

## **INTERPRETIVE LETTER 92-8 (JUNE 24, 1992)**

### **Illinois Credit Card Issuance Act is not preempted by federal Fair Credit and Charge Card Disclosure Act of 1989; out-of-state national bank that issues cards to Illinois residents must comply with disclosure and filing requirements of the Act.**

This letter is in reply to your correspondence dated \* to the Commissioner of Banks and Trust Companies regarding the Credit Card Issuance Act ("Act"), Ill. Rev. Stat. ch. 17, par. 6000 et seq. (1991). You stated that, in your opinion, the Act is preempted by federal banking law.

This Agency does not regulate national banks. The provisions of the Act that require issuers of credit cards to report specific credit information and to pay a fee to this Agency do not authorize the Commissioner to regulate the operations of banks. These provisions do, however, require that issuers of credit cards to Illinois residents, including your client bank, inform its card holders in Illinois that they have the right to receive comparative information on credit card rates, charges, annual membership fees and grace periods.

The Act requires each entity that issues credit cards to Illinois residents to comply with certain disclosures and to file certain reports. Section 6(b) of the Act provides that each credit card solicitation, application and periodic billing statement, or literature accompanying the periodic billing statement mailed or otherwise presented to Illinois residents, must contain a statement informing Illinois residents of their right to receive comparative credit information from the Commissioner. Section 7 of the Act provides that if a credit card issuer issues cards to residents of Illinois, then the issuer shall file with the Commissioner a statement of its current annual percentage rate or rates for credit card accounts, any membership or participation fees, and the number of days allowed for a grace period. Since your client bank issues credit cards to Illinois residents and mails periodic billing statements to them, Sections 6 and 7 of the Act require it to make the appropriate disclosures on its applications, solicitations and periodic billing statements that are mailed to Illinois residents and to report the required credit information to the Commissioner's Office. The Act does not exempt out of state financial institutions from these disclosure and reporting requirements.

The Commissioner is required to prepare, update and make available reports containing comparative information on all issuers of credit cards to Illinois residents. The Commissioner is authorized to specify reasonable fees that accompany filings of credit information in order to cover the cost of compiling the information and prepare the reports of comparative information. Since the Bank is required to file its credit information with this Agency, its filing must be accompanied by the appropriate filing fee.

The specific issue of federal preemption under the Fair Credit and Charge Card Disclosures Act of 1989 ("FCCDA") was considered by the Board of Governors of the Federal Reserve System ("Fed") when they amended Regulation Z, effective April 3, 1989. While some state laws were preempted, state laws that regulate the form or content of the disclosure of information that is unrelated to the scope and content of information required to be disclosed under Section 127(c) or (d) are not preempted. The example

given by the Fed essentially describes the Illinois law, stating "the following type of state laws are not preempted...laws notifying consumers about credit information available from state authorities." Official Staff Commentary, 12 C.F.R. ' 226.28(d)(3) (1990). Clearly, the Fed itself has found that Section 6(b) of the Act is not preempted by federal law.

Finally, you have attached a letter dated \*, in which the Office of the Comptroller of the Currency took the position that a Wisconsin notification statute was preempted by the National Bank Act. Once again, the Supplementary Information to the final amendments to Regulation Z specifically addresses this issue but reaches an opposite conclusion.