

is \$45,000, or 9% of \$500,000. This reflects the fact that only 50% of the Fund is in the account and A's interest in the account is in the same proportion as his interest in the overall plan. All other participants would be similarly insured. Participants' interests not capable of evaluation are added together and insured to a maximum of \$250,000 in the aggregate (§745.9–2).

Example 4. Question: Member A has an individual account of \$250,000 and establishes an IRA account and accumulates \$250,000 in that account. Subsequently, A becomes self-employed and establishes a Keogh account in the same credit union and accumulates \$250,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured as follows: the individual account for \$250,000, the maximum for that type of account; the IRA account for \$250,000, the maximum for that type of account; and the Keogh account for \$250,000, the maximum for that type of account. (§§745.3(a)(1) and 745.9–2).

Example 5. Question: Member A has a self-directed IRA account with \$70,000 in it. The FCU is the trustee of the account. Member transfers \$40,000 into a blue chip stock; \$30,000 remains in the FCU. What is the insurance coverage?

Answer: Originally, the full \$70,000 in A's IRA account is insured. The \$40,000 is no longer insured once it is moved out of the FCU. The \$30,000 remaining in the FCU is insured (§745.9–2).

[74 FR 55751, Oct. 29, 2009, as amended at 75 FR 34622, June 18, 2010]

EFFECTIVE DATE NOTE: At 89 FR 79416, Sept. 30, 2024, appendix to part 745 was removed, effective Dec. 1, 2026.

PART 746—APPEALS PROCEDURES

Subpart A—Procedures for Appealing Material Supervisory Determinations

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AUTHORITY: 12 U.S.C. 1766, 1787, and 1789.

SOURCE: 82 FR 50281, Oct. 30, 2017, unless otherwise noted.

Subpart A—Procedures for Appealing Material Supervisory Determinations

§ 746.101 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806), which requires the NCUA Board to establish an independent intra-agency appeals process to review appeals of material supervisory determinations made by NCUA staff, and sections 120 and 209 of the Federal Credit Union Act (12 U.S.C. 1766, 1789).

(b) *Purpose.* The purpose of this subpart is to establish an expeditious review process for insured credit unions to appeal material supervisory determinations made by NCUA staff to an independent supervisory panel and, if applicable, to the NCUA Board. This subpart is also intended to establish appropriate safeguards for protecting insured credit unions from retaliation by NCUA staff.

(c) *Scope.* This subpart applies to the appeal of material supervisory determinations made by NCUA staff. This subpart does not apply to the appeal of determinations for which an independent right to appeal exists such as a decision to appoint a conservator or liquidating agent for an insured credit union or to take prompt corrective action pursuant to section 216 of the Federal Credit Union Act (12 U.S.C. 1790d).

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and part 702 of this chapter. This subpart also does not apply to enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a pending enforcement action.

§ 746.102 Definitions.

For purposes of this subpart:

Board means the NCUA Board.

Committee means the Supervisory Review Committee.

Director of the Office of Examination and Insurance has the same meaning as used in § 790.2 of this chapter but also includes individuals designated by the Director of the Office of Examination and Insurance from among senior staff in the Office of Examination and Insurance to handle requests for review pursuant to § 746.106 of this subpart.

Material Supervisory Determination is defined in § 746.103 of this subpart.

Program office means the office within NCUA responsible for rendering a material supervisory determination.

Special Counsel to the General Counsel or *Special Counsel* means an individual within the Office of General Counsel providing legal or procedural advice to the Committee in accordance with the procedures set forth in this subpart.

§ 746.103 Material supervisory determinations.

(a) *Material supervisory determination.* The term “material supervisory determination” means a written decision by a program office (unless ineligible for appeal) that may significantly affect the capital, earnings, operating flexibility, or that may otherwise affect the nature or level of supervisory oversight of an insured credit union. The term includes, but is not limited to:

(1) A composite examination rating of 3, 4, or 5;

(2) A determination relating to the adequacy of loan loss reserve provisions;

(3) The classification of loans and other assets that are significant to an insured credit union;

(4) A determination regarding an insured credit union’s compliance with Federal consumer financial law;

(5) A determination on a waiver request or an application for additional

authority where independent appeal procedures have not been specified in other NCUA regulations; and

(6) A determination by the relevant reviewing authority that an appeal filed under this subchapter does not raise a material supervisory determination.

(b) *Exclusions from coverage.* The term “material supervisory determination” does not include:

(1) A composite examination rating of 1 or 2;

(2) A component examination rating unless the component rating has a significant adverse effect on the nature or level of supervisory oversight of an insured credit union;

(3) The scope and timing of supervisory contacts;

(4) A decision to appoint a conservator or liquidating agent for an insured credit union;

(5) A decision to take prompt corrective action pursuant to section 216 of the Federal Credit Union Act (12 U.S.C. 1790d) and part 702 of this chapter;

(6) Enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a pending enforcement action;

(7) Preliminary examination conclusions communicated to an insured credit union before a final exam report or other written communication is issued;

(8) Formal and informal rulemakings pursuant to the Administrative Procedure Act (5 U.S.C. 500 *et seq.*);

(9) Requests for NCUA records or information under the Freedom of Information Act (5 U.S.C. 552) and part 792 of this chapter and the submission of information to NCUA that is governed by this statute and this regulation; and

(10) Determinations for which other appeals procedures exist.

