

# NCUA Board of Directors Policies – Required Policies and Risk Assessments

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# Schedule

- Greetings & Overview
- The Good News
- Policy Generally Defined
- Policy as Defined by NCUA
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- Required Policies

# Policy Generally Defined

- A product of wisdom in the management of affairs.
- A definite course or method of action selected from alternatives and certain conditions to guide and determine present and future decisions.
- A high level overall plan embracing the general goals and acceptable procedures.

Synonym: strategy; principle; rule

# Policy Defined (continued)

- From Wikipedia

A **policy** is typically described as a principle or rule to guide decisions and achieve rational outcomes. The term is not normally used to denote what is actually done, this is normally referred to as either **procedure** or **protocol**. Policies are generally adopted by the Board whereas procedures or protocols would be developed and adopted by senior executive officers. Policies can assist in both **subjective** and **objective** decision making.

# Board Duties and Responsibilities

- Policies and Planning:

“Plans and policies are the board’s major tools for influencing the direction of the credit union. Board and management work to explicitly define the credit union’s vision. Then they develop broad plans for turning that vision into reality. The board has final say in adopting plans and policies, although it’s the responsibility of management to recommend policies and policy changes.”

- Source: Credit Union Board of Directors Handbook

# Policy as Defined by NCUA

- It is important to remember that even if there is no regulatory requirement for Board approval, the Credit Union Board still has the ultimate responsibility for the operations of the Credit Union.
- The NCUA Examiner's Guide states "The Board must approve all **major** policies. Further, it should review, and if necessary, update those policies at least annually."

# Another Perspective

1. We have been through a lot of documents/regulations and found that 'Board Approval' is not required for a great number of the items.
2. What is required is that the 'credit union' establish a policy that addresses each of these issues.
3. Policies can be established by Management to meet the requirements of the regulations and do not necessarily have to flow from/through the Board.
4. We have identified policies established by Management as 'Operating Standards.' In doing so we do not have to seek Board approval to change these as situations arise and it relieves the Board from having to address these issues on a recurring basis.
5. Each of the Operating Standards has a review period where Management must update them to assure they meet regulatory requirements.

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## List of “Required” Policies for Credit Unions

	<b>Required Policy</b>		<b>Regulation/Reference</b>
1	Bank Bribery Law	Adopt internal codes of conduct or written policies to include explanation of general prohibitions of bank bribery law, alert credit union officials about bank bribery statute, as well as establish and enforce written policies on acceptable business practices	Interpretative Ruling and Policy Statement 87-1
2	Bank Secrecy Act Compliance Policy <ul style="list-style-type: none"> <li>• Customer Identification Program (CIP) Policy that is required by § 326 of the Patriot Act</li> <li>• Anti-Money Laundering Program</li> </ul>	CU must establish and maintain written compliance program for the BSA. CIP Policy prevents money laundering and terrorist financing scheme (see also OFAC)	12 CFR § 748.2(b)
3	Children’s Online Privacy Protection Act (COPPA) Compliance Policy	Adopt a policy for implementing COPPA that includes providing a privacy notice on website and a notice to parents	16 CFR pt. 312

	<b>Required Policy</b>		<b>Regulation/Reference</b>
4	Compliance Policy/Program	Each CU should have a compliance officer that is responsible for general compliance. Additionally, officers in different divisions should be responsible for compliance in their divisions	See Compliance Manual at 8.
5	Consumer Leasing Act Policy	Adopt policy for implementing Reg. M	Reg. M
6	Contingency Funding Plan	Sets out strategies for addressing liquidity shortfalls in emergency situations	12 CFR § 741.12; NCUA Supervisory Letter No. 14-03
7	Credit by Banks and Persons Other than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock	Adopt comprehensive procedures for implementing Reg. U (if applicable)	Reg. U
8	Credit Practices Policy	Adopt policy re: credit practices	12 CFR pt. 706
9	Denial of Services	Adopt a policy to limit or restrict member services	NCUA Office of General Counsel
10	Derivatives Policy	A federal credit union with derivatives authority must operate according to a comprehensive written policy that addresses the requirements of 12 CFR part 703, Subpart B and any additional limitations imposed by the board of directors	12 CFR pt. 703, Subpart B, 12 CFR § 703.106

