

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

IRPS 11-1

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretative Ruling and Policy Statement 11-1, "Supervisory Review Committee" (IRPS 11-1).

SUMMARY: This policy statement combines two Interpretative Ruling and Policy Statements (IRPSs) and adds denials of technical assistance grant (TAG) reimbursements to the types of determinations that credit unions may appeal to NCUA's Supervisory Review Committee. This new IRPS will replace the earlier IRPSs addressing the Supervisory Review Committee.

DATES: This IRPS was previously issued as an interim final IRPS, which became effective on January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Dave Marquis, Executive Director or Justin M. Anderson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6320 (Dave Marquis) or (703) 518-6540 (Justin Anderson).

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), Pub. L. No. 103-325, §309(a), 108 Stat. 2160 (1994), the NCUA Board (Board) adopted guidelines that established an independent appellate process to review material supervisory determinations, entitled “Supervisory Review Committee” (IRPS 95-1). 60 FR 14795 (March 20, 1995). Through IRPS 95-1, NCUA established a Supervisory Review Committee (Committee) consisting of three senior staff members to hear appeals of material supervisory determinations. IRPS 95-1 defined material supervisory determinations to include determinations on composite CAMEL ratings of 3, 4 and 5, all component ratings of those composite ratings, significant loan classifications and adequacy of loan loss reserves. The Board noted in the preamble to IRPS 95-1, however, that it would consider expanding the disputes covered by the Committee’s review process at a later date. 60 FR 14795, 14796 (March 20, 1995). In 2002, the Board amended IRPS 95-1 by issuing IRPS 02-1, which added Regulatory Flexibility designation revocations to the list of material supervisory determinations credit unions may appeal to the Committee.

B. Interim Final IRPS

At its January meeting, the NCUA Board issued interim final IRPS 11-1. 76 FR 3674 (January 20, 2011). As noted in the preamble to the interim final IRPS, under Part 705 of NCUA's regulations, qualifying credit unions can apply for loans or technical assistance grants (TAGs) from the Community Development Revolving Loan Fund for Credit Unions (CDRLF). The change made in the interim final IRPS allows a credit union to appeal the denial of a TAG reimbursement to the Committee. Specifically, under the interim final IRPS, any credit union that disagrees with the Director of OSCUI's determination may, within 30 days from the date of the denial, appeal the determination to the Committee. Committee decisions on TAG appeals are final; they are not appealable to the NCUA Board. Interim final IRPS 11-1 also combined the two previous IRPSs addressing the Committee, IRPS 95-1 and 02-1, into one centralized document. The Board noted in the preamble that interim final IRPS 11-1 would supersede and replace the previous two IRPSs on the Committee. The Board also made the following minor changes in the interim final IRPS: inclusion of current position titles; deletion of the requirement for quarterly meetings (meetings will be held on an as needed basis); and to make timing of appeal of Committee decisions to the NCUA Board consistent, inclusions of a statement that all decisions appealable to the Board are from the date of receipt of decision.¹

¹ Under IRPS 95-1, decisions were appealable 30 days from the date a Committee decision was issued and under IRPS 02-1 decisions were appealable 60 days from the appellant's receipt of a decision.

C. Summary of Comments

NCUA received three comments, two from credit union trade associations and one from a state credit union association. All three commenters generally supported the rule, but did request additional changes. All three commenters requested that appeals to the Supervisory Review Committee be more transparent. Ideas suggested by the commenters included publishing on NCUA's website the names of the committee members, the agenda and dates of committee meetings, an annual report of the committee's actions, and the decisions of the committee. NCUA is considering ways to make the appeals process more transparent, including adding information about the Committee and its functions to the NCUA website. The Board, however, does not believe it is necessary to include any actions related to transparency in this IRPS. The purpose of the IRPS is to inform credit unions of their rights of appeal to the Committee.

One commenter also requested that NCUA clarify how credit unions can appeal other supervisory and examination matters that are outside the scope of the Committee's review. Section B of this IRPS lists various NCUA regulations addressing procedures for other appealable issues. In addition, Section B notes that the Board serves as the final administrative decision maker for major disputes not covered by those other regulations or this IRPS. Such matters should first be pursued through the appropriate Regional Office or the Office of Corporate Credit Unions.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe a significant economic impact agency rulemaking may have on a substantial number of small credit unions. For purposes of this analysis, credit unions under \$1 million in assets are considered small credit unions.

