This chapter covers the chartering, structure, and oversight of federal credit unions, including a discussion of the Federal Credit Union Act, the various sources of authority issued by the National Credit Union Administration (NCUA), the role of NCUA as insurer, and the role of state regulators. We also briefly discuss federal financial institution legislation and regulation in consumer protection, employment, and other areas of interest to credit union directors.

CHARTERING, STRUCTURE, AND OVERSIGHT AUTHORITY

Like any other financial institution, credit unions are governed by the laws that allow them to be organized and maintained. The Federal Credit Union Act is the legal foundation for federal credit unions. In addition, most states have their own credit union laws, giving credit unions a dual structure for chartering and regulatory oversight.

The National Credit Union Administration (NCUA) is the independent agency that exercises regulatory oversight of federal credit unions. NCUA has authority over managing the National Credit Union Share Insurance Fund (NCUSIF) and examining both federal credit unions and federally insured state-chartered credit unions. Individual state credit union acts also name the regulatory agency, establish the agency’s power and authority, establish the form, structure, and powers of state-chartered credit unions, and specify share insurance requirements.
Federal Credit Union Act

The Federal Credit Union Act is the law that established NCUA. It also defines the basic structure of federal credit unions in such areas as chartering, field of membership, and loan and investment powers. It outlines additional regulatory structures such as the NCUSIF, sets up NCUA’s enforcement powers over federal credit unions, and defines credit unions’ rights to appeal certain agency actions. The act explains the requirements for federally insured credit unions and the scope of NCUA’s authority over them.

The Federal Credit Union Act regulates federal credit unions in a number of important ways:

- Sets the process and requirements for chartering a federal credit union, establishing its legal right to be recognized as a business entity.
- Establishes volunteer boards, member ownership, and a not-for-profit democratic structure.
- Exempts federal credit unions from all taxes, except real and personal property taxes.
- Limits the powers of federal credit unions in certain areas, such as the types of loans and investments that are permitted to be made.
- Establishes NCUA as the regulatory authority over federal credit unions and some aspects of federally insured state-chartered credit unions; explains the agency’s examination authority, including enforcement powers.
- Appoints NCUA as the manager of the NCUSIF and establishes its authority to examine and regulate federally insured state-chartered credit unions.

Before a credit union director makes a decision regarding a particular investment or a change in the credit union’s lending policy, he or she must first determine whether the credit union’s action is permissible under the Federal Credit Union Act. The credit union must then turn to the various other sources of NCUA authority for further guidance.

Sources of NCUA Authority

NCUA is charged with the dual task of regulating federal credit unions and some aspects of federally insured state-chartered credit unions, and administering the NCUSIF. NCUA uses a number of tools to communicate its rules and opinions on compliance.
Credit union directors should familiarize themselves with the following sources of NCUA authority. These are summarized in figure 1.1.

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The NCUA is charged with the dual task of regulating federal credit unions and some aspects of federally insured state-chartered credit unions. NCUA Rules and Regulations

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NCUA Rules and Regulations

Administrative rules adopted by NCUA further define and clarify its authority over credit unions. NCUA rules address such issues as organization, operations of federal credit unions, investment and deposit activities, requirements for share insurance by federally insured state-chartered credit unions, board and committee duties and responsibilities, and regulations for the application of laws such as the Truth-in-Savings and Fair Housing Acts.

Bylaws

According to the requirements of the Federal Credit Union Act, NCUA publishes the Federal Credit Union Bylaws to provide boards of directors, credit and supervisory committees, and executive officers guidance for the sound management and proper operation of the credit union. NCUA adopted revised bylaws in 2007 and re-incorporated the bylaws as part of its Rules and Regulations.

In addition, although federal credit unions are required to use the bylaws published by NCUA, they have the flexibility to request “nonstandard bylaw amendments” if the need arises. Nonstandard bylaw amendments must be approved by the NCUA Board before they become effective. A federal credit union wishing to adopt a non-standard bylaw amendment must file a request with the appropriate NCUA regional director.

According to the requirements of the Federal Credit Union Act, NCUA publishes model bylaws as a guide for federal credit unions. NCUA also publishes standard amendments that federal credit unions can use to customize their bylaws to fit their individual operations, such as allowing mail ballots or board meetings by conference call.

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How Laws and Regulations Affect Credit Unions 3
Nonstandard amendments must be approved by NCUA to make sure they conform to the Federal Credit Union Act and regulations.

