

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, 705, 708a, 709,
741, 745, 746, 747, and 750

RIN 3133-AE68

Appeals Procedures

AGENCY: National Credit Union
Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is adopting this final rule to establish procedures to govern appeals to the Board. The rule establishes a uniform procedure that will apply to agency regulations that currently have their own embedded appeals provisions. Accordingly, this final rule will replace those current provisions. The procedures will apply in cases in which a decision rendered by a regional director or other program office director is subject to appeal to the Board. The procedures will result in greater efficiency, consistency, and a better understanding of the way in which matters under covered regulations may be appealed to the Board.

DATES: This final rule is effective on January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, General Counsel, Ross P. Kendall, Special Counsel to the General Counsel, or Benjamin M. Litchfield, Staff Attorney, at the above address, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

As outlined in its May 2017 proposed rule,¹ the Board intends for new 12 CFR part 746, subpart B, to govern most authorized appeals to the Board. The proposed rule identified which rules would be affected by these new procedures. In addition, the Board specifically requested comment on any other agency rules that should be covered under the proposal. The proposed rule also specifically identified certain categories of actions or determinations that would not be covered under the proposal because appeals relating to them are already covered under different agency procedures. The Board invited comment on these proposed exclusions as well.

As reflected in the proposed rule and as finalized herein, the Board is committed to providing credit unions, and other persons or entities that are affected by agency decisions, with an opportunity to obtain meaningful

review of those decisions. The Board believes this final rule strikes an appropriate balance that will afford a petitioner fair consideration of the issues while avoiding procedures that are overly burdensome, time consuming, and expensive.

Comment Summary

The Board received a total of seven comments to the proposed rule. All commenters noted broad, general support for the proposal. Beneficial results from the proposal identified by commenters included clearer and improved processes, the introduction of consistency into a process that is currently varied, a more uniform set of procedures to govern those rules in which an appeal is permitted, and the promotion of a more streamlined and efficient appeals process. One commenter applauded NCUA for what the commenter characterized as a visible and forceful commitment to the practice of transparency.

As discussed more fully below, the Board received one comment suggesting that the appeals process be extended to include decisions involving capital planning and stress testing. There were no other suggestions of additional rules that should be covered. Similarly, the Board did not receive any comments on its proposal to exclude certain categories of actions or determinations from coverage under the new procedures. Accordingly, all of the proposed changes to existing regulations are adopted as proposed and without change. In addition, the Board confirms the exclusion of the following categories of actions from the scope of new part 746, subpart B:

- Formal enforcement actions;
- Creditor claims in liquidation, to the extent that the claimant has requested and the Board has agreed to consider the appeal formally on the record;
- Material supervisory determinations within the jurisdiction of the Supervisory Review Committee (SRC);
- Challenges to actions imposed under the prompt corrective action regime; and
- Appeals of matters that are delegated by rule to an officer or position below the Board for final, binding agency action.

Section by Section Analysis; Discussion of Specific Comments

Section 746.201—Authority, Purpose, and Scope. No comments were received concerning this first section of proposed subpart B to part 746, which outlines the Board's authority for issuing the rule

as well as its scope and purpose. Accordingly, this section of the proposed rule is adopted in full without change from the proposal.

Section 746.202—Definitions. One commenter recommended that the rule be modified to include a specific definition of the term "reconsideration" in the definitions section. As proposed, this term is defined on a functional basis in § 746.203, which describes the concept of reconsideration in detail. While the Board understands that the commenter believes including a definition of the term in the definitions section would be useful, the Board believes that the description of this term, as set out in detail in § 746.203(a), provides a more useful, functional definition of the concept and should not be changed. Accordingly, this section of the proposed rule is adopted in full without change from the proposal.

Section 746.203—Request for Reconsideration. As proposed, this section would set forth procedures for requesting reconsideration from a program office prior to filing an appeal with the Board. The rule specifies that the program office must make its determination on a request for reconsideration within 30 days, and that failure by the program office to do so within that time frame shall be deemed an affirmation of the initial agency determination. One commenter suggested that the rule as proposed was insufficient and should go further as to this point. According to the commenter, the rule should require the program office to notify the petitioner of its failure to timely act on the reconsideration request, provide a substantive response, and again notify the petitioner of the right to file an appeal with the Board.

