

of persons to conduct that investigation on his or her behalf and at his or her direction. This delegation also extends to the NCUA Board's role as liquidator and conservator of insured credit unions. The power to issue a subpoena may not be delegated outside the agency. The General Counsel may amend such order as he deems appropriate.

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

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

§ 747.801 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the NCUA Board, before one or more of its members, or before any officer designated by the NCUA Board or its General Counsel, as described in subpart H of this part, and with or without the assistance of such other counsel as the NCUA Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

§ 747.802 Non-public formal investigative proceedings.

Unless otherwise ordered by the NCUA Board, all formal investigative proceedings shall be non-public.

§ 747.803 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named therein to appear before the officer conducting the investigation at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner:

(1) *Service upon a natural party.* Delivery of a copy of a subpoena to a natural person may be effected by—

- (i) Handling it to the person;
- (ii) Leaving it at his or her office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there;
- (iii) Leaving it at his or her dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or
- (iv) Mailing it by registered or certified mail to him or her at his or her last known address. In the event that personal service as described in this paragraph is impracticable, any other method whereby actual notice is given to the respondent may be employed.

(2) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by—

- (i) Handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;
- (ii) Mailing it by registered or certified mail to any such representative at his or her last known address; or
- (iii) Any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than 30 days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his or her discretion, may apply to the courts of the United States for enforcement of such subpoena.

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

§ 747.804 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any person

making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 747.805 Self-incrimination; immunity.

(a) *Self-incrimination.* Except as provided in paragraph (b) of this section, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his or her right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution under the laws of the United States or of any other jurisdiction.

(2) If the NCUA Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his or her privilege against self-incrimination, the NCUA Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he or she has previously refused to provide on the basis of self-incrimination.

(3) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the NCUA Board requiring him or her to testify or provide other information, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination;

but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 747.806 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his or her documentary evidence or a transcript of his or her testimony on payment of the appropriate fees; provided, however, that in a non-public formal investigative proceeding the NCUA Board may for good cause deny such request or the NCUA Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony.

§ 747.807 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to a specific order entered by the NCUA Board or by its General Counsel, then any party who is compelled or requested to provide documentary evidence or testimony as part of such proceeding shall, upon request, be shown a copy of the NCUA Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; provided however, that all witnesses in such proceeding