

April 25, 1992

James G. Connolly, Esq.
Volk, Frankovitch, Anetakis, Recht,
Robertson & Hellerstedt
337 Penco Road
Weirton, West Virginia 26062

Re: Iowa Credit Card Law (Your March 3, 1992, Letter)

Dear Mr. Connolly:

On behalf of your client, Steel Works Community Federal Credit Union, you asked whether the Federal Credit Union Act preempts a recently enacted Iowa law regulating credit card issuers, insofar as the law affects the rates, terms of re-payment and charges that may be imposed by federal credit unions ("FCUs") on credit card loans made to their members. You did not identify the law with which you are concerned. We assume that the statute about which you are inquiring is Iowa Code Chapter 536C, which imposes certain requirements on entities issuing credit cards to Iowa residents.

We are currently engaged in a review of Iowa Code Chapter 536C in its entirety, and have not yet determined the degree to which that statute is preempted. However, since you ask only about preemption of those portions affecting loan rates, repayment and fees, we will answer that narrow question now. We will also send you a copy of our opinion on the rest of the statute, when it is completed, as you may have further questions about the statute's effect on your client.

Section 701.21(b)(1) of NCUA's Rules and Regulations (the "Regulations") provides that federal law preempts any state law purporting to regulate the rates, terms of repayment and certain 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. Based on our review to date, it appears to us that Iowa Code Chapter 536C does not, for the most part, affect FCU loan rates, terms of repayment, or other conditions similar to those specified in Section 701.21(b)(1). Therefore, our current position is that the law is not preempted (except as discussed below), and FCUs issuing credit cards to Iowa residents must comply with most of its provisions.

However, we note that Section 536C.6 requires credit card issuers to comply with Chapter 537, the Iowa Consumer Credit Code. Although not experts in Iowa law, we have briefly reviewed Chapter 537, and believe that some of its provisions are preempted insofar as they purport to apply to FCUs.

Article 2 of Chapter 537 covers finance charges and other fees. Section 701.21(b)(1) of the Regulations preempts:

any state law purporting to limit or affect:
(i)(A) rates of interest and amounts of finance charges, . . .
(B) late charges; and
(C) closing costs, application, origination, or other fees

To the degree that Iowa Code Chapters 536C and 537 attempt to govern the imposition of such charges and fees by FCUs, they are preempted.

Article 3, Part 3 of Chapter 537 imposes limitations on use of security for loans. Those sections of Chapter

537 pur- porting to restrict FCUs in their choice of and requirements for security are preempted by Section 701.21(b)(1)(iii)(C) of the Regulations, which preempts state law governing "the type or amount of security and the relation of the value of the security to the amount of the loan or line of credit."

Section 537.3308, which governs use of balloon payments, ap- pears, by its terms, not to apply to credit card loans. How- ever, if that section does apply to credit card transactions, it is preempted by Section 701.21(b)(1)(ii)(C) of the Regula- tions, which preempts any state law restricting use of bal- loon notes.

We caution you that our review of Iowa Code Chapter 537 was extremely limited. You should look more closely at Chapter 537 to determine whether it contains other sections that would be preempted Section 701.21(b)(1).

You asked whether portions of Iowa Code Chapter 536C affect- ing interest rates and terms of repayment are preempted. We are not aware of any such provisions, in either Chapter 536C or Chapter 537, other than those discussed. If such provi- sions do exist and purport to apply to FCUs, they are pre- empted by Section 701.21(b)(1) of the Regulations. Again, we urge you to closely review both Iowa laws.

As was stated above, we have not yet completed out analysis of the Iowa statute. We will forward you a copy of our opin- ion once it is finalized.

Sincerely,

Hattie M. Ulan
Associate General Counsel

GC/MRS:sg
SSIC 3500