



National Credit Union Administration
Office of the Board

Board Action Memorandum

TO: NCUA Board **DATE:** September 13, 2021
FROM: Board Member Rodney E. Hood **SUBJECT:** Board Agenda
Vice Chairman Kyle Hauptman

Rodney E. Hood *Kyle Hauptman*

ACTION REQUESTED: Action on NCUA Board Agenda Items for 2021

DATE ACTION REQUESTED: September 23, 2021

OTHER OFFICES CONSULTED: Office of General Counsel, Office of the Executive Director, Office of Examination and Insurance

VIEWS OF OTHER OFFICES CONSULTED: N/A

SUBMITTED TO THE INSPECTOR GENERAL FOR REVIEW: Yes

BUDGET IMPACT, IF ANY: None

RESPONSIBLE STAFF MEMBERS: Board Member Rodney E. Hood, Vice Chairman Kyle Hauptman

SUMMARY:

Consistent with the provisions of the Federal Credit Union Act¹, Part 791 of the NCUA's regulations governs how the NCUA Board conducts certain business including the conduct, scheduling, and subject matter of NCUA Board meetings. This regulation provides that the agreement of at least two Board members is required for any action by the Board.² Voting may take place at an open or closed meeting or by notation vote.

Part 791 also addresses the methods by which an item is placed on an NCUA Board meeting agenda. The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman or, at the request of any Board Member, an

¹ The Federal Credit Union Act vests management of the NCUA under the direction of the NCUA Board. Further, specific provisions of the Federal Credit Union Act state that the "Board shall fix the compensation and number of, and appoint and direct, employees of the Board." While the Federal Credit Union Act allows the Board to delegate these authorities as appropriate, those delegations can be amended or withdrawn by a majority vote of a quorum of the Board (i.e. two votes). 12 U.S.C. § 1752a(a), (d) and (j). Similarly, 790.2(b)(1) of the NCUA's regulations states that "NCUA is managed by its Board." 12 C.F.R. 790.2(b)(1).

² 12 C.F.R. 791.2

item will be placed on the agenda of the next regularly scheduled meeting provided that the request is submitted at least ten days in advance of the next regularly scheduled meeting and is accompanied by an NCUA B-1 form and a Board Action Memorandum that states the specific issue(s) or action(s) to be considered by the Board.³

This Board Action Memorandum sets specific dates by which agenda items listed in this memorandum's action must be included on the Board agenda for NCUA Board meetings in 2021. This action is based on the Board's powers previously referenced in this memorandum. Additionally, per NCUA's regulations, the Chairman may add additional items to these upcoming Board meetings beyond the items required to be added by this Board Action Memorandum on the dates described herein.⁴ The items put forth by this Board Action Memorandum shall be brought before the Board as final rules in the timeframe set by this action. Nothing in this action should be construed to alter NCUA's obligations under the Government in the Sunshine Act⁵.

This Board action instructs NCUA staff to prepare the final rulemakings set by this Board Action Memorandum under the timetable prescribed in this memorandum's action. Further, any individual Board member may request assistance, including but not limited to technical drafting assistance, for Board actions set by this memorandum and staff shall provide such assistance. Staff shall prioritize the final rulemakings set in this memorandum's action.

RECOMMENDED ACTION:

- 1) Approve the following Board agenda items to be added to the 2021 NCUA Board agenda:
 - a) Final Rule: Credit Union Service Organizations (CUSOs) (Part 712) to be placed on the NCUA Board Agenda on October 21, 2021.
 - b) Final Rule: Field of Membership Shared Facility Requirements (Part 701, Appendix B) to be placed on the NCUA Board Agenda on November 18, 2021.
 - c) Final Rule: Mortgage Servicing Rights (Parts 703 and 721) to be placed on the NCUA Board Agenda on December 16, 2021.
- 2) Instruct and direct NCUA staff to prepare these final rules, B-1 forms, and Board Action Memorandums referenced in action number one in the manner described in this memorandum and under the parameters and deadlines set forth in NCUA's rules and regulations.
- 3) Authorize the General Counsel to make any corrections or updates to this Board Action Memorandum to carry out the intent of the Board's action. This delegated authority expires on February 28, 2022.

