



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

October 30, 1991

Mr. Mitch Dever
Trimmer, Atchison & Hayley, P.C.
P.O. Box 1885
Birmingham, Alabama 35201-1885

Re: Freedom of Information Act (Your
September 11, 1991 Letter)

Dear Mr. Dever:

This responds to your inquiry as to the procedures for obtaining copies of NCUA opinion letters under the Freedom of Information Act ("FOIA").

FOIA requests for NCUA information and publications are governed by Part 792, Subpart A of NCUA Rules and Regulations (the "Regulations"), 12 C.F.R. Part 792, Subpart A. A copy of that regulation is enclosed. While NCUA does not require that FOIA requests be made on a particular form, all such requests should comply with Part 792, Subpart A. FOIA requests should be sent to:

Freedom of Information Officer
Administrative Office
NCUA
1776 G Street, N.W.
Washington, D.C. 20456

Section 792.2(e) of the Regulations, 12 C.F.R. §792.2(e), requires that a FOIA request "reasonably describe" the documents requested. With respect to a particular opinion letter, the request should include the date, the subject, the recipient's name, and/or other similar identifying information. In the event that you wish to request a letter summarized in the NCUA News, you should contact NCUA's Office of

FOIA

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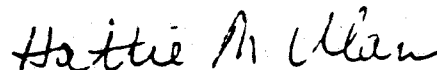
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Public and Congressional Affairs at the address given above, and request the letter using the identifying number specified in the NCUA News.

You may also request all NCUA opinion letters for a given time period, eg., the month of May, 1991. However, NCUA does not accept ongoing requests, that is, requests for opinion letters to be issued in the future. A requester who wishes to keep up with current opinion letters through use of FOIA must make multiple requests, at such intervals as he chooses, covering specific time periods.

You should also note Section 792.5 of the Regulations, 12 C.F.R. §792.5, which sets forth fees for document search, review and duplication. Your law firm would be classified as a "commercial use requester" for purposes of determining fees. See, Section 792.5(a)(5), 12 C.F.R. §792.5(a)(5). In the case of a commercial use requester, Section 792.4(c)(1), 12 C.F.R. §792.5(c)(1), provides that NCUA will charge the requester "fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought." Unlike some other requesters, commercial use requesters are not entitled to any fee waiver. Please refer to Section 792.5(b), 12 C.F.R. §792.5(b), for an explanation of the rates charged for search, review and duplication.

Sincerely,



Hattie M. Ulan
Associate General Counsel

Enclosure

cc: H. Allen Carver, Region III Director

GC/MRS:sg
SSIC 3500
91-0923

**Subpart A—The Freedom of
Information Act**

Part 792

§792.1 Scope

This Subpart sets forth the procedures for processing requests for information under the Freedom of Information Act ("FOIA") (5 U.S.C. §552).

§792.2 Information made available to the public and requests for such information

(a) Except to the extent that the matters set forth herein relate to or contain information which is exempted from public disclosure under the FOIA as amended (5 U.S.C. §552) or are promptly published and copies are for sale, NCUA shall make available for public inspection and copying, upon request made in accordance with the provisions of §792.2(g): (1) the final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases; (2) those statements of policy and interpretations which have been adopted by NCUA and are not published in the *FEDERAL REGISTER*; and (3) administrative staff manuals and instructions to staff affecting a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, NCUA may delete identifying details when an opinion, statement of policy, interpretation, or staff manual or instruction is made available or published. In each case, the justification for the deletion shall be fully explained in writing.

(c) NCUA also maintains current indices providing identifying information for the public for any matter referred to in paragraph (a) of this section issued, adopted, or promulgated after July 4, 1967. Manuals relating to general and technical information and booklets published by NCUA are listed on the "NCUA Publications List," which indicates those items available from the Agency. The Directory of Credit Unions, published by NCUA, is also available. A list of statements of policy, NCUA Instructions, Bulletins, Letters to Credit Unions and certain internal manuals are maintained on a "Directives Control Index." NCUA has determined that publication of the indices is unnecessary and impractical, but copies of indices will be provided on request at their duplication

Requests for Information Under the Freedom of Information Act and Privacy Act, and by Subpoena; Security Procedures for Classified Information

cost and are available for public inspection and copying. The listing of any material in any index is for the convenience of possible users of the materials and does not constitute a determination that all of the items listed will be disclosed or are subject to disclosure.

(d) The materials referred to in paragraph (a) of this section may be relied on, used, or cited as precedent by NCUA against a party, provided: (1) the materials have been indexed and either made available or published; or (2) the party has actual and timely notice of the materials' contents.

