



# 2015-042

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Sarah Henderson Moore  
Administrator  
Alabama Credit Union Administration  
100 North Union Street  
Montgomery, Alabama 36130-1203

Credit Union Administration –  
Credit Unions – Public Records –  
Rules and Regulation

Section 14 of the regulations adopted by the Alabama Credit Union Administration does not prohibit the Administrator for the Alabama Credit Union Administration from disclosing an enforcement order issued pursuant to section 5-17-8(c) of the Code of Alabama.

Section 14 of the regulations adopted by the Alabama Credit Union Administration does not prohibit the use of the reports of examination and other materials supporting an enforcement order during an appeal of an enforcement order to the tribunal hearing the appeal.

Dear Ms. Moore:

This opinion of the Attorney General is issued in response to your request.

### QUESTIONS

- (1) Does Section 14 of the regulations adopted by the Alabama Credit Union

Administration prohibit the Administrator for the Alabama Credit Union Administration from disclosing an enforcement order issued pursuant to section 5-17-8(c) of the Code of Alabama?

(2) Does Section 14 of the regulations adopted by the Alabama Credit Union Administration prohibit the use of the reports of examination and other materials supporting an enforcement order during an appeal of an enforcement order?

(3) Does the Administrator have the authority to require the credit union to disclose the contents of a cease and desist order to its own members?

#### FACTS AND ANALYSIS

According to your request, the Alabama Credit Union Administration ("ACUA"), after due investigation, has issued a "cease and desist order" pursuant to section 5-17-8(c) of the Code to an Alabama credit union.

Section 5-17-8 of the Code authorizes the Administrator of the ACUA, with the approval of a majority of the Board of the ACUA, to issue a "cease and desist order" to any credit union upon a finding that the credit union or any officer, director, committee member, or employee has done any of the following:

(1) Committed any violation of a law, rule, or regulation.

(2) Engaged or participated in any unsafe or unsound practice in connection with the credit union business.

(3) Engaged in any act, omission, or practice which constitutes a breach of fiduciary duty to the credit union.

(4) Committed any fraudulent or questionable practice in the conduct of the credit union's business which endangers the credit union's reputation or threatens insolvency.

(5) Violated any condition imposed in writing by the administrator or any written agreement made with the administrator.

(6) Concealed, destroyed, removed, falsified, or perjured any book, record, paper, report, statement, or account related to the business and affairs of the credit union.

ALA. CODE § 5-17-8(c) (Supp. 2014).

In response to the cease and desist order, the credit union has indicated an intention to exhaust its appellate remedies in the matter, and you request the guidance of this Office on the scope of confidentiality requirements appearing within the regulations of the ACUA.

Act 85-457 created the ACUA and is now codified in sections 5-17-40 through 5-17-59 of the Code of Alabama. 1985 Ala. Acts No. 87-457, 425; ALA. CODE §§ 5-17-40 to 5-17-59 (1996 & Supp. 2014). Section 5-17-46 of the Code authorizes the ACUA to promulgate regulations necessary to carry out its duties. ALA. CODE § 5-17-46(a) (1996).

Pursuant to its authority to promulgate regulations, the ACUA has adopted "Section 14. Confidentiality of Records & Applicability of Code of Alabama, Section 36-12-40." This section, in its entirety, states as follows:

Section 36-12-40 of the Code of Alabama, 1975 states in part: "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute or regulation."

Therefore, pursuant to requests for information invoked by 36-12-40:

Under the authority vested in the Administrator of the Alabama Credit Union Administration by

5-17-40 of the Code of Alabama, 1975, which states in part: “[The] Alabama Credit Union Administration . . . shall administer the laws of this state which regulate or otherwise relate to credit unions in this state; The authority of the Alabama Credit Union Administration to perform such functions shall be exclusive and all authority regarding credit unions is hereby vested in the Alabama Credit Union Administration.”

Therefore, neither the Administrator, any member of the Credit Union Board of the ACUA, nor any credit union examiner or other agency employee shall disclose the condition and affairs of any credit union ascertained by an examination of such credit union.

The Administrator is charged with furnishing copies of the Report of Examination or any other information to the board of directors of the credit union which was subject to examination.

Any reports or information furnished or disclosed under this section shall remain the property of the Alabama Credit Union Administration and may not be disclosed to any person other than the officers, directors, attorneys and auditors of such credit union.

It shall also be the authority of the Administrator of the Alabama Credit Union Administration under Title 5-17-40 of the Code of Alabama, 1975 pursuant to 5-3A-11, of the Code of Alabama, 1975, which states, in part: “All reports of examination, records reflecting action of the credit union taken pursuant thereto, and records and minutes of the Credit Union Board of the ACUA relating to a credit union shall be confidential and shall not be subject to subpoena or inspection except by subpoena from a grand jury served on the Administrator.”

