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

RE: *NCUA Proposed Rule 701.3 Member Inspection of Credit Union Books, Records, and Minutes*

Dear Ms. Rupp and Members of the NCUA Board:

On behalf of the leadership of Ent Federal Credit Union (Credit Union), thank you for the opportunity to provide our perspective on the issues addressed in the proposed regulation.

First, we welcome the NCUA's interest in providing consistent guidelines for member access to federal credit union records. Clearly, it is in the best interests of both members and credit unions that the "member-owner" structure provides appropriate access to pertinent records for members to verify or otherwise ascertain that pending actions approved by our Credit Union Board of Directors are in the best interests of the membership. We offer the following comments regarding the Proposed Rule.

1. **Consistency with Standard By-Laws** – This proposed regulation comes at the same time that the NCUA is renewing its role in establishing and enforcing FCU model bylaws, in part to address issues raised during recently, highly publicized credit union conversion activities. It may be appropriate to "test" some of the proposed language in revised standard by-laws before formalizing them in Federal regulation. At a minimum, we suggest that the Proposed Rule be consistent with FCU model bylaw provisions. The minimum number of petition signatures should be consistent with other petition requirements. For example, the minimum number of petition signatures for access to the records described in the regulation should be increased to the lesser of 1% of members or 500 members (instead of 250). With our current membership of more than 179,000, this would increase the required percentage of member signatures on the petition from .14% to .28% - still a significantly small fraction of our total membership.
2. **Scope of Available Records.** We have several concerns regarding the scope of available records.
 - a. First, the Proposed Rule provides inadequate protection of personal information which may appear in minutes of the proceedings of the Board and its committees. Personal information about individual employees and members, that may not be protected under the NCUA Privacy Rule (part 716), is routinely considered by or provided to the Board in its oversight capacity, but must be



- b. protected from disclosure. As drafted, the Proposed Rule threatens the Board's ability to be fully informed in taking Credit Union actions and the Credit Union's ability to maintain credibility and the confidence of employees and members about the privacy of personal information, not otherwise protected under law. The proposed Rule purports to limit member access only to "non-confidential" portions of the Credit Union's books, records and minutes, but fails to provide any protection due to the narrow provisions of paragraph (d) of what is confidential. We believe paragraph (d) should be revised to include an exclusion that would give the Board authority and flexibility to protect portions of records that the Board reasonably believes to be of a confidential nature that would be in the Credit Union's best interest to protect. Alternatively, we suggest incorporation of appropriate language, perhaps modeled on provisions of the Freedom of Information Act, to allow the Credit Union to redact employee or member personal information in materials made available under this proposal that may not otherwise be adequately protected.
 - c. Similarly we believe that there are many documents which in the planning and operation of our Credit Union constitute proprietary information, or at least information the premature disclosure of which would adversely affect the Credit Union's operations and, thus, adversely affect the members over the long term. We suggest the NCUA consider language which would allow the Credit Union reasonable discretion to limit access or restrict distribution of such information that is clearly proprietary, the disclosure of which will harm the Credit Union.
 - d. The proposed rule does not require that a Credit Union records request be based upon a "proper purpose". Rather the Proposed Rule merely provides that "a purpose" be stated and then provides a series of exceptions that are barely relevant. We believe the Proposed Rule should provide for records request only upon a member group stating a "proper purpose" for a records request. For example a proper purpose for a records request to review Board due diligence regarding a merger or conversion would be appropriate. However, a records request base only upon a stated purpose to protect member financial interests is too broad and invites the type of Credit Union/member dispute that NCUA is trying to prevent.
3. **Lack of Confidentiality Protection** – In addition to the concerns discussed above, the proposed rule is void of any protections for the Credit Union's books, records or minutes once disclosed to a group of members. As drafted, the Proposed Rule would not prevent the members from disclosing confidential and proprietary Credit Union information to anyone or freely posting or distributing such information to news media or over the Internet. We strongly urge the NCUA to revise the Proposed Rule that would allow the Credit union to require a confidentiality/ non-disclosure agreement by the member (or members), prior to and as a condition of accessing the requested records.
4. **Disclosure of compensation and benefits for senior executive officers.** We understand that this provision is consistent with the social movement toward greater transparency and accountability among organizations of all sizes. However, we believe the Proposed Rule should provide for a phased implementation of this requirement for



existing Credit Union executive employees. If NCUA adopts the existing Proposed Rule which permits extremely broad access to Credit Union executive compensation information, we will have an immediate conflict between the member's rights under this Rule and confidentiality obligations that the Credit Union has already extended to existing executives under employment agreements. The Credit Union's forced disclosure of information that is otherwise protected will cause the Credit Union to breach its agreements or at least give rise to a change in conditions of employment for the affected executives that could threaten the Credit Union's ability to retain such executives.. A reasonable period, for example, 3-5 years for credit unions to incorporate this provision would allow our Board and affected executives to make appropriate adjustments without creating immediate legal exposure to the Credit Union. The Propose Rule should also make clear that the disclosure addresses only compensation amounts and not actual contract provisions or decisions affecting actual payments made to the executives as a result of tax or benefit elections (e.g., insurance, deferred compensation, etc.).

We respectfully request that NCUA consider significant revisions to the Proposed Rule to provide better protection for the Credit Union and its records and to minimize the potential legal exposure that our Credit union would currently have under the draft Proposed Rule. Please direct any questions regarding these comments to James Moore, Senior Vice President, Corporate Communication and Development, Ent Federal Credit Union, (719) 550-6574.

James P. Moore
Senior Vice President
Corporate Communication and Development