



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

December 23, 1991

Mary Ann B. Clancy, Esq.  
General Counsel  
Massachusetts Credit Union Association, Inc.  
304 Turnpike Road  
Southborough, Massachusetts 01772-1709

Re: Preemption of Massachusetts Statute Prohibiting Late Fees (Your November 22, 1991, Letter)

Dear Ms. Clancy:

You asked whether federal regulations preempt a Massachusetts statute prohibiting the imposition of late charges on credit card loans. Insofar as it applies to federal credit unions ("FCUs"), the statute in question is preempted by Section 701.21(b)(1) of NCUA's Rules and Regulations ("Regulations"), 12 C.F.R. §701.21(b)(1).

Background

Massachusetts General Laws Chapter 140, Section 114B prohibits financial institutions, including credit unions, from levying late charges on open end loans. Recently, the United States District Court for the District of Massachusetts considered whether the Massachusetts statute was preempted by the Depository Institutions Deregulation and Monetary Control Act of 1980 (the "DIDMC Act"). The court determined, in Greenwood Trust Co. v. Commonwealth of Massachusetts (C.A. No. 89-2583-Y, October 22, 1991) that the federal statute does not preempt M.G.L. Ch.140 §114B. That decision prompted you to ask whether NCUA's Regulations preempt the Massachusetts law.

In a telephone conversation with Staff Attorney Meg Suuberg of this Office on December 10, 1991, you indicated that the Greenwood Trust decision had not yet been appealed, although you anticipate that it will be. You stated that you would advise us if you learn that an appeal has been filed.

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Analysis

Section 701.21(b)(1) states, in pertinent part:

Section 701.21 is promulgated pursuant to the NCUA'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 . . . .

By its express terms, Section 701.21(b)(1)(i)(B) preempts any state law that attempts to limit or affect an FCU's imposition of late charges on credit card loans. The Massachusetts statute prohibits late charges, and therefore is clearly preempted.

Our analysis is not affected by the Greenwood Trust decision, which in our view is clearly distinguishable, for several reasons. First, Section 521 of the DIDMC Act, which granted state banks the right to charge interest at the federal rate (like national banks) and preempted state usury laws, speaks only of preemption of "interest rates." The statute makes no mention of late charges, and the Court found the legislative history insufficient to show that Congress intended to preempt late charges as well as numerical interest rates. Second, Massachusetts, exercising its option under Section 525 of the DIDMC Act, had overridden Section 521 and amended its own statute to set a new interest rate and prohibit the assessment of late charges against Massachusetts customers. The Court expressed uncertainty as to whether Section 521 preempted even numerical interest rates in states that had opted out under Section 525. Thus, it was by no means clear that the DIDMC Act preempted late charges, and the Court therefore found that Greenwood Trust was subject to the Massachusetts late charge statute. Furthermore, the DIDMC Act had no effect on NCUA's regulations of FCUs.

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By contrast, it is obvious, based on the plain language of Section 701.21(b)(1)(i)(B), that the NCUA Board intended to preempt any state law attempting to limit or affect the imposition of late charges by FCUs. Whereas the DIDMC Act was silent on the issue of late charges, NCUA's regulation is unequivocal in its preemptive intent with regard to such charges. Therefore, we see no conflict between our opinion and the Greenwood Trust decision.

I hope that we have been of assistance.

Sincerely,



Hattie M. Ulan  
Associate General Counsel

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