

CHAPTER 14

EXAMINATION REVIEWS AND INVESTIGATIONS

Note: Chapter 14, "Contested Case Proceedings," rescinded, IAB 2/21/90, effective 3/28/90.

189—14.1(533) Definitions.

"Division officer" means the superintendent, deputy superintendent or any division employee authorized by the superintendent under Iowa Code section 533.59 to subpoena witnesses, to compel their attendance, to administer oaths, to examine any person under oath and to require the production of books and records.

"Examination review" means the review of a division field examination before the superintendent at the division's office.

"Formal investigative proceeding" means the taking of subpoenaed testimony of a witness by a division officer.

"Formal order of investigation" means the written order of the superintendent which indicates the reason for the formal investigation as well as the division personnel appointed division officers.

"Warning" means a written direction by the superintendent, or by a division employee on behalf of the superintendent, to cease acts or practices violative of Iowa Code chapter 533 or which threaten the safety and soundness of a credit union.

189—14.2(533) Application of rules. The rules of this chapter shall apply only to examination reviews and investigations conducted by the division. They do not apply to inquiries conducted by the division regarding chartering or employee group applications, or to hearings, appeals or rule-making proceedings. Further, these rules in no way limit the authority granted to the division or the superintendent by Iowa Code chapter 533.

189—14.3(533) Examination reviews.

14.3(1) Based on the division's examination of a credit union, the superintendent may, by written notice, request a credit union or its directors to appear at an examination review at the division's office.

14.3(2) If a credit union or its directors fail to appear at an examination review, the superintendent may: institute a formal investigation and issue subpoenas; or institute a contested case hearing.

14.3(3) At any time, including during an examination or an examination review, the superintendent may issue a written warning directing a credit union or an officer, director or employee of a credit union, to take action as deemed consistent with Iowa Code chapter 533 or as necessary for the safety and soundness of the credit union.

14.3(4) If a credit union fails to comply with a warning of the superintendent, the superintendent may institute a formal investigation or a contested case hearing.

14.3(5) If an officer, director or employee of a credit union fails to comply with the superintendent's warning, the superintendent may: institute a formal investigation; initiate a contested case hearing regarding removal of the officer, director or employee of the credit union; or refer the matter for criminal prosecution.

189—14.4(533) Preliminary informal investigations. An informal investigation may be conducted if the division receives an indication that there may be a violation of Iowa Code chapter 533 or that the safety and soundness of a credit union may be threatened based on any of the following: information received from a member of a credit union, from a member of the public, or from a federal or a state agency; from the examination of filings, financial reports, or credit union business records; from an examination review, or from some other occurrence or fact. In a preliminary informal investigation, no process shall be issued or testimony compelled.

189—14.5(533) Nonpublic proceedings and transcripts of examination reviews or informal preliminary investigatory proceedings. Examination reviews and preliminary informal investigations shall be nonpublic. Transcripts of any examination review or informal investigatory proceeding may be officially recorded as provided for in subrule 14.6(4).

189—14.6(533) Formal investigations.

14.6(1) *Initiation of formal investigations.* Formal investigations shall begin only upon the issuance of a formal order of investigation signed by the superintendent. Subpoenas for testimony and documents may be issued only after a formal investigation has begun.

14.6(2) *Issuance of formal order.* A formal order of investigation may be issued by the superintendent, and a formal investigation may be made if the superintendent has a reasonable basis to believe that there may be a violation of Iowa Code chapter 533 or that the safety and soundness of a credit union may be threatened based on any of the following: information received from a member of a credit union, from a member of the public, from a federal or a state agency; from the examination of filings, financial reports, or credit union business records; from an examination review, or from some other occurrence or fact. A formal order of investigation shall set forth the possible violations of law as well as a general statement describing the factual basis for the violations. A formal order shall also specify the division officers authorized to issue subpoenas in the formal investigation.

14.6(3) *Presiding officers.* Formal investigatory proceedings may be held before the superintendent, a deputy superintendent, or any division officer so designated by the superintendent in the formal order of investigation.

14.6(4) *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 division officer conducting the investigation. Any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony at the division's offices. A person who has submitted documentary evidence or has testified as a witness in a formal investigative proceeding shall be entitled, upon written request, and at the person's expense, to procure a copy of the documentary evidence produced by the witness or a transcript of the witness's testimony. However, the division may, for good cause, deny the request.

14.6(5) *Rights of witnesses.*

a. Any person who is compelled or requested to furnish documentary evidence or testimony at a formal investigative proceeding shall upon request be shown the division's formal order of investigation. Copies of formal orders of investigation shall not be furnished for their retention to those persons except with the express approval of the superintendent. The superintendent shall not grant approval unless the superintendent is satisfied that there exist reasons for approval which are consistent both with the protection of privacy of persons involved in the investigation and with the unimpeded conduct of the investigation.

b. Any person compelled to appear, or who appears by request or permission of the division, at a formal investigative proceeding may be accompanied, represented and advised by counsel. This means that a witness testifying shall have the right to have an attorney present with the witness during any formal investigative proceeding and to have the attorney:

- (1) Advise before, during, and after the conclusion of the examination,
- (2) Question the client/witness briefly at the conclusion of the examination to clarify any of the answers the client/witness has given, and
- (3) Make summary notes during the examination.

c. Witnesses shall be sequestered and, unless otherwise permitted in the discretion of the division officer conducting the investigation, no person other than the witness's counsel shall be permitted to be present during the witness's examination.

14.6(6) *Service of subpoenas.* Service of subpoenas issued in formal investigative proceedings shall be effected by personal service or by restricted certified mail.

14.6(7) *Nonpublic proceedings.* Except as otherwise provided by law, all formal investigative proceedings shall be nonpublic.

14.6(8) *Enforcement of subpoenas.* If a subpoenaed party fails to comply with a subpoena, the division may enforce the subpoena in district court.

189—14.7(533) Action following an examination, examination review or an informal or formal investigation. After an examination, an examination review, or an informal or formal investigation, the

division may take one or more of the following actions as consistent with Iowa Code chapter 533: issue a warning; conduct an examination review or an informal or formal investigation; institute a contested case hearing looking to the imposition of remedial sanctions; or refer the matter for criminal prosecution.

189—14.8(533) Voluntary submission of information. Any person who becomes involved in an examination review or in a preliminary or formal investigation may, on the person's own initiative, submit a written statement to the division which sets forth the person's interests and position with regard to the subject matter involved.

189—14.9(533) Effect of disposition and settlement on criminal proceedings. In the course of the division's examinations or investigations, contested cases, or lawsuits, the division staff, with the superintendent's authorization, may discuss the disposition of the matters with persons involved. A disposition may be by consent, by settlement, or in some other manner; however, it is the policy of the division that the disposition of any matter may not expressly or impliedly extend to any criminal charges that have been or may be brought against any person, and may not affect any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter of the division who consents or agrees to consent to any judgment or order, does so solely for the purpose of resolving the claims against the person in a division's investigation, contested case, or civil suit, and not for the purpose of resolving any criminal charges that have been or might be brought against the person. This policy reflects the fact that neither the division nor its staff has the authority or responsibility for instituting, conducting, settling or otherwise disposing of criminal proceedings. This authority and responsibility are vested in the county attorneys, the attorney general, or representatives of the U.S. Department of Justice.

These rules are intended to implement Iowa Code chapter 533.

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