

August 17, 1995

D. Ronald Ryland, Esq.

Sheppard, Mullin, Richter & Hampton

Seventeenth Floor

Four Embarcadero Center

San Francisco, CA 94111

Re: Freedom of Information Act - Appeal

(Your July 25, 1995 Letter Concerning

Delegations of Authority)

Dear Mr. Ryland:

On June 5, 1995, Bruce Pearson (your co-counsel in this matter) filed a Freedom of Information Act (FOIA) request for "copies of the documents, information, and/or authority(ies) referenced in the enclosure." The enclosure is NCUA Chartering Delegations 1 and 2, dated December 1994. This enclosure was originally sent in response to a May 25, 1995 FOIA request made by a Mr. Joseph Melchione, a partner in Mr. Pearson's lawfirm. By letter dated July 6, 1995, Richard Schulman, NCUA's FOIA Officer, responded to the FOIA request. NCUA Board meeting minutes and documents referenced in the enclosure were released. Several Board Action Memoranda (BAMs) were withheld pursuant to exemption 2 of the FOIA. We received your July 25 appeal on August 1, 1995. We note that your appeal was sent to the United States Attorney in San Francisco rather than to NCUA's Office of General Counsel as required by Section 792.6(a)(1) of the NCUA Regulations (12 CFR 792.6(a)(1)). You believe that the documents withheld pursuant to exemption 2 should be released. You also raise two other issues in your appeal. The documents withheld pursuant to exemption 2 are released. We have also released two additional BAMs we have located which were presented at open NCUA Board meetings. All three issues you raise in your appeal are addressed below.

First, you note that the Preamble to NCUA's Delegations of Authority was not included as a responsive document to Mr. Pearson's June 5 FOIA request. The Preamble was not included because it was not responsive to the FOIA request. Mr. Pearson requested documents "referenced in the enclosure" (certain chartering delegations). The Preamble to the NCUA Delegations was not referenced in the enclosure, therefore it was not responsive to Mr. Pearson's request. You also note that the Preamble was not included in response to Mr. Melchione's May 25 FOIA request. Mr. Melchione's request was for documentation regarding "delegation for decision making to the Regional Directors ... for matters falling under IRPS 94-1, Section 1751 of the Federal Credit Union Act or Section 1785(c) of the Federal Credit Union Act." The Preamble is a general statement regarding all delegations. It contains no specific reference to IRPS 94-1 or Sections 1751 or 1785 of the FCU Act. We did not believe it to be responsive to Mr. Melchione's request. We note further that Mr. Melchione did not appeal his May 25 FOIA request.

Second, you indicate your belief that there are "guidelines" established by the NCUA that govern the Regional Director's consideration of mergers and that these guidelines have not been released pursuant to your FOIA request. The legal, regulatory and interpretive guidance for mergers are Sections 109 and 205 of the FCU Act; Part 708 of the NCUA Rules and Regulations, and Interpretive Ruling and Policy Statement (IRPS)

94-1. We believe you have access to these documents. In addition, the NCUA has issued a Credit Union Merger

Procedures and Merger Forms Manual. For the most part, this is a how to manual for mergers. It does not set forth specific merger guidelines. A copy of the Merger Manual is enclosed.

Third, you appeal the denial of BAMs pursuant to exemption 2 of the FOIA. Six BAMs (dated 11/19/86, 6/10/87, 6/15/89, 3/11/92, 6/23/92, 6/15/93) and one NCUA Board notation vote (dated 5/6/94) were withheld pursuant to exemption 2. We have determined that these previously denied documents do not contain exemptible material and are therefore released. Copies of these BAMs and the notation vote which were previously denied are enclosed. Non-responsive portions of the BAMs have been redacted. Minutes from the 3/11/92 closed Board meeting are also enclosed. We have also located two additional BAMs (dated 5/12/83 and 11/3/88) which were presented at open NCUA Board meetings. These BAMs are also enclosed.

Sincerely,

James J. Engel

Acting General Counsel

Enclosures

GC/HMU:bhs

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