§ 746.104 General provisions.

(a) *Standard of review.* Each reviewing authority shall make an independent decision regarding whether a material supervisory determination by the program office subject to appeal was appropriate. The reviewing authority shall give no deference to the legal or

factual conclusions of the program office or a subordinate reviewing authority; *provided, however*, that the burden of showing an error in a material supervisory determination shall rest solely with the insured credit union. An insured credit union shall not be prejudiced in any respect by electing to forgo optional review by the Director of the Office of Examination and Insurance pursuant to §746.106 of this subpart.

(b) *Dismissal and withdrawal.* Any appeal under this subpart may be dismissed by written notice if it is not timely filed; if the basis for the appeal is not discernable; if an insured credit union asks to withdraw the request in writing; if an insured credit union fails to provide additional information requested pursuant to any authority granted in this subpart; if an insured credit union engages in bad faith; if the appeal fails to state a material supervisory determination as defined in §746.103 of this subpart; or for reasons deemed appropriate by the reviewing authority.

(c) *Discovery.* No provision of this subpart is intended to create any right to discovery or similar process.

(d) *Supervisory or enforcement actions not affected.* No provision of this subpart is intended to affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect NCUA's authority to take any supervisory or enforcement action against an insured credit union. For purposes of this subpart, a supervisory or enforcement action is considered to be commenced when NCUA provides an insured credit union with written notice of a recommended or proposed enforcement action under the Federal Credit Union Act or other applicable law.

(e) *Additional authority and waiver requests during the pendency of an appeal.* A program office will not consider a waiver request or an application for additional authority that could be affected by the outcome of an appeal of a material supervisory determination unless specifically requested by an insured credit union appealing the material supervisory determination. Any deadline for a program office to decide a waiver request or an application for

additional authority set forth in any part of this chapter shall be suspended until an insured credit union appealing a material supervisory determination has exhausted its administrative remedies under this subpart or may no longer appeal the material supervisory determination, whichever is later.

(f) *Administrative record.* A decision by the reviewing authority pursuant to this subpart shall be based exclusively on the administrative record. The administrative record shall consist of all written submissions by an insured credit union and a program office, decisions by subordinate reviewing authorities, and (where applicable) transcripts of an oral hearing before the SRC. For appeals where consultation with the appropriate State supervisory authority is required pursuant to §746.113, the administrative record shall also consist of any written submissions by the State supervisory authority.

§746.105 Procedures for reconsideration from the appropriate program office.

(a) *Reconsideration.* An insured credit union must make a written request for reconsideration from the appropriate program office prior to requesting review by the Director of the Office of Examination and Insurance pursuant to §746.106 or filing an appeal with the Committee pursuant to §746.107. Such a request must be made within 30 calendar days after receiving an examination report containing a material supervisory determination or other official written communication of a material supervisory determination. A request for reconsideration must be in writing and filed with the appropriate program office.

(b) *Content of request.* Any request for reconsideration must include:

(1) A statement of the facts on which the request for reconsideration is based;

(2) A statement of the basis for the material supervisory determination to which the insured credit union objects and the alleged error in such determination; and

(3) Any other evidence relied upon by the insured credit union that was not previously provided to the appropriate

program office making the material supervisory determination.

(c) *Decision.* Within 30 calendar days after receiving a request for reconsideration, the appropriate program office shall issue a written decision, stating the reasons for the decision, and provide written notice of the right to file a request for review by the Director of the Office of Examination and Insurance pursuant to § 746.106 or file an appeal with the Committee pursuant to § 746.107. If a written decision is not issued within 30 calendar days, the request for reconsideration will be deemed to have been denied.

(d) *Subsequent requests for reconsideration.* Any subsequent request for reconsideration following an initial request made pursuant to this section will be treated as a request for review by the Director of the Office of Examination and Insurance pursuant to § 746.106 or an appeal to the Committee pursuant to § 746.107 as determined by the Secretary of the Board after consultation with the insured credit union.

§ 746.106 Procedures for requesting review by the Director of the Office of Examination and Insurance.

(a) *Request for review.* Prior to filing an appeal with the Committee pursuant to § 746.107, but after receiving a written decision by the appropriate program office in response to a request for reconsideration pursuant to § 746.105, an insured credit union may make a written request for review by the Director of the Office of Examination and Insurance of the program office's material supervisory determination. Such a request must be made within 30 calendar days after receiving a final decision on reconsideration from the appropriate program office. A request for review must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

(b) *Content of request.* Any request for review by an insured credit union must include:

(1) A statement that the insured credit union is requesting review by the Director of the Office of Examination and Insurance;

(2) A statement of the facts on which the request for review is based;

(3) A statement of the basis for the material supervisory determination to which the insured credit union objects and the alleged error in such determination;

(4) Any other evidence relied upon by the insured credit union that was not previously provided to the appropriate program office making the material supervisory determination; and

(5) A certification that the board of directors of the insured credit union has authorized the request for review to be filed.