This final IRPS expands the types of determinations that credit unions may appeal to the NCUA's Supervisory Review Committee and combines two previous IRPS. This final IRPS imposes no additional financial, regulatory or other burden on credit unions. NCUA has determined and certifies that this final IRPS will not have a significant impact on a substantial number of small credit unions. Accordingly, NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that this final IRPS does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined

in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final IRPS applies to all credit unions that appeal NCUA material supervisory determinations before the NCUA Supervisory Committee, but does not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final IRPS will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Management and Budget is currently reviewing this IRPS, but NCUA does not believe the IRPS is a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the National Credit Union Administration Board on April 21, 2011.

Mary F. Rupp

Secretary of the Board

Accordingly, the interim final IRPS 11-1, which was published at 76 FR 3674 on January 20, 2011, is adopted as a final IRPS without change.

[Note: The following ruling will not appear in the Code of Federal Regulations.]

1. Authority: Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325.

2. IRPS 11-1 is established as follows:

Interpretive Ruling and Policy Statement 11-1 -- Supervisory Review Committee

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires that NCUA establish an independent intra-agency appellate process to review material supervisory determinations. The NCUA Board hereby establishes a Supervisory Review Committee (Committee) to implement Section 309.

It is NCUA policy to maintain good communication with all credit unions it supervises. Credit unions, examiners and regional and central office staff are encouraged to resolve disagreements informally and expeditiously. The NCUA Board expects that most disputes will be handled in that manner. The Committee and other appeals processes are available for certain disputes that cannot be resolved informally.

A -- Committee Structure, Scope and Procedures

The Committee shall consist of three regular members of the NCUA's senior staff as appointed by the NCUA Chairman. None of the members shall be currently serving as a Regional Director, Associate Regional Director, Executive Director, Director of the Office of Small Credit Union Initiatives, or Senior Policy Advisor or Chief of Staff to a Board Member. One member shall be designated by the NCUA Chairman as

chairperson. All three Committee members shall serve for one year terms and may be reappointed for additional terms. Each member of the Committee shall have one vote and a quorum (two members) shall be present at each Committee meeting. Meetings may be held in person or via teleconference. A majority vote of the full Committee (two votes) is required for action on an appeal. Meetings will be scheduled, as appropriate, by the chairperson on an as needed basis.

Appeals of material supervisory determinations made by NCUA may be made by all federally insured credit unions (federal credit unions (FCUs) and federally-insured, state chartered credit unions (FISCUs). Appeals of denials of Technical Assistance Grant (TAG) reimbursements may be made by any "Participating Credit Union" as defined by 12 C.F.R. §705.3(b).

Material supervisory determinations are limited to: (1) composite CAMEL ratings of 3, 4, and 5 and all component ratings of those composite ratings; (2) adequacy of loan loss reserve provisions; (3) loan classifications on loans that are significant as determined by the appealing credit union; and (4) revocations of Regulatory Flexibility Program (RegFlex) authority. Subject to the requirements discussed below, credit unions may also appeal to the Committee a decision of the Director of the Office of Small Credit Union Initiatives (OSCU) to deny Technical Assistance Grant (TAG) reimbursements.

An FCU, other than a corporate FCU, must contact the regional office regarding the examiner's decision within 30 days of the examiner's final determination. The decision must be appealed to (postmarked or received by) the Committee either 30 days after a regional determination or 60 days after the regional office has been contacted if it has not made a determination.

A FISCU, other than a corporate FISCU, must contact the Regional Office within 30 days of the NCUA examiner's final decision. The Region will verify that the determination being appealed was made by an NCUA examiner. If the decision was made by the state, the appeal will be turned over to the state for appropriate action. If the decision was made by the NCUA examiner, the dispute will be handed by the Region and become appealable to the Committee either 30 days after a regional determination or 60 days after the regional office has been contacted if it has not made a determination. The Committee chairperson will reverify that the determination was made by NCUA. Regional staff and the Committee will notify and consult with the state supervisory authority in appropriate cases.

