

7535-01-U

## NATIONAL CREDIT UNION ADMINISTRATION

### Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement 02-1, "Supervisory Review Committee" (IRPS 02-1).

SUMMARY: This policy statement amends Interpretive Ruling and Policy Statement (IRPS) 95-1 to add Regulatory Flexibility Program issues to the list of material supervisory determinations that credit unions may appeal to NCUA's Supervisory Review Committee.

DATES: The IRPS is effective April 23, 2002.

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

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos, Staff Attorney, at the above address, or telephone: (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

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). IRPS 95-1 created 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).

##### B. Regulatory Flexibility Program Amendment

On November 15, 2001, the Board adopted a final rule that established the Regulatory Flexibility Program (RegFlex). 66 FR 58656 (November 23, 2001). Under RegFlex, credit unions with advanced levels of net worth and consistently strong supervisory examination ratings are exempt from certain NCUA regulations, in whole or in part. A Regional Director may revoke a credit union's RegFlex authority, in whole or in part, by giving the credit union written notice of the Region's substantive and documented safety and soundness reasons. 12 C.F.R. §742.6. The RegFlex final rule provides that a credit union may appeal the Regional Director's determination to the Committee. 12 C.F.R. §742.7. This IRPS amends IRPS 95-1 by including RegFlex determinations in the list of material supervisory determinations within the Committee's purview and the special filing time frames adopted by the

## Board for RegFlex revocation appeals.

In the RegFlex rule, the Board adopted slightly different filing time frames for RegFlex revocation appeals than those currently in IRPS 95-1. Unlike the Regional Director's decision to revoke RegFlex authority, the other material supervisory determinations involve an intermediate review by the Region of a field examiner's determination before appealing to the Committee. A credit union may appeal the Regional Director's decision to revoke RegFlex authority to the Committee within 60 days from the date of the determination. 12 C.F.R. §742.7.

Under the RegFlex rule, the credit union may appeal the Committee's decision to the Board within 60 days from the date the Committee issued the decision. 12 C.F.R. §742.7. This differs from appeals of other material supervisory determinations because either the credit union or the Region may appeal to the Board within 30 days of receipt of the decision by the parties.

## Regulatory Procedures

### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe an 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 material supervisory determinations that credit unions may appeal to the NCUA's Supervisory Review Committee. 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 has determined that this final IRPS is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the National Credit Union Administration Board on March 5, 2002.

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Becky Baker,  
Secretary of the Board.

Accordingly, for the reasons set forth in the preamble, IRPS 02-1 amends IRPS 95-1 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. Amend the third paragraph in subpart A to read as follows:

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.

3. Add a new paragraph in subpart A, after the sixth paragraph to read as follows:

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.

4. Add the following sentence to the last paragraph in subpart A:

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 date the Committee issued its decision.