



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

January 30, 1992

Jerald P. Hurwitz, Esq.  
Shumaker Williams, P.C.  
P.O. Box 88  
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Re: **Preemption of State Statutes Limiting Fees and Charges in Connection with Loans** (Your December 23, 1991, Letter)

Dear Mr. Hurwitz:

You asked whether the Federal Credit Union Act (the "FCU Act") or NCUA's Rules and Regulations (the "Regulations") preempts Pennsylvania laws limiting imposition of certain fees and charges in connection with loans. We believe that the state laws, to the degree that they would otherwise affect federal credit union ("FCU") loans, are preempted in one of the three examples listed in your letter. You also asked whether the charges in question, if permitted to be imposed, would be considered finance charges. We would classify one of the three categories of fees described in your letter as finance charges. Our reasoning is explained below.

**Background**

Your client, an FCU, would like to institute a number of fees and charges in connection with loans it makes to its members. Specifically, the FCU would like to impose the following: (1) a research fee of \$20.00 per hour (\$10.00 minimum) for undertaking research of the FCU records concerning a credit extension not involving billing errors or credit denials; (2) charges for services rendered in connection with preparation and filing of documents used to perfect or release security interests in personal property (in addition to out of pocket filing fees); and (3) a \$15.00 fee for amortization schedules. You asked whether state statutes limiting such fees and charges are preempted.

FOIA

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Your letter did not specify the types of loans involved. However, in a telephone conversation with Staff Attorney Meg Suuberg of this Office, you stated that you were concerned about all types of loans made by your client, including credit card loans.

You indicated that Pennsylvania does not have any laws specifically authorizing the types of fees and charges in question. According to your letter and your telephone conversation, there are at least three Pennsylvania statutes that limit the imposition of fees in connection with credit purchases: the Goods and Services Installment Sales Act, 69 P.S. 1101 et seq., the Motor Vehicles Sales Finance Act, 69 P.S. 601 et seq., and the Secondary Mortgage Loan Act, 7 P.S. 6601 et seq. None of these statutes specifically prohibits the types of fees that your client wishes to impose, but you are concerned that if not preempted by federal law, they might be broadly read to prohibit such charges by implication.

You also asked whether, if the state laws are preempted and the FCU may levy the fees and charges, those fees and charges would constitute finance charges for purposes of the FCU Act. We assume that you are inquiring whether the charges would be taken into account in determining compliance with the usury limit set forth in Section 107(5)(A)(vi) of the FCU Act, 12 U.S.C. §1757(6)(A)(vi), and Section 701.21(c)(7) of the Regulations, 12 C.F.R. § 701.21(c)(7).

## **Analysis**

### Preemption

FCUs must comply with state laws unless a particular state law is preempted by federal law. The FCU Act and the Regulations preempt state law only when there is a conflict, or when state law interferes with an FCU's exercise of its statutory powers. In this case, nothing in the FCU Act conflicts with the statutes in question. Nor do we believe that any of the Pennsylvania laws prevents the exercise of any statutory FCU powers. Thus, the Pennsylvania laws will be preempted only if they conflict with the Regulations.

We note that the Pennsylvania statutes in question may not affect or purport to affect all of the types of loans that

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your client makes. We lack sufficient knowledge of Pennsylvania law to determine whether the statutes you listed, or any other Pennsylvania statutes, apply to loans made by FCUs or to the types of loans at issue. If the state laws do not purport to apply, or are determined not to apply to the loans in question, there is no preemption issue. However, we will assume for purposes of analysis that the Pennsylvania laws would prohibit the fees and charges in question unless preempted.

Section 701.21(b)(1) of the Regulations, 12 C.F.R. §701.21(b)(1), provides that federal law preempts any state law purporting to regulate "the rates, terms of repayment and other conditions" of FCU loans and lines of credit, including credit cards. Section 701.21(b)(2) makes clear that state laws affecting other aspects of FCU loans and lines of credit are not preempted.

The research fees (page one of your letter) and the amortization fee (page two of your letter) that your client proposes to impose on its members are not connected with the rates or terms of repayment of loans. The issue then becomes whether those charges are the types of "other conditions" of FCU loans and lines of credit contemplated by Section 701.21(b)(1). In our opinion, the mere fact that a charge relates to some kind of activity connected with a loan account is insufficient to bring the charge within the category of "other conditions" for purposes of preemption. In order to qualify as a condition of a loan, a charge must be incidental to or affect the loan itself. The research fees and the amortization schedule fee are not "other conditions," since they apparently do not relate in any way to the making of the loans, but are instead for additional services provided by the FCU at the borrower's request. (However, our analysis regarding the research fees would be different if they are related to the granting of the loan. See the discussion of research fees in the section on finance charges, below.) Therefore, any portions of the Pennsylvania statutes that prohibit or limit the imposition of such fees are not preempted, and may be applied to FCUs.

