

**Jordan, Sheron**

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**From:** \_Regulatory Comments  
**Sent:** Thursday, May 10, 2007 10:23 AM  
**To:** Jordan, Sheron  
**Subject:** FW: Robert Pyfer Comments on Proposed Rule 701.3

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**From:** Bob Pyfer [mailto:pyfer@mcun.org]  
**Sent:** Wednesday, May 09, 2007 3:15 PM  
**To:** \_Regulatory Comments  
**Cc:** mdunn@cuna.com; 'Donya Parrish'; 'Tracie Kenyon'; 'Janeth'; 'Bob Pyfer'  
**Subject:** Robert Pyfer Comments on Proposed Rule 701.3

To: NCUA Board and Staff

From: Robert Pyfer, General Counsel  
Montana Credit Union Network  
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406-442-9081 ext. 168

Thank you for the opportunity to comment. We are very supportive of the proposal. The issue of member inspection rights comes up from time to time with our Montana credit unions, usually relating to requests for board minutes, and we have looked to state corporation law as NCUA opinions have instructed. We believe it is much better to have a clear regulation specifically applicable to credit unions. We have three comments and suggestions:

**\*Harmful Purpose.** One of the concerns that credit unions have when minutes are requested is that some information might be included that is strategic in nature and potentially cause competitive harm if disclosed. Examples might be discussion of a particular marketing theme or idea, or that a branch might be pursued in an area that other financial institutions might also find desirable, along with timetables and other sensitive business information. While the analysis on page 10 indicates that competitive injury issues can be brought to the regional director under sub (f) of the regulation, we would like to see specific language added to the regulation. We suggest adding to sub (b) the following underlined language in the third sentence: "The petition must also state that the inspection is not desired for any purpose in the interest of a business or object other than the business of the credit union or that could lead to competitive injury to the credit union..."

**\*Membership Lists.** The analysis on page 8 indicates that the fact that a person is a member is protected. It would seem that access to a membership list would be essential to soliciting petition signatures. There are other times that members may need to solicit signatures, such as for director nominations or for special meetings of members. Not having direct experience with this process, I wonder how a member can go about soliciting support without knowing who the other members are. The fact that a person is a member without any other financial information would not seem to be a significant invasion of privacy. If it is within the agency's authority, we would suggest that access to membership lists be allowed if sought for petition purposes.

**\*Preemption of State Law.** Sub (c) of the proposal states that, "Member inspection rights under this paragraph are in addition to any other member inspection rights afforded by law, regulation, or the credit union's bylaws." This implies that if a state corporation law provides greater rights than the regulation, the state law must be given effect. Under both the Model Business Corporation Act and the Model Nonprofit Corporation Act, adopted in Montana and most other states, individual shareholders or members can seek to inspect on their own and without obtaining petition signatures. This would be a greater right that would have to be given effect under this language, thus nullifying the petition requirements, or at best causing confusion and possible litigation. The language could

cause confusion in other areas as well, as courts try to sort out what is indeed an additional right and what is truly inconsistent. In place of this language we would suggest language clearly stating that the regulation fully preempts state law in the area of member inspection rights.

Again, thank you for your consideration and the opportunity to comment on behalf of Montana's credit unions.