

§ 747.303

(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—

(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 indi-

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vidual 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 union. A finding of not guilty or other disposition of the charge will not preclude the NCUA Board from thereafter instituting proceedings, pursuant to the provisions of section 206(g) of the Act (12 U.S.C. 1786(g)) and subpart A of this part, to remove such director, committee member, officer, or other person from office or to prohibit his or her further participation in the affairs of the credit union.

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

§ 747.305 Effectiveness of suspension or removal until completion of hearing.

Any notice of suspension or prohibition issued under § 747.303 and any order of removal or prohibition issued under § 747.304 will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under section 206(i) of the Act (12 U.S.C. 1786(i)) and this subpart, unless such notice of suspension or order of removal is terminated by the NCUA Board.

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

§ 747.306 Notice of opportunity for hearing.

(a) Any notice of suspension or prohibition issued pursuant to § 747.303, and any order of removal or prohibition issued pursuant to § 747.304, shall be accompanied by a further notice to the concerned individual that he or she may, within 30 days of service of such notice, request in writing an informal hearing at which he or she may present evidence and argument that his or her continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair

confidence in the credit union. Any notice of the opportunity for such a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) of this section shall state with particularity the relief desired, the grounds thereof, and shall include, when available, supporting evidence. The request and supporting evidence shall be filed in writing with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 59 FR 36041, July 15, 1994]

§ 747.307 Hearing.

(a) Upon receipt of a request for a hearing which complies with § 747.306, the NCUA Board will order an informal hearing to commence within the following 30 days in the Washington, DC metropolitan area or at such other place as the NCUA Board designates before a Presiding Officer designated by the NCUA Board to conduct the hearing. At the request of the concerned party, the NCUA Board may order the hearing to commence at a time more than 30 days after the receipt of the request for such hearing.

(b) The notice of hearing shall be served by the NCUA Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the Presiding Officer.

(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the NCUA Board, oral testimony), and to present an oral argument before the Presiding Officer. A member of the enforcement staff of the Office of General Counsel of the NCUA may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557), nor subpart A of this part shall apply to the hearing. The proceedings shall be recorded and a

transcript furnished to the individual upon request and after the payment of the cost thereof. The NCUA Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the Presiding Officer at least ten days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or directed by the Presiding Officer. The Presiding Officer may examine any witnesses and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of General Counsel, the record shall remain open for a period of five business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the NCUA Board and the Presiding Officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the NCUA Board permits the presentation of witnesses, the NCUA Board or the Presiding Officer may require the attendance of witnesses from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the District Courts of the United States. The NCUA Board or the Presiding Officer may require the production of documents from any place in any such state, territory, or other place.

(e) The Presiding Officer will make his or her recommendations to the Board, where possible, within ten business days following the close of the record.

[56 FR 37767, Aug. 8, 1991, as amended at 59 FR 36042, July 15, 1994]