(c) *Conduct of review.* Review of a material supervisory determination shall be based on the written submissions provided under paragraph (b) of this section. The Director of the Office of Examination and Insurance may request additional information from the appropriate program office or the insured credit union within 15 calendar days after the Secretary of the Board receives a request for review by the Director of the Office of Examination and Insurance. The relevant party must submit the requested information to the Director of the Office of Examination and Insurance within 15 calendar days after receiving such request for additional information. The Director of the Office of Examination and Insurance may consult with the parties jointly or separately before rendering a decision and may solicit input from any other pertinent program office as necessary.

(d) *Decision.* Within 30 calendar days after the Secretary of the Board receives a request for review, the Director of the Office of Examination and Insurance shall issue a written decision, stating the reasons for the decision, and provide written notice of the right to file an appeal with the Committee pursuant to § 746.107. The 30 calendar day deadline is extended by the time period during which the Director of the Office of Examination and Insurance is gathering additional information. If a written decision is not issued within 30 calendar days, as extended by additional time during which the information is being gathered, the request for review will be deemed to have been denied.

(e) *Subsequent requests for review.* No party may request reconsideration of the decision rendered by the Director of the Office of Examination and Insurance. Any subsequent request for review following the rendering of a decision by the Director of the Office of Examination and Insurance will be treated as an appeal to the Committee.

[82 FR 50281, Oct. 30, 2017, as amended at 84 FR 1608, Feb. 5, 2019]

§ 746.107 Procedures for appealing to the Supervisory Review Committee.

(a) *Request for appeal.* After receiving a written decision by the appropriate program office in response to a request for reconsideration pursuant to § 746.105, an insured credit union may file an appeal with the Committee. Such an appeal must be filed within 30 calendar days after receiving a written decision by the appropriate program office on reconsideration or, if the insured credit union requests review by the Director of the Office of Examination and Insurance pursuant to § 746.106, within 30 calendar days after a final decision is made by the Director of the Office of Examination and Insurance. An appeal must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

(b) *Content of appeal.* Any appeal must include:

(1) A statement that the insured credit union is filing an appeal with the Committee;

(2) A statement of the facts on which the appeal is based;

(3) A statement of the basis for the determination to which the insured credit union objects and the alleged error in such determination;

(4) Any other evidence relied upon by the insured credit union that was not previously provided to the appropriate program office or, if applicable, the Director of the Office of Examination and Insurance; and

(5) A certification that the board of directors of the insured credit union has authorized the appeal to be filed.

(c) *Conduct of appeal.* The following procedures shall govern the conduct of an appeal to the Committee:

(1) *Submission of written materials.* The Committee may request additional information from either of the parties within 15 calendar days after the filing of an appeal. The parties must submit the requested information to the Committee within 15 calendar days after receiving a request for additional information.

(2) *Oral hearing; duration; location.* Except where an insured credit union has requested that an appeal be based entirely on the written record, an appeal shall also consist of oral presentations to the Committee at NCUA headquarters. The introduction of written evidence or witness testimony may also be permitted at the oral hearing. The insured credit union shall argue first. Each side shall be allotted a specified and equal amount of time for its presentation, of which a portion may be reserved for purposes of rebuttal. This time limit shall be set by the Committee and will be based on the complexity of the appeal. Committee members may ask questions of any individual appearing before it.

(3) *Appearances; representation.* The parties shall submit a notice of appearance identifying the individual(s) who will be representing them in the oral presentation. The insured credit union shall designate not more than two officers, employees, or other representatives including counsel, unless authorized by the Committee. The program office shall designate not more than two individuals, one of whom may be an enforcement attorney from NCUA's Office of General Counsel, unless authorized by the Committee.

(d) *Decision.* Within 30 calendar days after the oral presentation of the appeal to the Committee, the Committee shall issue a decision in writing, stating the reasons for the decision, and provide the insured credit union with written notice of the right to file an appeal with the NCUA Board (if applicable). If an insured credit union has requested that an appeal be entirely based on the written record, the Committee shall issue a decision within 30 calendar days from the date of receipt of an appeal by the Secretary of the Board. The 30 calendar day deadline to decide an appeal based entirely on the written record is extended by any time

period during which the Committee is gathering additional information pursuant to paragraph (c)(1) of this section.

(e) *Publication.* The Committee shall publish its decisions on NCUA's Web site with appropriate redactions to protect confidential or exempt information. In cases where redaction is insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published decisions may be cited as precedent in appeals to the Committee. Publication shall include a synopsis of each appeal and a summary of the final result.