	<b>Required Policy</b>		<b>Regulation/Reference</b>
11	Disaster Recovery and Business Resumption Contingency Plan	Develop contingency plan in preparation of disaster or other event to ensure uninterrupted service to members	NCUA Letter 01-CU-21; NCUA Letter 08-CU-07 FFIEC Updated Business Continuity Planning Examination Handbook; NCUA Letter 08-CU-01; Risk Alert 06-Risk-01; 12 CFR pt. 748; 12 CFR pt. 749
12	Dividend Nondiscriminatory Policy	To establish dividend periods, dividend credit determination dates, distribution dates, any associated penalties, and the method of dividend computation	Appendix C to 12 CFR Part 707
13	E-Sign Act Policy	Adopt policy and procedures regarding use of electronic records	NCUA Compliance Manual; E-Sign Act §101(C)(1)
14	Electronic Fund Transfer Act Policy (EFT)	Adopt policy implementing Reg. E	Reg. E
15	Equal Credit Opportunity Act Policy	Ensure compliance with ECOA and adopt non-discrimination policy for credit transactions	Reg. B; 12 CFR pt. 1002

	<b>Required Policy</b>		<b>Regulation/Reference</b>
16	Expedited Funds Availability Act Policy	Adopt policies to comply with Regulation CC and all related regulatory requirements. This includes adopting: <ul style="list-style-type: none"> <li>• Funds Availability Policy</li> <li>• Notices of Changes in Availability Policy</li> </ul>	Reg. CC
17	Fair Credit Reporting Act Policy	Ensure procedures are in place for implementing and complying with FCRA	FCRA
18	Fair Debt Collection Practices Act Policy	Ensure procedures are in place for implementing and complying with FDCPA	FDCPA
19	Fair Housing Act Policy	Board must ensure that policy for implementing FHA does not tolerate illicit discrimination in any transaction relating to residential real-estate	FHA; 24 CFR pt. 100
20	Fiduciary Duties Policy	Adopt policy that specifies the fiduciary duties of the Board of Directors	12 CFR § 701.4

	<b>Required Policy</b>		<b>Regulation/Reference</b>
21	Financial Education Program for the Board of Directors	Implement a policy that makes training available for enhancing the financial knowledge of the directors	NCUA Letter to Federal Credit Unions 11-FCU-02; 12 CFR § 701.4.
22	Fixed Asset Management Policy ( <i>currently a proposed rule</i> )	The proposed rule requires a written policy that sets an established reasonable limit on the aggregate amount of the credit union's total investments in fixed assets	12 CFR § 701.36
23	Flood Disaster Protection Act Policy or National Flood Insurance Act Compliance Policy	Adopt policy for implementing National Flood Insurance Act	FDPA; 12 CFR pt. 760
24	Foreclosure and Repossession Policy	Adopt policy to address mortgage foreclosure concerns	NCUA Accounting Manual for FCUs; See NCUA Letter to Credit Unions, Letter 11-CU-01; NCUA Letter 08-CU-25
25	Homeowner's Protection Act (HOPA)	Adopt HOPA compliance policies because NCUA may enforce HOPA	HOPA
26	Home Mortgage Disclosure Act Policy	Adopt policy for implementing HMDA when collecting and maintaining accurate data of covered loans/applications	Reg. C

	<b>Required Policy</b>		<b>Regulation/Reference</b>
27	Indirect Lending Policies	Adopt comprehensive policies re: indirect lending, including underwriting and monitoring, and clear policies for selecting third party vendors	NCUA Letter to Credit Unions, Letter No. 10-CU-15
28	Information Security Program	Each CU must institute a written security program to protect CU from robberies, etc., prevent destruction of vital records, layered security, member account authentication, multifactor identification of members, and risk assessment process	12 CFR pt. 748; 12 CFR pt. 749; NCUA Letter to Credit Unions, 11-CU-09, 05-CU-18, 06-CU-13; FFIEC Supplement to Authentication in an Internet Banking Environment
29	Interest Rate Risk Policy	Adopt policies as part of the asset liability management of the credit union	12 CFR pt. 741
30	Investment Policy	Adopt policies re: liquidity, investment objectives, cash deposits, etc. Review annually (can be part of a broader ALM policy)	12 CFR § 703.3; Supervisory Letter No. 14-03

