

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

IRPS 11-1

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim 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 is effective [Insert date of publication in the FEDERAL REGISTER]. Comments must be received by [Insert date 30 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.
Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on IRPS 11-1” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: All public comments are available on the agency’s website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

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 determinations to the list of material supervisory determinations credit unions may appeal to the Committee.

B. Technical Assistance Grant Reimbursement Denials Amendment

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. As outlined in the 2010 NCUA Office of Small Credit Union Initiatives' (OSCUI) Technical Assistance Grant Guidelines

([http://www.ncua.gov/Resources/CreditUnionDevelopment/Files/Programs/Grants/2010/](http://www.ncua.gov/Resources/CreditUnionDevelopment/Files/Programs/Grants/2010/GeneralGuidelines.pdf)

[GeneralGuidelines.pdf](http://www.ncua.gov/Resources/CreditUnionDevelopment/Files/Programs/Grants/2010/GeneralGuidelines.pdf)), qualifying credit unions that have applied for and been granted a TAG may purchase goods or spend the funds, up to the amount of the grant in accordance with the purpose of the grant as articulated in the credit union's application.

After making expenditures, a credit union must submit copies of receipts and proof of payment to NCUA for reimbursement. The Director of OSCUI may deny a request for reimbursements if the credit union fails to remit the necessary documentation, the expenditure is not in furtherance of the purpose of the grant, or the expenditure is for a restricted category of purchases currently as identified in the 2010 Technical Assistance Grant Guidelines. Prior to this IRPS, the decision of the Director of OSCUI was final and credit unions did not have a forum to appeal the decision within NCUA. This interim final IRPS will allow credit unions that disagree with the Director of OSCUI's determination to appeal the decision to NCUA's Supervisory Review Committee.

While the Board recognizes that the Riegle Act requires NCUA to set up a Supervisory Review Committee to hear appeals of material supervisory determinations, the Board notes that there is nothing in the Riegle Act that prohibits it from allowing the Committee to hear appeals of other issues. Although denials of TAG reimbursements are clearly

not a material supervisory determination, the Board believes these determinations are important enough to warrant formal appeals to the Committee. As such, 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. The Committee will typically make a decision on a TAG reimbursement denial appeal within 30 days from the date the committee receives the appeal. The Committee will, however, adjudicate material supervisory determination appeals before TAG denial appeals if it is necessary to ensure material supervisory determination appeals are adjudicated expeditiously as required by the Riegle Act. Committee decisions on TAG appeals are final; they are not appealable to the NCUA Board.

C. Replacement of IRPS 95-1 and 02-1

In order to centralize all applicable guidance on the Committee and ensure ease of understanding by credit unions, the Board is combining IRPS 95-1 and 02-1 into interim final IRPS 11-1, which will also include the TAG reimbursement denial amendments. Interim final IRPS 11-1 will supersede and replace the previous two IRPS on the Committee. The Board also made some minor changes to the IRPS: position titles are made current; the requirement for quarterly meetings is deleted (meetings will be held on an as needed basis); and to make timing of appeal of Committee decisions to the NCUA Board consistent, 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.

D. Interim Final IRPS

The Board is issuing this IRPS as an interim final IRPS pursuant to 5 U.S.C. §553(b)(3)(A), which allows agencies to issue rules without notice and comment in the case of interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. IRPS11-1 is an interpretation of agency procedure granting credit unions an appeal mechanism for denials of TAG reimbursements.

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 interim 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 interim final IRPS imposes no additional financial, regulatory or other burden on credit unions. NCUA has determined and certifies that this interim 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 interim 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 interim 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 interim 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 interim 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 January 13, 2011.

Mary F. Rupp

Secretary of the Board

Accordingly, for the reasons set forth in the preamble, IRPS 11-1 is established as follows:

[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.