The Board believes that the proposal adequately covers this scenario. The Board anticipates that instances of failure by the program office to respond to a reconsideration request within the prescribed time frame will be rare. Furthermore, the Board notes that the provisions in § 746.203(g) are designed to protect the petitioner from circumstances in which delay at the program office level would thwart the petitioner's ability to secure a higher level of review. As drafted, the provision effectively imposes an operational deadline for the program office to act. Accordingly, this section of the proposed rule is adopted in full without change from the proposal.

Section 746.204—Appeal to the Board. As proposed, this section describes the procedures for filing an appeal with the Board, including timing constraints and a listing of the

¹ 82 FR 26378 (June 7, 2017).

information that must be included as part of the appeal. These requirements are similar to the current requirements for creditor claims and share insurance claims, including the requirement that any appeal must be filed with the Secretary of the Board within 60 calendar days of the date of the initial agency determination or, if applicable, any determination following a request for reconsideration. As proposed, the 60-day deadline would not apply to a decision rejecting a request by a troubled or newly chartered credit union to make a change at the senior official level. In such cases, a 15-day deadline would govern the appeal process.

One commenter recommended that, for the sake of consistency, this appeals period should also be established at 60 days. Alternatively, according to the commenter, the rule should explicitly require the program office to notify credit unions affected by this provision of the notably shorter time frame for taking an appeal. Otherwise, according to the commenter, the movement toward standardization reflected in the rule could lead a credit union to assume that all appeals have the same 60-day deadline.

The Board is not persuaded by this comment. Preserving the shorter time frame in this area recognizes the exigencies associated with management changes and helps assure that decisions affecting personnel are made quickly and subject to review within reasonable time frames. In this respect, the Board notes that the relatively shorter timeframe governing the change of officials is currently reflected in the existing rules that governs this area (§ 701.14 and part 747, subpart J) and is therefore familiar to credit unions generally. Furthermore, the Board notes that program offices include explicit references to this deadline in correspondence dealing with this issue currently, further minimizing the likelihood of confusion in this area. Accordingly, this section of the proposed rule is adopted in full without change from the proposal.

Section 746.205—Preliminary Considerations Regarding the Appeal. As proposed, this section of the rule describes preliminary internal processes for reviewing appeals, and includes a description of the role of the Special Counsel to the General Counsel (Special Counsel) at this stage of the proceedings. Two commenters sought clarification as to this aspect. The proposed rule provides that the Special Counsel will conduct a preliminary review of the materials filed with the appeal (§ 746.205) and also perform a

substantive, de novo review of the program office file and the materials submitted by the petitioner to make a recommendation to the Board regarding the disposition of the appeal (§ 746.206). Both commenters requested that the final rule provide clarification as to the distinction between these two functions and provide greater clarity as to the nature and purpose of the preliminary review. The Board acknowledges the validity of the point made by these commenters. In the final version of § 746.205(a), language is now included that specifies in greater detail the nature of the preliminary review conducted by the Special Counsel, which is focused on whether the appeal is in good order procedurally. For example, the Special Counsel will assess the timeliness of the appeal and whether the issues identified in the appeal have become moot.

Section 746.206 Administration of the Appeal. Aside from the comment, discussed above, seeking clarification as to the nature of the role of the Special Counsel, the Board did not receive any comments regarding § 746.206. Accordingly, this section of the proposed rule is adopted in full without change from the proposal.

Section 746.207—Procedures for Oral Hearing. This section sets out a detailed process by which a petitioner may request to appear before the Board to argue its appeal in person. As proposed, the rule requires that a petitioner make its request for an oral hearing through a separate writing that must be submitted at the time of the initial appeal (§ 746.207(a)). Two commenters opposed this requirement, and advocated that the Board should change the rule so that a petitioner might make its request for an oral hearing at any time before the Board has issued its decision on the appeal. One commenter opposed limiting the number of persons to two who may appear as representatives for the petitioner at the oral hearing. The commenter asserted that two would be insufficient, and advocated that the number be changed to five.

The Board declines to make the changes requested by these commenters. In its proposed form, the rule recognizes that an oral hearing can be a logistical challenge requiring significant planning and effort, particularly in view of the goal of having the Board render its decision within 90 days of the filing of an appeal. This requirement also helps to prevent a petitioner from requesting a hearing as a device to delay or prolong appeal proceedings. Similarly, with regard to the request to allow more personnel to participate in the hearing, the Board believes the limitations as

proposed will help to keep the oral hearing procedures manageable. The Board notes, however, that the rule grants the NCUA Chairman discretion to allow a greater number of representatives to participate in the oral hearing. Accordingly, this section of the proposed rule is adopted in full without change from the proposal.

