



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

October 13, 1989

Office of General Counsel

GC/JT:sg  
SSIC 3320  
89-0922

Mr. Gary Robert Gardner  
Government Affairs Specialist  
Arizona Credit Union League, Inc.  
3611 N. Black Canyon Highway  
Phoenix, Arizona 85015

Re: Applicability of Arizona Revised  
Statutes Section 44-1205(B) to Federal  
Credit Unions (Your September 21, 1989, Let-  
ter)

Dear Mr. Gardner:

You have asked whether Section 44-1205(B) of the Arizona Revised Statutes (ARS), which limits a lender's ability to impose late charges on loans, is applicable to Federal credit union's ("FCU's"). It is not. Section 701.21(b)(1)(i)(B) of NCUA's Rules and Regulations (12 C.F.R. 701.21(b)(1)(i)(B)) preempts any state law which limits or affects an FCU's ability to impose late charges on loans.

**ANALYSIS**

You have questioned whether ARS, Section 44-1205(B), which states in part:

Revolving accounts in which the agreed upon credit limit does not exceed ten thousand dollars are subject to the provisions of this subsection. . . The lender may also charge a late payment or delinquency charge on each installment not paid in full within ten days of its due date in an amount not to exceed five per cent of the installment or ten dollars, whichever is less . . .

is applicable to FCU's.

FOIA

Vol. V K Preemption

Mr. Gary Robert Gardner  
October 13, 1989  
Page 2

Section 107(10) of the FCU Act (12 U.S.C. 1757(10)) authorizes an FCU to:

levy late charges, in accordance with the by-laws, for failure of members to meet promptly their obligations to the Federal credit union.

Article XII, Section 8 of the Standard FCU Bylaws provides:

Any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.

Section 701.21(b)(1) of NCUA's Regulations provides in part:

Section 701.21 is promulgated pursuant to the NCUA Board's exclusive authority as set forth in Section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) to regulate the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards) to members. This exercise of the Board's authority preempts any state law purporting to limit or affect:

\* \* \*

(i)(B) late charges. . .

FCU's are not subject to the above-cited Arizona statute. An FCU's board of directors has the discretion to determine whether a late charge will be imposed and the amount of the late charge.

Sincerely,

*Hattie M. Ulan*

HATTIE M. ULAN  
Assistant General Counsel