

August 7, 2007

Mr. Robert Braswell, Commissioner
State of Georgia
Department of Banking and Finance
2990 Brandywine Road, Suite 200
Atlanta, GA 30341-5565

Re: Preemption of Georgia law regarding check-cashing fees.

Dear Mr. Braswell:

Attorney Richard Kessler, counsel to the Georgia Credit Union Affiliates, asked us to provide you with our opinion on whether federal credit unions (FCUs) are subject to a Georgia statute prohibiting financial institutions from charging fees for cashing checks for non-accountholders. The Federal Credit Union Act (Act) and NCUA's regulations preempt the Georgia law's prohibition on charging fees to non-accountholders cashing share drafts drawn on FCUs.

FCUs must comply with state laws unless federal law provides a basis for federal preemption, and, in this case, the Act and NCUA regulations expressly address check cashing and the imposition of fees for this activity, thus, providing a basis for preemption. The Georgia law at issue, by its terms, prohibits a financial institution, including an FCU, from charging a fee for cashing a check or share draft drawn on it. O.C.G.A. § 7-1-239.5. The Act, however, authorizes FCUs to offer share draft accounts to their members and to cash checks and money orders for their members. 12 U.S.C. §§1757(6), 1757(12), 1785(f). Amendments to the Act adopted in 2006 grant explicit authority for FCUs to cash checks for persons in the field of membership "for a fee." 12 U.S.C. §1757(12)(B). In addition, FCUs have "such incidental powers as shall be necessary or requisite to enable. . . [them] to carry on effectively the business for which. . . [they are] incorporated. 12 U.S.C. §1757(17). NCUA regulations implementing the Act's authority expressly permit FCUs to determine the fees, charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account and expressly states that "[s]tate laws regulating such activities are not applicable to federal credit unions." 12 C.F.R. §701.35(c).

A recent federal court decision held that the Georgia statute at issue was preempted by federal law with respect to national banks and supports our determination that the Georgia law is preempted for FCUs. Bank of America, N.A. v. Sorrell, 248 F. Supp. 2d 1196, 1199 (N.D. Ga. 2002) (court based its decision on the incidental powers clause of the National Bank Act, comparable to provision in the Act, and an Office of the Comptroller of the Currency regulation permitting national banks to impose charges and fees). Id. at 1199.

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We conclude FCUs may cash checks drawn by a member on the FCU's account and payable to a nonmember and charge the nonmember payee a fee because the Georgia statute discussed above is preempted by federal law. If you have any questions or require additional information, please feel free to contact Staff Attorney Elizabeth Wirick or me.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/EAW/SAA:bhs
07-0743