



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

July 2, 1990

Steve Edgerton, President
Nebraska Credit Union League and
Affiliates
4315 Frances Street
Omaha, Nebraska 68105-2847

Re: CAMEL Ratings; Disclosure of Salaries
and Benefits; Tiered Dividends (Your
May 10, 1990, Letter)

Dear Mr. Edgerton:

This is in response to your letter to Robert Fenner. You asked two questions: (1) whether credit unions may disclose CAMEL ratings; and (2) whether management salaries and benefits are confidential information which may not be disclosed to credit union members. You also expressed your views regarding NCUA's position that federal credit unions may not pay tiered dividends on regular share accounts. These three subjects are discussed individually below.

1. Are credit unions prohibited from disclosing CAMEL ratings?

It has long been our position that EWS ratings are exempted from disclosure by the Freedom of Information Act ("FOIA") (5 U.S.C. §552) and Section 792.3(a)(8) of NCUA's Rules and Regulations (12 C.F.R. §792.3(a)(8)). In our opinion, these same provisions preclude disclosure of CAMEL ratings by credit unions.

Although credit unions are not subject to FOIA and are furnished with their own CAMEL ratings, the ratings are prepared by and belong to the NCUA. Therefore, credit unions may not disclose CAMEL ratings in violation of NCUA's policy and the statute and regulations discussed below.

Exemption 8 of the FOIA (5 U.S.C. §552(b)(8)) exempts from disclosure information:

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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.

Section 792.3(a)(8) of NCUA's Rules and Regulations repeats Exemption 8 of the FOIA, and adds the following:

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.

Exemption 8 of the FOIA has been given a very broad interpretation and all-inclusive scope by the courts. (See, McCullough v. FDIC, 1 GDS ¶80,184, D.D.C. 1980.) Records including the findings of examinations are exempt under Exemption 8. (See, Atkinson v. FDIC, 1 GDS ¶80,184, D.D.C. 1980.) Inasmuch as EWS codes are assigned as a result of the examination process, they are exempt from disclosure.

CAMEL ratings, like EWS codes, are assigned to credit unions based on NCUA's examinations (including supervisory visits) and analysis of financial performance. Therefore, the same analysis under which we have withheld EWS codes also precludes disclosure of CAMEL ratings.

2. Do confidentiality requirements imposed upon credit unions prohibit disclosure to credit union members of management salaries and benefits?

The confidentiality provisions of NCUA's Standard FCU Bylaws (Article XIX, Section 2) pertain only to member affairs, and thus do not justify withholding information on management salaries and benefits. Pursuant to corporate common law, records containing salary and benefit information on employees are available for inspection by members, assuming that the purpose of the inspection is proper and not vexatious. Of course, a credit union does not have any affirmative duty to create a list of salaries and/or benefits in order to satisfy a member's request for such information. We are enclosing a copy of a recent opinion letter on this

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issue. We also suggest that you contact local counsel for an opinion on the effect, if any, of Nebraska law on this issue.

You also asked whether a credit union could amend its bylaws to prohibit disclosure of management salaries and benefits, or, alternatively, whether the board of directors could pass a resolution to the same effect. While we do not say that such an amendment is prohibited, it would have to be submitted to the appropriate NCUA Regional Office for approval. Of course, neither a bylaw nor a resolution has the force of law. We offer no opinion as to whether a bylaw or resolution such as you describe would withstand a court challenge by a member seeking to examine the records in question. A court resolving such a dispute would most likely look to Nebraska corporate common law for guidance. Again, we recommend that you consult local counsel.

3. FCU payment of tiered dividends.

We have received a number of comments on payment of tiered dividends and, at present, it remains an open issue. While we cannot say definitely that a change will be made, we are currently reconsidering our position. We appreciate your taking the time to express your views on this matter, and assure you that they will be taken into account.

I hope that we have been of assistance.

Sincerely,



Hattie M. Ulan,
Associate General Counsel
Office of General Counsel

GC/MRS:sg
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Enclosure



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/MM:sg
SSIC 3701
89-0525

Office of General Counsel

June 8, 1989

Mr. Earl L. Hardy
Senior Vice President
Florida Credit Union League, Inc.
P.O. Box 3108
Tallahassee, Florida 32315-3108

Re: Disclosure of Credit Union Employee Salaries to
Members (Your May 15, 1989, Letter)

Dear Mr. Hardy:

You have asked whether a Federal credit union ("FCU") must disclose employee salaries to genuinely interested members. FCU employment contracts are subject to inspection by members, although the FCU is under no obligation to compile a list of salaries.

BACKGROUND

A member of a Florida FCU plans on requesting a list of employee salaries at the next annual meeting. The Florida FCU does not wish to disclose any salary information to its membership.

ANALYSIS

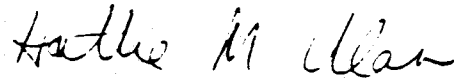
Article XIX, Section 6 of the FCU Bylaws states that the charter and bylaw are available to the membership for inspection. In regard to other records, we subscribe to the common law principle that members are entitled to inspect the books and records of the FCU at a reasonable time and for a proper purpose. Thus, minutes of board and committee meetings, as well as credit union employment contracts, may be subject to inspection, assuming that a proper and not a vexatious purpose for the inspection is demonstrated. This position is consistent with Florida State law treatment of this issue.

It is our opinion that the employment contracts may be made available for inspection by all members simultaneously. This can be accomplished by having the employment contracts available at

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the annual meeting or any other appropriate gathering of the members. In addition, the FCU is not under any affirmative obligation to create a list of salaries for inspection by the members. If a member wishes to know the salary of a position not subject to an employment contract, the FCU may wish to make the salary range available. We suggest that you also look to State corporate law in Florida to determine whether you are in complete compliance with State corporate inspection requirements.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

MM:sg