

October 21, 2008

Mary Mitchell Dunn
Deputy General Counsel
Credit Union National Association
Washington, D.C. 20007-1082

Re: Attorney-Client Privilege

Dear Ms. Dunn:

I am writing in response to your recent letter concerning whether a credit union has the ability to assert the attorney-client privilege against NCUA. You have asked whether a recent NCUA letter No. 06-1134 opines that, given the addition of Section 205(j), 12 U.S.C. §205(j), to the Federal Credit Union Act ("FCUA") the privilege is no longer available to credit unions.

We do not believe that the addition of Section 205(j) to the FCUA eliminates the ability of a credit union to assert the attorney-client privilege. In fact, that section protects the credit union's ability to assert the privilege as to third parties even when it provides an NCUA examiner a privileged document. NCUA opinion letter No. 06-1134 is consistent with this view.

Our position regarding access to credit union records has not changed. Pursuant to the FCUA and NCUA's Rules and Regulations, NCUA examiners are permitted complete access to the books and records of a credit union. See 12 U.S.C. §1756; 1784; 12 C.F.R. §741.1. Our opinion letter points out that NCUA previously permitted credit unions to withhold records covered by the attorney-client privilege because we recognized that courts might treat release of such privileged information to NCUA as a waiver of the privilege as to a third party. That possibility has been eliminated because of the addition of Section 205(j) to the FCUA. Accordingly, NCUA will no longer permit credit unions to withhold privileged documents because of an assertion that producing them will waive a privilege as to a third party.

This does not mean that it is no longer possible for a credit union to assert the attorney-client privilege against NCUA. However, our experience has been that the waiver of privilege as to a third party was almost always the reason for asserting privilege in the past. That possibility has been eliminated by Section 205(j).

Mary Mitchell Dunn
October 21, 2008
Page 2

I trust this responds to your concerns. Should you have any questions, please contact me or John K. Ianno.

Sincerely,

/S/

Robert M. Fenner
General Counsel