

January 28, 2004

Robert K. Rusch, Vice President and  
Deputy General Counsel  
CUNA Mutual Group  
5910 Mineral Point Road  
Madison, Wisconsin 53701-0391

Re: Preemption of Fee Limitations on Debt Cancellation Products.

Dear Mr. Rusch:

You have asked if NCUA's lending regulation preempts state laws that attempt to limit or prohibit charges related to debt cancellation or suspension agreements (collectively DCAs) that federal credit unions (FCU) offer with member loans. Our opinion is that such laws are preempted because they purport to limit or affect the rates, terms of repayment and other conditions of loans and lines of credit that FCUs may offer to their members.

Under Colorado law, a creditor may contract for and receive certain charges in connection with a consumer credit transaction, including charges for property, life, accident, or health insurance. COLO. REV. STAT. § 5-2-202. The law, however, does not authorize creditors to charge for "insurance protecting the creditor against the consumer's default or other credit loss." COLO. REV. STAT. §5-2-202(3). You have asked if the preemption provisions in NCUA's lending rule preempt this law and laws similar to this one in other states. 12 C.F.R. §701.21(b).

NCUA's incidental powers rule authorizes an FCU to enter into DCAs with its members because DCAs are permissible loan-related products. 12 C.F.R. §721.3(g). In the preamble to the final rule, NCUA noted that DCAs "provide a convenient and useful way for an FCU and its members to manage the risk of nonpayment due to financial hardship." 66 Fed. Reg. 40845, 40853 (Aug. 6, 2001).

NCUA's lending regulation expressly preempts state laws affecting the rates of interest and amounts of finance charges or the terms of repayment. 12 C.F.R. §701.21(b)(i)-(ii). A DCA is an agreement between an FCU and its member that affects the borrower's repayment obligation by modifying the loan terms based on the occurrence of a specified event. In exchange for the FCU's promise to cancel or suspend the member's loan payments, the FCU charges the member a fee that is generally considered a finance charge under Regulation Z. 12 C.F.R. §226.4(b)(10). State laws that prohibit or limit creditors from charging DCA fees essentially bar them from entering into DCAs with borrowers. NCUA's lending regulation preempts such state laws because they limit or affect the rates of interest, the amount of finance charges, and the terms of repayment of FCU loans and lines of credit to members. Similarly, this office determined NCUA's lending regulation preempted a Georgia law prohibiting the financing of DCAs in OGC Legal Opinion 03-0412, dated November 10, 2003, available on our website.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/CJL:bhs  
03-1020

