

March 2, 2001

Carla J. Cerniglia, Senior Compliance Specialist  
New York State Credit Union League, Inc.  
19 British American Blvd.  
Latham, NY 12110

Re: Applicability of State Lending Regulation to Federal Credit Unions.

Dear Ms. Cerniglia:

The purpose of this letter is to supplement a previous letter we sent to you on the question of the extent to which NCUA's lending regulation preempts a New York regulation intended to curb abuses in high cost mortgage loans. 3 NYCRR Part 41; 12 C.F.R. §701.21.

Specifically, we want to draw your attention to the relationship between the state regulation and another federal law, the Truth in Lending Act. In addition, we want to note the NCUA's support for state regulatory efforts in the area of predatory lending and highlight our involvement in efforts to combat predatory lending.

NCUA has focused on the issue of predatory mortgage lending in several ways. On December 16, 1999, the NCUA Board adopted a resolution to work on a cooperative basis with the National Association of State Credit Union Supervisors (NASCUS) on predatory mortgage lending practices. NCUA senior staff members have met with the NASCUS task force on predatory mortgage lending to discuss NASCUS data gathering efforts and the coordination of state and federal regulatory efforts. Also, in June 1999, NCUA issued a Letter to Credit Unions, 99-CU-05, which, while encouraging FCUs to make risk-based loans, specifically cautions that pricing differences must be justified based on risk or credit unions face heightened compliance and reputation risks. In addition, NCUA is a member of an interagency task force, with representatives from all the federal financial institution regulators, that has been working for several months on a policy statement on predatory lending.

NCUA's lending regulation does not preempt state laws that affect aspects of credit transactions that are primarily regulated by other federal laws or regulations. Our regulation specifically provides that, in those cases, preemption is determined under the standards provided by the other relevant federal law. 12 C.F.R. §701.21(b)(3).

The Home Ownership and Equity Protection Act (HOEPA), an amendment to the Truth in Lending Act, 15 U.S.C. §1601 *et seq.*, governs certain closed-end home mortgages. In comparison, the definition of a high cost home loan under the New York regulation encompasses a broader scope of mortgage loans and is triggered at lower thresholds than those in HOEPA. 3 NYCRR §41.1(e). HOEPA does not restrict states from adopting laws that provide greater consumer protections for

loans that are covered under HOEPA. 15 U.S.C. §1610(b). Under HOEPA, a creditor must comply with any state law governing HOEPA loans to the extent it is not inconsistent with HOEPA. 12 C.F.R. §226.28(a)(1). Thus, FCUs are also subject to state law governing HOEPA loans to the extent the law is not inconsistent with HOEPA.

Reviewing the New York regulation in light of HOEPA, we believe that FCUs are subject to provisions such as the state regulation's prohibitions regarding negative amortizations, increased interest rates, advance payments and certain lending practices. 3 NYCRR §§41.2(c), .2(d), .2(f), .3(b), .3(e). These provisions track HOEPA and its implementing regulation, Regulation Z, issued by the Federal Reserve Board (FRB). We note that a determination as to whether state law is inconsistent with HOEPA, however, falls within the purview of FRB. A creditor, state or other interested party may submit a request to the FRB for a determination that a state law is inconsistent or substantially the same as TILA. 12 C.F.R. §226.28, Appendix A to Part 226.

Finally, although we conclude that our lending regulation preempts some provisions of New York's regulation, we want to highlight that the Federal Credit Union Act (FCUA) and our lending regulation contain significant consumer protections for all member loans, not only those that are real estate secured. FCUs are subject to an 18 percent interest rate ceiling. 12 U.S.C. §1757(5)(A)(vi); 12 C.F.R. §701.21(c)(7)(ii)(B). Additionally, unlike HOEPA or the New York regulation, the FCUA strictly prohibits FCUs from charging prepayment penalties. 12 U.S.C. §1757(5)(A)(viii).

We hope that you find this information helpful.

