



Credit Union National Association

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June 21, 2007

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

Re: NCUA's Proposed Changes to 12 CFR  
701, Member Inspection of Credit Union  
Books, Records, and Minutes

Dear Ms. Rupp:

This letter is submitted on behalf of the Credit Union National Association in response to the agency's proposal to amend 12 CFR 701 to require federal credit unions to respond within fourteen days to petitions for member inspection of credit union books, records and minutes. By way of background, CUNA represents approximately 90 percent of our nation's 8,600 state and federal credit unions, which serve nearly 87 million members. The views reflected in this letter are based on the deliberations of the CUNA Federal Credit Union Subcommittee and the CUNA Governmental Affairs Committee, as well as comments we have received from leagues and credit unions.

### **CUNA Supports Principles Regarding Informed Members**

As discussed in greater detail below, CUNA cannot support the proposal as issued for comments because its approach is unbalanced, and it raises far too many practical and operational concerns about how it would be implemented.

However, even though we are not supporting this proposal, CUNA continues to recognize and support the view that members are entitled to reasonable access to key non-confidential information that impacts members' decisions concerning their credit union.



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This position was reaffirmed by the CUNA Board earlier this month when it adopted a new policy on member access to books, records, and minutes. The policy incorporates a set of principles for credit unions to consider when the issue of member access to credit union information arises, which are:

- Credit union members are entitled to reasonable access to non-confidential information regarding their credit union, as long as the stated purpose for requesting the information is related to the business of the credit union and the request is specific and limited in scope.
- The credit union should be able to decide whether it provides the actual account records, minutes or provides a summary or an extract that is limited to information which responds to the specific request.
- However, access to credit union information should be provided through an orderly process that minimizes the credit union's costs and burdens of providing the information and that limits disruptions to the credit union's business.
- Elements of an orderly process would include a requirement that members pay for the reasonable costs of providing the information; that minutes, books and records would be available only through a petition process appropriate for the credit union based on the number of members and other factors; and that nonpublic personal information about credit union members or employees, or information that is prohibited by law from disclosure should not be subject to review.

These principles are best implemented through internal credit union procedures, rather than through a new set of overreaching regulatory requirements.

As NCUA's Paperwork Reduction Act analysis accompanying the proposal indicates, future disputes regarding member access to information will be infrequent, as they have been in the past. To our knowledge, the context in which this issue has arisen (and the Supplementary Information does not indicate otherwise), has been a few credit union conversions. The agency has already regulated conversion disclosures, vastly improving the conversion disclosure process to make it more transparent and to enhance accountability of the credit union board to members.

These factors undermine the need for a broad regulation on member access to credit union information. In our view, NCUA's focus should be limited to how disputes regarding members' access to credit union information could be reasonably and fairly handled, as opposed to attempting to regulate all aspects of the member access process. We discuss this further in our comments below regarding NCUA's proposed dispute resolution procedures.

## **What Records Are Subject to Access**

In addition to our general concerns about the proposal, we have a number of concerns about specific provisions. Under the proposal, members would have access to the minutes of all meetings which would include any “summary or recording of the proceedings and all documents, reports, studies and visual aids considered by meeting participants.” NCUA acknowledges this is a “broad interpretation” but states such a reading is appropriate “for example in situations where an FCU membership vote is required.” While we question that such an expansive interpretation is appropriate even when a member vote is involved, the proposed, sweeping interpretation would apply whether the request was connected to a member vote or not. We agree that members should have access to summary information that will help them make informed decisions, but do not believe NCUA has provided sufficient basis or justification for access to such a virtually unlimited array of documents.

Along with access to minutes, the proposal addresses access to “books and records of account.” We are very concerned that the agency has not made it clear what is covered by this term. The Supplementary Information accompanying the proposal states, “the plain language meaning of ‘of account’ supports a limitation to accounting records,” but the agency does not sufficiently discuss what it means when it refers to such records. Credit union members are already entitled to a summary of the annual audit report and may request from the Supervisory Committee access to the full audit report. NCUA has not sufficiently clarified what additional records would be subject to access.

In an effort to describe the information NCUA believes members are entitled to, the agency concludes, “the Board believes the financial interests of members are adequately protected by combining a broad interpretation of minutes with a more restrictive interpretation of the phrase books and records of account.” However, the agency does not elaborate on this language. Such vagueness undermines the agency’s objectives in promulgating a new rule.

## **The Petition Process**

As indicated above, members would be able to access records under a petition process. There are a number of concerns and unanswered questions regarding the proposed process. The agency would require at least one percent of the members, with a minimum of 20 and a maximum of 250 members required to sign the petition. NCUA said it derived these numbers from its standard FCU bylaw on member nominations by petition to run for an FCU board, but did not explain why that election process is the correct standard for member access to books and records. Also, the bylaw as published in April 2006 contains options that call for a minimum of 20 and a maximum of 500 to sign the petition. Thus, we question whether the signature requirements as proposed are appropriate.