Other Comments

Role of the Ombudsman. Although the proposed rule made no mention of the NCUA Ombudsman and neither provided nor contemplated a role for the Ombudsman in the appeals process, two commenters recommended that consideration be given for such a role. One commenter opined that the full potential of the Ombudsman office is not being met, and that some role for the Ombudsman should be developed. In a similar vein, another commenter advocated a more robust role for the Ombudsman in the appeals process, but noted that greater independence of the Ombudsman, both in terms of appearance and in fact, would be necessary in order to further a fair and balanced appeals process. After due consideration, the Board concludes that, while the Ombudsman plays a valuable role in other contexts, a role for the Ombudsman is not necessary or useful in the appeals context. Accordingly, the Board has determined not to adopt this recommendation.

Advisory Council. One commenter recommended the Board consider establishing an advisory council, comprised of credit unions, which could fulfill a role in the appeals process. After due consideration, the Board has determined that administration of the appeals process as contemplated by the rule does not lend itself to the involvement of an advisory council and so has elected not to adopt this recommendation.

Operational Improvements. Although not directly related to the present proposal, one commenter suggested that NCUA focus on current operations in areas such as FOM-related applications to achieve improved efficiency and transparency in that area. In the view of the commenter, this would help to reduce the need for an eventual appeal of an adverse decision. The Board has taken this recommendation under advisement.

Expansion of Scope of Proposal. One commenter recommended that the Board expand the scope of the proposed rule so that it would extend to both capital planning and stress testing,²

² See 12 CFR part 702, subpart E.

such that program office decisions in each of these areas would be specifically subject to appeal to the Board. After due consideration of this recommendation, the Board has determined that an adverse determination at the program office level concerning a credit union's capital plan would qualify as a material supervisory determination, within the meaning of NCUA's Supervisory Review Committee rule (part 746, subpart A) (the rule is published elsewhere in this issue of the **Federal Register**). Similarly, a program office determination concerning the outcome of a required stress test carries with it potentially adverse consequences, in the event the credit union is determined to have failed the stress test. As such, either determination should be subject to appeal to the SRC. Corresponding adjustments to that rule to accommodate this approach are being made in coordination with the adoption of this rule.

Publication of Decisions. One commenter encouraged NCUA to publish its appeal decisions (as well as its SRC appeal decisions), so that the industry can better understand the Board's policy goals and statutory and regulatory interpretations. Another commenter suggested that NCUA should establish an annual reporting requirement that would inform stakeholders of the utility of pursuing an appeal by including an evaluation of results of appeals that have been taken during the reporting period. The Board does, in fact, routinely publish on the NCUA Web site its decisions concerning matters that have been appealed. The Board has taken under advisement the suggestion to include results of appeals in its regular annual report.

Codification in part 741. One commenter, whose focus is principally on the regulation of federally insured, State-chartered credit unions, recommended that the appeals rule be codified as a new subpart to part 741, instead of in new part 746. The commenter notes that because part 741 is ostensibly designed to contain all regulations to which such credit unions are subject, including the appeals rule in that part would be more convenient and useful to them. After due consideration of this suggestion, the Board concludes that this is best handled through a separate part (*i.e.*, new part 746) devoted exclusively to appeals.

Notice to State Supervisory Authorities. One commenter suggested that, with respect to federally insured, State-chartered credit unions, the rule should include a requirement that the State regulator be provided with a copy

of any correspondence between NCUA and the credit union relating to an appeal. In view of the close relationship that NCUA enjoys with State regulatory authorities, the Board believes inclusion of a provision mandating cooperation and information sharing is unnecessary.

V. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under \$100 million in assets). This rule only provides enhanced voluntary opportunities for credit unions to appeal agency determinations. Accordingly, it will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number.

In accordance with the PRA, the information collection requirements included in this final rule has been submitted to OMB for approval under control number 3133-0198.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of sec. 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has

determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996³ (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.⁴ NCUA does not believe this final rule is a "major rule" within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 705

Credit unions, Grants, Loans, Revolving fund.

12 CFR Part 708a

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 709

Claims, Credit unions.

12 CFR Part 741

Credit unions, Reporting and recordkeeping requirements, Share insurance.

