

White Collar Crimes Affecting Credit Unions

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Relevant Criminal Statutes

- ❖ Receipt of Commissions or Gifts for Procuring Loans, 18 U.S.C. § 215
- ❖ Lending, Credit and Insurance Institutions (Embezzlement), 18 U.S.C. § 657
- ❖ Loan and Credit Applications, 18 U.S.C. § 1014
- ❖ Fraud and Related Activity in Connection With Identification Documents, 18 U.S.C. § 1028
- ❖ Aggravated Identity Theft, 18 U.S.C. § 1028a
- ❖ Mail Fraud, 18 U.S.C. § 1341
- ❖ Wire Fraud, 18 U.S.C. § 1343
- ❖ Bank Fraud, 18 U.S.C. § 1344
- ❖ Attempt and Conspiracy, 18 U.S.C. § 1349
- ❖ Laundering of Monetary Instruments, 18 U.S.C. § 1956
- ❖ Engaging in Monetary Transactions in Property Derived From Specified Unlawful Authority, 18 U.S.C. § 1957
- ❖ Structuring Transactions To Evade Reporting Requirements, 31 U.S.C. §§ 5322, 5324

Lending, Credit and Insurance Institutions (Embezzlement), 18 U.S.C. § 657

- ❖ “Whoever, being an officer, agent or employee of or connected in any capacity with . . . any institution, . . ., the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board . . ., embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, . . . shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.”

United States v. Linda Sue Newcomb, No. 6:14-CR-9 (W.D. Va.)

- ❖ Manager and Head Teller of federal credit union charged with scheme to defraud.
- ❖ Originated loans in names of members without their knowledge or consent.
- ❖ Drafted and approved fictitious loan documents.
- ❖ Altered and withheld members' statements.
- ❖ Loan proceeds deposited in Defendants' or family members' accounts or used to pay off loans.
- ❖ Caused fictitious loans to be sold to another credit union pursuant to Loan Participation Agreement.
- ❖ Credit Union was liquidated by NCUA due to insolvency.
- ❖ Manager pled guilty to, among other things, embezzlement in violation of 18 U.S.C. § 657.
- ❖ Sentenced to 120 months in prison and 5 years supervised release and ordered to pay \$11 million in restitution.

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Loan and Credit Applications, 18 U.S.C. § 1014

❖ “Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of . . . a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by . . . the National Credit Union Administration Board, . . . upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, or insurance agreement or application for insurance or a guarantee, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

United States v. Anthony Forte, No. 2:08-CR-00526 BMS (E.D. Pa.)

- ❖ Executive Vice President/Director of Marketing created Select Employee Group to admit new members and enable them to apply for personal loans.
- ❖ Conspired with brother to use false information to obtain loans for persons who were not qualified and/or eligible. In return, received 7% kickback.
- ❖ Instructed loan processors to overlook problems with applications, removed tax information from loan applications, shredded signature cards and prepared fraudulent pay checks.
- ❖ Instructed loan applicants to request separate \$5,000 check from loan proceeds.
- ❖ Scheme involved \$2.5 million dollars in loans and more than \$100,000 in kickbacks.
- ❖ Defendant pled guilty to violating 18 U.S.C. § 1014 and 18 U.S.C. § 215(a)(2) and was sentenced to 5 years and ordered to pay \$178,000 in restitution.

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Bank Fraud, 18 U.S.C. § 1344

- ❖ “Whoever knowingly executes, or attempts to execute, a scheme or artifice—
 - (1) to defraud a financial institution; or
 - (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

United States v. Scott Lonzinski and Laura Conarton, No. 3:12-CR-420 (N.D.N.Y.)

- ❖ Mother and son engaged in fraudulent scheme to obtain loans from credit union based on pledged securities that had no value.
- ❖ Created phony bank statements and other documents, forged signatures, made false statements and created fictitious persons.
- ❖ NCUA discovered the fraud and assumed responsibility for day-to-day operations of credit union. Credit union assets eventually sold to another institution.
- ❖ Mother and son pled guilty to bank fraud in violation of 18 U.S.C. § 1344 and were sentenced to 60 months in prison and 5 years supervised release and ordered to pay \$14 million dollars in restitution.

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United States v. Louisa Gabaldon, No. 13-2448 (D.N. Mex.)

- ❖ Defendant was employed as loan officer for federally chartered credit union.
- ❖ Had authority to make withdrawals from customer accounts, transfer funds among accounts, increase loan amounts and open new loans.
- ❖ Increased member loans without their consent, opened new loans in members' names without their authorization, obtained checks drawn on member accounts and negotiated checks for her benefit.
- ❖ Allegedly stole more than \$118,000 from member accounts.
- ❖ Defendant pled guilty to bank fraud in violation of 18 U.S.C. § 1344 and was sentenced to 6 months in prison and 5 years supervised release and was ordered to pay \$118,00 in restitution.

