

# Compliance Hot Topics

Comply or Lie

Kris Bullinger, Compliance Services Group, LLC



COMPLIANCE SERVICES GROUP, LLC

# Compliance Management System (CMS)

# Framework for a successful CMS program:



Board and Senior Management Oversight



Risk Assessments



Policies and Procedures



Training



Audits and Monitoring



Reporting



Repeat Risk Assessments - Reporting



Organizational Health - Cultivating and Protecting the Culture

# Comply or Lie?

Policies, procedures, and processes are all basically the same and should be approved by the Board.

**Lie!**

A compliance program is made up of the Credit Union's policies, procedures, and processes...what is the difference??

# Policy:

- ▶ A policy is dictated and approved by the Board of Directors and indicates how the Credit Union will comply with federal laws and regulations.

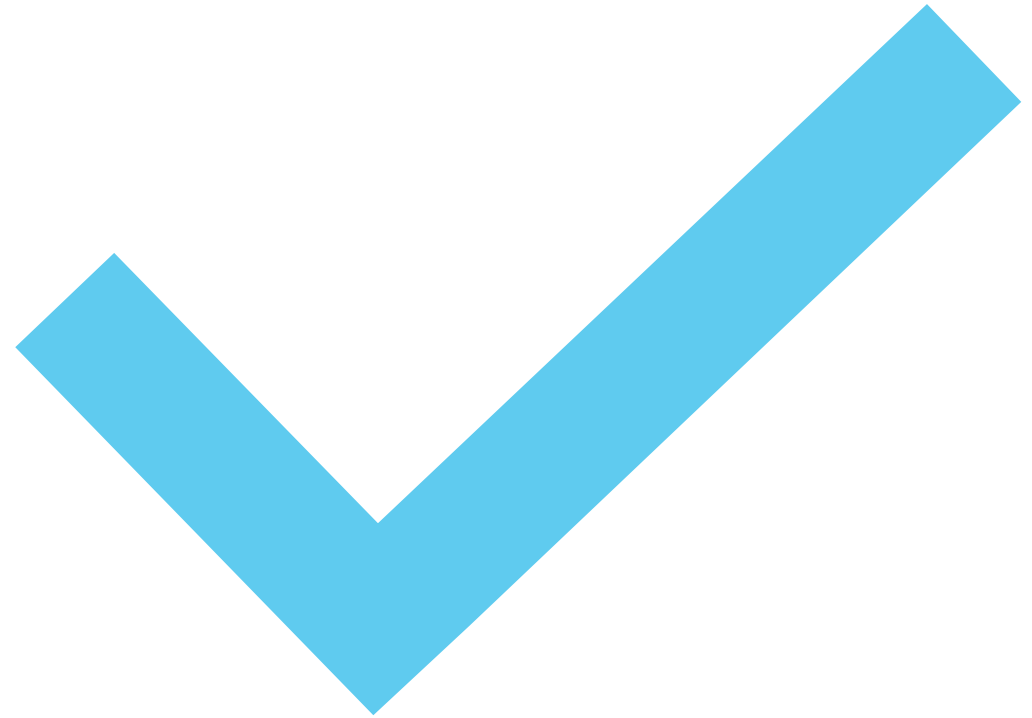


# Procedure:

- ▶ Procedures are guidelines and implemented by management to enable the Credit Union's employees to perform the day-to-day processes necessary to carry out the policy.

Should the Board  
approve procedures?

▶ Nope







## Policy

The policy states when a SAR will be completed.



## Procedure

The procedures give guidance on how to complete the SAR.



## Processes

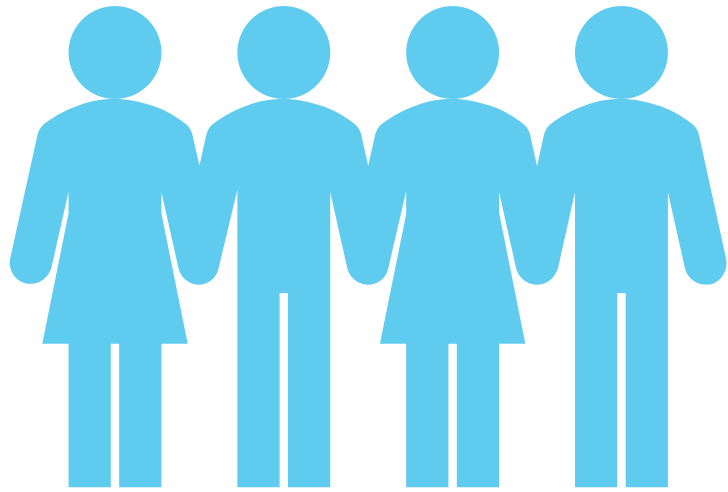
The processes are where forms are kept, how they are completed, who will complete them, if a supervisor will review the completed form, and who and how the SAR will be submitted.

Using SARs as an Example

# Comply or Lie?

Internal Audit should use the Compliance Department's monitoring results in audit planning.

**Comply!**



# Compliance Officers/Staff do not “do” Compliance

Compliance is the  
responsibility of everyone at  
the Credit Union

How do we get there?

## Training

# What regulations require training?

**BSA**  
(Initially &  
Periodically)

**NCUA Part 748 -  
Security Program**

**Regulation CC**  
(Initially)

**Customer  
Information  
Security (GLBA)**  
(Frequency not  
specified)

**FACT Act ID Theft  
Red Flags**  
(Initially &  
Periodically)

# Comply or Lie?

Internal Audit should review training records annually.

**Comply!**

To monitor or  
not to  
monitor??



# What is monitoring?

- ▶ Monitoring is an internal and ongoing assessment.
- ▶ It validates the effectiveness of internal controls and systems.