12 CFR Part 745

Administrative practice and procedure, Claims, Credit unions, Share insurance.

12 CFR Part 746

Administrative practice and procedure, Claims, Credit unions, Investigations.

12 CFR Part 747

Administrative practice and procedure, Claims, Credit unions, Investigations.

12 CFR Part 750

Credit unions, Golden parachute payments, Indemnity payments.

³Public Law 104-121.

⁴5 U.S.C. 551.

By the National Credit Union Administration Board, this 19th day of October 2017.

Gerard Poliquin,
Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR parts 701, 703, 705, 708a, 709, 741, 745, 746, 747, and 750 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Revise § 701.14(e) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(e) *Notice of disapproval.* NCUA may disapprove the individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union. The Notice of Disapproval will advise the parties of their rights to request reconsideration from the Regional Director and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

■ 3. Revise § 701.21(h)(3) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(h) * * *

(3) A regional director will provide a written determination on a waiver request within 45 calendar days after receipt of the request; however, the 45-day period will not begin until the requesting credit union has submitted all necessary information to the regional director. If the regional director does not provide a written determination within the 45-day period the request is deemed denied. A credit union may request the

regional director to reconsider a denied waiver request and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

* * * * *

■ 4. Revise § 701.22(c) to read as follows:

§ 701.22 Loan participations.

* * * * *

(c) To seek a waiver from any of the limitations in paragraph (b) of this section, a federally insured credit union must submit a written request to its regional director with a full and detailed explanation of why it is requesting the waiver. Within 45 calendar days of receipt of a completed waiver request, including all necessary supporting documentation and, if appropriate, any written concurrence, the regional director will provide the federally insured credit union a written response. The regional director's decision will be based on safety and soundness and other considerations; however, the regional director will not grant a waiver to a federally insured, State-chartered credit union without the prior written concurrence of the appropriate State supervisory authority. A federally insured credit union may request the regional director to reconsider a denied waiver request and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

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■ 5. Revise § 701.23(h)(3) to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations.

* * * * *

(h) * * *

(3) *Appeal to NCUA Board.* A Federal credit union may request the regional director to reconsider a denied request for expanded authority and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

■ 6. Revise § 701.32(b)(5) to read as follows:

§ 701.32 Payment on shares by public units and nonmembers.

* * * * *

(b) * * *

(5) The regional director will provide a written determination on an exemption request within 30 calendar days after receipt of the request. The 30-day period will not begin to run until all necessary information has been submitted to the Regional Director. A

credit union may request the Regional Director to reconsider a denied exemption request and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

* * * * *

■ 7. Revise § 701.34(a)(4) to read as follows:

§ 701.34 Designation of low income status; Acceptance of secondary capital accounts by low-income designated credit unions.

(a) * * *

(4) If NCUA determines a low-income designated Federal credit union no longer meets the criteria for the designation, NCUA will notify the Federal credit union in writing, and the Federal credit union must, within five years, meet the criteria for the designation or come into compliance with the regulatory requirements applicable to Federal credit unions that do not have a low-income designation. The designation will remain in effect during the five-year period. If a Federal credit union does not requalify and has secondary capital or nonmember deposit accounts with a maturity beyond the five-year period, NCUA may extend the time for a Federal credit union to come into compliance with regulatory requirements to allow the Federal credit union to satisfy the terms of any account agreements. A Federal credit union may request NCUA to reconsider a determination that it no longer meets the criteria for the designation and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

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■ 8. Appendix B to part 701 is amended as follows:

- a. Section VII.D of Chapter 1 is revised.
- b. Section II.C.5 of Chapter 2 is revised.
- c. Section III.C.5 of Chapter 2 is revised.
- d. Section IV.C.5 of Chapter 2 is revised.
- e. Section V.C.5 of Chapter 2 is revised.
- f. Section IV.B of Chapter 3 is revised.
- g. Section II.C.6 of Chapter 4 is revised.
- h. Section II.D—Application for a Federal Charter of Chapter 4 is redesignated as Section II.D.2—Application for a Federal Charter and revised.
- i. Section III.D.6 of Chapter 4 is revised.