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Structuring Transactions To Evade Reporting, 31 U.S.C. § 5324

- ❖ “No person shall, for the purpose of evading the reporting requirements . . . (1) cause or attempt to cause a domestic financial institution to fail to file a report . . ., (2) cause or attempt to cause a domestic financial institution to file a report . . . that contains a material omission or misstatement; or (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.”
 - ❖ “Whoever violates this section shall be fined . . ., imprisoned for not more than 5 years, or both.”
 - ❖ “Whoever violates this section while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period shall be fined twice the amount . . ., imprisoned for not more than 10 years, or both.”
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United States v. John A. Ortiz, No. 3:11-CR-92 (JCH) (D. Conn.)

- ❖ Defendant was owner and operator of towing repair business.
- ❖ He had a money market savings account at a credit union and a personal line of credit at a bank.
- ❖ He made more than 70 large cash deposits into his savings account and more than 30 large cash payments to his personal line of credit, the vast majority of which were in the amount of \$9,000.00.
- ❖ He was convicted of structuring the transactions to avoid filing Currency Transaction Reports (CTR) in violation of 31 U.S.C. § 5324(a).
- ❖ Sentenced to 18 months imprisonment, 2 years supervised release and a \$75,000.00 fine.

Laundering of Monetary Instruments, 18 U.S.C. § 1956

❖ “Whoever, knowing that the property involved in a monetary transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity . . . knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the sources, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.”

Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity, 18 U.S.C. § 1957

- ❖ “Whoever . . . knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished . . . [with] a fine . . . or imprisonment for not more than ten years or both . . .”
- ❖ “Monetary transaction” means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument . . . by, through, or to a financial institution . . . “
- ❖ “Criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense.”

United States v. Raffaello Follieri, No. 1:08-cr-00850-JGK-1 (S.D.N.Y.)

- ❖ Charged with conspiracy to defraud the U.S., wire fraud and money laundering in connection with scheme to raise funds from investors by misrepresenting himself as being affiliated with the Catholic Church and CFO of Vatican.
- ❖ Used various shell companies to conceal source of funds that he transferred for his own personal benefit.
- ❖ Charged with, among other things, money laundering in violation of 18 U.S.C. § 1956, by transferring proceeds of fraudulent scheme to banks outside US in effort to conceal criminal activity.
- ❖ Sentenced to 5 years in prison and 3 years supervised release as well as \$1.4M fine.

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Preventing Obstruction and Protecting Whistleblowers

Relevant Criminal Statutes

- ❖ Obstruction of Criminal Investigations, 18 U.S.C. § 1510
- ❖ Obstruction of State or Local Law Enforcement, 18 U.S.C. § 1511
- ❖ Tampering with a Witness, Victim or Informant, 18 U.S.C. § 1512
- ❖ Retaliating Against a Witness, Victim or Informant, 18 U.S.C. § 1513
- ❖ Obstruction of Federal Audit, 18 U.S.C. § 1516
- ❖ Obstructing Examination of Financial Institution, 18 U.S.C. § 1517
- ❖ Destruction, Alteration or Falsification of Records in Federal Investigation and Bankruptcy, 18 U.S.C. § 1519

Protection for Whistleblowers

- ❖ Civil Action to Restrain Harassment of Victim or Witness, 18 U.S.C. § 1514
 - ❖ Authorizes US Attorney to apply for “a temporary restraining order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds . . . that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists”
- ❖ Whistleblower Protections, 31 U.S.C. § 5328
 - ❖ Prohibits any “financial institution . . . from discharging or otherwise discriminating against any employee with respect to compensation, terms, conditions or privileges of employment because the employee . . . provided information to the Secretary of the Treasury, the Attorney General, or any Federal supervisory agency regarding a possible violation of any provision of this subchapter or section 1956, 1957, or 1960 of title 18, or any regulation under such provision, by the financial institution . . . or any director, officer, or employee of the financial institution”

Practical Tips

What To Do When You Become Aware of Potential Criminal Activity

- ❖ Engage counsel as soon as possible after learning of potential criminal activity.
- ❖ Take steps to preserve potentially relevant documents and information.
- ❖ Don't destroy, alter or remove records.
- ❖ Treat government requests for information with appropriate care and attention.
- ❖ Address employee disciplinary issues promptly and appropriately.
- ❖ Avoid conduct (including employee disciplinary actions) that might be construed as obstructive or harassing to cooperating witnesses.

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Preventative Measures

- ❖ Hire the right people. Conduct appropriate background checks.
- ❖ Properly and thoroughly train employees.
- ❖ Perform regular and random audits.
- ❖ Be alert to employee complaints, dissatisfaction and grievances expressed in performance reviews, counseling sessions, exit interviews and elsewhere.
- ❖ Create job descriptions that separate duties relating to authorization of transactions and reporting/recording.
- ❖ Enforce vacation and leave policies.
- ❖ Conduct periodic review of expense reimbursements.
- ❖ Promptly investigate and address irregularities.
- ❖ Implement an anonymous tip line.
- ❖ Effectively address and respond to member inquiries and/or concerns.
- ❖ Hire an expert to conduct a fraud risk assessment.
- ❖ Have an open door.

Questions?
