

# NCUA's Examinations and Your Credit Union's Rights

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# Key Areas To Be Covered Today

1. Actual examples/war stories
2. Address NCUA Examinations and the Examiner's Guide
3. Address Examiner's Tools
4. Credit Union Rights
5. NCUA exam modernization

# Why NCUA Examines Credit Unions?

The NCUA Examiner's Guide notes that "all Examiners are expected to work with Credit Unions they supervise in a professional manner at all times. Cooperation rather than coercion should be employed by the Examiner."

# Top 5 Concerns About NCUA Examiners

- Didn't treat officials at the Credit Union fairly or respectfully
- Required inappropriate or unnecessary remedies
- Exam staff turnover required too much time to get them "up to speed"
- Didn't allow enough time for management to review their findings so unresolved issues more likely to be brought before the Board
- Focused too much on "best practices" rather than on legal/regulatory requirements

# Survey of Exam Problems

## -Top 3-

- Failure to cite legal authority
- Cited unsafe practices but failed to give guidance to remedy
- Reliance on old or inaccurate data

# Risk-Based Exams

A risk-based program is an approach that allocates resources to a Credit Union in areas exhibiting potential weaknesses or adverse trends.

# Risk-Based Exams

- Risk is fundamental to the operations of a Credit Union. Examiners, should not insist that the Credit Union eliminate risk but instead, should ensure that Credit Unions identify and manage their risks. The desired reward for taking risk is stable profitability and increased net worth. Credit Unions must balance risks and rewards responsibly. Examiner's job requires assessing that the appropriate balance exists (NCUA Examiner's Guide).



# Areas of Risk to be Considered by an Examiner

- Credit Risk
- Interest Rate Risk
- Liquidity Risk
- Transaction or Operational Risk
- Compliance Risk
- Strategic Risk
- Reputation Risk
- Cybersecurity

# Risk-Based Exams

- Due diligence of new products and services
- Risk management systems
- Internal controls
- Management's ability to identify, measure, monitor and control risk
- Member Business lending





# NCUA Examiner “Tools”

- Strategic use of the examination report
- Downgrading CAMEL rating
- Issuing a Document of Resolution
- Issuing a Letter of Understanding and Agreement
- Issuing Cease and Desist orders
- Removing officials
- Assessing civil money penalties (fines)
- Placing a Credit Union into conservatorship
- Terminating insurance
- Placing a Credit Union into involuntary liquidation

# Several Bill of Rights Issues

- Open discussion of the issues
- Credit Unions should communicate the rationale for their position clearly and without emotion
- Keep in mind the Credit Union's appeal rights
- Develop both inside and outside relationships

# Andy Keeney's Top 5 Credit Union's Examination Rights

- Credit Union documentation is the key
- Be familiar with the NCUA Examiner's Guide
- Stay professional
- Consider requesting legal counsel's presence
- Stand firm and be prepared to appeal

# NCUA's Bill of Rights

NONE



# Formal Communications by NCUA

- Joint Conference
  - Under NCUA Procedures every Credit Union is entitled to a joint conference. The purpose of the Joint Conference is to reach an agreement with the Board regarding unwanted risks and actions that the Credit Union will take to address those risks
  - Prior to the Joint Conference, Examiners are **directed** to provide a preliminary review of examination results to management
- Exit Interview
  - Credit Unions are entitled to an Exit Interview

# 2014/2015 NCUA Enhancements a/k/a “Exam Modernization”

- Updated exam report cover letter
- Separated DOR from findings
- Simplified overview; DOR now includes full discussion of “material” problems
- DOR status report
- Controls over DOR’s (cessation, follow-up, communication with management)

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# The Kindler and Gentler DOR Policy


- Separated DOR from findings
- DOR worthy problems
- Unsafe or unsound practice/condition that reasonably threatens the ability of a Credit Union to function
- Systemic compliance violations
- BSA violations

# The Kindler and Gentler DOR Policy (cont'd.)

- What may not be in a DOR
- Best practices
- Broad requirements to comply with exam report or address findings
- Unresolved findings merely because they have gone unresolved
- **Must cite the law, the regulation, the bylaw or other official agency policy**

# Appeals Process\*

## Examiner

- Supervisory examiner
  - Regional office
  - Central office
- 
- NCUA Supervisory review committee
  - NCUA Board
  - Courts

**\*“NCUA has a zero tolerance policy for retaliation.”**

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# You Can Always Appeal!

Reasons Credit Unions did not use the appeals process (based on those that felt the need to appeal)

- Fear of retaliation by exam staff
- Did not believe it would make a difference in the outcome
- Not aware of the opportunity of right to appeal
- The perception was that the appeal process would take too long

# Appeals

“I have learned that many members of the credit union community remain dissatisfied with the examination and appeals process that is currently in effect, yet are reluctant to challenge the agency out of a distinct and palpable fear of retaliation and retribution.” NCUA Board Member McWatters.

# Formal Appeals

Keep in mind the Credit Union's Board of Directors must authorize an appeal before it is filed. The steps for an appeal are:

**Step 1** - Request a review from the appropriate Regional Director, in writing, within 30 days of receiving a final report from an examiner. Regional Director is required to respond within 60 days.

**Step 2** - Should a Credit Union not agree with Regional Director's response or the Regional Director does not respond within 60 days, the Credit Union may submit an appeal to the NCUA Supervisory Review Committee as outlined in IRPS 11-1 as amended by IRPS 12-1.

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# Best Practices

- Be prepared
- Communicate the Credit Union's position clearly and without emotion
- Insist upon cites from the law, the regulation, or the bylaws to support the Examiner's position
- If permitted by state law, record all discussions and all meetings
- Reserve the right to appeal



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