

**Jordan, Sheron**

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**From:** \_Regulatory Comments  
**Sent:** Monday, June 25, 2007 7:54 AM  
**To:** Jordan, Sheron  
**Subject:** FW: Proposed Rule - Member Inspection of Credit Union Books, Records, and Minutes 12 CFR Part 701

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June 8, 2007

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

Re: Proposed Rule – Member Inspection of Credit Union Books, Records, and Minutes 12 CFR Part 701

Dear Ms. Rupp:

I am writing on behalf of Truliant Federal Credit Union in response to NCUA's proposed rule on Member Inspection of Credit Union Books, Records and Minutes. Truliant Federal Credit Union is a \$1.1 billion multiple common bond credit union serving over 170,000 members in and around North Carolina.

Truliant has been a consistent advocate of transparency in credit union governance, but such transparency must be balanced with the need to provide excellent member service without unnecessary regulatory burdens responding to requests for information. We agree that a standardized rule for all federal credit unions might be easier to administer in some respects, but are concerned that a new regulation to address this is unnecessary.

NCUA stated that it wanted to reverse its former reliance on state law because state law can be inconsistent and "regulating member inspection of FCU records is preferable to reliance on state corporate law." The proposal did not state that multi-state and multi-national corporations generally apply the laws of the state of incorporation when dealing with access to corporate records and do not have to interpret 50 different state laws to determine compliance. Credit Unions generally can apply the law where they are headquartered and have the same uniformity. Given the compliance burden of other corporations applying state law is not overly onerous, we recommend that NCUA continue to allow state corporate law to apply to member inspection of credit union books, records, and minutes.

If NCUA chooses to adopt a rule on this issue, we are concerned that particular sections of the proposed rule could be overly burdensome without significant benefit to the membership. Additional comments on specific aspects of the proposal are stated below.

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### Reliance on the OTS Rule

The Board looked to the Office of Thrift Supervision (OTS) rule governing the right of shareholders to inspect the books, records, and minutes of federal stock savings associations as an example for the proposed rule. The major parts of the OTS rule were developed in 1975 without consideration of the explosion in availability of information, speed of communication and privacy issues brought on by the Internet. The OTS rule also requires \$100,000 minimum deposit and the requesting party be a stockholder for six months prior to making a request for access. Under NCUA's proposal, 250 non-members could join for \$5 each in many credit unions and state they have an interest in how the credit union is run and gain access to a multitude of records. Such a small group with a minor investment in the credit union for a short period of time should not have almost unfettered access to credit union records.

### Petition Requirements.

As referenced above, the 250 flat cap on petitioners is unacceptably low. For Truliant, that would mean less than one-sixth of one percent (.15%) would be able to petition the credit union for access to its books and records. We would also note this cap is less than the cap for nomination by petition to the credit union board (500) and less than the cap for members to call a special meeting (750). We believe that the 1% limitation with a flat cap is reasonable.

### Proper Purpose

The proposal sets out definition of proper purpose as "related to the business of the credit union." We agree that information related to the merger or conversion of a credit union would be a proper purpose and such information would be available in the minutes of the credit union. We do not agree with the other examples cited by NCUA as being a proper purpose.

### Executive Compensation

The proposed rule creates an exception to confidential information for compensation data for "senior executive officers." Access to such records is an important issue that should be carefully studied by NUCA. We believe it would be better to not address this large issue as a small part of this rule and instead address the issue in a separate rulemaking based on further study by groups such as NCUA's outreach task force.

### Trade Secrets and Privileged Information

The proposed rule also does not protect trade secrets and legally privileged information from disclosure. We disagree with NCUA's assessment of these two issues. There are many credit union documents that could be considered "trade secrets" and should therefore be subject to protection. Information technology security plans and management and board succession planning are two documents that readily come to mind. As for privileged information, the proposal does not make an exception for communications between the credit union and its legal counsel. The attorney client privilege is one of the oldest privileges in the United States legal system. We urge NCUA to not allow disclosure of information that is protected in so many other contexts.

### Time Frame to Respond to Petition

NCUA proposes a 14 day time period for a federal credit union to respond to a petition. We do not believe this allows sufficient time to verify signatures, possibly consult with legal counsel regarding the request, and work out the logistics of retrieving the requested data without disclosing confidential information.

To summarize, Truliant Federal Credit Union believes that a new regulatory scheme on member access to credit union books and records is not necessary. If NCUA proceeds with the rulemaking, we encourage the agency to rewrite the proposal taking into account the revisions suggested in this letter.

We appreciate the efforts made by NCUA thus far in the rulemaking process and hope that the comments provided from Truliant and other credit unions will further enhance the process. Please call me at (336) 659-1955 if you have any questions.

Sincerely,

/s/ Marc Schaefer  
President/CEO  
Truliant Federal Credit Union