

NCUA-IR - 95-1 GUIDELINES FOR THE SUPERVISORY REVIEW
COMMITTEE 3/95

NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement 95-1 -- Supervisory Review Committee (IRPS 95-1).

SUMMARY: The Riegle Community Development and Regulatory Improvement of Act (Act) of 1994 was signed into law on September 23, 1994. Section 309 of the Act requires that NCUA establish an independent appellate process to review material supervisory determinations. This process must be established within 180 days of the Act's passage or by March 22, 1995. The Act also requires that the public be entitled to comment on the proposed process. The NCUA Board issued proposed IRPS 94-2 on November 10, 1994. The proposed IRPS would have established a Supervisory Review Committee (Committee) consisting of five senior staff members to hear appeals of material supervisory determinations. Material supervisory determinations were defined in the proposal to include composite CAMEL ratings of 4 and 5, significant loan classifications and adequacy of loan loss reserves. The Board has expanded the determinations subject to review in the final IRPS to include composite CAMEL ratings of 3, 4 and 5 and all component ratings of those composite ratings. The final IRPS reduces Committee membership from five to three and shortens the time-frames for Committee action. Additional procedural and technical changes are made in the final IRPS as described in the Supplementary Information.

EFFECTIVE DATE: March 22, 1995

ADDRESSES: National Credit Union Administration, 1775 Duke Street,
Alexandria, VA 22314-3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel
to the General Counsel, at the above address or telephone 703-518-6540.

SUPPLEMENTARY INFORMATION:

Background

The Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325 (the Act) was signed into law on September 23, 1994. Section 309 of the Act requires, among other things, that NCUA and the federal banking agencies each establish an independent appellate process to review material supervisory determinations. The Act requires that the agencies provide the public with notice and opportunity to comment on the proposed guidelines for the appellate process within 90 days of the Act's passage. The NCUA Board issued proposed guidelines establishing a Supervisory Review Committee (Committee) (Interpretive Ruling and Policy Statement (IRPS) 94-2) on November 10, 1994 (59 FR 59437, 11/17/94.) The guidelines were issued with a 30-day comment period

ending on December 19, 1994. The NCUA Board then extended the comment period until January 18, 1995. (See 59 FR 61003, 11/29/94.) The Act requires that each agency's appellate process be established not later than 180 days after the Act's passage (by March 22, 1995).

Forty-nine commenters responded to the proposed guidelines. The public commenters consisted of 26 federally chartered credit unions, 7 state chartered, federally-insured credit unions and 1 unidentified credit union, 8 state credit union leagues, 1 state credit union regulator, 3 national trade associations, 2 individual auditors and one credit union manager. The commenters generally approved of the proposed Supervisory Review Committee, however, there were several areas where many of the commenters suggested changes. The Board has considered the public comments and suggestions of NCUA staff as well as the proposed guidelines of the federal banking agencies (Federal Deposit Insurance Corporation, Office of Thrift Supervision, Office of Comptroller of the Currency, and Federal Reserve Board) in devising its final guidelines. An explanation of the comments received and the resolution of the issues in the final IRPS follows.

Format -- IRPS or Regulation

The Board specifically requested comment on whether an IRPS was the appropriate method to establish the appeals process or whether the process should be established through a regulation. Sixteen commenters addressed this issue and the response was split 50/50. Several of the commenters supporting use of a regulation believe it would have greater force of law. The Board believes that the IRPS format is more appropriate since it provides the Board with some flexibility. The Board does not believe enforceability of the IRPS will be a problem since notice and comment requirements of the Administrative Procedure Act have been followed in its promulgation.

Committee Composition

According to the proposed IRPS, the Committee was to be composed of five senior staff members: the Executive Director, the Director of the Office of Examination and Insurance, the General Counsel, one Regional Director, and one additional senior staff or Board staff member. The Executive Director was to serve as Committee chairperson. The proposed composition generated response from 32 commenters. Twenty-two of these commenters suggested adding (or completely substituting) non-NCUA staff to the Committee to ensure that the Committee would exercise independent judgment. The Board does not have the authority to place non-NCUA staff on the Committee. The Act requires that NCUA establish an "independent intra-agency appellate process." (Emphasis added.) Non-NCUA staff presence on the Committee would not fulfill the statutory requirement of "intra-agency."

Several commenters (including ten who agreed that no non-NCUA staff should be on the Committee) suggested eliminating the Regional Director and alternate Regional Director from the Committee. Commenters believed that the Regional Director members would find it difficult not to support one another, even though they would not hear appeals occurring in their own Regions. The Board does not wish to place the Regional Directors in this position and has eliminated the Regional Director and alternate Regional Director from the Committee. In addition, the Board believes that neither the Executive Director nor the Executive Assistants to the

Board Members should serve on the Committee. The persons serving in these positions report to and represent the interests of Board members. In order to ensure a separate and meaningful final right of appeal to the Board, as discussed below, these individuals should not serve on the Committee.