(f) *Consultation with Office of Examination and Insurance or Office of General Counsel Required.* If an appeal involves the interpretation of material supervisory policy or generally accepted accounting principles, the Committee shall notify the Director of the Office of Examination and Insurance of the appeal and solicit input from the Office of Examination and Insurance. If an appeal involves the interpretation of legal requirements, including NCUA's regulations, the Committee shall notify the General Counsel of the appeal and solicit input from the Office of General Counsel.

(g) *Supplemental procedures authorized.* In addition to the procedures contained in this subpart, the Committee Chairman may adopt supplemental procedures governing the operations of the Committee, order that material be kept confidential, or consolidate appeals that present similar issues of law or fact.

§ 746.108 Composition of Supervisory Review Committee.

(a) *Formation and composition of committee pool.* The NCUA Chairman shall select not less than eight members from among senior staff in NCUA's regional and central offices as a Committee pool from which the Committee Chairman may select Committee members. None of the members appointed by the NCUA Chairman shall also serve as a Regional Director, Associate Regional Director, Executive Director, Deputy Executive Director, General Counsel, Director of the Office of Examination and Insurance, or a senior

policy advisor or chief of staff to a Board Member.

(b) *Term of office for members of Committee pool.* Each member of the Committee pool shall serve for a two-year term and may be reappointed by the NCUA Chairman for additional terms.

(c) *Designation and role of Committee Chairman.* The Secretary of the Board shall serve as permanent Committee Chairman. The Committee Chairman shall be responsible for designating three Committee members (one of whom may be the Committee Chairman) from among the Committee pool to hear a particular appeal.

(d) *Selection criteria.* When selecting Committee members to hear an appeal pursuant to paragraph (c) of this section, the Committee Chairman shall consider any real or apparent conflicts of interest that may impact the objectivity of the Committee member as well as that individual's experience with the subject matter of the appeal.

(e) *Interested staff ineligible.* Members of the Committee pool from the program office that made the material supervisory determination that is the subject of the appeal are ineligible to serve on the Committee for that appeal. Members of the Committee pool from the Office of Examination and Insurance are ineligible to serve on the Committee for appeals where the insured credit union previously requested review by the Director of the Office of Examination and Insurance pursuant to § 746.106.

(f) *Role of the Special Counsel.* The Special Counsel to the General Counsel shall serve as a permanent nonvoting member of the Committee to advise on procedural and legal matters.

(g) *Quorum; meetings.* A quorum of two Committee members (excluding the Special Counsel to the General Counsel) shall be present at each Committee meeting and a majority vote of a quorum is required for an action on an appeal. Meetings of the Committee will not be open to the public.

§ 746.109 Procedures for appealing to the NCUA Board.

(a) *Request for appeal.* An insured credit union may file an appeal with the Board challenging a decision by the Committee within 30 calendar days

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after receiving that decision. An appeal must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

(b) *Granting an appeal.* At least one Board Member must agree to consider an appeal from a decision by the Committee. If a request for an oral hearing pursuant to § 746.111 is granted, the Secretary of the Board will notify the parties of the time and location where the oral hearing shall be heard. Except in unusual circumstances, any appeal shall be held at NCUA headquarters. If at least one Board Member does not agree to consider an appeal from a decision by the Committee within 20 days of receiving a request, the request will be deemed to have been denied.

(c) *Failure to file a timely appeal.* An insured credit union that fails to file an appeal within the specified 30-day period shall be deemed to have waived all claims pertaining to the matters in issue.

(d) *Certain actions not reviewable.* Notwithstanding any other provision of this subpart, Committee decisions on the denial of a technical assistance grant reimbursement are final decisions of NCUA and may not be appealed to the Board.

(e) *Content of appeal.* Any request for appeal must include:

(1) A statement of the facts on which the appeal is based;

(2) A statement of the basis for the determination to which the insured credit union objects and the alleged error in such determination; and

(3) A certification that the board of directors of the insured credit union has authorized the appeal to be filed.

(f) *Amending or supplementing the appeal.* The insured credit union may amend or supplement the appeal in writing within 15 calendar days from the date the Secretary of the Board receives an appeal. If the insured credit union amends or supplements the appeal, the program office will be permitted to file responsive materials within 15 calendar days.

(g) *Request for oral hearing.* In accordance with § 746.111, the insured credit union may request an opportunity to appear before the Board to make an

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oral presentation in support of the appeal.

§ 746.110 Administration of the appeal.

(a) *Conduct of appeal.* Except as otherwise provided in § 746.111, the following procedures shall govern the conduct of an appeal to the Board:

(1) *Review based on written record.* The appeal of a material supervisory determination shall be entirely based on the written record.

(2) *Submission of written materials.* The Board or the Special Counsel to the General Counsel may request additional information to be provided in writing from either of the parties within 15 calendar days after the filing of an appeal, any amendments or supplementary information to the appeal documents by the insured credit union, or any responsive materials by the program office, whichever is later. The parties must submit the requested information to the Board or the Special Counsel within 15 calendar days of receiving a request for additional information.

