unions will be able to make the process of getting a mortgage loan simpler and faster. Local communities will have better access to affordable housing as credit unions are able to provide more loans for rental properties. Finally, and most importantly, with less regulatory burden, smaller financial institutions like credit unions can concentrate more on

Webinar: [Recent Call Report Changes & Top 10 Errors](#)

March 21

Webinar: [Compliance & Legal Risks in Mobile Banking: Rules & Security Requirements](#)

March 22

Webinar: [Completing the CTR Line-by-Line Effective May 28, 2018: Technical Changes, New Data Fields & Alternate Model Reporting](#)

March 28

Webinar: [Collections & The Servicemember: From the MLA to SCRA](#)

April 3

Webinar: [FFIEC Cyber Security Assessment Tool: Issues & Answers](#)

April 4

Webinar: [BSA Special Risks: Policy, Law Enforcement & Regulator Issues](#)

April 5

Webinar: [Dealing with Dormant Accounts, Unclaimed Property & Escheatment](#)

April 9

Webinar: [ADA Website Compliance: Requirements, Common Issues & Litigation](#)

April 10

[BSA Officer Training - Denver](#)

April 12

Webinar: [Impact of Reg CC Rule Changes on RDC & ACH](#)

April 17

Webinar: [How to Complete & File UCC-1 Financing Statements](#)

April 18

Webinar: [Compliance Rules All Staff Must Know: Red Flags for Identity Theft, Bribery, Privacy & Ethical Considerations](#)

April 19

Webinar: [Top 25 Things to Know About Reg CC Changes Before July 1, 2018](#)

April 26

Webinar: [Denied Loan Requirements: Consumer, Commercial & Real Estate](#)

**For 2018 webinar questions, please contact MWCUA@cuwebtraining.com.*

BSA Officer Training – Denver

[BSA Officer Training will be held on April 10](#) in Denver, CO. Led by compliance expert Mary-Lou Heighes, credit union BSA professionals are invited to attend a full-day seminar that will provide new and experienced BSA officers not only the newest information as it relates to the Bank Secrecy Act and OFAC requirements, but also the fundamentals of the duties of being a BSA Officer. **An added bonus!** Special Agents from the Denver office will speak to attendees regarding information on Conducting & Documenting a SARs Investigation. Don't miss this chance to find out what happens to your SARs information once you've reported it. The cost is \$229 per person and includes instruction, materials and lunch. Click below

-serving their members, rather than spending hours complying with unnecessary regulatory burdens originally intended for Wall Street.

Make your voices heard.

- [Contact your Senator and ask them to vote YES.](#)
- If you are a MAP credit union, [activate your members.](#)
- Educate your staff about this crucial vote and encourage them to [tweet](#), [call](#), and [email](#) their Senators, and here are [recommended social media posts](#).

S.2155 is bipartisan, common-sense reform legislation that will protect seniors from elder abuse, make mortgage processing easier and quicker, increase affordable rental housing in our communities, and help credit unions provide better service to their members.

You have been advocating for common-sense regulation for over a year now and this is the week where we get a crucial vote in the Senate. Your voices helped get this bill to the floor. Now it's time for Congress to fight for the 110 million Americans who depend on credit unions.

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. To receive this update, click on "Get CUNA Updates" on the [CUNA Advocacy Page](#). Additional Advocacy efforts may also be found under [CUNA's Removing Barriers blog](#). With the recent updates to CUNA's website, Advocacy information has also changed. To view recent advocacy issues and see ways your credit union can become involved, visit the [Priorities](#) or [Actions](#) pages.

Effective Dates New and Revised Rules

March 16, 2018

- [Same-day ACH - Phase 3 \(Final phase\)](#)

April 19, 2018

- [Amendments to 2013 Mortgage Rules under RESPA/Reg X and TILA/Reg Z](#)

May 11, 2018

- [Customer Due Diligence/CDD](#)

May 25, 2018

- [EU's General Data Protection Regulation](#)

July 1, 2018

- [Availability of Funds and Collection of Checks/Reg CC](#)

for more information and to register. Contact jweiser@mwcu.com with registration questions.

- April 10: [Denver, CO](#)

CUNA Comment Calls – Due Dates on Proposed Rules

March 5, 2018~Federal Reserve
[Consumer Leasing \(Regulation M\)](#)

March 27, 2018~CFPB
[Bureau Civil Investigative Demands and Associated Processes](#)

March 30, 2018~FHFA
[Credit Score Requirements](#)

April 2, 2018~NCUA
[Modernizing Data Collection for Supervision of Credit Unions](#)

April 2, 2018~NCUA
[Involuntary Liquidation of Federal Credit Unions and Claims Procedures](#)

April 6, 2018~CFPB
[Bureau Rules of Practice for Adjudication Proceedings](#)

April 13, 2018~CFPB
[Bureau Enforcement Processes](#)

April 30, 2018~CFPB
[Consumer and College Credit Card Agreements](#)

May 21, 2018~CFPB
[RFI re Bureau's Supervision Program](#)

May 29, 2018~CFPB
[RFI re Bureau's External Engagements](#)



Compliance Calendar

April 29, 2018
• 5300 Call Report Due to NCUA

May 28, 2018
• Memorial Day – Federal Holiday

July 4, 2018
• Independence Day – Federal Holiday

July 29, 2018
• 5300 Call Report Due to NCUA

September 3, 2018
• Labor Day – Federal Holiday

October 8, 2018
• Columbus Day – Federal Holiday

November 12, 2018
• Veterans Day (observed) – Federal Holiday

October 1, 2018

- [Amendments to the Integrated Disclosure Rule](#)

January 1, 2019

- [HMDA Thresholds/Reg C](#)

January 1, 2019

- [Risk-Based Capital](#)

April 1, 2019

- [Prepaid Accounts under the EFT Act/Reg E and TILA/Reg Z](#)

August 19, 2019

- [Payday Lending, Vehicle Title, and Certain High-Cost Installment Loans](#)

January 1, 2020

- [HMDA Threshold/Reg C](#)

December 15, 2020

- [Current Expected Credit Losses](#)

January 1, 2022

- [Amendments to Equal Credit Opportunity Act \(Reg B\) Ethnicity and Race Information Collection](#)

**For detailed information on rules and effective dates, click [here](#)*

Please respond to [Mark Robey](#) with any questions or concerns regarding content of this newsletter.

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