

Legal Issues Facing Credit Unions

Presented by:

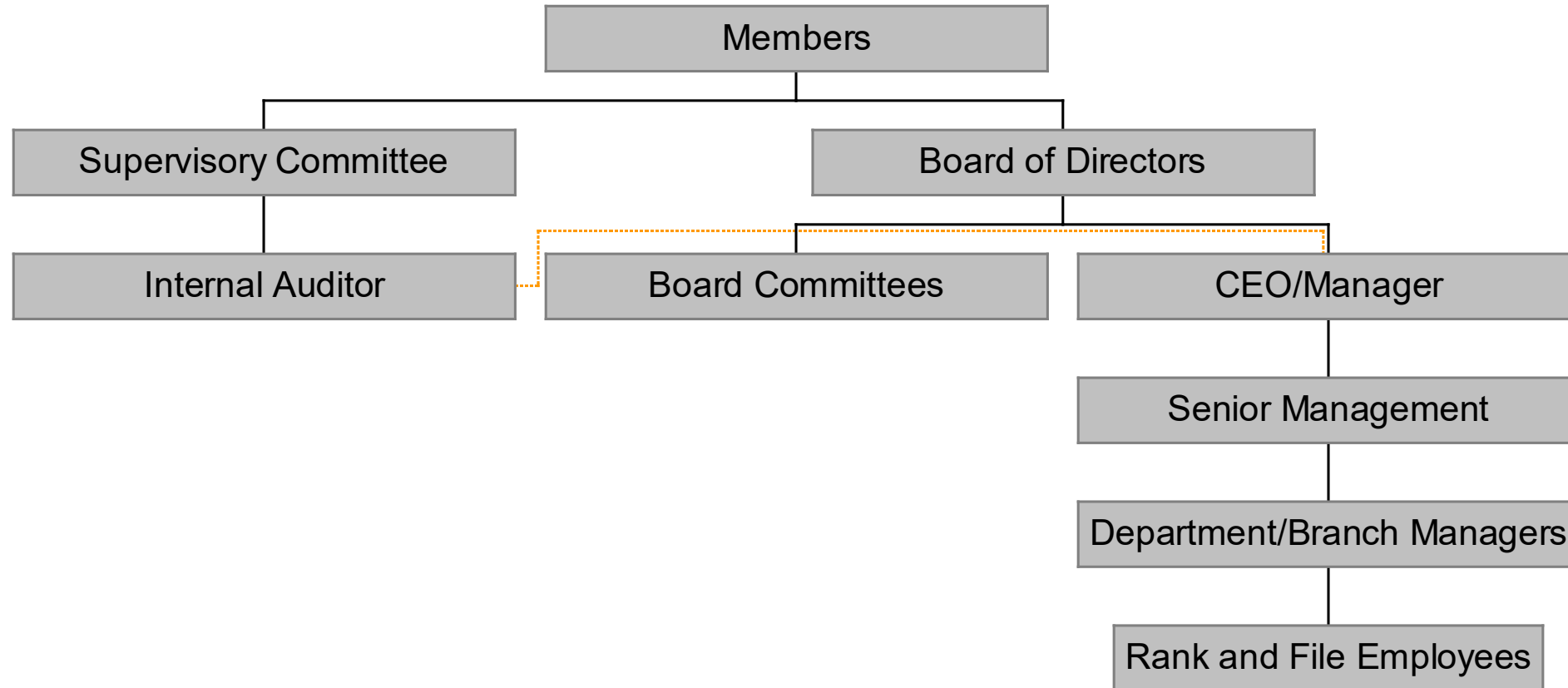
Christopher J. Pippett, Esquire



RKL Credit Union Seminar

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Board/Executive Management Relations



Board/Executive Team Relations

Duty of....

- Care
- Loyalty
- Obedience to the Law

All of these duties apply to officers, directors and supervisory/audit committee members of credit unions.

Board/Executive Team Relations

- Board Duties vs. Executive Management Duties.
 - Who does what?
 - How far should a board go into day-to-day operations?
 - What information is the board entitled to from executive management?
 - Can (should) the board communicate directly with members of the executive team?
 - What information should be provided to the board?
 - Financial Information
 - BSA
 - Fair Lending
 - Data Security

Board/Executive Team Relations

How to avoid problems

- Active board recruiting program
- Maintain confidentiality
- Periodic evaluations
- Succession planning/term limits
- Continuing education

Whistleblower Claims

- Whistleblower Policy
 - Where is it set forth?
 - Who is responsible for receiving/monitoring complaints?
 - Does it clearly state:
 - What should be reported?
 - Where it should be reported?
 - That no retaliation will be taken?
 - Are employees aware of it?
 - Who is responsible for investigating and/or responding to complaints?

NCUA Supervisory Priorities

- Interest Rate Risk
- Liquidity Risk (Don't be SVB)
- Credit Risk
- Fraud Prevention and Detection
- Information Security
- Succession Planning

Class Action Lawsuits

Overdraft/NSF Fees

- APSN
- Available vs. Ledger Balance
- Multiple NSF fees on one item

Repossession Cases

- Repossession Notices
- Deficiency Balance Notices

Solar Panel Lending

- Vendor due diligence and contract review is a must!

