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## DEPARTMENT OF HOMELAND SECURITY

### 2 CFR Part 3001

#### Federal Emergency Management Agency

### 44 CFR Part 17

[Docket No. DHS-2010-0028]

RIN 1601-AA62

#### Department of Homeland Security Implementation of OMB Guidance on Drug-Free Workplace Requirements

**AGENCY:** Department of Homeland Security (DHS).

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS) is issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance codified at 2 CFR part 182. This new part is the Department's implementation of OMB's guidance and is consistent with OMB's initiative to streamline and consolidate all Federal regulations on drug-free workplace requirements for financial assistance into one title of the CFR. In doing so, the Department is also removing regulations implementing the Government-wide common rule on drug-free workplace requirements for financial assistance, currently located within Part 17 of Title 44 of the Code of Federal Regulations (CFR).

**DATES:** This final rule is effective on March 28, 2011 without further notice. Submit comments by March 28, 2011 on any unintended changes this action makes in DHS policies and procedures for drug-free workplaces. All comments or unintended changes will be considered and, if warranted, DHS will revise the rule.

**ADDRESSES:** You may submit comments, identified by the docket number to this

rulemaking, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** [TBA], Department of Homeland Security, 245 Murray Lane, SW., Bldg. 410-Room 3514-11, Washington, DC 20528-0001.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Ms. Cara Whitehead, Office of the Chief Financial Officer, Financial Assistance Policy & Oversight, telephone 202-447-0338.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

These regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 44 CFR part 17. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

#### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (DHS-2010-0028), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means or mail at the address under **ADDRESSES**; but please submit your comment and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. We will consider all comments and material received during the

comment period. We may change this rule in view of them.

#### B. Viewing Documents

To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (DHS-2010-0028) in the Search box, and click "Go>>."

Individuals without internet access can make alternate arrangement for viewing comments and documents related to this rulemaking by contacting DHS at the **FOR FURTHER INFORMATION CONTACT** information above.

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#### I. Abbreviations

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 FEMA Federal Emergency Management Agency  
 OMB Office of Management and Budget  
 U.S.C. United States Code

#### II. Background and Purpose

##### A. OMB Guidance for Drug-Free Workplace Requirements

The Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*) was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants (54 FR 4946, January 31, 1989). The rule was a subpart of the Government-wide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments (55 FR 21681, May 25, 1990).

The agencies proposed an update to the drug-free workplace common rule in 2002 (67 FR 3266, January 23, 2002) and

finalized it in 2003 (68 FR 66534, November 26, 2003). The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 (Pub. L. 105–85, div. A, title VIII, Sec. 809, Nov. 18, 1997, 111 Stat. 1838), the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

Like many other agencies, the Federal Emergency Management Agency (FEMA) adopted the common rule in 1990 (55 FR 21702, May 25, 1990). FEMA participated in the 2002 proposal to revise the drug-free workplace common rule; as a result of FEMA's transfer to the newly-established DHS in 2003; however, neither FEMA nor DHS participated in the 2003 multi-agency finalization of that revision. Since its creation in 2003, DHS has been using the FEMA common rule to administer drug-free workplace requirements.

When OMB established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements (69 FR 26276, May 11, 2004), OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing (70 FR 51863, August 31, 2005) and finalizing (71 FR 66431, November 15, 2006) Government-wide guidance on nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment (73 FR 55776, September 26, 2008) and finalized (74 FR 28149, June 15, 2009) Government-wide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements, which the agency previously issued in its own CFR title, with a brief regulation in Title 2 of the CFR adopting the Government-wide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it co-locates OMB's guidance and all of the agencies' implementing regulations in Title 2 of the CFR.

#### B. Regulatory History

Under 5 U.S.C. 553(a), agencies need not publish an NPRM in the **Federal**

**Register** if the subject matter concerns grants, loans, benefits, or contracts. This rule concerns grants and cooperative agreements, and therefore does not require an NPRM.

In addition, DHS finds that good cause exists for not publishing an NPRM, because publication would be unnecessary. As described in the "Background" section of this preamble, the policies and procedures in this regulation have twice been proposed for comment—once by Federal agencies as a common rule in 2002, and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received. In addition, this final rule is an administrative clarification that would make no substantive change to existing DHS policy for drug-free workplaces. For these reasons, under 5 U.S.C. 553(b)(B) we find that public notice and comment are unnecessary.

#### III. Discussion of the Rule

As the OMB guidance directs, DHS is taking two regulatory actions. First, we are removing the drug-free workplace common rule located at 44 CFR part 17. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 3001 to adopt the Government-wide policies and procedures found in the OMB guidance. As directed by the OMB guidance, this rule adds to the adopted guidance certain additional information specific to DHS.