(e) Except with respect to records made available under this section or published in the *FEDERAL REGISTER*, or to the extent that records relate to or contain information which is exempt from public disclosure under the FOIA, NCUA, upon a request which reasonably describes records and is made in accordance with §792.2(g), will make such records available to any person who agrees to pay the direct costs specified in §792.5. A "reasonable description" is one which is sufficient to enable a professional employee of NCUA, who is familiar with the subject area of the request, to locate the record with a reasonable amount of effort.

(f) *Information Centers.* The Central Office and the Regional Offices are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Administrative Office is responsible for the operation of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices.

(g) *Methods of request.*

(1) *Indices.* Requests for indices should be made to NCUA, Administrative Office, 1776 G Street, N.W., Washington, D.C. 20456. The indices indicate how to obtain the documents listed therein.

(2) *All other records.* Requests for all other records made under Section 792.3(e) should be addressed to the appropriate Regional Director. When the location of requested records is not known, or it is known that such records are located in the Central Office, the request should be addressed to the Freedom of Information Officer of the Administrative Office at the address noted in Section 792.2(g)(i).

(3) *Improper address.* Failure to properly address a request may defer the effective date of receipt by NCUA for commencement of the time limitation stated in Section 792.6(a)(i), to take account of the time reasonably required to forward the request to the appropriate office or employee.

§792.3 Unpublished, confidential and privileged information

(a) All records of NCUA or any officer, employee, or agent thereof, are confidential, privileged and not subject to disclosure, except as otherwise provided in this Part, if such records are:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to an Executive Order.

(2) Records related solely to NCUA internal personnel rules and practices. This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information contained therein would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute, where the statute either makes non-disclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relate to the business, personal or financial affairs of any person or organization, are furnished to NCUA, and are confidential or privileged. This exemption includes, but is not limited to, various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by staff are not binding on NCUA.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies.

(6) Personnel, medical, and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Files exempt from disclosure include, but are not limited to: (i) the personnel records of the NCUA; (ii) the personnel records voluntarily submitted by private parties in response to NCUA's requests for proposals; and (iii) files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (i) could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair trial or an impartial adjudication; (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source; (v) would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (vi) could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which NCUA has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of NCUA or any agency responsible for the regulation or supervision of financial institutions. 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.

§792.4 Release of exempt records

(a) *Prohibition against disclosure.* Except as provided in §792.4(b), no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of the Agency to any person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

(b) *Disclosure authorized.* Exempt NCUA records may be disclosed only in accordance with the following conditions and requirements:

(1) *Exempt records—Disclosure to credit unions, financial institutions and state and Federal agencies.* The NCUA Board or any person designated by it in writing, in its sole discretion, may make available to certain governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of NCUA. No person, agency or employee shall disclose the reports or exempt records without NCUA's express written authorization.

(2) *Exempt records—Disclosure to investigatory agencies.* The NCUA Board, or any person designated by it in writing, in its discretion and in appropriate circumstances, may disclose to proper Federal or state authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of Federal or state civil or criminal law.

(3) *Exempt records—Disclosure to third parties.* The NCUA Board, or any person designated by it in writing, may disclose copies of exempt records to any third party where requested to do so in writing. The request shall: (i) specify the record or records to which access is requested; and (ii) give the reasons for the request. Any NCUA employee authorized to disclose exempt NCUA records to third parties may disclose the records

only upon determining that good cause exists for the disclosure. The designated NCUA official shall impose such terms and conditions as are deemed necessary to protect the confidential nature of the record, the financial integrity of any credit union or other organization or person to which the records relate, and the legitimate privacy interests of any individual named in such records.

§792.5 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 needed to respond to a FOIA request.

(4) "Review" means: (i) the process of examining documents located in response to a request that is for a commercial use (see subsection 792.5(a)(5)) to determine whether any portion of a document located is permitted to be withheld; and (ii) the process of preparing 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 operating a program or programs of scholarly research.

(7) "Noncommercial scientific institution" means an institution: (i) that is not operated on a "commercial" basis as that term is used in subsection 792.5(a)(5); and (ii) that 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 requires it alone to 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 duplicating the documents.

(4) Fees to exceed \$25—If NCUA estimates that duplication and/or search fees are likely to exceed \$25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. The requester will then have the opportunity to confer with NCUA personnel to reformulate the request to meet the person's needs at a lower cost.

(5) Other services—Complying with requests for special services is entirely at the discretion of

NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

(6) Restriction on assessing fees—NCUA will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(7) Waiving or reducing fees—NCUA shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester.

(i) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(D) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(ii) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(iii) If the required public interest exists and the requester's commercial interest is not primary in comparison, NCUA will waive or reduce fees.