However, we do think that the title preparation and filing charges described on page two of your letter are within the purview of Section 701.21(b)(1)(i)(A). That section preempts state laws attempting to regulate "rates of interest and

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amounts of finance charges." As the discussion of finance charges in the following section shows, we consider the title preparation and filing charges to be finance charges. We also note that such charges would also fall within the category of "closing costs, application, origination, or other fees" set out in Section 701.21(b)(1)(i)(C). Whether classified as finance charges or as "other fees" associated with a loan, the fees for preparation and filing of title documents are within Section 701.21(b)(1), and the Pennsylvania statutes are preempted to the degree that they attempt to prohibit or limit the levying and collection of such charges by FCUs. Please be advised, however, that we do not endorse the imposition of such fees on FCU members.

#### Finance Charges

Neither the FCU Act nor the Regulations defines the term "finance charge." Our long-standing practice has been to give "finance charge" the definition set forth in the Federal Reserve Board's Regulation Z, 12 C.F.R. Part 226. As you are no doubt aware, Reg Z is a disclosure regulation. Generally, it does not control the interest rate or other charges in a loan agreement; it merely imposes disclosure requirements for those charges. While credit unions are bound by Reg Z's definition of finance charges for disclosure purposes, NCUA alone has the authority to determine which types of charges are included in the computation of interest for purposes of the usury ceiling. We do, however, generally look to Reg Z for guidance on the issue of what constitutes interest and we have consistently followed the definition of finance charge set forth in Reg Z.

Section 226.4(a) of Reg Z contains the general definition of the term finance charge. That section states, in pertinent part:

The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.

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Fees and charges that are within this definition constitute finance charges unless otherwise excluded by Reg Z.

We believe that the charges for preparation of documents related to security interests in personal property and the labor involved in filing those documents are finance charges. It appears to us that the charges are imposed "as an incident to or a condition of" the granting of the loan, since presumably a member seeking a certain type of loan must agree to pay such charges if he wishes to receive the loan. Although Section 226.4(e)(1) of Reg Z does exclude fees paid in connection with security interests, that exclusion covers only fees paid pursuant to law "that actually are or will be paid to public officials." Section 226.4(e)(1) does not cover charges paid to the creditor for its time and effort in preparing and filing the necessary documents, and thus those charges constitute finance charges, and would be included in determining the interest rate for purposes of NCUA's usury ceiling.

We do not believe that the appraisal schedule fee is a finance charge, because it does not seem to be "an incident to or a condition of" the making of the loan. Although you provided very little in the way of facts, it looks to us as though the amortization schedule would be furnished solely at the request of the borrower; rather than being a cost of credit, it would simply be a charge for an extra service furnished by the FCU. Although the FCU would charge the fee, whether to request the schedule and thus incur the fee would be left entirely to the borrower's discretion, rather than being required as a condition of the loan. Moreover, a borrower could request amortization schedules (and pay the fee) repeatedly at whatever intervals he chooses, again without any control by the FCU, thus making it impossible to estimate the amount of the fee for purposes of computing the total finance charge and interest rate. The amortization schedule fee would not be included in the interest rate for usury purposes.

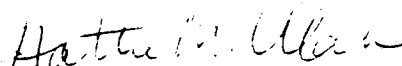
We do not have enough information to determine whether the research fees are finance charges. Section 226.4(b)(4) of Reg Z includes "appraisal, investigation, and credit report fees" as finance charges. However, it not clear to us that the research is done in connection with the extension of credit. If the research must be performed in order for the

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member to receive a loan, then the fee would constitute a finance charge and be taken into account in calculating the interest rate for usury purposes. On the other hand, if the research is solely for the member's own information and not required as a condition of the loan, then our analysis would be the same as for the amortization schedule, and we would neither classify the fee as a finance charge nor include it in the interest rate.

Should you require further assistance in determining whether any of the fees or charges in question is a finance charge, we suggest that you contact the Federal Reserve Board, which promulgated and has authority to interpret Reg Z.

Sincerely,



Hattie M. Ulan  
Associate General Counsel

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