

January 11, 2008

Mr. Gary E. Somerville
Director, Decision Support Systems
Vantage West Credit Union
P.O. Box 15115
Tucson, Arizona 85708

Re: Electronic Retention of Records.

Dear Mr. Somerville:

You asked for our opinion on the permissibility of a federally insured credit union retaining records, specifically original loan documents for outstanding loans to members, in an electronic format instead of a paper format. Under federal law and NCUA's record retention regulation, records can be preserved in any format that can be used to reconstruct the records, including in an electronic format.

The Electronic Signatures in Global and National Commerce (E-Sign) Act established a general rule of validity for electronic records and signatures for transactions, effective October 1, 2000, with records retention requirements effective March 1, 2001. 15 U.S.C. §7001(a)(1). The E-Sign Act "permits electronic retention of records required by other statutes and regulations, as long as the electronic form is accurate and capable of being reproduced for later reference." NCUA Regulatory Alert No. 01-RA-03 (March 2001) (available on the NCUA website, www.ncua.gov).

NCUA's Records Preservation Program regulation describes obligations for federally insured credit unions to maintain a records preservation program and implements the E-Sign Act. 12 C.F.R. Part 749. This regulation establishes the formats for vital records preservation and also for records required by other NCUA regulations. Records can be preserved in any format that can be used to reconstruct the credit union's records. The format used "must accurately reflect the information in the record, remain accessible to all persons entitled to access by statute, regulation or rule of law, and be capable of reproduction by transmission, printing, or otherwise." 72 Fed. Reg. 42,273-42,274 (to be codified at 12 C.F.R. §§ 749.4, 749.5). In addition, the credit union must maintain the necessary equipment or software to permit an examiner to access the records during the examination process.

Finally, we want to clarify the significance of prior legal opinions we have issued on this topic. We note our office has previously issued a legal opinion on

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electronic membership applications citing the E-Sign Act and establishing the validity of electronic recordkeeping for federally insured credit unions. OGC Op. 04-0543 (Aug. 5, 2004) (available on NCUA's website, www.ncua.gov). You specifically asked about an older opinion, OGC Op. 99-0443 (June 24, 1999), indicating it was confusing because this opinion letter recommended that credit unions retain original loan documents until a loan is paid off. We note we issued this opinion before the E-Sign Act; also, the opinion references the NCUA Accounting Manual as setting out NCUA's policies on records retention, which is no longer correct. The Accounting Manual was substantially revised several years ago and no longer addresses records retention. Thus, OGC Op. 99-0443 has been superseded by revisions to Part 749 and subsequent opinions on record retention.

Records retention guidance for federally insured credit unions is provided in Appendix A to Part 749 in NCUA's regulations and it specifically addresses the question of formats credit unions can use for retaining records stating that "NCUA does not recommend a particular format for record retention." 12 C.F.R. Part 749, Appendix A, Section A. This section also discusses the criteria regarding accuracy and accessibility of which credit unions should be mindful and notes that, as far as relying on copies or reproductions of records, credit unions "should also ensure that the reproduction is acceptable for submission as evidence in a legal proceeding." *Id.* Whether a reproduction will be acceptable in a legal proceeding may vary with state law requirements and, therefore, we encourage credit unions to consult with their own legal counsel on this aspect of their record retention policy.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/RMM/SAA:bhs
07-0812