

Credit Union News

A Message from Superintendent Allard



Welcome to March! With March comes celebration of St. Patrick's Day, return to daylight savings time, and the official start of spring. In addition to these events, March is a busy time for the Ohio legislature as many pieces of legislation are being introduced, including the new biennial budget for the state of Ohio.

As you may know, during the last legislative session, Ohio House Bill 489 was signed into law and will take effect on March 20, 2019. This financial reform legislation included many revisions to the Ohio Credit Union Act, including some new authority for Ohio-chartered credit unions. Various other modifications were made to Ohio Revised Code statutes pertaining to service facilities/real estate, conditions for membership, membership termination, voting, board meetings, loan officers, exam frequency, and director compensation, just to name a few. Recently, a detailed synopsis of the bill was distributed to the credit union industry. If you did not receive this, it can be found [here](#).

Also coming up in April, we will be holding a regional roundtable for credit union CEOs and officers. Scheduled for Tuesday, April 30, at the Quality Hotel and Conference Center – Cincinnati Blue Ash, the roundtable provides an opportunity for you to meet with us, your regulators, for informal open discussions. A high priority topic will be changes made by H.B. 489. If you have other issues, things that keep you up at night, or areas you would like to have addressed at this meeting, please share them with Deputy Superintendent Robert Rutkowski, Robert.Rutkowski@com.state.oh.us. Additional information on the Cincinnati roundtable as well as the planning for additional events will be distributed in the near future.

Finally, I am pleased to announce that we are scheduling another session of Credit Union Directors training, to be held in October. Last Fall, we presented this training for the first time to 65 credit union directors to help them understand their importance in providing direction and oversight to their institution. Additional details on this training opportunity will be sent out later this summer.

As always, if you have any questions on these or any other topics, please feel free to contact me directly at Kevin.Allard@com.ohio.gov or 614-728-2631

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Blame the Axioms

Deputy Superintendent, Robert Rutkowski

Sometimes laws on the books for years and years can suddenly and unexpectedly appear new. Recently, we've had some discussion here regarding Ohio Revised Code sections §1733.25 and §1733.24. Even though one statute discusses lending and the other membership, they interact with each other. Given that membership in a credit union is so fundamental, it is axiomatic that credit unions can only lend to members. And, if axioms aren't good enough, R.C. §1733.25 makes it clear. It's not a shocking thing, really.

The potential for a misstep, however, comes into play when there's more than one person signing on a loan. Semantics are important here: multiple signers on loans can have different roles. Typically, these folks are either co-makers or guarantors. What's the difference? Co-makers receive the benefit of the proceeds of the loans. They are signing for the loan but they are also getting the benefit of it. Guarantors, on the other hand, are helping the borrowing member by agreeing to step into the shoes of the borrower should the borrower not make the payments on the loan. They get all the risk and none of the benefits of the loan. Now here's the area where there can be trouble: should all people who sign the loan papers be members?

If credit unions can only lend money to members then everyone a credit union lends money to, ipso-facto, needs to be a member. So here, the primary borrower needs to be a member. The co-maker who receives the benefits and the liability is also a borrower so he or she needs to be a member. What about the guarantor? The guarantor gets a break, he or she isn't receiving any proceeds. He or she is not a borrower. Guarantors don't need to be members.

What about the share statute? It used to be that a joint owner on an account needed to have his or her own account in order to be a member. In 2006, R.C. §1733.24 changed so that any owner of an account could be a member in his or her own right depending on what the credit union allowed in its Articles of Incorporation. Now this matters because

often loans signed by more than one person are signed by folks who share a relationship and thereby potentially their membership relationship are joint. They have one account which they own jointly. If a credit union were to have a situation where it had many co-makers who were not members on the credit unions books but did happen to be non-member joint owners on accounts, they could easily become members if the credit union's articles allowed for this. Moreover, the upcoming changes to R.C. 1733.05 will make things as simple as paying a fee to become a member. So even if a credit union has exposure, things can be fixed. On an ongoing basis, however, credit unions do need to be careful to lend only to their members-- if nothing else, for the sake of the axioms.

Examination Focus

Ida Neely, Chief Examiner

With recent changes to the Ohio Administrative Code and upcoming changes to the Ohio Revised Code, 2019 brings a new year of oversight within the Division of Financial Institutions- Credit Union Section. In addition to the review of how your Credit Union is responding to the changes to the O.A.C. and O.R.C., the following is a list of topics that will be reviewed.

*Bank Secrecy Act (BSA) Compliance

BSA compliance remains at the forefront. As credit unions look to or not to, accept Marijuana Related Business accounts (MRBs), the focus will be within the BSA controls associated with MRBs. Although not all credit unions will participate in MRBs, you must still implement policies and internal controls that ensure you are monitoring for the potential relationship.

Be reminded, the review level of BSA is precisely the same regardless if you are federally insured or privately insured.

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Examination Focus

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*Information Technology (IT)/Cybersecurity

Vulnerabilities in your Information Technology (IT) system will remain of concern until Cybersecurity is no longer an issue. As such, examiners will continue to focus on helping credit unions ensure they are taking steps to address cybersecurity risks. Within the Division, the assistance of Division's IT Examiner Team will be utilized to a fuller extent with that team having access to our examination questionnaires to determine if a more targeted follow-up should be scheduled with the credit union.

