

June 26, 2002

William J. Donovan, General Counsel &
Senior Vice President
National Association of Federal Credit Unions
3138 N. 10th Street
Arlington, VA 22201-2149

Re: Preemption of California Credit Card Disclosure Law.

Dear Mr. Donovan:

You have asked for our opinion on whether the Federal Credit Union Act (Act) and the lending regulation issued by the National Credit Union Administration (NCUA) preempt a California law directed at credit card issuers. CAL. CIV. §1748.13. Our opinion is that, because the effect of this state law is to regulate the terms and conditions of credit card lending, it is preempted, and the State of California may not require federal credit unions to comply with it.

The California statute at issue requires disclosures to credit card holders who are permitted to make monthly payments of less than 10% of their account balance. In brief, it requires: (1) a minimum payment warning on monthly billing statements; (2) a statement with calculations about the time and cost to repay balances with minimum payments; (3) an offer to provide a customized estimate of the time and cost to repay through a toll-free number that must be available 13 hours per day; and (4) as an alternative to the 2nd and 3rd requirements, the issuer can provide customized statements to account holders (and must provide them to California cardholders who have made minimum payments for 6 consecutive months) and a referral for credit counseling services. CAL. CIV. §1748.13(a). Card issuers that require minimum monthly payments of at least 10% are exempt. CAL. CIV. §1748.13(c).

NCUA's lending regulation expressly preempts state laws affecting the terms of repayment for credit cards. The regulation states:

Section 701.21 is promulgated pursuant to the NCUA Board's exclusive authority as set forth in Section 107(5) of the Federal Credit Union Act (12 U.S.C. §1757(5) to regulate the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards) to members. This exercise of the Board's authority preempts any state law purporting to limit or affect:

- (i)(A) rates of interest and amounts of finance charges . . .
- (ii) terms of repayment, including . . .
 - (B) the amount, uniformity, and frequency of payments, including the accrual of interest if payments are insufficient to pay all interest due.

12 C.F.R. §701.21(b)(1)(emphasis added). The California law at issue affects the terms of repayment by placing additional burdens on credit card issuers that do not require minimum monthly payments of at least ten percent. NCUA's long-standing position is that state laws affecting terms of repayment are preempted. 49 Fed. Reg. 30683, 30684 (August 1, 1984).

NCUA's position regarding preemption of state law in certain areas of lending, as stated in its lending regulation, derives from the authority granted to the NCUA Board by the Federal Credit Union Act. 12 U.S.C. §§1751 *et seq.* Federal credit unions are federal instrumentalities, chartered and regulated under federal law. The NCUA, headed by a three-member Board appointed by the president, is an independent federal agency within the executive branch and is the cradle-to-grave regulator of federal credit unions. In addition to its role as the chartering authority and supervisor of federal credit unions, the NCUA, through the National Credit Union Share Insurance Fund, provides federal share insurance for all accounts in federal credit unions and, upon application, to state-chartered credit unions.

While the Federal Credit Union Act and regulations issued by the NCUA preempt much of the field of federal credit union regulation, there are instances in which federal credit unions are subject to state laws. The Office of General Counsel has recognized in legal opinions the authority of states to regulate various aspects of federal credit union operations that involve, for example, registration and certain filing requirements or fees designed to protect the health, safety or welfare of state residents. A [letter from Hattie M. Ulan, Associate General Counsel to Peter J. Liska, dated June 11, 1992](#), contains a thorough discussion of federal preemption from the NCUA perspective in the context of a state law pertaining to registration of credit card issuers. For your convenience, a copy is enclosed with this letter. The California statute in question is not within the area of permissible regulation by the states because it affects repayment terms.

NCUA's lending regulation expressly recognizes that federal credit unions in certain matters are subject to state law, including insurance laws, issues related to the establishment and transfers of security interests, issues of default and so forth. 12 C.F.R. §701.21(b)(2). NCUA's position is that our lending regulation will control if the preemption provision of other federal law would otherwise permit state law to be given effect for those areas expressly preempted by our regulation. 49 Fed. Reg. at 30684.

Thank you for bringing this matter to our attention and we hope that you find our guidance helpful on this issue.

Sincerely,

Robert M. Fenner
General Counsel

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[Enclosure](#)