

June 21, 2007

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

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

Dear Ms. Rupp:

Thank you for the opportunity to comment on the Agency's proposal to adopt Part 701.3, Member Inspection of Books, Records, and Minutes.

We understand that NCUA desires to standardize Member inspection rights. We also support Member access to credit union records, and the appropriate degree of transparency in the operation of a credit union for the benefit of its Members. We strongly endorse these concepts.

We think the proposed rule is a terrible idea as the mechanism to accomplish concepts which we endorse strongly. Rather than a rule such as proposed, we'd urge that Member access to credit union/corporate records be secured through a standard, system-wide modification of the standard federal credit union bylaws (and a compulsory adoption of the provision); the bylaw provision should contain only the standard-for-access that Member access to records would be available upon a demonstration of a proper purpose and reasonable assurance of the credit union's recovery of costs of production and compliance with a document request.

We believe this approach, in light of NCUA's recently announced intention to provide oversight and enforcement of federal credit union adherence to and respect of its own bylaws, would provide a system of measured, controlled and evolving criteria defining standards of record access that would both protect and enhance Member rights and appropriate transparency of corporate governance. Additionally, we'd urge that NCUA adopt a system of publication of its decisions in regard to Member access to records, where it's involvement becomes necessary, so that a body of authority or precedent (i.e. *stare decisis*) develops over time and on a case by case basis. This approach has served well the American system of jurisprudence for well over two hundred years, and seems an ideal solution to the competing interests of contestants to a matter of access to corporate records.

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While we believe in, and support, transparency in credit union governance, we urge caution on NCUA to consider the potential harm and misuse this regulation may cause. For example, consider the recent uninvited and hostile takeover situation with Continental FCU/Wings Financial CU. This rule would have made it possible for Members of the aggressor credit union (or any other hostile-take-over entity, whether or not a credit union) to join targeted credit unions for the purpose of obtaining information to further the cause of a hostile approach to the institution. Case by case determination of the rights and bounds for access to records under these circumstances would be far superior to the “shot-gun” approach of access granted by boiler-plate or cookie-cutter recipe for access contained in a regulation.

OCTFCU respectfully submits the following comments, first in the interest of guiding NCUA’s determinations concerning access to records under a system of Member access pursuant to bylaws, and secondarily, should NCUA press ahead in its adoption of this rule.

Orange County Teachers FCU (OCTFCU) agrees that this proposal does not represent a significant departure from requirements generally applicable under state laws, generally, for shareholders’ access and inspection of corporation records. Accordingly, the substantive content of the proposed regulation would be a good guideline against which NCUA ought to make case-by-case determination of records access questions under a bylaws-based system of access developed gradually using principles of *stare decisis*. Moreover, we would urge that NCUA additionally use the body of case law developed under Delaware corporate law to supplement its determinations on cases and questions, as Delaware corporate law is the most highly developed, widely respected and systematically followed body of corporate law in the nation.

- Part 701.3 (b) requires that the petition to inspect and copy records be signed by at least one percent of the credit union’s Members, with a minimum of 20 and a maximum of 250 signatures.
 - We recommend for consistency purposes that this requirement be the same as those established in the standard FCU Bylaws for Members seeking nomination by petition to run for election to an FCU’s BOD. That is, the petition should be signed by at least one percent of the credit union’s Members, with a minimum of 20 and a maximum of 500 signatures.
- Part 701.3 (a) (1) uses the term, “Books and records of account”. In the supplementary information, the term “records of accounts” is defined as being limited to accounting records.
 - We recommend that the term, “Books and accounting records” be the actual standard employed. This would obviate any need in the future for a court to decide the definition (as has happened in the past and is noted in the proposed rule’s supplementary information).

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- We further recommend that NCUA make clear that “accounting records” is a concept which addresses high-level financial records (e.g., consolidated financial statements, income statements, etc., versus detailed GL postings).
- Part 701.3 (b) states that the petition must name one or more Members who will represent the petitioners.
 - We believe the credit union ought to be able to impose reasonable limitations on the number of representatives with whom it is required to deal, in order that the credit union be able to effectively and expediently communicate with the petitioners.
 - We would ask that standards be clearly enunciated to the effect that only the named representatives and/or their agent or attorney be in attendance at the inspection of the materials. This would help facilitate and accommodate the logistics of the inspection.
- Part 701.3 (d) (3) states Members may inspect materials describing the compensation, benefits, and qualifications of the senior executive officers (as defined in §701.14).
 - We disagree with the definition of senior executive official for the purpose of this §701.3. We recommend that for the purposes of the concept of Member access to records, compensation records should be limited to the five highest paid positions in the credit union with “large” reserves and undivided earnings, i.e. over \$50,000,000 and the three highest paid positions in credit unions with lower reserves and undivided earnings. The concept at work here is parallel to the compensation disclosure requirements of the SEC for public companies, and we refer you to our comments lodged on the proposal concerning merger related compensation for a fuller discussion.
 - We also recommend that “qualifications” be regarded as a statement of an officer’s qualifications or a resume, so as not to be construed or interpreted as access to performance evaluations or personnel files.
 - Further, nothing should prohibit or impede the FCU from notifying personnel that the petitioners have requested their qualifications, compensation, and benefits, so as to afford those persons the opportunity to obtain protection on their own from inappropriate disclosure.
- Part 701.3 (e) allows the petitioners to include in the petition a maximum amount they are willing to pay.
 - One can only reasonably presume the credit union is not obligated to provide all requested materials even if it exceeds the maximum stated by the petitioners; moreover the proposal does not address in what manner the credit union may respond to the petitioners if the amount they are willing to pay is unreasonable given the scope of their request, or if responding only partially in light of a limitation on cost recovery would distort the “information picture” presented in the response. Accordingly, in the face of a cost limitation imposed by the requesting party, all options are unacceptable and the

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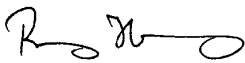
credit union ought to be excused from a response.

- NCUA estimates that it will take an FCU approximately 20 hours to evaluate a petition, locate the materials, and make them available for inspection and copying.
 - We do not believe that 20 hours is reasonable, as it is impossible to estimate the scope of materials requested in a petition.
- NCUA does not believe that Members will use this petition authority often.
 - We do not agree with this assessment. We believe that the public media will emphasize this new regulation and spin it as new rights for the Members. This media attention will initially cause an excessive number of petitions and a disruption in the credit union movement.

In summary, we respectfully submit that we believe it is unnecessary and unwise to create new, untested rules setting up a boiler-plate or cookie-cutter approach to a very sensitive task when other, more measured and appropriate approaches are available.

Thank you again for the opportunity to express our views on this proposed new rule to Part 701 – Organization and Operations of FCUs.

Sincerely,



Rudy Hanley
President/CEO