



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

September 10, 1991

Mark Baron,  
President  
Armour Kankakee Credit Union  
Box 852  
Kankakee, Illinois 60901

Re: Preservation of Loan Documents (Your  
June 27, 1991 Letter)

Dear Mr. Baron:

You asked whether the National Credit Union Administration ("NCUA") requires or suggests that federally-insured credit unions retain all loan documents relating to paid loans. That decision is left by NCUA to the discretion of a credit union's board of directors. However, other authorities or legal considerations may require or suggest that a credit union retain loan documents for a period of time after the loan is paid.

You indicate in your letter that an examiner from the State of Illinois Department of Financial Institutions recently informed your credit union that it should be disposing of loan documents on paid loans. A lawyer with the Illinois Credit Union league advised the credit union that it should retain the loan documents as evidence for potential future legal actions. You have asked for our position on the retention of loan documents.

Part 749 of NCUA's Rules and Regulations, 12 C.F.R. Part 749 (copy attached) governs preservation of vital records by federally-insured credit unions. That regulation does not include loan documents among the records that must be preserved. (We note that while you state in your letter that a credit union must retain loan applications, neither the Federal Credit Union Act, Part 749 nor any other NCUA regulation

FOIA

NO [unclear] [unclear]

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or policy imposes such a duty.) However, the list of documents set forth in Part 749 is not exhaustive, and federally-insured credit unions may be required to preserve additional records by other Federal or state laws. (See discussion below.)

NCUA's Accounting Manual for Federal Credit Unions also addresses the issue of records preservation. While the Accounting Manual is directed at federal credit unions, and represents NCUA policy as opposed to law or regulation, its provisions may assist your credit union in formulating a records preservation policy.

Section 5190.3 of the Accounting Manual (copy attached) lists certain records which federal credit unions must retain permanently. The list does not include loan documents or loan applications. However, Section 5190.3 does state:

Records that would support a credit union's position in actions before the courts, or other claims should be retained for the minimum period prescribed by the statute of limitations jurisdiction of the political subdivision(s) where the credit union does business.

A legal opinion, from a local attorney, with respect to the application of the statute of limitations is necessary for full consideration of the subject.

Section 5190.3 list applications of paid off loans and paid notes among the records that may be periodically destroyed, but cautions that federal credit unions should be careful to conform with the requirements of various consumer regulations before destroying such records. Section 5190.3.1 (copy attached), states, in part:

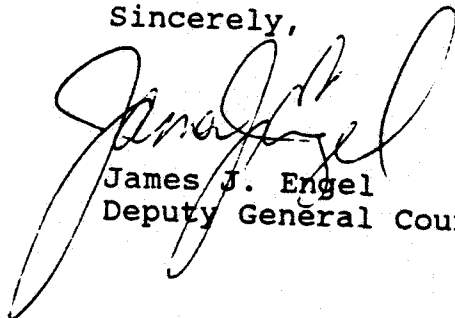
All original loan documents should be retained until the loan and the requirements for retention in Regulations Z, B, C, the Real Estate Settlement Procedures Act, Flood Disaster Protection Act and the Fair Credit Reporting Act, the Bank Secrecy Act, or any other applicable law

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or regulation are satisfied. Then they may be microfilmed. The credit union may wish to destroy the original records after those original records have been microfilmed. This should only be done after obtaining competent legal advice that the credit union will be in compliance with applicable state and federal laws, if such original records are destroyed.

NCUA does not require federally-insured credit union to retain loan documents after a loan is paid. However, as discussed in Section 5190.3.1 of the Accounting Manual, other state or federal laws may impose requirements for retention of such records. Further, it would be wise for a credit union to keep such records until the expiration of the statute of limitations for suits related to the loan. We suggest that your credit union obtain a local attorney's opinion on the relevant Illinois statute of limitations, and the retention requirements of other state and federal laws.

Sincerely,



James J. Engel  
Deputy General Counsel

Attachments

GC/MRS:sg  
SSIC 3500  
91-0712

## §749.0 Records Preservation.

All federally insured credit unions must maintain a records preservation program to identify, store and reconstruct vital records in the event that the credit union's records are destroyed.

### §749.1 Implementation.

The Financial Officer of the credit union is responsible for storing duplicate vital records at a vital records center. This responsibility may be delegated.

(a) The Records Preservation Program must be operational within 6 months after the credit union's insurance certificate is issued.

(b) The vital records center is defined as any location far enough from the credit union's office to avoid the simultaneous loss of both sets of records in the event of disaster.

(c) Records must be stored every 3 months, within 30 days after the end of the 3 month period. Previously stored records may be destroyed when the current records are stored.

(d) A records preservation log will be maintained showing what records were stored, where the records were stored, when the records were stored, and who sent the records for storage.

(e) Stored records may be in any format which can be used to reconstruct the credit union's records. Formats include paper originals, machine copies, micro film or fiche, magnetic tape, etc.

(f) Credit unions which have some or all of their records maintained by an off-site data processor are considered to be in compliance for the storage of those records.

