



# Final Regulation

## **National Credit Union Administration: Appeals Procedures**

### **17-EF-12**

#### **NAFCU would like to highlight the following:**

- The National Credit Union Administration (NCUA) Board has approved a final rule regarding the appeals process.
- The NCUA Board seeks to promote efficiency, consistency, and transparency in the appeals process to the Board by developing a uniform set of procedures to govern all rules in which an appeal to the Board is permitted.
- The final rule establishes a uniform procedure that will apply to agency regulations that currently have their own embedded appeals provisions.
- The uniform procedure will be codified in a new section, 12 CFR part 746, Subpart B.

**Effective Date:**

**January 1, 2018**

This Document is a dues supported service provided as a part of NAFCU's Regulatory Compliance Assistance Program.

## **Summary**

The National Credit Union Administration (NCUA) Board has approved a rule regarding the appeals process, required under section 309 of the *Riegle Community Development and Regulatory Improvement Act of 1994* (Riegle Community Development Act). The NCUA Board seeks to promote efficiency, consistency, and transparency in the appeals process by developing a uniform set of procedures to govern all rules in which an appeal to the Board is permitted.

The final rule in its entirety can be found [here](#).

## **Background**

The Board has noted its commitment to providing an opportunity to obtain meaningful review of agency decisions. However, present procedures for obtaining review are scattered throughout the specific regulations to which they pertain, and these procedures often differ from one another in their execution. In response to this, the Board developed a more uniform set of procedures to govern cases in which an appeal is permitted, hoping to strike a balance between fair consideration of the issues while avoiding procedures that are overly burdensome for either the petitioner or the agency.

## **Section-by-Section Analysis**

### **Regulations Affected by Part 746**

As part of the rule, the Board has included a list of the various regulations that have appeals procedures that are being replaced by the final procedures in Subpart B of part 746:

- 701 – Organization and Operation of Federal Credit Unions
- 703 – Investment and Deposit Activities
- 705 – Community Development Revolving Loan Fund Access for Credit Unions
- 708a – Bank Conversions and Mergers
- 709 – Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation
- 741 – Requirements for Insurance
- 745, Subpart B – Share Insurance and Appendix
- 747 – Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations
- 750 – Golden Parachutes
- FCU Act – Chartering and Field of Membership Determinations

### **Exclusions**

There are five areas that are excluded from the scope of the rule: Enforcement Actions; Creditor claims in liquidation that are litigated or reviewed by the Board under formal agency adjudication procedures; Material Supervisory Determinations; Prompt Corrective Action; and Other Exclusions including appeals of adverse determinations under FOIA, requests made under NCUA's *Touhy* Regulation, appeals of initial determinations made under the *Privacy Act*, and consumer complaints to the NCUA.

*Enforcement Actions.* There are four enforcement actions that specifically include an

opportunity for the affected entity or individual to be heard before the action becomes effective, found in section 206 of the *Federal Credit Union Act* (FCUA). These include actions to terminate the institution's insured status §206(c), cease and desist actions §206(e), removal actions §206(g), and civil money penalties §206(k), including any actions to obtain enforcement of an outstanding order issued under §206 or under the prompt corrective action provisions in §216 of the FCUA. There are two enforcement actions that may be taken by NCUA with immediate effectiveness and an agency hearing is not required (temporary cease and desist actions §206(f) and actions to appoint a conservator §206(h), however each of these provides an opportunity for the affected entity or individual to immediately challenge NCUA's action in court.

*Creditor claims in liquidation that are litigated or reviewed by the Board under formal agency adjudication.* A person appealing an initial creditor claim determination by the liquidating agent of an insolvent FICU may either: (1) file an action in federal court (or renew an action that had been pending before the liquidation began) seeking a de novo judicial determination of the merits of his or her claim; or (2) they may request that the Board review the claim. The FCUA also specifies that, if the Board agrees to the review request, it must consider the claim after opportunity for a hearing on the record.

*Material Supervisory Determinations.* As required by the *Riegle Community Development Act*, NCUA established a Supervisory Review Committee (SRC) to provide a forum for FICUs to appeal an examiner's material supervisory determinations. The provisions in the new Subpart B to part 746 do not apply to issues that are reviewable by the SRC.

*Prompt Corrective Action.* Under the FCUA, FICUs are subject to mandatory and discretionary supervisory actions, based on their net worth position. Mandatory actions are not subject to appeal, but discretionary actions are. Under the FCUA, these discretionary measures are considered "material supervisory determinations" and could have been made subject to the jurisdiction of the SRC. The FCUA, however, permits the Board to establish a separate appeals process regarding these determinations.

*Other Exclusions.* By rule, appeals of adverse determinations under the *Freedom of Information Act* are decided by the General Counsel. The General Counsel also decides on requests made under NCUA's *Touhy* regulation and appeals of initial determinations made under the Privacy Act. The new procedures in Subpart B to part 746 do not affect how consumer complaints are processed by NCUA.

## **Section 746 – The New, Improved, and Standardized Appeals Process**

As discussed above, the rule amends existing NCUA regulations to include a cross-reference to the procedures contained in this Subpart. The Board's stated intention in adopting these procedures is to improve and streamline the appeals process as it applies to decisions under the covered rules.

### **Section 746.201 – Authority, Purpose, and Scope**

Section 746.201(c) lists the regulations under which a credit union can appeal initial agency determinations.

