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June 21, 2007

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Sent via Email

Re: PCUA Comments on Proposed Rule Part 701.3 (Member Inspection of Credit Union Books, Records and Minutes).

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (“Association”) appreciates this opportunity to provide comments to the National Credit Union Administration (“NCUA”) on the notice of proposed rulemaking related to member inspection of credit union books, records and minutes.

The PCUA is a statewide trade association that represents almost eighty-five percent (85%) of the approximately 614 credit unions located within the Commonwealth of Pennsylvania. To respond to this request for comments, the PCUA consulted with its Regulatory Review Committee. The Committee consists of twelve credit union CEOs who lead the management teams of Pennsylvania federal and state-chartered credit unions. Members of the Committee also represent credit unions of all asset sizes.

The comments contained in this letter reflect the comments of PCUA’s Regulatory Review Committee and the PCUA staff (collectively referred to in this letter as “PCUA”).

General Comments:

As set forth in the proposed rule, NCUA is proposing to standardize and clarify the existing rights of members to inspect the non-confidential portions of the credit union’s books, records and minutes. PCUA supports this objective and, as discussed in more detail below, encourages NCUA to work with state agencies to ensure that the same standards are applied to insured state-charted credit unions as well.

Interests of Members of Credit Unions vs. Interests of Shareholders of For-Profit Corporations:

Historically, NCUA has maintained the position that the financial interests of members in their credit union are similar to the financial interests that shareholders have in for-profit corporations. Accordingly, NCUA has stated that Federal credit union (“FCU”) members may inspect the FCU’s books and records under the same terms and conditions that state corporate law where the FCU is located permits shareholder inspection of corporate records.

NCUA, however, has recognized that the above position has caused uncertainty and inconsistency among FCUs in responding to members’ request for information about the credit union. Therefore, NCUA has proposed this rule in order to standardize the member inspection rules applicable to FCUs.

PCUA submits that credit unions, regardless of whether they are state or federally-chartered, should all share in the standardization of these rules and, therefore, requests NCUA to: 1) pre-empt state corporation law to the extent it

conflicts with federal privacy laws and regulations that apply to all insured credit unions; and 2) work with their state agency counterparts to standardize the rules that govern members right to inspect the books and records of credit unions.

Pre-Emption of State Corporation Laws:

Similar to the protection from disclosure provided under the Office of Thrift Supervision rule, NCUA's proposal protects from disclosure the personal and financial information of a credit union's members. However, in the NCUA proposed rule, all nonpublic personal information, as that term is defined in the NCUA's rules on privacy of consumer financial information, is protected. "Nonpublic personal information includes information such as the fact an individual is member, account numbers, and balances, transaction information, consumer reports, and any information provided by the member to obtain a financial product from the credit union." 12 CFR § 716.3(r).

With regard to state-chartered credit unions and NCUA's prior position as noted above, Pennsylvania law provides that every shareholder of a Pennsylvania for-profit corporation shall have access, for any "proper purpose," to the *share register*, books and records of account, and records of proceedings of the incorporators, shareholders and directors. 15 Pa. C.S.A. § 1508(b)(emphasis added). PCUA submits that credit union membership lists are not the same thing as a "share register" because, as noted by NCUA in the proposed rule, members of credit unions are both owners *and deposit customers*, which may not always be the case with regard to shareholders.

Like NCUA, PCUA member credit unions are concerned about providing personal and confidential information about members to other members and applaud NCUA for clarifying this issue in the proposed rule for FCUs. However, PCUA respectfully requests that NCUA further clarify that, to the extent that state corporate law could be deemed to allow access to information indicating that an individual is a member of a state-charted credit union, the state law is pre-empted consistent with the NCUA regulations at 12 C.F.R. § 716.17.

Proper Purpose:

Although the "Paragraph-by-Paragraph Analysis" references that the inspection of a credit union's books and records must be related to a "proper purpose," this actual language is not included in the proposed amendments. The actual amendments state that:

The petition must also state that inspection is not desired for any purpose in the interest of a business or object other than the business of the credit union; that the members signing the petition have not within five years preceding the signature date sold or offered for sale, and do not now intend to sell or offer for sale, any information obtained from the credit union; and that the members signing the petition have not within the past five years aided or abetted any other person in procuring any information from the credit union for proposes of sale.

Proposed 12 C.F.R. § 701.3(b). While PCUA recognizes the difficulty in drafting regulations that address all of the credit unions' concerns, we respectfully submit that the regulation be revised to indicate that a member's right to inspect the books and records of the credit union, including materials describing the compensation and benefits provided by the credit union to its senior executive officers, must be for a "proper purpose." With regard to the disclosure of compensation related material in particular, PCUA requests that NCUA set forth the specific circumstances under which the disclosure of such information is proper.

This part of the proposed regulation could be construed as an invitation to conduct a general fishing expedition for credit union information and credit union executive compensation. As many of our members are community chartered credit unions, virtually any small group located within the community field of membership could request access to the credit union's books and account of records by establishing a small share accounts, including individuals who may not have a proper purpose for requesting access.

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Some of our member credit unions also expressed a concern over the requirement to disclose information related to less significant, but important, decisions of the credit union board and management, such as a branch office closing or the determination to discontinue a service. It is possible that the management of a credit union could eventually be overwhelmed and overly burdened with requests for information related to routine and daily management decisions.

Finally, one other justification for using the longstanding doctrine of “proper purpose” in the federal regulation is that in event of disputes, or even litigation, over whether documents should be disclosed, parties can avail themselves of the guidance contained in the well developed body of case law related to state corporate law and the courts’ definition of a “proper purpose” for further clarification.

Confidential Books, Records and Minutes:

In the Paragraph-by-Paragraph Analysis, the proposed rule addresses the types of credit union information that may be deemed confidential under federal law and states that “credit unions do not generally have trade secrets, this is, secret formulas or technology on which the success of the organization is dependent....”

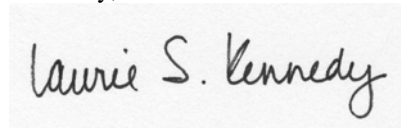
Credit unions may not have the type of “trade secrets” that are typical in commercial enterprises. However, in making this observation, we encourage NCUA to recognize that credit unions do have strategic, business and marketing plans that contain confidential and proprietary information. This type of information should be protected from wide dissemination in the best interests of the credit unions and their members, particularly in the context of litigation between credit unions and competitors. For example, a credit union’s plan related to its strategic deployment of branches and ATM networks or the development of internal processes that enhance their operations should be protected from disclosure similar to the protection afforded traditional “trade secrets.”

Minimum Signature Requirement:

The proposed rule provides that at least one percent of the credit union’s members, with a minimum of 20 members and a maximum of 250 members, must sign the petition. In some instances, the proposed thresholds represent a very small portion of the credit union’s total membership. Some of our members expressed concern over the small number of members that are necessary to generate a petition and the potential disruption that that such a small group could cause to the credit union’s daily operations due to the time and resources necessary to handle such requests.

Thank you again for this opportunity to comment on a subject matter that is of significant importance to our Association and the members of our Committee. Please feel free to contact me if you have any questions or want to discuss the items included in this letter.

Sincerely,



Laurie S. Kennedy
Associate Counsel

LSK:llb

Attachments

cc: Association Board
J. McCormack
R. Wargo
Regulatory Review Committee
M. Dunn, CUNA