

## National Credit Union Administration

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be sent to the Office of External Affairs and Communications.

[58 FR 45431, Aug. 30, 1993, as amended at 84 FR 38850, Aug. 8, 2019]

### **PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS**

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AUTHORITY: 12 U.S.C. 1766, 1781, 1786, 1787, 1789, and 5 U.S.C. 552b.

SOURCE: 53 FR 29647, Aug. 8, 1988, unless otherwise noted.

### **Subpart A—Rules of NCUA Board Procedure**

#### **§ 791.1 Scope.**

The rules contained in this subpart are the rules of procedure governing how the Board conducts its business. These rules concern the Board's exercise of its authority to act on behalf of NCUA; the conduct, scheduling and subject matter of Board meetings; and the recording of Board action.

#### **§ 791.2 Number of votes required for board action.**

The agreement of at least two of the three Board members is required for any action by the Board.

#### **§ 791.3 Voting by proxy.**

Proxy voting shall not be allowed for any action by the Board.

#### **§ 791.4 Methods of acting.**

(a) *Board meetings*—(1) *Applicability of the Sunshine Act*. The Government in the Sunshine Act (5 U.S.C. 552b, “Sunshine Act”) requires that joint deliberations of the Board be held in accordance with its open meetings provisions (5 U.S.C. 552b (b) through (f)). (Subpart C of this part contains NCUA's regulations implementing the Sunshine Act.)

(2) *Presiding officer*. The Chairman is the presiding officer, and in the Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings. Any Board member may appeal a ruling made by the presiding officer. The appeal of a procedural ruling by the presiding officer shall be immediately considered by the Board, and a majority decision by the Board shall decide the procedural ruling.

(b) *Notation voting*. Notation voting is the circulation of written memoranda and voting sheets to the office of each Board member simultaneously and the tabulation of responses.

(1) *Matters that may be decided by notation voting*. Notation voting may be used only for administrative or time sensitive matters, for example, enforcement or interagency actions requiring prompt Board action matters.

(2) *Notation vote sheets*. Notation vote sheets will be used to record the vote tally on a notation vote. The Secretary

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of the Board has administrative responsibility over notation voting, including the authority to establish deadlines for voting, receive notation vote sheets, count votes, and determine whether further action is required.

(3) *Veto of notation voting.* In view of public policy for openness reflected in the Sunshine Act, each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus requires that the matter be placed on the agenda of the next regularly scheduled Board meeting that is held at least ten days after the date of the veto.

(4) *Disclosure of result.* A record is to be maintained of Board transactions by use of the notation voting procedure. Public disclosure of this record is determined by the provisions of the Freedom of Information Act (5 U.S.C. 552).

[53 FR 29647, Aug. 8, 1988, as amended at 62 FR 64267, Dec. 5, 1997; 70 FR 55517, Sept. 22, 2005; 75 FR 34623, June 18, 2010]

### § 791.5 Scheduling of board meetings.

(a) *Meeting calls*—(1) *Regular meetings.* The Board will hold regular meetings each month unless there is no business or a quorum is not available. The Secretary of the Board will coordinate the dates for meetings.

(2) *Special meetings.* The Chairman shall call special meetings either on the Chairman's own initiative or within fourteen days of a request from two Board members that is accompanied by an NCUA B-1 form and a Board Action Memorandum that states the specific issue(s) or action(s) to be considered by the Board.

(b) *Notice of meetings*—(1) *Notifying the public.* The Sunshine Act and subpart C set forth the procedures for notifying the public of Board meetings.

(2) *Notifying board members*—(i) *Special meetings.* Except in cases of emergency, as determined by a majority of the Board, each Board member is entitled to receive notice of any special meeting at least twenty-four hours in advance of such meeting. The notice shall set forth the place, day, hour, and nature of business to be transacted at the meeting. In cases of emergency a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

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(ii) *Regular meetings.* Each Board member is entitled to receive notice of the agenda and/or notice of any changes in the subject matter of such meetings concurrent with the public release of such notices under the Sunshine Act. Each Board member shall be entitled to at least twenty-four hours advance notice of the consideration of a particular subject matter, except in cases of emergency as determined by a majority of the Board. In cases of emergency, a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

[53 FR 29647, Aug. 8, 1988, as amended at 62 FR 64267, Dec. 5, 1997; 63 FR 5859, Feb. 5, 1998; 75 FR 34623, June 18, 2010]

### § 791.6 Subject matter of a meeting.

(a) *Agenda.* The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman or, at the request of any Board Member, an item will be placed on the agenda of the next regularly scheduled meeting provided that the request is submitted at least ten days in advance of the next regularly scheduled meeting and is accompanied by an NCUA B-1 form and a Board Action Memorandum that states the specific issue(s) or action(s) to be considered by the Board.

