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NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

May 3, 1989

Office of General Counsel

Gary Greenwald, Esq.  
Reichelt, Nussbaum, Brown  
Dukes & LaPlaca  
P.O. Box 627  
Greenbelt, Maryland 20770

Re: Federal Credit Union Obtaining Mortgage in State of  
New Jersey (Your April 10, 1989, letter)

Dear Mr. Greenwald:

You have asked whether a Maryland Federal credit union must comply with the registration requirements of the Banking Act of the State of New Jersey when the Federal credit union (FCU) secures loans by filing mortgages against a member's residence and real estate in New Jersey. It is our opinion that such a filing does not subject an FCU to the registration requirements.

**BACKGROUND**

A Maryland Federal credit union plans to make loans to members in Maryland who own real estate in New Jersey. The FCU plans to secure the loans by filing mortgages against the members' residences and real estate in New Jersey. Foreign banks operating in New Jersey must comply with the New Jersey Banking Act.

Section 17:9A-315 of the New Jersey Banking Act states, in part:

For the purposes of this article, "foreign banks" shall mean a corporation, other than a banking institution, organized under the laws of the United States, another state, or a foreign government, which is authorized by the laws under which it is incorporated to

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exercise some or all of the powers specified  
in . . . .

Section 17:9A-331 of the New Jersey Banking Act provides in part:

Nothing in this article shall prohibit a  
foreign bank from

\* \* \*

(4) acquiring, holding, leasing,  
mortgaging, contracting with respect to,  
or otherwise protecting or conveying  
property in this State heretofore or  
hereafter assigned, transferred,  
mortgaged or conveyed to it as a security for,  
or in whole or part satisfaction of a loan or  
loans made by it or obligations acquired by it  
in the transaction of business outside of this  
State . . . .

#### ANALYSIS

Our review of the New Jersey statutes indicates that a Maryland Federal credit union doing business in New Jersey, by definition, is a foreign bank for the purpose of the statute. However, foreign banks are specifically allowed to secure their out-of-state loans in New Jersey pursuant to Section 17:9A-331(4). Therefore, under the language of the statute, securing an out-of-state loan does not subject an FCU to the registration requirements.

In your letter you state that FCU's are generally exempt from state regulation. This is not true.

Section 701.21(b)(1) of the NCUA Rules and Regulations provides:

(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 FCU Act (12 U.S.C. 1757(5)) to regulate the rates, terms of repayment and other conditions of FCU 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 [these matters] . . . .

This subparagraph then lists a number of specific items regarding rates of interest and amounts of finance charges, terms of repayment, and certain loan conditions that are exempt from state

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law. However, a number of issues are not exempt from state regulation.

Section 701.21(b)(2) of the NCUA Rules and Regulations provides:

(2) Matters not preempted. Except as provided by Section 701.21(b)(1), it is not the Board's intent to preempt state laws that do not affect rates, terms of repayment and other conditions described above concerning loans and lines of credit . . . .

This subparagraph then sets forth a nonexclusive list of items not preempted including insurance laws, laws related to the transfer of security interests in real and personal property (with some exception), and conditions relating to collection costs and attorneys' fees, requirements concerning consumer lending documents, and issues concerning default by a borrower. In addition, the Federal Credit Union Act does not preempt state laws affecting credit transactions that are regulated by other Federal laws. Therefore, in many cases, a Federal credit union will be subject to state law and regulation.

You also asked whether or not an FCU must register to do business with the appropriate state authority in order to either record a mortgage or initiate a foreclosure proceeding on the mortgage in a state which is not the principal place of business of the FCU. This Office has addressed the preemption of a state statute requiring an FCU to obtain a certificate of authority to do business in Georgia. A copy of that opinion is enclosed. If you wish us to make a determination on the New Jersey or any other state statute, you should first review the statute, verify that it is applicable to FCU's and set forth your opinion on why the statute should be preempted. We will then review your opinion and make a determination on the preemption issue.

Sincerely,

*Hattie M. Ulan*

HATTIE M. ULAN  
Assistant General Counsel

MM:sg

Enclosure



NATIONAL CREDIT UNION ADMINISTRATION

Washington, D.C. 20456

March 29, 1989

Office of General Counsel

Walter H. Hotz, Esq.  
Hotz & Associates, P.C.  
Suite 150  
11 La Vista Perimeter Office Park  
Tucker, Georgia 30084

Re: Requirements for Certificates of Authority To Do  
Business in the Various States (Your February 22,  
1989, Letter)

Dear Mr. Hotz:

You have asked whether Federal credit unions (FCU's) are required to obtain a certificate of authority from a state in order to conduct business in that state. As an example of the type of statute about which you are inquiring, you provided us with a copy of Georgia statute O.C.G.A. 14-2-310, which requires foreign corporations to register with the state prior to transacting business in the state. Our review of O.C.G.A. 14-2-310 indicates that it does not apply to credit unions. O.C.G.A. 7-1-635.1 specifically applies to credit unions organized in a state other than Georgia transacting business in Georgia. It does not apply to FCU's. You may wish to confirm this with the State of Georgia.

We are unable to make a determination on whether FCU's are required to obtain certificates of authority in states having a statute similar to Georgia's. Each state statute would first have to be reviewed to determine its applicability to FCU's before the issue of Federal preemption could be reached.

**ANALYSIS**

Georgia statute O.C.G.A. 14-2-310 provides, in part:

(a) No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority to do so from the Secretary of

State, except that when another statute of this state requires foreign corporations of a particular class to qualify thereunder to transact business in this state the requirements of such other statute shall govern. . . .

O.C.G.A. 7-1-635.1 specifically addresses credit unions organized under the laws of another state that are operating in Georgia. O.C.G.A. 14-2-310 therefore appears inapplicable to credit unions. O.C.G.A. 7-1-635.1 provides, in part:

(a) A credit union organized in another state may conduct business and establish a place of business in this state with the approval of the department. The department must find that the out-of-state credit union:

(1) Is a credit union organized under laws of a state other than the State of Georgia or of the United States, which state grants similar authority to credit unions organized under the laws of this state . . . .

O.C.G.A. 7-1-635.1(a)(1) excepts FCU's from its coverage.

Sincerely,

*Hattie M. Ulan*

HATTIE M. ULAN  
Assistant General Counsel

JT:sg