

May 18, 1992

Michael LaDouceur  
Rockland Federal Credit Union  
241 Union Street  
Rockland, MA 02370

Re: Preemption of Late Charges (Your March 24, 1992, Letter)

Dear Mr. LaDouceur:

You have asked whether Rockland Federal Credit Union (FCU) is subject to Massachusetts General Laws (MGL) Chapter 183 Section 59 concerning late charges. Assuming that the law is applicable to all financial institutions, it is preempted by Section 107(10) of the FCU Act (12 U.S.C. 1757(10) and Section 701.21(b)(1) of NCUA's Regulations (12 C.F.R. 701.21(b)).

MGL Chapter 183 Section 59 provides that no mortgagee shall require a mortgagor to pay a penalty or late charge for any payment made within 15 days from the date such payment is due. Section 107(10) of the FCU Act authorizes federal credit unions (FCUs) "to levy late charges in accordance with the bylaws, for failure of members to promptly meet their obligations to the FCU." Article XII, Section 8 of the Standard FCU Bylaws states as follows:

Any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.

Section 701.21(b)(1) of the NCUA Rules and Regulations (12 C.F.R. 701.21(b)(1)) addresses the preemption of state laws. The regulation sets forth certain areas that are specifically preempted. State laws purporting to affect late charges on loans are specifically preempted by Section 701.21(b)(1)(i)(B). Your FCU may impose late fees on loans without regard to state law.

You also asked whether Massachusetts General Laws (MGL) Chapter 4 Section 9, is also preempted by NCUA's Regulations. This law, which states that payments due on Sundays and legal holidays may be made the next business day is not preempted since it is simply a matter of general statutory contract law. This law does not regulate the FCU's operation but rather affects the days payments may be made. It does not rise to the level of interference with federal regulation necessary to present a conflict between state and federal law and therefore is not subject to federal preemption.

Sincerely,

Hattie M. Ulan  
Associate General Counsel

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