

CUNA REGTRAC

GENERAL OPERATIONS REGULATIONS



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Legal Review

The RegTraC books are designed to provide general information regarding regulations affecting credit unions. They are not intended to substitute for legal advice based upon specific facts in any individual case, and credit unions with regulatory concerns are advised to consult with attorneys or specialists to obtain advice directed to their specific circumstances.

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SECTION 1 – THE BANK BRIBERY ACT





Section 1 – The Bribery Act

Background

In many parts of the world, bribery is considered a usual part of the overall business process. Greasing the palm of a key employee or officer of a corporation or a government official is viewed in many countries as standard operating procedure — a legal way to “cut through the red tape” in order to get things done. Bribery, however, does not enjoy such revered status in the U.S. Plainly and simply, it is illegal here.

And because Congress views the integrity of the nation’s banking system as a high priority, bribery involving federally insured credit unions and other financial institutions is addressed separately in the federal [Bank Bribery Act](#) (BBA), 18 U.S.C. 215.

From the newly hired teller to a member of the board of directors, credit union employees, attorneys, and official families are subject to the requirements of the BBA. This criminal statute makes it a felony for any officer, director, employee, agent, or attorney of a federally insured financial institution to corruptly solicit or corruptly agree to accept anything of value from any person, if that officer, director, employee, agent, or attorney intends to be influenced or rewarded in connection with any business or transaction of the financial institution. (Section 215(a)(1) and (2).)

A key term in that prohibition is the word “corruptly.” Prior to the amendment of the BBA in 1985 which added

that word, the statute appeared to prohibit legitimate payments for services rendered, or insignificant gift-giving or entertaining that did not involve a breach of fiduciary duty or dishonesty. Such is not the case.

Another key phrase to consider in terms of BBA violations is “influenced or rewarded.” When we think of “bribery” we usually think of a payment in advance of special favors or services rendered. But the BBA prohibits corrupt gifts received **after** performing special favors or services as well. Consider as an illustration the case of *Ryan v. U.S.*, C.A. Cal. 1960, 278 F.2d 836, where the defendant (Ryan), a commercial loan officer at a bank, bent over backward to help customers procure loans then was rewarded with cash payments from some of the parties who benefited from his special services. The court held that the statute was clearly violated even though the loans to the borrowers were completed before the defendant received the gifts from the borrowers.

The BBA gave federal agencies with responsibility for regulating financial institutions a mandate to establish guidelines to assist officers, directors, agents, and attorneys for those financial institutions in complying with this law. (Section 215(d).) These guidelines were developed by the Interagency Bank Fraud Working Group, of which the National Credit Union Administration (NCUA) was a part. The NCUA issued its Interpretive Ruling and Policy Statement

(IRPS) No. 87-1 in late 1987 to provide federally insured credit unions with guidelines to use in complying with the BBA. To see this statement, go to www.ncua.gov/Legal/Documents/IRPS/IRPS1987-1.pdf

NCUA IRPS 87-1

IRPS 87-1 provides credit unions with some background on the BBA, then recommends procedures which federally insured credit unions should implement to ensure compliance. Although these guidelines do not have the force of law, the Justice Department (which prosecutes violations of the BBA) will consider a credit union's reliance on these guidelines in making the determination whether an activity should or should not be prosecuted. Therefore, credit unions are well-advised to abide by the recommendations of IRPS 87-1 to guard against the risk of BBA violations.

IRPS 87-1 encourages all federally insured credit unions to adopt internal codes of conduct or written policies that, among other things, explain the general prohibitions embodied in the BBA. Keep in mind, internal codes of conduct should also address conduct which is prohibited by other statutes or regulations—for example, NCUA's Rules and Regulations regarding loan officer incentives, loans to officials, restrictions regarding credit union investments, and certain CUSO activities. IRPS 87-1 also directs credit unions to establish and enforce written policies on acceptable business practices.

The NCUA recommends that each credit union's code of conduct include a prohibition against any employee,

officer, director, committee member, agent, or attorney (a group which the NCUA collectively terms "Credit Union Officials") from:

- Soliciting for themselves or for a third party (other than the credit union itself) anything of value from anyone in return for any business, service, or confidential information of the credit union; and
- Accepting anything of value (other than bona fide salary and fees) from anyone in connection with the business of the credit union either before or after a transaction is discussed or consummated.

The NCUA recognizes that such a broad prohibition against accepting anything of value in connection with the business of the credit union—other than bona fide salaries and fees—is somewhat harsh. Under that strict definition, a credit union manager who accepts a lunch or dinner from a vendor—or lets the vendor pick up his greens fees at the local golf course—would violate this code. To address this, IRPS 87-1 recommends that each credit union's code of conduct specify appropriate exceptions to the general prohibition of accepting something of value in connection with credit union business.

In general, there is no threat of violating the BBA if a credit union official accepts something of value from someone:

- When the acceptance is based on a family or personal relationship that exists independently of any business of the credit union;
- If the benefit is available to the general

public under the same conditions on which it is available to the credit union official; or

- If the benefit would be paid by the credit union as a reasonable business expense if it was not paid by the other person.

