Banking and Finance Law Daily Wrap Up, DIRECTORS, OFFICERS AND EMPLOYERS—D.C. Cir.: Government files brief challenging reinstatement of NCUA board members, (Sept. 17, 2025)

Banking and Finance Law Daily Wrap Up

By Shashi Kant, BALLB, LLM.

Government argues Congress enacted no express removal restrictions, NCUA exercises substantial executive power, and courts cannot reinstate removed officers.

The U.S. government filed its opening brief with the United States Court of Appeals for the District of Columbia Circuit on Sept. 12, 2025, challenging a district court order that reinstated two National Credit Union Administration Board members removed by President Trump in April 2025. The case centers on whether the President has constitutional authority to remove NCUA board members at will and whether federal courts can order their reinstatement (*Harper v. Bessent*, No. 25-5268 (D.C. Cir. Sept. 12, 2025)).

Todd Harper and Tanya Otsuka filed suit after receiving termination notices from the White House in April 2025. Harper, originally nominated by President Trump and confirmed in 2019, was reconfirmed for another term in 2022 that was set to expire in 2027. Otsuka was confirmed in 2023 for a term scheduled to end in 2029.

District court's ruling. The district court granted summary judgment in favor of Harper and Otsuka on July 22, 2025 (see *Banking and Finance Law Daily*, July 23, 2025). Judge Amir Ali ruled that NCUA board members may be removed by the President prior to the expiration of their terms only for cause. The court ordered their reinstatement and enjoined government officials from treating them as removed from office.

Government's statutory argument. In its appellate brief, the government first contends that Congress did not enact any express statutory restrictions on the President's authority to remove NCUA board members. The government notes that the Federal Credit Union Act "does not contain a provision that expressly limits the President's ability to remove the agency's Board members." The brief argues that courts should not infer removal restrictions where Congress has not explicitly provided them, citing *Kennedy v. Braidwood Management, Inc.* (145 S. Ct. 2427 (2025)), which held that courts will not read a for-cause removal restriction into a statute that does not explicitly provide for one.

Constitutional separation of powers argument. The government argues that any implied removal restriction would violate the Constitution's separation of powers. The brief maintains that NCUA board members exercise "substantial executive power," including promulgating regulations, investigating violations, initiating enforcement proceedings, and imposing monetary penalties up to $1 million per day. According to the government, because the NCUA wields such executive authority, board members do not fall within the narrow exception recognized in *Humphrey's Executor v. United States* (295 U.S. 602 (1935)) for multimember bodies that exercise no part of the executive power.

Remedial authority challenge. The government challenges the district court's authority to order the reinstatement of removed principal officers. The brief argues that courts lack equitable authority to order the reinstatement of officers removed by the President, citing *Mississippi v. Johnson* (71 U.S. (4 Wall.) 475 (1867)), which held that a court has no jurisdiction to enjoin the President in the performance of his official duties. The government contends that the district court's order amounts to "de jure reinstatement" that improperly interferes with the President's constitutional authority.

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NCUA's executive powers. The government's brief details the NCUA's extensive regulatory and enforcement powers. The agency oversees 4,499 federally insured credit unions with $2.3 trillion in assets. The board can issue rules and regulations, investigate unsafe practices, hold administrative hearings, issue cease-and-desist orders, impose civil money penalties, remove officers from credit unions, and appoint itself as conservator of troubled institutions. Following the 2008 financial crisis, the NCUA's role as liquidating agent for five failed credit unions resulted in litigation that recovered over $5 billion.

Relief requested. The government requests that the appeals court reverse the district court's judgment. If the court finds removal restrictions exist, the government asks for a determination that such restrictions are unconstitutional. Additionally, the government seeks reversal of the reinstatement order as beyond the district court's remedial authority.

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Companies: National Credit Union Administration

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