A few commenters noted that a Committee composed of fewer individuals may be better able to handle the appellate process. These commenters noted that it may be difficult to accommodate all members' schedules given their senior status and multiple job demands. The Board agrees and has reduced the Committee from five to three. The Committee will be composed of three senior staff members, none of whom are currently serving as a Regional Director or Associate Regional Director, the Executive Director or Executive Assistant to a Board Member. One Committee member will be designated as chairperson. All three members will serve for one year terms and can be reappointed for additional terms. The NCUA Chairman will appoint the Committee members and designate one member as Committee chairperson.

The proposed IRPS required that three of the five Committee members be present at each Committee meeting and that a majority vote be required for action on an appeal. The number of Committee members has been reduced from five to three and a quorum of two must be present for each meeting. A majority vote of the entire Committee (at least two) is required for action on an appeal.

The proposed IRPS stated that regular Committee meetings would be held quarterly with flexibility given to the Committee chairperson to cancel meetings and call additional meetings, as needed. Many commenters believed that more regular meetings should be scheduled. The final IRPS retains the requirement for regular quarterly meetings, again with flexibility given to the Committee chairperson to change this schedule. It is the Board's intention that adequate meetings be scheduled and held to complete action on all appeals within the time frames set forth below. Time frames for Committee action have been shortened as requested by many commenters. See discussion below.

Appealable Issues

The Act requires that material supervisory determinations, including determinations relating to examination ratings, adequacy of loan loss reserve provisions and loan classifications on loans that are significant to the credit union, be subject to the appellate process. The Board noted in the proposed IRPS that it understood the reference to "examination" rating to mean a credit union's CAMEL rating. The Board proposed that only a credit union's composite CAMEL rating of 4 or 5 be appealable; component ratings were not appealable to the Committee. In addition, the Board noted adequacy of loan loss reserve provisions and loan classifications on loans that are significant to the credit union as appealable issues. The Board requested comment on how it should define "significant" for purposes of identifying classified loans subject to the appeals process.

A total of 30 commenters addressed the appealability of certain CAMEL ratings. Most commenters thought the ratings subject to the appeals process should be expanded. Thirteen commenters believed all CAMEL ratings (or CAMELs 2 -- 5) should be appealable. They stated that credit unions with CAMEL ratings other than 4 and 5 have significant objections to ratings and that their appealability would

give credit unions the ability to discuss ratings with their examiners. Ten commenters thought that CAMEL 3s should be appealable. They noted that a rating of 3 affects field of membership expansions and some CAMEL 3 credit unions get increased examinations and supervisory contacts and are placed under letters of understanding and agreement. One commenter stated that a CAMEL rating of 3 is perceived as unsatisfactory in the credit union community. Fifteen commenters requested that at least some component ratings should be appealable. It was stated that composite ratings are made up of components, and if a component rating could not be appealed, a composite rating could never be changed. The Board has decided to expand the appealability of CAMEL ratings. Credit unions may appeal composite ratings of 3, 4, and 5 as well of as all component ratings of those composite ratings.

Eleven commenters addressed the issue of how to define "significant" for purposes of appealing the classification of a significant loan. Seven of these commenters believe that each credit union should determine which loans are significant. Two commenters suggested significant be defined as a percentage of reserves, one suggested a percentage of reserve plus dollar amount of the loan and one suggested that significant loans be linked to reserve adequacy. The Board has determined that each credit union may determine whether a classified loan is "significant" for purposes of its appealability to the Committee.

Several commenters believed additional disputes should also be subject to the Supervisory Review Committee. Included are disputes relating to fixed assets, credit union service organizations, field of membership, mergers and letters of understanding and agreement. It was also suggested that the Act requires that material supervisory decisions "relating to examinations" are appealable and the Board's interpretation of the Act as set forth in the proposed IRPS was too narrow. The Board has determined not to further expand the types of disputes covered by the review process initially. The Board may expand the disputes covered after some experience is gained with the process. In addition, disputes over field of membership, mergers, and other material issues are already appealable to the NCUA Board by credit unions not satisfied with the decisions of the Regional Director.

Resolution by Region and Timing Issues

The proposed IRPS stated that a dispute is ripe for review by the Committee only when the credit union establishes that it has been unsuccessful in attempting to resolve the matter with the Regional Office. No time frames were set for resolving issues at the regional level. Fourteen commenters believed that some time limit should be imposed on the Region to make a decision. Suggestions ranged from 30 -- 120 days, with most commenters favoring 30 days. The Board agrees and believes that the Regions should respond to these disputes within 30 days.