##### A. Differences Between OMB Guidance and the Common Rule

This DHS adoption of the OMB guidance, with additional information provided in 2 CFR part 3001, replaces the existing drug-free workplace common rule located at 44 CFR part 17. Adopting the OMB guidance in place of the common rule will not substantively change the drug-free workplace requirements placed on award recipients.

The OMB guidance uses slightly different terminology and organization. For example, as compared to the common rule, OMB's text replaces most instances of the terms "grant" and "grantee" with the terms "award" and "recipient," respectively. The OMB guidance defines the new terms "award" and "grant" more narrowly to mean a type of award. The OMB guidance also defines "recipient" using language substantively similar to the common rule's definition of "person"; in the OMB guidance, "person" is no longer a defined term. The OMB guidance reorganizes the drug-free workplace requirements, separating and clearly labeling the requirements for recipients

who are individuals, recipients other than individuals, and Federal agencies. Adopting these Government-wide terms and the new organizational structure will make DHS drug-free workplace requirements clearer and easier to use.

The most notable change from the common rule is the removal of procedures by which a recipient "certifies" to the agency that it will comply with drug-free workplace requirements. Recipients are still required to comply with drug-free workplace requirements, but the requirement appears in regulation and in the terms and conditions of the award, rather than in a separate certification. As a result of this change, the common rule's provisions regarding certification will not appear in this rule.

##### B. DHS Additions to the OMB Guidance

The OMB guidance directs agencies to state whether the agency has a central point to which recipients may send the notification of a conviction, and indicate which agency official is authorized to determine whether recipients have violated drug-free workplace requirements. Accordingly, in adopting the OMB guidance we have added language at 2 CFR 3001.225 and 3001.300 indicating that a recipient required to report a conviction for a criminal drug offense should notify the DHS Office of Inspector General and each DHS office from which the recipient currently has an award. Similarly, we have added language at §§ 3001.500 and 3001.505 indicating that the Secretary of Homeland Security or his or her official designee is authorized to determine that a recipient is in violation of the requirements of 2 CFR part 182 as implemented by this rule.

The OMB guidance at 2 CFR 182.510 discusses the consequences of a violation. We added 2 CFR 3001.510 to clarify that DHS will take one or more of the listed actions, and that any suspension or debarment of the recipient would occur under 2 CFR part 3000 as well as 2 CFR part 180.

#### IV. Regulatory Analyses

##### A. Regulatory Planning and Review

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This action will impose no additional costs. As explained in the Background and Purpose and

Discussion of the Rule, this final rule is an administrative clarification that will make no substantive change to existing DHS policy for drug-free workplaces. This rule merely transfers existing FEMA regulations with some minor non-substantive changes.

#### B. Small Entities

Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to review rules to determine if they have “a significant economic impact on a substantial number of small entities.” A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking provided for by 5 U.S.C. 553(b). DHS has determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(a)(2) and (b)(B); therefore, a regulatory flexibility analysis is not required for this rule.

#### C. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of \$100 million by State, local, Indian Tribal governments, or the private sector. Because this rule will not result in expenditures of this magnitude, a written statement is not required.

#### D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Reporting and recordkeeping requirements in 2 CFR part 3001 are those required by the OMB Guidance for Drug-Free Workplace Requirements and have already been cleared by OMB.

#### E. Federalism

This rule will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Section 6 of Executive Order 13132, DHS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### F. Environmental Analysis

DHS has analyzed this rule under Department of Homeland Security Management Directive 023–01, which

guides the Department in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and has made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under Categorical Exclusion A3, Table 1 of Appendix A, of the Directive.

#### List of Subjects

##### 2 CFR Part 3001

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

##### 44 CFR Part 17

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority of 5 U.S.C. 301 and 41 U.S.C. 701 *et seq.*, the Department of Homeland Security amends the Code of Federal Regulations, Title 2, Subtitle B, chapter XXX, and Title 44, chapter I, part 17, as follows:

#### TITLE 2—GRANTS AND AGREEMENTS

■ 1. Add part 3001 in Subtitle B, Chapter XXX, to read as follows:

#### PART 3001—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

3001.10 What does this part do?

3001.20 Does this part apply to me?

3001.30 What policies and procedures must I follow?

##### Subpart A—Purpose and Coverage [Reserved]

##### Subpart B—Requirements for Recipients Other Than Individuals

3001.225 Who in DHS does a recipient other than an individual notify about a criminal drug conviction?

##### Subpart C—Requirements for Recipients Who Are Individuals

3001.300 Who in DHS does a recipient who is an individual notify about a criminal drug conviction?

##### Subpart D—Responsibilities of Agency Awarding Officials

3001.400 What method do I use as an agency awarding official to obtain a recipient’s agreement to comply with the OMB guidance?