(b) *Submission of recommended agenda items.* Recommended agenda items may be submitted to the Secretary of the Board by Board members, the Executive Staff (which includes all Office Directors and President of the Central Liquidity Facility), and Regional Directors.

[61 FR 55208, Oct. 25, 1996, as amended at 62 FR 64267, Dec. 5, 1997; 63 FR 5859, Feb. 5, 1998]

## Subpart B—Promulgation of NCUA Rules and Regulations

### § 791.7 Scope.

The rules contained in this subpart B pertain to the promulgation of NCUA rules and regulations.

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### § 791.8 Promulgation of NCUA rules and regulations.

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87-2, as amended by Interpretive Ruling and Policy Statements 03-2 and 15-1.

(b) *Proposed rulemaking.* Notices of proposed rulemaking are published in the FEDERAL REGISTER except as specified in paragraph (d) of this section or as otherwise provided by law. A notice of proposed rulemaking may also be identified as a "request for comments" or as a "proposed rule." The notice will include:

- (1) A statement of the nature of the rulemaking proceedings;
- (2) Reference to the authority under which the rule is proposed;
- (3) Either the terms or substance of the proposed rule or a description of the subjects and issues involved; and
- (4) A statement of the effect of the proposed rule on federally insured state-chartered credit unions.

(c) *Public participation.* After publication of notice of proposed rulemaking, interested persons will be afforded the opportunity to participate in the making of the rule through the submission of written data, views, or arguments, delivered within the time prescribed in the notice of proposed rulemaking, to the Secretary, NCUA Board, 1775 Duke Street, Alexandria, VA 22314-3428. Interested persons may also petition the Board for the issuance, amendment, or repeal of any rule by mailing such petition to the Secretary of the Board at the address given in this section.

(d) *Exceptions to notice.* The following are not subject to the notice requirement contained in paragraph (b) of this section:

- (1) Matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts;
- (2) When persons subject to the proposed rule are named and either personally served or otherwise have actual notice thereof in accordance with law;

(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 therefor 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>.

[53 FR 29647, Aug. 8, 1988, as amended at 59 FR 36041, July 15, 1994; 68 FR 31952, May 29, 2003; 75 FR 34623, June 18, 2010; 78 FR 4038, Jan. 18, 2013; 80 FR 57517, Sept. 24, 2015; 84 FR 1610, Feb. 5, 2019]

### 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 provide 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:

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(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

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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,

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(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,

(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

by the General Counsel as provided in § 791.16, by expressions of the public interest set forth in requests for open meetings as provided by § 791.15(b), and by the brief staff analysis of public interest which will accompany each staff recommendation that an agenda item be considered in a closed meeting.

[53 FR 29647, Aug. 8, 1988, as amended at 75 FR 34623, June 18, 2010]

### § 791.13 Public announcement of meetings.

(a) Except as otherwise provided in this section, the Board shall, for each meeting, make a public announcement, at least one week in advance of the meeting, of the time, place and subject matter of the meeting, whether it will be open or closed to public observation, and the name and telephone number of the Secretary of the Board or the person designated by the Board to respond to requests for information about the meeting.

(b) Advance notice is required unless a majority of the members of the Board determine by a recorded vote that agency business requires that a meeting be called at an earlier date, in which case, the information to be announced in paragraph (a) of this section shall be publicly announced at the earliest practicable time.

(c) A change, including a postponement or a cancellation, in the time or place of a meeting after a published announcement may be made only if announced at the earliest practicable time.

(d) A change in or deletion of the subject matter of a meeting or any portion of a meeting or a redetermination to open or close a meeting or any portion of a meeting after a published announcement may be made only if:

(1) A majority of the Board determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible and

(2) Public announcement of the change and of the vote of each member on such change shall be made at the earliest practicable time.

(e) Each meeting announcement or amendment thereof shall be posted on the Public Notice Bulletin Board in the

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reception area of the agency headquarters and may be made available by other means deemed desirable by the Board. Immediately following each public announcement required by this section, the stated information shall be submitted to the FEDERAL REGISTER for publication.

(f) No announcement shall contain information which is determined to be exempt from disclosure under §791.12(a).

(g) The agency shall maintain a mailing list of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation and amendments to such announcements. Requests to be placed on the mailing list should be made by telephoning or by writing to the Secretary of the Board.