(c) *Categories of requesters.*

(1) Commercial use requesters—NCUA will assess commercial use requesters' fees which

recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(2) Educational institution, noncommercial scientific institution, and requesters who are representatives of the news media—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(3) All other requesters—NCUA shall charge requesters not included in either of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(d) *Interest on unpaid fees.*

NCUA may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C., and will accrue from the date of the billing.

(e) *Fees for unsuccessful search and review.*

NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(f) *Aggregating requests.*

A requester may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge accordingly.

(g) *Advance payment of fees.*

NCUA will require a requester to give an assurance of payment or an advance payment only when:

(1) NCUA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. NCUA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requester with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion. NCUA may re-

quire the requester to pay the full amount owed, plus any applicable interest as provided in subsection 792.5(d) or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NCUA begins to process a new request or a pending request from that requester.

(3) When NCUA acts under subsections 792.5(g)(1) or (2), the administrative time limits prescribed in Section 792.6(a) will begin only after NCUA has received the fee payments described.

§792.6 Agency determination

(a) Upon any request for records published in the *FEDERAL REGISTER*, or made available under §792.2, NCUA will:

(1) Determine within 10 working days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether, or the extent to which, to comply with such request; and will upon such determination notify the person making the request that any adverse determination is not a final agency action, and that such person may appeal any adverse determination to the Office of General Counsel;

(2) make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials). If, on appeal, the denial of the request for records is in whole or in part upheld, the Office of General Counsel will notify the person making such request of the provisions for judicial review of that determination under the FOIA. In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) In unusual circumstances as specified herein, the time limits prescribed in either paragraph (a)(1) or (a)(2) of this Section may be extended by written notice to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice will specify a date that would result in an extension

for more than 10 working days. "Unusual circumstances" means:

(1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) the need for consultation, which will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the Agency having substantial subject-matter interest therein.

(c) (1) The appropriate Regional Director, the Freedom of Information Officer, or, in their absence, their designee, is responsible for making the initial determination on whether to grant or deny a request for information. This official may refer a request to a professional NCUA employee who is familiar with the subject area of the request. Other members of the NCUA's staff may aid the official by providing information, advice, recommending a decision, or implementing a decision, but no NCUA employee other than an authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in paragraph (a)(1) of this Section unless the request involves an unusual circumstance as provided in paragraph (b) of this Section.

(2) The General Counsel is the official responsible for determining all appeals from initial determinations. In case of this person's absence, the appropriate officer acting in General Counsel's stead shall make the appellate determination, unless such officer was responsible for the initial determination, in which case the Vice-Chairman of the NCUA Board will make the appellate determination.

(3) All appeals should be addressed to the General Counsel in the Central Office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator "FOIA-APPEAL." Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a)(2) of this Section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

(d) Any person making a request to NCUA for records published in the *FEDERAL REGISTER*,

or made available under §792.2 shall be deemed to have exhausted administrative remedies with respect to such request if NCUA fails to comply with the applicable time limit provisions of this Section. On complaint filed in the appropriate U.S. District Court, if the Government can show exceptional circumstances exist and that NCUA is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the Agency additional time to complete its review of the records. Upon any NCUA determination to comply with a request for records, the records will be made promptly available. Any notification of denial of any request for records under this section will set forth the names and titles or positions of each person responsible for the denial.

(e) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where, after diligent effort, this has not been achieved within the required period, NCUA may advise the person making the request: that a determination to deny the request has been made because the records have not been found or examined; that this determination will be reconsidered when the search or examination is completed (and the time within which completion is expected); but that the person making the request may immediately file an administrative appeal.

§792.7 Confidential commercial information

(a) Confidential commercial information provided to NCUA by a submitter shall be disclosed pursuant to a FOIA request in accordance with this Section.

(b) Definitions.

For purposes of this Section:

(1) "Confidential commercial information"—means commercial or financial information provided to NCUA by a submitter that arguably is protected from disclosure under Section 792.3(a)(4) because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter"—means any person or entity who provides business information, directly or indirectly, to NCUA.

(c) Designation of business information—Submitters of business information shall use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions deemed to be protected from

disclosure under Section 792.3(a)(4). Such a designation shall expire ten years after the date of submission.

(d) Notice to submitters—NCUA shall provide a submitter with written notice of a FOIA request or administrative appeal encompassing designated business information when:

(1) The information has been designated in good faith by the submitter as confidential commercial information deemed protected from disclosure under Section 792.3(a)(4); or

(2) NCUA has reason to believe that the information may be protected from disclosure under Section 792.3(a)(4).

This notice will afford the submitter an opportunity to object to disclosure pursuant to paragraph (e) of this section. A copy of the notice shall also be provided to the FOIA requester.

