

NCUA-IR - 94-2 INTERPRETIVE RULING AND POLICY STATEMENT;  
GUIDELINES FOR THE SUPERVISORY REVIEW COMMITTEE 11/94

NATIONAL CREDIT UNION ADMINISTRATION

PROPOSED INTERPRETIVE RULING AND POLICY STATEMENT

November 1994

12 CFR Part 700 et seq.

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA)

ACTION: Proposed Interpretive Ruling and Policy Statement 94-2 (IRPS 94-2)

SUMMARY: The Riegle Community Development and Regulatory Improvement Act of 1994 (the Act) requires that NCUA and the federal banking agencies each establish an appeals process within the Agency to review material supervisory determinations made with respect to insured institutions. The NCUA Board proposes that the review process be carried out by a supervisory review committee consisting of senior staff members. This proposal sets forth the types of issues that are eligible for review by the committee as well as the composition, structure and procedures for the proposed committee. The Board requests comment on the committee concept as well as all other aspects of the proposal.

DATES: Comments must be postmarked or received by December 19, 1994.

ADDRESSES: Send written comments to Becky Baker, Secretary to the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314 or comments via the electronic bulletin board to Becky Baker at 703-518-6480.

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 the 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 proposed guidelines for the appellate process within 90 days of the Act's passage. The Act requires further that each agency's appellate process be established not later than 180 days after the Act's passage.

The Act defines the terms "material supervisory determinations" and "independent appellate process." Material supervisory determinations are defined to include determinations relating to (1) examination ratings; (2) adequacy of loan loss reserve

provisions; and (3) loan classifications on loans that are significant to a credit union. The definition specifically excludes determinations made by NCUA to appoint a conservator or liquidating agent or a decision made under Section 212 of the FCU Act (12 U.S.C. 1790a) concerning NCUA approval of officials of newly chartered or troubled credit unions.

Independent appellate process is defined as a review by an agency official who does not report, directly or indirectly, to the agency official who made the determination that is being reviewed. The Act also requires that the agencies ensure that appeals be heard and decided expeditiously and that safeguards exist for protecting the appellant from retaliation by agency examiners.

In order to carry out the requirements of the Act, the NCUA Board proposes the establishment of a supervisory review committee composed of several senior NCUA personnel. The Board believes the committee will provide at least the following benefits for NCUA and credit unions:

- Ensure more consistent application of supervisory policy throughout the Agency.
- Enhance the level of fairness and due process afforded to credit unions and others who are involved in supervisory disputes with NCUA.
- Reduce the number of cases that can only be resolved through judicial proceedings.
- Provide a more comprehensive and accurate record in those cases that do result in such proceedings.

The Board requests comment on all aspects of this proposal, including the advisability of meeting the statutory requirements through the establishment of a committee; whether the process should be established by policy statement (as proposed here) or regulation; the types of disputes subject to the committee's jurisdiction; the composition of the committee's membership; and the procedural workings of the committee. Certain of these issues are discussed in greater detail below.

### Supervisory Disputes

As noted above, the Act sets forth the material supervisory determinations subject to the review process. Included are determinations related to (1) examination ratings; (2) adequacy of loan loss reserves; and (3) loan classifications on loans that are significant to the credit union.

The Board understands the reference to "examination" rating to mean a credit union's CAMEL rating. CAMEL is a rating system that provides a numerical score, from 1 through 5 (with 1 being the highest score), in each of five key areas of a credit union's management and financial performance, as well as a composite score. The five rated areas -- capital adequacy, asset quality, management, earnings and liquidity -- provide the basis for the CAMEL acronym.

It should be noted that CAMEL is intended and used mainly as an internal supervisory tool by NCUA, to assist the agency in determining how and where to devote its supervisory resources. It is not a public rating and it does not necessarily reflect the level of service a credit union provides to its members.