The essential function of this section of the regulation is to declare that any and all information pertaining to credit unions, including but not limited to, reports of examination, correspondence or documents concerning the examination that are prepared by the board or credit union and any responses or comments by the credit union to the Administrator shall be confidential and shall not be subject to subpoena or inspection except by subpoena from a grand jury served on the Administrator.

And, although minutes of the Credit Union Board of the ACUA are public records, it is only those records or minutes of meetings that contain financial matters of individuals as well as information that might be incorrectly construed or improperly used to harm the credit union and thereby prejudice its members and the community it serves that are entitled to the same assumption and privilege of confidentiality afforded to banks and the State Banking Board, under sections 5-3A-3 and 5-3A-11 of the Code of Alabama, 1975.

Ala. Credit Union Admin. Regs. § 14, [acua.alabama.gov/law.aspx](http://acua.alabama.gov/law.aspx).

The rules, regulations, and general orders of administrative authorities pursuant to the powers delegated to them have the force and effect of laws. *McCullar v. Universal Underwriters Life Ins. Co.*, 687 So. 2d 156, 176 (Ala. 1996). Language used in an administrative rule or regulation should be given its plain, ordinary, and commonly understood meaning. *Ex parte Wilbanks Health Care Servs., Inc.*, 986 So. 2d 422, 427 (Ala. 2007). Moreover, an administrative body's interpretation of its authorizing legislation is entitled to great weight. *Ala. Metallurgical Corp. v. Alabama Pub. Serv. Comm'n*, 441 So. 2d 565, 571 (Ala. 1983).

Section 14 does not mention “cease and desist orders” nor any other type of enforcement mechanisms. Rather, from the language of Section 14, it is clear that the regulation was intended to provide guidance on the distribution of sensitive materials gathered and prepared during the examination process prior to the issuance of an enforcement order. Specifically, Section 14 addresses disclosure in the following contexts: (1) public records requests; (2) disclosure of information by a credit

union undergoing examination; (3) subpoenas; and (4) the conduct of meetings of the Board of the ACUA and the minutes thereof. The protections of this information are necessary during the examination period to facilitate the process to identify circumstances listed in section 5-17-8(c) of the Code without restraint. Examination reports and related correspondence contain extensive and detailed information regarding every aspect of a credit union. It is appropriate that this information be exempted from disclosure so as not to interfere with or constrain the examination process.

By contrast, a "cease and desist order" or other enforcement order issued pursuant to section 5-17-8(c) of the Code is a separate administrative undertaking that serves multiple corrective purposes. It is issued as a result of the examination and to correct deficiencies identified during the examination. More importantly, an enforcement order is the instrument by which the Administrator of the ACUA seeks to compel corrective action on the part of the credit union to protect the interests of its members and the public. Although an enforcement order necessarily draws upon information gleaned from the examination process, it serves a distinct purpose, including the enhanced enforcement effect that follows from publication.

To interpret Section 14 any differently would effectively prevent the Administrator of the ACUA from taking any public action against a credit union. Accordingly, it is the opinion of this Office that Section 14 of the ACUA regulations does not prohibit the disclosure of an enforcement order issued pursuant to section 5-17-8(c) of the Code.

With respect to your second question, Section 14 applies in the following scenarios: (1) public records requests; (2) disclosure of information by a credit union undergoing examination; (3) subpoenas; and (4) the conduct of meetings of the Board of the ACUA and the minutes thereof. Section 14 does not expressly apply to the appellate proceedings following the issuance of an enforcement order issued pursuant to section 5-17-8(c) of the Code. Indeed, to prohibit the use and disclosure of these records during the appellate litigation would undoubtedly seriously jeopardize the ability of the Administrator of the ACUA to defend enforcement orders duly issued. Thus, the Administrator of the ACUA may disclose reports of examinations and supporting materials during the litigation of an appeal arising from the issuance of an enforcement order to the tribunal hearing the appeal.

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We note, however, that although not required by Section 14, depending on the contents of the materials and litigation strategy, some material may be appropriately redacted, made subject to protective order, or filed under seal pursuant to other legal restrictions. *See, e.g.*, 15 U.S.C.A. § 6802 (2014) (restricting disclosure of personal financial information). Of course, the determination of whether materials may be filed under seal or subject to protective order is generally left to the discretion of the court. *See, generally*, ALA. R. CIV. P. 26(c); *Holland v. Eads*, 614 So. 2d 1012 (Ala. 1993); *Ex parte Old Mountain Properties, Ltd.*, 415 So. 2d 1048 (Ala. 1982).

Because we determine that the cease and desist order may be disclosed to the public, discussion of your third question is pretermitted.

#### CONCLUSION

Section 14 of the regulations adopted by the Alabama Credit Union Administration does not prohibit the Administrator for the Alabama Credit Union Administration from disclosing an enforcement order issued pursuant to section 5-17-8(c) of the Code.

Section 14 of the regulations adopted by the Alabama Credit Union Administration does not prohibit the use of the reports of examination and other materials supporting an enforcement order during an appeal of an enforcement order to the tribunal hearing the appeal.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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