



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

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89- 0832

October 2, 1989

Walter H. Hotz, Esq.
Suite 150
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Tucker, Georgia 30084

Re: Application of Official Code of Georgia Annotated
(O.C.G.A.) 7-5-4 to Federally Chartered Credit
Unions (Your August 18, 1989, Letter)

Dear Mr. Hotz:

You have asked whether the provisions of O.C.G.A. 7-5-4, which restrict a lender's right to apply a change in the interest rate, terms or conditions to the existing balance on a credit card account, are applicable to Federal credit unions ("FCU's"). To the extent that the lender's change affects a matter listed in Section 701.21 of NCUA's Rules and Regulations (12 C.F.R. 701.21), the Georgia statute would be preempted. The Georgia statute would, however, apply to loans originated by a state-chartered Georgia credit union in which an FCU owns a participation interest. The manner in which the modification is disclosed is governed by Regulation Z.

ANALYSIS

O.C.G.A. 7-5-4 states, in part:

In the event a lender desires to modify in any respect any portion of the credit card account, it shall first provide at least 30 days' prior written notice of such modification. In providing such notice, the lender

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shall notify the debtor in writing that the debtor has the right to surrender the credit card whereupon the debtor shall have the right to continue to pay off his credit card account in the same manner and under the same terms and conditions as then in effect. The failure to surrender the card within the 30 day period shall constitute a consent to the modification.

O.C.G.A. 7-5-2(6) makes the above-cited statute applicable to FCU's having their principal place of business in Georgia.

Section 701.21(b)(1) of NCUA's Rules and Regulations (12 C.F.R. 701.21(b)(1)) preempts any state law limiting or affecting:

- (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;
- (iii) conditions related to:
 - (A) the amount of the loan or line of credit;
 - (B) the purpose of the loan or line of credit;
 - (C) the type or amount of security and the relation of the value of the security to the amount of the loan or line of credit;
 - (D) eligible borrowers; and
 - (E) the imposition and enforcement of liens on the shares of borrowers and accommodation parties.

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To the extent that a modification of the loan agreement would affect the matters set forth in Section 701.21(b)(1), O.C.G.A. 7-5-4 would be preempted. As indicated in your letter, the manner in which a modification is disclosed is governed by the Federal Reserve's Regulation Z, 12 C.F.R. 226.

You also asked:

If a federally chartered credit union enters into a loan participation agreement with a state chartered credit union and: (i) the loan participation agreement is such that the federally chartered credit union purchases 90% of the VISA card accounts originated by the state chartered credit union and the state chartered credit union retains a 10% ownership interest therein; and (ii) that, as to the loan(s) subject to such loan participation agreement, the federally chartered credit union controls, for all practical purposes, all decisions made in the administration of such loans, including the right to amend the interest rate charged thereon from time to time; then does O.C.G.A. 7-5-4 apply to the loans under such a loan participation agreement?

O.C.G.A. 7-5-4 would apply under the facts you describe since the loan is being originated by a state-chartered credit union. A preemption question will not arise under Section 701.21 of NCUA's Rules and Regulations for a loan originated by a state-chartered credit union in which an FCU has a participation interest.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel