



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

LS/SRB:jm
4650

JUL 1 1985

James D. Poliquin, Esq.
Norman and Hanson
P.O. Box 4600 DTS
Portland, ME 04112

Dear Mr. Poliquin:

This is in reply to your letter dated May 9, 1985, to Mr. Robert Fenner concerning ~~over-the-credit-limit~~ charges. Specifically, you request our opinion on whether: (1) Federal credit unions (FCU's) have the power to impose ~~over-the-credit-limit~~ charges when a member exceeds his credit limit on a credit card; and (2) state law limiting or prohibiting such charges by financial institutions (including FCU's) would be preempted by Section 701.21(b) of the NCUA Rules and Regulations.

We concur with your analysis that FCU's are authorized to assess such ~~over-the-credit-limit~~ charges. Of course, the charges must be provided for pursuant to the terms of the line of credit agreement with the member. The authority is based on an FCU's incidental powers under Section 107(16) of the FCU Act (12 U.S.C. §1757(16)) in conjunction with its authority under Section 107(5) of the Act (12 U.S.C. §1757(5)) to establish lines of credit for its members. We also agree that, to the extent that state law attempts to limit (regulate, etc.) or prohibit FCU's located in the state from assessing these charges, it would be preempted by Sections 701.21(b)(1)(i)(C) and (iii)(A) of the NCUA Rules and Regulations. These Sections of the Rules and Regulations state, in pertinent part, that:

". . . the Board's [NCUA Board] authority preempts any state law purporting to limit or affect

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(i)

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(C) closing costs, application, origination, or other fees;

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(iii) conditions related to:

(A) the amount of the loan or line of credit";

(Emphasis added.)

These two Sections read together reflect the Board's express intent of limiting a state's imposition of its law in this area.

Lastly, for purposes of clarification, we should stress that, since under Regulation Z, Section 226.6(b) and the Official Staff Commentary Par. 6(b)(1), over-the-credit-limit charges are not considered to be finance charges, they would not be added into the interest calculation for purposes of an FCU's usury limitation as provided in Section 701.21(c)(7) of the Rules and Regulations and Section 107(5)(A)(vi)(I) of the FCU Act.

I hope that we have been of assistance.

Sincerely,

RS/

STEVEN R. BISKER
Assistant General Counsel

bcc: All RD's
Dept. of S&E