

July 31, 1997

David L. Ray, Esq.  
Fletcher, Ray & Satterfield  
130 North Front Street, Suite 300  
Wilmington, North Carolina 28401

Re: Preemption of State Law Concerning Late Fees  
Your letter dated June 9, 1997.

Dear Mr. Ray:

You have asked whether §701.21(b)(i)(B) of NCUA Rules and Regulations preempts a provision of the North Carolina law concerning late charges. 12 C.F.R. §701.21(b)(i)(B) and N.C. GEN. STAT. §24-10.1 (1996). It does. NCUA's regulatory provision on preemption of state laws concerning loans to members expressly provides for preemption of state laws that purport to limit or affect rates of interest and finance charges, including late charges. 12 C.F.R. §701.21(b)(i)(B).

You have also asked about a portion of the National Housing Act that exempts certain types of loans from state laws limiting interest rates and other charges, but which also allows a state to opt out of that exemption and, in effect, have state law provisions continue to apply. 12 U.S.C. §1735f-7a. North Carolina has opted out of the National Housing Act exemption. N.C. GEN. STAT. §24-2.3. You have asked what interplay, if any, there is between NCUA's preemption and the exemption provided in the National Housing Act.

The exemption from state law provided in the National Housing Act and the election by North Carolina to opt out of the exemption's application do not affect the authority of a federal credit union (FCU) to charge late fees in excess of that permitted under North Carolina law. In brief, an FCU's authority flows from the Federal Credit Union Act (the Act) and NCUA Rules and Regulations, not the National Housing Act. The Act establishes the power of FCUs to make loans, setting out particular criteria, and specifically authorizes FCUs to levy late charges in accordance with their bylaws. 12 U.S.C. §§1757(5), (10); Article XII, Section 8 of the FCU Bylaws. Under that authority, as noted above, NCUA Rules and Regulations specifically preempt any state law limiting late charges. 12 C.F.R. §701.21(b)(i)(B). North Carolina's ability to opt out or elect not to have a provision of the National Housing Act apply in North Carolina is only David L. Ray, Esq. with respect to that federal statute and has no effect on the authority provided in the Act or NCUA regulations.

I hope that we have been of assistance.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/MFR:bhs  
SSIC 3320  
97-0633