## What is audit?

- ▶ Audit is less frequent and has a definite start and finish.
- ▶ Audit should dig deeper to allow early detection and prevent future or worse problems.



Complaint  
Management -  
When a culture  
of great  
service is not  
enough!

What is a complaint?

Do you have a procedure for  
addressing complaints?

Are complaint logs monitored  
and audited at regular intervals?

# Comply or Lie?

All complaints should be reported to the Board of Directors.

Lie...maybe?

# What does “culture” have to do with it?

Words I hear weekly...”That will never work, we have a sales culture at our Credit Union.”

# Comply or Lie?

The OCC's July 2016 exam manual mentions culture 45 times.

**Comply!!!**

Can you  
audit  
culture?



# Potential Pushback




I'm not the leader



It's hard



It's costly



# What is Internal Audit's role?

Internal Audit +  
Compliance = High Five!



# Regulation E

# Comply or Lie?

Verbal stop payment orders are only good for 3 days.

**Lie!**

# Stop Payment Orders

## What the institution did:

- ▶ Did not consistently enter stop payment orders, despite receiving them in a timely manner;
- ▶ Did not consistently honor verbal stop payment orders for at least 14 days; and
- ▶ Required the consumer to contact the merchant initiating the EFT as a prerequisite to implementing the stop payment orders

## What is required:

- ▶ Place a stop payment on an EFT if notice is received at least 3 business days prior to the scheduled transaction date
- ▶ If a written stop payment is required but is received verbally, the consumer must be notified of the requirement and where they can send it **at the time the verbal request is received**
- ▶ If a written request is not received within 14 calendar days, the CU may choose to remove the stop payment

# Stop Payment Orders



# Error Resolution Process

# Comply or Lie?

The Credit Union may delay an error resolution investigation until written notification is received from the member.

**Lie!**

# Error Resolution Processes

## What the institution did:

- ▶ Did not investigate reported errors unless a written error notice was provided within 10 days;
- ▶ Did not conduct reasonable investigations and/or denied error claims when the consumer had previously conducted transactions with the merchant; and
- ▶ Denied error claims that were truly errors because the institution did not consider relevant details within its own records when conducting investigations

## What is required:

- ▶ Notice is received when the member provides sufficient information to identify the member, account, and transaction(s) the member is disputing
- ▶ Once information is received, the clock begins. You can ask the member to provide the claim in writing but cannot delay the investigation or deny the claim if it is not provided
- ▶ If the claim is not received in writing (if required), provisional credit may be withheld but investigation and determination must occur within the timing requirements

# Error Resolution Processes





# Consumer Liability for Unauthorized Transfers

# Comply or Lie?

An unauthorized EFT claim can be denied because the transaction occurred 4 months prior to the member providing notice.

**Lie!**

# Consumer Liability for Unauthorized Transactions

Even if the transaction is older than 60 days, the Credit Union is still required to investigate and determine whether the transaction was authorized.

According to Regulation E, the member is liable for transactions that occurred after the 60 day period when the first transaction appeared.

\*rules are different for debit card transactions

## What is required:

- ▶ Regulation E consumer liability limits apply to unauthorized EFT claims
- ▶ There is no statute of limitations when it comes to consumer liability; liability limits differ between EFT types (debit card, ACH, etc.)
- ▶ The CU must investigate and determine if EFTs were unauthorized, even for transactions that occurred more than 60 days prior to notification

# Consumer Liability for Unauthorized Transactions



# Fair Lending

# Comply or Lie?

It is best practice to use a lending matrix in underwriting.

**Comply!**

# Fair Lending

## Ways to violate Fair Lending:

- ▶ Fail to provide information/services regarding any aspect of the lending process,
  - ▶ Including: credit availability, application procedures, or lending standards
- ▶ Refuse to extend credit or use different standards in determining whether to extend credit
- ▶ Vary the terms of credit offered, including the amount, interest rate, duration, or type of loan
- ▶ Use different standards to evaluate collateral

## What is required:

- ▶ Advertisements for the Credit Union's products and services, (including housing) may not discriminate against any protected class
- ▶ Advertisements must not discourage or selectively encourage applicants with respect to inquiries about or applications for credit

# Fair Lending - Advertising



# Bits & Pieces



Does your Credit Union do any advertising for lending products through social media platforms?



Do you pay to have your ads go to targeted users?

# Website Reviews



# Comply or Lie?

All applicable disclosures must be displayed in a website advertisement.

**Lie!**

# Website Ad Compliance

## Common findings in website reviews:

- ▶ Links without interstitial pages, or the interstitial lacking information to properly mitigate risk from 3<sup>rd</sup> parties
- ▶ Lack of disclosures for TILA/TISA when ads use a trigger term (usually the APR/APY)
- ▶ Broken links or links that navigate to a page/form that is no longer there

# Potential Americans with Disabilities Act (ADA) website issues

- ▶ Lack of image description causes page readers to read out “null” instead of describing the image
- ▶ Text contrast for consumers with color blindness
- ▶ Improperly coded foreign language phrases that will cause screen reading software to mispronounce the phrase



# RESPA Section 8

# Comply or Lie?

Lenders may enter into advertising or marketing agreements with realtors.

**Comply!**

# What is allowed?

- ▶ RESPA permits bona fide payments for goods actually furnished, and services actually performed

Example: Office space rental



# What is NOT allowed?

- ▶ A lender may not pay over “market value” for a good or service
  - ▶ A lender renting desk space in a Real Estate office may not pay \$1,200 for space that would normally rent for \$500
  - ▶ This would be seen as paying over market value, and may be disguising payment for referral fees or kickbacks

# Questions?



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