



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

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July 14, 1989

Amy F. Solomon, Esq.
Cullen and Dykman
1010 Franklin Avenue
Garden City, New York 11530-0155

Re: Preemption of Virginia State Law (Your June 26,
1989, Letter)

Dear Ms. Solomon:

You have asked whether Virginia Code Annotated §6.1-330.78 is preempted by Section 701.21 of the National Credit Union Administration Rules and Regulations. The section of the statute dealing with finance charges is preempted.

APPLICABLE LAW

Virginia Code Annotated §6.1-330.78(A)1 and 2 states:

A. 1. Any seller or lender engaged in the extension of credit under an open-end credit or similar plan under which a finance charge is imposed upon the cardholder or consumer, if payment in full of the unpaid balance is not received at the place designated by the creditor prior to the next billing date (which shall be at least twenty-five days later than the prior billing date), may impose finance charges at such rate as may be agreed upon by the seller or lender and the cardholder or consumer. Such rate may be applied at the option of the seller or lender, to:

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- a. The average daily balance for the period ending on the billing date;
- b. The balance existing on the billing date of the month; or
- c. Any other balance which does not result in the seller or lender charging or receiving finance charges in excess of those which would be charged or received under subdivision a. or b. of this section.

2. No finance charge shall be imposed unless the bill is mailed not later than eight days (excluding Saturdays, Sundays and holidays) after the billing date, except that such time limitation shall not apply in any case where the seller or lender has been prevented, delayed or hindered in mailing or delivering the bill within such time period because of an act of God, war, civil disorder, natural disaster, strike or other excusable or justifiable cause.

This statute prevents imposition of a finance charge if payment in full of the unpaid balance owed for credit extensions is received by the creditor prior to the next billing date or if the bill is mailed later than eight days after the billing date by the lender. Section 701.21(b) of the NCUA Rules and Regulations (12 C.F.R. §701.21(b)(1)) addresses preemption of lending laws. This section preempts in part:

- any state law purporting to limit or affect:
- (i)(A) rates of interest and amounts of finance charges, including:
 - (1) the frequency or the increments by which a variable interest rate may be changed;
 - (2) the index to which a variable interest rate may be tied;
 - (3) the manner or timing of notifying the borrower of a change in interest rate;
 - (4) the authority to increase the interest rate on an existing balance;
 - (B) late charges; and
 - (C) closing costs, application, origination, or other fees;
 - (ii) terms of repayment, including:
 - (A) the maturity of loans and lines of credit;
 - (B) the amount, uniformity, and frequency of payments, including the accrual of unpaid interest if payments are insufficient to pay all interest due;
 - (C) balloon payments; and
 - (D) prepayment limits. . . .

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ANALYSIS

Federal credit unions ("FCU's") must comply with the Virginia statute unless it is preempted by the FCU Act and/or NCUA Regulations. NCUA Rules and Regulations preempt state laws attempting to regulate finance charges and the terms of repayment. Therefore, it is our opinion that Section 6.1-330.78(A) of the Virginia Code is clearly preempted by Section 701.21(b)(1) since the law attempts to mandate a grace period for the payment of finance charges.

Regulation Z (12 C.F.R. §226) controls whether the disclosure requirements of the Virginia statute are preempted. The Board of Governors of the Federal Reserve System should be contacted for a determination of preemption of disclosure requirements.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel