



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

GC/YG:sg  
3212

SEP 29 1986

Office of General Counsel

Jeffrey B. Bartell, Esq.  
Quarles & Brady  
First Wisconsin Plaza  
P.O. Box 2113  
Madison, Wisconsin 53701-2113

Dear Mr. Bartell:

This responds to your Freedom of Information Act appeal dated September 9, 1986. Specifically, you have questioned the withholding of the Continental Association of Resolute Employers (CARE) Federal Credit Union (FCU) charter application and other miscellaneous documents utilized in the chartering decision. After carefully reviewing your appeal and each of the withheld documents, we have determined that, with one exception, they continue to be exempt pursuant to 5 U.S.C. §§552(b)(5), (6) and (8) and Sections 790.4(a)(5), (6) and (8) of the NCUA Rules and Regulations. One document was determined not to be exempt from disclosure and, accordingly, has been enclosed with this response.

The documents withheld pursuant to 5 U.S.C. §552(b)(5), also exempt under (b)(8), include intra-agency memoranda concerning the recommended action on the CARE charter application. Such intra-office predecisional communications are protected from disclosure under (b)(5). See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975); Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

The documents withheld pursuant to 5 U.S.C. §552(b)(6), also exempt pursuant to (b)(8), include reports containing personal information of several officials of CARE FCU, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The Supreme Court has held that all information which applies to a particular individual qualifies for (b)(6) exemption consideration. See Department of State v. Washington Post Co., 456 U.S. 595, 599-603 (1982).

The charter application and other supporting or related documents were withheld pursuant to 5 U.S.C. §552(b)(8). Each of the withheld documents, including most of the documents withheld pursuant to other exemptions, contain or relate to examination,

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operating or condition reports prepared by, or on behalf, or for the use of NCUA as an agency responsible for the regulation and supervision of Federal credit unions (financial institutions). See Gregory v. FDIC, 631 F. 2d 896, 898 (D.C. Cir. 1980); McCullough v. FDIC, 1 P-H Govt. Disclosure Service, ¶80, 194 (D.D.C. 1980); Consumers Union of U.S., Inc. v. Heimann, 589 F.2d 531, 533 (D.C. Cir. 1978). Each of the withheld documents were used in examining the fitness of CARE for an FCU charter.

Pursuant to 5 U.S.C. §552(a)(4)(B), you may seek judicial review of this appeal determination by filing suit to enjoin NCUA from withholding the records. Such suit may be filed in the District Court of the United States in the district in which you reside, in the district in which your principal place of business is located, in the district in which the records are located (San Francisco), or in the District of Columbia.

Sincerely,

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Robert M. Fenner  
General Counsel

YG:sg

Enclosure

# APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

O: The Administrator  
National Credit Union Administration

Date 3/8/84

The proposed Continental Association of Resolute Employers Federal Credit Union,

515 Northgate Drive

(Mailing Address)

San Rafael,

California

94903

(City)

(State)

(Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Administrator may deem necessary in connection with determining the eligibility of the application for insurance.
2. To permit and pay the reasonable cost of such examinations as in the judgment of the Administrator may from time to time be necessary for the protection of the fund and of other insured credit unions.
3. To permit the Administrator to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Administrator may require.
4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.
5. To maintain such regular reserves as may be required by Section 116 of this Act.
6. To maintain such special reserves as the Administrator, by regulation or in special cases, may require for protecting the interest of members.
7. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Administrator.
8. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.
9. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Administrator pursuant thereto.
10. To permit the Administrator to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that he may require.
11. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No.

Title

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Administrator if any proposed or future officer commits a criminal offense.

*Thur.*

*[Signature]*

President

*[Signature]*

Treasurer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18, Sec. 1001.