



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

Office of General Counsel

GC/MM:sg  
SSIC 3601  
89-0909

September 28, 1989

William R. Mapother, Esq.  
Mapother and Mapother  
801 West Jefferson Street  
Louisville, Kentucky 40202

RE: Application of Statutory Lien to Individual  
Retirement Accounts (Your September 1, 1989,  
Letter)

Dear Mr. Mapother:

You have asked us to reanalyze our June 12, 1989, opinion regarding the application of a statutory lien by a Federal credit union ("FCU") to a member's Individual Retirement Account ("IRA") vis-a-vis your analysis in Volume 2 of Winning Bankruptcy Strategies for Credit Union Attorneys and Consultants.

**BACKGROUND**

On June 12, 1989, this Office issued an opinion on the legality of an FCU applying a statutory lien to a member's IRA. In the opinion, we stated that, although such an application does not clearly violate the FCU Act or NCUA Rules and Regulations, it may be a violation of the Internal Revenue Code. We strongly recommended that the individual request a revenue ruling from the Internal Revenue Service ("IRS"). This was consistent with our past opinions on this matter.

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ANALYSIS

You asked us to compare this opinion to your analysis contained in Volume 2 of Winning Bankruptcy Strategies for Credit Union Attorneys and Consultants. In your analysis you quote extensively from one of our prior opinions which stated in part that:

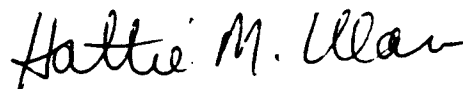
[w]hile an FCU would not violate the FCU Act if it applied its statutory lien authority against a member's Individual Retirement Account ("IRA") held in the FCU, it could be a violation of the Internal Revenue Code and thus a violation of NCUA Rules and Regulations.

The NCUA opinion quoted was referring to Section 701.19 and Part 724 of the NCUA Regulations. You go on to discuss your belief that the Internal Revenue Service's likely response would be that:

[t]he credit union's statutory lien is created by federal statute, not by any voluntary act of the taxpayer/member, so he is not "using" the funds "as security for a loan." Since this is an involuntary lien over which the taxpayer has no control, the credit union is not in violation of §408(e)(4) [of the IRS Code].

Thus, if we understand your position correctly, you believe an FCU can use its statutory lien to absorb a member's IRA. Our approach is more cautious due to the fact that the IRS has not ruled on this issue. Although your publication was quite informative, we see no major difference between your approach and our approach except for your assertion on how the IRS would rule on this issue. Other aspects of our opinion do not seem to conflict with your own research. Our citation of case law was only for the purpose of analogy since no court has ruled on the issue of the statutory lien. If you need further clarification on our position or have any specific questions on these issues, please contact us at your earliest convenience.

Sincerely,



HATTIE M. ULAN  
Assistant General Counsel