The proposed IRPS stated that appeals should be submitted within 30 days of the Regional Office's decision. Seven commenters suggested that 30 days would not always provide adequate time for a credit union to prepare an appeal. Some of these commenters suggested the 30 days be expanded to 45 -- 60 days. The Board believes that 30 days is adequate time for a credit union to make a decision on whether to submit an appeal and in an effort to complete the appeal process expeditiously, will not increase the 30 days. In the event the Region does not

respond, the dispute becomes appealable to the Committee after the first 30 days and within another 30 days (30 days for Region to respond, 30 days for credit union to submit appeal to Committee).

The Board also believes that credit unions should be timely in their attempt to resolve the dispute with the Region. Therefore the final IRPS states that the credit union must contact the Regional Office within 30 days of the examiner's final determination.

Sixteen commenters addressed the proposed time frames for the Committee to act on an appeal. Most agreed that the time frames set forth would not result in an expeditious appeal as required by the Act. It was proposed that an appeal be submitted by a credit union within 30 days of regional action and that the Committee would make a decision on the appeal within 90 days. If additional information was needed, the Committee would request it within 30 days of receipt of the appeal and the information would be submitted by the credit union and/or Regional Office within 15 days. Seven commenters specifically suggested shorter time frames for the Committee to decide an appeal, several others just noted that the time frame was too long. One commenter suggested reducing the 90 days to 30 days, three others suggested reducing it to 60 days. Three additional commenters stated the whole process should be limited to 90 days. The Board agrees that the time for Committee deliberation should be reduced. The final IRPS reduces the time the Committee has to request additional information from 30 to 15 days and the time for Committee action on the appeal from 90 to 30 days.

Appeals by Federally-Insured, State Chartered Credit Unions

The Act requires that the appellate process be available at insured institutions that NCUA supervises. It was noted in the preamble of the proposed IRPS that in cases of material supervisory determinations made by NCUA, the Committee would consider appeals from all federally insured institutions and that NCUA would consult with the state supervisory authority in appropriate cases. Six commenters addressed the issue of appeals made by federally-insured, state chartered credit unions (FISCUs). One commenter agreed with the proposal, one stated that NCUA does not supervise FISCUs and believed the review process should not be available to them and several commenters asked how the FISCO review process would be implemented.

NCUA has clear responsibilities with respect to the safety and soundness of all federally insured credit unions. NCUA works closely with the various state supervisory authorities in both joint and independent examination of FISCUs. There are two basic types of FISCO examinations in which NCUA examiners are involved: a joint examination with the state examiner; and an NCUA insurance review. Normally in a joint examination, the state examiner is the examiner-in-charge and there will be concurrence between the state and NCUA examiner on all substantive exceptions noted in the examination report. Results of joint examinations will normally be within the purview of the state since the state examiner is the examiner-in-charge. Disputes arising from these examinations would not normally be subject to NCUA's review process. An insurance review, on the other hand, is done by NCUA examiners; it does not involve state examiners. Disputes concerning material supervisory determinations arising from insurance reviews would normally be subject to the review process. The final IRPS states that FISCO appeals of

material supervisory determinations made by NCUA examiners should first be pursued with the appropriate NCUA Regional Office and then, if not satisfactorily resolved, submitted to the Committee. The Committee chairperson will reverify that an NCUA examiner rather than a state examiner made the disputed determination, and the appeal will then be subject to review by the Committee. Regional staff and the Committee will consult with the state supervisor's office in appropriate cases.

Corporate Credit Union Appeals

The proposed IRPS did not specifically address appeals of corporate credit unions. The corporate credit union program is managed by the Office of Corporate Credit Unions located in NCUA's central office. NCUA examiners (rather than state credit union examiners) normally serve as the examiner-in-charge for examinations of corporate FISCUs. All federally insured corporate credit unions (both FCUs and FISCUs) should contact the Office of Corporate Credit Unions rather than the regional office concerning material supervisory determinations made by NCUA examiners. The same time frames and procedures apply. Staff from the Office of Corporate Credit Unions and the Committee will consult with the state supervisor's office in appropriate cases.

Written Appeal and Authorization by Board of Directors

Most commenters did not address whether the appeal should be submitted in writing. Of the few that did address the issue, only one commenter was opposed. The final IRPS reflects the requirement that the appeal be submitted in writing. A related issue that the Board did not specifically request comment on is whether the board of directors of the appealing credit union be required to authorize the appeal. The NCUA believes this to be a fair requirement. The board of directors should be made aware of and authorize any appeal made to the Committee. This requirement will eliminate the decision to appeal being made by one credit union official.

