

April 14, 1997

Mr. Kunal V. Randery

Cornerstone Research

University Place

124 Mount Auburn Street

Cambridge, MA 02138

Re: Freedom of Information Act Appeal

(Your March 13, 1997 Letter)

Dear Mr. Randery:

On January 7, 1997, you submitted a Freedom of Information Act (FOIA) request to Patricia Slye, NCUA's Regulatory Affairs Specialist. You requested two categories of documents. First, for all federally insured credit unions receiving assistance under Section 208 of the Federal Credit Union Act, from 1985 to the present, you requested the name, charter number, state of location, asset size, date assistance was provided, type of assistance, and cost of providing assistance. Second, for all federally insured credit unions you requested the name, charter number, state of location, and CAMEL code for each year from 1985 - 1995. Richard S. Schulman, NCUA's FOIA Officer, denied your request on February 26, 1997. We received your appeal on March 17, 1997. Your appeal is denied pursuant to exemption 8 of the FOIA as explained below.

Exemption 8 of the FOIA 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.

5 U.S.C. 552(b)(8). CAMEL code ratings are assigned at the conclusion of NCUA (or in some cases the state regulator or NCUA/state joint) examination. Decisions on assistance provided pursuant to Section 208 of the Federal Credit Union Act are based on examinations of credit unions. All of the information requested is clearly within the purview of exemption 8.

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 examination information. The NCUA regulation implementing exemption 8 of the FOIA is found at 12 C.F.R. 792.3(a)(8). Section 792.3(a)(8) repeats exemption (8) and adds:

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.

Courts have interpreted exemption 8 broadly and have declined to restrict its all- inclusive scope. Consumers Union of United States, Inc. v. Heimann, 589 F.2d 531 (D.C. Cir. 1978). Examination reports, including the findings of examinations (in this case the CAMEL code rating), have been withheld from disclosure pursuant to exemption 8. In addition, matters that are related to such reports (examination follow-up - in this case a determination to provide 208 assistance) have been withheld from disclosure. See Atkinson, at 80,102. Records pertaining to a financial institution no longer in operation can be withheld pursuant to exemption 8. Gregory v. FDIC, 631 F.2d 896 (D.C. Cir. 1980). The information you requested is indicative of the financial condition of the credit unions.

Disclosure of what credit union members may perceive to be a negative CAMEL rating can clearly affect the credit union's financial security. We note that it is long-standing NCUA policy not to disclose any CAMEL rating, be it a CAMEL 1 or a CAMEL 5. Disclosure of only CAMEL 1 and 2 credit unions could certainly have a negative affect on credit unions not receiving such ratings. The financial security and stability of credit unions could clearly be affected by release of some or all CAMEL ratings. The CAMEL code information continues to be withheld pursuant to exemption 8.

Similarly, members may perceive provision of 208 assistance to indicate a weak and unstable credit union. You noted you have already received information requested on credit unions that received 208 assistance that were later either liquidated or merged. Although we believe such information could have been withheld pursuant to exemption 8 (*see Gregory, supra*), it was released pursuant to NCUA's discretionary authority. Information on operating credit unions that have received 208 assistance can and will be withheld pursuant to exemption 8 since its release could affect the financial security of the operating credit unions. You note that you would accept all of the requested information on the 208-assisted credit unions with the credit union names and charter numbers deleted. We believe that even with this information deleted, it would be possible to identify the names of some of the credit unions receiving 208 assistance. Hence, we will not disclose the requested 208 information, with or without names and charter numbers.

Pursuant to 5 U.S.C. 552(a)(4)(B), you may seek judicial review of this determination by filing suit to enjoin NCUA from withholding the documents you requested and to order production of the documents. Such a suit may be filed in the United States District

Court in the district where you reside, where your principal place of business is located,

the District of Columbia, or where the documents are located (the Eastern District of Virginia.)

Sincerely,

Robert M. Fenner

General Counsel

GC/HMU:bhs

SSIC 3212

97-0321