BANKING AND FINANCE: MONEY AND INTEREST.

Every offer or extension of consumer credit within Commonwealth must be in compliance with Federal Truth-in-Lending Act and Regulation Z. State law claims are precluded where conduct forming basis of claim is regulated by federal law. Borrower who disputes lender’s ability to establish cut-off or reasonable hour for posting payments to his account is limited substantively and procedurally to remedies and recovery allowed under federal law; is prohibited from recasting his claim under other state law theories.

The Honorable William C. Mims
Member, Senate of Virginia
September 12, 2001

You inquire regarding the application of certain provisions in Chapter 7.3 of Title 6.1 of the Code of Virginia governing money and interest. You first ask whether § 6.1-330.79 precludes other state law claims where the conduct forming the basis of a claim is regulated by federal law.

You present a hypothetical situation whereby a Virginia lender, subject to the Federal Truth-in-Lending Act and Regulation Z, establishes an open-end consumer credit account with a borrower. As authorized by Regulation Z, the lender sends periodic statements notifying the borrower that payments must be received by the lender at a time certain on the due date to be credited as of that date. The lender posts the borrower’s payments to the account the day they are received, if they are received by a particular cut-off hour, in accordance with the notice on the periodic statement. Payments received after the cut-off hour are posted as of the following business day. The borrower claims that payments received after the cut-off hour must be posted as of the day received.

Section 6.1-330.79, entitled "[c]ompliance with federal law," provides:

Every person subject to the provisions of 15 U.S.C. § 1601et seq. and Regulation Z, Truth-in-Lending,
promulgated by the Board of Governors of the Federal Reserve System shall comply with such statutes and regulations when offering or extending consumer credit as defined therein. A lender who fails to comply with this section shall not be subject to any liability or penalty beyond those imposed by such federal statutes and regulations.

Under recognized principles of statutory construction, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directory. The Truth-in-Lending Act and Regulation Z provide certain rules for the disclosure to consumers of terms, billing practices, and other aspects related to offers or extensions of consumer credit by creditors. Therefore, it is clear that § 6.1-330.79 requires every individual or entity within the Commonwealth who offers or extends consumer credit to comply with the federal law.

Additionally, "[w]hile not part of the code section, in the strictest sense, the caption may be considered in construing the statute, as it is 'valuable and indicative of legislative intent.'" The caption to § 6.1-330.79 clearly reflects that the General Assembly requires compliance by creditors with federal law—the Truth-in-Lending Act and Regulation Z. Finally, "[w]here a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation." Section 6.1-330.79 is clear and unambiguous. It is my opinion that § 6.1-330.79 clearly intends to preclude other state law claims where the conduct forming the basis of a claim is regulated by federal law. Such regulated conduct would include conduct that is required, specifically permitted, or prohibited by federal law.

You also ask whether a plaintiff who brings a claim under Virginia law regarding conduct regulated by § 6.1-330.79 is limited substantively and procedurally to the remedies and recovery allowed by the Federal Truth-in-Lending Act and Regulation Z.

Because I conclude that § 6.1-330.79 clearly and unambiguously precludes other state law claims where the conduct forming the basis of a claim is regulated by federal law, I must also conclude that a claim under Chapter 7.3 of Title 6.1 is limited substantively and procedurally to the remedies and recovery allowed by federal law. In the hypothetical situation you present, therefore, a borrower
who disputes the lender’s ability to establish a cut-off hour or the reasonableness of the hour for posting payments to his account is limited by § 6.1-330.79 to seeking redress under federal law. Section 6.1-330.79, in my view, prohibits such borrower from recasting his claim under other state law theories.


4 See 12 C.F.R. § 226.10(b) & Supp. I, cmt. 10(b) (providing that lender may establish requirements, on or with periodic statement, for consumer to follow in making payments, and lender may establish time by which payments must be received in order to be credited as of that date); 12 C.F.R. § 226.7(j) (requiring creditor to provide consumer with periodic statements disclosing date or time new balance must be paid in order to avoid additional finance charges).


7 See 15 U.S.C.A. § 1602(f) (West 1998) (defining "creditor," as used in Truth-in-Lending Act, as person who extends consumer credit and to whom debt arising from consumer credit transaction is payable by agreement).