**Accounting Manual**

NCUA publishes its *Accounting Manual for Federal Credit Unions* for federal credit unions with under $10 million in assets to use in accounting for financial transactions and reporting. In accordance with the *Credit Union Membership Access Act* (CUMAA), credit unions with $10 million or more in assets must follow generally accepted accounting principles (GAAP) in the call reports they file with NCUA. These credit unions should not look to NCUA’s accounting manual, but should seek the advice of an independent accountant to gain a full understanding of GAAP and its implementation. The manual may be adopted by federally insured state chartered credit unions (FISCUs) under $10 million in assets at the option of the credit unions and their state supervisor.

**Examiner’s Guide**

NCUA also makes its *Examiner’s Guide* available so that you know which areas of your credit union’s operations the examiner will scrutinize and what records examiners inspect. The guide covers such areas as the examination’s objectives, the actual examination process, what examiners look for in a credit union’s lending and investment programs, how examiners determine whether a credit union is complying with various laws and regulations, and what the examination report covers. As you can see, the *Examiner’s Guide* is a valuable resource for every credit union to have in its library.

**NCUA Letters to Credit Unions**

When NCUA wants to express its opinion or position on an issue that does not require a full regulation, it uses its *Letters to Credit Unions*. These letters do not have the force of laws or regulations, but they do provide guidance on the agency’s opinions and expectations. *Letters to Credit Unions* cover operational issues, such as risk-focused examination, or credit union web site compliance. These letters also furnish credit unions with information on call report modifications and financial industry trends.

*Each federally insured credit union receives a copy of the Letters to Credit Unions periodically. NCUA Letters to Credit Unions are also available on the agency’s web site at www.ncua.*
gov. It is up to management and the board to review these letters and either comply with their guidelines or develop justification for deviations.

**NCUA Regulatory Alerts**

In addition to NCUA Letters to Credit Unions, the agency publishes NCUA Regulatory Alerts that inform credit unions of recent regulatory changes announced by other agencies. For example, the agency sends out regulatory alerts regarding changes to consumer regulations applicable to credit unions, National Flood Insurance Program updates, money laundering alerts, etc.

**NCUA Legal Opinion Letters**

NCUA’s regulations often lack supporting materials or explanations, resulting in questions about the agency’s expectations. To clarify a particular law or rule, individual credit unions or their representatives sometimes write to NCUA’s Office of General Counsel to request an opinion letter on the issue. These letters are often quite helpful in explaining the agency’s position on various portions of the Federal Credit Union Act and regulations. The credit union’s compliance officer or other designated employee should keep track of these letters, since many of them will apply to your individual credit union’s operations.

CUNA and state leagues usually alert you to new letters that have a broad application. Copies of letters can be retrieved through www.ncua.gov, NCUA’s home page on the Internet, or through your state league.

**Interpretive Ruling and Policy Statements (IRPS)**

NCUA also issues Interpretive Ruling and Policy Statements (IRPS), which offer federal credit unions guidance on the agency’s policies and procedures concerning such areas as the allowance for loan and lease losses (ALLL) and field of membership. These supervisory policy statements do not have the force of regulation. However, they do provide federal credit unions with direction for complying with various provisions of the Federal Credit Union Act and NCUA regulations. Generally, NCUA withdraws an IRPS once it becomes unnecessary, outdated, or, in some cases, is replaced by a regulation.
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Other NCUA Publications

Also available from NCUA are the agency’s Federal Credit Union Act Handbook and the Supervisory Committee Guide. The Federal Credit Union Handbook covers a wide range of subjects, and should prove useful to the board, committee members, and employees in carrying out their duties and responsibilities. The Supervisory Committee Guide provides

Figure 1.1 Sources of NCUA Authority

- **NCUA Rules and Regulations**: Under the authority of the Federal Credit Union Act, NCUA prescribes rules and regulations for the organization and operation of federal credit unions. Federally insured state-chartered credit unions are covered by a number of these regulations as a condition of NCUSIF coverage.

- **Federal Credit Union Bylaws**: NCUA prescribes standard federal credit union bylaws for adoption upon chartering. Once adopted by the board of directors, the standard bylaws become the official bylaws of the federal credit union. Standard bylaw amendments may be adopted by the board without NCUA approval; however, “nonstandard” amendments require agency approval.

- **NCUA’s Accounting Manual**: This manual spells out the prescribed accounting principles and standards that federal credit unions with under $10 million in assets must follow in accounting for financial transactions and reporting.

- **NCUA’s Examiner’s Guide**: NCUA makes the guide used by its examiners available to credit unions so that they know which areas are scrutinized during an examination and can prepare accordingly.

- **NCUA Letters to Credit Unions**: NCUA issues letters to credit unions that provide guidance on the agency’s opinions and expectations in various operational areas. These letters do not have the force of law or regulation but do provide credit unions with helpful information.

- **NCUA Legal Opinion Letters**: NCUA’s Office of General Counsel responds to legal inquiries from credit unions clarifying areas of the Federal Credit Union Act or the agency’s regulations. These letters offer credit unions NCUA’s position on a variety of legal and operational issues.

