



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 3, 1990

Office of General Counsel

Walter H. Hotz, Esq.
Suite 150
11 La Vista Perimeter Office Park
Tucker, Georgia 30084

Re: Applicability of OCGA 44-12-203(g) to Federally
Chartered Credit Unions (Your February 23, 1990,
Letter).

Dear Mr. Hotz:

You have asked whether Section 44-12-203(g) of the Official Code of Georgia Annotated is preempted by federal law. The answer is yes.

BACKGROUND

Official Code of Georgia Annotated 44-12-203(g) states:

No banking or financial organization shall deduct a service charge from any account on which there has been no deposit or withdrawal for 12 or more months or otherwise impose a service charge on any such account. A service charge may be imposed for 12 months immediately following a deposit to or withdrawal from any such account.

Section 701.35(c) of NCUA Rules and Regulations (12 C.F.R. 701.35(c)) states:

A Federal credit union may, consistent with this Section, other Federal law, and its contractual obligations, determine the type of disclosures, fees, or charges, time for crediting of deposited

FCIA

Vol III Part H Preemption

Walter H. Hotz, Esq.
April 3, 1990
Page 2

funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

The preamble to Interpretive Ruling and Policy Statement ("IRPS") 82-4 (47 F.R. 26842, 6/22/82) states in part:

As to service charges that result in absorbing accounts or portions thereof into income, this is a matter of contract between the FCU and the member. To the extent that such charges are either authorized or not prohibited by the Federal Credit Union Act, NCUA Rules and Regulations or Board policy, and are provided for in the contract with the member, it is the Board's position that state law prohibiting such charges would be preempted.

ANALYSIS

It is clear from the sections cited above that any state statute attempting to prohibit an FCU from applying a service charge on a dormant account is preempted. Therefore, Official Code of Georgia Annotated 44-12-203(g) is preempted by NCUA Rules and Regulations. However, as you point out in your letter, Article III, Section 3 of the Standard FCU Bylaws requires an FCU to give notice to a member if the member's account is reduced below the par value of a share. The member has at least six months from the time of the notice to get the account back to par value.

Sincerely,



Hattie M. Ulan
Associate General Counsel

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