All federally insured corporate credit unions (FCUs and FISCUs) must contact the Office of Corporate Credit Unions concerning its examiner's final determination and then the Committee within the same time frames. Staff from the Office of Corporate Credit Unions and the Committee will consult with the state supervisory authority in appropriate cases involving corporate FISCUs.

If a Regional Director revokes a credit union's RegFlex authority, in whole or in part, upon written notice to the credit union, the credit union may appeal the revocation to the

Committee within 60 days from the date of the Region's determination. The RegFlex revocation is effective as soon as the credit union receives the notice and it remains in effect pending a decision from the Committee.

All "Participating Credit Unions" must appeal a determination of the Director of OSCUI to deny a TAG reimbursement to the Committee within 30 days from the date of the denial.

The board of directors of the appealing credit union must authorize that the appeal be filed. Appeals must be submitted in writing and mailed or delivered to Chairman, Supervisory Review Committee, NCUA, 1775 Duke Street, Alexandria, VA 22314-3428.

Appeals may be made by letter, and must include the name of the appellant credit union, the determination or denial being appealed and the reasons for the appeal. Appellants are encouraged to submit all information and supporting documentation relevant to the matter in dispute.

Appellants are entitled to a personal appearance before the Committee. The Committee chairperson reserves the right, however, to attempt to work out the dispute through teleconference.

The determination or denial remains in effect pending appeal. The appeal does not prevent the NCUA from taking any action, either formal or informal, that it deems appropriate during the pendency of the appeal.

The Committee may request additional information from the appellant and/or the Regional Office, Office of Corporate Credit Unions, or OSCUI within 15 days of its receipt of the appeal. The information must be submitted to the Committee within 15 days of receipt of the Committee request. The Committee shall make a determination on the appeal within 30 days from the date of the receipt of an appeal by the Committee or of its receipt of any requested additional information. These time requirements are subject to adjustment by the Committee, whether on its own or upon request of the appellant or the Region or other office involved. If time constraints do not permit all appeals to be adjudicated within the above time frames, the Committee will adjudicate material supervisory determination appeals before appeals of TAG reimbursement denials regardless of the order in which the Committee received the appeals.

Committee decisions on the denial of a TAG reimbursement are the final decisions of NCUA and are not appealable to the NCUA Board. If a RegFlex revocation is the basis of the appeal, the credit union may appeal the Committee's decision to the NCUA Board within 60 days from the appellant's receipt of the Committee's decision. All other appealable decisions must be appealed to the NCUA Board within 30 days of the appellant's receipt by the party of the Committee's decision.

B -- Other Appeals

Procedures for various formal and informal adjudicative and non-adjudicative actions and proceedings not covered by the Supervisory Review Committee are found in Parts 709 (creditor claim appeals), 745 (share insurance appeals), 792 (Freedom of Information Act appeals) and 747 (appeals of various administrative and enforcement actions) of the NCUA Rules and Regulations (12 CFR 709, 745, 792, and 747). These parts should be reviewed to determine the procedures which apply for a particular appeal. In addition, the NCUA Board serves as the final administrative decision maker for major disputes that are not otherwise covered by this IRPS or Parts 709, 745, 792 or 747. These include disputes over chartering, insurance applications, field of membership expansion, merger, certain corporate credit union matters, charter changes and letters of understanding and agreement. These issues should first be pursued through the appropriate Regional Office or the Office of Corporate Credit Unions. Appeals concerning these matters should be addressed to the NCUA Board and submitted through the appropriate Regional Office or the Office of Corporate Credit Unions.

C -- Retaliation

Alleged acts of retaliation should be reported to NCUA's Inspector General, who is authorized by Congress, under the Inspector General Act, to receive and investigate complaints and other information regarding abuse in agency programs and operations.

Any retaliation by NCUA staff against a credit union making any type of appeal will subject the employee to appropriate disciplinary or remedial action by the appropriate supervisor. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, suspension or separation from employment, change in assigned duties, or disqualification from a particular assignment, including prohibition from participating in any examination of the credit union that was the subject of the retaliation.