

January 7, 1993

Daniel D. Plauda
President/
Chief Executive Officer
Illinois Credit Union League
P.O. Box 3107
Naperville, IL 60566-7107

Re: Truth in Savings/ Request for Exemption (Your Letter of December 2, 1993)

Dear Mr. Plauda:

Chairman D'Amours asked that the Office of General Counsel respond to your letter. In your letter, the Illinois League of Credit Unions ("Illinois League") requested that NCUA exempt all credit unions with no data processing capabilities ("Nonautomated Credit Unions") from the dividend calculation requirements of Part 707 of the NCUA Rules and Regulations. 12 C.F.R. ~707.7. In addition, the Illinois League requests that NCUA permit the Nonautomated Credit Unions to continue using low-balance methods of dividend calculation, with full disclosure and the permission of the appropriate NCUA Regional Director. For the reasons stated in this letter, NCUA cannot agree to either of your two requests.

ANALYSIS

Legal Issues

The NCUA Board is well aware of the situation faced by Nonautomated Credit Unions. Nonautomated Credit Unions are the reason that the Board extended the compliance date for Part 707 to January 1, 1995.

The board has been extremely concerned about the effect that this regulation will have on small, nonautomated credit unions that offer rollback or other low balance accounts. As discussed elsewhere in this supplementary information (see ~707.7(c) and discussion of Regulatory Flexibility Act) the rule, particularly the requirements for daily balance or average daily balance calculations, will create substantial financial hardship for such entities. In addition to facing the compliance burden imposed upon all credit unions, the majority of these small credit unions will have to purchase computer equipment or services, change their balance calculation methods, and train their staffs in new methods. Many commenters have indicated that it will be literally impossible for some of these credit unions to comply within nine months. Fifteen months is the time frame most often suggested to the Board as reasonable for compliance. The Board is persuaded by the comments that a later effective date than that originally contemplated is necessary.

Final Rule, 58 Fed. Reg. 50393, 50396 (September 27, 1993). The reason for this generosity and sensitivity to the needs of Nonautomated Credit Unions by the NCUA Board is because it is the only mitigating option remaining to the Board under the Truth in Savings Act ("TISA"). As is explained fully in the preamble to the final rule (see 58 Fed. Reg. 50393, 50396 (timetable), 50428-50430 (payment of dividends), 50433-50434 (date dividends begin to accrue), and 50443-50444 (regulatory flexibility analysis)), NCUA has considered the plight of Nonautomated Credit Unions very earnestly, but has no authority to exempt such credit unions from either TISA or Part 707.

TISA's primary purpose is to enable consumers (members) to make informed decisions about deposit (and share) accounts, by promoting uniformity in the disclosure of terms and conditions and interest (dividend) calculations. 12 U.S.C. ~4301. Moreover, TISA clearly bans low-balance, rollback, and other accounts that

do not pay dividends on the full amount of principal in an account each day. 12 U.S.C. ~4306(a).

Any variation from the Federal Reserve Board's Truth in Savings rule, Regulation DD, and TISA, must either: (1) arise out of the unique nature of credit unions and the limitations under which they may pay dividends (12 U.S.C. ~4311(b)), and (2) be necessary or proper to carry out the purposes of TISA, prevent circumvention or evasion of TISA, or facilitate compliance with TISA's requirements (12 U.S.C. ~4308(a)(3)). Neither the practice of low balance and rollback accounts nor the lack of data processing equipment or ability meet the requirements for an exemption under TISA. As discussed in detail in the preamble to the final rule, low balance methods and nonautomation are neither unique to credit unions, a limitation upon which dividends are paid, nor carry out the purposes of TISA. See Final Rule, 58 Fed. Reg. 50393, 50429-50430.

The proper venue for your petitions lie with Congress, not with the NCUA Board. Until such time as the language of TISA would be amended to permit the Board to grant your exemption request, NCUA is without authority to grant the exemptions requested in your letter.

Compliance Assistance Issues

NCUA has an ongoing program to assist all credit unions, with an emphasis on Nonautomated Credit Unions, in complying with Part 707 by the mandatory compliance date of January 1, 1995. The NCUA's Office of Examination and Insurance ("OEI") plans on having NCUA examiners assist credit unions through on-site contacts, and assistance with, by and through local credit union leagues and other organizations. During the past 6 weeks and over the next 30 days, OEI: (1) has identified Nonautomated Credit Unions and other credit unions that could be adversely affected by Part 707; (2) placed articles in the NCUA News asking credit unions to contact their NCUA Regional Office if they anticipate Part 707 compliance difficulties; (3) began working with, and providing training for, state regulator staffs in developing action plans to assist state-chartered credit unions; and (4) continued commitment of NCUA's availability to conduct education and training programs.

OEI's intermediate plans are for NCUA examiners to contact the credit unions identified in (1), above, to determine the type and amount of training and assistance that will be necessary. OEI is developing a two-part education/training standard presentation program that senior examiners can deliver to league and chapter meetings.

Part One of the plan consists of providing information and explanation of TISA and Part 707, as well as its implementation, to eliminate the fear factor. This part is currently under review by OEI and all Regional Directors. Regional Directors will then set up and schedule the presentation program with the various leagues in the Regions.

Part Two of the plan is a nuts and bolts presentation on computation and disclosure requirements (using case studies and examples format). Part Two is still in the developmental stage and may be conducted with various trade associations.

NCUA will conduct train-the-trainer sessions in each Region on the two-part presentation package. These sessions are planned for the first quarter of 1994. We will then begin conducting education/training programs on the local level. Regional Directors will coordinate this part with the trade associations and leagues.

NCUA plans on publishing periodic articles in the NCUA News on the requirements of TISA and Part 707, including information on NCUA's enforcement approach (to stress education and training). OEI is updating

NCUA's Regulatory Handbook of Compliance Activities, the Examiners Guide, and the Accounting Manual for FCUs to include information regarding TISA and Part 707. Examiner compliance training will also be expanded to include more on TISA and Part 707. OEI plans to accomplish this by including Truth in Savings presentations in the New Examiner Training Program and lengthening the Consumer Compliance Seminar from 2 1/2 days to 4 days to accommodate the instruction. In addition, all NCUA examiners will receive TISA and Part 707 training at NCUA Regional Conferences between April and June 1994. Internal NCUA publications will also ensure that examiners understand that NCUA's primary enforcement policy when it comes to implementing Truth in Savings compliance is the education of credit unions. Additionally, NCUA Letter to Credit Unions No. 148 (November 1993) gives a synopsis of NCUA's plans and commitment to all credit unions, especially to Nonautomated Credit Unions. Finally, NCUA is continuing to review other ways it can assist credit unions during this transition.

As you can clearly see, NCUA is dedicated to assisting Nonautomated Credit Unions to the maximum extent of our ability. We trust that this is responsive to your inquiry.

Sincerely,

Richard S. Schulman
Acting Associate General Counsel

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