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Removal of NCUA Board Members: What it Means for You

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After the first 100 days of President Donald Trump's second term, few areas of government have avoided disruption or controversy, and the regulation of credit unions—normally a quiet corner within the federal bureaucracy—has been no exception. By its statutory creation and evolved operations, the National Credit Union Administration (NCUA) has long functioned as a consensus-driven, bipartisan regulator not normally associated with political intrigue; however, on April 16, 2025, President Trump fired the two Democratic members of the NCUA Board of Directors, Todd Harper and Tanya Otsuka. This decision leaves the Board with only one member and lingering questions about the NCUA's ability to operate in the coming months. Additionally, Harper and Otsuka have filed an action in federal court demanding reinstatement.

Background

The Federal Credit Union Act (FCUA), 12 U.S.C. 1752a, provides that the NCUA Board shall consist of three members who are broadly representative of the public interest and appointed by the President, by and with the advice and consent of the Senate. In appointing the Board members, the President also designates the Chairman. Moreover, the Board requires diversity of political party, meaning that not more than two members of the Board shall be members of the same political party. A majority of the Board constitutes a quorum. The Rules of NCUA Board Procedure, codified at 12 CFR part 791, further provide that (1) agreement of at least two of the three Board members is required for any Board action and (2) regular meetings are to be held each month unless there is no business or a quorum is not available.

The FCUA does not expressly address the circumstances under which a Board member may be removed for cause or otherwise. This contrasts with some other federal regulator enabling statutes, which expressly provide "for cause" protection for board or commission members, as discussed below.

What happened?

President Trump's termination of Harper and Otsuka leaves only one Board member, Kyle Hauptman, who was appointed as NCUA Chairman in January. Harper and Otsuka's Board terms were not set to expire until 2027 and 2029, respectively. Harper was originally appointed by President Trump in 2019; he served as chairman starting in 2021 after former President Biden appointed him to the post, and he then stepped aside so Trump could pick a new chairman.

The dismissal of Harper and Otsuka follows President Trump's recent firings of Democrat members of other multimember commissions and boards, including the Federal Trade Commission (FTC), National Labor Relations Board (NLRB), Merit Systems Protection Board (MSPB), and Federal Election Commission (FEC). Multiple lawsuits challenging the removals at these other agencies are pending in the U.S. District Court for the District of Columbia, with plaintiffs arguing that their

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termination violated statutory "for-cause" protections.

On April 28, Harper and Otsuka filed their own lawsuit in D.C. District Court challenging their removals. In their complaint, they claim that President Trump's "unprecedented removal" has left the NCUA Board without a quorum and therefore "render[ed] it unable to implement Congress's mandate in full." The lawsuit seeks declaratory and injunctive relief to "restore the Board's lawful composition and preserve the independence Congress mandated." We anticipate that President Trump's administration will vociferously defend its actions.

In the meantime, how does this impact credit unions?

With only one Board member, Chairman Hauptman, it would arguably seem that the Board lacks a quorum to conduct official business assuming that the vacancies must be counted in determining whether a quorum has been achieved. In conjunction with the NCUA's regulation that agreement of at least two of the three Board members is required for any Board action, this would logically lead to the conclusion that the Board may not hold a meeting or take action with only one Board member.

The NCUA, however, is not taking that position, as evidenced by their statement released on April 18 to agency staff, which read, in part, "Please be assured that the NCUA has precedent and standing delegations of authority in place to continue performing all operational and statutory requirements under the authority of a single Board Member." The statement also noted that, "It is the NCUA's long-held view that a single Board Member constitutes a quorum when there are no other Board Members." Furthermore, on Friday, April 25, the NCUA released its agenda for its May 22 Board Meeting, along with a video from Chairman Hauptman outlining the agenda as well as confirming their position that there is precedent for Board actions with a single Board member.

During this time, the agency can still perform its supervisory functions. Examination authority is delegated to staff under the FCUA and such actions do not require a Board vote. Furthermore, the National Credit Union Share Insurance Fund should continue to operate normally and should not be directly affected by the loss of a quorum on the Board.

It is not so clear how other matters that fall under the authority of the Board will be impacted during this time. Despite the NCUA's position that the Board has the authority to act with a single Board member, some of the Board's functions may still be put on hold or delayed while the situation is being sorted out for fear of legal challenges related to proper Board authority. This could include the adoption and repeal of NCUA regulations, approval of emergency mergers, approval of the assumption of assets and liabilities of non-insured credit unions and other institutions, approval of conversions and liquidations, approval of new charter applications, hearing appeals of agency actions (such as field of membership decisions), and the approval of the NCUA budget, to name a few.

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What might happen next?

In this age of disruption in Washington DC, it is difficult to offer definitive predictions. Here are some potential next steps for the NCUA:

1. **Nomination of new board members**: President Trump may now nominate either one or two new board members to fill these vacant positions. At least one must be from a different political party, as statutorily required by the FCUA. Hauptman's term is set to expire in August 2025, leaving some uncertainty as to whether he will continue in his role as a holdover or whether an additional appointment will need to be made.

2. **Litigation challenging the removal of board members**: The lawsuit filed by Harper and Otsuka challenging their removal is similar to those filed in response to firings at other independent agencies such as the FTC and the NLRB. It is possible that Harper and Otsuka may have a more challenging path than recently terminated members of other agency boards or commissions because the FCUA does not have an express for-cause removal provision, in contrast to other similarly-situated statutes. Given the litigation on other recent removals, the Supreme Court will likely have to weigh in. Indeed, the parameters of presidential removal authority for leaders of independent regulatory agencies goes to the continued viability of a 90-year old Supreme Court precedent, Humphrey's Executor, which the current administration has been challenging in recent filings. A forthcoming Legal Update will discuss those issues in more detail.

3. **Momentum toward consolidating the federal banking regulators**: There is speculation in the industry that the removal of these two Board members is a move toward consolidation of regulators in the industry. Treasury Secretary Scott Bessent recently voiced his opposition to consolidating federal financial regulators. Any consolidations will require congressional action to amend key statutes.

4. **Staffing reductions**: The Department of Government Efficiency (DOGE) has embedded itself at numerous federal agencies and driven large scale staffing reductions. It is possible that the leadership vacuum could coincide with an effort to force the retirement of longtime staff and reducing headcount well below the budgeted 2025 headcount. The Board Agenda released for the May 22 Board meeting includes a Board Briefing of NCUA's Voluntary Separation Programs. These reductions, while unrelated to the removal of two Board members, are hard to ignore in the overall picture of the state of the agency.

Contact us

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If you have any questions about the NCUA or other credit union issues, contact Brenda Barrett, Marci Kawski, Mike G. Silver, or your local Husch Blackwell attorney.

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