



June 22, 2007

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

Re: Member Inspection of Credit Union Books, Records, and Minutes
72 FR 20061 (April 23, 2007)

Dear Ms. Rupp:

America's Community Bankers (ACB)¹ appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposed rule on member inspection of federal credit union books, records, and minutes.² In addition to representing the nation's community banks, ACB's membership includes credit unions that have expressed an interest in converting their charters to mutual savings banks or associations.

The proposed rule would provide that a group of credit union members representing approximately one percent of the credit union's membership may inspect and copy the "nonconfidential portions of the credit union's books and records of account and minutes of the proceedings" of the board and board committees. Credit union members must submit a petition for inspection that states a proper purpose for examining the documents. Confidential business information would receive very limited protection under the proposal. The preamble to the proposal states that the rule would provide confidential treatment to credit union materials that cannot be released under federal law, materials that contain nonpublic personal information, and personal information about federal credit union employees and officials. Internal memoranda, trade secrets, and privileged information would not be protected under the proposal.³

ACB Position

ACB supports transparency in corporate governance matters. We support the disclosure of appropriate and accurate information about financial performance and business operations in a timely manner. Nevertheless, we are very concerned about the NCUA's proposal. We do not believe that the proposal is consistent with existing corporate governance standards and

¹ America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit www.ACB.us.

² 72 *Fed. Reg.* 20061 (April 23, 2007).

³ *Id.* at 20065.

expectations, we do not believe that the premise for the proposal is correct, nor do we believe that there is a demonstrated need for the proposed regulation. Moreover, ACB believes that the NCUA proposal is contrary to the recent emphasis on corporate governance on the fiduciary obligations of boards of directors.

ACB is very concerned about the treatment of confidential information in the proposed rule. The proposal would enable a group of credit union members to inspect and copy information related to the credit union's internal planning, deliberations, and business decisions. Publicly traded and cooperatively-owned companies expect that their records and deliberations about strategic matters will remain confidential and will not be subject to public distribution. The proposed rule could result in proprietary information being prematurely placed in the public domain. In addition, given the wide membership footprint of some credit unions, the proposed rule would make it possible for plaintiffs to obtain information that would otherwise be privileged in the course of litigation.

We are concerned that the proposal would be used primarily by well-funded outside interest groups that do not have meaningful ties to the credit union involved. We are aware that such groups exist and that they philosophically oppose any credit union conversion to a mutual savings bank. We believe that the proposed rule would enable these groups to disrupt preliminary discussions and due diligence gathering about this charter alternative and would discourage a credit union board of directors from fully exploring all strategic charter options.

Treatment of Confidential Information

ACB disagrees with the parallel the NCUA attempts to draw between the rights of a credit union member and the rights of stockholders of a federal savings association. Credit union members do not purchase an ownership interest in their institution, nor do they have liquidation rights.

While we disagree with the NCUA's comparison of these ownership interests, we are even more troubled by the NCUA's characterization of the OTS rule governing the right of shareholders of a federal stock association to inspect books and records of account, minutes, and record of stockholders as provided in 12 CFR 552.11.

The preamble to the proposed rule states that the OTS rule has no confidentiality provisions related to internal memoranda, trade secrets or privileged information. While the OTS rule does not explicitly protect these kinds of information, the regulation limits the right of inspection to "nonconfidential portions of its books and records of account, minutes and record of stockholders...." We believe that the OTS regulation is intended to protect the confidential and proprietary information pertaining to an association's business decisions and strategy. We believe that the OTS regulation is intended to be consistent with established corporate governance practices and expectations that balance the shareholder's right to inspection with the association's legitimate interest in safeguarding its highly confidential information and trade secrets.

For the above reasons, we believe that the proposed rule is extreme and that it should be significantly amended or withdrawn.

If the NCUA proceeds with adopting a regulation on the inspection of a credit union's books and records, we request that the NCUA amend the proposal to protect confidential, proprietary, and commercially sensitive business information. This approach would strike a better balance than the current proposal and would be consistent with the Freedom of Information Act laws and regulations by which the NCUA and other federal banking regulators must abide.

At the very least, any regulation should enable a credit union to require a requestor to enter an agreement not to disclose confidential information.

Dispute Resolution

The proposal would provide that, in the event of a dispute between a federal credit union and its members concerning a petition for inspection of records, either party may submit the dispute to the appropriate NCUA director. The NCUA director would have the authority to decide whether the records should be released or whether the costs of researching and copying the documents is appropriate.

We are concerned that a NCUA regional director does not have the independence necessary to resolve such disputes if the proposed rule is adopted. Given the NCUA's staunch opposition to credit union conversions to mutual savings banks, we are very concerned that a NCUA regional director would not be an unbiased decision maker in the event that a credit union and a group of members disagree about whether the members should have access to credit union records that may involve candid board discussions about charter options for the credit union going forward.

Conclusion

Thank you for the opportunity to comment on this matter. Please contact the undersigned at 202-857-3187 or kshonk@acbankers.org or Patricia Milon at 202-857-3121 or pmilon@acbankers.org with any questions.

Sincerely,



Krista J. Shonk
Senior Regulatory Counsel