

January 21, 1993

J. Adam Matlawski, Esq.  
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The Madison Building  
108 Chesley Drive  
Media, Pennsylvania, 19063-1712

Re: Preemption of Pennsylvania Laws Governing Mortgage Fees (Your November 13, 1992, Letter)

Dear Mr. Matlawski:

You asked whether Section 701.21 of NCUA's Rules and Regulations ("Regulations") preempts a Pennsylvania law limiting imposition of certain fees in connection with residential mortgage loans. Although we have not been given sufficient information to enable us to render a definitive opinion, it appears to us that the state law, to the degree that it would otherwise affect federal credit union ("FCU") loans, is pre-empted.

#### Background

Your client, Atlantic Employees Federal Credit Union ("AEFCU"), recently attempted to have its mortgage forms modified to indicate that AEFCU will charge a mortgage satisfaction fee to the borrower when the mortgage is paid in full. Counsel for the printing company advised AEFCU that Pennsylvania law does not permit the charging of a mortgage satisfaction fee.

You state that the printing company's opinion "is based on Pennsylvania's Act 6 which lists permissible settlement costs and makes no mention of mortgage satisfaction fees." However, your letter does not include either a copy of or a complete citation to the relevant Pennsylvania statute. It is not clear from your letter whether you mean the term "mortgage satisfaction fee" to indicate the recording fee paid to a public official, a fee paid to AEFCU's attorney for the labor involved in preparing and/or filing the satisfaction document, or a fee paid to AEFCU for preparation and/or filing. Nor do you fully explain your interpretation of the statute and why its failure to list mortgage satisfaction fees precludes a lender from collecting such fees. Without complete information, we are unable to render a definitive opinion on the preemption issue. The following analysis should provide you with some guidance, however.

#### Analysis

##### Pennsylvania Law

We assume that the statute with which you are concerned is 41 P.S. ~101. That section defines the term "actual settlement costs" for purposes of residential mortgage loan transactions. Section 101 does not prohibit a lender from collecting fees other than those specifically listed therein. We note, however, that 41 P.S. ~406 states that a residential mortgage lender may only collect certain enumerated attorney's fees from a debtor; among those fees are "reasonable fees from services included in actual settlement fees." Read together, section 101 and 406 preclude a lender from collecting any attorney's fees other than those listed in Section 101. 1

We are not experts in Pennsylvania law. Nonetheless, before reaching the preemption issue, we offer the following comments on the Pennsylvania statute. First, Section 101 includes the following in the definition of actual settlement costs:

(f) Charges and fees necessary for or related to the transfer of the property or the closing of the residential mortgage loan, paid by the residential mortgage debtor and received by any party other than the residential mortgage lender, whether or not paid by the residential mortgage debtor directly to the third party or to the residential mortgage lender for payment to the third party.

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In our view, this language could be interpreted to include fees for the recording of the satisfaction document, collected by AEFCU for payment to the appropriate public official. We also think that attorney fees for preparing and/or filing the satisfaction document could be within paragraph (f), and therefore AEFCU's collection of such fees would not violate 41 P.S. ~406. Fees paid to AEFCU for its own labor in preparing and/or filing the document would not be within paragraph (f), as they would not be "received by any party other than the residential mortgage lender". Of course, you should make your own judgment as to whether Pennsylvania courts would agree with these interpretations.

Second, 41 P.S. ~406 only limits the attorney's fees that a lender may collect from a residential mortgage debtor. Section 406 would not, in our opinion, preclude AEFCU from collecting a fee for reimbursement of its actual recording costs and/or a fee for its own labor in preparing and/or filing the satisfaction document. Again, you should make your own determination in this regard.

#### Preemption

Assuming that 41 P.S. ~101 and 406 are intended to apply to FCUs, and that the mortgage satisfaction fee proposed by AEFCU would violate those laws, we believe that the Pennsylvania laws are preempted by Section 701.21(b)(1) of the Regulations, 12 C.F.R. ~701.21(b)(1). That section 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. Among the state laws preempted are those dealing with "closing costs . . . or other fees." ~701.21(b)(1)(i)(C). In our opinion, both fees collected to reimburse AEFCU for actual recording fees paid to public officials, and fees for preparation and/or filing of a mortgage satisfaction document are within the purview of Section 701.21(b)(1)(i)(C). 41 P.S. ~101 and 406 are preempted to the degree that they attempt to prohibit or limit the imposition and collection of such charges by FCUs.

Sincerely,

Hattie M. Ulan  
Associate General Counsel

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92-1131 1 Although your letter does not discuss whether the statutes in question are intended to apply to FCUs, the statutes appear to be broad in scope and we assume that they would apply to FCUs unless preempted.