- **Interpretive Ruling and Policy Statements**: NCUA issues policy statements dealing with a wide variety of topics applicable to credit union operations. They interpret the agency’s regulations and provide procedural guidance in areas such as investments and field of membership additions.

- **NCUA Regulatory Alerts**: These alerts inform credit unions of recent regulatory changes announced by other agencies, such as changes to consumer regulations applicable to credit unions.

- **NCUA Risk Alert**: These alerts are issued when the NCUA identifies credit union practices that result in significant potential risk to net worth and require immediate action.
guidance on the committee’s duties and responsibilities, and the appropriate standards for performing the internal audit and verification.

This Guide is written for federal credit unions, but federally insured state chartered credit unions may find it a helpful reference tool if supplemented with guidance available through the state supervisory authority. Information for ordering publications from NCUA can be found on the agency’s Web site at www.ncua.gov or in Appendix A of this handbook.

NCUA as Insurer

Most credit union shares and deposits are insured by the National Credit Union Share Insurance Fund (NCUSIF), whether the credit union is state or federally chartered. Only a handful of credit unions maintain private deposit insurance coverage.

Part 741 of NCUA’s Rules and Regulations requires federal credit unions and federally insured state-chartered credit unions to meet a list of requirements to qualify for federal share insurance coverage. In addition to the minimum requirements for insurance, NCUA also imposes many of its other operational regulations on federally insured state-chartered credit unions. These regulations cover areas NCUA believes present an exposure risk for the insurance fund.

The Role of State Regulators

Each state regulator administers a body of laws and regulations similar to federal standards. These rules apply to credit unions chartered under that state’s authority. A law similar to the Federal Credit Union Act establishes the foundation for chartering, organizing, operating, and supervising credit unions in each state.

The state agency charged with supervising credit unions publishes its own administrative rules, as necessary, to govern operations and clarify statutory requirements. Most states publish a set of model bylaws and standard amendments, or at least a procedure to have bylaw changes reviewed and approved.

The state agency may even have supplementary publications like NCUA’s Examiner’s Guide, Accounting Manual, and Letters to Credit Unions for further guidance. Volunteers
for state-chartered credit unions need to know their state regulations and the specific rules that govern the credit union’s operations.

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FEDERAL FINANCIAL INSTITUTION LEGISLATION AND REGULATION

In addition to credit union-specific requirements, credit unions are also responsible for complying with a number of other laws and regulations applicable to financial institutions in general. Directors must become acquainted with these regulations, which address consumer protection, employment practices, information reporting, and other requirements.

Consumer Protection Legislation

Congress has historically been concerned for the welfare of consumers and has passed laws to protect them from unfair business practices. Most early consumer protection laws required uniform disclosures for loans in order to address predatory practices exhibited by some lenders. Congress believed that consumers should be guaranteed pertinent information when they applied for a loan. That objective led to the passage of consumer protection legislation, such as the Truth-in-Lending Act and the Real Estate Settlement Procedures Act. When Congress saw that these disclosure laws worked well for loans, it passed the Truth-in-Savings Act to apply to savings deposits.

Congress regarded these laws as beneficial because they disclosed to consumers the terms of credit and savings accounts. Once that proved successful, Congress also passed laws limiting the terms and conditions of loans. These laws addressed the worst of the abuses Congress saw in the financial services industry.
The **Equal Credit Opportunity Act** prohibits discrimination in lending based on several factors, including race, color, national origin, and gender. The **Home Mortgage Disclosure Act** makes lenders accountable for their real estate lending practices by requiring records of who applied for loans and which loans were granted, tracked in part by geographic location, gender, and race. The **Fair Credit Reporting Act** and the **Fair Debt Collection Practices Act** further limit lenders’ options, to benefit borrowers. Figure 1.2 lists the most important federal consumer protection laws to which credit unions are accountable.

Branching out of the lending area, Congress moved to regulate automated teller machine (ATM), telephone, and computer transactions by passing the **Electronic Fund Transfer Act**. Credit unions are also subject to such laws as the **Bank Secrecy Act**, which requires disclosure of large currency transactions and their equivalents, and myriad related real estate laws such as the **Fair Housing Act** and regulations on flood insurance and appraisals. Keep in mind that some states have additional requirements that apply to state-chartered credit unions in many of the areas covered by federal law.