(b) *Decision.* The Board shall issue a decision within 90 calendar days, unless there is an oral hearing, from the date of receipt of an appeal by the Secretary of the Board. The decision by the Board shall be in writing, stating the reasons for the decision, and shall constitute a final agency action for purposes of chapter 7 of title 5 of the United States Code. Failure by the Board to issue a decision on an appeal within the 90-day period, unless there is an oral hearing, shall be deemed to be a denial of the appeal.

(c) *Publication.* The Board shall publish its decisions on NCUA's Web site with appropriate redactions to protect confidential or exempt information. In cases where redaction is insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published decisions may be cited as precedent. Publication shall include a synopsis of each appeal and a summary of the final result.

§ 746.111 Oral hearing.

(a) *Request for oral hearing.* The insured credit union may request to appear before the Board to make an oral presentation in support of the appeal.

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The request must be submitted with the initial appeal documents and should be in the form of a separate written document titled "Request for Oral Hearing." The request must show good cause for an oral presentation and state reasons why the appeal cannot be presented adequately in writing.

(b) *Action on the request.* The Board shall determine whether to grant the request for oral hearing and shall direct the Secretary of the Board to serve notice of the Board's determination in writing to the parties. A request for oral hearing shall be granted with the approval of any Board Member within 20 days of receiving a request for an oral hearing.

(c) *Effect of denial.* In the event a request for an oral hearing is denied, the appeal shall be reviewed by the Board on the basis of the written record.

(d) *Procedures for oral hearing.* The following procedures shall govern the conduct of any oral hearing:

(1) *Scheduling of oral hearing; location.* The Secretary of the Board shall notify the parties of the date and time for the oral hearing, making sure to provide reasonable lead time and schedule accommodations. The oral hearing will be held at NCUA headquarters; *provided, however,* that on its own initiative or at the request of the insured credit union, the NCUA Chairman may in his or her sole discretion allow for an oral hearing to be conducted via teleconference or video conference facilities.

(2) *Appearances; representation.* The parties shall submit a notice of appearance identifying the individual(s) who will be representing them in the oral presentation. The insured credit union shall designate not more than two officers, employees, or other representatives including counsel, unless authorized by the NCUA Chairman. The program office shall designate not more than two individuals one of whom may be an enforcement attorney from NCUA's Office of General Counsel, unless authorized by the NCUA Chairman.

(3) *Conduct of oral hearing.* The oral hearing shall consist entirely of oral presentations. The introduction of written evidence or witness testimony shall not be permitted at the oral hear-

ing. The insured credit union shall argue first. Each side shall be allotted a specified and equal amount of time for its presentation, of which a portion may be reserved for purposes of rebuttal. This time limit shall be set by the Board and will be based on the complexity of the appeal. Members of the Board may ask questions of any individual appearing before the Board.

(4) *Transcript.* The oral hearing shall be on the record and transcribed by a stenographer, who will prepare a transcript of the proceedings. The stenographer will make the transcript available to the insured credit union upon payment of the cost thereof.

(e) *Confidentiality.* An oral hearing as provided for herein constitutes a meeting of the Board within the meaning of the Government in the Sunshine Act (5 U.S.C. 552b). The Chairman shall preside over the conduct of the oral hearing. The meeting will be closed to the public to the extent that one or more of the exemptions from public meetings apply as certified by NCUA's Office of General Counsel. The Board shall maintain the confidentiality of any information or materials submitted or otherwise obtained in the course of the procedures outlined herein, subject to applicable law and regulations.

(f) *Conclusion of the oral hearing.* The Board shall take the oral presentations under advisement. The Board shall render its decision on the appeal in accordance with § 746.110.

§ 746.112 Retaliation prohibited.

(a) *Retaliation prohibited.* NCUA staff may not retaliate against an insured credit union making any type of appeal. Alleged acts of retaliation should be reported to the NCUA Office of Inspector General, which is authorized to receive and investigate complaints and other information regarding abuse in agency programs and operations.

(b) *Submission of complaints.* Insured credit unions may submit complaints of suspected retaliation to the NCUA Office of Inspector General, 1775 Duke Street, Alexandria, VA 22314-3428. Complaints should include an explanation of the circumstances surrounding the

complaint and evidence of any retaliation. Information submitted as part of a complaint shall be kept confidential.

(c) *Disciplinary action.* Any retaliation by NCUA staff will subject the employee to appropriate disciplinary or remedial action by the appropriate supervisor. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, suspension or separation from employment, change in assigned duties, or disqualification from a particular assignment, including prohibition from participating in any examination of the insured credit union that was the subject of the retaliation.

§ 746.113 Coordination with State supervisory authority.

(a) *Coordination when request for review by the Director of the Office of Examination and Insurance filed.* In the event that a material supervisory determination subject to a request for review by the Director of the Office of Examination and Insurance is the joint product of NCUA and a State supervisory authority, the Director of the Office of Examination and Insurance will promptly notify the appropriate State supervisory authority of the request for review, provide the State supervisory authority with a copy of the request for review and any other related materials, solicit the State supervisory authority's views regarding the merits of the request for review before making a determination, and notify the State supervisory authority of the Director's determination.

