

This final interpretative ruling and policy statement (IRPS) was approved by the NCUA Board as an interim final at its January 2011 meeting. NCUA is posting this version of the final IRPS on its website because the final version published in the Federal Register, found [here](#), only contains the preamble to the IRPS and not the text of the policy statement. The Federal Register does not publish the text of final items that do not differ from the text of proposed or interim final items.

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

IRPS 11-1

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretative Ruling and Policy Statement 11-1, “Supervisory Review Committee” (IRPS 11-1).

SUMMARY: This policy statement combines two Interpretative Ruling and Policy Statements (IRPSs) and adds denials of technical assistance grant (TAG) reimbursements to the types of determinations that credit unions may appeal to NCUA’s Supervisory Review Committee. This new IRPS will replace the earlier IRPSs addressing the Supervisory Review Committee.

DATES: This IRPS was previously issued as an interim final IRPS, which became effective on January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Dave Marquis, Executive Director or Justin M. Anderson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6320 (Dave Marquis) or (703) 518-6540 (Justin Anderson).

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), Pub. L. No. 103-325, §309(a), 108 Stat. 2160 (1994), 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). 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. 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). In 2002, the Board amended IRPS 95-1 by issuing IRPS 02-1, which added Regulatory Flexibility designation revocations to the list of material supervisory determinations credit unions may appeal to the Committee.

B. Interim Final IRPS

At its January meeting, the NCUA Board issued interim final IRPS 11-1. 76 FR 3674 (January 20, 2011). As noted in the preamble to the interim final IRPS, under Part 705 of NCUA's regulations, qualifying credit unions can apply for loans or technical assistance grants (TAGs) from the Community Development Revolving Loan Fund for Credit Unions (CDRLF). The change made in the interim final IRPS allows a credit union to appeal the denial of a TAG reimbursement to the Committee. Specifically, under the interim final IRPS, any credit union that disagrees with the Director of OSCUI's determination may, within 30 days from the date of the denial, appeal the determination to the Committee. Committee decisions on TAG appeals are final; they are not appealable to the NCUA Board. Interim final IRPS 11-1 also combined the two previous IRPSs addressing the Committee, IRPS 95-1 and 02-1, into one centralized document. The Board noted in the preamble that interim final IRPS 11-1 would supersede and replace the previous two IRPSs on the Committee. The Board also made the following minor changes in the interim final IRPS: inclusion of current position titles; deletion of the requirement for quarterly meetings (meetings will be held on an as needed basis); and to make timing of appeal of Committee decisions to the NCUA

Board consistent, inclusions of a statement that all decisions appealable to the Board are from the date of receipt of decision.¹

C. Summary of Comments

NCUA received three comments, two from credit union trade associations and one from a state credit union association. All three commenters generally supported the rule, but did request additional changes. All three commenters requested that appeals to the Supervisory Review Committee be more transparent. Ideas suggested by the commenters included publishing on NCUA's website the names of the committee members, the agenda and dates of committee meetings, an annual report of the committee's actions, and the decisions of the committee. NCUA is considering ways to make the appeals process more transparent, including adding information about the Committee and its functions to the NCUA website. The Board, however, does not believe it is necessary to include any actions related to transparency in this IRPS. The purpose of the IRPS is to inform credit unions of their rights of appeal to the Committee.

One commenter also requested that NCUA clarify how credit unions can appeal other supervisory and examination matters that are outside the scope of the Committee's review. Section B of this IRPS lists various NCUA regulations addressing procedures for other appealable issues. In addition, Section B notes that the Board serves as the

¹ Under IRPS 95-1, decisions were appealable 30 days from the date a Committee decision was issued and under IRPS 02-1 decisions were appealable 60 days from the appellant's receipt of a decision.

final administrative decision maker for major disputes not covered by those other regulations or this IRPS. Such matters should first be pursued through the appropriate Regional Office or the Office of Corporate Credit Unions.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe a 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 determinations that credit unions may appeal to the NCUA's Supervisory Review Committee and combines two previous IRPS. 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 is currently reviewing this IRPS, but NCUA does not believe the IRPS is a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the National Credit Union Administration Board on April 21, 2011.

Mary F. Rupp
Secretary of the Board

Accordingly, the interim final IRPS 11-1, which was published at 76 FR 3674 on January 20, 2011, is adopted as a final IRPS without change.