Government Investigations

- Proceed with caution – even if it is not the credit union that is being investigated.
- Reach out to counsel.
- Request a Subpoena.
- If it's the credit union that is being investigated, follow counsel's instructions regarding internal communications.
- Always keep privacy and other legal requirements regarding members in mind when responding or providing information.

Fair Lending

Targeted internet marketing and AI is all the rage but is it safe? What should you watch out for?

- Facebook – case study

How can you monitor third parties, like appraisers for bias?

- Connolly & Mott v. Lanham et al. – case study

You thought redlining was a thing of the past, but it is back! How can you identify and mitigate potential risks?

Fair Lending – Minimizing Risk

- Review policies and procedures.
- Review vendor relationships, especially appraisers.
- Educate personnel from the board to staff.
- Examine automated processes for bias, intentional or unintentional.
- Examine HMDA report information and other results.
- Conduct a thorough assessment of community financial product needs.

Fair Lending – Minimizing Risk

- Review personnel deployment, abilities and characteristics.
- Review vendor relationships, especially appraisers.
- Regular reporting to the board regarding efforts and results.
- NCUA Fair Lending Guide.
- Have an independent review of performance performed.
- If contacted by the DOJ or NCUA regarding commencement of an exam or investigation, involve counsel.

Document all of the above!

Reg. E Claims

- Unauthorized EFT - Reg E 1005.2(m):
- 3 elements:
 - Transaction initiated by someone other than cardholder/account owner
 - Person initiating transaction - no actual authority
 - Cardholder received no benefit from transaction
- EFT is not unauthorized when:
 - Owner gave other person authority to use access device, even if authority exceeded (until owner notifies financial institution)
 - Authorized order but goods/services not delivered or poor quality

Reg. E Claims

Don't blow the deadlines!

- Issuer must complete investigation or issue provisional credit within 10 *business* days after oral or written notice of error.
- Applies if notice is received within 60 days after first statement showing error.
- Asking for written confirmation doesn't stop the clock.
- Final completion of investigation within 90 calendar days for debit card POS transactions or 45 *calendar* days for others, if provisional credit given (or not required because issuer asked for written confirmation and didn't get it).

CFPB Proposed Rule – Credit Card Fees

- Targeting late fees on credit card accounts.
- The proposal would:
 - Adjust the safe harbor dollar amount for late fees at \$8 and eliminate a higher safe harbor amount for late fees for subsequent violations of the same type occurring within the same billing cycle or in one of the next 6 billing cycles;
 - Provide that the current provision that provides for annual inflation adjustments would not apply to the late fee safe harbor amount and
 - Provide that late fee amounts must not exceed 25% of the required payment.

CFPB “Shoddy Data Security Practices” Circular August 11, 2022

“Financial companies are at risk of violating the Consumer Financial Protection Act *if they fail to have adequate measures to protect against data security incidents.*”

Fraud – It's still around!

Employee
or Director
Dishonesty
(11% of claims,
28% of dollars)

Zelle/P2P
Fraud

Spoofed
Websites

Fraudulent
Checks

Altered
Checks



Zelle/P2P Fraud – Steps you can take!

- Introduce Zelle/P2P with lower daily limits (limits can be raised later)
- Require members to enroll for Zelle in person at a branch or through call center after they are properly authenticated (active enrollment)
- Don't allow password resets using unregistered devices
- Block / delay Zelle/P2P transfers that occur immediately following a password reset
- Consider a rule for a lower limit for new tokens
- Deploy real-time fraud monitoring system with behavioral analytics leveraging AI and machine learning
- Include a statement in texts and emails containing 2-factor authentication passcodes:
 - If you did not request this passcode call the credit union immediately. Don't share this passcode with anyone. Credit union employees will never ask for this passcode.
- Disable Zelle/P2P during the midst of the fraud
- Member education – website, newsletters, and special mailer

Check Fraud – Steps you can take!

- Close account and issue new account number
- Determine if member reported the unauthorized checks within the timeframe outlined in account agreement
- If applicable, pursue breach of presentment warranty claim against depository institution
- Perform manual review of large dollar checks (e.g., \$25,000 or more) presented for payment
 - Call member to verify he/she issued the check to the stated payee for the amount listed (verify that phone number was not changed in the last 60 days prior to making the call)
- Review must be performed timely
- Consider offering payee positive pay to business members

Member Expulsion Rule

- Expulsion Policy must be provided to each member in written or electronic form.
- Board may vote to expel a member for “cause” by 2/3 vote of a quorum of directors.
- Member must be notified of the pending expulsion and the reason for the expulsion in specific terms.
- Notice must also clearly state the member’s right to request a hearing from the board of directors of the FCU (as opposed to the members of the FCU) within 60 days of the member’s receipt of the notice.
- If the member does not request a hearing during the 60-day period, the member shall be expelled after the end of the 60-day period.

Member Expulsion Rule

- “Cause” for expulsion includes:
 - A substantial or repeated violation of the membership agreement.
 - Material Loss to the credit union.
 - Substantial or repeated disruption, including abusive behavior, to the operations of the credit union.
 - Fraud, attempted fraud, other illegal conduct that the member has been convicted of in relation to the credit union, including the federal credit union’s employees conducting the credit union’s business.

Christopher J. Pippett

610.458.6703

cpippett@foxrothschild.com



Fox Rothschild ^{LLP}
ATTORNEYS AT LAW