



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

January 25, 1991

Mark S. Rubin  
State-Wide Capital  
2001 Marcus Avenue  
Lake Success, NY 11042

Re: Referral Fees (Your December 11, 1990, Letter)

Dear Mr. Rubin:

You have asked for an opinion regarding the payment of referral fees to credit unions in New York. Assuming we understand your question correctly, federal credit unions in New York may receive such fees.

Background

You have referred to National Credit Union Administration (NCUA) Research Study No. 12, "Credit Unions and the Secondary Mortgage Market" (May 1990), which states that if a credit union chooses not to fully originate mortgage loans, it can take several different "in between" steps to meet its members' needs for mortgages. These include: taking a 1/4 point referral fee; selling a completed application for a flat fee of \$500 or one point; and selling a processed application. The study goes on to note, "Today there are credit unions that have a relationship with a mortgage lender such that the credit union gets a 1/4 point 'referral fee' just for sending the borrower to the lender."

You have also referred to Part 38 of the New York State Banking Board Regulations (NY Regulations), which you state requires a mortgage broker's license for an entity which negotiates mortgages with lenders on behalf of borrowers for a fee. You ask for our opinion regarding the applicability

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of the NY Regulations to credit unions. You specifically ask whether credit unions are exempt from the licensing requirement of mortgage brokers in order to receive referral fees.

### Analysis

Section 38.1(j) of the NY Regulations and Section 590(f) of the New York State Banking Law (N.Y. Banking Law §590(f)) provide that the terms "licensee" and "mortgage banker" mean a person or entity which is licensed pursuant to Section 591 of the NY Law to engage in the business of making mortgage loans in the state of New York. Section 38.1(l) of the NY Regulations and Section 590(c) of the NY Law define "making a mortgage loan" as advancing funds to an applicant for a mortgage loan. Section 591 of the NY Law sets forth procedures to obtain a mortgage banker's license.

Section 38.1(k) of the NY Regulations and Section 590(g) of the NY Law provide that "registrant" and "mortgage broker" mean a person or entity registered pursuant to Section 591-a of the NY Law to engage in the business of soliciting, processing, placing, or negotiating mortgage loans for others. Section 38.1(r) of the NY Regulations and Section 590(d) of the NY Law provide that the terms soliciting, processing, placing, and negotiating a mortgage loan mean accepting an application for a mortgage loan, assisting in the processing of an application for a mortgage loan, soliciting a mortgage loan on behalf of a third party, or negotiating the terms or conditions of a mortgage loan with a lender on behalf of a third party. Section 591-a of the NY Law sets forth procedures to become a registered mortgage broker.

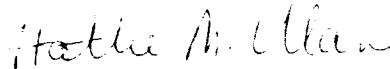
We assume from your letter that your company funds the loans in question. It does not appear that New York requires that a person or entity assisting in the lending process prior to the funding stage be licensed. Thus, credit unions need not be licensed to receive referral fees. Rather than requiring that parties assisting in the lending process prior to the funding stage be licensed, New York requires certain such parties to be registered. If you intended to ask whether credit unions are exempt from the registration requirement, the answer appears to be no. While Section 39.2(a) of the NY

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Regulations and Section 590(e) of the NY law provide that federal credit unions are "exempt organizations" that need not be licensed in order to make mortgage loans, there is no exemption from the registration requirements for mortgage brokers.

We do not believe those requirements apply to simply referring potential borrowers to a lender, however. Since that activity appears to be outside the scope of New York's definition of "mortgage broker," credit unions need not be registered to refer borrowers to your company for a fee. If credit unions are engaging in other registrant practices, it appears that they should be registered. We caution you that our interpretation of state law is not dispositive and that you should consult local counsel familiar with New York law.

Sincerely,



Hattie M. Ulan  
Associate General Counsel

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