

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Chapter VII**

**Guidelines for the Supervisory Review Committee**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Direct final Interpretive Ruling and Policy Statement (IRPS) 12-1, with request for comments.

**SUMMARY:** This direct final policy statement amends IRPS 11-1, which addresses appeals to NCUA's Supervisory Review Committee. NCUA adopts IRPS 12-1 to remove Regulatory Flexibility designation determinations from the list of material supervisory determinations credit unions may appeal to the Committee because NCUA is eliminating the RegFlex program contemporaneously with the issuance of this IRPS.

**DATES:** Comments must be received by [Insert date 30 days from date of publication in the FEDERAL REGISTER]. This IRPS is effective [Insert date 90 days from date of publication in the FEDERAL REGISTER] unless NCUA withdraws the IRPS by [Insert 60 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**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site: <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on IRPS 12-1” 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:** You can view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments 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](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Chrisanthy Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

- I. Background**
- II. IRPS 12-1**
- III. Issuance as Direct Final**
- IV. Regulatory Procedures**

**A. Background**

In 1995, the NCUA Board (Board) adopted guidelines that established an independent appellate process to review material supervisory determinations, entitled “Supervisory Review Committee” (IRPS 95-1). Pub. L. No. 103-325, §309(a), 108 Stat. 2160 (1994); 60 FR 14795 (Mar. 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. In 2002, the Board amended IRPS 95-1 by issuing IRPS 02-1, which added Regulatory Flexibility (RegFlex) designation determinations to the list of material supervisory determinations credit unions may appeal to the Committee. 78 FR 19778 (Apr. 23, 2002). In order to centralize all applicable guidance

on the Committee and ensure ease of understanding by credit unions, the Board combined IRPS 95-1 and 02-1 into IRPS 11-1. 83 FR 23871 (Apr. 29, 2011).

In December 2011, the Board issued a Notice of Proposed Rulemaking (NPRM) to eliminate its RegFlex program and remove corresponding part 742 of NCUA's regulations. 76 FR 81421 (Dec. 28, 2011). In the NPRM, the Board notified the public that, upon issuance of a final RegFlex rule, it would amend IRPS 11-1 to remove the RegFlex appeals process. 76 FR at 81422. Contemporaneous with this adoption of IRPS 12-1, the Board is adopting the NPRM as a final rule in a separate rulemaking. The final rule provides regulatory relief by expanding RegFlex authorities to all federal credit unions, rather than only those that qualified for a RegFlex designation. The final rule also removes or amends related rules to ease compliance burden while retaining certain safety and soundness standards.

## **II. IRPS 12-1**

IRPS 12-1 amends IRPS 11-1 by removing all references to the RegFlex program. The amendments remove RegFlex designations as the fourth type of material supervisory determination a federal credit union could appeal in subpart A's third paragraph. It also removes subpart A's seventh paragraph, which set the time frame for filing RegFlex appeals. Finally, it removes the second sentence in the last paragraph in subpart A, which permitted further appeals to the Board.

### **III. Issuance as Direct Final**

The Board is issuing this IRPS as a direct final IRPS under the Administrative Procedure Act (APA), 5 U.S.C. §553(b)(3)(A) and §553(b)(3)(B), because these provisions allow an agency to issue rules without notice and comment in the case of interpretative rules and when it finds for good cause that these procedures are unnecessary. IRPS 11-1, as amended by IRPS 12-1, is an interpretation of agency procedure. Notice and public procedures are unnecessary because the Board finds that IRPS 12-1 is noncontroversial and believes it will not elicit significant adverse comments. The Board's rulemaking action to remove part 742 renders the RegFlex appeals process in IRPS 11-1 moot. IRPS 12-1, therefore, is merely a housekeeping measure to remove references to a nonexistent program. The Board finds these reasons are good cause to dispense with the APA's notice and comment period and the procedures in NCUA's IRPS 87-2. 5 U.S.C. 553(b)(3)(B); 52 FR 35213 (Sept. 18, 1987), as amended by IRPS 03-2, 68 FR 31949 (May 29, 2003).

Although the IRPS is being issued as a direct final IRPS, interested parties have a 30-day comment period. If NCUA receives a significant adverse comment that explains why the IRPS is inappropriate, challenges its underlying premise, or states why it would be ineffective or unacceptable without a change, the agency will withdraw the IRPS by [Insert 60 days from date of publication in the FEDERAL REGISTER]. Unless NCUA publishes a Federal Register notice withdrawing the IRPS by this date, the IRPS will

become effective on [Insert 90 days from date of publication in the FEDERAL REGISTER].

#### **IV. Regulatory Procedures**

##### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This final IRPS removes the appeal of RegFlex designations from the Committee's purview because the RegFlex program no longer exists. NCUA has determined and certifies that this IRPS will not have a significant economic impact on a substantial number of small credit unions.

##### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 USC 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that this final IRPS does

not increase paperwork requirements under the PRA 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 actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final IRPS applies to credit unions that appeal NCUA's material supervisory determinations before the Committee. It does not have a 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 rule 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 May 24, 2012.

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Mary F. Rupp

Secretary of the Board

**Accordingly, for the reasons set forth in the preamble, IRPS 12-1 amends IRPS 11-1 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; and (3) loan classifications on loans that are significant as determined by the appealing credit union. 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.

3. Remove the 7<sup>th</sup> paragraph in subpart A.

4. Revise the last paragraph in subpart A to read as follows:

Committee decisions on the denial of a TAG reimbursement are the final decisions of NCUA and are not appealable to the NCUA Board. 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.