The revisions read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

Chapter 1—Federal Credit Union Chartering
* * * *

VII.D—Appeal of Office of Consumer Financial Protection and Access Director Decision

If the Office of Consumer Financial Protection and Access Director denies a charter application, in whole or in part, that decision may be appealed to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the prospective group may, within 30 days of the denial, provide supplemental information to the Office of Consumer Financial Protection and Access Director for reconsideration. A request for reconsideration should contain new and material evidence addressing the reasons for the initial denial. The Office of Consumer Financial Protection and Access Director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial.

* * * *

Chapter 2—Field of Membership Requirements for Federal Credit Unions
* * * *

II.C.5—Appeal of Office of Consumer Financial Protection and Access Director Decision

If the Office of Consumer Financial Protection and Access Director denies a field of membership expansion request, merger, or spin-off, that decision may be appealed to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the Office of Consumer Financial Protection and Access Director for reconsideration. A request for reconsideration should contain new and material evidence addressing the reasons for the initial denial. The Office of Consumer Financial Protection and Access Director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial.

* * * *

III.C.5—Appeal of Office of Consumer Financial Protection and Access Director Decision

If the Office of Consumer Financial Protection and Access Director denies a field of membership expansion request, merger, or spin-off, that decision may be appealed to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the Office of

Consumer Financial Protection and Access Director for reconsideration. A request for reconsideration should contain new and material evidence addressing the reasons for the initial denial or explain extenuating circumstances that precluded the inclusion of existing material evidence or information that should have been filed with the request for reconsideration. The Office of Consumer Financial Protection and Access Director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A petitioner may seek a second reconsideration based on new material evidence or information or extenuating circumstances that precluded the inclusion of such information in the previous request.

* * * *

IV.C.5—Appeal of Office of Consumer Financial Protection and Access Director Decision

If the Office of Consumer Financial Protection and Access Director denies a field of membership expansion request, merger, or spin-off, that decision may be appealed to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the Office of Consumer Financial Protection and Access Director for reconsideration. A request for reconsideration should contain new and material evidence addressing the reasons for the initial denial or explain extenuating circumstances that precluded the inclusion of existing material evidence or information that should have been filed with the request for reconsideration. The Office of Consumer Financial Protection and Access Director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A petitioner may seek a second reconsideration based on new material evidence or information or extenuating circumstances that precluded the inclusion of such information in the previous request.

* * * *

V.C.5—Appeal of Office of Consumer Financial Protection and Access Director Decision

If the Office of Consumer Financial Protection and Access Director denies a field of membership expansion request, merger, or spin-off, that decision may be appealed to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the Office of Consumer Financial Protection and Access Director for reconsideration. A request for reconsideration should contain new and material evidence addressing the reasons for the initial denial or explain extenuating circumstances that precluded the inclusion

of existing material evidence or information that should have been filed with the request for reconsideration. The Office of Consumer Financial Protection and Access Director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A petitioner may seek a second reconsideration based on new material evidence or information or extenuating circumstances that precluded the inclusion of such information in the previous request.

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Chapter 3—Low-Income Credit Unions and Credit Unions Serving Underserved Areas
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IV.B—Appeal of Office of Consumer Financial Protection and Access Director Decision
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If the Office of Consumer Financial Protection and Access Director denies an “underserved area” request, the Federal credit union may appeal that decision to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the Office of Consumer Financial Protection and Access Director for reconsideration. A request for reconsideration should contain new and material evidence addressing the reasons for the initial denial or explain extenuating circumstances that precluded the inclusion of existing material evidence or information that should have been filed with the request for reconsideration. The Office of Consumer Financial Protection and Access Director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A petitioner may seek a second reconsideration based on new material evidence or information or extenuating circumstances that precluded the inclusion of such information in the previous request.

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Chapter 4—Charter Conversions
* * * *

II.C.6—Appeal of the Office of Consumer Financial Protection and Access Director Decision

If a conversion to a Federal charter is denied by the Office of Consumer Financial Protection and Access Director, the applicant credit union may appeal that decision to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the Office of Consumer Financial Protection and Access Director for reconsideration. A request for reconsideration should contain new and material evidence addressing the reasons for

the initial denial or explain extenuating circumstances that precluded the inclusion of existing material evidence or information that should have been filed with the request for reconsideration. The Office of Consumer Financial Protection and Access Director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A petitioner may seek a second reconsideration based on new material evidence or information or extenuating circumstances that precluded the inclusion of such information in the previous request.