(b) *Coordination when appeal to Supervisory Review Committee filed.* In the event that a material supervisory determination appealed to the Committee is the joint product of NCUA and a State supervisory authority, the Committee will promptly notify the State supervisory authority of the appeal, provide the State supervisory authority with a copy of the appeal and any other related materials, solicit the State supervisory authority's views regarding the merits of the appeal before making a determination, and notify the State supervisory authority of the Committee's determination. Once the Committee has issued its determination, any other issues that may remain

between the insured credit union and the State supervisory authority will be left to those parties to resolve.

(c) *Coordination when appeal to board filed.* In the event that a material supervisory determination appealed to the Board is the joint product of NCUA and a State supervisory authority, the Board will promptly notify the State supervisory authority of the appeal, provide the State supervisory authority with a copy of the appeal and any other related materials, solicit the State supervisory authority's views regarding the merits of the appeal before making a determination, and notify the State supervisory authority of the Board's determination. Once the Board has issued its determination, any other issues that may remain between the insured credit union and the State supervisory authority will be left to those parties to resolve.

Subpart B—Appeals Procedures That Do Not by Law Require a Board Hearing

SOURCE: 82 FR 50294, Oct. 30, 2017, unless otherwise noted.

§ 746.201 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to sections 120, 207, and 209 of the Federal Credit Union Act (12 U.S.C. 1766, 1787, and 1789).

(b) *Purpose.* This subpart provides generally uniform procedures by which petitioners may appeal initial agency determinations to the NCUA Board under this part.

(c) *Scope.* This subpart covers the appeal of initial agency determinations by a program office which the petitioner has a right to appeal to the NCUA Board under the following regulations: §§ 701.14(e), 701.21(h)(3), 701.22(c), 701.23(h)(3), 701.32(b)(5), and 701.34(a)(4), appendix A to part 701 of this chapter, appendix B to part 701 of this chapter, Chapters 1–4, §§ 703.20(d), 703.108(b), 705.10(a), 708a.108(d), 708a.304(h), 708a.308(d), 709.7, 741.11(d), and 745.201(c), 752.11(b), subpart J to part 747 of this chapter, and § 750.6(b).

(d) *Exclusions.* This subpart does not apply to:

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(1) Actions by the agency to develop regulations, policy statements, or guidance documents;

(2) Formal enforcement actions, the review of material supervisory determinations that come under the jurisdiction of NCUA's Supervisory Review Committee, or the appeal of any agency determination made pursuant to part 792 of this chapter;

(3) Challenges to determinations under the prompt corrective action regime in parts 702 and 704 of this chapter and subparts L and M to part 747 of this chapter; and

(4) Creditor claims arising from the liquidation of an insured credit union to the extent that the creditor has requested, and the NCUA Board has agreed, for the claim to be handled through a hearing on the record pursuant to 12 U.S.C. 1787(b)(7)(A) and subpart A of part 747 of this chapter.

[82 FR 50294, Oct. 30, 2017, as amended at 86 FR 28250, May 26, 2021; 89 FR 79393, Sept. 30, 2024]

§ 746.202 Definitions.

For purposes of this subpart:

Appeal means a process by which a petitioner may obtain the review by the Board of an initial agency determination.

Board means the NCUA Board.

Initial agency determination means an agency action taken at a level below the Board with respect to an application, request, claim, or other matter in which a determination of rights or resolution of issues is rendered and the party affected by the determination has been provided with a right to appeal the determination to the NCUA Board. The initial agency determination shall notify the Petitioner of the right to request reconsideration or to file an appeal with the Board, and shall include a description of applicable filing deadlines and time frames for agency responses. Agency determinations involving the formulation of a regulation, guidance document, or policy statement are excluded from this definition.

Oral hearing means an opportunity, granted at the sole discretion of the Board, by which a petitioner may make an oral presentation to the Board concerning issues pertinent to an appeal.

Petitioner means the person or entity seeking Board review of an initial agency determination.

Program office means the office within NCUA responsible for making an initial agency determination.

Special Counsel to the General Counsel means an individual (referred to herein as the "Special Counsel") within NCUA's Office of General Counsel charged with administering appeals in accordance with the procedures set forth in this part.

§ 746.203 Request for reconsideration.

(a) *Reconsideration*. Prior to submitting an appeal in accordance with § 746.204, the petitioner may in its sole discretion make a written request to the appropriate program office to reconsider the initial agency determination.

(b) *Deadline to file*. A request for reconsideration must be sent to the appropriate program office within 30 calendar days of the date of the initial agency determination. A petitioner who does not file a request for reconsideration in a timely manner is considered to have waived the right to request reconsideration.

(c) *Special rule regarding change in officials*. Notwithstanding paragraph (a) of this section, a request for reconsideration of an initial agency determination disapproving an individual serving as a director, committee member or senior executive officer pursuant to § 701.14 of this chapter must be sent to the appropriate program office within 15 calendar days of the date of the initial agency determination.

