



May 9, 2007

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

**RE: Member Inspection; Request for Comments.**

Dear Ms. Rupp:

Thank you for the opportunity to comment on the NCUA's proposed rule to amend its regulation regarding member inspection rights of credit union books, records and minutes. While this proposal purports to standardize and clarify existing member inspection rights, a review of NCUA legal opinion letters and various litigation outcomes suggests that new policy is being created.

Member inspection rights - Minutes. The definition of minutes to include documents, reports, studies and visual aids considered by meeting attendees is unnecessarily broad and may encourage credit unions to minimize the use of such information. Boards looking to protect proprietary information may rely on more generalized presentations at board meetings and maintain only basic meeting minutes. Minimally sufficient minutes can be detrimental to the membership, directors and the NCUA. Thorough minutes can document due diligence to address fiduciary responsibilities and place decisions in context. Proper minutes can help NCUA identify processes that lead to positive outcomes and assist in critiquing those that produce unfavorable results.

Member inspection rights - Inspection and copying. Establishing a general rule of allowing copying will have the effect of permanently placing internal information in the public domain. Once information leaves the control of the FCU without confidentiality restrictions, and even with regional director conditions, it is forever at risk of being obtained by unlimited users for any number of purposes. FCUs spend significant funds for security systems, encryption and internal controls to safeguard sensitive and proprietary information. Competitors, potential and actual litigants, and other third parties can use this information to target business practices, supplement litigation strategies against the FCU and gain insight as to internal controls and systems which were previously kept under the FCU's control.

Petition for inspection - Minimum signature requirement. The one percent rule, subject to a minimum number of 20 signatures, exposes small asset FCUs to an unreasonably low threshold of members to burden board decisions such as branching strategies, fees and rates. For larger credit unions like DFCU Financial, a maximum number of 250 members is less than one sixth of

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one percent of the membership. Such a de minimis percentage exposes larger FCUs to disruptions by a relatively very small number of members. We recommend that the absolute number of signatures range from 250 for smaller credit unions to a simple one percent of members at the maximum limit. A higher overall limit will help ensure that information requests are sought for issues material to a significant number of members.

Petition for inspection - Proper purpose. The minimal standard for establishing a proper purpose, and the inability of credit unions to effectively challenge it, open the door for almost limitless reasons to access the records. Once documents are disclosed, the FCU and NCUA will have no information about subsequent access to, and copying of, the produced documents. NCUA uses the examples of protecting members' financial interests and ascertaining possible mismanagement. Given the substantial regulator oversight, internal and external audits and extensive public financial reporting, it is unlikely that a group of members will independently uncover mismanagement at a credit union using this proposed regulation.

Inspection Procedures. Inspection rights should be limited to members only or their attorney as designated in writing, not simply any "agent" as proposed. Fourteen days may be sufficient to identify and prepare records for reasonable and clear requests. If however, the request is for very sensitive records and comes in between board meetings, the FCU should be given more time to discuss the request with the board of directors.

Confidential books, records and minutes - Information about credit union employees or officials. More weight should be given to the interests of senior management's privacy. Disclosing actual resumes and employment applications would be irresponsible given the prevalence of fraud and identity theft today. Boards determine compensation based on industry benchmarks, intangible factors and leadership that will not be present when compensation figures are posted to some website or reported in the media. Publicizing compensation out of context can be used to facilitate involuntary mergers and manipulated to portray the credit union industry in a negative way. The recently proposed regulation on merger related compensation records (12 CFR 708b) provides a more reasonable approach by limiting access to review of documents on the FCU's premises without the right to make or retain copies.

Confidential books, records and minutes - Other considerations. In determining whether information should be protected, NCUA should look beyond 1950's case law and factor in the proliferation of technology like email and the internet which make global distribution of internal records extremely easy.

NCUA states, "credit unions do not generally have trade secrets, that is, secret formulas or technology on which the success of the organization is dependent..." Any well run and successful credit union has substantial investments in marketing strategies, demographic studies, staff and other tools that are used to target members and market segments. Every major strategic decision like branch and ATM locations and pricing decisions should be based on extensive use of internal and external information. Such information is expensive to compile and disclosure of it can be detrimental to an FCU. A properly run credit union performs periodic critical self-assessments for strengths and weaknesses relative to its product offering and service proposition. The reality is that there is competition from within and outside the credit union industry and credit unions cannot afford to lose their competitive advantages in this fashion. It would be irresponsible for a board, staff or the NCUA to divulge information that would be ordinarily privileged in litigation. In today's litigious society, no credit union knows when the

next lawsuit will be filed against it or what it will be about. Attorney-client, accountant-client and other such relationships must continue to be protected by laws and regulations. In the course of its oversight role, NCUA has always had the ability to seek such information if it finds it necessary and this information should continue to be properly safeguarded.

Costs. This section does not include attorney fees and possible litigation costs that may result from this proposal. The FCU may be in the middle of some major event like a merger, conversion or other significant issue that will dictate using counsel and other resources to promptly and responsibly respond to access requests.

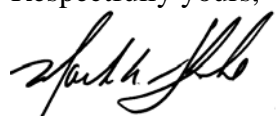
Dispute Resolution. Such matters should be left to highly trained and independent arbitrators not NCUA Regional Directors who lack experience and independence in such matters. Regional Directors are expert at administering a regional office and overseeing the safety and soundness of thousands of credit unions. Their experience does not include serving as a director or actually running a sophisticated financial institution. The hallmarks of a good arbitration system are experienced, independent and fair arbitrators who gather and weigh evidence to make a decision in which they have no interest in the outcome. Regional Directors are not independent in deciding conflicts when the outcome is most often directly related to matters (e.g. a conversion, merger or other issues) that affect a Regional Director's responsibilities. The lack of independence and experience may lead to unnecessary and burdensome litigation costs for the FCU, its members and the NCUA.

NCUA estimates five petitions a year. Given the increasing number of mergers and conversions as well as the advent of bank acquisitions and hostile merger attempts, it is likely that there will be more than five and that most of them will be very contentious.

In summary, the NCUA's proposed disclosure should be objective and neutral in its language and adhere to the long-standing policy of allowing for internal resolution of member disputes. In its current state, the proposal gives unwarranted powers to both de minimis member groups and the NCUA's Regional Directors.

Again, thank you for the opportunity to comment on this proposed rule. If you have any questions please contact me at (313)336-2700.

Respectfully yours,



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cc: Credit Union National Association  
National Association of Federal Credit Unions  
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