* * * * *

II.D.2—Application for a Federal Charter

When the Office of Consumer Financial Protection and Access Director has received evidence that the board of directors has satisfactorily completed the actions described above, the Federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. A credit union may request the Office of Consumer Financial Protection and Access Director to reconsider a denial of a conversion application and/or appeal a denial to the NCUA Board. For more information, refer to Section II.C.6 of this chapter.

* * * * *

III.D.6—Appeal of Office of Consumer Financial Protection and Access Director Decision

If the Office of Consumer Financial Protection and Access Director denies a conversion to a State charter, the Federal credit union may appeal that decision to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the Office of Consumer Financial Protection and Access Director for reconsideration. The Office of Consumer Financial Protection and Access Director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the Office of Consumer Financial Protection and Access Director.

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PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 9. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

■ 10. Revise § 703.20(d) to read as follows:

§ 703.20 Request for additional authority.

* * * * *

(d) *Appeal to NCUA Board.* A Federal credit union may request the regional director to reconsider any part of the determination made under paragraph (c) of this section and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

■ 11. Revise § 703.111(d) to read as follows:

§ 703.111 NCUA approval.

* * * * *

(d) *Right to appeal.* A Federal credit union may request the field director to reconsider a determination made under paragraph (a) or (c) of this section and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

■ 12. Revise § 703.112(c) to read as follows:

§ 703.112 Applying for additional products or characteristics.

* * * * *

(c) A Federal credit union may request the regional director to reconsider a denial of an application for additional products or characteristics and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

■ 13. Revise § 703.114(c) to read as follows:

§ 703.114 Regulatory violation.

* * * * *

(c) A Federal credit union may request the regional director to reconsider a revocation of derivatives authority or an order to terminate existing derivatives positions and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

* * * * *

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN FUND ACCESS FOR CREDIT UNIONS

■ 14. The authority citation for part 705 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

■ 15. Revise § 705.10(a) to read as follows:

§ 705.10 Appeals.

(a) *Appeals of non-qualification.* A Qualifying Credit Union whose application for a loan or technical assistance grant has been denied under § 705.7(f) for failure to satisfy any of the conditions set forth in § 705.7(c),

including any additional criteria set forth in the related notice of funding opportunity, may request the Director of the Office of Small Credit Union Initiatives to reconsider the denial and/or appeal that decision to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter, subject to the following limitations:

(1) *Scope.* The scope of the Board's review is limited to the threshold question of qualification and not the issue of whether, among qualified applicants, a particular loan or technical assistance grant is funded.

(2) *Appeals procedures inapplicable.* The foregoing procedure applies during an open period in which funds are available and NCUA has called for applications. NCUA will reject any application submitted during a period in which NCUA has not called for applications, except for applications submitted under § 705.8. Such rejections are not subject to appeal or review by the NCUA Board.

* * * * *

PART 708a—BANK CONVERSIONS AND MERGERS

■ 16. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 1785(b), and 1785(c).

■ 17. Revise § 708a.108(d) to read as follows:

§ 708a.108 NCUA oversight of methods and procedures of membership vote.

* * * * *

(d) A converting credit union may request the regional director to reconsider a determination regarding the methods and procedures of the membership vote and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

■ 18. Revise § 708a.304(h) to read as follows:

§ 708a.304 Notice to NCUA and request to proceed with member vote.

* * * * *

(h) *Appeal of adverse decision.* If the Regional Director disapproves a merger proposal, the credit union may request reconsideration and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

■ 19. Revise § 708a.308(d) to read as follows:

§ 708a.308 NCUA approval of the merger.

* * * * *

(d) A merging credit union may request the Regional Director to reconsider the disapproval of a merger proposal and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

■ 20. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1767, 1786(h), 1787, 1788, 1789, 1789a.

■ 21. Revise § 709.7 to read as follows:

§ 709.7 Procedures for agency review or judicial determination of claims.

(a) *General.* A claimant may either request agency review of an initial determination of the liquidating agent to disallow a claim or seek a de novo judicial determination of claims. In order to receive agency review of an initial determination, a claimant must request an administrative appeal before the NCUA Board. In order to seek a judicial determination, a claimant must 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 is located or the United States District Court for the District of Columbia.

(b) *Procedures for agency review.* A claimant requesting an administrative appeal may request a hearing on the record conducted pursuant to the procedures set forth in subpart A of part 747 of this chapter. The determination of whether to agree to a request for a hearing on the record shall rest solely with the NCUA Board, which shall notify the claimant of its decision in writing. Alternatively, a claimant may request an appeal before the NCUA Board pursuant to the procedures set forth in subpart B to part 746 of this chapter.