(d) *Content of request*. Any request for reconsideration must include:

(1) A statement of the facts on which the request for reconsideration is based;

(2) A statement of the basis for the initial agency determination to which the petitioner objects and the alleged error in such determination; and

(3) Any other support or evidence relied upon by the petitioner which was not previously provided to the appropriate program office.

(e) *Determination of program office*. The appropriate program office will review its initial agency determination and reconsider the position initially

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taken in the light of the arguments and additional materials provided in the request for reconsideration. Within 30 calendar days of its receipt of a request for reconsideration, the appropriate program office shall issue its determination either affirming in whole or in part the initial agency determination or rejecting it.

(f) *Notice of determination.* The appropriate program office shall provide its decision concerning the reconsideration request to the petitioner in writing, stating the reasons for the decision. The decision shall be treated as an initial agency determination for purposes of § 746.204(a).

(1) In addition to a written statement of reasons for the decision, the appropriate program office shall provide the petitioner with written notice of the right to appeal the decision, in whole or in part, to the Board in accordance with the procedures set forth in § 746.204.

(2) For creditor claims brought pursuant to sec. 207 of the Federal Credit Union Act (12 U.S.C. 1787), the appropriate program office shall provide the petitioner with written notice of the right, in the alternative to filing an appeal with the Board, to file suit or continue an action commenced before the appointment of the liquidating agent in the district or territorial court of the United States for the district within which the credit union's principal place of business was located or the United States District Court for the District of Columbia. For such claims, the 60-day period for filing a lawsuit in United States district court provided in 12 U.S.C. 1787(b)(6) shall be tolled from the date of the petitioner's request for reconsideration to the date of a determination pursuant to paragraph (e) of this section.

(3) Upon a showing of extenuating circumstances, as determined by the program office in its reasonable judgment, a petitioner may be allowed to submit a second reconsideration request before filing an appeal with the Board. In such cases, the deadline for filing an appeal with the Board shall begin to run from the earlier of the date of the decision of the program office regarding the second reconsideration request or thirty calendar days

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from the date the second reconsideration request was accepted by the program office.

(g) *Failure to make a determination.* Failure by the appropriate program office to issue a decision within the timeframe specified in paragraph (e) of this section shall be an affirmation of the original initial agency determination and shall be treated as an initial agency determination for purposes of § 746.204(a).

(h) *Burden of proof.* The burden of proof to lead the appropriate program office to modify or reverse an initial agency determination shall rest solely upon the petitioner.

§ 746.204 Appeal to the Board.

(a) *Filing.* Within 60 calendar days of the date of an initial agency determination, or, as applicable, a determination by the program office on any request for reconsideration, a petitioner may file an appeal seeking review of the determination by the Board. The request must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

(b) *Special rule regarding change in officials.* Notwithstanding paragraph (a) of this section, an appeal of an initial agency determination disapproving an individual serving as a director, committee member or senior executive officer pursuant to § 701.14 of this chapter must be filed with the Secretary of the Board within 15 calendar days of the date of the initial agency determination.

(c) *Failure to file a timely appeal.* Absent extenuating circumstances, as determined by the Board in its sole discretion, a petitioner who fails to file an appeal within the specified 60-day period shall be deemed to have waived all claims pertaining to the matters in issue.

(d) *Content of request.* Any appeal filed with the Board must include:

(1) A statement summarizing the underlying facts that form the basis of the appeal, together with copies of all pertinent documents, records, and materials on which the petitioner relies in support of the appeal.

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(2) A statement outlining why the petitioner objects to the conclusions in the initial agency determination, including any errors alleged to have been made by the program office in reaching its determination.

(3) Any other materials or evidence relied upon by the petitioner that were not previously provided to the appropriate program office.

(e) *Burden of proof.* The burden of proof to lead the Board to modify or reverse an initial agency determination shall rest solely upon the petitioner.

(f) *Amending or supplementing the appeal.* Within 45 calendar days from the date the Secretary of the Board receives an appeal, the petitioner may amend or supplement the appeal in writing.

(g) *Request for oral hearing.* In accordance with § 746.207, the petitioner may request an opportunity to appear before the Board, in person, or via teleconference or videoconference, to make an oral presentation in support of the appeal.

§ 746.205 Preliminary considerations regarding the appeal.

(a) *Initial review.* The Special Counsel shall review all appeals filed with the Secretary of the Board for conformance with the rules set forth in this subpart, including deadlines for submission of an appeal. The Special Counsel shall also make an evaluation concerning whether an appeal is moot or is otherwise not in good order, and shall make a recommendation for the disposition of all such appeals to the Board. The Special Counsel shall have the authority to dismiss an appeal upon the request of the petitioner.

(b) *Supplemental materials.* Within 30 calendar days from the date the Secretary of the Board receives an appeal, the Special Counsel may request in writing that the petitioner submit additional evidence in support of the appeal. If additional evidence is requested, the petitioner shall have 30 calendar days from the date of issuance of such request to provide the requested information. Failure by the petitioner to provide such information may result in denial of the petitioner's appeal. The Special Counsel shall have the authority to request additional in-

formation from any other relevant source in order to provide the Board with a full and complete administrative record. All requests by the Special Counsel pursuant to this section must be reasonable and designed to facilitate the processing of the appeal, not to delay it.