*Current Expected Credit Losses (CECL)

Although the implementation of CECL is not effective until January 1, 2022, examiners will be looking to determine where a credit union is in the impact analysis process. As you know, the impact on the Allowance for Loan and Lease Loss could be significant.

*Liquidity

As the economy is projected to see fluctuations in 2019, the monitoring of liquidity positions is prudent. The current plan is to review the liquidity position of all credit unions on a quarterly basis and at your individual credit union during the examination.

Your examiner is here to help you operate safely and within regulations. Remember to reach out to your examiner and ask questions. We all have the same goal--the protection of your members through the safety and soundness of your credit union.

Medical Marijuana

Ingrid White

House Bill 523 legalized medical marijuana in Ohio in September 2016. As the program continues to ramp up, financial institutions have been considering their appetite and preparedness to bank marijuana-related businesses (MRB).

An informal telephone survey shows Ohio's banks are at different points in their decision-making process. Some are still considering whether to participate in the industry while others indicated that they have a policy in place. Wherever banks are in the process, there are a few things to keep in mind.

First, if they haven't already, banks should have discussions about participation in the industry at the board level and consider developing and adopting policies for deposits and/or loans for MRB clients. Topics that can be discussed in these policies include account opening and closing procedures, account fees, internal controls for high cash volumes, source of funds tracking, board reporting frequency and, for lending relationships, concentration limits and ALLL methodology.

Second, banks should review their Customer Information Program (CIP) and Customer Due Diligence/Enhanced Due Diligence (CDD/EDD) procedures to ensure they include steps to ascertain whether the customer is an MRB. This will allow the institution to identify when to apply its MRB policies. One thing to note is that, if an MRB customer is intent on seeking an account relationship, they may try to hide their true identity and purpose for the account by using a misleading name, inaccurately describing business operations, structuring cash deposits or through other means. Additionally, businesses that act as ancillary businesses to MRBs may not be captured. Since both MRBs and ancillary companies may require some form of BSA reporting, a bank that relies on its existing CIP and CDD may inadvertently open and manage an MRB account or ancillary account that is not compliant with BSA reporting requirements.

Third, whether an institution opts to work with MRBs, it should be prepared for MRB-related questions during the examination process.

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Medical Marijuana continued

Division examiners for both banks and credit unions are now asking questions about MRB risk assessment, BSA management and, if applicable, board policies and procedures for the provision of account services to MRBs.

If the institution has decided to open MRB accounts, examiners will ask whether the board has approved policies relative to MRBs. Examiners will also ask whether the institution has a written risk assessment for the MRB relationships or business line, and whether the institution has confirmation from third party providers that they will service the program (e.g., armored car company, ATM servicer, correspondent financial institutions, etc.).

Institutions that intend to open MRB accounts should also ensure their EDD form captures all appropriate information for the MRB and related individual(s), and they should revise their BSA policies to incorporate the increased reporting requirements for the MRB relationship. The BSA officer and staff must be properly trained, internal controls for red flag monitoring should be ensured and procedures for the filing of Limited/Priority/Terminated SARs should be adopted.

Also, examiners will inquire whether a legal opinion has been obtained to ensure the board and management have a full understanding of federal and state laws that may be applicable, including the seizure of property, forfeiture/subordination of collateral and uninsured losses. Financial institutions with MRB accounts should also have a contingency plan that details the closure of the account relationship should there be changes in federal or state law.

Banks that would like more information on how to comply with the FinCEN guidance for the Limited/ Priority/Terminated SAR filing procedures can contact FinCEN at 800-767-2825 or FRC@fincen.gov.

Board of Director Elections and the Members Annual Meeting

Dina Messina

Now's the time when many credit unions throughout Ohio host their annual meetings to elect their board of the directors for the year. There are several ways in which such an election can be structured, including:

- In-person voting
- Mail, electronic or telephone ballots
- Proxies

These methods may be used in combination with one another to achieve a members' quorum or one method may be chosen, provided these methods are not restricted in a credit union's code of regulations and the method ultimately obtains the members' quorum necessary to hold a meeting of the members.

Elections can be contested or uncontested. If an election is uncontested, candidates may be deemed elected by acclamation. However, even when election by acclamation occurs, an annual meeting for the election of directors must still take place. Election by acclamation simply means the uncontested members running for the board are elected without a ballot vote at the credit union's annual meeting.

In addition, a contested or uncontested election does not determine a credit union's voting methods (i.e. mailed ballots/proxies). What drives the need for other types of voting methods, other than in-person voting, is the requirement to meet the members' quorum as listed in a credit union's code of regulations. Voting methods other than in-person voting at the annual meeting need approval by the division or the division-approved forms may be used (these forms will be forthcoming).

To recap, credit unions are required to host an annual meeting to elect its board of directors, as well as address other business. Contested and uncontested elections are not the determining factor for the type of voting method chosen, and the members' quorum must be met at the annual meetings for the meeting itself to be considered valid.

Anyone with questions related to the election of officers, the annual meetings themselves or voting method process, can contact the division at 614-728-8400.

SAVE
THE
DATE

NASCUS / CUNA BANK SECRECY ACT OHIO CONFERENCE

April 23–24, 2019
8:00 a.m.–5 p.m.

Sheraton Columbus Hotel at Capitol Square
75 East State Street
Columbus, Ohio 43215
866.932.6215

Register here.



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