

August 7, 2017

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Supervisory Review Committee; Procedures for Appealing Material Supervisory
Determinations;
RIN 3133-AE69

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments concerning the National Credit Union Administration's (NCUA) Notice of Proposed Rulemaking on Supervisory Review Committee; Procedures for Appealing Material Supervisory Determinations. CUNA represents America's credit unions and their 110 million members.

CUNA generally supports the proposed appeal procedures rule, as it would expand the number of issues that can be appealed to the supervisory review committee (SRC) and create an intermediate level review. The proposed rule would also expand the SRC and update SRC operating rules. Credit unions welcome improvements to appeals procedures; nonetheless, since appeals are adjudicated by NCUA staff they inherently lack true independence. Credit unions would benefit from an independent appeals process, which is not contemplated in this proposed rule.

The scope of the proposal is the expansion of material supervisory determinations that can be appealed to the SRC, the addition of an intermediate level of review, and updates to the composition of the SRC and the process governing the working of the SRC.

The SRC was established to meet the requirements of section 309(a) of the Riegle Community Development and Regulatory Improvement of Act (Act) of 1994. The NCUA met the Act's requirement by issuing final Interpretive Ruling and Policy Statement 95-1, which has been updated through the years to expand the SRC's jurisdiction and make other changes. We support moving the SRC requirements to Part 746. Along with proposed Part 746, Subpart B, Subpart A clarifies NCUA's appeals process by explaining appeals procedures and codifying the substantive portions of NCUA's appeals process in NCUA's rules and regulations.

Expansion of the Supervisory Review Committee

CUNA supports the expanded definition of “material supervisory determination.” The proposed rule would expand the number of material supervisory determinations appealable to the SRC. Because only material supervisory determinations are appealable to the SRC, the definition of material supervisory determination should be expanded to facilitate the expanded SRC process as would be achieved by the proposed. The proposed definition closely tracks the definition used by the Federal Deposit Insurance Corporate (FDIC) to meet banks’ section 309(a) requirements, which was similarly expanded in 2012.

Addition of Intermediate Level of Review

CUNA supports the proposed optional intermediate level of review. This level of review is optional, meaning a credit union can choose to bypass this level and appeal directly to the SRC. This level of review will be conducted by the Director of the Office of Examination and Insurance (E&I), or his or her designee. The final rule should explicitly state that a credit union that chooses to skip the intermediate level of review will not be prejudiced by the SRC.

Composition of the Supervisory Review Committee

The proposed rule expands the size and details the staff composition of the SRC pool. The Secretary of the Board would serve as the permanent Chairman of the SRC and would select the SRC members from the SRC pool to serve as the SRC for a particular appeal. The proposed rule would include safeguards to ensure members from a program office or E&I would be ineligible to serve on the SRC for an appeal involving issues previously addressed by that particular office.

The proposed procedures would ensure that SRC members are not assigned to offices whose decisions are being appealed. Nonetheless, the proposed rule should also require the Secretary of the Board to look deeper into conflicts before choosing SRC members for a particular appeal. The concern is that an NCUA staff member’s current position might not conflict or bias a determination but past interaction with an office or other employee involved in decisions being appealed could bias a determination or give the appearance of bias.

We understand that the NCUA is a relatively small agency, which makes finding multiple employees without connections to other staff for the purpose of serving on the SRC difficult. However, NCUA should build as many safeguards in the rule as possible to ensure the most disconnected staff serve on the SRC for an appeal. Eliminating the appearance of bias as much as possible, absent a truly independent appeals process, is critical in order for credit unions to feel the process is equitable.

Reporting

NCUA should report appeals decisions at all levels to the public. Identifying details of a decision, of course, can be redacted. Reviewing important facts of NCUA decisions could help credit unions determine the validity of an appeal and whether it is worth using resources to engage in the appeals process. This could serve to limit appeals over time, as credit unions would have information to help analyze the merits of submitting an appeal. Furthermore, there is value in allowing the public

to review NCUA's decision-making process, as it would hold NCUA staff to high standards when rendering important decisions that impact credit unions and their members.

Conclusion

Thank you for the opportunity to provide comments on the proposed updates to the SRC appeals process. Credit unions will benefit from the NCUA adding an intermediate level of appeal and expanding the definition of "material supervisory determination" to allow additional NCUA staff decisions to be appealed to the SRC. If you have any questions about our comments, please do not hesitate to contact me at (202) 508-6705.

Sincerely,

A handwritten signature in cursive script that reads "Lance Noggle".

Lance Noggle
Senior Director of Advocacy & Counsel