

American Airlines Federal Credit Union

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VIA FACSIMILE 1-703-518-6319

June 19, 2007

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

RE: Comments on Proposed Rule 701.3

Dear Ms. Rupp:

I am writing on behalf of American Airlines Federal Credit Union (AA Credit Union). AA Credit Union has over \$4 billion in assets, is the ninth largest credit union in the United States and has over 209,000 members. We have members located throughout the United States including Hawaii and Puerto Rico. I am writing in response to the National Credit Union Administration's (NCUA) request for public comment on member inspection of a federal credit union's (FCU) books, records and minutes.

Member Inspection Rights

While AA Credit Union agrees that a narrow definition of "books and records of account" be limited to accounting records, we do not agree that a broad interpretation should be given to the meaning of "minutes of the proceedings of the credit union's members, board of directors, and committees of directors" as proposed. This proposal also includes "any summary or recordings of the proceedings and all documents, reports, studies and visual aids considered by the meeting participants."

Such a broad definition of minutes would have a chilling effect on the information that would be shared at board or committee meetings. At AA Credit Union, we have various committees made up of directors such as Governance, Compensation, Technology and Finance. Confidential and sensitive materials are shared at these meetings. For example, at our Compensation committee meetings, sensitive team award payouts (variable compensation) are discussed. At Governance committee meetings, information is shared about a director's performance as a board director when discussing the slate of directors to be recommended to the Board. At Technology meetings, information is shared regarding potential vulnerabilities and/or risk

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assessments. Finally, at Finance committee meetings, due diligence reports are shared about the assessments of our investments and/or the companies that the Credit Union retains.

To include these specific types of information in the definition of minutes would stymie the sharing of information because of the fear that the information would somehow be used against the Credit Union whether it be by a competitor or a disgruntled member. Additionally, the regulation could have the unintended effect of encouraging FCUs to be so detailed in their minutes to avoid the prospect of litigation.

The definition of “minutes” instead should be tightened so that only the minutes themselves and/or a summary of the minutes are included in this definition. A FCU should have the option of determining what type of information to share that meets the request in a petition. If the “minutes” definition is kept in its expanded form, credit unions would be encouraged to have legal counsel review all minutes in detail so that “words” could not be twisted in meaning. It could also have the unintended effect of doing away with some committees, not putting important details in minutes or board books, having more “off the record” conversations and may even force credit unions to abandon certain legitimate practices to avoid putting it down in writing.

Petition for Inspection

Minimum signature requirement

The requirement that “at least one percent of the credit union’s members, with a minimum of 20 members and a maximum of 250 members” sign a petition should be amended. While we agree with the minimum number of members required to sign a petition, we strongly recommend that for larger credit unions that the maximum number of members required to sign a petition be increased from 250 members to at least one percent of a credit union’s membership.

At AA Credit Union, it is very easy for our members to obtain signatures of 500 members during the election process. To not require the maximum one percent to sign a petition requesting records could potentially create nightmares for larger credit unions in being constantly asked to provide various records. By not placing a higher cap on credit unions whose membership could easily obtain 250 signatures, it would invite unhappy members to constantly harass credit unions for information.

Additionally, only members in good standing who have been members for at least six months should be required to sign the petition. This would alleviate a deluge of new members joining for the sole purpose of obtaining information from a FCU. Furthermore, members who have caused the credit union a loss or employees who were terminated should not be entitled to sign a petition. These members due to the nature of their situation would already be upset with the FCU and the option of obtaining records to harass or embarrass the FCU would be too tempting.

Petition's particular purpose

The burden of proof for a credit union to prove that members requesting information is for an improper purpose is particularly high. A credit union would have no way of determining whether a purpose is improper until it was too late. By that time, the information would have already left the FCU and much damage could be done to the FCU.

Instead, the burden should be shifted to the members to show that the purpose for the request of information is legitimate. Even then a member can state any purpose on the petition to make it sound legitimate, but truly have an improper reason for requesting the information. A petition should also state with what persons or entities the information will be shared or given. That way a credit union may know upfront before they give the information requested whether they should object to the petition.

The purposes for which members can petition for information should be very limited in scope. It should be limited to those instances where a credit union is merging with another credit union and/or wants to change its charter to a thrift or bank. It appears that in only these serious circumstances would a member who is opposed to a merger or conversion stand to gain from filing a petition because its FCU would no longer exist after it is merged or converted.

