

May 3, 2005

Suzanne Yashewski, Associate General Counsel
Texas Credit Union League
1122 Colorado Street, Suite 1307
Austin, TX 78701

Re: Preemption of State Law.

Dear Ms. Yashewski:

You have asked if the NCUA would preempt a proposed law under consideration in the Texas legislature that would provide relief on consumer debt owed by military personnel called to active duty. H.B. 1853, 79(R) Leg. Sess. (Tex. 2005) (H.B. 1853). Our opinion is the Federal Credit Union Act (Act) and NCUA's regulations would preempt its application to federal credit unions (FCUs) because the effect of the proposed law would be to regulate the terms and conditions of lending by FCUs. 12 U.S.C. §1757(5); 12 C.F.R. §701.21. FCUs, however, must comply with the provisions of the Servicemembers Civil Relief Act (SCRA), a federal law providing many protections that parallel those in H.B. 1853. 50 U.S.C. App. §§501-596.

While H.B. 1853 would provide relief similar to the SCRA, there are differences between the two. In some instances, the relief provided by H.B. 1853 is more generous to military personnel and, therefore, more burdensome to FCUs.

NCUA's lending regulation expressly preempts state laws affecting the terms and conditions of lending by FCUs. 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, including: (1) the frequency or the increments by which a variable interest rate may be changed; (2) the index to which a variable interest rate may be tied; (3) the manner or timing of notifying the borrower of a change in interest rate; (4) the authority to increase the interest rate on an

existing balance; (B) late charges; and (C) closing costs, application, origination, or other fees;

(ii) terms of repayment, including: (A) the maturity of loans and lines of credit; (B) the amount, uniformity, and frequency of payments, including the accrual of unpaid interest if payments are insufficient to pay all interest due; (C) balloon payments; and (D) prepayment limits;

(iii) conditions related to: (A) the amount of the loan or line of credit; (B) the purpose of the loan or line of credit; (C) the type or amount of security and the relation of the value of the security to the amount of the loan or line of credit; (D) eligible borrowers; and (E) the imposition and enforcement of liens on the shares of borrowers and accommodation parties.

12 C.F.R. §701.21(b)(1). The Board does not intend to preempt state laws that do not affect the rates, terms of repayment and other conditions described above regarding FCU loans and lines of credit to members. 12 C.F.R. §701.21(b)(2). For example, insurance laws, laws related to transfer of and security interests in real and personal property, conditions related to collection costs and attorneys' fees, requirements that consumer lending documents be in plain language, and the circumstances in which a borrower may be declared in default and may cure a default, are not preempted.

H.B. 1853 has provisions different from those in the SCRA that, if enacted, would affect the rates of interest and terms of repayment of FCU loans to members eligible under the bill. Accordingly, the Act and §701.21 would preempt H.B. 1853 to the extent it affects the terms and conditions of lending by FCUs. Additional discussion of NCUA's position on preemption of state law is available in Legal Opinions 02-0566 and 02-0638, available on the agency's website at ncua.gov.

Sincerely,

/s/

Sheila A. Albin
Associate General Counsel