### **§791.14 Regular procedure for closing meeting discussions or limiting the disclosure of information.**

(a) A decision to close any portion of a meeting and to withhold information about any portion of a meeting closed pursuant to §791.12(a) will be taken only when a majority of the entire Board votes to take such action. In deciding whether to close a meeting or any portion of a meeting or to withhold information, the Board shall independently consider whether the public interest requires an open meeting. A separate vote of the Board will be taken and recorded for each portion of a meeting to be closed to public observation pursuant to §791.12(a) or to withhold information from the public pursuant to §791.12(a). A single vote may be taken and recorded with respect to a series of meetings, or any portions of meetings which are proposed to be closed to the public, or with respect to any information concerning the series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. No proxies shall be allowed.

(b) Any person whose interests may be directly affected by any portion of a meeting for any of the reasons stated in §791.12(a) (5), (6) or (7) may request that the Board close such portion of

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the meeting. After receiving notice of a person's desire for any specified portion of a meeting to be closed, the Board, upon a request by one member, will decide by recorded vote whether to close the relevant portion or portions of the meeting. This procedure applies to requests received either prior or subsequent to the announcement of a decision to hold an open meeting.

(c) Within one day after any vote is taken pursuant to paragraph (a) or (b) of this section, the Board shall make publicly available a written copy of the vote taken indicating the vote of each Board member. Except to the extent that such information is withheld and exempt from disclosure, for each meeting or any portion of a meeting closed to the public, the Board shall make publicly available within one day after the required vote, a written explanation of its action, together with a list of all persons expected to attend the closed meeting and their affiliation. The list of persons to attend need not include the names of individual staff, but shall state the offices of the agency expected to participate in the meeting discussions.

### **§791.15 Requests for open meeting.**

(a) Following any announcement that the Board intends to close a meeting or any portion of any meeting, any person may make a written request to the Secretary of the Board that the meeting or a portion of the meeting be open. The request shall be circulated to the members of the Board, and the Board, upon the request of one member, shall reconsider its action under §791.14 before the meeting or before discussion of the matter at the meeting. If the Board decides to open a portion of a meeting proposed to be closed, the Board shall publicly announce its decision in accordance with §791.13(e). If no request is received from a Board member to reconsider the decision to close a meeting or portion thereof prior to the meeting discussion, the Chairman of the Board shall certify that the Board did not receive a request to reconsider its decision to close the discussion of the matter.

(b) The request to open a portion of a meeting shall be submitted to the Secretary of the Board in advance of the

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meeting in question. The request shall set forth the requestor's interest in the matter to be discussed and the reasons why the requestor believes that the public interest requires that the meeting or portions thereof be open to public observation.

(c) The submission of a request to open a portion of a meeting shall not act to stay the effectiveness of Board action or to postpone or delay the meeting unless the Board decides otherwise.

(d) The Secretary of the Board shall advise the requestor of the Board's consideration of the request to open a portion of the meeting as soon as practicable.

### § 791.16 General counsel certification.

For each meeting or any portion of a meeting closed to public observation under § 791.14, the General Counsel shall publicly certify, whether in his or her opinion, the meeting or portion thereof may be closed to public observation and shall state each relevant exemption provision of law. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained as a part of the permanent meeting records. As part of the certification, the General Counsel shall recommend to the Board whether the public interest requires that the meeting or portions thereof proposed to be closed to public observation be held in the open.

### § 791.17 Maintenance of meeting records.

(a) Except in those circumstances which are beyond the control of the agency, the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or any portion thereof, closed to public observation. However, for meetings closed under § 791.12(a) (8), (9)(i) or (10), the Board shall maintain either a transcript, a recording or a set of minutes. The Board shall maintain a complete electronic recording for each open meeting or any portion thereof. All records shall clearly identify each speaker.

(b) A set of minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for taking such action. Minutes shall also include a description of each of the views expressed by each person in attendance on any item and the record of any roll call vote, reflecting the vote of each member. All documents considered in connection with any action shall be identified in the minutes.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes or a complete electronic recording of each meeting, or any portion of a meeting, closed to public observation, for at least two years after such meeting or for one year after the conclusion of any agency proceeding with respect to which the meeting or any portion was held, whichever occurs later. The agency shall maintain a complete electronic recording of each open meeting for at least three months after the meeting date. A complete set of minutes shall be maintained on a permanent basis for all meetings.

### § 791.18 Public availability of meeting records and other documents.

(a) The agency shall make promptly available to the public, in the Public Reference Room, the transcript, electronic recording, or minutes of any meeting, deleting any agenda item or any item of the testimony of a witness received at a closed meeting which the Board determined, pursuant to paragraph (c) of this section, was exempt from disclosure under § 791.12(a). The exemption or exemptions relied upon for any deleted information shall be reflected on any record or recording.

(b) Copies of any transcript, minutes or transcription of a recording, disclosing the identity of each speaker, shall be furnished to any person requesting such information in the form specified in paragraph (a) of this section. Copies shall be furnished at the actual cost of duplication or transcription unless waived by the Secretary of the Board.

