

June 6, 1997

Peter J. Liska, Esquire  
766 Shrewsbury Avenue Tinton Falls, New Jersey 07724

Re: Operating and Sharing an Electronic Branch in Massachusetts, Your letter dated March 14, 1997.

Dear Mr. Liska:

You have asked whether federal credit unions (FCUs) must comply with provisions of the Massachusetts' Electronic Branches and Electronic Fund Transfers statute which set forth the licensing and procedural requirements for electronic banking in the state of Massachusetts. MASS. GEN. LAWS ANN., ch. 167B (West 1994). We conclude that some of the provisions are preempted and others are not.

Since NCUA does not regulate in the area of electronic branching, FCUs are subject to state law unless the law precludes them from serving their members effectively. The provisions of chapter 167B which limit the ability of FCUs to establish ATMs in Massachusetts are preempted by federal law. The preempted provisions are those that: require approval by the Massachusetts Commissioner to establish the branch; require approval by the Commissioner as to the location of the branch; limit the services an FCU may provide; and require notification and approval by the Commissioner to terminate the branch. These provisions affect the ability of an FCU to branch freely across state lines and serve its members effectively.

We have no legal objection to the registration requirements, the filing fee requirements and any provisions relating to security which are designed to protect the health, safety and welfare of the Massachusetts residents.

Enclosed are copies of letters providing some additional discussion of federal preemption and similar state law provisions that we have considered. A letter dated June 11, 1992, from Hattie M. Ulan to you, discusses the standards for preemption in the context of an Iowa credit card statute that requires FCUs, whose principal place of business is not in Iowa, to register, file copies of their credit agreements and pay an annual fee to the State Superintendent. We concluded that these provisions are valid exercises of a state's powers. In a letter from Richard Schulman to Ralph Shulansky,

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dated March 15, 1994, we reviewed a Connecticut statute that prohibited FCUs, whose main offices are outside Connecticut, from establishing ATMs in Connecticut. We concluded in that case that "by limiting the ability of out-of-state FCUs to establish and maintain ATMs in Connecticut, Section 36-193 of the Connecticut General Statutes frustrates the objectives of Congress and is a nullity with respect to FCUs."

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/MFR:bhs  
SSIC 3600  
97-0331

Enclosures

cc: Layne L. Bumgardner, Region I Director