# Part 749

## Records Preservation Program

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### §749.2 Vital Records To Be Stored.

At least the following records, as of the most recent month end, must be stored:

(a) A list of share and/or deposit and loan balances for each member's account.

(1) The list of balances will be individually identified by a name or number.

(2) Multiple loans of one account will be listed separately.

(3) Information sufficient to enable the credit union to locate each member, such as address and telephone number, shall also be included, unless the board of directors determines that such information is readily available from another source.

(b) A financial report which lists all of the credit union's asset and liability accounts.

(c) A list of the credit union's banks, insurance policies and investments. This information may be marked "permanent" and be updated only when changes are made.

be destroyed when the current records are stored. A records preservation log is to be maintained showing what records were stored, their location, the date of storage and the person responsible for their storage. Credit unions that have some or all of records maintained by an off-site data processor are considered to be in compliance for the storages of those records.

A vital records preservation center should be established at any location that is far enough from the credit union's office to avoid the simultaneous loss of both sets of records in the event of a disaster. Stored records may be in any format which can be used to reconstruct the credit union's records. Formats include paper originals, machine copies, microfilm or microfiche, magnetic tape, etc. The vital records to be stored are (as of the most recent month end):

a. A list of share and/or deposit and loan balances for each member's account. Each balance of the list is to be identified by an account name or number. Multiple balances of either loans or shares to one account need to be listed separately.

b. A financial report (Statement of Financial Condition) which lists all of the credit union's assets and liability accounts. If the statement is for a period other than the end of an accounting period in which the income and expense accounts have been closed to Net Income, the statement should include a Statement of Income and Expense for the current period to date.

c. A listing of the credit union's banks, insurance policies, and investments. The information can be marked "permanent" and be updated only when changes are made. Also helpful, but not required would be a machine copy of the credit union's charter, insurance certificate, and most recent amendment(s) to the field of membership.

d. Credit unions that have in-house data processing capabilities need to make provision to safeguard the backup of electronic data on a continuous basis.

## 5190.2 RECORDS RETENTION

After a period of years, a credit union's files become crowded and the question arises whether certain records are any longer of value. Material which occupies space unnecessarily is costly and hampers the finding of essential material. Efficiency requires that all records that are no longer useful be discarded just as both efficiency and safety re-

quire that useful records be preserved and kept readily available.

The destruction of any record of a federal credit union, regardless of how inconsequential it may seem or how old it may have become, is a matter requiring careful consideration. Subject to the minimum time within which records discussed below may not be destroyed, the retention period for the records should be determined and authorized by the board of directors in compliance with the requirements of the statute of limitations established by the political subdivision of the credit union location.

The board of directors may approve a schedule authorizing the disposal of certain records on a continuing basis upon expiration of specified retention periods. Such a schedule provides a means for systematic disposal of records under a continuing authority from the board. This will eliminate the necessity for the board to give repeated consideration to dispose of the same types of records created at different time periods.

As records are destroyed by authorization of the board of directors, an appropriate listing of such records should be prepared and retained permanently. Destruction of such records should ordinarily be carried out by at least two persons whose signatures, attesting to the fact that such records were actually destroyed, should be affixed to the listing.

## 5190.3 DESTRUCTION OF OBSOLETE RECORDS

### *Minimum Retention Time*

A record should not be destroyed which pertains to any member's account until the account has been appropriately verified by the supervisory committee; however, Individual Share and Loan Ledgers (Form 103 or its equivalent) should not be destroyed. Records, for a particular period, should not be destroyed until both a comprehensive annual audit by the supervisory committee and a supervisory examination by the National Credit Union Administration have been made for that period.

Records that would support a credit union's position in actions before the courts, or other claims should be retained for the minimum period prescribed by the statute of limitations jurisdiction of the political subdivision(s) where the credit union does business.

A legal opinion, from a local attorney, with respect to the application of the statute of limitations is necessary for a full consideration of the subject.

#### *Permanent Retention Records*

Records which are of an official nature significant to the continuing operations of the credit union should be retained permanently. Such records are:

- a. Charter, bylaws, and amendments.
- b. Certificates or licenses to operate under programs of various government agencies, such as a certificate to act as issuing agent for the sale of U. S. Savings Bonds.
- c. Current manuals, circular letters and other official instructions of a permanent character received from the National Credit Union Administration and other appropriate governmental agencies.

Key records which reflect the operation of the credit union, and particularly records which reflect transactions with the members or former members, should be retained permanently, unless, as stated below, such records have been microfilmed. Such records are:

- a. Minutes of meetings of the membership, board of directors, credit committee, and supervisory committee.
- b. One copy of each semiannual and annual (June 30 and December 31) financial report NCUA 5300 and/or their equivalents.
- c. One copy of each Supervisory Committee Comprehensive Annual Audit Report (Form 701) and attachments.
- d. Supervisory Committee record of account verification (SCG 30 or its equivalent.)
- e. Applications for Membership and Joint Share Account Agreements (Forms FCU 150 and 123 or their equivalents).
- f. Journal and Cash Record (Form FCU 101 or its equivalent).
- g. General Ledger (Form FCU 102 or its equivalent).
- h. Copies of the Periodic Statements of Members, or the Individual Share and Loan Ledger (Form FCU 103 or its equivalent). (A complete record of the account needs to be kept permanently.)