#### Subpart E—Violations of This Part and Consequences

3001.500 Who in DHS determines that a recipient other than an individual violated the requirements of this part?

3001.505 Who in DHS determines that a recipient who is an individual violated the requirements of this part?

3001.510 What actions will the Federal Government take against a recipient determined to have violated this part?

#### Subpart F—Definitions

3001.605 Award.

3001.661 Reimbursable Agreement.

**Authority:** 5 U.S.C. 301; 41 U.S.C. 701–707; OMB Guidance for Drug-Free Workplace Requirements, codified at 2 CFR part 182.

#### § 3001.10 What does this part do?

This part requires that the award and administration of Department of Homeland Security (DHS) grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as “the Act”) that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance, as supplemented by this part (Subparts A through F of 2 CFR part 182) for DHS’s grants and cooperative agreements; and

(b) Establishes DHS policies and procedures, as supplemented by this part, for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government-wide implementing regulations.

#### § 3001.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (*see table at 2 CFR 182.115(b)*) apply to you if you are a—

(a) Recipient of a DHS grant or cooperative agreement; or

(b) DHS awarding official.

#### § 3001.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* This part supplements the OMB guidance in 2 CFR part 182 as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
2 CFR 182.225(a) .....	§ 3001.225 .....	Who in DHS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
2 CFR 182.300(b) .....	§ 3001.300 .....	Who in DHS a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
2 CFR 182.400 .....	§ 3001.400 .....	What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance.
2 CFR 182.500 .....	§ 3001.500 .....	Who in DHS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
2 CFR 182.505 .....	§ 3001.505 .....	Who in DHS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
2 CFR 182.510 .....	§ 3001.510 .....	What actions the Federal Government will take against a recipient determined to have violated 2 CFR part 182, as implemented by this part.
2 CFR 182.605 .....	§ 3001.605 .....	What types of assistance are included in the definition of "award."
None .....	§ 3001.661 .....	What types of assistance are included in the definition of "reimbursable agreement."

(c) Sections of the OMB guidance that this part does not supplement. For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, DHS policies and procedures are the same as those in the OMB guidance.

**Subpart A—Purpose and Coverage [Reserved]**

**Subpart B—Requirements for Recipients Other Than Individuals**

**§ 3001.225 Who in DHS does a recipient other than an individual notify about a criminal drug conviction?**

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the DHS Office of Inspector General and each DHS office from which the recipient currently has an award.

**Subpart C—Requirements for Recipients Who Are Individuals**

**§ 3001.300 Who in DHS does a recipient who is an individual notify about a criminal drug conviction?**

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the DHS Office of Inspector General and each DHS office from which the recipient currently has an award.

**Subpart D—Responsibilities of Agency Awarding Officials**

**§ 3001.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?**

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 3001, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

**Subpart E—Violations of This Part and Consequences**

**§ 3001.500 Who in DHS determines that a recipient other than an individual violated the requirements of this part?**

The Secretary of Homeland Security, or his or her official designee, will make the determination that a recipient other than an individual violated the requirements of this part.

**§ 3001.505 Who in DHS determines that a recipient who is an individual violated the requirements of this part?**

The Secretary of Homeland Security, or his or her official designee, will make the determination that a recipient who is an individual violated the requirements of this part.

**§ 3001.510 What actions will the Federal Government take against a recipient determined to have violated this part?**

If a recipient is determined to have violated 2 CFR part 182, as implemented by this part, the agency will take one or more of the following actions—

- (a) Suspension of payments under the award;
- (b) Suspension or termination of the award; and
- (c) Suspension or debarment of the recipient under 2 CFR part 180 and 2 CFR part 3000, for a period not to exceed five years.

**Subpart F—Definitions**

**§ 3001.605 Award.**

*Award* means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant, cooperative agreement or reimbursable agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under 2 CFR part 182 and specifies uniform administrative requirements.

(b) The term "award" does not include:

- (1) Technical assistance that provides services instead of money.
- (2) Loans.
- (3) Loan guarantees.
- (4) Interest subsidies.
- (5) Insurance.
- (6) Direct appropriations.
- (7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).
- (8) Other Transactional Authority Award.

**§ 3001.661 Reimbursable Agreement.**

*Reimbursable Agreement* means an award in which the recipient is reimbursed for expenditures only, and is not eligible for advance payments.

**TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE**

**CHAPTER I**

**PART 17—[REMOVED]**

- 2. Remove part 17.

Dated: February 4, 2011.

**Lluana McCann,**

*Director, Division of Financial Assistance Policy and Oversight, Office of the Chief Financial Officer, Department of Homeland Security.*

[FR Doc. 2011-3217 Filed 2-23-11; 8:45 am]

**BILLING CODE 9110-9B-P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 704**

**RIN 3133-AD80**

#### **Corporate Credit Unions**

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

**ACTION:** Final Interpretive Ruling and Policy Statement 11-02.

**SUMMARY:** The NCUA Board is issuing a final Interpretive Ruling and Policy Statement (IRPS) setting forth the requirements and process for chartering corporate Federal credit unions.

