

December 15, 2003

Ms. Karen D. Waterman  
Vice President, Internal Audits and Compliance  
Kirtland Federal Credit Union  
P.O. Box 80570  
Albuquerque, NM 87198-0570

Re: Texas Debt Collection Law.

Dear Ms. Waterman:

This letter supplements an earlier letter to you dated November 26, 2003 (OGC Legal Opinion 03-0905), that responded to your question of whether credit unions outside of Texas must comply with the Texas Debt Collection Act (TDCA). Tex. Fin. Code Ann. §§392.001 et seq. (Vernon 1998). Your letter was prompted by an amendment to the TDCA, effective on September 1, 2003, that imposes certain disclosure obligations on creditors pursuing the collection of overdue debts.

We have learned that the Texas legislature amended the TDCA during a subsequent special session. The amendment, which becomes effective on January 11, 2004, makes the disclosure obligation discussed in OGC Legal Opinion 03-0905 applicable only to third party debt collectors. 2003 Tex. HB 7, Art. 28. As a result, after that date, the TDCA disclosure requirement will not apply to a creditor (including a federal credit union) acting on its own behalf in collecting an overdue debt.

Sincerely,

Sheila A. Albin  
Associate General Counsel

OGC/RPK:bhs  
03-0905A

---

November 26, 2003

Ms. Karen D. Waterman  
Vice President, Internal Audits and Compliance  
Kirtland Federal Credit Union  
P.O. Box 80570  
Albuquerque, NM 87198 – 0570

Re: Texas Debt Collection Law.

Dear Ms. Waterman:

You have asked if credit unions outside of Texas must comply with the Texas Debt Collection Act (TDCA). We interpret your question to ask if NCUA's lending regulations preempt the TDCA. We believe the TDCA is not preempted and that a federal credit union (FCU) must comply with it to the extent it has members who are Texas residents.

The TDCA governs the methods that creditors may use to collect overdue debts from borrowers. Tex. Fin. Code Ann. §§392.001 et seq. (Vernon 1998). The TDCA was recently amended, effective September 1, 2003, to require that a creditor notify its borrower in the communication that initiates collection activity that the creditor is attempting to collect a debt and that any information obtained from the borrower will be used for that purpose. Tex. Fin. Code Ann. §392.304(5) (Vernon 1998). The creditor must also assure in any subsequent communications from it or made on its behalf that the borrower knows that the communication is coming from a debt collector. Id.

NCUA's preemption analysis begins with an evaluation of whether the state law addresses a subject matter that it has reserved exclusively to itself. The NCUA has exclusive authority to regulate the rates, terms of repayment and other conditions of FCU loans and lines of credit to members. 12 C.F.R. §701.21(b)(1). NCUA's lending regulation states, however, that it is not the intent of the NCUA Board to preempt state laws affecting aspects of credit transactions that are primarily governed by federal laws other than the FCU Act, including state laws concerning debt collection practices. 12 C.F.R. §701.21(b)(3). It further provides that the relevant federal law's preemption standards determine whether a state law is preempted. Id.

The Fair Debt Collection Practices Act (FDCPA), which is the federal law governing this issue, anticipates that states may also regulate this area. 12 U.S.C. §1692n. It provides that state efforts to regulate debt collection practices will not be considered inconsistent, for preemption purposes, if the differences in the state law provide relatively greater protection to the consumer. Id. We believe the TDCA meets this standard. We spoke with a staff attorney at the Federal Trade Commission, which has enforcement authority over the FDCPA, who agreed with this assessment. While both laws prohibit false and misleading representations, the TDCA extends those prohibitions to any creditor, such as a credit union, acting on its own behalf in collecting its own debts. Tex. Fin. Code Ann. §392.001(6) (Vernon 1998).

Our preemption analysis also considers if an otherwise permissible state law affects an FCU's operations in an area, such as the terms of lending or repayment, that is exclusively within the regulatory oversight of the NCUA. That was the basis for the agency's determination to assert preemption in the case involving the California law to which you have referred in your letter. OGC Legal Opinion 02-0638, dated June 26, 2002. Unlike that case, the requirements imposed by the TDCA do not affect the terms of lending or repayment and so are not preempted.

The NCUA does assert exclusive examination and enforcement jurisdiction over FCUs. 12 C.F.R. §701.21(b)(4). Any state official asserting a claim against an FCU involving the TDCA or any other applicable state law relating to lending activities would need to refer the matter to the appropriate NCUA regional office. Id.

Sincerely,

Sheila A. Albin  
Associate General Counsel

OGC/RPK:bhs  
03-0905