The Board proposes that only a credit union's composite CAMEL rating be appealable, but requests comment on whether the individual component ratings (capital, assets, management, earnings and liquidity) should also be subject to appeal. In either case, the Board proposes that only ratings of 4 and 5 be subject to appeal. Credit unions with CAMEL ratings of 4 and 5 are treated differently than those with ratings of 1, 2, or 3. They are generally under much closer supervision. They are often subject to letters of understanding and agreement. All new officials of credit unions with a 4 or 5 CAMEL rating are subject NCUA approval pursuant to Section 701.14 of the NCUA Regulations. The Board believes that credit unions subject to these special supervisory and regulatory procedures are the credit unions whose examination ratings should be subject to the appeal process. Comment is requested on whether additional composite ratings should be subject to the appeal process.

The Board also requests comment on how it should define classified loans that are "significant" to the credit union. Should this be left to the discretion of the credit union? Should it be determined by the loan amount as a percentage of reserves? Or is some other definition more appropriate?

Finally, with respect to disputes subject to review, the Board proposes to limit the review process to those three categories set forth in the Act and identified above. The Board requests comment, however, on any other specific disputes that should be subject to the committee's review.

#### Timing of Committee Involvement

The Board proposes that the committee assume jurisdiction over a supervisory determination only when the credit union establishes that it has been unsuccessful in attempting to resolve the matter with the credit union's examiner and the appropriate regional office. The Board does not intend by this requirement to establish a series of regional reviews (e.g. Director of Supervision, to Associate Regional Director, to Regional Director), but only that the credit union demonstrate that an effort was made to resolve the matter with the regional office and an official stationed in the regional office has said no.

The Board believes that any earlier involvement by the committee would be disruptive of the established organizational structure of the NCUA and the relationships between credit unions and their regional offices. Also, in order to remain flexible and avoid unnecessary bureaucracy, the Board would prefer not to establish specific time frames for resolving issues at the regional level. The Board welcomes comment on these issues, however, and is committed to both preserving the regional chain of command and avoiding unnecessary delays.

#### Committee Composition and Procedures

The committee will be comprised of senior agency staff. The Board proposes that the committee be comprised of five regular members. The members of the committee will consist of the Executive Director, the General Counsel, the Director of the Office of Examination and Insurance, a specified Regional Director, and one additional senior or Board staff member. The regional member will be rotated on a periodic basis (proposed policy is to rotate every two years), and an alternate Regional Director will be named to consider matters arising in the regular member's

region. The Executive Director will serve as the chairperson of the committee.

Regular committee meetings will be scheduled four times a year. Special meetings may be called and regular meetings may be canceled based on the workload of the committee. Each committee member will have one vote, the chairperson will only vote in the case of a tie, and a quorum will be required to conduct business.

All appeals will be submitted in writing. An appeal may be made by letter, addressed to the Chairman of the Supervisory Review Committee, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. The appeal need only include the name of the credit union, the determination being appealed, and the reasons for the appeal. Appellants will be encouraged, however, to provide as much detail and supporting documentation as possible, in order to expedite the appeal process.

Personal appearances will not be a regular part of the process. Appellants may request personal appearances, but the final decision will be made by the committee.

NCUA is committed to the Act's mandate that appeals be decided expeditiously. It is proposed that the following timing requirements apply. Credit unions must submit their appeal within 30 days of the regional office's decision. Once a complete package of information is submitted, the committee will make a determination on the appeal within 90 days.

The committee may request more information from either the appealing party or the regional office. Committee requests for more information must be made within 30 days of receipt of the appeal. The information must be submitted to the committee within 15 days of receipt of the committee request. The 90 days to make a determination will not begin to run until the expiration of the time allotted to submit more information. Although these time requirements should be sufficient in most cases, they are subject to adjustment by the committee, either on its own or upon request of the appellant or the region involved.

Each determination by the committee will be submitted in writing to the NCUA Board. The Board will review the determination within seven working days. Board members will each sign indicating whether they agree with the committee's determination. If a majority of the Board members agree, the determination will be final and the parties will be notified. If a majority of the Board members do not agree, the matter will be considered by the Board on final appeal.

