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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

February 21, 1989

Office of General Counsel

William Klewin, Esq.
Associate Counsel
CUDIS Insurance Society, Inc.
P.O. Box 391
Madison, Wisconsin 53701

Re: Nevada Revised Statutes (Your December 5, 1988,
Letter)

Dear Mr. Klewin:

You have asked whether Section 701.21 of NCUA's Rules and Regulations (12 C.F.R. 701.21) preempts a provision of the Nevada Revised Statutes (NRS) which requires the use of certain forms in all automobile-secured purchase money transactions. We believe that it does.

BACKGROUND

Section 97.301 of the NRS provides:

When a vehicle is sold in this state and a security interest is taken to secure all or a part of the purchase price of the vehicle, the seller and any other lender shall use the forms prescribed by the administrator of financial institutions pursuant to NRS 97.299.

NRS 97.299 provides in part:

The administrator of financial institutions shall establish, by regulation, forms for the application for credit and the contract to be used in the sale of vehicles when the sale in-

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volves the taking of a security interest to secure all or a part of the purchase price of the vehicle. The forms must meet the requirements of NRS 97.165 and, in addition to the information required in NRS 97.185 and required to be disclosed in such a transaction by federal law, must

Pursuant to NRS 97.299, the Nevada Financial Institutions Division has promulgated proposed forms to be used in all automobile-secured purchase money transactions. You have asked whether Federal credit unions ("FCU's) in the State of Nevada would be required to use these forms.

ANALYSIS

Section 701.21(b) of NCUA's Rules and Regulations (12 C.F.R. 701.21(b)) provides, in part:

(b) Relation to Other Laws:

(1) Preemption of state laws. 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. This exercise of the Board's authority preempts any state law purporting to limit or affect:

(i) (A) rates of interest and amounts of finance charges, including:

* * *

(ii) terms of repayment, including:

(A) the maturity of loans and lines of credit;

(B) the amount, uniformity, and frequency of payments, including the accrual of

unpaid interest if payments are
insufficient to pay all interest due;

(C) balloon payments; and

(D) prepayment limits;

(iii) conditions related
to:

(A) the amount of the
loan or line of credit;

(B) the purpose of
the loan or line of credit;

(C) the type or
amount of security and the relation
of the value of the security to the
amount of the loan or line of credit;

(D) eligible
borrowers; and

(E) the imposition
and enforcement of liens on the
shares of borrowers and accommodation
parties.

The proposed forms only permit closed-end loans. Section 701.21(b)(1)(ii) expressly preempts any state law limiting or affecting terms of repayment. Section 701.21(b)(iii) preempts any state law affecting or limiting the purpose of a loan or line of credit. A state law, such as this one, which has the effect of prohibiting open-end lending when a lender acquires a purchase money security interest in an automobile, is preempted by these sections of NCUA's Rules and Regulations.

Since the prohibition against open-end lending is preempted by Section 701.21(b), we have not analyzed specific terms of the forms. Our review was also limited given the reproduction quality of the proposed forms. Our cursory review of the forms indicates that there may be additional preemption issues. For example, the proposed forms affect late charges and balloon payments, matters which are clearly subject to preemption by Section

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701.21(b). Should these specific issues need to be addressed, we request that you provide us with more legible copies of the proposed forms.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Acting Assistant General Counsel

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