**Figure 1.2 Some of the Major Laws Affecting Credit Unions**

<table>
<thead>
<tr>
<th>Bank Secrecy Act</th>
<th>Management Interlocks Act</th>
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<tr>
<td>Electronic Fund Transfer Act</td>
<td>Privacy Act</td>
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<td>Equal Credit Opportunity Act</td>
<td>Real Estate Settlement Procedures Act</td>
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<td>Fair Credit Reporting Act</td>
<td>Reserve Requirements for Depository Institutions</td>
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<tr>
<td>Fair Debt Collection Practices Act</td>
<td>Truth in Leasing</td>
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<td>Fair Housing Act</td>
<td>Truth-in-Lending Act</td>
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<tr>
<td>Flood Hazard Insurance</td>
<td>Truth-in-Savings Act</td>
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<tr>
<td>Funds Availability Act</td>
<td>Unfair and Deceptive Acts and Practices</td>
</tr>
<tr>
<td>Home Mortgage Disclosure Act</td>
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2 The federal Fair Debt Collection Practices Act does not apply to credit unions collecting debts in their own name, but most states have similar consumer protection laws, and following the federal law is deemed a safe harbor where no state law addresses this area.
Credit Unions as Employers

Credit unions are employers as well as depository and lending institutions, and they face the same complex set of laws that confront employers of all types. Whether you have one employee or a thousand, issues such as sexual harassment, age discrimination, and compliance with the Americans with Disabilities Act can arise in one form or another.

The agencies that enforce most federal employer-related regulations are the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor. The EEOC is the federal agency that provides guidance and technical assistance to employers and their employees on equal employment laws. The Department of Labor promotes and develops policies relating to working conditions and employment opportunities for the benefit of U.S. wage earners. Therefore, the EEOC implements and enforces laws such as the Americans with Disabilities Act and the Age Discrimination and Employment Acts while the Department of Labor regulates enforcement of the Family Medical Leave Act (FMLA).

Although employment law is a complex and evolving area, figure 1.3 provides a snapshot of the various federal requirements applicable to employers. Credit union directors need to have a firm grasp of these rules in order to make appropriate policy decisions regarding the credit union’s workforce. Please be sure to check state law requirements relating to equal employment and working conditions as well as the federal laws listed in the figure.

Credit union directors need to have a firm grasp of employment laws in order to make appropriate policy decisions regarding the credit union’s workforce.

Other Applicable Laws and Rules

Some laws relate to credit unions because they touch on general business activities. For example, credit unions enter into debtor-creditor relationships with their members, so bankruptcy laws play a part whenever members use the bankruptcy process to discharge or reorganize their debts when they qualify. Credit union business transactions are governed by the Uniform Commercial Code (UCC). It is a set of laws, adopted in all fifty states with
Figure 1.3 Employment Laws at a Glance

- **Age Discrimination in Employment Act** Prohibits age discrimination in employment and requires credit unions to keep records necessary for the administration of this law.
- **Americans with Disabilities Act** Prohibits employers from discriminating against persons with disabilities who are otherwise qualified for employment and requires employers to make reasonable accommodations to known disabilities.
- **Equal Employment Opportunities, Civil Rights** Requires equal employment opportunity without regard to race, color, religion, sex, familial status, national origin, age, or disability.
- **Affirmative Action Plans** Require credit unions with over fifty employees that are federal contractors to comply with affirmative action rules.
- **Employee Retirement Income Security Act (ERISA)** Protects employees’ rights to receive welfare and pension benefits and includes detailed reporting, filing, and disclosure requirements.
- **Employment Practices** Recordkeeping Requires employers to make, keep, and preserve personnel records of employees, including wages, hours, and other conditions of employment.
- **Family and Medical Leave Act** Requires employers with fifty or more employees to provide up to twelve weeks per year of unpaid, job-protected leave to eligible employees for family medical emergencies or to care for an infant.
- **Group Health Plans** Require employers to provide continuous group health coverage to certain individuals due to termination of employment.
- **Minimum Wage and Overtime Rules** Establish the minimum permissible wage per hour and the maximum number of hours above which an employer must pay an employee not less than one and a half times regular wage.
- **Occupational Safety and Health Act** Requires employers to provide employees a safe and nonhazardous environment in which to work and to keep records regarding activities related to occupational safety and health.
- **Polygraph Protection Act** Prohibits employers from requiring an employee or prospective employee to take a lie detector test (with limited exceptions).
some state variations, that applies to sales and negotiable instruments like loans, checks, and share drafts.

It governs security interests and the collateral collection process. Credit unions also need to report to the Internal Revenue Service (IRS). Credit unions must withhold payments on interest- or dividend-bearing accounts when the depositor has underreported income or failed to provide an accurate taxpayer identification number. Year-end reports on dividends paid to members, interest paid on their mortgage loans, and debts discharged during the year help the IRS make sure that people report all their income and take only the allowed deductions. Credit unions as employers must also comply with employment tax withholding rules. (Chapter 7 provides more information on bankruptcy, UCC, and IRS requirements.)