

## § 791.6

## 12 CFR Ch. VII (1–1–13 Edition)

emergency, a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

[53 FR 29647, Aug. 8, 1988, as amended at 62 FR 64267, Dec. 5, 1997; 63 FR 5859, Feb. 5, 1998; 75 FR 34623, June 18, 2010]

### § 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.

[61 FR 55208, Oct. 25, 1996, as amended at 62 FR 64267, Dec. 5, 1997; 63 FR 5859, Feb. 5, 1998]

## Subpart B—Promulgation of NCUA Rules and Regulations

### § 791.7 Scope.

The rules contained in this subpart B pertain to the promulgation of NCUA rules and regulations.

### § 791.8 Promulgation of NCUA rules and regulations.

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87-2 as amended by Interpretive Ruling and Policy Statement 03-2.

(b) *Proposed rulemaking.* Notices of proposed rulemaking are published in the FEDERAL REGISTER except as speci-

fied in paragraph (d) of this section or as otherwise provided by law. A notice of proposed rulemaking may also be identified as a "request for comments" or as a "proposed rule." The notice will include:

(1) A statement of the nature of the rulemaking proceedings;

(2) Reference to the authority under which the rule is proposed;

(3) Either the terms or substance of the proposed rule or a description of the subjects and issues involved; and

(4) A statement of the effect of the proposed rule on state-chartered federally-insured credit unions.

(c) *Public participation.* After publication of notice of proposed rulemaking, interested persons will be afforded the opportunity to participate in the making of the rule through the submission of written data, views, or arguments, delivered within the time prescribed in the notice of proposed rulemaking, to the Secretary, NCUA Board, 1775 Duke Street, Alexandria, VA 22314-3428. Interested persons may also petition the Board for the issuance, amendment, or repeal of any rule by mailing such petition to the Secretary of the Board at the address given in this section.

(d) *Exceptions to notice.* The following are not subject to the notice requirement contained in paragraph (b) of this section:

(1) Matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts;

(2) When persons subject to the proposed rule are named and either personally served or otherwise have actual notice thereof in accordance with law;

(3) Interpretive rules, general statements of policy, or rules of agency organization, procedure or practice, unless notice or hearing is required by statute; and

(4) If the Board, for good cause, finds (and incorporates the finding and a brief statement therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, unless notice or hearing is required by statute.

(e) *Effective dates.* No substantive rule issued by NCUA shall be effective less than 30 days after its publication in the

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FEDERAL REGISTER, except that this requirement may not apply to:

(1) Rules which grant or recognize an exemption or relieve a restriction;

(2) Interpretive rules and statements of policy; or

(3) Any substantive rule which the Board makes effective at an earlier date upon good cause found and published with such rule.

(f) NCUA has an Office of Management and Budget (OMB) control number for rulemakings containing an information collection within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501). A list of OMB control numbers is available to the public for review online at <http://www.RegInfo.gov>.

[53 FR 29647, Aug. 8, 1988, as amended at 59 FR 36041, July 15, 1994; 68 FR 31952, May 29, 2003; 75 FR 34623, June 18, 2010]

### Subpart C—Public Observation of NCUA Board Meetings Under the Sunshine Act

#### § 791.9 Scope.

This subpart contains regulations implementing subsections (b) through (f) of the “Government in the Sunshine Act” (5 U.S.C. 552b). The primary purpose of these regulations is to provide the public with the fullest access authorized by law to the deliberations and decisions of the Board, while protecting the rights of individuals and preserving the ability of the agency to carry out its responsibilities.

#### § 791.10 Definitions.

For the purpose of this subpart:

(a) *Agency* means the National Credit Union Administration;

(b) *Board* means the National Credit Union Administration Board, whose members were appointed by the President with the advice and consent of the Senate;

(c) *Subdivision of the Board* means a group composed of two Board members authorized by the Board to act on behalf of the agency;

(d) *Meeting* means any deliberations by two or more members of the Board or any subdivision of the Board that determine or result in the joint conduct or disposition of official agency business with the exception of: (1) De-

liberations to determine whether a meeting or a portion thereof will be open or closed to public observation and whether information regarding closed meetings will be withheld from public disclosure; (2) deliberations to determine whether or when to schedule a meeting; and (3) infrequent dispositions of official agency business by sequential circulation of written recommendations to individual Board members (“notation voting procedure”), provided the votes of each Board member and the action taken are recorded for each matter and are publicly available, unless exempted from disclosure pursuant to 5 U.S.C. 552 (the Freedom of Information Act);

(e) *Public observation* means that a member or group of the public may listen to and observe any open meeting and may record in an unobtrusive manner any portion of that meeting by use of a camera or any other electronic device, but shall not participate in any meeting unless authorized by the Board;

(f) *Public announcement or publicly announce* means making reasonable efforts under the particular circumstances to fully inform the public, especially those individuals who have expressed interest in the subject matters to be discussed or the decisions of the agency;

(g) *Sunshine Act* means the open meeting provisions of the “Government in the Sunshine Act” (5 U.S.C. 552b.)

#### § 791.11 Open meetings.

Except as provided in § 791.12(a), any portion of any meeting of the Board shall be open to public observation. The Board, and any subdivision of the Board, shall jointly conduct official agency business only in accordance with this subpart.

#### § 791.12 Exemptions.

(a) Under the procedures specified in § 791.14, the Board may close a meeting or any portion of a meeting from public observation or may withhold information pertaining to such meetings provided the Board has properly determined that the public interest does not require otherwise and that the meeting