- i. Bank Reconcilements (Form SCG 10 or its equivalent).

- j. Listing of records destroyed.

Any record not described above may be periodically destroyed. Care should be taken to conform to retention requirements of the various consumer-type regulations as further discussed in Section 5190.3.1 below. Records that may be periodically destroyed include at least:

- a. Applications of paid off loans.
- b. Paid notes.
- c. Various consumer disclosure forms.
- d. Cash Received Vouchers
- e. Journal Vouchers.
- f. Cancelled Checks.
- g. Bank Statements.
- h. Outdated manuals, cancelled instructions, and nonpayment correspondence from the National Credit Union Administration and other governmental agencies.

#### **5190.3.1 MICROFILMING OF RECORDS**

Federal credit unions may microfilm records as desired, including the listed permanent key records. There will probably be more interest in microfilming the bulkier of the records that should be retained permanently, although in many cases a board of directors may want to microfilm nonpermanent records such as voided and cancelled checks, Cash Received Vouchers, Journal Vouchers, etc.

Before a decision is made to microfilm records, legal advice should be obtained on applicable laws in the jurisdiction to determine whether microfilm will support the credit union's claims in a court of law in which the credit union is located. If a credit union decides to microfilm records, not only should adequate equipment be used to properly microfilm, but equipment must be readily available for reading and making prints of the film, as needed.

Another important consideration when contemplating microfilming of records is the timing of audits and/or regulatory examinations. Records which have been microfilmed, although convenient from the storage viewpoint, can present problems for the auditor and examiner in terms of accessibility and

time. It is therefore suggested that microfilming of records required at audits and examinations be delayed until the audits and examinations are completed.

All original loan documents should be retained until the loan is satisfied and the requirements for retention in Regulations Z, B, C, the Real Estate Settlement Procedures Act, Flood Disaster Protection Act and the Fair Credit Reporting Act, the Bank Secrecy Act, or any other applicable law or regulation are satisfied. They may then be microfilmed. The credit union may wish to destroy the original records after those original records have been microfilmed. This should only be done after obtaining competent legal advice that the credit union will be in compliance with applicable state and federal laws, if such original records are destroyed.

After the records have been microfilmed, those original records may be destroyed following the next examination by the National Credit Union Administration and the next comprehensive annual audit by the supervisory committee, provided the Individual Share and Loan Ledgers are in balance with the General Ledger Control accounts. If any of the records pertain to discrepancies or shortages that have been discovered, such records should not be destroyed until the discrepancies or shortages have been cleared.

### **5190.3.2 DISPOSAL OF DATA PROCESSING OUTPUT REPORTS**

The previous instructions pertaining to the disposal of records also apply to output reports pro-

duced by a data processing system as well as those records used with a conventional accounting system. Output reports that substitute for standard conventional records or that provide the only support for entries in the Journal and Cash Record should be retained for the minimum period specified. In the case of one output report completely duplicating the information shown on another record, only one of the records needs to be maintained. Output records may be microfilmed subject to the conditions listed previously.

### **5190.3.3 MICROFICED RECORDS**

Credit unions may also use microfiche for the storage of records. As with microfilm, this is a convenient way to store records but it can present the same problems for auditors and examiners in terms of accessibility. If records are stored on microfilm or microfiche, the credit union needs to be able to produce, within 5 working days, a hard copy of the records for the period in which the audit or examination is being done. In addition, the credit union on a continuing basis should retain a hard copy of the previous month-end trial balance of the Individual Share and Loan Ledgers until the next output report is received.

The credit union should also consider having, on the premises, equipment to read and make prints of the microfiche. Many data processing firms now produce the credit union's copy of the statement of accounts on microfilm or microfiche. Since the need arises quite frequently to reproduce statements, a reader/printer would be valuable to the credit union's operations.

## **5193 SECURITY DEVICES AND PROCEDURES**

The following security devices and procedures should be used by a federally insured credit union:

a. Tamper-resistant locks should be installed on functional exterior doors and windows in all credit union offices not owned by the credit union unless the building owner objects to the installation of these devices;

b. Vital records should be stored in a fire-resistant vault or container prior to the closing of the office or building each day;

c. A decal should be displayed in a conspicuous place which states that the Federal Bureau of In-

vestigation has jurisdiction to investigate felonies committed against a federally insured credit union, unless the credit union's board of directors determines that display of the decal would identify a credit union office which otherwise is undistinguished from its surroundings.

d. All currency and negotiable securities should be placed in a locked safe or vault at times other than regular business hours. If a credit union cannot afford to purchase a vault or safe, or if the construction of the building or office will not support a safe or vault, then funds and negotiable securities in