



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

GC/HMU:cch

3240

October 31, 1985

Honorable David Durenberger  
Chairman, Subcommittee on  
Intergovernmental Relations  
Committee on Governmental Affairs  
United States Senate  
Washington, DC 20510

Honorable Lawton Chiles  
Ranking Minority Member  
Subcommittee on Intergovernmental  
Relations  
Committee on Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Senators Durenberger and Chiles:

This is in response to your letter of October 8, 1985, concerning the Government in the Sunshine Act. Enclosed are copies of the 1983 and 1984 Government in the Sunshine Act Reports for the National Credit Union Administration.

We hope that we have been of assistance.

Sincerely,

(S)

ROBERT M. FENNER  
General Counsel

Enclosure

FOIA - Vol. IV, Part 6, 3 - Sunshine Act

**GOVERNMENT IN THE SUNSHINE ACT  
1984 ANNUAL REPORT OF THE NATIONAL CREDIT UNION ADMINISTRATION**

Background Information

In accordance with 5 U.S.C. §552b(g), the National Credit Union Administration Board (the "Board") on March 13, 1980, adopted its final Sunshine Act regulations, which became effective on April 18, 1980 (45 F.R. 15171, March 19, 1980).

The information discussed below is a summary of the National Credit Union Administration's (NCUA) experience under the Government in the Sunshine Act during calendar year 1984. This report has been prepared in accordance with the guidelines suggested in 1980 by Congressional oversight subcommittees, and in accordance with subsection (j) of 5 U.S.C. §552b.

1. AGENCY NAME: NATIONAL CREDIT UNION ADMINISTRATION

2. CALENDAR YEAR: 1984

3. MEETINGS:	A. Total Number of Open	10
	B. Total Number of Closed	14
	C. Total Number of Partially Closed	0
	Total Number of Meetings	24

4. REASONS FOR CLOSING MEETINGS.

A. The number of times specific exemption(s) were cited alone or in combination with other exemptions, as the basis for closing 14 meetings:

(8) and (9) (B)	1
(8), (9) (A) (ii) and (9) (B)	2
(2), (6), (8) and (9) (A) (ii)	7
(2), (6), (8), (9) (A) (ii) and (9) (B)	1
(2), (6), (7) (C), (8), (9) (A) (ii) and (10)	1
(2), (6), (8), (9) (A) (ii), (9) (B) and (10)	2
	14

B. Meetings closed during 1984.

There were more closed meetings than open meetings in 1984 because of the way regularly scheduled meetings were planned. Regularly scheduled Board meetings were planned to be held once a month. Some agenda items therefore had to be considered between the regularly scheduled meetings because of their urgency. The Board was required to consider requests for various administrative actions. These items had to be considered as soon as they were received and not held for consideration at a regularly scheduled closed meeting. In some instances, it was possible to give advance notice of these Board discussions.

5. DESCRIPTION OF LITIGATION. No litigation was brought against the Agency under 5 U.S.C. §552b.
6. NOTATION VOTING. Under the Sunshine Act regulations, the definition of "meeting" excludes "infrequent dispositions of official agency business by sequential circulation of written recommendations to individual Board members, provided, the votes of each Board member and the action taken are recorded for each matter and are publicly available, unless exempted from disclosure pursuant to 5 U.S.C. §552 (the Freedom of Information Act)" (12 C.F.R. §790.41(d)(3)). Further, the rules of Board procedure specify that "notation voting may be used, but only for routine matters, which in any case will not include decisions on proposed and final rulemakings, adjudications, and formal Board interpretations and policy statements" (12 C.F.R. §791.4(a)(1)). In conclusion, the public has access upon request to the matters handled by notation voting and the votes of each Board member on each matter considered unless exempted from disclosure under the Freedom of Information Act. This includes written material circulated with the requested staff recommendations.
7. PUBLIC OBSERVATION. Discussed below are the methods used by NCUA to provide meaningful public observation:

(a) The ability to see, hear and record meetings. The Sunshine Act regulations define public observation to mean "that a member or group of the public may listen to and observe any open meeting and may record in an unobtrusive manner any portion of that meeting by use of a camera or any other electronic device, but shall not participate in any meeting unless authorized by the Board: (12 C.F.R. §790.41(e)). The Board meeting room is arranged so that the visitors may view the entire Board during its deliberations and a public address system broadcasts the discussions throughout the Board room. For a portion of the year, Board meetings were held in various cities around the country. The same arrangements applied.

(b) Staff summaries. The staff prepared for the Board and for members of the public attending the open meetings a "Board Action Memorandum" on each agenda item except one recurring matter (CLF loan interest rate). (For this recurring matter, an oral report was made.) This memorandum set forth the specific Board action requested, the internal offices consulted and their views, and a summary of the matter to be considered. Except to the extent that documents were unavailable under the Freedom of Information Act, draft copies of documents or support memoranda were also attached to the memorandum and were available to the public as they entered the Board meeting room. After a meeting, the Board Action Memoranda with enclosures were available to the public upon request. Further, to assist the public in understanding

the matters presented, the staff person presenting an item to the Board orally summarized the matter prior to Board discussion.

