

May 28, 1998

William Kelly, Jr.

Director, Center for Credit Union Research

University of Wisconsin-Madison

School of Business

Grainger Hall

975 University Avenue

Madison, WI 53706-1323

Re: FOIA Appeal, your letter dated April 28, 1998

Dear Mr. Kelly,

On March 5, 1998, you filed a Freedom of Information Act (FOIA) request seeking comparative information on losses to the National Credit Union Share Insurance Fund (NCUSIF) caused by federally-chartered and federally insured, state-chartered credit unions. You requested the number of credit unions causing an insurance loss, and the dollar value of the insurance loss for each credit union. You also requested the credit union, charter type, asset size and insurance loss for each of the top five credit union losses for each year. You sought the information for the years 1971 - 1996. On April 9, 1998, Dianne Salva, NCUA Staff Attorney, responded to your request. Since our historical data files date back only to 1984, you only received information for the years 1984 - 1996.

We received your April 28 appeal on May 4. You again request information for the years 1971-1984. We again note the NCUA does not maintain records on individual credit unions causing losses to the NCUSIF prior to 1984. The NCUA Annual Reports for the years 1971 -1984 do contain some information on liquidations and losses to the NCUSIF for those years. However, there is little, if any information in the Annual Reports on specific credit union losses. Hattie Ulan of my office spoke to your associate Elaine and told her of the availability of the Annual Reports and the information they contain. We understand that you have already reviewed the Annual Reports.

The records that you are requesting would now be from fourteen to twenty-seven years old. NCUA, and all federal agencies, maintain most records only for a limited period of time before they are sent to one of several Federal Records Centers (FRCs). The records are then maintained at the FRC for a certain period of time and are then destroyed. Records are maintained pursuant to both government-wide and individual agency schedules. (*See* applicable regulations of the National Archives and Records Administration, 36 C.F.R.1228.) Under NCUA's record retention schedules, credit union liquidation files are transferred to the FRC when they are no longer needed. The records are destroyed five years after notification of cancellation of the charter. Any liquidation records sent to a FRC from 1971 - 1984 would have been destroyed several years ago.

Federal agencies are under a duty to conduct a reasonable search for records when a FOIA request is received. Patterson v. Internal Revenue Service,

56 F.3d 832, 841 (7<sup>th</sup> Cir. 1995). The question is not whether any documents responsive to the request might exist, but rather whether the search for any responsive documents was adequate. Steinberg v. United States Department of Justice, 23 F.3d 458 (D.C. Cir. 1994) quoting from Weisberg v. United States Department of Justice, 745 F.2d 1476 (D.C. Cir. 1984). Given the age of the records requested and the retention schedules noted above, we believe any further search for records would be futile.

Pursuant to 5 U.S.C. 552(a)(4)(B), you may seek judicial review of this determination by filing suit against NCUA.

Such a suit may be filed in the United States District Court in the district where you reside, where your principal place of business is located or in the District of Columbia.

Sincerely,

Robert M. Fenner

General Counsel

GC/HMU:bhs

SSIC 3212

98-0503