

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

September 7, 1990

James R. Brown, III, Esq.
Brown & Brown
8501 La Salle Road
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Re: Maryland Abandoned Property Law
(Your May 21, 1990, Letter)

Dear Mr. Brown:

You have asked whether the Maryland Disposition of Abandoned Property Law, Annotated Code of Maryland, Commercial Law, Title 17 (the Statute), is preempted by Section 701.35 of the National Credit Union Administration (NCUA) Rules and Regulations and Article III, Section 3, of the Standard Federal Credit Union (FCU) Bylaws. In our opinion, the basic premise of the Statute, that FCUs must turn over inactive accounts to the State, is not preempted by Section 701.35. Certain specific provisions of the Statute, however, are preempted by Section 701.35 and other NCUA regulations. We also believe that the Statute is not preempted by Article III, Section 3.

Background

Under Section 17-301 of the Statute, an account in a financial institution is presumed to be abandoned if it has shown no activity for five years. Section 17-310 requires the holder of property which is presumed to be abandoned to report that fact to the State Comptroller. Section 17-312 requires all holders of such property to then pay or deliver the property to the State Comptroller. You suggest that the Statute conflicts with Section 701.35(c) of the NCUA Rules and Regulations, which provides that FCUs may determine all matters "affecting the opening, maintaining or closing of a share, share draft or share certificate account" and that

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"[s]tate laws regulating such activities are not applicable to FCUs." You also suggest that the Statute conflicts with Article III, Section 3, of the Standard FCU Bylaws, which states that a member who reduces his share balance below the par value of one share must be given at least six months to increase the balance to par value before he may be terminated from membership.

Analysis

Your concern about Section 701.35 is that the Statute, by requiring the FCU to turn over certain property, may effectively force the closing of an account in a manner inconsistent with the FCU's normal termination procedures. We note that questions about conflict between state abandoned property laws and Section 701.35 normally arise when state laws attempt to limit fees that holders may impose on inactive accounts. We have stated that prior to the time when funds become presumed abandoned under a state law, FCUs may set and levy fees against all types of FCU accounts as permitted under Section 701.35. Such fees are not limited by state law. Accordingly, Section 17-308.1 of the Statute, which addresses the imposition of any charges on a dormant or inactive account by the holder of such account, is preempted.

As to your concern about the Statute effecting the closing of accounts in a manner contrary to the established termination procedures of the FCU, we do not see a conflict with Section 701.35. In our view, the Statute represents Maryland's effort to protect the abandoned property of its citizens, not to "regulate" share accounts in FCUs within the meaning of Section 701.35(c). FCUs thus are required to comply with the Statute's requirement to turn over abandoned property to the State.

We note that, despite NCUA's longstanding position that FCUs are required to comply with state unclaimed property laws, the enforcement provision of the Statute is preempted by federal law. Section 17-323 of the Statute provides for various penalties for failing to file required reports and deliver abandoned property to the State Comptroller. In the Preamble to Interpretive Ruling and Policy Statement 82-5 (copy enclosed), however, the NCUA Board stated that if violations of state law occur and the matter cannot be re-

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solved informally between the parties, the state should report such violations to NCUA for appropriate action. The Board further stated that the imposition of fines and penalties under state law would fall within NCUA's enforcement jurisdiction. Accordingly, Section 17-323 of the Statute is preempted to the extent that NCUA, rather than the state, is the enforcement agency.

Finally, we are of the opinion that in the vast majority of cases the Statute does not conflict with Article III, Section 3, of the Bylaws. According to the bylaw, a share balance below par value may be absorbed by a late charge after a certain period of time (at least six months) upon authorization of the board of directors. Even if the board specifically authorizes an absorption fee, the Statute's requirement that an account be inactive for five years before it is presumed to be abandoned allows an FCU to absorb an account as long as the time period established is less than five years.

I hope this has been of assistance.

Sincerely,

L. M. Ulan
Hattie M. Ulan
Associate General Counsel
Office of General Counsel

Enclosure

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SSIC 3320
90-0532