



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

April 30, 1991

Susan Stack
Vice President
Heritage Federal Credit Union
1212 Huxley Street
Madison, WI 53704-4295

Re: Federal Preemption of Illinois Law
(Your March 15, 1991, Letter)

Dear Ms. Stack:

You have asked the National Credit Union Administration (NCUA) to preempt an Illinois law which governs electronic fund transfers.

Background

Heritage Federal Credit Union (the FCU), whose main office is in Madison, Wisconsin, has installed an automated teller machine (ATM) on the premises of its Rockford, Illinois, branch. The FCU has arranged for a data communications firm located in Wisconsin to drive the machine and has joined TYME, an ATM network located in Wisconsin. TYME has an interchange agreement with Rock Valley Network, located in Rockford. You have received calls from Rock Valley Network and the Illinois State Banking Commission regarding the FCU's alleged violation of the Illinois Electronic Fund Transfer Transmission Facility Act. You have been told that in order to comply with the Illinois law, the FCU must: 1) have the ATM driven by an Illinois data processing firm; 2) pay to join the Rock Valley Network (despite the interchange agreement through the Wisconsin-based network), or the Rock Valley Network's card holders will not be permitted to use the FCU's ATM; and 3) notify all Illinois card holders who have network cards with a TYME interchange that they cannot use the FCU's ATM. You state that complying with the Illinois law will be expensive for the FCU and ask NCUA to consider preempting it on the ground that it is interfering with credit union business.

FOIA

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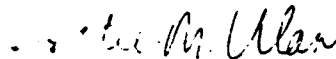
Analysis

State laws are only preempted when they conflict with the FCU Act and NCUA Rules and Regulations or when they interfere with an FCU's exercise of its statutory powers. Since neither the FCU Act nor NCUA Rules and Regulations address the business aspect of electronic fund transfers, and thus do not conflict with the Illinois law, the law would only be preempted if it imposed such a large burden on FCUs with main offices in other states that they were effectively precluded from operating ATMs in Illinois. While it does not seem that the Illinois law has this effect, we suggest you contact the Wisconsin and Illinois Credit Union Leagues to determine whether and the extent to which other out-of-state credit unions have experienced problems.

Should you conclude that the law imposes an intolerable burden, local counsel could challenge it in court. Even if we were to state now that the law is preempted, it still may have to be challenged in court, as our opinion would not bind the Illinois State Banking Commission. The most NCUA could do if such a challenge were brought is file a brief with the court in support of your position.

Should you wish to challenge the law, in addition to the preemption argument you might also consider arguing that the law violates the Commerce Clause of the U.S. Constitution. The Commerce Clause prohibits states from discriminating against interstate commerce by providing a direct commercial advantage to local business. It may be that by making it difficult for out-of-state FCUs to operate ATMs, Illinois unconstitutionally discriminates against interstate commerce.

Sincerely,



Hattie M. Ulan
Associate General Counsel

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