(c) Following each meeting or any portion of a meeting closed pursuant to § 791.12(a), the General Counsel or his

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designee, after consultation with the Secretary of the Board, shall determine which, if any, portions of the meeting transcript, electronic recording or minutes not otherwise available under 5 U.S.C. 552a (the Privacy Act) contain information which should be withheld pursuant to § 791.12(a). If, at a later time, the Board determines that there is no further justification for withholding any meeting record or other item of information from the public which has previously been withheld, then such information shall be made available to the public.

(d) Except for information determined by the Board to be exempt from disclosure pursuant to paragraph (c) of this section, meeting records shall be promptly available to the public in the Public Reference Room. Meeting records include but are not limited to: The transcript, electronic recording or minutes of each meeting, as required by § 791.17(a); the notice requirements of §§ 791.13 and 791.14(c); and the General Counsel Certification along with the presiding officer's statement, as required by § 791.16.

(e) These provisions do not affect the procedures set forth in part 792, subpart A, governing the inspection and copying of agency records, except that the exemptions set forth in § 791.12(a) of this subpart and in 5 U.S.C. 552b(c) shall govern in the case of a request made pursuant to part 792, subpart A, to copy or inspect the meeting records described in this section. Any documents considered or mentioned at Board meetings may be obtained subject to the procedures set forth in part 792, subpart A.

[53 FR 29647, Aug. 8, 1988, as amended at 58 FR 17493, Apr. 5, 1993; 64 FR 57365, Oct. 25, 1999]

### Subpart D—Use of Supervisory Guidance

SOURCE: 86 FR 7957, Feb. 3, 2021, unless otherwise noted.

#### § 791.19 Purpose.

The NCUA issues regulations and guidance as part of its supervisory function. This subpart reiterates the distinctions between regulations and

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guidance, as stated in the Interagency Statement Clarifying the Role of Supervisory Guidance (Interagency Statement) and provides that the Statement is binding on the NCUA.

#### § 791.20 Implementation of the Interagency Statement.

The Statement describes the official policy of the NCUA with respect to the use of supervisory guidance in the supervisory process. The Statement is binding on the NCUA.

#### § 791.21 Rule of construction.

Appendix A to this subpart does not alter the legal status of guidance that is authorized by statute, including but not limited to 12 U.S.C. 1781, 1786, and 1789, to create binding legal obligations.

#### APPENDIX A TO SUBPART D—STATEMENT CLARIFYING THE ROLE OF SUPERVISORY GUIDANCE

##### STATEMENT CLARIFYING THE ROLE OF SUPERVISORY GUIDANCE

The National Credit Union Administration is responsible for promoting safety and soundness and effective consumer protection at Federal credit unions. The NCUA is issuing this statement to explain the role of supervisory guidance and to describe its approach to supervisory guidance.

##### *Difference Between Supervisory Guidance and Laws or Regulations*

(1) The NCUA issue various types of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions, to their respective supervised institutions. A law or regulation has the force and effect of law.<sup>1</sup> Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the NCUA do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the NCUA's supervisory expectations or priorities and articulates the agency's general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of

<sup>1</sup>Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.

practices that the agency generally considers consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

*Ongoing Agency Efforts To Clarify the Role of Supervisory Guidance*

(2) The NCUA is clarifying the following policies and practices related to supervisory guidance:

(i) The NCUA intends to limit the use of numerical thresholds or other “bright-lines” in describing expectations in supervisory guidance. Where numerical thresholds are used, the NCUA intends to clarify that the thresholds are exemplary only and not suggestive of requirements. The agency will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.

(ii) Examiners will not criticize (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations) a supervised financial institution for, and the NCUA will not issue an enforcement action on the basis of, a “violation” of or “non-compliance” with supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

(iii) Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.

(iv) The NCUA also has at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the agency to improve its understanding of an issue, to gather information on institutions’ risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.

(v) The NCUA will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

(3) The NCUA will continue efforts to make the role of supervisory guidance clear in their communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

**PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION**

**Subpart A—The Freedom of Information Act**

GENERAL PURPOSE

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792.09 What if my request does not meet the requirements of this subpart?

792.10 What will NCUA do with my request?

792.11 What kind of records are exempt from public disclosure?

792.12 How will I know what records NCUA has determined to be exempt?

792.13 Can I get the records in different forms or formats?

792.14 Who is responsible for responding to my request?

792.15 How long will it take to process my request?

792.16 What unusual circumstances can delay NCUA’s response?

792.17 What can I do if the time limit passes and I still have not received a response?

EXPEDITED PROCESSING

792.18 What if my request is urgent and I cannot wait for the records?