- 701 – Organization and Operation of Federal Credit Unions
- 703 – Investment and Deposit Activities

- 705 – Community Development Revolving Loan Fund Access for Credit Unions
- 708a – Bank Conversions and Mergers
- 709 – Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation
- 741 – Requirements for Insurance
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- 747 – Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations
- 750 – Golden Parachutes
- FCU Act – Chartering and Field of Membership Determinations

**Section 746.203 – Request for Reconsideration**

Several regulations issued by the NCUA Board permit affected parties to request reconsideration. It also limits the overall number of matters appealed to the Board. Therefore, the final rule makes this optional procedure available for any matter that could otherwise be appealed to the Board under part 746, Subpart B.

**Section 746.204 – Appeal to the Board**

Section 746.204 states the procedures for filing an appeal with the Board. The provision also lists the 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.

**Section 746.205 – Preliminary Considerations Regarding the Appeal**

Section 746.205 of the rule describes preliminary internal processes for reviewing appeals. Additional information from the petitioner may be requested by the agency in order to provide the Board with a more full and complete administrative record but such requests must be reasonable and timely to facilitate the processing of the appeal, not to delay it.

**Section 746.206 – Administration of the Appeal**

Section 746.206 sets out the standard procedures followed by the Board when it receives a timely appeal. These procedures are, in some respects, a codification of informal practices that the Board currently follows when reviewing appeals.

**Section 746.207 – Procedures for Oral Hearing**

Section 746.207 of the rule sets out the process for requesting and conducting an oral hearing. The Board recognizes that, in some unusual cases, the opportunity to make a presentation in person is necessary or useful to assure a thorough understanding of the issues in a case.

*This document is intended for informational purposes only. It does not constitute legal advice. If such advice or a legal opinion is required, please consult with competent local counsel.*

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## NAFCU'S 2017 REGULATORY ALERTS

<b>Number</b>	<b>Topic</b>	<b>Date Issued</b>
17-EA-01	Treasury: Participation in the Automated Clearing House	1/3/2017
17-EA-02	CDFI Fund: RFI Regarding Policies and Procedures	1/18/2017
17-EA-03	NCUA: Alternative Capital ANPR	2/8/2017
17-EA-04	CFPB: Alternative Data	3/22/2017
17-EA-05	CFPB: Remittance Rule Assessment	4/5/2017
17-EA-06	CFPB: Amendments to HMDA Final Rule	5/2/2017
17-EA-07	CFPB: CARD Act Review	5/9/2017
17-EA-08	CFPB: Small Business Lending Information Collection RFI	5/17/2017
17-EA-09	NCUA: 2017 Regulation Review	5/19/2017
17-EA-10	NCUA: Exam Appeals	6/6/2017
17-EA-11	NCUA: Supervisory Review Committee	6/6/2017
17-EA-12	NCUA: Mergers	6/7/2017
17-EA-13	CFPB: Improving Language Access	6/9/2017
17-EA-14	CFPB: Mortgage Servicing Rules Assessment	6/9/2017
17-EA-15	Federal Reserve: Regulation CC – Forged or Altered Checks	6/28/2017
17-EA-16	CFPB: Amendments to Rules Concerning Prepaid Accounts	6/29/2017
17-EA-17	CFPB: ATR/QM Rule Assessment	6/30/2017
17-EA-18	NCUA: OTR Methodology	7/10/2017
17-EA-19	DOL: Fiduciary Rule and Prohibited Transaction Exemptions	7/10/2017
17-EA-20	NCUA: Corporate Credit Unions	7/14/2017
17-EA-21	NCUA: Merger of Stabilization Fund and SIF	7/28/2017
17-EA-22	NCUA: Share Insurance Fund Equity Distributions	7/28/2017
17-EA-23	NCUA: Emergency Mergers	8/28/2017
17-EA-24	NCUA: Regulatory Reform Agenda	8/29/2017
17-EA-25	DOL: Overtime	8/30/2017
17-EA-26	CFPB: TRID	9/11/2017
17-EA-27	NCUA: Accuracy of Advertising and Notice of Insured Status	10/16/2017

## NAFCU'S 2017 FINAL REGULATIONS

<b>Number</b>	<b>Topic</b>	<b>Date Issued</b>
17-EF-01	FHFA: Acquired Member Assets	1/12/2017
17-EF-02	FHFA: Duty to Serve Underserved Markets	1/18/2017
17-EF-03	FFIEC: CC Rating System	2/3/2017
17-EF-04	Federal Reserve: Availability of Funds and Collection of Checks	6/28/2017
17-EF-05	NCUA: Safe Harbor	7/13/2017
17-EF-06	CFPB: Arbitration Agreements	8/7/2017
17-EF-07	CFPB: TRID "Fix"	8/25/2017
17-EF-08	CFPB: Amendments to the 2015 HMDA Final Rule	9/29/2017
17-EF-09	Treasury: Federal Participation in Automated Clearing House	10/5/2017

17-EF-10	CFPB: Payday, Vehicle Title, and Certain High Cost Installment Loans	10/10/2017
17-EF-11	NCUA: Supervisory Review Committee, Procedures for Appealing Material Supervisory Determinations	10/26/2017
17-EF-12	NCUA: Appeals Procedures	10/26/2017