(c) Staff availability to answer questions. Following each Board meeting, the Chairman of the NCUA Board, the General Counsel and/or the Secretary of the Board were available to respond to questions.

8. PUBLIC NOTICE. The Agency's procedure for notifying the public of regular and emergency meetings was as follows:

(a) Regular meetings. In accordance with 5 U.S.C. §552b(e), the Sunshine Act regulations provide that seven days' advance notice will be given for all meetings (12 C.F.R. 790.44). Seven days prior to each meeting, a meeting notice was posted on the public notice bulletin board in the sixth floor entrance area. Each meeting notice for a regular meeting was submitted to the Office of the Federal Register seven days in advance of the meeting. At the same time the meeting notice was sent to the Federal Register, copies of the notice were sent to persons on the Sunshine Act mailing list and to the press, various trade associations, and interest groups who have expressed interest in the affairs of NCUA. Whenever there was a change in the proposed agenda, another list of persons, including local trade associations, members of the press and persons who requested to be notified of such changes, were immediately advised by telephone of the change. In addition, the NCUA News Service, accessible by a toll-free number, recorded the Board's scheduled agenda, changes to the agenda and summaries of the Board's actions. This telephone news service was updated daily.

(b) Emergency meetings. The Board participated in three emergency closed meetings where less than seven days' notice was given. In those cases, notice of the meeting was provided after the meeting.

9. PUBLIC INTEREST. The Sunshine Act regulations provide that, prior to closing a meeting, the Board will balance the public interest in observing the deliberations of an exemptible matter and the Agency's need for confidentiality (12 C.F.R. 790.43(b)). In weighing these interests, the regulation provides that the Board will be assisted by the General Counsel, by expressions of the public interest set forth in requests for open meeting (see #11 Requests to Open, below) and by the staff analysis of the public interest which accompanies each staff recommendation that an agenda item be considered in a closed meeting. During 1984, the individual Board members, the General Counsel and the staff recommendations provided the basis for these public interest determinations. In addition, pursuant to the Sunshine Act regulations, the Board, in voting to close a meeting

considered each agenda item separately. This allowed the Board to individually consider the public interest question for each agenda item (12 C.F.R. §790.45(a)).

10. RELEASE OF TRANSCRIPTS, RECORDINGS, AND MINUTES OF CLOSED MEETINGS. The Agency's procedures for determining and releasing recordings withheld from the public was as follows:

(a) Determination to withhold closed meeting recordings and information. During 1984, cassette recordings were made of every meeting, both open and closed. The Sunshine Act regulations provide that, as the last item of business, the Board shall determine which, if any, portions of meetings not otherwise available under the Privacy Act contain information which should be withheld under the Sunshine Act; provided, however, that should the Board not make such determinations immediately following any closed meeting, the Secretary of the Board, upon the advice of the General Counsel or the General Counsel's designee and after consulting with the Board, shall make such determinations (12 C.F.R. §790.49(c)). The Board did not make any such determinations this year.

(b) Redetermination to disclose previously withheld records. The Sunshine Act regulations provide that, at a later date following a meeting, the Board may determine that, if there is not further justification for withholding any meeting record or other item of information from the public which has previously been withheld, then such information shall be made available to the public (12 C.F.R. §720.49(c)). Because of limited resources and since there have been few requests for a copy of that portion of a particular set of minutes relating to an agenda item, no formal procedure has been developed for periodically reviewing the continued application of an exemption or exemptions to recordings or minutes. Inasmuch as Exemption 8 (referring to examination reports, etc.) has been claimed most frequently, it does not appear that many recordings would be readily available on a regular basis.

(c) Public access to meeting records of interest. No formal indexing system is available to the public to assist in finding the meeting recording on a matter of interest. However, meeting agendas are available and, upon request, the staff provides the assistance needed to find the Board deliberations on a matter of interest.

11. REQUESTS TO OPEN. A procedure for requesting that a meeting scheduled to be held in a closed session be held in the open is described in the Sunshine Act regulations (12 C.F.R. §790.46). Following any announcement that the Board intends to close a meeting, any person may make a written request to the Secretary of the Board that the meeting be held in the open. This request shall set forth the requester's interest

in the matter and the reason why the requester believes that the public interest requires that the meeting be open to the public. The request is circulated to the Board members, and the Board, upon the request of one member, shall reconsider its vote to close before the meeting or before the discussion of the matter at the meeting. If no request for reconsideration is received from a member, the Chairman of the Board shall certify that the Board did not request reconsideration of its decision to close. The Board's action on a request is communicated to the requester by the Secretary of the Board. During 1984, no requests to open a previously-scheduled closed meeting were received.

12. FORMAL COMPLAINTS. No formal complaints have been received by the Agency.