Sincerely,

Sheila A. Albin  
Associate General Counsel

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November 16, 2000

Carla J. Cerniglia, Senior Compliance Specialist  
New York State Credit Union League, Inc.  
19 British American Blvd.  
Latham, NY 12110

Re: Applicability of State Lending Regulation to Federal Credit Unions.

Dear Ms. Cerniglia:

You have asked whether a regulation adopted by the State of New York Banking Department entitled "High Cost Home Loans," 3 NYCRR Part 41, applies to federal credit unions (FCUs) in New York. The state's regulation applies to FCUs except for provisions that regulate the rates, terms of repayment and other conditions of loans and lines of credit, which our lending regulation preempts. 12 C.F.R. §701.21(b)(1).

While New York law provides that mortgage regulations adopted by the state's banking department apply to FCUs, our lending regulation preempts state law regarding rates, terms of repayment and other conditions of FCU loans and lines of credit. N.Y. BANKING LAW §§6-I, 590(1)(e) (Consol. 2000); 12 C.F.R. §701.21. The attached letter from me to Philip L. Carson, dated September 4, 1997, provides our analysis for federal preemption of state lending laws. State law includes the constitution, laws, regulations and judicial decisions of any state. 12 C.F.R. §701.21(b)(5).

Our lending regulation preempts New York's regulation to the extent it limits or affects rates of interest, finance charges, late charges, closing costs, terms of repayment, and loan conditions such as the loan amount, type of loan, permissible security, eligibility of borrowers and the enforcement of liens on shares. 12 C.F.R. §701.21(b)(1). We have identified those provisions in the regulation that are preempted under federal law and therefore inapplicable to FCUs in New York.

Our lending regulation preempts Section 41.2(a), (b), (c), and (f) because they control the terms of repayment by prohibiting certain call provisions and balloon payments, restricting the use of negative amortizations in payment schedules and barring advance payments. 12 C.F.R. §701.21(b)(1)(ii)(C), (B). Federal law also preempts Section 41.2(d) and (g) because they limit the rates of interest and the amount of fees an FCU may charge in a loan agreement. 12 C.F.R. §701.21(b)(1)(i)(A), (C).

Our rule also preempts Section 41.3(b) because it addresses the eligibility of borrowers and dictates the amount of payments, thereby affecting the terms of repayment. 12 C.F.R. §701.21(b)(1)(iii)(D), (b)(1)(ii)(B). Section 41.3(c) and (d) are preempted because they limit or affect the rates of interest and amounts of finance charges or other fees. 12 C.F.R. §701.21(b)(1)(i). Section 41.3(e) places restrictions on home improvement loans and is preempted by our regulation because it places conditions on loans based on the type of loan. 12 C.F.R. §701.21(b)(1)(iii)(B).

Section 41.4(b) requires reporting of certain information to credit bureaus and, also, is preempted. This provision is preempted by the Fair Credit Reporting Act, which expressly preempts state laws relating to the responsibilities of persons who furnish

information to consumer reporting agencies. 15 U.S.C. §1681t(b)(1)(F). Our rule provides that, for aspects of transactions that are primarily regulated by federal law other than the Federal Credit Union Act, we will determine the question of preemption under the standards of the relevant federal law. 12 C.F.R. §701.21(b)(3).

We also note that Section 41.5, which sets out criteria to be considered in licensing or registering lenders, does not apply to FCUs because they are not subject to state law on licensing and registering.

Finally, we note that while our regulation preempts state laws regarding rates, terms of repayment and other loan conditions, the Federal Credit Union Act places various limitations on FCU loans. For example, FCUs are currently subject to an 18 percent interest rate ceiling and are prohibited from charging prepayment penalties. 12 U.S.C. §1757(5)(A)(vi), (viii); 12 C.F.R. §701.21(c)(7)(ii)(B).

Sincerely,

Sheila A. Albin  
Associate General Counsel

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Enclosure