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(3) Interpretive rules, general statements of policy, or rules of agency organization, procedure or practice, unless notice or hearing is required by statute; and

(4) If the Board, for good cause, finds (and incorporates the finding and a brief statement thereof in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, unless notice or hearing is required by statute.

e) Effective dates. No substantive rule issued by NCUA shall be effective less than 30 days after its publication in the FEDERAL REGISTER, except that this requirement may not apply to:

(1) Rules which grant or recognize an exemption or relieve a restriction;

(2) Interpretive rules and statements of policy; or

(3) Any substantive rule which the Board makes effective at an earlier date upon good cause found and published with such rule.

(f) NCUA has an Office of Management and Budget (OMB) control number for rulemakings containing an information collection within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501). A list of OMB control numbers is available to the public for review online at http://www.RegInfo.gov.


Subpart C—Public Observation of NCUA Board Meetings Under the Sunshine Act

§ 791.9 Scope.

This subpart contains regulations implementing subsections (b) through (f) of the “Government in the Sunshine Act” (5 U.S.C. 552b). The primary purpose of these regulations is to protect the public with the fullest access authorized by law to the deliberations and decisions of the Board, while protecting the rights of individuals and preserving the ability of the agency to carry out its responsibilities.

§ 791.10 Definitions.

For the purpose of this subpart:

(a) Agency means the National Credit Union Administration;

(b) Subdivision of the Board means a group composed of two Board members authorized by the Board to act on behalf of the agency;

(c) Meeting means any deliberations by two or more members of the Board or any subdivision of the Board that determine or result in the joint conduct or disposition of official agency business with the exception of: (1) Deliberations to determine whether a meeting or a portion thereof will be open or closed to public observation and whether information regarding closed meetings will be withheld from public disclosure; (2) deliberations to determine whether or when to schedule a meeting; and (3) infrequent dispositions of official agency business by sequential circulation of written recommendations to individual Board members (“notation voting procedure”), provided the votes of each Board member and the action taken are recorded for each matter and are publicly available, unless exempted from disclosure pursuant to 5 U.S.C. 552 (the Freedom of Information Act);

(d) Public observation means that a member or group of the public may listen to and observe any open meeting and may record in an unobtrusive manner any portion of that meeting by use of a camera or any other electronic device, but shall not participate in any meeting unless authorized by the Board.

(e) Public announcement or publicly announce means making reasonable efforts under the particular circumstances to fully inform the public, especially those individuals who have expressed interest in the subject matters to be discussed or the decisions of the agency;

(f) Sunshine Act means the open meeting provisions of the “Government in the Sunshine Act” (5 U.S.C. 552b).

[53 FR 29647, Aug. 8, 1988, as amended at 78 FR 32546, May 31, 2013]

§ 791.11 Open meetings.

Except as provided in §791.12(a), any portion of any meeting of the Board shall be open to public observation. The Board, and any subdivision of the Board, shall jointly conduct official
agency business only in accordance with this subpart.

§ 791.12 Exemptions.

(a) Under the procedures specified in §791.14, the Board may close a meeting or any portion of a meeting from public observation or may withhold information pertaining to such meetings provided the Board has properly determined that the public interest does not require otherwise and that the meeting (or any portion thereof) or the disclosure of meeting information is likely to:

(1) Disclose matters that are:
   (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and
   (ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to internal personnel rules and practices;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of title 5 of the United States Code, the Freedom of Information Act), provided that such statute:
   (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
   (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:
   (i) Interfere with enforcement proceedings,
   (ii) Deprive a person of a right to a fair trial or an impartial adjudication, (iii) Constitute an unwarranted invasion of personal privacy,
   (iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, or
   (v) Disclose investigative techniques and procedures, or
   (vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of Federal agencies responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to (i)(A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution, or (ii) be likely to significantly frustrate implementation of a proposed action, except that this paragraph (a)(9) shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

(b) Prior to closing a meeting whose discussions are likely to fall within the exemptions stated in paragraph (a) of this section, the Board will balance the public interest in observing the deliberations of an exemptible matter and the agency need for confidentiality of the exemptible matter. In weighing these interests, the Board is assisted