



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/JT:sg
SSIC #3320
89-1124

January 26, 1990

Walter H. Hotz, Esq.
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Tucker, Georgia 30084

Re: Request for Opinion - - State Law's Applicability
to Federal Credit Unions (Your November 16, 1989,
Letter)

Dear Mr. Hotz:

You have asked whether Section 2954.8(a) of the California Civil Code, which requires financial institutions to pay interest on real estate escrow accounts, is applicable to Federal credit unions ("FCU's"). This statute is preempted by Section 701.35 of NCUA's Rules and Regulations.

ANALYSIS

Section 2954.8(a) of the California Civil Code requires a "financial institution" to pay interest "of at least two percent simple interest per annum" on money it "receives ... in advance for payment of taxes and assessments on the property, for insurance, or for other purposes related to the property." "Financial institution" is defined to include FCU's.

You have presented five different factual situations and asked whether the California statute applies in each case. The situations you presented and our comments follow:

FOIA - Vol. V, Part K, Preemption

1. "The FCU makes a long term real estate loan and keeps same in its own portfolio of loans. The FCU requires an escrow account (the escrow account is of a standard nature, wherein an escrow is maintained for real estate taxes, hazard insurance premium and possibly other items customarily escrowed by real estate lenders in the community in question.) The debtor is a member of the FCU."

Section 701.35 provides:

(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).

* * *

(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 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 California statute is preempted by Section 701.35(c). The decision of whether an account will receive dividends, and the dividend rate that will be paid, is a matter affecting the maintaining of a share account, and is therefore a decision to be made by an FCU's board of directors.

2. "Same facts as in the first factual circumstance except that the real estate loan is a short term loan (where the term is fifteen years or less)."

The length of the loan does not change the result. Our answer is the same as in the first situation.

3. "The FCU makes a long term real estate loan and sells same (whole or part) to the secondary market. The FCU retains servicing rights and services the loan. As part of the servicing duty, the FCU manages the required escrow account The debtor is a member of the FCU."

Section 701.23(e) of NCUA's Regulations authorizes an FCU to ser-

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vice loans that it sells in whole or in part. Section 701.35(a) provides the FCU with the discretion to determine the dividend rate, if any, that will be paid on the escrow account. Section 701.35(c) preempts any state law affecting this determination.

4. "The FCU purchases a long term real estate loan from a third party (for the purpose of facilitating the FCU's ability to create a 'package' of loans to be submitted to the secondary market) and sells same (100%) to the secondary market. The FCU retains servicing rights and services the loan. As part of the servicing duty, the FCU manages the required escrow account The debtor is not a member of the FCU."

An FCU does not have the authority to maintain the escrow funds in a share account where the debtor is a nonmember. It can maintain the escrow funds as an account payable. This account would not be federally insured. The account payable is subject to the California statute since the Section 701.35(c) preemption provision applies only to share, share draft and share certificate accounts, and not to accounts payable.

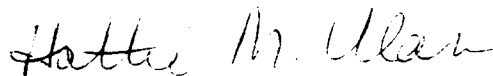
5. "Same as the fourth factual circumstance, except only a portion of the loan is sold to the secondary market versus 100% being sold."

Section 701.23(b)(iv) authorizes an FCU to purchase:

real estate-secured loans, from any source, if the purchaser is granting real estate-secured loans pursuant to Section 701.21 on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market.

This regulation limits FCU purchase of nonmember loans to purchases made for the purpose of packaging a pool of loans for sale or pledge on the secondary market. The circumstance you describe is permissible only if the nonmember loans held by the FCU are intended to be pledged on the secondary market. Our position on the escrow funds described in 4 above is unchanged.

Sincerely,



HATTIE M. ULAN
Associate General Counsel