



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

September 5, 1989

Office of General Counsel

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SSIC 3320
89-0718

Thomas F. Viguera, President
Connecticut Credit Union League, Inc.
P.O. Box 5001
Wallingford, CT 06492

Re: Preemption of Connecticut Law (Your July 10,
1989, Letter)

Dear Mr. Viguera:

You have asked whether a recently-passed Connecticut law is preempted by the NCUA's Rules and Regulations. Generally, the new law requires financial institutions, including Federal credit unions, to pay interest on certain types of accounts from the first day of the earnings period until the date of withdrawal even though the earnings period has not expired. As applied to federally-chartered credit unions, the Connecticut law is preempted.

Analysis

The relevant portion of Connecticut Public Act 89-117 (Connecticut law) provides:

- (a) For purposes of this section:
(1) "Financial institution" means any
... . federally chartered credit union;

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Vol. V Part K (1) Conn. Law governing interest
payments

(2) "savings deposit account" means any account at a financial institution into which deposits are made, where interest is paid periodically . . .

(b) In the event a depositor withdraws all moneys from a savings deposit account before the end of the earnings period, the financial institution shall pay interest on a pro rata basis from the first day of the earning period to the date of withdrawal.

Section 117 of the FCU Act (12 U.S.C. §1763) provides, in part:

At such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare a dividend to be paid at different rates on different types of shares, at different rates and maturity dates in the case of share certificates, and at different rates on different types of share draft accounts. Dividends credited may be accrued on various types of shares, share certificates, and share draft accounts as authorized by the board of directors.

Section 701.35 of the NCUA Rules and Regulations (12 C.F.R. §701.35) provides, in part:

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with Section 107(6) of the Act (12 U.S.C. §1757(6)) and the board of directors may declare dividends on such accounts as provided in Section 117 of the Act (12 U.S.C. §1763).

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(c) A Federal credit union may, consistent with this Section, other Federal law, and its contractual obligations, determine the type of disclosures, fees or charges, time for

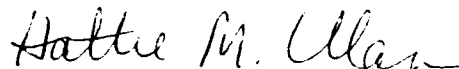
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crediting of deposited funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

The Connecticut law requires all financial institutions, including FCU's, operating in the state to pay pro rata interest from the first day of the earning period to the date of withdrawal, even if the earning period has not ended.

FCU's must comply with the law unless it is preempted by the FCU Act or NCUA's Rules and Regulations. In our opinion, it is preempted. We first note that the Connecticut law applies to "interest," not dividends. FCU's pay dividends on share accounts -- not interest. Interest is normally guaranteed, dividends are not. FCU's can only pay dividends after they have made their reserve transfer. Even if the Connecticut law were interpreted to apply to dividends paid by FCU's, it is our opinion that the Connecticut law is preempted by Section 117 of the FCU Act and Section 701.35 of the NCUA Regulations. Section 117 of the FCU Act permits an FCU's board of directors to determine the dividends to be paid on share accounts once the reserve transfer has been made. Section 701.35(a) restates the authority to pay dividends. Section 701.35(c) permits the FCU to determine the "time for crediting of deposited funds . . . and all other matters affecting the opening, maintaining or closing of a share . . . account." The Connecticut law's requirements conflict with Section 117 of the FCU Act and Section 701.35 of the NCUA's Rules and Regulations and are preempted.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel