

October 3, 2002

Arthur T. Corey, General Counsel  
Connecticut Credit Union Association  
110 South Turnpike Road  
Wallingford, Connecticut 06492

Re: Preemption of Connecticut Open-End Mortgage Law.

Dear Mr. Corey:

You have asked whether the Federal Credit Union Act (Act) and NCUA's lending regulation preempt a Connecticut law that bars financial institutions from permitting borrowers to use credit cards to access a home equity line of credit (HELOC). CONN. GEN. STAT. ANN. §49-2(c)(9)(C). Our opinion is that, because the effect of this state law is to regulate the conditions of loans, lines of credit or credit cards, it is preempted, and the State of Connecticut may not require federal credit unions (FCUs) to comply with it.

The Connecticut law permits advances under a mortgage for a "consumer revolving loan," commonly known as a HELOC. The issue is that the Connecticut law defines a consumer revolving loan as:

[A] loan . . . which . . . does not authorize access to the loan proceeds by credit card or any similar instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit . . . .

CONN. GEN. STAT. ANN. §49-2(c)(9)(C)(iii).

NCUA's lending regulation expressly preempts state laws affecting conditions of FCU lending. It states:

Section 701.21 is promulgated pursuant to the NCUA Board's exclusive authority as set forth in Section 107(5) of the Federal Credit Union Act (12 U.S.C. §1757(5)) to regulate the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards) to members.

12 C.F.R. §701.21(b)(1). The regulation preempts any state law purporting to limit or affect conditions related to the amount or purpose of loans or lines of credit, including credit cards, in addition to other conditions. 12 C.F.R. §701.21(b)(1)(iii).

The regulation lists areas preempted, including laws affecting interest rates, finance charges, use of and limits on variable rate credit, maturity limits, terms of repayment, and other conditions. The listing of these areas is exemplary only. 12 C.F.R. §701.21(b)(1). In the final rule's preamble, the NCUA Board noted that the list "is not intended to be nor should it be considered exhaustive." 49 Fed. Reg. 30683, 30684 (Aug. 1, 1984).

This Connecticut law affects conditions related to the purpose and the distribution of a loan and the use of credit cards. While the Connecticut law permits a lender to grant HELOCs for consumer purposes, it prohibits the lender from allowing borrowers to draw on the loan through a credit card or similar device. The law burdens lenders and borrowers because a borrower must obtain a draw on the HELOC by obtaining a check or cash distribution from the lender. But, once a borrower receives the loan proceeds, the borrower is free to use the money for a personal, family, or household purpose, and obtain goods or services. Thus, the result --an extension of credit-- is the same whether a borrower uses a credit card or obtains a check or cash distribution. The prohibition against a credit card device limits the borrower's ability to use a HELOC for consumer purposes

and burdens the means of distributing the loan.

While the Act and regulations issued by the NCUA preempt much of the field of FCU regulation, FCUs are subject to state laws. NCUA's lending regulation expressly recognizes that FCUs are subject to state law in certain matters, including insurance laws, issues related to the establishment and transfers of security interests, issues of default and so forth. 12 C.F.R. §701.21(b)(2). The Connecticut statute is not within the area of permissible regulation by the states because it affects conditions related to the purpose of the loan and the distribution of loan proceeds.

Sincerely,

Sheila A. Albin

Associate General Counsel

OGC/CJL:bhs

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