§ 746.206 Administration of the appeal.

(a) *De novo review by Special Counsel.* After receipt of a timely appeal, the Special Counsel shall contact the relevant NCUA program office and request a complete set of all pertinent materials, including internal memoranda, correspondence, and records having a bearing on the initial agency determination being appealed. The Special Counsel will conduct an independent review of these materials, along with all materials submitted by the petitioner in support of the appeal. The Special Counsel will make a recommendation to the Board as to the appropriate disposition of the appeal after having evaluated the applicable legal arguments and considered the facts and circumstances that pertain to the appeal. As directed by the Board, the Special Counsel may provide his or her recommendation in writing to the Board and may make an oral presentation before the Board.

(b) *Determination on appeal.* Within 90 calendar days from the date of receipt of an appeal by the Secretary of the Board, or within any extension of time as established by the Chairman, the Board shall issue a decision allowing, in whole or in part, or disallowing the petitioner's appeal. The decision by the Board shall be in writing, stating the reasons for the decision, and shall constitute a final agency action for purposes of chapter 7 of title 5 of the United States Code. Failure by the Board to issue a decision on an appeal within the 90-day period or within any extension of time as established by the Chairman shall be deemed to be a denial of the appeal.

(c) *Extension of time.* In the discretion of the Chairman, the time frame for the Board's decision may be extended as the Chairman may consider necessary or appropriate for a full and fair consideration of the issues. For purposes of this paragraph (c), the Special

Counsel is authorized to act on behalf of the Chairman and may, in that capacity, grant an extension of time.

§ 746.207 Procedures for oral hearing.

(a) *Request for oral hearing.* The petitioner may request to appear before the Board to make an oral presentation in support of the appeal. The request must be submitted with the initial appeal documents and should be in the form of a separate written document titled “Request for Oral Hearing.” The request must show good cause for an oral presentation and state reasons why the appeal cannot be presented adequately in writing.

(b) *Action on the request.* The Board shall determine whether to grant the request for oral hearing and shall direct the Special Counsel to serve notice of the Board’s determination in writing to the petitioner. A request for oral hearing shall be granted with the approval of any Board member. The determination by a Board member approving an oral hearing must be taken within 20 days of the Board Secretary’s receipt of the appeal.

(c) *Effect of denial.* In the event no Board member approves of holding an oral hearing, the request for an oral hearing is deemed to be denied, and the appeal shall be reviewed and determined by the Board on the basis of the written record.

(d) *Procedures for oral hearing.* The following procedures shall govern the conduct of any oral hearing:

(1) *Scheduling of oral hearing; location.* The Special Counsel shall notify the petitioner and the program office of the date and time for the oral hearing, making sure to provide reasonable lead time and schedule accommodations. The oral hearing will be held at NCUA headquarters in Alexandria, Virginia; *provided, however,* that on his or her own initiative or at the request of the petitioner, the Chairman may in his or her sole discretion allow for a hearing to be conducted via teleconference or video conference facilities.

(2) *Appearances; representation.* The petitioner and the NCUA program office shall submit a notice of appearance identifying the individual(s) who will be representing them at the oral presentation. The petitioner shall des-

ignate not more than two officers, employees, or other representatives (including counsel), unless otherwise authorized by the Chairman. The NCUA program office shall designate not more than two individuals (one of whom may be a litigation and enforcement attorney from NCUA’s Office of General Counsel), unless otherwise authorized by the Chairman.

(3) *Conduct of oral hearing.* The oral hearing shall consist entirely of oral presentations. The introduction of written evidence or witness testimony at the hearing shall not be permitted. The petitioner shall present first, followed by the NCUA program office. Each side shall be allotted a specified and equal amount of time for its presentation, of which a portion may be reserved for purposes of rebuttal. This time limit shall be set by the Board and will be based on the complexity of the appeal. Members of the Board may ask questions of any individual appearing before the Board.

(4) *Transcript.* The oral hearing shall be on the record and transcribed by a stenographer, who will prepare a transcript of the proceedings. The stenographer will make the transcript available to the petitioner upon payment of the cost thereof.

(e) *Confidentiality.* An oral hearing as provided for herein constitutes a meeting of the Board within the meaning of the Government in the Sunshine Act (5 U.S.C. 552b). The NCUA Chairman shall preside over the conduct of the oral hearing. The meeting will be closed to the public to the extent that one or more of the exemptions from public meetings apply as certified by NCUA’s Office of General Counsel. The Board shall maintain the confidentiality of any information or materials submitted or otherwise obtained in the course of the procedures outlined herein, subject to applicable law and regulations.

(f) *Conclusion of the oral hearing.* The Board shall take the oral presentations under advisement. The Board shall render its decision on the appeal in accordance with § 746.206.