NCUA would require members to state a proper purpose for obtaining access to information at the credit union and states that members may want to know more about the board's decision to close a branch or discontinue a service. These kinds of decisions are business judgments that are the responsibility of the board to make. It is not clear why an open-ended range of documents about such decisions would be appropriate for members to review.

The proposal would create a presumption that the purpose stated by the members in the petition is proper and only with "substantial evidence" to the contrary could a federal credit union deny a petition for an improper purpose. We do not agree that the burden of proof should be born by the credit union. The agency states that its approach is appropriate because petitioners must state that they are not intending to sell the information and that they have not been involved in the sales of such information in the last five years; they must also convince the required number of other members to join the petition. These requirements will help ensure a proper purpose, according to the agency. NCUA has not addressed how it reached that conclusion, and we question whether the fulfillment of those requirements is related to ensuring the stated purpose is proper. Also, NCUA has not described what "substantial evidence" would encompass. Furthermore, it is not clear how a credit union that questions the purpose statement would be in a position to gather "substantial evidence" that the purpose is not proper. In any event, we feel providing such evidence would improperly divert the credit union from its primary purpose of serving its members.

### **The Inspection Process**

NCUA would require the credit union to respond to the petition in 14 days. This is an arbitrary time frame, which is unreasonably short.

The inspection process contains several other arbitrary features. Under the proposal, a regional director could impose conditions on a particular request for information. We question whether this is a proper role for the regional director and what criteria would be used to impose additional limitations on either the petitioners or the credit union.

The Supplementary Information indicates that NCUA expects credit unions and petitioners to work out reasonable arrangements for making the information available. This could include, according to NCUA, requiring the credit union to move documents to branch locations convenient to petitioners. This has the potential to be quite burdensome for credit unions. If NCUA regulates on member access to credit union information, we believe the credit union should determine where the documents will be made available.

## **Cost Reimbursement**

We agree that members should reimburse credit unions for costs they incur in providing records to members. However, we do not support the cost reimbursement concept that the proposal indicates. The proposal would cover direct costs associated with search and duplication of specific documents but does not seem to cover document relocation or other indirect costs the credit union that, but for the petitioners' request, the credit union would not incur. NCUA states that it has patterned its approach after that of the Office of Thrift Supervision for stock thrifts. While reimbursement of direct costs to a stock savings association may be appropriate, we do not think NCUA's approach strikes a fair balance between the interests of credit unions and petitioners, as all of the credit union's costs not reimbursed by the petitioners will be born by the other members.

## **Confidential Information**

NCUA is proposing that the compensation of senior executive officers be subject to review. NCUA's Outreach Task Force is considering whether the agency should collect data on executive compensation and as we understand it, will be concluding its work later this year or early 2008. Rather than address the issue of access to information about executive compensation in this proposal in a piecemeal fashion, we suggest that the agency consider it in the context of the larger review of data collection.

We are concerned that certain information that should be confidential would be subject to review, such as employee performance information or marketing and business plans. The credit union's board, consistent with its fiduciary duties, should have the prerogative of redacting, summarizing or precluding access to such information.

## **Dispute Resolution**

In our view, NCUA's involvement in the matter of member access to credit union information should center on how disputes between members and a credit union, which should be rare, could be resolved in an appropriate manner, and in recognition of the role of the credit union's board as well as the rights of the members. We do not believe the proposal achieves that balance.

Under the proposal, members or an FCU could submit a request for dispute resolution to the appropriate NCUA regional director when a disagreement arises regarding the petitioners' request for information. In our view, the Supervisory Committee is entitled to be involved in this process, if the credit union determines that is appropriate. While the Supplementary Information discusses the Supervisory Committee's possible role, the proposal does not indicate that

petitioners should first work through any internal procedures that a credit union may establish before the regional director is involved.

Also, the proposal imposes a hasty 14 days on credit unions to respond, but there would be no deadlines that regional directors would have to adhere to. The regional director's decision would not be subject to appeal.

We think due process for all parties demands a fairer dispute resolution approach that: allows the credit union to utilize internal procedures first to address disputes before NCUA is involved; includes an appeals process; and applies the same time constraints to NCUA that it imposes on credit unions.

## **Conclusion**

In view of these major and comprehensive concerns, CUNA cannot support the proposal as drafted and believes more time is needed for the agency to consider operational as well as normative issues that have arisen in connection with the matter of member access to credit union information.

As we suggested with the proposal on merger compensation, if NCUA feels it must proceed with a regulation, we urge the agency to consider credit union concerns including the ones we have raised, and reissue a new proposal for comment before taking action on a final rule. Thank you for the opportunity to express our views on the proposal.

Sincerely,

A handwritten signature in cursive script that reads "Mary Mitchell Dunn". The signature is written in black ink and is positioned to the left of a vertical red line.

Mary Mitchell Dunn  
CUNA Deputy General Counsel and  
Senior Vice President

cc: CUNA Governmental Affairs Committee Chairman Tom Dorety  
CUNA Federal Credit Union Subcommittee Chairman Bill Raker