Attachment: Rules of NCUA Board Procedure

³ 12 C.F.R. 791.6

⁴ 12 C.F.R. 791.6

⁵ 5 U.S.C. 552b; 12 C.F.R. § 791.4

Attachment: Subpart A—Rules of NCUA Board Procedure

§791.1 Scope.

The rules contained in this subpart are the rules of procedure governing how the Board conducts its business. These rules concern the Board's exercise of its authority to act on behalf of NCUA; the conduct, scheduling and subject matter of Board meetings; and the recording of Board action.

§791.2 Number of votes required for board action.

The agreement of at least two of the three Board members is required for any action by the Board.

§791.3 Voting by proxy.

Proxy voting shall not be allowed for any action by the Board.

§791.4 Methods of acting.

(a) *Board meetings*—(1) *Applicability of the Sunshine Act.* The Government in the Sunshine Act (5 U.S.C. 552b, “Sunshine Act”) requires that joint deliberations of the Board be held in accordance with its open meetings provisions (5 U.S.C. 552b (b) through (f)). (Subpart C of this part contains NCUA's regulations implementing the Sunshine Act.)

(2) *Presiding officer.* The Chairman is the presiding officer, and in the Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings. Any Board member may appeal a ruling made by the presiding officer. The appeal of a procedural ruling by the presiding officer shall be immediately considered by the Board, and a majority decision by the Board shall decide the procedural ruling.

(b) *Notation voting.* Notation voting is the circulation of written memoranda and voting sheets to the office of each Board member simultaneously and the tabulation of responses.

(1) *Matters that may be decided by notation voting.* Notation voting may be used only for administrative or time sensitive matters, for example, enforcement or interagency actions requiring prompt Board action matters.

(2) *Notation vote sheets.* Notation vote sheets will be used to record the vote tally on a notation vote. The Secretary of the Board has administrative responsibility over notation voting, including the authority to establish deadlines for voting, receive notation vote sheets, count votes, and determine whether further action is required.

(3) *Veto of notation voting.* In view of public policy for openness reflected in the Sunshine Act, each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus requires that the matter be placed on the agenda of the next regularly scheduled Board meeting that is held at least ten days after the date of the veto.

(4) *Disclosure of result.* A record is to be maintained of Board transactions by use of the notation voting procedure. Public disclosure of this record is determined by the provisions of the Freedom of Information Act (5 U.S.C. 552).

§791.5 Scheduling of board meetings.

(a) *Meeting calls*—(1) *Regular meetings.* The Board will hold regular meetings each month unless there is no business or a quorum is not available. The Secretary of the Board will coordinate the dates for meetings.

(2) *Special meetings.* The Chairman shall call special meetings either on the Chairman's own initiative or within fourteen days of a request from two Board members that is accompanied by an NCUA B-1 form and a Board Action Memorandum that states the specific issue(s) or action(s) to be considered by the Board.

(b) *Notice of meetings*—(1) *Notifying the public.* The Sunshine Act and subpart C set forth the procedures for notifying the public of Board meetings.

(2) *Notifying board members*—(i) *Special meetings.* Except in cases of emergency, as determined by a majority of the Board, each Board member is entitled to receive notice of any special meeting at least twenty-four hours in advance of such meeting. The notice shall set forth the place, day, hour, and nature of business to be transacted at the meeting. In cases of emergency a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

(ii) *Regular meetings.* Each Board member is entitled to receive notice of the agenda and/or notice of any changes in the subject matter of such meetings concurrent with the public release of such notices under the Sunshine Act. Each Board member shall be entitled to at least twenty-four hours advance notice of the consideration of a particular subject matter, except in cases of emergency as determined by a majority of the Board. In cases of emergency, a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

§791.6 Subject matter of a meeting.

(a) *Agenda.* The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman or, at the request of any Board Member, an item will be placed on the agenda of the next regularly scheduled meeting provided that the request is submitted at least ten days in advance of the next regularly scheduled meeting and is accompanied by an NCUA B-1 form and a Board Action Memorandum that states the specific issue(s) or action(s) to be considered by the Board.

(b) *Submission of recommended agenda items.* Recommended agenda items may be submitted to the Secretary of the Board by Board members, the Executive Staff (which includes all Office Directors and President of the Central Liquidity Facility), and Regional Directors.