

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§ 747.301 Scope.

The rules and procedures set forth in this subpart are applicable to informal proceedings conducted by the NCUA Board, or a Presiding Officer designated by the Board, pursuant to section 206(i) of the Act (12 U.S.C. 1786(i)), to suspend, remove and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union who:

(a) Is charged in a state, Federal or territorial information or indictment or complaint with committing or participating in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law; or

(b) Enters a pretrial diversion or other similar program as result of being charged in such information or indictment or complaint with participating or committing such crime; or

(c) Is convicted of such crime.

Subpart A of this part does not apply to proceedings under this subpart.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.302 Rules of practice; remainder of board of directors.

Except as otherwise specifically provided in this subpart, the following provisions shall apply to proceedings conducted under this subpart:

(a)(1) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before the NCUA Board or Presiding Officer designated by the NCUA Board upon filing with the NCUA Board a written declaration that he or she is currently qualified as provided by this paragraph, and is authorized to represent the particular party or whose behalf he acts. Any other person desiring to appear before or transact business with the NCUA Board in a representative capacity may be required

to file with the NCUA Board a power of attorney showing his or her authority to act in such capacity, and he or she may be required to show to the satisfaction of the NCUA Board that he or she has the requisite qualifications. Attorneys and representatives of parties to proceedings shall file a written notice of appearance with the NCUA Board or with the Presiding Officer designated by the NCUA Board.

(2) *Summary suspension.* Contemptuous conduct by any person at an argument before the NCUA Board or at the hearing before a Presiding Officer shall be grounds for exclusion therefrom and suspension for the duration of the argument or hearing.

(b)(1) *Notice of hearing.* Whenever a hearing within the scope of this subpart is ordered by the NCUA Board, a notice of hearing shall be given by the NCUA Board to the party afforded the hearing and to any appropriate state supervisory authority. The notice shall state the time, place, and nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing. It shall be delivered by personal service, by registered or certified mail to the last known address, or by other appropriate means, not later than 30 nor earlier than 60 days before the hearing.

(2) *Party.* The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

(c)(1) *Computation of time.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor such legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is ten

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days or less in which event Saturdays, Sundays, and legal holidays shall not be included.

(2) *Service by mail.* Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this subpart, after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

(d) *Nonpublication of submissions.* Unless and until otherwise ordered by the NCUA Board, the notice of hearing, the transcript, written materials submitted during the hearing, the Presiding Officer's recommendation to the NCUA Board and any other papers filed in connection with a hearing under this subpart, shall not be made public, and shall be for the confidential use only of the NCUA Board, the Presiding Officer, the parties and appropriate authorities.

(e) *Remainder of board of directors.* (1) If at any time, because of the suspension of one or more directors pursuant to this subpart, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(2) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, the NCUA Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office.

(3) Directors appointed temporarily by the NCUA Board pursuant to paragraph (e)(2) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30-day period—

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(i) The regular annual meeting is convened; or

(ii) The suspensions giving rise to the appointment of temporary directors are terminated.

§ 747.303 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the NCUA Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend him or her from office, or prohibit him or her from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the NCUA Board.

§ 747.304 Removal or permanent prohibition.

In the event that a judgment of conviction or an agreement to enter a pre-trial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the NCUA Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the NCUA Board. A copy of such order will also be served upon such credit