NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/MM:sg
SSIC 7200
89-0711

September 29, 1989

Mr. Donald P. Couch
South Dakota Corporate Federal Credit Union
Post Office Box O
Sioux Falls, SD 57101

Re: Pledging FCU Assets (Your July 5, 1989, Letter)

Dear Mr. Couch:

You have asked us the following questions. (1) May a Federal credit union ("FCU") pledge all cash, investments, loans, receivables, fixed assets, real estate, and miscellaneous assets as collateral on a loan from a corporate credit union? Yes. Could a lending corporate FCU enforce a policy which requires the credit union to pledge all assets to secure an open-end credit limit and amounts borrowed under such programs? It depends, see response below. (2) If a borrowing credit union were to be placed in involuntary liquidation, would Part 710 of the Rules and Regulations apply? No. (3) If a UCC-1 is filed for all pledged assets, would NCUA turn these assets over to the corporate credit union to satisfy the loan or will NCUA convert the assets to cash and repay the corporate credit union in full as indicated in Section 710.10 of the Rules and Regulations? It depends, see response below. (4) How does the filing of the UCC-1 improve the corporate's creditor priority pay-out position over the current pay-out procedures? See response below.

FOIA
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ANALYSIS

(1) You have asked whether an FCU may pledge all cash, investments, loans, receivables, fixed assets, real estate, and miscellaneous assets for a loan from a corporate Federal credit union. A corollary to this question is whether a corporate credit union can enforce such a policy. Section 107 of the Federal Credit Union Act (12 U.S.C. 1757) provides:

> A Federal credit union . . . shall have power--
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> * * *
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> (9) to borrow in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of title III, 50 per centum of its paid-in and unimpaired capital and surplus . . . .

Incidental to this authority is the power to pledge any or all FCU assets to secure repayment of the borrowing. This could include all cash, investments, loans, receivables, fixed assets, real estate, and miscellaneous assets.

Section 701.23(d) of the NCUA Rules and Regulations (12 C.F.R. §701.23(d)) authorizes a FCU to pledge, for any purpose, member loans and certain other loans that it has purchased. Certain safety and soundness requirements are imposed on a pledge of loans. Section 701.23(d) provides:

> (1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written pledge policies, provided:
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> (i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall identify the eligible obligations covered by the agreement.

These requirements apply to a pledge of loans for any purpose. There is no limitation in the FCU Act or NCUA Rules and Regulations on a corporate FCU requiring an FCU to pledge its assets to secure a loan. As noted above, FCU's pledging loans must comply with the provisions of Section 701.23(d). In general, it is within the business judgment of each FCU to decide what assets should be pledged when borrowing from a corporate credit union. It is a matter each FCU must negotiate with a corporate FCU or any other creditor. Safety and soundness issues on any such action certainly must be considered by the FCU and the appropriate Regional Office.

(2) You have asked whether Part 710 of the NCUA Rules and Regulations applies to a credit union that is placed in involuntary liquidation. Section 710 of the NCUA Rules and Regulations explicitly states that it applies to <u>voluntary</u> liquidations. Therefore, Section 710 would not be applied to involuntary liquidations.

(3) You have asked whether NCUA would turn over the collateral or pay cash to satisfy a loan to a corporate credit union when the corporate credit union has filed a UCC-1 on the assets. There is no set rule on how to satisfy the loan of a secured creditor when the FCU is in an involuntary liquidation. If the secured creditor is in possession of the collateral, they would be allowed to keep the collateral (however, if the collateral is worth more than the remainder of the loan, the excess is owed to the NCUA). If the secured creditor has filed a UCC-1, the NCUA could either turn over the collateral to the secured creditor or distribute cash, whichever is in the best interest of NCUA. The decision is made on a case-by-case basis.

(4) You have asked if the filing of UCC-1's will improve the corporate creditor's priority pay-out position over the current pay-out procedures. Filing a UCC-1 would make the corporate credit union a secured creditor, if such filing is the appropriate method of perfecting a security interest.

When it comes to priority pay-out, a secured creditor is first in priority. (See 51 Federal Register 43383, December 2, 1986, enclosed.) We recently addressed the issue of perfection of a security interest by the filing of a UCC-1 form. A copy of that letter is enclosed.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

Enclosures