The petition should not be used for other purposes such as why a credit union closed a branch, why it stopped offering a certain product or for questioning a director's qualifications. Members of a credit union already have other means available to them if they are not happy with their credit union. They may write a letter to the credit union's president, they may join another credit union or financial institution that is offering a better product or service or they may nominate another member to be a director as provided in a credit union's bylaws. None of these issues threatens the existence of the FCU as would a merger or a conversion. Therefore, there is no reason why a petition should be allowed in these situations.

Inspection Procedures

The NCUA is currently proposing that a credit union respond to a petition within 14 days of receipt and allow for the inspection or copying of records. The deadline to respond to a petition should be extended to at least 30 days up to a maximum of 60 days depending upon the list of requested documents. For a credit union to validate signatures, then to review the list of requested documents to determine which documents are confidential or which portions should be redacted and/or should be objected to and to then make copies and possibly deliver the copies of records to a branch that could be located in a different city or state requires more time than the proposed 14 days.

Furthermore, in litigation where a request for production of documents is made, it is the responding party's responsibility to verify that it is complying with the request and then in most cases it usually provides copies of the requested documents. A procedure similar to this should be enacted where it is solely up to the FCU to determine if it wants its records inspected before being copied, which could prove to be very burdensome. For example, a

FCU may not have available private space at a branch for a member to review various records before the member decides which documents should be copied or it may not have the manpower at a branch for a credit union employee to stay with the members while they are inspecting records.

Due to these types of situations, the FCU should be the one to decide how it would like to produce the records, which could also include just giving members copies of the requested records without the initial step of providing for inspections. As long as a credit union's representative were able to affirm that the records were true and accurate, this should suffice.

Confidential Books, Records and Minutes

It is extremely common for credit unions to have competitive trade secrets. A FCU spends a lot of money, time and resources developing its strategies and future plans to offer various products and services to its members and to remain competitive. These trade secrets and/or confidential materials should not be subject to petition by members.

Furthermore, the list of exceptions to the definition of confidential books, records and minutes should also include those records that are already protected by the attorney/client privilege. The attorney/client privilege is a legal concept that protects communications between a client and her attorney and keeps those communications confidential. This privilege encourages open and honest communication between clients and attorneys. The proposed rule could make it very easy for dissatisfied members and/or third parties to thwart this privilege especially where a credit union is preparing for or already in the midst of litigation against the members who have signed a petition. A credit union and its counsel must have the option of preserving the attorney/client privilege.

Information about Credit Union Employees or Officials

Information about the compensation of credit union employees should be limited to instances of merger or conversion situations where a certain threshold is met in terms of increases in compensation related solely to a merger or a conversion. To require a credit union to list the compensation of its officers would be a gross invasion of privacy to the officers, which is not always balanced by a members' right to know. Releasing this type of information would be detrimental to all the employees of a credit union.

Dispute Resolution

A different mechanism should be allowed for any objections to a petition. While regional directors have many worthwhile qualities overseeing the safety and soundness of credit unions, determining what types of information should be released by a credit union to its members is not one of them. Regional directors are not judges. They do not have the day-to-day knowledge or experience in making these types of decisions. They may also not have the impartiality to decide these issues. Additionally, if a FCU does not agree with a decision, it must have the right to appeal that decision whether it be to the NCUA board or in a court.

I thank you for all of your diligent efforts on this Proposal. While we believe that members have a right to know how their credit union is managed, they can already obtain much of this information by simply meeting with someone from a credit union management team, a board member, asking for the monthly financials, attending annual meetings, attending seminars offered by their credit union, reviewing the types of products and services that its credit union is offering, the loan rates offered and the dividends paid on their accounts. A member's need to know must be balanced so that there is no major disruption in a credit union's operations and that responding to these petitions do not take away from a credit union's day to day business of managing a credit union.

In the event the NCUA decides to move forward with this Proposal, I strongly recommend that the NCUA review the comments that are received, and then submit another proposal for comment before any final rules are adopted.

I appreciate the opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink that reads "John M. Tippetts". The signature is written in a cursive style with a long horizontal stroke at the end.

John M. Tippetts
President & CEO

cc: CUNA
NAECU