

§750.6 Filing instructions; appeal.

(a) Requests to make excess nondiscriminatory severance plan payments pursuant to §750.1(d)(2) (v) and golden parachute payments permitted by §750.4 must be submitted in writing to NCUA. In the case of a Federal or state chartered natural person credit union, such written requests must be submitted to the NCUA regional director for the region in which the credit union is located. In the case of a Federal or state chartered corporate credit union, such written requests must be submitted to the Director of the Office of National Examinations and Supervision. The request must be in letter form and must contain all relevant factual information as well as the reasons why such approval should be granted. If written concurrence by the state supervisory authority is required, the requesting party must submit a copy of its written request to the state supervisory authority where the credit union is located.

(b) An FICU whose request for approval by NCUA in accordance with paragraph (a) of this section has been denied may file an appeal of that denial with the NCUA Board by following the procedures set out in this paragraph.

(1) The appeal must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, and must be filed not later than sixty days after the initial determination denying the request.

(2) The Board shall make its determination concerning the appeal based on what is submitted in writing; there shall be no personal appearance before the Board in connection with an appeal under this paragraph.

(3) The Board shall make its determination concerning the appeal within 180 days from the date of its receipt of the appeal. The decision by the Board on appeal shall be provided to the appellant in writing, stating the reasons for the decision, and shall constitute a final agency decision. Failure by the Board to issue a decision on appeal within the 180-day period provided for under this section shall be deemed to be denial of such appeal.

(4) 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 District Court for the Eastern District of Virginia or the U.S. District Court for the Federal judicial district where the FICU's principal place of business is located. Any request for judicial review under this section must be filed within 60 days of the date of the Board's final decision. If any appellant fails to file before the end of the 60-day period, the Board's decision shall be final, and the appellant shall have no further rights or remedies with respect to the request.

[76 FR 30517, May 26, 2011, as amended at 78 FR 32545, May 31, 2013; 79 FR 12658, Mar. 6, 2014]

§750.4 Permissible golden parachute payments.

(a) A Federally insured credit union may agree to make or may make a golden parachute payment if:

(1) NCUA, with written concurrence of the appropriate state supervisory authority in the case of a state chartered credit union or corporate credit union, determines the payment or agreement is permissible; or

(2) An agreement is made in order to hire a person to become an IAP at a time when the Federally insured credit union satisfies or in an effort to prevent it from imminently satisfying any of the criteria in

§750.1(d)(1)(ii), and NCUA, with written concurrence of the appropriate state supervisory authority in the case of a state chartered credit union or corporate credit union, consents in writing to the amount and terms of the golden parachute payment. NCUA's consent will not improve the IAP's position in the event of the insolvency of the credit union since NCUA's consent cannot bind a liquidating agent or affect the provability of claims in liquidation. In the event the credit union is placed into conservatorship or liquidation, the conservator or the liquidating agent will not be obligated to pay the promised golden parachute and the IAP will not be accorded preferential treatment on the basis of any prior approval; or

(3) A payment is made pursuant to an agreement that provides for a reasonable severance payment, not to exceed twelve months' salary, to an IAP in the event of a merger of the Federally insured credit union; provided, however, that a Federally insured credit union must obtain the consent of NCUA before making a payment and this paragraph (a)(3) does not apply to any merger of a Federally insured credit union resulting from an assisted transaction described in section 208 of the Act, 12 U.S.C. 1788, or the Federally insured credit union being placed into conservatorship or liquidation; and

(4) A Federally insured credit union or IAP making a request pursuant to paragraphs (a)(1) through (3) of this section must demonstrate it does not possess and is not aware of any information, evidence, documents or other materials indicating there is a reasonable basis to believe, at the time the payment is proposed to be made, that:

(i) The IAP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the Federally insured credit union that has had or is likely to have a material adverse effect on the Federally insured credit union;

(ii) The IAP is substantially responsible for the insolvency of, the appointment of a conservator liquidating agent for, or the troubled condition, as defined by §700.2 of this chapter, of the Federally insured credit union;

(iii) The IAP has materially violated any applicable Federal or state law or regulation that has had or is likely to have a material effect on the Federally insured credit union; or

(iv) The IAP has violated or conspired to violate sections 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18 of the United States Code, or sections 1341 or 1343 of that title affecting a Federally insured financial institution, as defined in title 18 of the United States Code.

(b) In making a determination under paragraphs (a)(1) through (3) of this section, NCUA may consider:

(1) Whether, and to what degree, the IAP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IAP was affiliated with the Federally insured credit union and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances indicating the proposed payment would be contrary to the intent of section 206(t) of the Act or this part.