IRPS 87-1 does not fix an objective standard as to how much can be received or given in the areas of business-purpose entertainment or gifts. As the IRPS points out, what is reasonable in one part of the country may appear lavish in another part of the country. Thus it is up to each credit union to establish acceptable standards within its own code of conduct — NCUA’s official guidance is that credit unions “should seek to embody the highest ethical standards” in their codes of conduct. Credit unions are encouraged to establish a range of dollar values that cover the various benefits that its officials may receive from those doing or seeking to do business with the credit union.

A credit union’s code of conduct should provide some, but not too much, flexibility. For example, whatever acceptable range is established in terms of what benefits can be received by credit union officials, the code can allow the limit to be reasonably exceeded, as long as any time a credit union official is offered or receives something of value beyond what is authorized in the code of conduct, the official is required to disclose that fact to the official at the credit union charged with ensuring Bank Bribery Act compliance.

Each credit union should develop a reporting mechanism to prevent situations that might otherwise lead to impli-

cations of corrupt intent or breach of trust. IRPS 87-1 makes clear, however, that simply disclosing those instances when a credit union official receives something of value beyond what the code of conduct authorizes is not enough. Management must then review these disclosures and determine what has been accepted is reasonable and does not pose a threat to the integrity of the credit union. These reviews should be documented.

In addition, IRPS 87-1 recommends that each credit union’s code of conduct require that all credit union officials disclose all **potential** conflicts of interest, including those in which they have been inadvertently placed due to business or personal relationships with members, suppliers, business associates, or competitors of the credit union. The NCUA recognizes that a credit union official who is involved in outside business interests or employment that gives rise to a potential conflict of interest can pose a threat to the integrity of a credit union.

Suggested code of conduct considerations

IRPS 87-1 recommends that each credit union’s code of conduct or Bank Bribery Act policy include a general prohibition against acceptance by credit union officials of things of value in connection with credit union business. The code or policy can then define exceptions to that general prohibition including permission to accept:

- Gifts, gratuities, or favors based on an obvious family or personal relationship where the circumstances make it clear

that it is such a relationship — not the business of the credit union — which is the motivating factor.

- Meals, refreshments, or entertainment, all of reasonable value and in the course of a legitimate business meeting, provided these expenses would be paid for the credit union if they were not paid by the other party (the credit union can, and should, establish a specific dollar limit for such an occasion).
- Loans from banks or financial institutions on customary terms to finance proper and usual activities of credit union officials, such as home mortgage loans, except where prohibited by law.
- Advertising or promotional material of nominal value, such as pens, pencils, note pads, key chains, calendars, and similar items.
- Discounts or rebates on merchandise or services that do not exceed those available to other members.
- Gifts of reasonable value that are related to commonly recognized occasions, such as a promotion, new job, wedding, retirement, Christmas, or bar or bat mitzvah (the credit union can, and should, establish a specific dollar limit for these types of gift).
- Civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the credit union can, and should, establish a specific dollar limit for these types of awards).

IRPS 87-1 also allows the code of conduct to provide that credit union's

may approve — on a case-by-case basis — situations in which a credit union official accepts something of value in connection with credit union business, provided such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the Bank Bribery statute.

Finally, IRPS 87-1 recommends that in order to ensure compliance with the BBA, each credit union should:

- Maintain a copy of any code of conduct or written policy it establishes for its officials.
- Require an initial written acknowledgment from all credit union officials of the code of conduct, along with written acknowledgment of any subsequent material changes, and the officials' agreement to comply with the code.
- Maintain written reports of any disclosures made by its credit union officials in connection with a code of conduct or written policy.

Again, although the guidelines in IRPS 87-1 do not have the force of law, the Justice Department will consider a credit union's reliance on these guidelines in making the determination whether an activity should or should not be prosecuted under the BBA.

Penalties for Noncompliance

The BBA is a criminal statute. If a thing of value corruptly offered to or received by a credit union official is worth \$1000 or less, both the person

making the offer and the credit union official can be convicted of a misdemeanor and punished by up to one year's imprisonment and be fined. If the thing of value is worth more than \$1000, the offense is a felony and is punishable by up to 30 years' imprisonment and a fine of \$1,000,000, or three times the value of the bribe or gratuity. Section 215(a).

Record Retention

Credit unions should retain all evidence of compliance with the BBA permanently. It is recommended that all credit union officials be given a written code of conduct or policy that addresses the general prohibition against accepting anything of value in connection with the business of the credit union. Each official should sign an acknowledgment of receipt of this policy. The credit union's policy should require that any official who receives something of value in excess of the established guidelines should submit a written disclosure to an individual designated as the BBA compliance officer. These disclosures should be presented to the full board of directors for a determination whether they are reasonable and thus not in violation of the BBA. These disclosures should then be retained permanently.

Products and Services Affected by the Bank Bribery Act

Because the prohibitions of the BBA apply across the board to all officers—directors, employees, agents, or attorneys of a federally insured credit union—virtually all of the products and services offered by the credit union could in some way be impacted by this law. Staff training for every credit union department should include a discussion about the ramifications of violating the Bank Bribery Act.