(e) Opportunity to object to disclosure—Through the notice described in paragraph (d) of this Section, NCUA shall afford a submitter a reasonable period of time within which to provide a detailed written statement of any objection to disclosure. Such statement shall describe why the information is confidential commercial information and should not be disclosed.

(f) Notice of intent to disclose—Whenever NCUA decides to disclose confidential commercial information over the objection of a submitter, it shall forward to the submitter and to the requester, within a reasonable number of days prior to the specified disclosure date, a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objection was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(g) Notice of lawsuit—If a requester brings suit seeking to compel disclosure of confidential commercial information, NCUA shall promptly notify the submitter.

(h) Exceptions to notice requirements—The notice requirements of paragraph (d) of this section do not apply if:

(1) NCUA determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law; or

(4) The designation made by the submitter in accordance with paragraph (c) of this Section

appears obviously frivolous; except that, in such case, NCUA shall provide the submitter with written notice of any final administrative decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

Subpart B—The Privacy Act

§792.20 Scope

This Subpart governs requests made of NCUA under the Privacy Act (5 U.S.C. §552a). The regulation applies to all records maintained by NCUA which contain personal information about an individual and some means of identifying the individual, and which are contained in a system of records from which information may be retrieved by use of an identifying particular; sets forth procedures whereby individuals may seek and gain access to records concerning themselves and request amendments of those records; and sets forth requirements applicable to NCUA employees' maintaining, collecting, using, or disseminating such records.

§792.21 Definitions

For purposes of this Subpart:

(a) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) "Maintain" includes maintain, collect, use, or disseminate.

(c) "Record" means any item, collection, or grouping of information about an individual that is maintained by NCUA, and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual.

(d) "System of records" means a group of any records under NCUA's control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(e) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by Section 8 of Title 13 of the United States Code.

§792.22 Procedures for requests pertaining to individual records in a system of records

(a) An individual seeking notification of whether a system of records contains a record pertaining to that individual, or an individual seeking access to information or records pertaining to that individual which are available under the Privacy Act shall present a request to the NCUA official identified in the access procedure section of the "Notice of Systems of Records" published in the *FEDERAL REGISTER* which describes the system of records to which the individual's request relates. An individual who does not have access to the *FEDERAL REGISTER* and who is unable to determine the appropriate official to whom a request should be submitted may submit a request to the Director of the Administrative Office, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456, in which case the request will then be referred to the appropriate NCUA official and the date of receipt of the request will be determined as the date of receipt by the official.

(b) In addition to meeting the identification requirements set forth in §792.23, an individual seeking notification or access, either in person or by mail, shall describe the nature of the record sought, the approximate dates covered by the record, and the system in which it is thought to be included, as described in the "Notice of Systems of Records" published in the *FEDERAL REGISTER*.

§792.23 Times, places, and requirements for identification of individuals making requests and identification of records requested

(a) The following standards are applicable to an individual submitting requests either in person or by mail under §792.22:

(1) If not personally known to the NCUA official responding to the request, an individual seeking access to records about that individual in person shall establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license or credit card);

(2) An individual seeking access to records about that individual by mail may establish iden-

tity by a signature, address, date of birth, employee identification number if any, and one other identifier such as a photocopy of driver's license or other document. If less than all of this requisite identifying information is provided, the NCUA official responding to the request may require further identifying information prior to any notification or responsive disclosure.

(3) An individual seeking access to records about that individual by mail or in person, who cannot provide the required documentation or identification, may provide a notarized statement affirming identity and recognition of the penalties for false statements pursuant to 18 U.S.C. 1001.

(b) The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing identity of the minor or other person as required in paragraph (a) of this section, furnish a copy of a birth certificate showing parentage or a court order establishing guardianship.

(c) An individual may request by telephone notification of the existence of and access to records about that individual and contained in a system of records. In such a case, the NCUA official responding to the request shall require, for the purpose of comparison and verification of identity, at least two items of identifying information (such as date of birth, home address, social security number) already possessed by the NCUA. If the requisite identifying information is not provided, or otherwise at the discretion of the responsible NCUA official, an individual may be required to submit the request by mail or in person in accordance with paragraph (a) of this Section.

(d) An individual seeking to review records about that individual may be accompanied by another person of their own choosing. In such cases, the individual seeking access shall be required to furnish a written statement authorizing discussion of that individual's records in the accompanying person's presence.

(e) In addition to the requirements set forth in paragraphs (a), (b) and (c) of this Section, the published "Notice of Systems of Records" for individual systems may include further requirements of identification where necessary to retrieve the individual records from the system.

§792.24 Notice of existence of records, access decisions and disclosure of requested information; time limits

(a) The NCUA official identified in the record access procedure section of the "Notice of Systems