

December 24, 1992

Mr. John F. Joseph  
Joseph's Audit Service  
102 Panorama Drive Spartanburg, SC 29303

Re: Freedom of Information Act - Appeal (Your November 23, 1992, Letter)

Dear Mr. Joseph:

We received your Freedom of Information Act (FOIA) appeal on December 1, 1992. You state that in a November 18, 1992, letter, the National Credit Union Administration (NCUA) denied your request for examination reports for Independent Credit Association Federal Credit Union of Greenville, South Carolina, and Pickens County Educators Federal Credit Union of Liberty, South Carolina. We have determined that the records meeting your request should be withheld pursuant to the FOIA.

#### ANALYSIS

Exemption 8 of the FOIA (5 U.S.C. ~522(b)(8)) exempts information:

Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

Section 792.3(a)(8) of NCUA's Rules and Regulations (12 C.F.R. ~792.3(a)(8)) implements exemption 8 and adds the following:

This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

The courts have discerned two major purposes for exemption 8 from its legislative history: 1) to protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank's stability; and 2) to promote cooperation and communication between employees and examiners. See *Atkinson v. FDIC*, 1 GDS `80,034, at 80,102 (D.D.C. 1980). Either purpose is sufficient reason to withhold a report. Courts do not require agencies to segregate and disclose portions of documents unrelated to the financial condition of the institution. An entire report relating to the financial condition of the institution may be withheld. See *Atkinson*, 1 GDS at 80,103. We believe both purposes of exemption 8 are met. Therefore, the examination reports responsive to your request are withheld pursuant to exemption 8.

Pursuant to 5 U.S.C. ~552(a)(4)(B), you may seek judicial review of this appeal by filing suit to enjoin NCUA from withholding the documents you requested and to order production of such documents. Such a suit may be filed in United States District Court in the district where the requestor resides, where his principal place of business is located, or in the District of Columbia.

Sincerely,

Robert M. Fenner  
General Counsel

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