	<b>Required Policy</b>		<b>Regulation/Reference</b>
31	Liquidity Policy	Adopt written policy managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances (see Investment Policy)	12 CFR § 741.12 (a); NCUA Supervisory Letter No. 14-03
32	Loans and Lines of Credit Policies	Written policies for loans and lines of credit consistent with the relevant provisions applicable laws and regulations; to contain real estate lending policies related to appraisal and evaluation program	Interagency Appraisal & Evaluation Guidelines; 12 CFR § 701.21 (c)(2); 12 CFR § 741.3
33	Loan Participation Policy	Adopt policies re: member loan participation policies and procedures	12 CFR § 701.22 (b) and (c)
34	Loan Workout Policy	Develop written policy and standards that control the use of loan workouts	Appendix C to 12 CFR pt. 741
35	Management Officials Interlocks Act Compliance Policy	Adopt compliance policy for Interlocks Act	12 U.S.C. 1823(k), 3207; 12 CFR pt. 711.4-.6

	<b>Required Policy</b>		<b>Regulation/Reference</b>
36	Member Business Loan Policy	Establish guidelines and overall lending strategy to integrate with overall asset liability management	12 CFR pt. 723, NCUA Letter to Credit Unions 10-CU-02
37	Office of Foreign Asset Control (OFAC) Policy and Procedure	Credit Unions must monitor all financial transactions performed by or through in order to detect entities/persons subject to OFAC laws and regulations (see also BSA)	Various OFAC laws and regulations.
38	Overdraft Policy	Develop written policy that sets a cap on the total dollar amount of all overdrafts the CU will honor, establish any applicable fees, establish time limit for repayment, etc.	12 CFR § 701.21 (c)(3)
39	Preservation of Consumer Claims and Defenses Policy (Holder in Due Course)	Board must adopt policy for implementing the Preservation of Consumers' Claims and Defenses Rule	FTC Holder in Due Course Rule – 16 CFR pt. 433.2
40	Privacy Policy	Adopt policy re: non-disclosure of nonpublic information, to determine whether nonpublic information will be shared and proper delivery of disclosures	12 CFR pt. 1016



	<b>Required Policy</b>		<b>Regulation/Reference</b>
41	Purchase, Sale, and Pledge of Eligible Obligations Policy	Written policies that address the credit unions purchase, sale, or pledge of all or part of a loan of its members; should address incentive or bonus payments to employees if using this practice.	12 CFR § 701.23
42	Real Estate Settlement Procedures Act Policy	Adopt policy for implementing RESPA and Reg. X. This includes explaining coverage of regulation, exemption, and disclosure requirements	24 CFR pt. § 3500; Reg. X
43	Records Preservation Program and Record Retention Policy	Adopt vital records preservation program and document retention policy	12 CFR pt. 749
44	Reimbursement for Officials and Employees Policy	Written policies and procedures addressing payment for reasonable and proper costs incurred by an official carrying out responsibilities of the credit union position	12 CFR § 701.33

	<b>Required Policy</b>		<b>Regulation/Reference</b>
45	Reimbursement for Providing Financial Records Policy	Adopt policy for implementing Reg. S for collecting expenses associated with assembling and copying subpoenaed members' records	Reg. S
46	Reserves on Transaction Accounts	Adopt policy for implementing Regulation D	Reg. D.
47	Risk-Based Lending Policies	Policies that define parameters of risks assumed and internal controls; manage risks; implement information systems or monitoring information	See NCUA Letter to Credit Unions, Letter No. 99-CU-05
48	Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) Compliance Policies	Establish written policies providing basic framework for compliance with SAFE Act (if employing one or more mortgage loan originators)	12 CFR pt. § 1007 and Appendix A; NCUA Letter to Credit Unions, Letter No. 10-CU-13
49	Service-Members' Civil Relief Act Policy	Adopt policy for implementing SCRA	See Compliance Manual; 50 U.S.C. App. § 526.
50	Truth in Lending Act	Adopt policy for implementing Truth in Lending Act	Reg. Z

	<b>Required Policy</b>		<b>Regulation/Reference</b>
51	Truth in Savings Act Compliance Policy	Adopt policy for implementing Truth in Savings Act, this includes adopting procedures related to activities like: account opening disclosures, dividend calculations, subsequent disclosures, member inquiries, training, record retention, advertising, monitoring	12 CFR pt. 707
52	Unlawful Internet Gambling Enforcement Act (UIGEA) Policy	Establish policies and procedures that are reasonably designed to identify and block or otherwise prevent restricted transactions	Unlawful Internet Gambling Enforcement Act of 2006
53	Website Policy	Written policies or procedures to address implementation and ongoing management of website	NCUA Letter to Credit Unions, 02-CU-17; NCUA e-Commerce Guide for Credit Unions

# A Required Policy???

Detailed review of 3 examples

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# A Required Policy???

