

August 14, 1991

Mr. Jeff Connor
Commissioner
State of New Jersey
Department of Banking
CN 040
Trenton, New Jersey 08625

Re: New Jersey Consumer Checking Accounts (Your July 23, 1991, Letter)

Dear Mr. Connor:

You have asked us to comment on the New Jersey Consumer Checking Account Bill which was signed into law by New Jersey's Governor Florio on July 16, 1991. Chairman Jepsen requested that I respond to your letter since it addresses legal issues. The New Jersey law is preempted by NCUA Rules and Regulations because the law attempts to regulate share draft accounts at federal credit unions (FCU).

BACKGROUND

The state of New Jersey has recently enacted the Consumer Checking Act ("Act") which requires the New Jersey Department of Banking to establish the features of a New Jersey Consumer Checking Account. Those features must include the following, which may be stated in terms of a range of options rather than a specific number:

- (1) the initial deposit amount, if any, necessary to open a New Jersey Consumer Checking Account;
- (2) the maximum amount, if any, permitted to be required by a depository institution as a minimum balance necessary to maintain the account;
- (3) the number of checks, if any, that may be used within a periodic cycle without charge to withdraw funds from the account;
- (4) the number of other withdrawals, if any, that may be made by method other than check within a periodic cycle without charge;
- (5) a maximum amount, if any, that may be charged per periodic cycle for maintaining the account; (6) the maximum number of deposits, if any, that may be made in a periodic cycle without charge; and
- (7) a maximum amount that may be charged per transaction in excess of the number permitted under (3), (4) and (6) above. Furthermore, the Act requires all FCUs, which offer regular checking accounts to offer the New Jersey Consumer Checking Account. FCUs must also post a conspicuous notice and provide materials in a public area to inform members of the public of the availability of this new account.

ANALYSIS

FCU's must comply with New Jersey law and regulations unless it is preempted by the FCU Act or NCUA's Rules and Regulations. Section 701.35(c) of NCUA's Rules and Regulations (12 C.F.R. ~701.35(c)) addresses the preemption of laws affecting share draft accounts. Section 701.35(c) states:

A Federal credit union may, consistent with this Section and other Federal law, and its contractual obligations, determine the type of disclosures, fees, or charges, time for crediting or depositing funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

It is clear from the section cited above that any state statute or regulation attempting to establish or regulate a specific type of share draft account at an FCU is preempted. Therefore, the New Jersey law is preempted by Section 701.35(c). The decisions concerning whether to establish a consumer checking account and on what terms is left to the discretion of the FCU's board of directors. State laws, such as the New Jersey statute, which purport to regulate such decisions are inapplicable to FCUs.

Please contact us if we can be of further assistance.

Sincerely,

James J. Engel
Deputy General Counsel

GC/MM:sg
SSIC
91-0747