



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, DC 20486

October 2, 1990

Mr. James L. Stuppy
Virginia Credit Union League
1207 Fenwick Drive
P.O. Box 11469
Lynchburg, Virginia 24506

Re: Preemption of Virginia State Code (Your August
9, 1990, Letter)

Dear Mr. Stuppy:

You have asked whether Section 55-210.3:01B of the Code of Virginia is preempted by federal law. The answer is yes.

BACKGROUND

Virginia Code Section 55-210.3:01B states in part that:

. . . . No banking or financial institution may deduct any service charge or cease to accrue interest on any account, from the date the account is declared dormant or inactive by such organization except in conformity with cessation of interest or service charges generally assessed upon active accounts. With respect to any property described in this section, a holder may not impose any charges due to dormancy or inactivity which differ from those imposed on active accounts or cease to pay interest unless:

1. There is an enforceable contract between the holder and the owner of the property pursuant to which the holder may impose those charges or cease payment of interest; and

FOIA
Vol. IV, Part H Preemption

Mr. James L. Stuppy
October 2, 1990
Page 2

2. For property in excess of twenty-five dollars, the holder, no more than three months prior to the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease; however, such notice need not be given with respect to charges imposed or interest ceased before July 1, 1984; and

3. The holder regularly imposes those charges or ceases payment of interest and does not regularly reverse or cancel those charges or retroactively credit interest with respect to such property.

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

A Federal credit union may, consistent with this Section and other Federal law, and its contractual obligations, determine the type of disclosures, fees, or charges, time for crediting of deposited 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 82-4 entitled Examination for Compliance with State Unclaimed Property Laws (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

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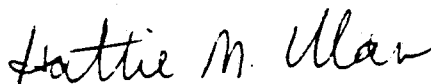
October 2, 1990
Page 3

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. The provisions of Virginia law requiring that there be an enforceable contract that allows for dormant account charges and that three months prior to the imposition of dormant account charges the financial institution gives written notice to the owner of a dormant account in excess of \$25.00 that the charges will be imposed, are preempted. The third criteria under Virginia Law for allowing the imposition of charges on a dormant account is that the FCU regularly imposes those charges or ceases payment of interest and does not regularly reverse those charges. This requirement for imposing special fees on dormant accounts is also preempted.

Sincerely,



Hattie M. Ulan
Associate General Counsel

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