The Board welcomes comment on both the composition and procedural aspects of the committee.

#### Miscellaneous Issues

Section 309 of the Act requires that each of the agencies ensure that safeguards exist for protecting the appellant from retaliation by agency examiners. The proposal notes that credit unions can seek redress from alleged retaliation through NCUA's Office of Inspector General. The Board will expeditiously and firmly address any cases of retaliation or abuse. The Board requests comment on any other steps it should take to protect and reassure appellants.

The Act requires that the appellate process be available at insured institutions that the agency supervises. Accordingly, the supervisory review process will be open to all federally insured credit unions. The committee will however, only consider appeals of material supervisory determinations made by NCUA. The committee will consult with the state supervisory authority in appropriate cases involving federally insured state chartered credit unions.

#### Regulatory Procedures

#### Regulatory Flexibility Act

The NCUA Board certifies that the proposed IRPS, if made final, will not have a significant impact on a substantial number of small credit unions. The appeal procedure set forth in the proposal applies equally to all credit unions. The appeal procedure is not mandatory. Only those credit unions wishing to appeal certain regional decisions are subject to its provisions. It is not anticipated that small credit unions will use the appeal procedure any more or less than large credit unions. Accordingly, the NCUA Board has determined that a Regulatory Analysis is not required.

#### Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed IRPS will apply to all federally insured credit unions, 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 this process apply to FISCUs.

#### Paperwork Reduction Act

The proposed IRPS, if adopted, will impose paperwork requirements on an appealing credit union. The paperwork requirements will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on the paperwork requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20530, Attn. Milo Sunderhauf. NCUA will publish a notice in the Federal Register once OMB action is taken on the submitted requirement.

By the National Credit Union Administration Board on November 10, 1994.

Becky Baker  
Secretary of the Board

Accordingly, NCUA proposes IRPS 94-2:

Interpretive Ruling and Policy Statement 94-2 -- 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 to implement Section 309.

The committee shall consist of five regular members of NCUA's senior staff: 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. An alternate Regional Director shall be appointed to consider matters arising in the member Regional Director's region. The term of committee service for the Regional Director, alternate Regional Director and additional member is two years. These members may be appointed for additional terms. All other members will serve permanently.

The Executive Director shall serve as the chairperson of the committee and shall only vote in the case of a tie. All other members shall have one vote. At least three members will be present at each committee meeting. A majority vote is required for action on an appeal. Regular committee meetings shall be held four times a year. Meetings via teleconference are acceptable. Regular meetings may be canceled and special meetings may be called by the Executive Director.

Appeals may be made by all federally insured credit unions. The committee shall hear appeals of material supervisory determinations made by the NCUA. Such determinations are limited to: (1) composite CAMEL rating of a 4 or 5; (2) adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant to a credit union. A determination is appealable only after a decision has been made by an official of the appropriate NCUA Regional Office.

Appeals shall be submitted in writing to the Chairman of the committee, within 30 days of the regional office's decision. Appeals shall be mailed or delivered to Chairman, Supervisory Review Committee, NCUA, 1775 Duke Street, Alexandria, VA 22314- 3428. Appeals may be made by letter, which shall include the name of the appellant credit union, the 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.

The committee may request additional information from the appellant and/or the regional office within 30 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 90 days from the date of the receipt of an appeal by the committee or of its receipt of any requested additional information.

The time requirements set forth above are subject to adjustment by the committee, either on its own or upon request of the appellant or the region involved.

The committee's determination shall be submitted in writing to the NCUA Board. Within seven working days, each Board member will sign indicating whether they agree with the committee's determination. If a majority of the Board members agree, the determination shall be final and the parties so notified. If a majority of the Board members do not agree, the parties will be notified, and the Board will proceed with the final appeal.

Appellants can seek redress from alleged retaliation through NCUA's Office of Inspector General.

