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NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

March 1, 1989

Office of General Counsel

Ms. Denese L. Ashbaugh  
Vice President  
Legal & Governmental Affairs  
Washington Credit Union League  
15440 Bellevue-Redmond Road  
Redmond, WA 98052-5509

Re: Release of 5300 Reports Under FOIA (Your  
Letter of January 23, 1989)

Dear Ms. Ashbaugh:

You requested reconsideration of the National Credit Union Administration's ("NCUA") policy of releasing, pursuant to the Freedom of Information Act, information found in the Year-End Call Reports (Forms 5300 and 5300s) submitted by all federally-insured credit unions. We maintain our longstanding policy that such information may be released pursuant to a properly filed FOIA request.

**BACKGROUND**

Federal credit unions ("FCU's") submit Form 5300 to the NCUA semiannually. Federally-insured state-chartered credit unions ("FISCU's") submit Form 5300s. The information submitted by credit unions on Forms 5300 and 5300s includes amounts and types of assets (loans, investments, fixed assets, etc.), shares/deposits, income, expenses, interest/dividends, and reserves. The information submitted is also posted by the credit unions in their offices.

A financial publishing company has obtained information from the 5300 and 5300s Reports for all FCU's and FISCU's in the State of Washington pursuant to a Freedom

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of Information Act ("FOIA") request made to the NCUA. The company did their own analysis on the information obtained to generate a rating of the financial health of the credit unions. The Seattle Times ran a story listing the 34 worst-rated credit unions in the State of Washington based on the company's analysis and ratings.

#### ANALYSIS

As noted in your letter, the FOIA (12 U.S.C. §552) is a disclosure statute. Agency records are required to be disclosed to any persons (including corporations and associations) requesting them unless one of the nine FOIA exemptions applies. Exemption 8 of the FOIA (5 U.S.C. 552(b)(8)) exempts information:

(8) 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;

The courts have gleaned two purposes to exemption (8) from its legislative history: 1) to protect the security of financial institutions by withholding frank evaluation 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). NCUA has issued regulations implementing the FOIA. The regulation implementing exemption 8 is found at Section 790.4(a)(8) of NCUA's Regulations (12 C.F.R. §790.4(a)(8)). Section 790.4(a)(8) repeats exemption (8) of the FOIA and adds the following:

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

We do not believe that the information from the Call Reports falls within exemption 8 (or any other exemption) to the FOIA, especially in light of the fact that the information is made public in the credit union. We do not believe that release of the information alone

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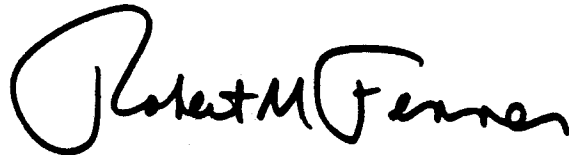
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would harm the financial security of credit unions or interfere with the relationship between NCUA examiners and credit unions. We do not have control over how a requester analyzes information released and ranks credit unions based on their analyses. Nonetheless, it is our position that the information should be made available.

You stated in your letter that the relationship of some credit unions in Washington with the Division of Savings and Loan Associations was damaged by the release of the information and the article in the Seattle Times. We received a letter from the Supervisor of the Division of Savings and Loan Associations (enclosed) which supports our disclosure of the information. The Supervisor also stated that the information disclosed concerning state-chartered credit unions is not privileged and confidential under Washington State law and the records are, in fact, public records.

In summary, we believe that disclosure of the 5300 and 5300s information was appropriately made under the FOIA, and that, in general, such disclosure is in the public interest. While it is unfortunate that those who receive information pursuant to the FOIA and state law may subject it to faulty analysis, this in no way alters the disclosure requirements under the law.

Sincerely,



ROBERT M. FENNER  
General Counsel

HMU:sg

Enclosure

K. W. JY HOLDEN  
Director



STATE OF WASHINGTON  
DEPARTMENT OF GENERAL ADMINISTRATION  
218 General Administration Building • Olympia, Washington 98504-0622

February 9, 1989

Ms. Pat Slye, FOIA Officer  
National Credit Union Administration  
1776 G. Street, N.W.  
Washington D.C. 20456

Dear Ms. Slye:

We have received a copy of the attached letter to you from the Washington Credit Union League requesting reconsideration of your policy of releasing credit union 5300 Reports under the Freedom of Information Act. In that letter, references were made to the Division of Savings and Loan Associations which I believe need clarification.

First, let me assure you that NCUA's release of 5300 Reports has not interfered with the relationship of this Division with the NCUA either directly or indirectly.

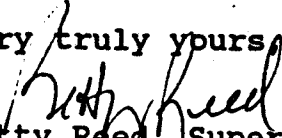
We believe that reports of financial condition prepared by a credit union are not privileged and confidential under Washington State Law and are in fact public records. We routinely disclose reports of financial condition as required under the Washington State Public Disclosure Act.

One state chartered (not federally insured) credit union has raised a legal challenge to that disclosure, but it is being vigorously defended by the Attorney General's office on our behalf.

Local news coverage of IDC Financial ratings did cause some concern for credit unions, however, that is a separate issue and must be dealt with by the industry independent of the regulatory process.

Fair and accurate disclosure of its financial condition is a primary obligation of any depository institution. This Division believes that to attempt to restrict disclosure of financial reports would be harmful to the credit union industry and not in the public interest.

Very truly yours,

  
Betty Reed, Supervisor  
DIVISION OF SAVINGS AND  
LOAN ASSOCIATIONS

cc: Robert Fenner, NCUA, Washington  
Robert LaPorte, Regional Director  
Dean Kastanis, Chairman, WCUL  
Bruce Rouillard, President, WCUL