## Loan Workouts and Troubled Debt Restructured Loans

- NCUA Board Action January 26, 2012
- 12 CFR 741 Federal Register May 31, 2012
- Is the adoption of a policy by the Credit Union's Board of Directors Required???
- CFPB?

# Board Action Required for Loan Workout and/or TDR Policy?

- NCUA Supervisory Letter of August 2008 08-CU-20 Evaluating Credit Risks to Credit Unions. No mention of policy.
- NCUA Board Action Bulletin.  
“In developing a written *policy* in this area, the proposed TDR guidance would allow credit union boards and management to consider parameters.”
- Final Regulation & IRPS – Federal Register May 31, 2012
  1. Regulations amended to require FICUs to maintain written policies. (Summary paragraph)
  2. FICUs to have written policies. (Background paragraph)

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# Board Action Required for Loan Workout and/or TDR Policy? (continued)

3. Adoption of written workout policies by October 1, 2012. (Page 2 of Regulation)
4. Final rule and IRPS to give FICU's *management* ability to "establish" institution appropriate policies. (Page 2 of Regulation)
5. The Final Rule requires the FICU board *and* management to adopt and adhere to an explicit written policy and standard that control the use of loan workouts. (Page 6 of Regulation)
6. Apparently, the credit union board and management must adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to ensure the policy is consistently applied." (IRPS/Final Regulation page 8)
  - Board and management??

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# A Required Policy?

## Concentration Risk Policy?

- The Board of Directors must establish a policy which addresses its philosophy on Concentration Risk. NCUA Supervisory Letter 10-CU-03 and March 2010, page 5
- The NCUA Board adopted a final amendment to Part 741 requiring FICUs to have a written policy to address IRR. NCUA Board Bulletin of January 26, 2012
- Final Regulations and IRPS – Federal Register February 2, 2012
  1. The Rule includes an Appendix B setting forth guidance. It leaves to each affected credit union’s board of directors the obligation and responsibility to adopt a policy (page 2 of Regulation)

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# A Required Policy?

## Concentration Risk Policy? (continued)

2. A credit union must adopt and develop an IRR policy (page 3 of Regulation) (Impact of 2 required (?) policies)
3. FICUs should devise a policy and risk management appropriate to their own situation (page 6 of Regulation)
4. All FICUs required to have an IRR policy and program should incorporate the following 5 elements into their IRR program:
  1. Board-approved IRR policy (page 8 of Regulation)
  5. The Board should annually access the IRR policy (page 9 of Regulation)

# A Required Policy?

## Suspension of Member Services Denial of Member Services

- No regulation
- No Letter to Credit Unions
- No IRPS
- No Adopted Law
- NCUA Office of General Counsel

1. Letter of February 27, 1993 –

An FCU may limit all services except the member fundamental rights. The Board of Directors would need to adopt a policy and disseminate it to members.

2. Letter of June 22, 1994 –

Reduced Services – as long as the FCU has a rational basis for limiting services we would have no legal objection. (No mention of Policy)<sup>26</sup>

# A Required Policy?

## Suspense of Member Services Denial of Member Services (continued)

3. Letter of February 7, 1996 –

An FCU Board of Directors may fashion a number of policies to deny credit union services.

4. Letter of June 10, 1996 –

Denial of most services requires “a policy.”

5. Letter of April 18, 1997 –

A Federal Credit Union may adopt a policy of denying services to a member who has a delinquent loan.

6. Letter of April 26, 1999 –

A policy that withholds dividends on the full amount of funds in a member’s share account violates NCUA regulations.

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# A Required Policy?

## Suspense of Member Services Denial of Member Services (continued)

7. Letter of March 31, 1999 –  
Denial of member services requires a policy.
8. Letter of August 12, 2008 –
  - a. An FCU may have a policy suspending and limiting services to members.
  - b. “We” would have no objections to suspending certain services to member where there is a logical relationship between objectionable conduct and the services to be suspended.
  - c. FCUs need to ensure that the policy is in writing and provided to all members.
  - d. We suggest you consult to determine the applicability of ECOA and the effects test.