Personal Appearance

The preamble to the proposed IRPS noted that personal appearances would not be a regular part of the appellate process; that personal appearances may be requested, but the final decision would be made by the Committee. Twenty-nine commenters addressed personal appearance of the appealing party and all agreed that the credit union should be given the opportunity to make a personal appearance before the Committee. The NCUA Board has reconsidered this issue and determined that the decision on whether to make a personal appearance should be up to the appealing credit union. Appealing credit unions will be responsible for all of their costs associated with a personal appearance. In an attempt to save resources of both appealing credit unions and the NCUA, the Committee chairperson reserves the right to first attempt to work out the dispute via teleconference.

Stay of Decision Pending Review

Three commenters requested that any material supervisory determination appealed be stayed pending the outcome of the appellate process. This issue was not specifically addressed in the proposed IRPS. The NCUA Board does not believe it appropriate to stay examination findings pending appeal. Safety and soundness

concerns require that examination findings remain in place and that any action that the NCUA deems appropriate based on these findings be taken.

Role of NCUA Board

The proposed IRPS required that all Committee decisions be submitted to the NCUA Board. The Board would then have 7 days to review the decision. If a majority of the Board members agreed, the decision would become final. If a majority did not agree, the decision would be considered by the Board on final appeal. Six commenters addressed this issue. One agreed with the proposal and four stated that the decision should not go to the Board, but that the appealing credit union should have a right to appeal the Committee decision to the Board. One commenter suggested that only Committee decisions opposed to the appealing credit union should go to the Board. The Board has reconsidered this issue and determined that all appealing credit unions as well as the NCUA offices involved should have a right to appeal to the Board. The Committee decision is appealable to the NCUA Board within 30 days of receipt by the parties.

Other Appeals

One commenter requested that the Board include in the IRPS other types of appealable issues that are available to credit unions and credit union members. A section has been added to the final IRPS setting forth provisions of the NCUA Rules and Regulations which address various formal and informal appeals processes. Also noted in this section are other types of disputes (chartering, insurance applications, field of membership expansions, merger, etc.) which are appealable to the NCUA Board.

Retaliation

The Act requires that NCUA ensure that safeguards exist for protecting the appellant from retaliation by agency examiners. The proposed IRPS stated that credit unions could seek redress from alleged retaliation through NCUA's Office of Inspector General. Seven commenters addressed this issue, with five suggesting rotation of examiners if retaliation is found to exist. The final IRPS sets forth the types of actions that may be taken against an NCUA employee, including rotation of examiners, when retaliation is found to exist.

Exhaustion of Administrative Remedies

Two commenters asked whether a credit union would have to use the appellate process before proceeding to court on a dispute subject to the Committee's jurisdiction. Since the appellate procedure is part of NCUA's administrative process, it appears that if a credit union did not pursue the process and filed directly in court, it would not have exhausted its administrative remedies. Unless otherwise noted, this would be true for any of NCUA's appeal procedures. The Board has determined not to address this issue in the IRPS, as it is a principle of general administrative law.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the final rule will not have a significant economic impact on small credit unions (those under \$1 million in assets). The appeal procedures set forth apply equally to all credit unions. The procedures are not mandatory. Only those credit unions wishing to appeal are subject to its provisions. It is not anticipated that small credit unions will use the appeal procedures any more or less than large credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The IRPS applies to all federally insured credit unions (both federally chartered credit unions and federally-insured, state chartered credit unions (FISCUs)), as required by the Act. It may have a 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. However, the Act requires that the process apply to FISCUs.

Paperwork Reduction Act

Although it was noted in the proposal that the IRPS would impose paperwork requirements subject to the Paperwork Reduction Act, upon further consideration, including consultation with the Office of Management and Budget, the Board has concluded that the IRPS is exempt from the Paperwork Reduction Act pursuant to 44 U.S.C. 3518(c)(1)(B)(ii). According to this section, the Paperwork Reduction Act does not apply to an administrative action or investigation involving an agency against specific individuals or entities.

By the National Credit Union Administration Board on March 13, 1995.

Becky Baker,
Secretary of the Board.

Accordingly, for the reasons set forth in the preamble, IRPS 95-1 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 95-1 is established as follows:

Interpretive Ruling and Policy Statement 95-1 -- Supervisory Review Committee

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 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 Supervisory Review Committee and other appeals processes are available for certain disputes that cannot be resolved informally.

A -- Committee Structure, Scope and Procedures

The Supervisory Review 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 or Executive Assistant 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. Regular Committee meetings shall generally be held quarterly. Additional meetings will be scheduled or regular meetings canceled, 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).

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; and (3) loan classifications on loans that are significant as determined by the appealing credit union.

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.

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

Appeals may be made by letter, and shall include the name of the appellant credit union, the material supervisory determination 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 material supervisory determination remains in affect 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 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 involved.

The Committee decision is appealable to the NCUA Board within 30 days of receipt by the parties.

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.

WITHDRAWN