**DATES:** This IRPS is effective March 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Lisa Henderson, Staff Attorney, Office of General Counsel, at the address above or telephone: (703) 518-6540; or Dave Shetler, Deputy Director, Office of Corporate Credit Unions, at the address above or telephone: (703) 518-6640.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

NCUA recently finalized changes to its Corporate Credit Union Rule, 12 CFR part 704. 75 FR 64786 (October 20, 2010). These changes, as well as NCUA's other efforts to resolve the problems created by the legacy assets remaining in the corporate credit union (corporate) system, are likely to result in a fundamental restructuring of that system. As part of this restructuring, NCUA believes that some groups of natural person credit unions (NPCUs) may wish to form new corporates. Previous corporate chartering guidance had been withdrawn; accordingly, on September 24, 2010, the NCUA Board issued a proposed IRPS setting forth the requirements and process for chartering corporate Federal credit unions (FCUs). 75 FR 60651 (October 1, 2010).

The proposed IRPS set forth requirements for prospective new corporate FCUs and NCUA's standards for evaluating applications. It also included detailed timelines for processing charter applications.

The public comment period for the proposed IRPS closed on November 1, 2010. NCUA received six comment

letters on the proposed IRPS. The commenters generally supported the IRPS but asked for clarification regarding certain provisions and/or suggested minor changes.

#### **B. Comments**

##### *General Comments*

One commenter observed that the Board has suggested the possibility of permitting special purpose corporates and asked whether the IRPS would apply to an entity organized as a special purpose corporate. The Board notes that any entity chartered as a "corporate credit union" would be subject to the IRPS.

##### *Specific Comments*

##### Section II—Subscribers

This section of the proposed IRPS provided that seven or more natural person representatives of natural person credit unions (NPCUs)—"the subscribers"—may charter a corporate FCU.

Two commenters stated that it was not clear whether each natural person subscriber must represent a different NPCU. They recommended a clarification requiring at least seven subscribers from at least seven different NPCUs but that there be some latitude, on a case-by-case basis, for the subscribers to represent fewer NPCUs. The Board believes it is important that, without exception, each natural person subscriber represent a different NPCU, and has clarified the final IRPS accordingly. This requirement furthers the goal of developing broad membership support for any potential new charter and is consistent with the requirement in § 704.14(a)(4) of the NCUA Regulations that no individual may serve on the board if any corporate member would have more than one representative on the board. 12 CFR 704.14(a)(4).

##### Section III—Economic Advisability; Subsection B—Proposed Management's Character and Fitness

This subsection of the proposal provided that NCUA would conduct background and credit investigations on prospective officials and employees to establish each applicant's character and ability to effectively handle financial matters. The proposal listed some factors that could lead to disapproval of a prospective official or employee, including criminal convictions, indictments, acts of fraud and dishonesty, serious or unresolved past due credit obligations, and bankruptcies. This subsection also noted that NCUA needs assurance that

the management team would have the requisite skills—including leadership—to make the proposed corporate a success.

One commenter suggested that instead of providing factors NCUA may consider, the IRPS should state that these factors are the only ones NCUA will consider. The commenter further stated that an indictment alone should not be a factor, as an individual might not be convicted. The Board declines to change the list of factors or to make them exclusive. To help ensure that corporate officials and employees have the highest integrity, NCUA needs to have the flexibility to consider any and all matters that may bear on an applicant's character, including indictments and other factors that might not be listed. No one factor is necessarily dispositive, however, and depending on the circumstances, the fact that an applicant has been indicted might not lead to his or her disapproval.

One commenter stated that "leadership" should not be included as a factor, as the IRPS does not provide the criteria NCUA would use to assess leadership quality. The commenter pointed to § 701.14 of the NCUA Regulations, governing change in officials of newly-chartered or troubled condition credit unions. Paragraph (e) of that section allows NCUA to disapprove an individual's service based on his or her "competence, experience, character, or integrity." The commenter suggested that these criteria should be the focus of NCUA's evaluation of prospective corporate officials. The Board disagrees. As noted above, the IRPS already provides for NCUA consideration of a prospective official or employee's character and ability to handle financial matters. Leadership is an additional quality that includes the demonstrated ability to establish an organizational vision, prioritize activities, and lead the organization to successfully accomplish its goals.

##### Section III, Subsection C—Member Support

This subsection required that subscribers demonstrate a sufficient customer base for the proposed corporate in the form of membership applications, capital and share commitments, and commitments to use the corporate's services. Specifically, it stated that the capital plan must show how the corporate would keep its total capital at 4 percent or more of its moving daily average net assets (MDANA) at all times beginning when NCUA issues the charter.

Several commenters questioned how this could be calculated on the day the