

April 30, 1991

Robert S. Bascom
Senior Compliance Specialist
Credit Union Center
2 Wall Street
Box 15021
Albany, N.Y. 12212-5021

Re: Appraisal Regulations (Your February 28, 1991, Letter)

Dear Mr. Bascom:

You have asked for a legal opinion concerning an apparent conflict between NCUA's Rules and Regulations and New York State Banking Regulations on appraisal requirements.

APPLICABLE LAW

Section 722.3(a)(1) of NCUA's Rules and Regulations (12 C.F.R. 722.3(a)(1)) states that an appraisal is not required for any real estate-related financial transaction in which the transaction value is \$50,000 or less. Section 722.3(d) requires that transactions exempt from the appraisal requirements of 722.3(a)(1) must be supported by a written estimate of the market value of the property, commonly known as a valuation.

Section 454(11) of the New York State Banking Law requires credit unions to comply with New York Banking Board regulations. Section 80.8 of New York State Banking Regulations states: "No junior mortgage loan shall be made except upon a written and signed certificate which states that the property securing such loan has been examined and which appraises the value of such property." Section 96.5(b) of the New York State Banking Regulations requires, among other things, that on loans for one-to-six family owner-occupied residences, the fair market value of the residence be "determined by a certified independent appraiser appointed by the board of directors or credit committee and shown in a written and signed certificate."

ANALYSIS

The N.Y. Regulations require an appraisal on any loan to a member which is secured by a mortgage, regardless of the amount of the loan, while NCUA imposes that requirement only on loans in excess of \$50,000. After a comprehensive study of the legislative history of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") and discussions with the other financial institution regulatory agencies, we conclude that FIRREA and Part 722 of NCUA's Regulations do not preempt a state from imposing additional appraisal requirements on a federally-insured state-chartered credit union ("FISCU"). A FISCU will not be in violation of Part 722 of NCUA's Regulations if it complies with the N.Y. Banking Regulations. Therefore, FISCUs located in New York must comply with the New York regulation.

Sincerely,

HATTIE M. ULAN
Associate General Counsel

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