



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

May 4, 1992

Collection

Kevin D. Hammar, Esq.
Lynch, Printz, Aldridge & Grammer, P.A.
1717 Louisiana Boulevard, N.E.
Suite 103
Albuquerque, NM 87110

Re: Confessions of Judgment (Your February 13,
1992, Letter)

Dear Mr. Hammar:

You have asked ~~whether a credit union may use a confession of judgment to reduce an account to a form of judgment after the account is in default~~, if the confession is obtained and executed pursuant to state law.

Until 1987, federal credit unions (FCUs) were subject to the Federal Trade Commission's (FTC's) Credit Practices Rule, and the FTC had the authority to determine whether certain FCU practices, such as the use of confessions of judgment, were unfair or deceptive. In 1987, that authority was transferred from the FTC to NCUA, and NCUA was required to promulgate a rule that was "substantially similar" to the Credit Practices Rule. NCUA did so, issuing ~~Part 706 of the National Credit Union Administration~~ (NCUA) Rules and Regulations, 12 C.F.R. Part 706.

~~Section 706.2(a)(1) prohibits FCUs from taking or receiving obligations containing confessions of judgments from consumers in connection with extensions of credit to consumers.~~ It is identical to ~~Section 444.2(a)(1) of the FTC's rule,~~ 16 C.F.R. §444.2(a)(1). The FTC has interpreted Section 444.2(a)(1) in an opinion letter dated January 22, 1986, to which you referred. In that letter, FTC staff addressed the question of whether a law firm could use confessions of judgment with respect to delinquent accounts

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that its client, a federal credit union, turns over to the law firm for collection. The law firm would obtain a confession of judgment from the delinquent consumer if the consumer agrees to pay the amount due. Judgment would be entered pursuant to the confession only if the delinquent consumer fails to pay as agreed.

FTC staff determined that such confessions of judgment are prohibited by Section 444.2(a)(1) of the Credit Practices Rule. You correctly state that the FTC is not empowered to determine what constitutes a deceptive or unfair practice for FCUs; however, we have concluded that such confessions of judgment are prohibited for FCUs by Section 706.2(a)(1) of the NCUA Rules and Regulations. FCUs may not use confessions of judgment prior to institution of suit and service of process. We caution you that since NCUA has jurisdiction in this matter only over FCUs, our answer is not applicable to state chartered credit unions. Since the FTC continues to have jurisdiction over state chartered credit unions, however, the answer would likely be the same.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

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