



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

August 1, 1991

Mr. William Resnik
Seafirst Bank
Post Office Box 3977
Seattle, Washington 98124

Re: Applicability of Section 701.21 of NCUA's
Rules and Regulations (Your June 10, 1991,
Letter)

Dear Mr. Resnik:

You have asked whether Section 701.21 of NCUA's Rules and Regulations which allows a federal credit union ("FCU") to charge an interest rate of 18 percent preempts a state law which sets a lower interest rate for conditional sales contracts for motor vehicles. The answer will vary depending on whether it is a loan to a member or whether it is the sale and financing of collateral to a nonmember.

BACKGROUND

You pose the following situation. An FCU acquires, through foreclosure or other means, an automobile following the default on a loan to a member secured by the automobile. The FCU sells the automobile subject to a conditional sales contract to a member or nonmember and finances the sale. Is the interest rate charged by the FCU limited to the state law interest rate for conditional sales contracts for motor vehicles?

ANALYSIS

LOANS TO MEMBERS

FCU's must comply with state law unless it is preempted by the FCU Act or NCUA's Rules and Regulations. Section 701.21(c)(7)(ii)(B) of NCUA's Rules and Regulations (12 C.F.R. §701.21(c)(7)(ii)(B)) authorizes an FCU to "extend

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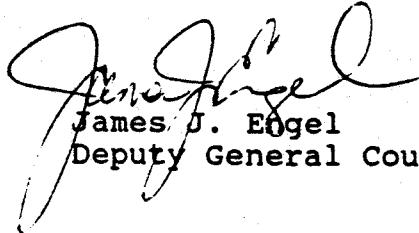
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credit to its members at rates not to exceed 18 percent per year on the unpaid balance inclusive of all finance charges." Section 701.21(b)(1) of NCUA's Rules and Regulations (12 C.F.R. 701.21(b)(1)) addresses the preemption of state laws. The regulation sets forth certain areas that are specifically preempted. State laws purporting to affect rates of interest on loans to credit union members are specifically preempted by Section 701.21(b)(1)(i)(A).

CREDIT TO NONMEMBERS FOR THE SALE OF COLLATERAL

An FCU may dispose of its collateral property pursuant to its authority to dispose of property (Section 107(4) of the FCU Act, 12 U.S.C. §1757(4)) and the incidental powers clause (Section 107(17) of the FCU Act, 12 U.S.C. §1757(17)). An FCU may extend credit to a nonmember in order to dispose of collateral property. Under these limited circumstances, the extension of credit would not be considered loans for purposes of the FCU Act. Therefore, Section 701.21 of NCUA's Regulations which covers loans to members would not apply to this type of financing to nonmembers and thus the state law would not be preempted by this section of the regulation. Furthermore, there is no other authority in NCUA Regulations or the FCU Act that would preempt the state law in this situation. Therefore, an FCU selling its collateral property to a nonmember, under these facts, would be limited to the state law interest rate for conditional sales contracts for motor vehicles.

Sincerely,



James J. Egel
Deputy General Counsel

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