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NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

June 6, 1989

Office of General Counsel

Richard L. Huff, Esq.  
Daniel J. Metcalfe, Esq.  
Co-Directors  
Office of Information and Privacy  
U.S. Department of Justice  
Washington, D.C. 20530

Re: May 1, 1989, Survey Regarding Electronic  
Record Issues

Dear Messrs. Huff and Metcalfe:

The National Credit Union Administration does not have any regulation or policy statement regarding what constitutes an electronic record or its release under the Freedom of Information Act. The only regulation that we have in this area concerns fees for computer searches and duplication of computer records under the FOIA. Such regulations are found at 12 C.F.R. §790.7(b)(2)&(3). A copy of the sections is enclosed.

The NCUA does maintain extensive computer records. Federally-insured credit unions submit semiannual financial reports that the NCUA maintains in its computer system. Annual credit union examinations are also maintained on our computer system.

Computer-generated copies of the information contained in the semiannual financial reports make up the bulk of the FOIA requests received by the NCUA. According to our Office of Information Services, various programs have been created and some reprogramming or minor program modifications have been performed using the data already available on NCUA's computer database in order to respond to FOIA requests. Program modifications are usually performed in accordance with the specifications of the requester. NCUA will not perform major programming in order to satisfy a FOIA requester. Requests for such information are denied on the basis that the records requested do not exist.

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This system of responding to FOIA requests for electronic data has not presented any major problems for the NCUA.

Do not hesitate to contact me if any further information is needed.

Sincerely,

Handwritten signature of Hattie M. Ulan in cursive script.

HATTIE M. ULAN  
Assistant General Counsel

HMU:sg

Enclosure

cc: Pat Slye  
Administrative Office

be of assistance to the General Counsel in determining whether such documents or information should be produced.

(2) If any third party who is not an officer, employee or agent of the Administration is served with a subpoena, court order or other legal process requiring that party to produce such records or to testify with respect to the requested records, such party should notify the Office of General Counsel in accordance with the procedures set forth in §790.6(b)(1).

(c) *Appearance by person served.* Absent the authorization of the Office of General Counsel disclose the requested information, any officer, employee or agent of the Administration (and any third party having custody of exempt records of the Administration) who is required to respond to the subpoena or other legal process shall attend at the time and place specified and shall respectfully decline to produce the documents and records or to disclose the information called for, basing his refusal upon this paragraph.

### §790.7 Fees for Document Search, Review, and Duplication; Waiver and Reduction of Fees.

#### (a) Definitions

(1) *Direct costs* means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request.

(2) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) *Duplication* means the process of making a copy of a document necessary to respond to FOIA request.

(4) *Review* means the process of examining documents located in response to a request that is for a commercial use (see subsection 790.7 (a) (5)) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(5) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in subsection 790.7 (a) (5), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Included within the meaning of public is the credit union community. The term "news" means information that is about current events or that would be of current interest to the public.

#### (b) Fees to be charged

NCUA will charge fees that recoup the full allowable direct costs it incurs. NCUA may contract with the private sector to locate, reproduce and/or disseminate records. Fees are subject to change as costs increase. In no case will NCUA contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(1) *Manual searches and review*—NCUA will charge fees at the following rates for manual searches for and review of records:

(i) If search/review is done by clerical staff, the hourly rate for GS-5, step 1, plus 16 percent of that rate to cover benefits;

(ii) If search/review is done by professional staff, the hourly rate for GS-13, step 1, plus 16 percent of that rate to cover benefits.

(2) *Computer searches*—NCUA will charge fees at the hourly rate for GS-13, step 1, plus 16 percent of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

#### (3) Duplication of records—

(i) The per-page fee for paper copy reproduction of a document is \$.25;

(ii) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);

(iii) If any other method of duplication is used, NCUA will charge the actual direct cost of duplicat-