

§ 709.9

12 CFR Ch. VII (1-1-06 Edition)

constitute a final determination regarding a claim.

(B) A final determination by the Board is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the credit union's principal place of business is located. Any request for judicial review under this paragraph must be filed within 60 days of the date of the Board's final decision. If any claimant fails to file before the end of the 60-day period, the Board's decision shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(2) The following additional procedures for dispute resolution may be made available at the sole discretion of the Board: mediation; nonbinding arbitration; and neutral fact finding.

[56 FR 56925, Nov. 7, 1991, as amended at 59 FR 36041, July 15, 1994]

§ 709.9 Expedited determination of creditor claims.

(a) *General.* The provisions of this section establish procedures under which claimants may request expedited relief in lieu of the procedures set forth in § 709.6 of this part. A claimant shall be entitled to expedited determination of a claim only upon a showing that there exists a legally valid and enforceable or perfected security interest in assets of the liquidated credit union and that irreparable injury will occur if the routine claims procedure is followed.

(b) *Filing of request for expedited relief.* All requests for expedited relief must be filed within 30 days from the date of mailing, by the liquidating agent, of the notice to the creditor concerned. The request shall be deemed to be filed when received by the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. A copy of the request must be simultaneously served upon the liquidating agent for the credit union concerned. There shall be no right of personal appearance before the Board in connection with any claim submitted under this paragraph.

(c) *Content of request for expedited relief.* Any Request for Expedited Relief must contain the following:

(1) A clear and concise statement of the facts and issues on which the request is based;

(2) A clear and concise statement describing the nature of any security interests in any assets of the credit union;

(3) A clear and concise statement of the probable, imminent and irreparable harm likely to occur if expedited relief is not granted;

(4) An assessment of the likelihood of success on the merits of the underlying claim, including statutory citations and relevant documentation supporting the merits of the claim;

(5) Any other relevant documentation that supports the request;

(6) Citations to applicable statutes, regulations, or other legal authority; and

(7) A signed statement certifying that a copy of the request has been mailed or hand delivered to the liquidating agent on or before the day that the request was filed with the Board.

(d) *Burden of proof.* The burden of proving entitlement to expedited relief rests at all times with the requester.

(e) *Additional information.* The Board may order the filing of additional information and or documentation in order to make its determination. Such filing shall be on a date certain, and failure to provide the additional documentation or information may constitute the sole grounds for denial of the request.

(f) *Decision.* Before the end of the 90-day period beginning on the date a request is filed, the Board shall render its decision and provide it to the requester. The Board will determine whether to grant expedited review and allow or disallow the claim or whether such claim should be resolved pursuant to the claims process described in § 709.6 of this part.

(1) *Expedited review denied.* A decision by the Board that expedited review is not appropriate shall be final and the claim shall be decided pursuant to the claims adjudication process set forth in § 709.6 of this part.

(2) *Expedited review granted.* If expedited review is granted, the Board shall

decide the claim. If the claim is disallowed, in whole or part, the decision shall contain a statement of each reason for the disallowance and the procedure for obtaining judicial review.

(g) *Period for filing or renewing suit.* Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the liquidating agent, seeking a determination of the claimant's rights with respect to its security interest after the earlier of:

(1) The end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(2) The date the Board denies all or part of the claim.

(h) *Statute of limitations.* If an action described in paragraph (g) of this section is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with paragraph (g) of this section, the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim that was allowed by the Board). Such disallowance shall be final and the claimant shall have no further rights or remedies with respect to such claim.

[56 FR 56925, Nov. 7, 1991, as amended at 59 FR 36041, July 15, 1994]

§ 709.10 Treatment by conservator or liquidating agent of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* (1) *Beneficial interest* means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

(2) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(3) *Legal isolation* means that transferred financial assets have been put presumptively beyond the reach of the transferor, its creditors, a trustee in

bankruptcy, or a receiver, either by a single transaction or a series of transactions taken as a whole.

(4) *Participation* means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the "lead," to a buyer, known as the "participant," without recourse to the lead, under an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant due to a default on the underlying obligation.

(5) *Securitization* means the issuance by a special purpose entity of beneficial interests:

(i) The most senior class of which at time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations; or

(ii) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933, as amended, or in transactions exempt from registration under such Act under 17 CFR 230.91 through 230.905 (Regulation S) thereunder (or any successor regulation).

(6) *Special purpose entity* means a trust, corporation, or other entity demonstrably distinct from the federally-insured credit union that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The Board, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1787(c), will not reclaim, recover, or recharacterize as property of the credit union or the liquidation estate any financial assets