

July 29, 2002

Richard P. Kessler, Jr., Esquire  
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Marquis Two Tower, Suite 600  
285 Peachtree Center Avenue, N.E.  
Atlanta, GA 30303-1229

Re: Applicability of Georgia Fair Lending Act to Federal Credit Unions.

Dear Mr. Kessler:

You have asked whether Georgia's recently passed Fair Lending Act applies to federal credit unions (FCUs) in Georgia. As explained below, certain provisions relating to closed-end mortgages may be preempted by the Truth in Lending Act (TILA). 15 U.S.C. §1601 *et seq.* The Federal Reserve Board (FRB) makes this determination. Our lending regulation preempts other provisions not covered by TILA that regulate rates, terms of repayment and other conditions of loans and lines of credit. 12 C.F.R. §701.21(b)(1).

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 TILA, governs certain closed-end home mortgages and excludes "residential loans." 12 C.F.R. §226.32(a). "Residential loans" are defined in HOEPA as loans in which a mortgage "is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling." 12 C.F.R. §226.2(a)(24).

The Georgia statute applies to both open and closed-end home loans and includes "residential loans," as defined in HOEPA. Ga. Code Ann. §7-6A-2(6), (9)(2002). The definition of a high cost home loan under the Georgia's statute, because it includes open-end loans and "residential loans," encompasses a broader scope of mortgage loans and is triggered at slightly different thresholds than those in HOEPA. Ga. Code Ann. §7-6A-2(8), (19). HOEPA does not restrict states from adopting laws that provide greater consumer protections for loans 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 subject to state law governing HOEPA loans to the extent the law is not inconsistent with HOEPA.

Reviewing the Georgia statute in light of HOEPA, we believe that FCUs entering into closed-end loans that are not "residential loans" and fall within either the HOEPA or Georgia thresholds are subject to provisions such as prohibitions

regarding negative amortizations, increased interest rates, advance payments and certain lending practices. Ga. Code Ann. §§7-6A-4; 7-6A-5(2)-(5), (8), (9), and (14). These provisions, although in some instances more restrictive, track HOEPA and its implementing regulation, Regulation Z, issued by the 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.

For those loans not covered by HOEPA, our lending regulation preempts the Georgia statute to the extent it limits or affects rates of interest, finance charges, late charges, closing costs, terms of repayment, and loan conditions. 12 C.F.R. §701.21(b)(1). Our rule preempts two provisions in the Georgia statute that place conditions on the types of loans. Ga. Code Ann. §§7-6A-3(1); 7-6A-4. Our rule also preempts four provisions that limit fees. Ga. Code Ann. §§7-6A-3(3), (4); 7-6A-5(10), (13).

NCUA and not, as stated in the Georgia law, the state commissioner of banking and finance, has the authority to take enforcement action against FCUs. Ga. Code Ann. §7-6A-8. As explained in the attached letter from Hattie M. Ulan to Peter J. Liska, dated June 11, 1992, and as provided in NCUA's regulations, if violations of state law occur and the matter cannot be resolved informally, the imposition of fines and penalties falls within NCUA's enforcement jurisdiction. 12 C.F.R. §701.21(b)(4).

Finally, although we conclude that our lending regulation preempts some provisions of the Georgia statute, 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 Georgia statute, 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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02-0649

Enclosure