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# The New List

The New Number

17\*

\* Maybe less



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	Policy	Required?	
		Yes	No
1	Bank Secrecy Act Compliance Policy <ul style="list-style-type: none"> <li>• Customer Identification Program (CIP) Policy that is required by § 326 of the Patriot Act</li> <li>• Anti-Money Laundering Program</li> </ul>	X	
2	Children's Online Privacy Protection Act (COPPA) Compliance Policy		X
3	Compliance Policy/Program		X
4	Consumer Leasing Act Policy		X
5	Contingency Funding Plan	<i>IF</i> CU has assets more than \$50 million	X

	Policy	Required?	
		Yes	No
6	Credit by Banks and Persons Other than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock		X
7	Credit Practices Policy		X
8	Denial of Service		X
9	Derivatives Policy	X*	
10	Disaster Recovery and Business Resumption Contingency Plan		It is recommended according to Appendix B of Part 749, but see NCUA Letter to Credit Unions 01-CU-21 suggests CUs must have a plan
11	Dividend Nondiscriminatory Policy	<i>IF</i> issuing dividends*	
12	E-Sign Act Policy		X

	Policy	Required?	
		Yes	No
13	Electronic Fund Transfer Act Policy (EFT)		X
14	Equal Credit Opportunity Act Policy		X
15	Expedited Funds Availability Act Policy		X
16	Fair Credit Reporting Act Policy		X
17	Fair Debt Collection Practices Act Policy		X
18	Fair Housing Act Policy		X
19	Fiduciary Duties Policy		X
20	Financial Education Program for the Board of Directors		X
21	Fixed Asset Management Policy ( <i>currently a proposed rule</i> )		X
22	Flood Disaster Protection Act Policy or National Flood Insurance Act Compliance Policy		X



	Policy	Required?	
		Yes	No
23	Foreclosure and Repossession Policy		Unclear- there is a specific question in the examiner's questionnaire re: whether there is a written foreclosure policy
24	Homeowner's Protection Act (HOPA)		X
25	Home Mortgage Disclosure Act Policy		X
26	Indirect Lending Policies		X
27	Information Security Program	X	
28	Interest Rate Risk Policy	X*	
29	Investment Policy	X*	

	Policy	Required?	
		Yes	No
30	Liquidity Policy	As of 3/31/14*	
31	Loans and Lines of Credit Policies	X	
32	Loan Participation Policy	X	
33	Loan Workout Policy	<i>IF</i> participating in loan workouts/TDR	
34	Management Officials Interlocks Act Compliance Policy		X
35	Member Business Loan Policy	<i>IF</i> CU offers MBLs*	
36	Office of Foreign Asset Control (OFAC) Policy and Procedure		No requirement for this policy, but must comply with regulations
37	Overdraft Policy	<i>IF</i> permitting member to overdraft without a credit application on file	

	Policy	Required?	
		Yes	No
38	Preservation of Consumer Claims and Defenses Policy (Holder in Due Course)		X
39	Privacy Policy	seems to be required b/c disclosures to consumers are stating the CU's policies related to nonpublic information*	
40	Real Estate Settlement Procedures Act Policy		X
41	Records Preservation Program and Record Retention Policy	X	
42	Reimbursement for Providing Financial Records Policy		X
43	Reserves on Transaction Accounts		X

	Policy	Required?	
		Yes	No
44	Risk-Based Lending Policies	<i>IF</i> offering risk-based lending program*	
45	Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) Compliance Policies		X
46	Service-members' Civil Relief Act Policy		X
47	Truth in Savings Act Compliance Policy		X
48	Unlawful Internet Gambling Enforcement Act (UIGEA) Policy	<i>IF</i> CU has any of the designated payment systems (ACH systems, card systems, check collection systems, or wire transfer systems)	
49	Website Policy		X

# Policy as Defined by NCUA

- It is important to remember that even if there is no regulatory requirement for Board approval, the Credit Union Board still has the ultimate responsibility for the operations of the Credit Union.
- The NCUA Examiner's Guide states "The Board must approve all **major** policies. Further, it should review, and if necessary, update those policies at least annually."

# Fish, or Cut Bait

Anthony Demangone

- “Not making decisions. Listen, investigate, seek suggestions, but whatever you do, decide.” Dan Rockwell
- “So go ahead and act as if your decisions are temporary. Because they are. Be bold, make mistakes, learn a lesson and fix what doesn’t work. No sweat, no need to hyperventilate.” Seth Godin
- “There you have it. Fish, or cut bait. Use due diligence. Do your homework. But by all means, decide. Make a choice. It will provide clarity, efficiencies, and a new direction.” Anthony Demangone

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