

January 28, 2004

Peter J. Liska, LLC
Attorney at Law
766 Shrewsbury Avenue
Tinton Falls, New Jersey 07724

Re: New Jersey Homeownership Security Act of 2002.

Dear Mr. Liska:

You have asked if the New Jersey Homeownership Security Act of 2002 (the Act), which addresses predatory lending practices in consumer mortgage loans, applies to federal credit unions (FCUs). Our opinion is that this law is preempted because it purports to limit or affect the rates, terms of repayment and other conditions of loans and lines of credit that FCUs may offer to their members.

The Act is an anti-predatory lending law requiring certain disclosures and prohibiting certain terms and conditions in “home loans,” “covered home loans,” and “high-cost home loans,” as these terms are defined in the Act. N.J. STAT. §46:10B-22 to -35 (Lexis 2002). Home loans are subject to certain provisions regulating the terms of credit, loan-related fees, disclosures, and processing, originating and servicing mortgages. These provisions include: 1) prohibiting single premium financing of credit insurance, debt cancellation coverage, or suspension coverage; 2) prohibiting the encouragement of default in order to refinance the debt; 3) limiting late payment fees; 4) prohibiting acceleration of the indebtedness at the creditor’s sole discretion; and 5) prohibiting charges for payoff balance fees. N.J. STAT. §46:10B-25. Creditors are also prohibited from “flipping” covered home loans. N.J. STAT. §46:10B-25(b).

In addition to these restrictions, high cost home loans are subject to other provisions regulating the terms of credit, loan-related fees, disclosures, processing, originating, and servicing mortgages, and disbursements. These provisions include: 1) prohibiting balloon payments, negative amortization, increases in the interest rates after default, and fees to modify, renew, extend, or amend a high-cost home loan or defer a payment; 2) limiting the number of advance payments from loan proceeds; 3) requiring creditors to provide special disclosures to borrowers; 4) requiring borrowers to attend loan counseling before the creditor may make the loan; 5) restricting payments of loan proceeds to home improvement contractors; 6) prohibiting refinancing points and fees for an existing loan held by the same creditor; and 7) limiting the financing of points and fees. N.J. STAT. §46:10B-26.

The Act’s various restrictions and requirements are directed at “home loans,” “covered home loans,” and “high-cost home loans.” As noted above, these types of loans are defined in terms of their rates, repayment terms or lending conditions. As such, an FCU must either change its rates or other terms and conditions of its lending or be subject to the requirements of the Act. NCUA’s long-standing position is that state laws affecting rates, repayment terms or lending conditions are preempted. 49 Fed. Reg. 30683, 30684 (August 1, 1984).

NCUA’s lending regulation preempts any state law that regulates the rates, terms of repayment and other conditions of federal credit union loans and lines of credit to members. 12 C.F.R. §701.21(b). This office recently discussed our preemption analysis under NCUA’s lending regulation when we reviewed a Georgia statute comparable to the Act in OGC Legal Opinion 03-0412, dated November 10, 2003, available on our website. Like the Georgia law, the Act imposes similar limitations and prohibitions on home loans, covered

home loans, and high-cost home loans. These restrictions, as described above, are specifically preempted under federal law because they regulate the rates, terms of repayment and other conditions of the loan. 12 C.F.R. §701.21(b)(1).

We note that the Act also requires the New Jersey Department of Banking and Insurance to conduct examinations of creditors and enforce the provisions of the Act. N.J. STAT. §46:10B-28. NCUA has the sole authority to take enforcement actions against federal credit unions. 12 C.F.R. §701.21(b)(4). The opinion referred to above regarding our analysis of the Georgia law contains a thorough discussion of NCUA's examination authority. OGC Legal Opinion 03-0412.

Likewise, you can find a discussion of the consumer protections afforded under federal law for member loans by reviewing OGC Legal Opinion 03-0165, dated May 23, 2003, and OGC Legal Opinion 02-0649, dated July 29, 2002, available on our website.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/CJL:bhs
03-1106