(c) *Deadline to request agency review or file suit.* A claimant must request agency review of an initial determination or file suit (or continue an action commenced before the appointment of the liquidating agent) within 60 days from the mailing of the initial determination or the expiration of the time period for the liquidating agent to determine claims under § 709.6(c), whichever is earlier. A request for a hearing on the record will suspend the 60-day period for filing a lawsuit (or

continuing an action commenced before the appointment of the liquidating agent) from the date of the claimant's request to the date of the NCUA Board's decision regarding that request. If a claimant fails to either request a hearing on the record or an appeal to the Board or file suit (or continue an action commenced before the appointment of the liquidating agent) within the 60-day period, any disallowance of claims shall be final and the claimant shall have no further rights or remedies with respect to such claims.

(d) *Reconsideration.* Prior to requesting agency review or filing or continuing a lawsuit, a claimant may request reconsideration of the initial determination of the liquidating agent in accordance with the procedures set forth in subpart B to part 746 of this chapter. The deadline to request agency review or file suit (or continue an action commenced before the appointment of the liquidating agent) in paragraph (c) of this section will be suspended from the date of the claimant's request to the date of the liquidating agent's decision regarding that request.

§ 709.8 [Removed]

■ 22. Remove § 709.8.

§§ 709.9 through 709.13 [Redesignated as § 709.8 through 709.12]

■ 23. Redesignate §§ 709.9 through 709.13 as §§ 709.8 through 709.12, respectively.

PART 741—REQUIREMENTS FOR INSURANCE

■ 24. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 25. Revise § 741.11(d) to read as follows:

§ 741.11 Foreign branching.

* * * * *

(d) *Revocation of approval.* A State regulator that revokes approval of the branch office must notify NCUA of the action once it issues the notice of revocation. The regional director may revoke approval of the branch office for failure to follow the business plan in a material respect or for substantive and documented safety and soundness reasons. If the regional director revokes the approval, the credit union will have six months from the date of the revocation letter to terminate the operations of the branch. The credit union can request reconsideration of the revocation and/or appeal this revocation to the NCUA Board in accordance with

the procedures set forth in subpart B to part 746 of this chapter.

* * * * *

PART 745—SHARE INSURANCE AND APPENDIX

■ 26. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; title V, Pub. L. 109–351, 120 Stat. 1966.

■ 27. Revise § 745.201(c) to read as follows:

§ 745.201 Processing of insurance claims.

* * * * *

(c) *Reconsideration and appeals.* An account holder may request reconsideration from the Liquidating Agent of the initial determination and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

§ 745.202 [Removed]

■ 28. Remove § 745.202.

§ 745.203 [Redesignated as § 745.202]

■ 29. Redesignate § 745.203 as § 745.202.

PART 746—APPEALS PROCEDURES

■ 30. The authority citation for part 746 continues to read as follows:

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

■ 31. Add subpart B to read as follows:

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

Sec.

746.201 Authority, purpose, and scope.

746.202 Definitions.

746.203 Request for reconsideration.

746.204 Appeal to the Board.

746.205 Preliminary considerations regarding the appeal.

746.206 Administration of the appeal.

746.207 Procedures for oral hearing.

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

§ 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 B to part 701 of this chapter, Chapters 1–4, §§ 703.20(d), 703.111(d), 703.112(c), 703.114(c), 705.10(a), 708a.108(d), 708a.304(h), 708a.308(d), 709.7, 741.11(d), and 745.201(c), subpart J to part 747 of this chapter, and § 750.6(b).

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

(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.

§ 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 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 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.

(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 information 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 designate 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.

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 32. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 15 U.S.C. 1639e; 42 U.S.C. 4012a; Pub. L. 101-410; Pub. L. 104-134; Pub. L. 109-351; Pub. L. 114-74.

Subpart J—[Removed and Reserved]

■ 33. Remove and reserve subpart J.

PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

■ 34. The authority citation for part 750 continues to read as follows:

Authority: 12 U.S.C. 1786(t).

■ 35. Revise § 750.6(b) to read as follows:

§ 750.6 Filing instructions; appeal.

* * * * *

(b) A FICU whose request for approval by NCUA, in accordance with paragraph (a) of this section, has been denied may seek reconsideration of the request and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

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